

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC 927

CO44/2017

In the matter between:

REPUBLIC

(rep. by Mr Thachett)

and

STEPHEN MONDON

(rep by Mr Clifford Andre)

MR GUY HALL

(rep by Mr Joel Camille)

HANSEL MAZORCCHI

(rep by Mr Clifford Andre)

PHILIP MAZORCCHI

(rep by Mr Clifford Andre)

CHELSEA MONDON

(rep by Mr Clifford Andre)

1st Accused

2nd Accused

3rd Accused

4th Accused

5th Accused

Neutral Citation: *Republic v Mondon & Ors*(CO44/2017) [2019] SCSC 927 (11 October 2019)

Before: Govinden J

Summary:

Heard:

Delivered: 11 October 2019

RULING

GOVINDEN J

[1] The 1st, 2nd and 4th accused persons have lodged a Notice of Motion with this Court dated the 25th of July 2019 and the 2nd accused person has lodged a similar motion dated the 17th of July 2019. In both motions the accused persons are moving this Court to release them

on bail, albeit on stringent conditions, pursuant to Section 179 of the Criminal Procedure Code as read with Article 18(7) and 19 of the Constitution.

- [2] I have heard submissions of Counsels of the accused persons on those two motions and the reply thereto by Learned Counsel representing the Republic.
- [3] The principal thrust of the motion of the 1st, 3rd and 4th accused persons is that the alleged inordinate delay that has or is taking place in this trial.
- [4] Learned Counsel submitted that the delay has been caused by the length that the Prosecution case is taking especially the fact that the last witness could not read and could not write and he gave 4 statements to the Police upon which he had to be cross examined. A task that consisted of translation of both his questions and his answers to the questions. Learned Counsel submitted further that in cases similar to the fact and the law as the one before the Court the Supreme Court had on past occasions released accused persons on bail on stringent conditions rather than remanding them in custody.
- [5] In specific reference to the first accused person, the learned Counsel has tendered to the Court a number of medical documents that revealed that this accused person has to be admitted to the Seychelles Hospital on the 13th of October 2019 at 8.00 a.m in order for him to understand a surgical operation on the 14th of October 2019. Learned Counsel submitted that he has no knowledge of whether his client will be admitted post operation. And if he was to be admitted for how long will be his admission.
- [6] Based on these submissions and the averments of his three clients in their respective Affidavits in support of their Motion, the Learned Counsel submitted that his clients should be released on bail.
- [7] On the other hand learned Counsel for the 2nd accused persons submitted that in the case of *Esparon versus Republic*, Seychelles Court of Appeal 01 of 2014, the Court of Appeal held as follows: *“the judge may for good reason grant him bail on being satisfied that the case is taking too long, the defendant is one that will not abscond the facts are tedious against him and for reasons such as there has been change in circumstances since the decision denied him bail.”*

- [8] On this basis Learned Counsel submitted that his client has to be released on bail. He submitted that his client has been on remand for over two years and as such this Court should rule that the case is taking too long. He further submitted that there is no reasonable ground to suspect that his client will abscond especially given that he has outstanding financial obligations which necessitate his presence in this jurisdiction. Lastly, similarly to his fellow Counsel representing the other co-accused he submitted that the Supreme Court has released accused persons on bail in the past in cases similar in nature as the one before this Court on the ground of inordinate delays in the Prosecution case.
- [9] On this basis Learned Counsel pressed this Court to release his client on bail albeit on very stringent conditions.
- [10] Learned Counsel representing the Republic on the other hand vehemently objected to the Application for bail. The Counsel submitted that delay, if any, in this case is caused by the actions of the learned Counsel for the accused person. He especially emphasised on the fact that the defence has taken a very long time to cross examine Prosecution witnesses. Further Learned Counsel submitted that he is about to close the case for the Prosecution and that only two crucial material witnesses, being former accomplices are outstanding.
- [11] According to him, he is especially worried that if the accused persons are released on bail at this point in time there will arise the potential and strong likelihood of them tampering with their former confederates.
- [12] I have given careful attention to the submissions of Counsel in this case. I have further scrutinized their respective motions and their accompanied Affidavits. I have also addressed my mind to the operative Constitutional and legal principles involved in this matter having to do with the right to liberty within this jurisdiction.
- [13] Looking at the bail Applications I find that there are two common issues arising. The first one is based on the delay that has elapsed since the accused persons has been charged to-date and the second one being the fact that this Court has allegedly in the past

in similar cases to the one before the Court released accused persons on bail. The third issue is related to and is specific to the 1st accused person. That is whether he should be released on bail given his present medical conditions.

[14] As far as the argument based on delay is concerned, I am of the view that the delay in this case arises not as a result of any malice, vexatiousness or negligence on the part of the Republic or the representative of the Republic. The Learned Counsel representing the State has always diligently and dutifully made himself available for the continuation of the trial. He had also made available to the Court the earliest possible dates for fixing the dates for the continuation of the trial. The passage of time in this case has arisen as a result of the exercise of the rights by the accused persons to their rights to cross examination. The number of Prosecution witnesses and the length of time that the Learned Counsels especially Counsel for the 1st, 3rd and 4th accuseds has taken to cross examine them has consumed much time.

[15] Whilst I draw no adverse inferences in the exercise of the right to Counsel to cross examine at length witnesses call against his client, I at the same time cannot help myself to take notice of the impact that this has had in this case and is having on the length of time that the trial is taking. I will take, for example, the cross examination of Jude Beauchamp. His cross examination started on the first month of this year and it finished last month. It took all in all nine Court trial sessions for learned Counsel to complete his cross examination. To my mind, therefore, the delay is not inordinate the delay is perfectly ordinate. It is because it arises as a result of the accused exercising their rights to cross examination.

[16] As far as the issue of being giving dissimilar treatments as compare to similar cases previously decided by this Court, I am of the view that I have already dealt with this point in my Rulings on bail of the 22nd of September 2017 and 17th of October 2017 and that of the 23rd of January 2018. This argument to my mind does therefore does not represent any change of circumstances.

[17] As to the third issue, it is clear that the 1st accused has a medical condition. This is a new circumstance in the case. However, I find that his change medical situation is not of such

a nature that calls upon to be released on bail. I order the Superintendent of Prison to ensure that Mr Stephen Mondon is brought to the Seychelles Hospital before 8.00 a.m on the 13th of October 2019 so that he will be able to undergo his surgery on the 14th of October 2019. He will go back to his current place of custody once he is discharged from the hospital.

[18] According I dismiss the Applications for bail for reasons that I have mentioned in this Ruling.

Signed, dated and delivered at Ile du Port 11 October 2019

Govinden J