

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ... 899
CM 114/2021
Arising in CR16/2021

ANDANTE MARCEL FERGUSON
(rep by Anthony Juliette)

1st Applicant

KEVIN LAWRENCE LABLACHE
(rep. by Anthony Juliette)

2nd Applicant

and

REPUBLIC
(rep. by Lansinglu Rongmei)

Respondent

Neutral Citation: *Andante Ferguson & Anor v The Republic* MC114 of 2021 arising in CR16 of 2021) [2021] SCSC 899...delivered on 17 December 2021

Before: **Vidot J**

Summary: Bail Application; change of circumstances. Breach Article 19(1) of the Constitution

Heard: 15 December 2021

Delivered: 17 December 2021

RULING

VIDOT J

- [1] This case was being handled by the Honourable Chief Justice and dates for the trial had been set for 7th, 10th, 11th and 28th February 2022. The case has now been transferred to the undersigned Judge. Unfortunately, the date set for the trial are not convenient to this Court as it would be involved with a murder trial. The only available dates that this Court has for the hearing of this matter are 14th, 15th, 17th and 18th November 2022. The Accused are on

remand. They have been on remand since 15th March 2021, when they were produced before Court on a section 101 of the Criminal Procedure Code application. This is because they were still suspects in the matter. Subsequently, when they were charged an application pursuant to section 179 of the Criminal Procedure Code and Article 18(7) of the Constitution was filed praying for their continued detention to custody. By an Order dated 01st April 2021, the Chief Justice acceded to that application. The Applicants are on remand awaiting trial.

- [2] The Applicants have now filed an application for bail. They aver that there has been a change in circumstance, since the trial dates have been postponed by almost 9 months. They argue that this is a breach of their constitutional right to a fair hearing within a reasonable time. I believe what they were invoking was Article 19(1) of the Constitution which states thus;

“Every person charged with an offence has a right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.”

- [3] Counsel for the prosecution, though admitting that there was a change in circumstances, insists that the application should not be granted. She impressed on the fact that the charge is a serious one. She also adds that there is the likelihood of the Applicant absconding and indicated that there has been an instance when the first Applicant had tried to flee from the Police. Furthermore, I note that the first Applicant has dual nationality.
- [4] I have fully considered the remand Order of the Chief Justice of the 15th April 2021. I do appreciate his reasoning for keeping the Applicants on remand. The charges are indeed serious but nonetheless I remain aware that Article 19(2)(a) of the Constitution provides that a person who is charged with an offence is innocent until proven or has pleaded guilty.
- [5] It is non-contentious that there has been a change in circumstances not occasioned in any way by the Applicants nor the Respondent. When there is a change in circumstances the Court has evaluate the severity of such changes. It has to access whether such changes will

prejudice the Applicants in any way and assess whether such changes infringe on the Constitutional rights of the Applicants.

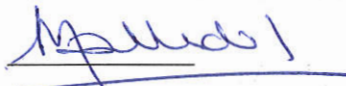
[6] In the case of **Esparon v The Republic SCA 1 of 2014**, the Court of Appeal allowed the accused on bail precisely because that Court felt that there could be a breach of Article 19(1) of the Constitution. The postponement of the hearing date in this case could constitute a breach of that Article. Therefore, the Court which is mandated with upholding the Constitutional rights of the citizens have ensure that such is done at all times. In the circumstances I find that the postponement of the trial will be unjust and prejudicial to the Applicants..

[7] Therefore, I release the Applicants on bail on the following conditions

- (i) The first Applicants shall pay into Court a cash bail in the sum of SR150, 000.00 and the second Applicant a cash bail of SR100,000.00 The Applicants shall satisfy Court as to the source of the money.
- (ii) The Applicants shall each provide 2 sureties, to be approved by the Court, who shall each sign a bond of SR100,000.00 to ensure their appearance in court each time that the case is called. If at any time the Applicants fail to so appear, the bail bond shall become payable immediately and the cash bail paid by the Applicants shall be forfeited to the Republic.
- (iii) The Applicants 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/or all travel documents to the Registrar of the Supreme Court and the Immigration Authorities are directed not to issue any travelling documents to the Applicants and prevent them leaving the Republic;
- (iv) The first Applicant shall report to the Police station nearest to his place of abode every day of the week while the second Applicant shall similarly report to the Police Station nearest to his residence every Mondays, Wednesdays and Fridays.

- (v) The Applicants shall until this case is completed remain on Mahe and shall not travel to any other islands of the Seychelles jurisdiction. For avoidance of doubt the Respondent shall not while on bail go out at sea for any purpose whatsoever;
- (vi) The Applicants shall not whilst on bail commit any other offences;
- (vii) Before being release on bail the Applicants shall furnish to Court and the police a telephone number whereon they may be contacted at all times.
- (viii) The Applicants shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with the witnesses.
- (ix) The Applicants shall not leave their homes between the hours of 7.00 pm and 5.30 am. until the final determination of this case and shall at times spend the hours of curfew at their residence; and
- (x) If the Applicants breache any of the aforementioned bail conditions; theyshall be arrested and produced forthwith before this court

Signed, dated and delivered at Ile du Port 17 December 2017


Vidot J