

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 44/2017

[2017] SCSC 979

THE REPUBLIC

versus

STEPHAN MONDON & ORS

Accused

Heard:

Counsel:

Mr. George Thachett for the Republic
Mr. Clifford Andre for the 1st, 2nd, 4th, 5th & 8th

Delivered:

17th October 2017

RULING

R. Govinden, J

[1] Mr. Clifford Andre on behalf of the 1st, 2nd, 4th and 5th Accused has filed a notice of motion dated the 6th of October 2017 applying for the enlargement of these accused on strict bail conditions in pursuant to Section 179 of the Criminal Procedure Code as read with Article 18 (7) and 19 (2) of the Constitution.

[2] In support of this motion, all of the accused have filed affidavits in support that replicates one another on the facts. The grounds that the accused are relying upon are to effect that the documents that the Prosecution would rely upon has only been partly served on the defence, when the collection of evidence should have been done by now. Further it is

aver that Article 18 of the Constitution grants a right to liberty, which should be preserved and that this is not done in this case as in numerous previous cases accused person charged with drug related offences of more serious nature has been released on stringent bail conditions and that this includes a similar case of **Republic vs. Alexander Geers & Ors.**

- [3] Mr. Andre in his submission in support of this motion submits that under Article 19 (2) (a) of the Constitution, release of the accused on bail is a norm whilst detention is the exception. He argues that seriousness of the offence is not a stand-alone condition for detaining an accused person in custody and that it has to be supported by other grounds as provided in for Article 18 (7) (a), (b) and (c) of the Constitution. Further, he submits that no substantial grounds has been brought forward by the Republic to show that any conditions under Article 18 (7) (c) applies.
- [4] Mr. Andre further submits that certain detention conditions of the 1st accused person is irregular, such as the fact that he is not served with food regularly and this has given him gastritis and that this accused is not given exercise time. This submission is supported by the additional affidavit of the 1st accused. Mr. Andre also submits that no sun time and exercise time is afforded to 3rd and 4th accused and 5th accused.
- [5] Mr. Andre argues further, that in many cases of a more serious nature, such as the case of the **Kenneth Esparon and Ors vs. The Republic, Republic vs. Alexander Geers & ors, Republic vs. Steve Ragain, Republic vs. Christopher Choppy**, the accused were released on bail though facts were similar or even more serious than this one.
- [6] Mr. Thachett, in response, submitted that all the grounds put forth by the four accused in support of this motion for bails are grounds similar to the ones averred by the four accused in the affidavits of the four accused dated the 15th of September 2017, which was filed against the Republic's motion dated the 7th of September 2017. He submitted that in the case of **Republic vs. Geers & Ors**, The Republic never moved for the remand of the accused persons, hence their release. He submitted that the case of **Republic vs. Steve Ragain** can be distinguished from this one as Steve Ragain case did not involved drug trafficking, but one of assaulting an NDEA Agent.

- [7] In regards to the case of **Kenneth Esparon and Ors vs. The Republic** Mr. Thachett submits that the Court of Appeal released the accused as a result of the inordinate delay and protractedness of the prosecution case, which makes it manifestly distinguishable from this one. As regards to the additional affidavit of the 1st accused regarding his medical conditions. Mr. Thachett argues that the medical conditions are not life threatening or serious that can be solved through medical treatments or through a Court Order. Further he submits that there is no medical evidence to support these averments.
- [8] Having scrutinized the facts in support of this motion for bail and after given due consideration to the submissions of both the Counsels for the Republic and defence Counsel. I find that bail remains a right to a detained person and this right is exercise every 14 days and is subject to the Prosecution being able to prove that remand is still necessary. This I have held previously in this case and is confirmed by the Court of Appeal case of **Kenneth Esparon vs. The Republic**.
- [9] However, though one has a right to apply for bail every 14 days and the Prosecution has a duty to show to the Court that one has to be remanded further based on *prima facie* ground, there has to be a substantial change of circumstances that would lead this Court to reconsider the remand of the accused person. I find that the grounds relied upon by the 4 accused in this motion are substantially the same, if not similar, as the ones they relied upon in their affidavits of 15th of September 2017. All these grounds have been subject of my ruling dated the 22nd of September 2017. I do not find that there is any change of circumstances since this last ruling.
- [10] In regards to the case of **Republic vs. Alexander Geers** there was an application there remand filed by Republic before this Court. However, given that the accused had already been released by the Magistrate Court on bail and had surrendered to the Supreme Court through a summon are the charge, the Court consider that there was no substantial grounds to detain them further.
- [11] I, therefore, dismiss the motion of the 4 defendants applying for their released on stringent bail conditions. As for the conditions of detention of the 1st accused and the 4th and 5th accused I would Order that Mr. Mondon be given food on time so that his eating pattern does not aggravate his medical condition of gastritis. And that further he is given

sufficient sun time and exercise time at the Anse Aux Pins Police Station. I would also order that the NDEA provide Mr. Louys and Mr. Philip Marzocchi sufficient sun time and sufficient exercise time in accordance with proper internal rules and regulations of their detaining centres.

[12] All the accused except accused number 8 and accused number 3 shall be detain by way of an extension of the remand order to the 31st of October 2017 at 01:45 p.m. The conditions of the 8th accused person as to her bail is extended. She is also to report to this Court at this date and time. As for the 3rd accused person he shall remain at the Victoria Hospital, until further order of the Court.

I order accordingly.

Signed, dated and delivered at Ile du Port on 17th October 2017

R Govinden , J
Judge of the Supreme Court