

IN SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 510
CN 29/2019

REPUBLIC
(rep. by Joshua Revera)

Applicant

and

ANDREW MEIN
(rep Nichol Gabriel)

1st Respondent

BRANDON HOAREAU
(rep by Joel Camille)

2nd Respondent

RICHARD SOURIS
(unrepresented)

3rd Respondent

Neutral Citation: *Republic v Andrew Mein & Ors SCA 04/09*

Before: Vidot J

Summary: Application for remand in terms with section 179 of Criminal Procedure Code read with Article 18(7) of the Constitution

Heard: 11 June 2019

Delivered: 19 June 2019

RULING

VIDOT J

[1] The Republic has made an application in terms with section 179 of the Criminal Procedure Code and read with Article 18(7) of the Constitution for the remand of the Respondents to

custody. The Application is supported with affidavit sworn by Samia Etienne, Police Corporal attached to the Criminal Investigation Division.

- [2] The Respondents have been charged with the offence of robbery with violence contrary to section 280 read with section 22(a) and punishable under section 281 of the Penal Code. The allegation is that on the 27th May 2019, at Marie Laure Beach, Bel Ombre, Mahe, they robbed from a Russian National, namely Evgeny Tsybmarevich of several items and that at or immediately before or immediately after the commission of such robbery used actual violence against the said Evgeny Tsybmarevich.
- [3] The grounds on which remand is being sought, according to the Application and affidavit are;
- i. That the offence of robbery with violence is serious in nature and carries a minimum sentence of 15 years imprisonment and a maximum of life imprisonment;
 - ii. The victim is a foreign national and such offences affect the tourism industry in the country for it is the country's main source of income;
 - iii. That the charged offence is on the rise in the country endangering peace, public order and tranquillity of the society;
 - iv. That there are substantial grounds to believe that if the Respondents are released on bail and not remanded, the Respondent may try to obstruct the course of justice by interfering with key witnesses known to the Respondents and one who resides in the same household as one of the Respondents.
- [4] Counsels for the Respondents opposed the application. They stated that seriousness of the offence cannot be a standalone provision and noted that remand should only be allowed in very exceptional circumstances. Counsel for the first Respondent remarked that after remand proceedings was discontinued before the Magistrate Court the 1st Respondent spent at least 24 hours with the so called key witness. She is the girlfriend of the 1st Respondent.

- [5] Bail is a constitutional right provided for under Article 18(1) of the Constitution. Bail remains the rule and not the exception. As provided for in **Esparon v the Republic SCA 1 of 2014** such right can only be curtailed in *exceptional* cases where the prosecution has satisfied court that there are compelling reasons *in law and on facts* for remanding the accused. Article 18(7) provides for derogations whereby this right to liberty can be curtailed. The list of derogations seems to be an exhaustive one, but this court does not believe this to be so. The court should be able to evaluate the particular circumstance of the case and exercise its discretion to decide that there are exceptional reasons for remanding the accused. I find support for that position in the case of **Beeharry v Republic [2009] 11** whereby it was held that the right to liberty is subject to the rights of others and to the public interest. Another consideration would be if the release of the accused to bail could place his safety and security at risk. Nonetheless, Article 18(7) advocates for release; either unconditionally or upon reasonable condition. That reinforces that remand should be adopted as a last resort. As was pronounced in **Esparon v The Republic (supra)**, in dealing with bail application, the court needs to ensure that *“the principle is not reversed in the sense that bail instead of jail becomes jail instead of bail”*.
- [6] In placing emphasis that bail should be the rule and remand, the exception, I find support in the International Covenant on Civil and Political Rights (ICCPR) which Seychelles ratified in 1992 which 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.”*
- [7] At the end of the day, the court should be concerned with ensuring that the accused do not abscond and present themselves before court each time that the case is called. The main ground when considering an application for remand is the threat that the Accused may default appearance when he is required to attend Court. At the end of the day it has to satisfy itself that either it should remand the accused or release on bail, conditionally or unconditionally. That should be the first consideration.
- [8] I have stated before and I shall again repeat and insist that in making an application for remand, it does not suffice to make mere and blank averments without more. All averments have to be substantiated and supported by facts. The Prosecution needs to come up to proof

on the averments. The onus of satisfying Court that the rule of bail should be compromised in favour of remand rests on the Prosecution.

- [9] In assessing the merit of the Application, I remind myself that the Respondents is presumed innocent until he is proven or has pleaded guilty as provided for under Article 19 (2) (a) of the Constitution.
- [10] It is trite and it has been established in **Beeharry v Republic (supra)** 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. The main being that such crimes are on the rise and the offence was committed against a foreigner.
- [11] I do appreciate that when any crime, particularly of that nature is committed against a foreigner, the whole of Seychelles is affected. Tourism is our bread and butter. We all depend on it. It does not take much for a traumatic experience by a visitor to our shores to create a wave of negative publicity against Seychelles. We cannot condone such some delinquents or criminals to cause such harm to our population. This should never happen. As regards the fact that such crimes are on the increase I believe that the Republic needed to substantiate that averment. It has already been explained that the 1st Respondent already had contact with the key witness. I believe that conditions can be imposed that the other co-Respondents do not have contact with her. Though I take serious view on the fact that we should not allow such crimes to be perpetrated against foreigners, I believe that conditions could be imposed whereby the Respondent are prevented from carrying out such crimes.
- [12] I therefore refuse the application and release the Respondents on bail on the following condition;
- i. Each Respondent shall pay into court a cash bail of SR80,000/- with 2 sureties each to be approved by court who shall each sign a bond of SR70,000/-, in order to secure the attendance of the accused before court each time that they are requested to do so;

- ii.** The Respondents shall not leave the Republic until the final determination of the case and to that end shall forthwith, and before their release on bail, surrender their passports and all travel documents to the Registrar of the Supreme Court and the Immigration Authorities shall be directed not to issue any travelling documents to the Respondents and to not allow them to travel out of jurisdiction
- iii.** The Respondents shall report to the Police station nearest to their place of abode every Monday, Wednesday and Friday ;
- iv.** The Respondents shall until this case is completed remain on Mahe and shall not travel to any other island of the Seychelles jurisdiction. For avoidance of doubt the accused shall not while on bail go out at sea for any purpose whatsoever;.
- v.** The Respondents shall not whilst on bail commit any other offence should they breach this bail condition the cash bail shall be forfeited;
- vi.** Before being release on bail the Respondents shall furnish to Court and the police a telephone number whereon they may be contacted at all times.
- vii.** The Respondents shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses. For avoidance of doubt none of Respondents, including the 1st Respondent shall have contact with the key witness Kelly Songore.
- viii.** The Respondent shall not leave their homes between the hours of 8.30pm and 5.30 am. until the final determination of this case;

[13] If the Respondents breach any of the aforementioned bail conditions; they shall be arrested and produced forthwith before this court

Signed, dated and delivered at Ile du Port on 19 June 2019

A handwritten signature in black ink, appearing to be 'Vidot J', written over a horizontal line.

Vidot J