

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 72/2017

[2018] SCSC 170

THE REPUBLIC

versus

OSAMA CASIME
HIFA CASIME
Accuseds

Heard:

Counsel: Ms. Confait for the Republic
Mr. Gabriel for the accused persons

Delivered: 20 February 2018

RULING

R. Govinden, J

- [1] This is a ruling on an application for bail made by the two accused persons in this case.
- [2] The accused persons were charged on the 22nd December 2017 and has since then been on remand in pursuant to an application made by the prosecution on the same day.
- [3] They have both pleaded not guilty to the charges of conspiracy to import a controlled drug contrary to section 16 read with section 5 of the Misuse of Drugs Act, and

importation of a controlled drug contrary to section 5, and aiding and abetting the importation of a controlled drug contrary to section 15(1) of the Misuse of Drugs Act. And the trial has been fixed on several dates in July 2018.

- [4] In their application for remand dated 29th January 2018, the two accused persons relied on the presumption of innocence under Article 19 (2) (a) of the Constitution and argued that the rule is for the accused persons to be released on bail in accordance with Article 18(7) of the Constitution and that remand has to be done strictly in accordance with Article 18(7) (a to f) of the Constitution.
- [5] The applicants aver that the prosecution, therefore, needs to ground its application on one of the exceptions to Article 18(7) in order to be able to deny the accused persons bail.
- [6] The applicants aver that the prosecution contention that the two accused persons will abscond if released on bail is totally unsupported and at any rate there are conditions that can be imposed by this court as bail conditions in order to mitigate any possibility of absconding.
- [7] The applicants further aver that there are numerous other cases more serious in nature involving offences of aiding and abetting trafficking in a controlled drugs, and conspiracy to commit controlled drugs in which the court has released accused on bail.
- [8] The applicants aver that the court in considering the issue of bail, should look at the circumstances such as, the possibility of the accused failing to appear and absconding subsequently, public safety, and tempering with witnesses, etc.
- [9] For these reasons the applicants pray to this court that they should be released on stringent conditions.
- [10] The application is supported by the affidavit of the Attorney of the defendant, Mr. Nichol Gabriel. Mr. Gabriel aver in his affidavit that the applicants are unable to swear to the affidavit as they are presently on remand. The affidavit is based on counsel's own knowledge derived from instructions received during the course of conduct of the proceedings in this case. This is not the first remand application made on behalf of the two applicants.

- [11] Mr. Gabriel for the applicants strenuously objected to remanding of the two applicants and applied for their bail on the 22nd December 2017. However, this is the first formal written bail application of the two applicants.
- [12] In his oral submissions in support of the application, Mr. Gabriel submitted that the charge are not aggravated in nature under the Misuse of Drugs Act, as the weight of the controlled drugs come up to only 140 grams.
- [13] He submitted that the accused has been on remand since December and that the second accused is not in good term of health condition.
- [14] In support of his submissions regarding the health condition of the second accused person, Mr. Gabriel produced a medical report and an x-ray report request form.
- [15] The learned counsel further submitted that there had been previous cases similar in nature to this one whereas remandees have been released on bail for medical reasons.
- [16] Mr. Gabriel further submitted that there are no compelling reasons to remand the accused persons as most of the documents are ready and that the accused persons are not violent, and pose no harm to society in any way and have fixed place of abode.
- [17] Moreover, Mr. Gabriel submitted that the key and star prosecution witness lives at Takamaka, whereas the two accused persons live at Perseverance and as such there are no possibility of interference.
- [18] Mr. Gabriel further submitted that there are ways and means to prevent absconding of prisoners and remandees such as imposing of bail conditions and this has happened in previous cases.
- [19] Ms. Confait, for the Republic, on the other hand, strenuously objected to the bail application. She argued that the affidavit in support of the application is incompetent and has to be struck out as it is sworn by counsel for the applicants and that this contravenes the Legal Practitioner's Professional of Code of Conduct Rules.
- [20] Further, Ms. Confait submitted that there are no change of circumstances to justify this court in varying the prior ruling made in this case. He submitting that the Republic in

this case is relying on the grounds as set out in Article 18(7) (b) and (c) of the Constitution; namely that the offences are of a serious nature and that there are substantial grounds for believing that the accused persons will fail to appear at the trial or will interfere with the witnesses for the prosecution.

[21] Ms. Confait also sought to distinguish the case of Kenneth Esparon v R from the one before this court. She submitted that the trial of this matter is fixed five months from today whilst the Court of Appeal in the case of Kenneth Esparon, released the accused after he has spent one and a half year on remand.

[22] Learned counsel also submitted that the affidavit of the prosecution filed in the original remand application shows that the first Applicant attempted to evade arrest and discard the decoy drug and as such he is a flight risk.

[23] As regard the medical condition of the second accused person, Ms. Confait submitted that she only suffered from cold and a backache and this cannot be compelling reason to release her and does not consist of a change of circumstances. Further she submitted, that in the case of R v Agnielle Francourt, the latter was released only when the medical evidence was not available at the detention center and she could not be treated whilst being kept in detention.

[24] All in all, the learned counsel submitted that there has been no change in circumstances to justify the released of the accused in this case on bail.

[25] I have carefully scrutinize the application for bail together with the attached affidavit and have considered submission of both counsels in this matter, and I accordingly make the following determination.

On the issue of Mr. Gabriel swearing to an affidavit in support to a notice of motion for bail. I note that rule 11(5) (b) of the Legal Practitioners, (Professional Code of Conduct) Rules 2013, provides that a legal practitioner shall not be preventing from giving evidence on a formal and non-contentious point. However, under rule 11(5) (a) of the same Code, a legal practitioner cannot appear and must ceased to appear before any court in any matter in which she or he has reason to believe that she or he will be requested to give evidence whether verbally or on affidavit.

- [26] In this case the application of Mr. Gabriel relates to formal and contentious facts. The prosecution is strongly objecting to the release of the accused persons on bail and they are basing their case on the affidavit dated 22nd December 2017, as sworn by officer Jaffar; upon which the court has previously made its ruling.
- [27] The affidavit of learned defence counsel sought to contest the facts of the case as attested by the officer Jaffar and sought to prove that, on the facts, the two accused persons have not been charged in serious offences and that they will not pose a flight risk if released.
- [28] Mr. Gabriel is hence giving evidence in a case where he appeared as counsel on a formal and a contentious matter. This is strictly prohibited by rules 11(5) (b) of the Legal Practitioners (Professional Code of Conduct) Rules, 2013.
- [29] Accordingly, the affidavit is null and void and is struck out, which leaves the application for bail of the two accused person dated 29th January 2018 unsupported. The application being unsupported by an affidavit of fact; this application is accordingly dismissed as being incompetent.
- [30] This being the case, this court will not go on to explore other issues arising out of the bail application.

Signed, dated and delivered at Ile du Port on 20 February 2018

R. Govinden, J
Judge of the Supreme Court