

**SUPREME COURT OF SEYCHELLES**

---

**Reportable**  
[2021] SCSC 885  
CO 100/2021

In the matter between:

**THE REPUBLIC**  
(rep. by George Thachett)

**Republic**

and

**KEN JEAN CHARLES**  
(rep. by Oliver Chang Leng)

**1<sup>st</sup> Accused**

**TERRY JULES MARIE**  
(rep. by Rene Durup)

**2<sup>nd</sup> Accused**

**SINDU CLIFF PAREKH**  
(rep. by Anthony Juliette)

**3<sup>rd</sup> Accused**

**PHILIP PIERRE**  
(rep. by Basil Hoareau)

**4<sup>th</sup> Accused**

---

**Neutral Citation:** *Republic v Ken Charles & Ors* (CO 100/2021) [2021] SCSC 885 (13 December 2021)

**Before:** Burhan J

**Summary:** Charge of Counselling and procuring another to commit Murder. Application for bail. Application declined.

**Heard:** 06 December 2021

**Delivered:** 13 December 2021

---

**ORDER**

3<sup>rd</sup> Accused application for bail declined

---

**BURHAN J**

- [1] This is an application for bail on behalf of the 3<sup>rd</sup> accused Sindu Cliff Parekh. This accused together with three other accused have been charge on various Counts concerning the Murder of one Mr. Benny Appasamy. For a better understanding of the facts of the case the respective charges against each of the accused are set down below.
- [2] The aforementioned 1<sup>st</sup> and 2<sup>nd</sup> accused stand charged as follows:

**Count 1**

*Murder, contrary to Section 193 read with Section 22 (a) of the Penal Code and punishable under Section 194 there under.*

*Ken Wess Jean-Charles 42 years old Self Employed residing at Le Noile, Mahe and Terry Jules Marie 45 years old Labourer residing at Chetty Flat, Anse Aux Pins, Mahe, on the 11<sup>th</sup> day of September 2021, at an abandoned property at Bougainville, Mahe with common intention, murdered one Berney Appasamy, 37 years old male of Kosovo, Roche Caiman.*

- [3] In the alternative the 2<sup>nd</sup> accused also stands charged with:

**Count 2**

*Aiding and abetting in committing the offence of murder, contrary to Section 193 of the Penal Code read with Section 22 (c) and punishable under Section 194 there under.*

*Terry Jules Marie 45 years old Labourer residing at Chetty Flat, Anse Aux Pins, Mahe, on the 11<sup>th</sup> day of September 2021, aided and abetted one Ken Wes Jean-Charles 42 years old Self Employed residing at Le Noile, Mahe, to murder one Berney Appasamy, 37 years old male of Kosovo, Roche Caiman at an abandoned property at Bougainville, Mahe.*

- [4] The 3<sup>rd</sup> accused Sindhu Cliff Parekh on whose behalf the bail application is being made stands charge as follows:

*Counselling or procuring another to commit the offence of murder, contrary to Section 193 of the Penal Code read with Sections 22 (d) & 24 and punishable under Section 194 there under.*

*Sindhu Cliff Parekh 46 years old Businessman residing at Eden Island, Mahe, on or around the 2<sup>nd</sup> week of September 2021, counseled or procured one Ken Wess Jean-Charles 42 years old Self Employed residing at Le Noile, to murder one Berney Appasamy, 37 years old male of Kosovo, Roche Caiman.*

- [5] The 4<sup>th</sup> accused Phillip Pierre stands charged as follows;

**Count 4**

*Accessory after the fact to felonies, contrary to Section 384 of the Penal Code and punishable under Section 385 there under.*

*Philip Archange Pierre, 59 years old store keeper at CWS, residing at Pointe Larue, on or around the 3<sup>rd</sup> week of September 2021, assisted one Ken Wess Jean-Charles, 42 years old Self Employed residing at Le Noile, Mahe, who is to the knowledge of said Philip Archange Pierre, was guilty of an offence of abducting one Berney Appasamy, 37 years old male of Kosovo, Roche Caiman with intent to cause the said Berney Appasamy to be secretly and wrongly confined, by giving false and misleading statements to the Police in order to enable the said Ken Wess Jean-Charles to escape punishment.*

- [6] I have considered the submissions of learned Counsel Mrs Amesbury on behalf of the 3<sup>rd</sup> accused Sindhu Cliff Parekh in respect of bail and the objections of learned Principal State Counsel Mr George Thachet in respect of same.

[7] The main grounds urged by learned Counsel for the 3<sup>rd</sup> accused as borne out in her submissions and the affidavit filed by the 3<sup>rd</sup> accused dated 15<sup>th</sup> November 2021 are :

- a) Even though the charges are of a serious nature, the accused is innocent until proven guilty and the accused cannot be committed to prison as requested by the prosecution.
- b) The prosecution has delayed the handing over the docket containing witness statements and other material on which the prosecution relies on proving its case. This has affected the accused right to prepare his defence and insufficient time has been given to him to prepare his defence.
- c) That there is no sufficient evidence against the 3<sup>rd</sup> accused, to formally charge him as in the affidavit filed on behalf of the prosecution by Sergeant Marianna Eulentine paragraph 9 only refers to telephone contact between the 3<sup>rd</sup> accused and the 1<sup>st</sup> accused.
- d) The only thing a court should be interested in at this stage is whether the accused will appear at his trial for which suitable conditions could be imposed should there be a danger of absconding if released on bail.
- e) A strong suspicion is not sufficient to keep a person for long periods of pre-trial detention.
- f) The seriousness of the offence and the severity of the penalty are not grounds on their own that bail should be refused.

[8] This court is in agreement with Mrs. Amesbury that the Supreme Court has the discretion of granting bail even in murder cases. The prosecution has not sought to challenge this fact either. I will therefore proceed to analyse the grounds on which Mrs Amesbury relies on in her bail application.

[9] I will first proceed to deal with the contention of learned Counsel for the 3<sup>rd</sup> accused that the accused is innocent until proven guilty and therefore should not be committed to prison. Firstly the Constitution of Seychelles must be read as a whole document. No doubt Article

19 (2) (a) refers to the fact that the accused is innocent until proven guilty but this does not preclude a court from detaining persons into custody pending trial, provided that there exists circumstances referred to in Article 18 (7) of the Constitution at the time he is produced before a Court. At the stage a person is produced before a court especially on the basis of a serious charge, his right to liberty is not an absolute right but qualified as the court may detain the person, provided the derogations to the right to liberty exist under Article 18 (7) of the Constitution. The prosecution cannot be faulted for using the words “commit to prison” as these are the words appearing in section 179 of the Criminal Procedure Code but this in no way denotes that the accused is being sentenced to prison prior to a trial being held or a guilty plea being recorded as indicated by Mrs Amesbury. This has never happened and in my view would never happen in which ever context the words “commit to prison” in section 179 of the CPC could be interpreted.

- [10] It also must also be borne in mind that at present there is no “lengthy pre-trial detention” in the instant case, as referred to in the affidavit of the 3<sup>rd</sup> accused when quoting from the case of **Van der Tang v Spain** details set out in paragraph 14 of his affidavit.
- [11] The 3<sup>rd</sup> accused was first produced before court in a 101 application under the Criminal Procedure Code on the 6<sup>th</sup> of October 2021 and then charged on the 20<sup>th</sup> of October 2021. Learned Counsel on behalf of the 3<sup>rd</sup> accused complains of delay on the part of the prosecution in furnishing the docket resulting in the 3<sup>rd</sup> accused having difficulty in preparing his defence. The case has been fixed for trial from the 3<sup>rd</sup> of May 2022 onwards. On the 15<sup>th</sup> Of November 2021, learned Principal State Counsel brought to the notice of court that the investigations notes / docket was very voluminous in this case and consists of 426 pages (proceedings of 15 November 2021) and that the docket would be handed over by the end of the day which was done as admitted by defence counsel as per the proceedings of 29<sup>th</sup> November 2021. As this case is before a jury section 247 (2) (a) of the CPC applies which requires that witness statements and documents be served on the accused not less than 14 days before trial. It is clear from the facts before court in respect of this case that documents have been served not 14 days before the trial date but more than five months before the trial date which in the view of this court gives more than ample time

for the accused to prepare his defence. Therefore this ground raised by learned Counsel bears no merit.

- [12] In this instant case the charge against the 3<sup>rd</sup> accused is counselling and procuring a person to commit murder which carries the same punishment as murder mandatory life imprisonment. This in itself speaks of the seriousness of the offence with which the 3<sup>rd</sup> accused is charged with. It is too premature to decide on the facts before court in respect of the charge or analyse the contents of the docket at this stage but the facts set out in the affidavit of Sergeant Eulentine, clearly allege close involvement of the 3<sup>rd</sup> accused with the 1<sup>st</sup> and 2<sup>nd</sup> accused during the time the 1<sup>st</sup> and 2<sup>nd</sup> accused allegedly killed the victim Benny Appasamy. She also alleges in the affidavit a motive in that the victim had been troubling the girlfriend of the 3<sup>rd</sup> accused. These allegations are supported by telephone records which would at the appropriate time be analysed and be subject to cross examination. It is too premature for this court at this stage to analyse all this evidence and come to a finding no evidence exists against the 3<sup>rd</sup> accused.
- [13] It is incorrect for Mrs Amesbury to say that the only thing a court should be interested in at this stage is whether the accused will appear at his trial. Article 18 (7) of the Constitution draws the attention of courts detaining persons to several other factors as well that a court should consider. The prosecution has also brought to the notice of court that the 3<sup>rd</sup> accused is an experienced skipper owning boats. It appears therefore he could leave the Seychelles anytime he pleases as supervision would be difficult. This together with the fact that the 3<sup>rd</sup> accused is facing a serious charge that attracts a mandatory term of imprisonment creates substantial grounds that the 3<sup>rd</sup> accused would abscond in the face of such a serious charge. In the **Bresson & Ors v R [2015] SCCA 5** referred to by learned Counsel Mrs Amesbury, the main concern of the Seychelles Court of Appeal in ordering bail for the suspects was due to the fact that the trial had been delayed and the Court of Appeal was satisfied that the trial could not be concluded within a reasonable time. In this instant case proceedings have only just commenced. Once again the application is too premature as the grounds referred to in the Bresson case are non-existent in this instant case.

[14] For all the aforementioned reasons, I proceed to decline the application for bail and am satisfied on consideration of all the above facts that substantial grounds exists for the further remand of the accused into custody. The application for bail is declined. The need to consider stringent conditions therefore does not exist.

Signed, dated and delivered at Ile du Port on 13 December 2021.

A handwritten signature in blue ink, appearing to be 'M Burhan J', is written over a horizontal line. To the right of the signature, the date '13-12-2021' is handwritten in blue ink.

M Burhan J