

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2020] SCSC 318  
CO 26/2020

In the matter between

**THE REPUBLIC**  
(*rep. by Lansinglu Rongmei*)

and

<b>MARCUS DUGASSE</b>	<b>1<sup>st</sup> Accused</b>
<b>DAVIS LESPERANCE</b>	<b>2<sup>nd</sup> Accused</b>
<b>DARIO LAURENCE</b> ( <i>rep. by Anthony Juliette</i> )	<b>3<sup>rd</sup> Accused</b>

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**Neutral Citation:** *Rep. vs Dugasse & Ors* (CO 26/2020) SCSC 318 (15 June 2020)  
**Before:** Vidot J  
**Summary:** Bail conditions  
**Heard:**  
**Delivered:** 15 June 2020

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**RULING**

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**VIDOT J**

[1] The Applicant has filed an application for the remand of the accused to custody. The Application is supported by affidavit sworn by Juliette Naiken, a Police Officer working with the Anti-Narcotic Bureau. She is the investigating officer in the case. The Application is made in terms with Section 179 of the Criminal Procedure Code read with Article 18(7) of the constitution.

[2] The Respondents have been charged with drugs related offences ranging from Trafficking, agreeing with another to traffic in a controlled drug, and aiding and abetting

to traffic in a controlled drug. This concerns cocaine weighing 54.85 grams with a purity content of 32.82 grams.

[3] The Applicant argue that there is necessity for remanding the Respondents and relies on the following grounds;

(a) The offence charged is trafficking in a Class A controlled drug which is a serious offence that carries a maximum sentence of life imprisonment with a fine of SCR 750,000/- if convicted.

(b) The conduct or modus operandi of the Respondents being found with large amount of Class A drug and use of a rental car in Mahe while being all residents of Praslin shows commercial element involving an organised drug transaction.

(c) That there are reasonable grounds to believe that the said Respondents will fail to appear for the trial and/or do other activity thus obstructing the course of justice, if released on bail considering the seriousness of the offence, severity of punishment prescribed for such an offence and considering in particular the conduct of the Respondent no.2 at the time of apprehension.

(d) That there is reasonable and substantial ground to believe that the Respondents will interfere and frustrate the course of justice if not remanded in custody considering the conduct of the Respondents to hiding the controlled drug and fleeing from the officers at the time of apprehension.

(e) That the drug offences and the related consequences are a menace to the health and wellbeing of the small island state with serious impact on the younger generation and its potential negative impact on tourism and image of the Nation in the international platform.

[4] On his part counsel for the Respondents has forcefully argued against the remanding of his clients. He argued that there is no reasonable basis for the continued detention of his clients. He argued that the seriousness of the offence cannot be a standalone provision and noted that remand should be allowed in very exceptional circumstances only.

- [5] 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 this 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 circumstances 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] 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”*.
- [6] In placing emphasis that bail should be the rule and remand, the exception, I find support in the International Covenant on Civil and Political Rights (ICCPR) which Seychelles ratified in 1992 which 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.”*
- [7] At the end of the day, the court should be concerned with ensuring that the accused do not abscond and present themselves before court each time that the case is called. The main ground when considering an application for remand is the threat that the Respondents may default appearance when they are 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.

- [8] I have considered fully submissions made by both counsels. I find that counsel for the Applicant has raised ground of seriousness of the offence couple with other grounds particularly; the modus operadi of the Respondents while being found in a large amount of Class A drugs, reasonable grounds to believe that the Respondents will abscond and fail to appear for their trial and they might interfere with witnesses and obstruct the due course of justice and that the related consequence of drugs being made a valuable to the public that seriously impact on the younger generation and its potential negative impact on tourism and image of the nation.
- [9] Mr Juliette argued that the averments contained in the affidavit have not been tested. Therefore, they are not necessarily true. An affidavit in this context is admissible hearsay. The averments are considered to be ex facie true. Nothing however prevented counsel from calling the person who swore the affidavit and in that case, Juliette Naiken who was present in court to be cross-examined. He did not exercise that right.
- [10] The primary purpose for remanding an accused to bail is to ensure his attendance at the trial. If there is the possibility of the accused failing to appear in court then the remand is warranted. However, the court first needs to evaluate if imposing bail conditions would contain that fear by the Applicant. In **Republic v Rolly Lesperance CR 31/2019** the Honourable Chief Justice noted that bail under Article 18(7) of the Constitution is qualified by the discretion given to the Judge to detain the suspect in certain circumstances. In exercising this discretion, the court considers inter alia, the seriousness of the offence, the risk the suspect might abscond, the possibility of the accused interfering with witnesses and the necessity to keep the accused inside for his own safety. Referring to **Beeharry v Republic [2008-2009] SCAR 41**, she noted that *“the right to personal liberty is considered with the right of others and the public interest. Therefore, the confirmed detention is justified only if there are specific indications of a genuine requirement of the public interest which notwithstanding the presumption of innocence outweigh the right to liberty”*
- [11] I have considered ground (d) above and find that there is negligible likelihood for the Respondents to frustrate and obstruct the course of justice. All material witnesses in this

case are ANB officers. They should be trusted not to allow any influence to be exercised on them. I also take note that the Respondents are alleged to have hidden the controlled drug when apprehended. However, now that the drug has been seized, I believe that there is no possibility of the Respondents obstructing justice as far as the drugs are concerned.

[12] It is true that use of controlled drug, particularly Class A drugs pose a serious cause of alarm particularly amongst the youth and tarnish the image of the country which is dependent on tourism. I take note that these grounds are considered with the fact that this case is one of serious nature.

[13] However, despite its seriousness, I note that subject to the sentencing guidelines in drugs related offences, the sentence for an offence relating to drug with a purity content of 32.82 grams of Heroin is 5 to 8 years. Therefore, in this case the Respondents do not expect a life sentence if convicted.

[14] The Applicant has not demonstrated to me that there is a serious likelihood of absconding. The likelihood of an accused absconding is always real, but the court has to evaluate if in the particular circumstances that likelihood cannot be addressed by imposing strict bail conditions. At the most it is almost impracticable for someone to leave jurisdiction in view of the Covid-19 pandemic at the moment.

[15] Furthermore, due to that pandemic the court has experienced serious delays in the administration of cases. That means that in some circumstances the court cannot guarantee the right of an accused to a trial within a reasonable time as provided under Article 19(1) of the Constitution.

[16] Therefore, such being the case, the court has considered the application and the Respondents are released on bail subject to very stringent bail conditions. The conditions are as follows:

- i. Each Respondent shall pay into court a cash bail of SR120,000/- with 2 sureties each to be approved by court who shall each sign a bond of SR90,000/-, in order to secure the attendance of the Respondent before court each time that they are requested to do so;

- ii. The Respondents 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 their passports and all travel documents to the Registrar of the Supreme Court, and the Immigration Authorities shall be directed not to issue any traveling documents to the Respondents and to not allow them to travel out of jurisdiction
- iii. The Respondents shall report to the Police station nearest to their place of abode every Monday, Wednesday and Friday;
- iv. The Respondents shall until this case is completed remain on Praslin and shall not travel to any other island of the Seychelles, save Mahe when requested by court in which case their movement should be limited to and from Pointe Larue, to Palais de Justice, Ile Du Port. For avoidance of doubt the accused shall not while on bail go out at sea for any purpose whatsoever;
- v. The Respondents shall not whilst on bail commit any other offence. Should they breach this bail condition the cash bail shall be forfeited;
- vi. Before being released on bail the Respondents shall furnish to Court and the police a telephone number whereon they may be contacted at all times.
- vii. The Respondents shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses.
- viii. The Respondents shall not leave their home between the hours of 7.00 pm and 5.30 am until the final determination of this case.

[17] 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 15 June 2020.

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Vidot J