

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2020] SCSC 4
CR96/2020

REPUBLIC
(rep. by Steven Evelyne Almeida)

Applicant

and

J.P H
(rep. by Guy Ferley)

Respondent

Neutral Citation: *Republic v. [REDACTED] [REDACTED]* (CR 96/2020) [2020] SCSC 4... (12 January 2021).

Before: Vidot J

Summary: Application for remand; section 179 of the Criminal Procedure Code and Article 18(7) of the Constitution

Heard: 30 December 2020

Delivered: 12 January 2021

ORDER

Application allowed.

RULING

VIDOT J

- [1] The Applicant has filed a Notice of Motion supported with affidavit sworn by Detective Constable Bryna Charles of the Criminal Investigation Division of the Police Force, seeking the remand of the Respondent to custody. This application is made pursuant to section 179 of the Criminal Procedure Code read with article 18(7) of the Constitution.

- [2] The Respondent has been charged with the following charges; (i) Sexual assault, (ii) Sexual assault on a dependent child, (iii) Incest and (iv) Act intended to procure the miscarriage of a woman. These are all offences appearing under Chapter XV of the Penal Code dealing with offences against morality.
- [3] The Applicant makes this application for remand of the Respondent on several grounds. These include;
- (i) Seriousness of the offences; sexual assault involving the penetration of another person's body orifice; carries a maximum sentence of 20 years;
 - (ii) The offence of sexual assault against a dependent child is serious in nature and carries a penalty of 20 years if convicted;
 - (iii) The offence of incest is serious in nature as it carries a penalty maximum of 3 years imprisonment;
 - (iv) The offence of committing an act intended to procure the miscarriage of a woman carries a maximum penalty of 14 years imprisonment;
 - (v) That are substantial grounds to believe that if released on bail, the Respondent is likely to obstruct the course of justice by interfering with key witnesses namely the virtual complainant since the Respondent is her father and he has threatened the life of such virtual complainant; and
 - (vi) That such offences are on the rise in Seychelles thereby endangering peace, public order and tranquillity of society.
- [4] 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) advocates for release; either unconditionally or upon reasonable conditions. 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"*.

- [5] 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.*”
- [6] When considering whether or not to remand or grant bail to an accused, the primary concern of court should be to ensure that the accused does not abscond and present himself before court each time that the accused is requested to do so. In fact, Counsel for the Respondent relying on Article 18(7) argued that actually this should be the consideration the Court should address its mind to when deciding on application. If the threat is that an accused may default appearance when he is required to attend Court, then Court has to consider whether release on bail subject to the imposition of conditions will answer that threat. At the end of the day, it has to satisfy itself that either it should remand the accused or release conditionally or unconditionally. If there is overwhelming possibility that the Respondent will abscond, then the scale tips in favour of remanding the Respondent. However, in this application, the Applicant is not making any averment that there is possibility of absconding by the Respondent.
- [7] In assessing the merit of the Application, I remind myself that the Respondents is presumed innocent until he is proven or has pleaded guilty as provided for under Article 19 (2) (a) of the Constitution.
- [8] It is trite and it has been established in **Beeharry v Republic** that seriousness of the offence is not a standalone provision. It has to be considered with other grounds of the application. The Applicant has averred seriousness of the offence coupled with other grounds as above referred. However, quoting **Republic v Kenny Neville Fanchette CO 70/2017 [2018] SCSC 50**, Counsel for the Applicant remarked that “*there can be such an offence that is so abhorrent, so vile which affect a greater interest of the public at large that the court will remand the accused based on public revulsion alone, given the serious nature of the case.*”
- [9] The charges levelled against the Respondent are indeed abhorrent and vile but I need to keep in mind Article 19(2) of the Constitution. However, I feel that such crimes are indeed on the increase and that is alarming. I nonetheless consider that in the circumstances the court has to protect the virtual complainant. Article 18(7) (c) of the Constitution provides

that where there is possibility of interference with potential witnesses and thereby obstructing the course of justice, the court should seriously consider remanding an accused person. Obviously, the Court has to first consider if the imposition of strict conditions will be sufficient to contain such apprehension of such interference. The Respondent is the father of the virtual complainant. The alleged commission of such offences by the Respondent are said to have begun when she was 14 years. This continued for many years. She alleges that she suffered physical abuse by means of threats and beatings from the Respondent. Now that she has decided to report the alleged criminal acts she lives in fear of her life. I believe that there is a need to protect the virtual complainant. Counsel for the Respondent has argued that such protection can be guaranteed since the Respondent does not live with her. However, this does not mean that that will prevent interference and threats to witnesses. I feel that the protection of the virtual complainant outweighs releasing the Respondent to bail. This Court intends to take down the evidence of the virtual complainant as early as possible after which the Court will consider releasing him on bail.

[10] The Application is allowed and the Respondent is remanded to custody

Signed, dated and delivered at Ile du Port on 12 January 2021


Vidot J

