

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2019] SCSC 31
CR39/2019

██████████
(rep By Nichol Gabriel)

Applicant

and

REPUBLIC
(rep. by Gulmette Leste)

Respondent

Neutral Citation: ██████████ v Republic CR39 of 2019 [2020] SCSC delivered on 21 January 2020

Before: **Vidot J**

Summary: Bail; Articles 18(1) and 19(2)(a) of Constitution, Section 179 of the CPC

Heard: 07 January 2020

Delivered: 21 January 2020

ORDER

VIDOT J

- [1] The Applicant has filed a Notice of Motion supported with affidavit seeking his release on bail. The Applicant stands charged of 2 counts of sexual assault on a minor.
- [2] The Applicant seeks remand on the ground that there has been a change in circumstances in that the Applicant will not interfere with key witnesses in that the virtual complainant has already testified. In fact the case is fixed for July 2020 but the virtual complainant gave de bene esse evidence in November 2019. They also argue that a second case of similar nature that was before another court has been withdrawn.


- [3] The Republic objected the application. Counsel for the Respondent argued that the virtual complainant is a vulnerable witness who needs to be protected. There are other witnesses that is known to the Accused and if released on bail there is a possibility that the Accused will interfere with those witnesses.
- [4] In fact after I had perused the file, I discovered that the Applicant was never remanded in this present case. When the Applicant first appeared before Court he was already being remanded before another court and despite having filed an application for remanding the Applicant, the Respondent decided not to proceed with the application because the Applicant was already on remand.
- [5] The grounds on which the Respondent based the application for remand as per the affidavit attached to that application are as follows;
- i. The offence of sexual assault is a serious and heinous crime against human dignity and morality;
 - ii. The offence of sexual assault is serious as it carries a minimum sentence of 14 years of imprisonment and in the instant case aggravated considering the multiple counts of offence charged and the age of the victim;
 - iii. The victim is a vulnerable witness being a very young child;
 - iv. That the Applicant did various acts on different occasions; and
 - v. That the victims and witnesses are civilian witnesses known to the Applicant, therefore if the Applicant is released on bail, there is reasonable grounds to believe that he will interfere with the witnesses.
- [6] As stated above, the Respondent never argued the original application for remand. Therefore, since there was no remand order, the Respondent could not be asked to present any change in circumstances of a non-existent remand order. More importantly the Applicant was never on remand in this case. Technically speaking he should be released. However, since the application was made and responded to I shall consider whether the Applicant should be remanded, granted bail or released altogether.

- [7] 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 such 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] SLR 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"*
- [8] At the end of the day, the court should be concerned with ensuring that the Applicant does not abscond and present himself before court each time that the case is called. The main ground when considering an application for remand is the threat that an 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 conditionally or unconditionally. That should be the first consideration.
- [9] In assessing the merit of the Application, I remind myself that the Respondents is innocent until he is proven or has pleaded guilty as provided for under Article 19 (2) (a) of the Constitution.
- [10] Having heard Counsels for both the Applicant and the Respondent, I in do not in the circumstances find any reason to remand the Applicant. I based my decision on the fact that the virtual complainant has already testified and the fact that one of the key witnesses is deceased. I however I will impose conditions for his release to ensure that he does not

interfere with witnesses and I also take into consideration the gravity of the offence with which the Appellant is charged. Therefore, I release the Applicant on bail subject to the following conditions;

- i. The Applicant shall provide a cash bail in the sum of SR50,000.00 with 2 sureties who shall each sign a bail bond in the sum of SR50,000.00. This is to ensure that the Applicant appears before Court each time that the case is called;
- ii. The Applicant shall surrender his passport or any travel documents that he may have to the Registrar of the Supreme Court by 12 noon today and the Immigration Authorities are advised not to issue any passport or travelling documents to the Applicant and shall prevent him from leaving the jurisdiction;
- iii. The Applicant shall not go inside the Roche Caiman Village at all times until the final determination of this case or further order from the court;
- iv. The Applicant shall not approach or interfere with any of the witnesses in this case and shall not in any way obstruct the course of justice in this case;
- v. The Applicant shall not while on bail commit any other offences;
- vi. The Applicant shall report to the Mont Fleuri Police Station once a week

Signed, dated and delivered at Ile du Port 21 January 2020


Vtdot J