

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO44/2017

[2017] SCSC 893

THE REPUBLIC

versus

STEPHAN MONDON & ORS

Heard: 22nd September 2017

Counsel: Mr. G. Thatchett for the Republic
Mr .C. Andre for the 1st, 2nd, 4th, 5th and 8th Accused
Mr .F. Bonte for the 3rd Accused
Mr. Gabriel for 6th and 7th Accused

Delivered: 22nd September 2017

RULING

R. Govinden, J

[1] In this case, the accused have been charged before the Court on the 7th September 2017 as follows:

- i. In the first Count, Stephan Mondon, 1st Accused (also referred to as the 1st Respondent) and Guy Hall, 2nd accused (also referred to as the 2nd Respondent) has been charged to have aided and abetted, counselled, induce or procured the 3rd accused, Hansel Marzorchi, (also referred to as the 3rd Respondent) the

4th Accused, Philip Marzorcchi (also referred to as the 4th Respondent) Marcus Louys, the 5th Accused (also referred to as the 5th Respondent) Jude Beauchamp, 6th Accused, (also referred to as the 6th Respondent) and Jude Labiche (also referred to as the 7th Respondent), to, on or around the 13th August 2017 import into Seychelles Thirty Three Thousand Eight Hundred And Fifty Five and Zero Three grams (33,855.03grams) of controlled drugs namely, cannabis resin in contravention of the Misuse of Drugs Act 2016, on-board of the yacht "Quest" and in two vessels belonging to the 1st Accused Stephan, Martial Mondon.

- ii. On the other hand, the 4th to 7th Accused namely Hansel Marzorcchi, Philip Marzorcchi, Marcus Louys, Jude Beauchamp and Jude Labiche have been charged in the 2nd count to have imported a controlled drug in Seychelles in contravention of the Misuse of Drugs Act 2016 on or around the 13th August 2017 by importing Thirty Three Thousand Eight Hundred And Fifty Five and Zero Three grams (33,855.03 grams) of the drug cannabis resin on board of a yacht "Quest" and in two vessels belonging to the 1st Accused.
- iii. The 3rd Count, charged the 6th and 7th Accused to have, on the 16th August 2017 at Anse Royale, Mahe, traffic in a controlled drug by being found in unlawful possession of cannabis resin of net weight One Thousand Eight Hundred and Eighty Three and Zero One Grams (1,883.01 grams) of cannabis resin, giving rise to a rebuttal presumption of having possessed the said controlled drug with intent to traffic.
- iv. The 4th Count, charged Chelsie Shaquille Marie Mondon, the 8th Accused with the offence of soliciting or inciting another to commit an offence contrary to section 377A of the penal code as read with Section 110.

[2] The offences charged against the accused in Count 1 is punishable under provision of Section 5 read with Section 15 (1) (a) and Section 48 (1) (a) in the Second Schedule of the Misuse of Drugs Act.

It is aggravated in nature and carry within a minimum indicated sentence of fifteen years imprisonment and a maximum life imprisonment.

The offence charged in Count 2 is also aggravated in nature as it carries the same indicative minimum sentence of fifteen years and a maximum of life of fifty years imprisonment.

- [3] On the 7th September, the prosecution moved that the Accused number 1 to number 7 be remanded in police custody, pursuant to a notice of motion that they filed under Section 179 of the Criminal Procedure Code as read in Article 18 (7) of the Constitution. This motion is supported by a very comprehensive affidavit of facts of Agent Ryan Durup, setting out in detail the evidence gathered so far by the NDEA (National Drugs Enforcement Agency) that implicates all the accused in the commission of the offences charged.
- [4] Counsel for the Republic Mr. Thatchett, submitted to the Court in support of this motion on the said date. Mr Nichol Gabriel who appeared for the 7th and 8th Accused did not respond immediately and directly to the motion but requested for further time to be able to file counter affidavit of facts and to make formal reply. Mr Clifford Andre for the 1st to 5th Respondent made a similar application. On the said date. The 8th accused Mrs Chelsie Mondon who was not subject to a Motion for remand was released on bail by this Court.
- [5] The Defence did file their reply affidavits and the Court heard their reply in answer to the motion for the Republic. This was done on the 15th September 2017. In their affidavits, the 1st to 5th Respondent all deny the prosecution's versions of facts. They all applied for their release on bail with or without conditions. The same position was taken by the 6th to 7th Respondents.
- [6] The case for the Republic is as follows;
- i. Firstly, the offence charged against the Respondents are serious and aggravated in nature, the maximum sentence for the offences consist of very long terms of imprisonment and are very serious in nature and the amount of drugs recovered

shows the presence in a degree of commercialisation in the commission of the offence.

- ii. It is further argued by the prosecution that drug offences are on the rise in the country, endangering the peace, public order, tranquillity, morality of the society, especially the young generation. Hence, the need to protect society from the repetition of such offences, by committing the accused into prison pending the full determination of the case.
- iii. It is the averment of the Republic that there are substantial grounds to believe that these Respondents will likely obstruct the due course of justice by absconding and failing to appear for trial, if released on bail, since the Respondents are charged with very serious offences and that Respondents are seafarers. Further it is the averment of the Republic that Respondent number 1 was using his unregistered vessel to collect the drugs.
- iv. It is further the averment of the Republic that there are substantial grounds to believe that the Respondents will likely interfere with potential witnesses who are known to the Respondents, in order to avoid conviction in this case and thereby obstruct the due course of justice, if released on bail.

[7] In his Submission, Mr Andre for the 1st to 5th Respondents submitted that the seriousness of the offence is not a stand-alone ground for remanding of an accused person in custody. He further submitted that the grounds for remanding an accused in custody under Article 18 (7) of the Constitution consist of "substantial grounds to believe" and that the prosecution has not called or tendered enough evidence to show that there are substantial grounds that the accused will fail to appear for trial or interfere with the witnesses or obstruct the due course of justice or commit further offences if released on bail. He further submits that the Constitutional provisions is Article 18 (7)are mandatory and Section 179 is discretionary and that as such the Constitutional provisions should prevail. He further submitted that no drugs were found in the possession of his clients and that the case of the Republic relies on mere surmisation. He further submitted that the Court can impose bail conditions on his clients in order to allow them to appear subsequently for trial.

[8] Mr. Gabriel on the other hand quoted the case of **Kenneth Esparon & ors Vs the Republic SCA 01/02/03/14** and submitted that the prosecution has to make a case every fourteen days for extending the remand and that there is no such law for remanding an accused in custody pending the full determination of the case. He submitted that seriousness of the offence cannot be a ground for detention as in the case of **Kenneth Esparon & ors Vs The Republic**, the Court of Appeal did release the accused on bail in a case of a nature similar to this one before the Court. Mr Gabriel further submitted that the Republic has failed to show any propensity on the parts of his clients to abscond and defeat the due course of justice. He submitted that the Court must balance the right to liberty of his clients with the public interest and the right to liberty in this case favour his clients. Hence, he submitted finally that they should be released on bail.

[9] After scrutinising the application of the Republic and its attached affidavit and the replies and affidavits of the respondents and after hearing the different arguments and submissions of the counsels, I am of the following opinion:

- i. That remand in custody of an accused after he is charged is the exception and his enlargement on bail with or without conditions, is a rule. The burdens lies on the Republic to show, through a prima facie case, that there are strong and cogent reasons why the Respondents should not be released on bail.
- ii. The reasons for further detention are set out under Article 18 (7) of the Constitution, they are of strict application and they are exhaustive. Section 179 of the Criminal Procedure Code no longer provides to the Court a discretionary power, it is superseded by Article 18 (7) of the Constitution. The prosecution must prove its case for bail. If the prosecution is relying on Article 18 (7) (c), the prosecution should show "substantial grounds" in order to convince this Court and not simple grounds.

[10] I am guided in my determination by the case of **Roy Beeharie Vs The Republic, Seychelles Court of Appeal case 11/2009**, where the Court of Appeal rule as follows;

"The prime concern in a bail application is that once the Court is properly seized of a case, the presence of the accused needs to be secured in a manner and with

respect to the fundamental principle of presumption of innocence. The seriousness of the offence and the severity of the penalty likely to be imposed on conviction are factors relevant to the decision whether in all circumstances, it is necessary to deprive the applicant of their liberties, they do not of themselves provides ground of refusing bail. Decision on bail must be supported by clear and express reason"

This case is also authority and the proposition that;

"a person must be released unless the state can show there are relevant and sufficient reasons for the continued detention. Further continued detention can be justified in a given case if there are evidence indicative of a genuine requirement of public interest, which notwithstanding the presumption of innocence outweigh the individual right to liberty.

Further the Court of Appeal went on to hold that;

"to support detention, the prosecution must demonstrate a prima facie case against the accused, then the Court should determine whether the Defendant may be released with or without condition for the purpose of ensuring that the Defendant appears on a subsequent trial date. The seriousness of the charge requires the consideration of the facts of each particular and the evidence of the prosecution gathered so far. This is independent of consideration such as whether there may be interference with witnesses or there is breach of bail conditions".

I also accept and it is confirmed in the case of **Kenneth Esparon & ors Vs The Republic**, every fourteen days the prosecution has to move the Court anew for further remand of an accused person and that an accused cannot be remanded until the full determination of the case, it has to be renewed.

[11] Having so considered, I am of the view that the offence charged against the 1st to 7th accused are very serious for the following reasons:

- i. In terms of their penalties, the 1st Count carries with it the minimum indicative penalty of fifteen years and maximum of life. 2nd Count, maximum of life imprisonment indicative minimum penalty of fifty years. It is one of the most serious crimes under the Misuse of Drugs Act and in our laws.
- ii. The offence is very serious in term of the amount of drugs that the accused allegedly import into the country. Knowing the scourge that drug is causing and is having on our youth of our small country, an extra amount of drug of Thirty Three Thousand Eight Hundred and Fifty Five and Zero Three grams (33,855.03 grams) of cannabis resin would have a significant impact on the continuance and maintenance of our drug dependency problem in this country and its consequent evil on our society.
- iii. The offence is also very serious, in the sophistication and complexity of the *modus operandi* of these offences. It is evidence adduced before the Court so far that the 1st and 2nd accused flew from Seychelles to a foreign country, there they purchased drugs which is the subject matter of the charge in this case. It was thereafter conveyed to Seychelles through an international maritime route and in so doing they managed to breach the maritime safety administration, the custom and immigration system of two sovereign states, which are Seychelles and Tanzania. The drug finally came from the high seas into Seychelles waters where it was conveyed into a second vessel near an outlying island and from there to Mahe, from Mahe it came ashore on a third vessel. The amount of planning, the amount of preparation, the methodology and the sophistication of that methodology show a high level of organisational skill, plan and resources. This makes it extremely serious.
- iv. This offence is serious given the amount of individual involved in its commission and their common intention and the high level of synchronisation of their efforts and skills in order to ensure that the objective is met.
- v. The offence is serious given the amount of drugs as I have said imported which amounted to Thirty Three Thousand Eight Hundred and Fifty Three and Zero Three grams (33,853.03 grams) of cannabis resin.

vi. It is also the view of this Court that there is substantial grounds to believe that the respondents will likely obstruct the due course of justice in this case by absconding and failing to appear for trial, if released on bail. The level of resources, energy, effort put into place by the accused in the alleged commission of this offence shows a propensity on their part to show the same level of determination and efforts in order to flee the due course of justice, especially knowing the consequences of a conviction and the potential high penalties involved. The audacity of the accused is reflected in the way that they formed their common intention and put that common intention into place, through their unison of effort and a consistency of approach. No efforts were spared in ensuring that their objectives were met. This lead me to conclude that there exist substantial grounds also to believe that the 1st to 7th Respondent would likely interfere with potential civilian witnesses who are known to the accused and knowing of the consequences for their offences and the conviction. This couple with the availability of resources, human and financial of the accused, especially the 1st and the 2nd accused could place a potential risk to the witnesses of the Republic and their evidence and thereby taint, interfere and affect the due course of justice.

[12] Accordingly, I will remand the 1st to 7th accused in custody. The 3rd accused will remain at the hospital, if he is discharged, the hospital authority is directed to inform this Court of his release. I will remand the accused and they will re-appear before this Court on the 4th October 2017 at 1.45pm. The 8th Respondent's conditions of bail shall remain the same and she should appear also on this date and time.

[13] For avoidance of doubts, my opinion on the facts of this case has nothing to do with the finding of guilt, it is based on the *prima facie* case that I find that the prosecution has so far established through its affidavit. The accused to my mind are still innocent until proven guilty and any findings of guilt will depend on the evidence to be adduced by the prosecution in a full trial.

Signed, dated and delivered at Ile du Port on the 22nd September 2017

R. Govinden
Judge of the Supreme Court