

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO02/2019

[2019] SCSC 81

THE REPUBLIC

versus

JIMMY FINESSE

First Accused

PRISCILLA FINESSE

Second Accused

BALAMURALI PILLAY

Third Accused

KARUMBAYIRAM PILLAY

Fourth Accused

Heard: 01 February 2019

Counsel: Ms. Brigitte Confait, Senior State Counsel for the Republic
Mr. Clifford Andre Attorney at Law for the first and second accused
Mr. France Bonte Attorney at Law for the third and fourth accused

Delivered: 11 February 2019

ORDER

Burhan J

[1] I have considered the submissions made in respect of the application for bail by Learned Counsel for the 1st accused Mr. Andre and Learned Counsel for the 3rd and 4th accused

Mr. France Bonte. I have also considered the objections of Learned Counsel Ms Brigitte Confait in respect of releasing the accused on bail.

[2] The main grounds urged by Learned Counsel for the 1st accused in respect of his application for bail are:

- a) In accordance with article 18 (7) of the Constitution, the accused has a right to be released on bail unless the Court is satisfied that reasonable grounds set out in article 18 (7) exist to remand him to custody.
- b) Several accused who were similarly charged with the offence of Human Trafficking have been released on bail.
- c) Suitable bail conditions could be used to ensure the attendance of the 1st accused.

[3] The main grounds relied on by Learned Counsel for the 3rd and 4th accused are that:

- a) The 3rd accused was arrested at the airport but he was not running away as alleged by the prosecution but going to visit his sick mother.
- b) The 4th accused is suffering from acute diabetes.
- c) Suitable stringent bail conditions could be imposed to ensure the attendance of the 3rd and 4th accused.

[4] Learned counsel for the prosecution objected to the release of the accused on bail on the basis that the 1st accused was holding high public office as the Director General for Human Resource Budget Management and Administration of the Department of Foreign Affairs at the time he committed some of the offences and at the time of arrest. She also brought it to the attention of Court that the 1st accused faces several Counts of Uttering a false document contrary to section 339 of the Penal Code and also a charge for Human Trafficking under the Prohibition of Trafficking in Persons Act together with the 2nd and 4th accused. The charge under section 339 of the Penal Code, attracts a term of 10 years imprisonment on conviction whilst a charge under the Prohibition of Trafficking in Persons Act, attracts under section 5(2) of the Act, a term of 25 years imprisonment and a fine of SR 800,000/= . This in itself speaks of the seriousness of the offences with which the accused have been charged with and the possibility of the accused absconding in the

face of such serious charges is apparent. Another aggravating feature is that the 1st accused faces not one but several charges under section 339 of the Penal Code.

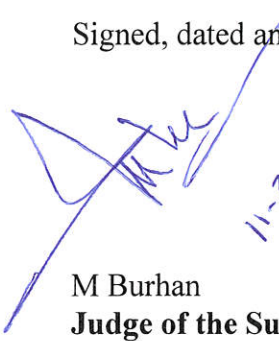
[5] Learned Counsel for the prosecution has also brought it to the notice of Court that the 3rd accused has already attempted to flee the country and was arrested at the airport on the 11th of January 2019. Learned Counsel for the accused denied this fact and stated he was leaving to visit his sick mother and produced a medical certificate to support his contention. However Learned Counsel for the prosecution brought it to the notice of Court that this was a prescription and not a medical certificate. I am inclined to agree with Learned Counsel for the prosecution and note the photocopy filed looks like a prescription and is an incomplete photocopy as it states “advised admission on follow...”. Further Learned Counsel for the prosecution brought to the attention of Court that the 1st accused and another had been arrested and produced before the Magistrates’ Court on the 8th of January 2019. I am of the view therefore that there exist substantial grounds to believe that the 3rd accused would have been well aware of the pending investigation and therefore had attempted to flee the country before his arrest.

[6] I also note that the affidavit filed by the prosecution indicates the involvement of several persons in the preparing of false documents which were being utilized for the purpose of Human Trafficking. One such person has agreed to be a State witness. Learned Counsel for the prosecution also brings it to the attention of Court that the investigations in this case reveal unlike other cases, the working of a well-organized group acting in a well-organized manner in the commission of the offences of Uttering false documents and Human Trafficking and therefore there exists a strong possibility of interference with the witnesses. This distinguishes this case from other similar cases where the accused have been released on bail. On considering the powerful position held in public office by the 1st accused at the time of his arrest and his links with the other accused as borne out by the affidavit filed and particulars of the offences, I am satisfied substantial grounds exist to believe that if released on bail, the State witness and other witnesses known to the accused could be interfered with.

[7] The grant of bail under article 18 of the Constitution is not an absolute right. I am satisfied for the above mentioned reasons that the derogations referred to in article 18 (7) of the Constitution i.e. the seriousness of the offence, that substantial grounds exist to believe that the 1st, 3rd and 4th accused would abscond and the State witness and other witnesses who are well known to them could be interfered with, do exist.

[8] I therefore proceed to reject the application for bail made on behalf of the 1st, 3rd and 4th accused and remand them to custody. As bail has been refused, the need to consider stringent conditions being imposed does not arise. At this stage, I observe the medical certificates filed on behalf of the 4th accused are dated as far back as the year 2015. This Court will revisit the application for bail on behalf of the 4th accused on medical grounds when his latest medical reports are made available to Court.

Signed, dated and delivered at Ile du Port on 11 February 2019


11-2-2019
M Burhan
Judge of the Supreme Court

