

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 35/2018

[2018] SCSC 699

THE REPUBLIC

versus

CHRIS KANJERE
First Accused

JEAN-CLAUDE ADELIN

Second Accused

Heard: 26 June 2018

Counsel: Mr. D. Esparon, Principal State Counsel for the Republic
Mr. C. Andre for the accused

Delivered: 10 July 2018

ORDER

Vidot J

[1] The Accused are charged with the following offences;

Count 1

Statement of Offence

Importation of a controlled drug contrary to Section 5 of the Misuse of Drugs Act and punishable under Section 5 of the Misuse of Drugs Act read with the Second Schedule of the same Act.

Particulars of Offence

Chris Kanjere on 07th June 2018, at the Seychelles International Airport imported into Seychelles a controlled drug, namely, 4kgs 763.6 grams of cannabis (herbal material).

Count 2

Statement of Offence

Aiding and abetting in the importation of a controlled drug contrary to Section 15 of the Misuse of Drugs Act read with Section 5 of the same and punishable under Section 15 of the Misuse of Drugs read with Section 5 and the Second Schedule of the Misuse of Drugs Act.

Particulars of Offence

Jean-Claude Wellington Adeline on or around 01st June 2018 to the 07th June 2018 aided and abetted another person, namely Chris Kankere to commit the offence of importation of a controlled rug namely, 4kgs 763.6 grams of cannabis (herbal material).

Count 3

Statement of Offence

Trafficking in a Controlled drug contrary to Section 7(1) of the Misuse of Drugs Act, read with Section 2 of the Misuse of Drugs Act and punishable under Section 7(1) of the Misuse of Drugs Act read with the Second Schedule of the same Act.

Particulars of Offence

Jean-Claude Wellington Adeline on 07th June 2018 at Les Mamelles, Mahe, was found to be trafficking in a controlled drug namely 4kgs 763.6 grams of cannabis (herbal material)

by doing an act preparatory to trafficking for the purpose of selling, supplying, sending, delivering or distributing of the said controlled drug.

Count 4

Statement of Offence

Possession of ammunition without holding a firearm licence contrary to Section 4(2)(a) of the Firearms and Ammunitions Act and punishable under Section 4(2) of the Firearms and Ammunitions Act.

Particulars of Offence

Jean-Claude Wellington Adeline on 07th June 2018 at Les Mamelles, Mahe, was found in the possession of ammunition namely 1 live bullet without holding a firearm licence

[2] On 26th June 2018, the Republic filed a Notice of Motion supported with affidavit by Police Officer Juliette Naiken of the Anti-Narcotic Bureau seeking the remand of the Accused to custody on the following grounds;

- i. That the offences which the Respondents are charged with are serious and carry a maximum penalty of life imprisonment, if convicted;
- ii. That there are substantial grounds to believe that due to the seriousness of the offences, if released on bail, the Respondents may abscond and thereby obstruct the course of justice;
- iii. That the 2nd Respondent holds a British passport and as such there are reasonable grounds that if released on bail, he may abscond and not turn up for trial;
- iv. That such offences are on the rise and thus affecting the public in general;

v. That the amount of controlled drugs, namely cannabis (a class B drug), weighing 4kg 763.6 grams, has a commercial element that amplifies the seriousness of the offence; and

vi. That there are civilian witnesses known to the Respondents that if the Respondents are released on bail, there are reasonable grounds to believe that the Respondents may interfere with such witnesses.

[3] This Application is made pursuant to Section 179 of the Criminal Procedure Code read with Article 18(7) of the Constitution. The Application is being resisted by the Respondents

[4] Bail is Constitutional right guaranteed under Article 18(1) of the Constitution; see **R v Julie SSC 49/2006**. Such right can only be restricted in exceptional cases where the Prosecution has satisfied court that there are compelling reasons in both *law and on facts* for remanding the Respondent; see **Esparon v The Republic SCA 1 of 2014**. Article 18(7) provides for derogations whereby this liberty can be curtailed. The International Covenant on Civil and Political Rights (ICCPR) which Seychelles ratified in 1992 provides that “*it shall not be the general rule that persons awaiting trial be detained in custody, but release may be subject to guarantees to appear at trial.*”


[5] In essence an application for remand is a request to and an invitation for the court to exercise its discretion provided by law to restrain a person’s right guaranteed under Article 18(1). In exercising this discretion whether or not to accede to an application for remand, the court must bear in mind that pursuant to Article 19(2)(a) of the Constitution a Respondent is innocent until proven or has pleaded guilty.

[6] It is trite and it has been established in **Beeharry v Republic [2009] SLR 11** that seriousness of the offence is not a standalone provision. It has to be considered with other grounds of the application. The prosecution has averred seriousness of the offence coupled with other grounds as above referred. However, in considering such grounds, the court needs first assess whether the imposition of bail conditions can provide safeguards against any concerns raised by the Republic. After all bail is the rule and remand the exception.

[7] Indeed the offences the Respondents stand charged with carry severe penalties. If released on bail, the Court has to be highly confident that there is little likelihood of the Respondents absconding. The 1st Respondent is a foreign national and the 2nd Respondent holds a British passport. I believe that imposing strict travel restrictions and curfew will address this fear. Such condition has been imposed in numerous cases with success. I note nonetheless that the 1st Respondent is a foreign national with no fixed abode in Seychelles. The Court also acknowledges and take judicial notice that the prevalence of drugs use and trafficking is alarming in the Seychelles. I have stated above that an accused is innocent until he pleads or is found guilty. Again I hold the opinion that strict conditions will ensure that the Respondents do not get involved in drug related offences if released on bail. Cumulatively, the above listed ground could provide reasons for remanding the Respondents, but first the Court needs to consider if imposition of severe bail conditions will prevent absconding or reoffending by the Respondents.

[8] However, I am concerned by the fact that the 1st Respondent is a foreign national with no fixed abode in Seychelles and to release him on bail under such circumstances could jeopardize his safety and security. The 2nd Respondent is in employment at the same tourism establishment as potential prosecution witnesses. The possible interference with witnesses is real and that will cause obstruction to the course of justice. It is also necessary to protect such witnesses and I cannot think of any conditions to be imposed that may prevent that, especially should the 2nd Respondent remain in same employment. Therefore, at this stage this court cannot release the Respondents on bail. The Application is therefore allowed.

Signed, dated and delivered at Ile du Port on 10 July 2017


M Vidot
Judge of the Supreme Court