

IN THE SUPREMECOURT OF SEYCHELLES

Reportable
[2020] SCSC 73
CR5/2020

REPUBLIC
(rep by Ananth Subramanian)

Applicant

and

FRANCISCA SAMEJA
(rep. by Nichol Gabriel)

1st Respondent

and

ANDRE LESPERANCE
(rep by Joel Camille)

2nd Respondent

and

DOMINIC DUGASSE
(rep by Clifford Andre)

3rd Respondent

Neutral Citation: *Republic v Francisca Sameja & Others* CR 5 of 2020 [SCSC 73] delivered on 5th February 2020

Before: **Vidot J**

Summary: Trafficking, aiding and abetting and conspiracy to traffic in 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: 22nd January 2020

Delivered: 05th February 2020

ORDER

VIDOT J

- [1] This is an application for remand pursuant to section 179 of the Criminal Procedure Code read with Article 18(7) of the Constitution. The Application is supported with affidavit sworn the Aubrey Labiche, an Officer of the Anti-Narcotics Bureau.
- [2] The Respondents stand charged of 5 counts which are all drugs related. The charges are;
- (i) Trafficking in a controlled drug contrary to section 7(1) of the Misuse of Drugs Act 2016, read with section 2 and punishable under section 7 (1) read with section 48(1)(a) and (b) and the Second Schedule of the said Act
 - (ii) Aiding and Abetting in trafficking in a controlled drug contrary to and punishable under section 7 read with section 15(1)(a) and section 48(1)(a) and the Second Schedule of the Misuse of Drugs Act
 - (iii) Conspiracy to traffic in a controlled drug contrary to section 16(a) and section (7) (1) of the Misuse of Drugs Act and punishable under the Second Schedule of the said Act.
- [3] The drug in issue is diamorphine (heroin) having a total net weight of 447.45 grams having a total average heroin content of 156.85 grams.
- [4] The grounds being canvassed for the application for remand are;
- (i) The offences with which the Respondents are charged are serious and aggravated in nature and carry a maximum of life imprisonment with and indicative minimum sentence of 20 years and also a fine of SR750,000.00 if convicted;
 - (ii) The amount of controlled drug involved namely heroin, a class A drug with a total net weight of 447.45 grams and a purity content of 156.85 grams and other facts and circumstances of this case shows the presence and degree of a commercial element and the involvement of an organized criminal group making the offence an aggravated one;
 - (iii) The Court shall take judicial notice that drug offences are on the rise in the country endangering peace, public order, tranquillity and morality of society,

especially in the younger generation. Hence the need to protect the society from repetition of such offences by committing the Respondents into custody pending the hearing of this case;

- (iv) There are substantial grounds to believe that the Respondents will likely interfere with potential witnesses to avoid any conviction in this case thereby obstructing the course of law, if released on bail.

[5] 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. Counsel for the 1st Respondent noted that though the charges relate to Class A drug, the offence is not one that is aggravated in nature since the purity of heroin content is only 156.85 grams. He also noted that the 1st Respondent has been very cooperative with the Police. Counsel for the 2nd Respondent submitted that there was no likelihood of his client absconding. He stated that the 2nd Respondent was released before the Magistrate Court and did not abscond. However, it was accepted that the 2nd Respondent was completely discharged and therefore there was no reason for him to abscond. Counsel referred to some authorities of cases whereby the accused were charged with drug related offences but were released on bail. Counsels also argue that the averments as laid down in the affidavit does not substantiate a case as charged.

[3] 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.*” In fact in **Esparon v Republic** (supra) the Court of Appeal cautioned court that we have to ensure that the rule is not reversed whereby bail instead of jail becomes jail instead of bail.

- [4] In essence an application for remand is to secure the appearance of the accused at the hearing. The Court has to be satisfied that there isn't a likelihood that the accused will abscond. If there is a likelihood of absconding, then the court should consider if the imposition of bail conditions will ensure that the accused does not abscond. If there is likelihood of the accused absconding and that bail conditions will not safeguard against that then the accused should be remanded. An application for remand is 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 Respondents are innocent until proven or has pleaded guilty.
- [5] 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 Applicant has averred seriousness of the offence coupled with other grounds. 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.
- [6] Indeed I find the offence with which the Respondents are charged with to be serious. Drugs, especially Class A drug continue to have a devastating and destructive effect on society and I also find that there is a commercial element to the drug seized.
- [7] The onus of satisfying Court that the rule of bail should be compromised in favour of remand rests on the Applicant. However, I find that the Applicant is not relying on the seriousness of the offence only. They have argued that there is a likelihood of the Respondent absconding. This concern is based on the fact that if convicted the Respondent faces a minimum indicative sentence of 20 years imprisonment.
- [7] However, 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 Respondents right to liberty..
- [8] I therefore release the Respondent on the following bail conditions;

- (i) The Respondents shall each pay into Court a cash bail in the sum of SR110,000.00.
- (ii) The Respondents shall each provide 2 sureties, to be approved by the Court, who shall each sign a bond of SR100,000 to ensure their appearance in court each time that the case is called. If at any time the Respondents fail to so appear the bail bond shall become immediately payable. The sureties must be in full time employment and if not, must provide proof of sufficient and adequate funds to pay the bail bond if ever it became necessary.
- (iii) The Respondent shall not leave the Republic until the final determination of the case and to that end the Respondents shall forthwith, and before being released on bail, surrender their passports and/or all travel documents to the Registrar of the Supreme Court and the Immigration Authorities is ordered not to issue any travelling documents to the Respondents and to not allow them to travel out of jurisdiction;
- (iv) The Respondents shall report to the Police station nearest to their place of residence every Mondays, Wednesdays, Fridays and Sundays.
- (v) The 1st and 3rd Respondents shall until this case is completed remain on Mahe and shall not travel to any other islands of the Seychelles jurisdiction. The 2nd Defendant shall until the final completion of this case remain on Praslin and not travel to any other islands of Seychelles save to travel to Mahe when required to do so to attend Court;
- (vi) The Respondents shall not whilst on bail commit any offence of similar nature.
- (vii) 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.
- (viii) The Respondents shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses.

- (ix) The Respondents shall not leave their homes between the hours of 7.00pm and 5.30 am. until the final determination of this case;
- (x) 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 05th February 2020

Vidot J