

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 66/2018

[2018] SCSC 1112

THE REPUBLIC

versus

DAVID MICHAEL AGNES

Accused

Heard: 21 November 2018
Counsel: Mr.H. Kumar, Assistant Principal State Counsel for the Republic
Mr. B.Julie for the accused
Delivered: 04 December 2018

RULING

Vidot J


- [1] The Accused stands charged with one count of murder contrary to Section 193 of the Penal Code and punishable under Section 194 of the Code.
- [2] The particulars of offence are that the Accused, David Michael Agnes, of Les Mamelles, during the period between the 23rd to 24th October 2018 at Nageon Estate, Pointe Larue, Mahe, murdered one Doreen Eulentin of Nageon Estate, Mahe.

- [3] On the 21st November 2018 the Prosecution filed a Notice of Motion supported with affidavit sworn by Detective Inspector David Belle, attached to the Criminal Department Headquarters, requesting the remand of the Accused on the following grounds;
- i. The offence committed is one of murder and is serious in nature that any person who commits murder in case of a conviction is liable to imprisonment to a minimum mandatory sentence of life imprisonment.
 - ii. There are substantial grounds to believe that if accused person is released on bail and not remanded, he is likely to abscond, thus obstructing the course of justice since he is facing a serious charge against him.
- [4] 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
- [5] 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.*”
- [6] In essence an application for remand is a request 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.
- [7] 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 another ground as above stated. 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.

- [8] Indeed the offences the Respondent stands charged with carry severe penalty. If released on bail, the Court has to be highly confident that there is little likelihood of the Respondents absconding and that stringent bail conditions will ensure that the Accused does not abscond.
- [9] In fact, Counsel for the Respondent has argued that the imposition of severe bail conditions would deter his client from absconding. I do appreciate that argument and have given it full consideration. The charge of murder is indeed a serious one that carries a penalty of life imprisonment. Faced with such a sentence there is indeed in deed a likelihood the Accused could abscond. However, I am more concerned with another issue. This was not put forward by the Prosecution, but I am forced to raise it. This is to do with the fact that prime witnesses, the deceased children, the oldest of whom is 11 years old have to be protected. I feel that they have to feel safe and are not interfered with. There is also the safety of the Accused himself. For these reasons, I feel that coupled with the grounds listed in the affidavit of David Belle, remanding the accused to custody would be necessary.
- [10] Therefore, I hereby remand the accede to the Notice of Motion and remand the Accused to custody

Signed, dated and delivered at Ile du Port on 4 December 2018



M Vidot

Judge of the Supreme Court