

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 873
CO112/2021

In the matter between:

THE REPUBLIC
(rep. by Mr. Hemanth Kumar)

PROSECUTION

and

MOHAMMED GOOLAM
(rep. by Mr. Basil Hoareau)

1ST ACCUSED

DANIELITO MALBROOK
(rep. by Mr. Joel Camille)

2ND ACCUSED

CURTIS JOUBERT
(rep. by Mr. Joel Camille)

3RD ACCUSED

DOMINIC ALVIS
(rep. by Mr. Joel Camille)

4TH ACCUSED

Neutral Citation: *Rep. vs Mohammed Goolam & ors* [2021] SCSC 873 CO112/2021

Before: Dodin J

Summary: Bail Application/Article 18(7) of the Constitution

Heard: 10 December 2021

Delivered: 10 December 2021

RULING

Dodin, J

[1] The Accused persons Mohammed Goolam, Danielito Malbrook, Curtis Joubert and Dominic Alvis have been charged with the following counts:

Count 1

Statement of Offence

Acts intended to cause Grievous harm contrary to Section 219(a) of the Penal Code read with Section 22(a) of the Penal Code and punishable under Section 219(a) of the Penal Code.

Particulars of Offence

Mohammed Goolam of Plaisance, Danielito Malbrook of La Louise and Curtis Joubert of La Louise, Mahe on 13th November 2021 at Anse Royale, Mahe, unlawfully did Grievous Harm on the person namely Mr. Terrence Bastienne of Petit Paris, causing laceration on the scalp and a deep laceration on the upper back of the left side of his body, by using a machete and sword.

Count 2

Statement of Offence

Acts intended to cuase Grievous Harm contrary to Section 219(a) of the Penal Code read with Section 22(a) of the Penal Code and punishable under Section 219(a) of the Penal Code.

Particulars of Offence

Mohammed Goolam of Plaisance and Dominic Alvis of La Louise, Mahe on 13th November 2021 at Anse Royale, Mahe, unlawfully did Grievous Harm on the person namely Mr.Lucas Esther of Petite Paris, causing a deep laceration on his left hand plam, by using a machete and a wood.

Count 3

Statement of Offence

Acts intended to cuase Grievous Harm contrary to and punishable under Section 219(a) of the Penal Code.

Particulars of Offence

Dominic Alvis of La Louise, Mahe on 13th November 2021 at Anse Royale, Mahe, unlawfully did Grievous Harm on the person namely Mr. Dylan Marie of Cascade, causing a deep laceration on his right forearm, by using a machete.

- [2] Learned Counsel for the Republic had moved the Court to remand the Accused persons into custody pending trial for the reasons stated in the affidavits of Sergeant Brian Dogley dated 26th November 2021 and 30th November 2021 respectively.
- [3] The reasons contained in paragraph 7 of the Affidavit dated 26th November 2021 against the 1st Accused are that:
- a) Due to the well-planned and organized structure of the alleged offences conducted which involved an organized criminal group comprising the Accused Persons herein amplifies the seriousness of the offence.
 - b) He is a habitual offender, often committing these type of serious crimes on the vulnerable people in the community.
 - c) The other three main accused stated above connected to this case are still on run.
 - d) To ensure the protection for the Victims connected to this case and to maintain the law and order in general in the Country.
 - e) The offences committed are of serious nature which carries a maximum sentence of life imprisonment.
 - f) That there are substantial grounds to believe that if the accused person is not remanded and released on bail he may abscond and thus obstruct the course of justice since he is facing such a serious charge against him.
- [4] The following grounds are set in paragraph 7 of the Affidavit of 30th November 2021 against the 2nd, 3rd and 4th Accused.

- a) Due to the well-planned and organized structure of the alleged offences committed by using dangerous weapons in publicly which involved an organized criminal group comprising the Accused Persons herein amplifies the seriousness of the offence.
- b) All these Accused persons herein are youngsters, unemployed, became a threat to the vulnerable people in the community.
- c) To ensure the protection for the Victims connected to this case and to maintain the law and order in general in the Country.
- d) The offences committed are of serious nature which carries a maximum sentences of life imprisonment.
- e) That there are substantial grounds to believe that if the accused persons are not remanded and released on bail they may commit the similar offences on the vulnerable people in the community.

[5] The brief facts of the case are that on the 13th November 2021 at Anse Royale, Mahe there was an altercation between two groups of youngsters whereby the 4 Accused persons disembarked from their vehicle with a machete, a sword and a piece of wood and assaulted the Victims causing injuries to the 3 complainants/victims.

[6] Learned Counsel for the 1st Accused moved the Court to release the first Accused on bail for the following reasons.

[7] The evidence set out in the Affidavit do not support the grounds being relied upon by the prosecution in paragraph 7.

1. There is no evidence of an organised criminal group. The accused persons were in one vehicle but the incident was spontaneous and not planned ahead.
2. There is no evidence that A1 was a habitual offender. He has charges pending before the Magistrate's Court but he has never been convicted of any offence.

3. All the other Accused have been arrested.
4. There is no evidence or allegation that Accused 1 has interfered with the victims or witnesses.
5. Seriousness of the offence is not a stand alone ground for remand.
6. There is no evidence that the A1 would abscond. In fact, after having been remanded for 10 days, the 1st Accused was released before being served with summons. He went home and returned to Court on his own volition in the afternoon. In any event, the Court can impose conditions to ensure the Accused attends Court and do not interfere with the victims or witnesses.

[8] Learned counsel for the 2nd, 3rd and 4th Accused adopted the submission made in respect of the 1st Accused and made the following additional submission:

1. That paragraph 7 of the Affidavit of 30th November 2021 do not disclose grounds under Article 18(7) of the Constitution providing for the remand of the Accused persons.
2. The Court can impose conditions to ensure that the Accused attend Court and do not have contact with the alleged victims or witnesses.

[9] Learned Counsel for the Prosecution submitted that the Affidavit disclosed that the Accused persons formed an organised group by being in one vehicle, armed with offensive weapons and acted in concert with one another to attack the victims. The 1st Accused has been charged with similar offences before the Magistrate's Court for which he is awaiting trial.

[10] There is also evidence that the 2nd Accused threatened one of the victims when he met him at Beau Vallon.

[11] Learned Counsel submitted that the injuries sustained by the victims are serious. Learned counsel referred the Court to the case of *Beehary vs Republic* for the 7 guidelines that the Court should consider when determining the issue of bail.

[12] Article 18(7) of the Constitution states:

(7) A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise-

a) where the court is a magistrates' court, the offence is one of treason or murder;

(b) the seriousness of the offence;

(c) there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;

(d) there is a necessity to keep the suspect in custody for the suspect's protection or where suspect is a minor, for the minor's own welfare;

(e) the suspect is serving a custodial sentence;

(f) the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.

[13] The reasons advanced by the Prosecution in the respective paragraphs 7 of the Affidavits, as reproduced above, only covered seriousness of the offence and possibility of absconding or obstructing the course of justice. The others are reasons outside the provisions of the Article 18(7) which although the Court may consider in support of the prosecutions application for remand do not consist valid grounds to remand an accused person.

[14] As regards to seriousness of the offence, it is now trite law that it is not a stand alone ground for remand but if other circumstances exist that makes it not prudent to release an accused person, the Court can remand an accused on that ground of seriousness alone.

[15] In the actual case, I am in no doubt that if the offences are proved and the Accused persons are convicted, there is a high likelihood of sentences of imprisonment being imposed. However, the Court must keep in mind that remand is not a way of punishing an accused prior to conviction and sentence. Secondly, remand is a last resort where bail conditions would not be sufficient to secure the presence of an accused for trial or prevent interference with witnesses or victims or where the provisions of Article 18(7) actually exist.

[16] In this case, I am not persuaded by the prosecution that there is no way to ensure the attendance of the Accused persons for trial or to prevent interference with the victims or witnesses.

[17] Consequently, I find that the Accused persons can be released on bail with conditions.

[18] I therefore release all 4 Accused Persons on bail with the following conditions:

1. They shall deposit any travelling documents they may have into Court;
2. They shall not leave the jurisdiction without an order of the Court;
3. Immigration Authorities shall not issue them with any travel document nor allow them to travel outside the jurisdiction without an order of this Court;
4. They shall deposit a cash bail in the sum of SR20,000 into Court;
5. They shall enter into a bail bond in the sum of SR50,000 with 2 sureties vouching for each.
6. They shall report to Mont Fleuri Police Station every Monday and Friday (between 8am to 4pm);

7. They shall not group together or with other persons outside their respective households between the hours of 8pm and 6am and more specifically, they must not frequent any public entertainment place between these same hours whether alone or in the Company of others.
8. They shall not approach, contact directly or indirectly any witness or potential witness or the alleged victims in this case.
9. They shall not commit any similar offence whilst on bail.
10. They shall report to Court whenever they are required to do so.
11. Any breach of the above conditions will result in bail being forfeited.

Signed, dated and delivered at Ile du Port, Victoria on 10 day of December 2021

G. Dodin

Judge