

IN THE SUPREME COURT OF SEYCHELLES

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Reportable  
[2019] SCSC 759  
CR54/2019

**REPUBLIC**  
(rep by Joji John)  
and

**Applicant**

**JOACHIM HOAREAU**  
(rep. by Nichol Gabriel)

**Respondent**

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**Neutral Citation:** *Republic v Joachim Hoareau* CR 54 of 2019 delivered on 12 September 2019  
**Before:** **Vidot J**  
**Summary:** possession of a controlled drug with intent to traffic; Bail; Articles 18(1) and 19(2)(c) of the Constitution and sections 179 of the CPC  
**Heard:** 10 September 2019  
**Delivered:** 12 September 2019

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**ORDER**

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**VIDOT J**

- [1] The Accused stands charged of 4 counts for the following offences, 2 of which are in the alternative;
- (i) Possession of a controlled drug with intent to traffic contrary to section 9(1) of the Misuse of Drugs Act (MODA) read with section 19(1)(d)(i) of the said Act and punishable under section 7(1) and with the Second Schedule of MODA;

- (ii) Permit or suffer such place or premises or any part thereof to be used for the purpose of trafficking in a controlled drug contrary to section 11(1)(c) of MODA (count in the alternative);
- (iii) Trafficking in a controlled drug contrary to section 9(1) of MODA read with section 19(1)(d)(ii) and punishable under section 7(1) and with Second Schedule of MODA;
- (iv) Permitting or suffer premises or any part thereof to be used for the purpose of trafficking in a controlled drug contrary to section 11(1)(c) of MODA punishable under the Second Schedule of the said Act

[2] The Republic has now filed a Notice of Motion requesting for the remand of the accused to custody. The Notice of Motion is supported with an affidavit sworn by Juliette Naiken, officer of the Anti-Narcotics Bureau. The grounds on which the application is grounded is as follows;

- (i) There are substantial grounds to believe that the Defendant will obstruct the course of justice by absconding and failing to appear for trial if granted bail due to the seriousness of the offences.
- (ii) The amount of drugs mainly cannabis herbal material has a total weight of 471.40 grams and cannabis resin hashish having a total weight of 38.27 grams, which presents a degree of commercial element involving a group of organized group which the accused belongs to; and
- (iii) The occurrence of serious offences are on the rise and have serious impact on the society at large endangering peace, public order and morality especially in the younger generation.

[3] The application is most strenuously resisted by the Defence. They argue that the right to liberty is a Constitutional right protected under the Constitution and can only be curtailed if there are compelling reasons to do so. It is the defence position that there are no compelling reasons. He noted that the drugs are Class B drugs and despite the penalties

provided for in MODA the courts have been rather lenient in imposing sentences for such offences.

- [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] I find that in general such offences are less serious than offences where class A drugs are involved. However, the Court should not underplay the disastrous effect that drugs have on society as a whole.
- [9] 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. It is not enough for the Prosecution to merely aver that the Respondent belongs to an organised group engaged in drug trafficking without more. They have to substantiate such averments. Furthermore, they have to at least explain why they have reasons to believe that the Respondent will abscond.

[10] I am convinced that by imposing stringent bail conditions the court will be able to address fears that the Prosecution has and at the same time uphold the Respondent right to liberty. The Applicant has not provided me with any compelling reasons as to why I should remand the Respondent.

[11] I therefore release the Respondent on the following bail condition;

- (i) The Respondent shall pay into Court a cash bail in the sum of SR140,000.00. The Respondent shall satisfy Court as to the origin of the money.
- (ii) The Respondent shall provide 2 sureties, to be approved by the Court, who shall each sign a bond of SR100,000 to ensure his appearance in court each time that the case is called. If at any time the Respondent fails to so appear the bail bond shall become payable immediately;
- (iii) The Respondent 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 his passport and/or 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 Respondent and to not allow him to travel out of jurisdiction;
- (iv) The Respondent shall report to the Police station nearest to his place of abode every Monday, Wednesday, Friday and Sunday
- (v) The Respondent 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 Respondent shall not while on bail go out at sea for any purpose whatsoever;

- (vi) The Respondent shall not whilst on bail commit any other offences and should he breach any of bail condition the cash bail shall be forfeited;
- (vii) Before being release on bail the Respondent shall furnish to Court and the police a telephone number whereon he may be contacted at all times.
- (viii) The Respondent shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses.
- (ix) The Respondent shall not leave his home between the hours of 7.00pm and 5.30 am. until the final determination of this case;
- (x) If the Respondent breaches any of the aforementioned bail conditions; he shall be arrested and produced forthwith before this court

Signed, dated and delivered at Ile du Port on 12<sup>th</sup> September 2019



Vidot J

