

**IN THE SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
[2021] SCSC 731  
FH 44/2021

**REPUBLIC**  
*(rep. by Joshua Revera)*

**Applicant**

and

**RICHARD RASOLONDRAIBE**

**1<sup>st</sup> Respondent**

**ANDREW ERNESTA**

**2<sup>nd</sup> Respondent**

**THIERRY JAO**

**3<sup>rd</sup> Respondent**

**ANTHONY BOUE**

**4<sup>th</sup> Respondent**

**SOHAIL ABBAS**

**5<sup>th</sup> Respondent**

**FETY RAZAH**

**6<sup>th</sup> Respondent**

*(all rep. by Frank Elizabeth)*

---

<b>Before:</b>	Vidot J
<b>Heard:</b>	18 <sup>th</sup> September 2020
<b>Delivered:</b>	09 <sup>th</sup> November 2021

---

**ORDER**

---

**VIDOT J**

[1] The Applicant has filed an application pursuant to Section 101 of the Criminal Procedure Code (“the CPC”) praying for the further holding of the suspects to custody to allow the Police time to conduct the investigation in this case. This application follows a similar application dated 20<sup>th</sup> October 2021. On that same date, this Court made an Order granting the Applicant’s prayer to remand the suspects. However, the suspects then did

- not have legal representations. All of the suspects, save for the second suspect are nationals of Madagascar. The second suspect is a Seychellois national.
- [2] Attorney for the suspects has also filed an application seeking their release of his clients. This application is made in pursuance with section 101(4) of the CPC.
- [3] The suspects are suspected of having committed the offence of Money Laundering contrary to section 3(1)(a) of the Anti-Money Laundering and Countering in Financing of Terrorism Act 2020 as amended and punishable under section 3(4) (a) of the said Act.
- [4] The suspects were arrested after they had arrived in Seychelles on a catamaran, the Mitsio 2, in possession of 22 pieces of gold weighing 23.5 grams. It is disputed that as alleged by the Applicant that gold was discovered on the catamaran. The suspects maintain that the gold was declared and brought over to the Customs Division of the Seychelles Revenue Commission. It is not in dispute that the gold was so declared.
- [5] In fact the fourth suspect, Anthony Boue has made declaration that the gold belongs to him and he has produced documents to establish that. However, the Applicant disputes the authenticity and these documents. He has produced documents to prove that their gold was declared with the Customs Division of the Seychelles Revenue Commission.
- [6] The Applicant has listed out certain work as part of the investigation already carried out. However, they state that more investigation needs to be carried out. In particular they are waiting documents from Madagascar regarding the authorization of exportation of gold from Madagascar. In actual fact they maintain that there is an Order from Madagascar that prohibits the exportation of gold. They are also awaiting to interview key witnesses. They also claim that the offence is serious and have trans-national implications warranting thorough investigation not only in Seychelles but beyond our jurisdiction. The suspects are also suspected to be involved in drug trafficking and investigation in that regards are being carried out. Anti-Narcotics Bureau Officers have already been on board the vessel.
- [7] An application for bail or remand strikes at the core of a most important Constitutional right; the right to liberty guaranteed under Article 18(1) of the Constitution. That is a right that cannot be arbitrarily nor removed on flimsy or capricious demand of the Police or other law enforcement bodies. A plethora of Rulings delivered by this Court, has echoed sentiments held in **Esparon v the Republic SCA 1 of 2014** that such right can

only be curtailed in *exceptional* cases where the Applicant has satisfied court that there are compelling reasons *in law and on facts* to remand the accused. Compelling reasons is often referred to as “substantial grounds”.

- [8] The mantra that should resonate in a Judge’s mind when hearing a remand application is that a suspect or an accused is innocent until proven or has pleaded guilty as enshrined in Article 19(2)(a) of the Constitution.
- [9] It was established in **Beeharry v R** that seriousness of the offence cannot be a standalone provision. Seriousness of the offence can be advanced as one of the highly probable reason for an accused to abscond or even interfere with witnesses and/or subvert the course of justice in an application for remand of an accused. However, there will be need in the latter instance for the Applicant to substantiate such ground. It is not sufficient to just state that the police believe that the accused will interfere with witnesses or obstruct the course of justice. To rely on mere belief is as per **R v (on an application of F)** be applying the wrong test.
- [10] The nature and seriousness of the offence (and the probable method of dealing with the defendant for it): the relevance of seriousness of the offence is that the offence is likely to attract a severe sentence, the temptation for the defendant to abscond is more likely to increase. In **Hurnam v Mauritius [2005] UKPC 49; [2006] 1 W.L.R 857**, the Privy Council said that seriousness of the offence cannot to be treated as conclusive reason for refusing bail. The right to personal liberty is and remains an important constitutional right and should never be unnecessarily curtailed.
- [11] Therefore, to refuse bail the court has to be satisfied that there are “substantial grounds” for believing that the circumstances specified would occur; see **R v (on the application of F) v Southampton Crown Court [2009] EWHC 2206 (Admin)**. However, the Court need to first whether releasing the suspects unconditionally would in the circumstances not frustrate Police investigation and then consider if releasing suspects on condition will mitigate any qualms that the Applicant has. I find that some of the apprehension of the Applicant is legitimate
- [12] Mr. Elizabeth’s argument is that the Police have been granted ample time to do all necessary investigations. These should have been done within the two weeks that was

originally granted. He prayed that Court does not condone the Police failure to have acted in a more professional and effective manner. Counsel argued that the Police had opportunity to search the catamaran for drugs. They did. I agree with him The Anti-Narcotics Bureau officers went on board and conducted a search, then did nothing as no controlled drug was found. They now seek more time to conduct further searches. He also argued that the Applicant did nothing to find get a copy of the alleged Order from Madagascar that there is prohibition on exportation of gold from Madagascar. This could have been easily obtained.

[13] I do not agree fully with the Counsel for the suspects. The affidavit makes reference to matters that the Police have done under the heading “Inquires which the Police has Carried out”. However, I remained concerned that the Police seems not in a hurry to carry out other matters, such as; getting an alleged Order from Madagascar that there is a prohibition on exportation of gold. This would have assisted the investigation tremendously. This is a determinant fact in whether or not the suspects need to be remanded. Other matters have been carried out such as forensic extraction and examination on some electronic devices which would not necessarily require the detention of the suspects unless there results are seriously damning against them.

[14] Counsel for the suspects also argued that there is no known offence under any statutes that prohibits the transiting of gold in Seychelles. He is correct on that. He further stated that pursuant to section 3(1) of the AMLCFT Act there is a need to establish that the gold was the benefit of criminal conduct and that under section 3(1) (2) for there to have been money laundering the offence must be committed in Seychelles and that the gold was from Madagascar. With respect to Counsel, I am not in total agreement with his submissions. At this stage there is no necessity for the ingredients of the offence of money laundering have to be proved. This is an investigative stage whereby the Police is trying to establish has been committed. At the remand stage of a suspect, an offence need have been committed. It suffices that there is a suspicion of an offence having been committed.

[15] Nonetheless, I find that as stated before, some of the matters pertaining to the possible commission of an offence does no longer require the detention of the suspects. The Police has been lethargic in getting credible information from Madagascar. I find that the right

to liberty of a person guaranteed under the constitution is of paramount consideration here. By delaying this Ruling for a week, I have given the Police an extra week to move ahead with their investigation. I appreciate the concern of the Applicant, but I believe that the suspects may be released on bail subject to strict conditions.

[16] I released the suspects subject to the following conditions;

- i. The Respondents shall each sign bail bond of Seychelles Rupees Sixty Thousand (SR200,000/-) to ensure that the Respondents appear before Court each time that they are asked to do so.
- ii. The Respondents shall immediately surrender their passports and any travel documents they may possess to the Registrar of the Supreme Court and the Immigration Department is ordered not to issue any passport or travelling documents to the second Respondent, Andrew Ernesta until further order from this Court and the said Department shall further prevent the Respondents from leaving the jurisdiction.
- iii. The Respondents shall during the time that this bail Order is in force, reside on the catamaran, Mitsio 2 and the Police and Coastguard shall such steps as is necessary to prevent the vessel from leaving the jurisdiction until further Order from this Court. The catamaran Mitsio 2 shall under no circumstances be allowed to sail from Seychelles unless ordered by this Court.
- iv. The Respondents shall not, unless authorized by Court, travel to any island of the Seychelles jurisdiction, save for Mahe;
- v. The Police shall take from the Respondents any telephonic or communication equipment or devise that may be in their possession or on board the vessel and keep them safe until further Order from this Court
- vi. The Respondents are restricted from moving from the catamaran between the hours of 4 p.m to 7 a.m
- vii. The Respondents shall not interfere with any witness in this case and shall not do anything that shall affect the due course of process in this case.
- viii. The Respondents shall not interfere with the investigation of this case and shall not commit any act that shall interfere with the course of justice;
- ix. The Respondent shall while on bail not commit any other offence.

Signed, dated and delivered at Ile du Port on 09<sup>th</sup> November 2021.

---

M. Vidot J