

IN THE SUPREME COURT OF SEYCHELLES

Reportable/ Not Reportable / Redact
[2020] SCSC 385
CO31/2019

In the matter between

THE REPUBLIC

(rep. by Mr. Ananth Subramanian)

PROSECUTION

and

LANCE HENRI

(rep. by Mrs. Amesbury)

3RD RESPONDENT

Neutral Citation: *Rep v L Henri (CR31/19) [2020] SCSC 385/20*

Before: Vidot J

Summary: Bail Application

Heard: 2 March 2020

Delivered: 2 March 2020

RULING

VIDOT J

The Court hereby make the ruling against the 3rd Respondent.

- [1] On the 14th of February 2020 counsel for Mr. Lance Henri (the Applicant) filed a notice of Motion supported with her affidavit seeking bail for his client. This was the 3rd bail application filed by the applicant. He averred that there has been a change of circumstances that warrants the Court to re-assess the previous orders for remanding the applicant to bail.
- [2] The change in circumstances concerned the applicant's health stages, since this was a matter dealing with the health of a person and is Constitutional right to liberty, I saw it necessary to have this matter heard urgently.

- [3] In fact I was approach by counsel about the applicant's health condition on the 13th of February 2020. I agree to hear counsel viva voce application for an order that he be taken to Pro-Med link Clinic to be examined and treated. This Court granted that order.
- [4] It is non contentious that the applicant has been suffering from respiratory problems for a while. Dr. Bernardino Rodriguez a doctor from Pro- Med Link Clinic was called to testify. He also produce the medical report, office observations and findings. It testified that the applicant who is 20 years old has old history of recurring sinuses status and lumonia.
- [5] The applicant has been complaining of fever, cough and shortness of breath for the previous days. A physical examination was performed and he was found to be perfectly normal. An X-tray was conducted and no pulmonary abnormalities was detected. A whole blood count was conducted to see if there was any sign of infection, but only the white blood cells were a bit low. Dr. Rodriguez diagnosis was a protract respiratory infections viral infection. He was placed on antibiotics. The doctors recommendation is that the applicant is kept in a clean environment free from dust and smoke and humidity.
- [6] Dr. Sukumar Balarajah is a full time prison doctor who is called by the respondent. In fact he had treated the applicant on several occasions, he stated that he had been in Court before in regards to the applicant, because his nose was blocked and he had a cough. The patient says that he was having respiratory problems. He was treated and was well.
- [7] Since there was suspicion of bronchitis and asthmas he was prescribed antibiotics similarly to Dr. Rodriguez, he testify that the applicant's conditions were not severe. He in fact derogated to Dr. Roriguez, he recounted incidence perforated by Mr. Sammy Ghislain, Deputy Superintendent of Prison, that the applicant was on numerous time taken to hospital and given treatment. The X-tray that was performed did not show any abnormality. He also added that if it takes the prescribe medicine he would kept the situation under control. He added further that he finds no valuable reasons against remanding and provided he is given a clean surrounding. Mr. Sammy Ghislain in charge of the Bois de Rose Remand Centre where the applicant was being kept. He testified that on several occasions the applicant had to be taken to hospital because of the respiratory problems, whereby he was placed on drip.

- [8] This Court has always have held that Article 18(1) of the Constitutions provides that every person has a right to liberty and security of the person. That right can only be curtailed when the prosecution satisfied the Court that compelling reasons makes both on facts and law that would fall the accused to be remanded to custody under article 18(7) of the Constitution. *C Esparon versus The Republic*. Bail is always the rule and remand the exception.
- [9] The Applicant was being remanded, because the Court found such compelling reasons for such remand that he now argues that there is a change of circumstance and prays Court to reconsider its initial bail order. Just to note that the applicant had previously applied for bail which was denied. Such application was made on totally different grounds to the one being canvass, even if at the time of filing the application he was suffering from respiratory problems.
- [10] This Court has in those previous rulings in this case address the legal issues for consideration when dealing with case or bail or remand and therefore they shall not be repeated herein. I had given profound considerations to the applicant's medical condition and whether they would be consider as a change of circumstances that would warrant releasing the applicant on bail. I know that he has had a recurrent respiratory problem, whereby he needed medical attention, however, both doctors described such situation as not alarming nor serious. The recommendation is that he is provided with an environment that is dust and smoke free and has no humidity. There is always humidity in the atmosphere, but I know that some efforts can be made to reduce the level of humidity for particular surroundings and to maintain the surroundings dust and smoke free.
- [11] Mr. Ghislain gave evidence that Bois De Rose Remand Centre cannot accommodate the applicant, because it is congested with no proper ventilation with humidity. He also stated there is in a place within the Police and Prison Authorities buildings which house remandees that is conducive to accommodate the applicant. Therefore I was very alarmed by such statement, the Court is mindful that remandees are kept appropriately accommodated. If no proper facility exist, then it should consider releasing such persons on bail. I contacted the Commissioner of Police who admitted that there are some weakness

and challenges in adequately housing the remandees, however, he informed me that they do have accommodation that is adequate to house the applicant with adequate ventilation, dust and smoke free and with no humidity at Montagne Possee prison, separate from inmates. There is also medical facility and a doctor that will be within immediate proximity if the applicant ever needs medical assistance.

- [12] Therefore, since the doctors testify that the applicant's conditions is not severe and that it can be treated and in fact that he should be accommodated in adequate conditions and since such accommodation is available, I see no reason why the applicant should be released on bail. I remand the applicant to Montagne Possee prison which the Commissioner of Police has guaranteed is dust and smoke free and within humidity.

Signed, dated and delivered at Ile du Port / Victoria on 2 March 2020.

A handwritten signature in dark ink, appearing to read 'M. Vidot', is written over a horizontal line.

M VIDOT J