

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 44/2017**

**[2018] SCSC 48**

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**THE REPUBLIC**

versus

**STEPHAN MONDON  
GUY HALL  
HENSEL MARZORCCHI  
PHILIP MARZORCCHI  
MARCUS LOUIS  
JUDE BEAUCHAMP  
JUDE LABICHE  
CHELSIE MONDON  
Accused**

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Heard:

Counsel: Mr. Tatchett for the Republic  
Mr. Andre for the 1<sup>st</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 8<sup>th</sup> the accused  
Mr. Gabriel for the 6<sup>th</sup> and 7<sup>th</sup> accused  
Mr. Bonte for the 3<sup>rd</sup> accused

Delivered: 23 January 2018

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**RULING**

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**R. Govinden, J**

- [1] The second accused person, Mr. Guy Hall, on the 9<sup>th</sup> January 2018 through his counsel Mr. Camille, applied again to this court for him to be remanded on bail subject to stringent conditions in order to ensure his appearance before this court at a later date.
- [2] Similar to the other previous applications of which he was a party, this was done in pursuance to section 179 of the Criminal Procedure Code as read with article 18(7) and article 19 of the Constitution.
- [3] In his affidavit in support of his application, Mr. Hall averred the following in the presentation of his fresh bail application; first of all that he was previously charged jointly with the others with the offence of importation of a controlled drug and that this charge was laid by the prosecution on the 7th September 2017. He averred that the said charge now stands amended and that he is presently charged with a single count of the offence of aiding and abetting in the importation of a controlled drug in pursuant to an information dated 14 November 2017.
- [4] He averred that he is advised that this new charge against him alleges only a secondary offence or participatory offence as compared to the first charge which was a primary offence. He averred that this new charge will necessary carry a lesser penalty from the previous one.
- [5] Further, the applicant denied further that he is an experienced sea farer and that accordingly will obstruct the course of justice and abscond and fail to appear for trial on that basis.
- [6] As grounds to show that he has no intention to defeat the course of justice by failing to re appear or abscond or obstruct the course of justice, the applicant further averred in his affidavit, that his wife with whom he has been married for many years is his sole dependent and she is currently not able to be employed for health reason. In support of this averment the applicant has attached a medical report that indicated that his wife suffers from SVT and hypotension.
- [7] As a further ground to show that he does not intend to abscond, the second defendant averred that he has a loan with the Seychelles Commercial Bank and that he was the sole

person repaying the finance of that loan and that he does not intend to abscond and leave this burden on his family.

- [8] Thirdly, the applicant averred that if he is released on bail he will be able to secure back his employment with the Creole Travel Services.
- [9] In support of this averment, the applicant attached a letter from his former employer that shows that he will be able to secure his employment if he is released.
- [10] The applicant further averred that accused in other cases have been granted bail for more serious offences than the one that he is now stands charge. He cites the case of R v Labrosse and R v Mohammed as cases involving drugs wherein the accused persons were released on bail.
- [11] The Republic contest the application for bail again. As to the applicant's contention that he now stands charge with a lesser offence, Mr. Ananth Subramanian, Principal State Counsel, averred that the change to the charge does not per se constitute a lesser offence. He argued that both the previous charge and the current charge against the second accused person carry the same penalty, namely maximum penalty of life imprisonment.
- [12] Mr. Ananth averred that the seriousness of the offence includes the quantity of the drug involved, nature of the offence, the prescribed punishment under the law and the involvement of more or less more than one person in the commission of the offence.
- [13] Regarding the applicant's reference to his reimbursement and financial difficulties, health reasons regarding his family's members, the learned assistant State Counsel averred that this has already been dealt with by this court in his ruling dated 14th November 2017.
- [14] Finally, the learned counsel quoted the case of R v Alphonse Cr47/06 and he averred in his reply that this case is authority for the proposition that the court should not hear arguments as to facts or law which has been already previously heard unless there has been a change of circumstances that have affected the earlier decision. Counsel contended that there is no change of circumstances to allow the court to enlarge the accused on bail.

- [15] Counsel for the defendant, Mr. Camille, submitted viva voce, in support of this application for bail. The same for counsel for the Republic. They more or less repeated substantially the grounds that they have raised in the application and objection to the bail application.
- [16] I have given careful consideration to this new application for bail made by the second accused person, I have also given due consideration to the position taken by the Republic and the applicant. I have scrutinized the affidavit of Mr. Hall in the light of the submissions and previous applications made by this same accused before me and previous Rulings that I delivered in this case and I determined as follows:-
- [17] The prosecution has amended the charge against the second accused person. The statement of offence of the first charge was one of *“Importation of a controlled drug in contravention of the misuse of drugs act 2016, contrary to and punishable under section, 5 read with section 15(1) (a) and section 48(1) (a) and the second schedule of the Act”*. The charge was laid on the 7th September 2017, this is the original charge. The particulars of offence was as follows – inter alia, *“Stephan Marshall Mondon, Guy Pierre Hall together with one Trevor Camille on or around the 13th August 2017 aids and abets counsel or insight or procure Hensel Marzorcchi, Philip Marzorcchim, Marcus Louis, Jude Beauchamp, Jude Labiche to import into Seychelles 33,855.3g of a controlled drugs namely cannabis resin”*.
- [18] The amended of charge that have been levelled against the second accused was filed on the 14th November 2017. The statement of offence in the first counts reads as follows – *“Aids, abets, counsel insight for procure importation of a controlled drug in contravention of the misuse of drugs Act 2016 contrary to and punishable under section 5 read with section 51(a) and section 48(1) (a) of the second schedule of the Act”*.
- [19] The particulars of offence of the amended charge read inter alia, *“Stephan Marshall Mondon and Guy Hall together with one Trevor Camille on or around the 13th August 2017 aid, abet counsel, insight or procure Hensel Marzorcchi, Philip Marzorcchi, Marcus Louis, Jude Beauchamp and Jude Labiche to import in Seychelles 33,855.3g of a controlled drugs namely cannabis resin”*.

- [20] Accordingly, I am of the opinion that the particulars of offence in the new first count and the old amended first count are the same, nothing has changed. The second accused is still charged jointly with the other co-accused having importing to Seychelles 33,855.3g of controlled drugs. To that extent the serious nature of the offence remains the same. What the prosecution appears to have done was to simple change the statement of offence of the first count which was apparently wrongly drafted in the first place. It stated the importation of a controlled drug which in effect, did not reflect the particulars of offence.
- [21] As the particulars of offence of the first count show this is a case of aiding and abetting, the commission of an offence or procuring or inciting or counselling of importation. In other words, the statement of offence as originally filed did not match and reflects the facts as averred in the particulars of offence; namely that the second accused person was charged as an accomplice to the offence.
- [22] The serious nature of the offence, given the acts of the first and second accused on the facts is therefore no diminished. The facts that the court saw as aggravated against the second accused person in the first count of the original charge, is the same one as is before this court today. And the court has given its ruling on the serious nature of this case based on the particulars of offence prior to two in different Rulings, the latest one being the 14th November 2017.
- [23] Furthermore, it appears that the change of the statement of offence from one of principal offence of importation to one of complicity to the commission of the offence of the importation of a controlled drug, has not changed the severity of the sentences that can possibly be imposed on the second accused. The accused is still punishable, if convicted, under the same provisions of the law. The section punishable under is section 5 read with section 15(1) (a) and section 48(1) (a) of the second schedule of the Misuse of Drug Act 2016. The maximum sentence that the court can impose on the second accused has not changed with the amendment of the first count, is it still one of life imprisonment.
- [24] Accordingly, I do not find that the circumstances has changed that can lead this court to reconsider the seriousness of the offence vis a vis the second accused person. The offence is as serious as in the originally charged.

- [25] As to whether or not the second accused is an experienced sea farer, this is a question of fact. This is an averment that is denied by the accused and there is an averment to the contrary by the Republic. This as it may, this issue has not been relied upon by this court as a ground to remand the accused in custody.
- [26] The second accused has put forward mitigatory grounds upon which the court should find that he has no intention to default appearance or abscond the due course of justice if he is released on bail. These same grounds were more or less subject of previous bail applications by Mr. Hall in his affidavit dated 13th November 2017 and the same grounds were or less the subject matter of this court's decision dated 14th November 2017.
- [27] However, the second accused now presents the grounds in a new format. Formerly he was saying that he has been offered a job back in his original employment with the Creole Holidays that being in employment, this will help him pay his loan at the Seychelles Commercial Bank as he was unable to service the loan given her medical condition and as a result he needs to be released on bail.
- [28] Now the second accused says that these exact grounds are evidence that he has no intention to default appearance and or abscond or obstruct the course of justice in any way. I have ruled on this fact in my ruling dated 14th November 2017 at paragraph 8 and I will repeat same here for the purpose of completeness. I said "*these are new economic and financial grounds being put forward by the respective accused. As in the affidavit and the submissions of counsel for the Republic and the accused, bearing in mind the original application for bail and in my previous rulings, I am of the heavy of the view that every person has a right to liberty and security of the persons. However, article 18(2) of the Constitution, the restriction in accordance with the procedure established by law of this right is not an infringement of the right to liberty. The economic and social well-being of an accused and his immediate family members is a matter of concerned for this court. However, this has to be balanced with the public interest and that persons who full filled the article of 18(7) of the Constitution as is the case here is due to be remanded into custody*". Accordingly, I find that I have considered these facts when it comes to the enlargement of the second accused on bail.

- [29] The commitment of the second accused to his job, his financial economic situation of himself and his family has to be balanced with the possibility of him absconding, notwithstanding these conditions.
- [30] I am of the opinion that the loan repayment, the secure employment and the medical condition of the second accused person's wife does not outweigh, the possibility of him absconding and given the nature of this offence alleged against him and the seriousness of this offence.
- [31] As far as the previous cases is concerned, wherein the Supreme Court has released accused persons on bail. Where allegedly the facts were more serious than this one, I find that those cases has to be decided on their own merits. The circumstances that led to the release of the accused in these other cases have not been demonstrated to be applicable similar in this one. The case of Jimmy Labrosse and the case of Saeed Mohammed have to be considered on its own merits. Nothing has been shown to convince that the circumstances that have led to the release of these accused persons on bail, runs on all four with this one and therefore should be binding and applicable, accordingly I will not consider them as relevant.
- [32] I hence dismiss the application for bail of the second accused person as prayed for in his notice of motion dated 9th January 2018.

Signed, dated and delivered at Ile du Port on 23 January 2018

R. Govinden  
**Judge of the Supreme Court**