

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC ...
FH 01/2021

In the matter between:

THE REPUBLIC

(rep. by Mr. Hemanth Kumar)

and

ACHILLE CHRISTIAN AGATHINE

(rep. by Ms. Karen Domingue)

1st Suspect

JULIUS SEBASTIAN ZIALOR

(rep. by Mr. Clifford Andre)

2nd Suspect

JEAN-PAUL MARIE

(rep. by Mr. Clifford Andre)

3rd Suspect

Neutral Citation: *The Republic v Agathine & Ors* (FH 01/2021) [2021] SCSC

Before: Govinden CJ

Heard: 12 January 2021

Delivered: 25 January 2021

ORDER

GOVINDEN CJ

[1] This is an application for further holding of suspects made under the provisions of Section 101 of the Criminal Procedure Code. The suspects are three Police Officers and they are suspected to have committed the offences of breaking into a building and committing felony, namely stealing contrary to section 291 of the Penal Code as read with Section 253; conspiracy to commit a felony namely stealing contrary to Section 381 and Section 253 of the Penal Code; aiding and abetting contrary to Section 22 of the

Penal Code and counselling another person to commit an offence, namely stealing contrary to Section 24 of the Penal Code as read with Section 253 of the code.

- [2] The applications set out *in extenso* the facts upon which the suspects were arrested and detained. These facts are deponed to by Detective Woman Police Sergeant Marianna Eulentin in a supporting affidavit. The facts of this application are not being contested by the suspects.
- [3] The grounds upon which the application is made are that there other potential suspects still at large and to be identified; other pertinent exhibits are still to be obtained; identifications of the exhibits are still to be carried out; alibis are still to be verified; digital examination of the suspects' mobile are still to be carried out; there are some potential witnesses to be interviewed; the tyre marks on the alleged scene of crime are still to be analysed and the scene of crime examination is still being awaited.
- [4] The application also avers that the offences suspected are very serious with the maximum sentence being 14 years imprisonment. According to the application there are further serious aspects in this case, such as the fact that the offence was plan and organised and that the offence is suspected to have been committed by law enforcement Officers, through an abuse of their power and authorities entrusted in them by law.
- [5] It is further averred that the identity of the main eye witness of the Prosecution is well known by all the suspects and releasing them on bail may lead them to interfere with the witness.
- [6] Finally, the applicant avers that there is a strong possibility of there being other suspects at large and that the premature release of them would lead to them possibly interfering with the cause of justice.
- [7] The application is contested on behalf of the 1st suspect. According to his Counsel the bulk of the investigation has been completed. As regards the rest of the investigation to be conducted she submits that she does not see how the further detention of his client would assist the Police in their investigation.

- [8] As to the seriousness of the offence Learned Counsel submitted there is not a standalone ground and that the presumption of innocence stands in the way of faulting the breach professional duty of the respondent as Police Officers as a ground for detaining them. According to her that would be tantamount to discrimination.
- [9] Learned Counsel for the 2nd suspect on the other hand took an objection to the sanction issued by the Commissioner of Police, in which they have been sanctioned to be dealt with before the Magistrate Court.
- [10] As to the merits, Counsel adopted the argument of Learned Counsel for the 1st suspect: citing the provisions of article 18(9) and Section 101 of the constitution. Learned Counsel submitted that seriousness of the offence cannot be a standalone ground and that the applicant must adduce further grounds before the Court remand a suspect in custody under those provisions. As regards the other grounds Learned Counsel submits that they lack merits and are one not strong enough to support such an application. As regards the status of the suspects as Police Officers, Learned Counsel urges that their employment cannot be advisedly taken against them as they are presumed innocent until they are found guilty. The third suspect also contested the application.
- [11] I have meticulously and thoroughly considered the content of the application and its supporting affidavit. I have also given careful attention to the submission for and against the application. As I have held previously after having done so it is my firm view that there are enough ground to justify the pre-trial detention of all of the suspect.
- [12] To my mind the alleged offences are not ordinary offences. The special position plus status of the suspects put them in a very advantageous position when it comes to the possibility of interference with the due course of investigation in this case. As Police Officers they know about the technique of investigation, if they are at large there is a strong possibility of them using their knowledge and skills in order to shuffle the investigation by interfering with witness, interfering with other suspects; with forensic examination and process of investigation. They have moreover, colleagues in the force that might be swayed to conduct themselves in such a way that may not be in the best interest of the investigation. Finally, the offence is serious, both because it is committed

in a concerted manner by Police Officers that should have been acting in the public trust to protect and enforce the law and order and also is the maximum sentence for the main suspected offence, which is 14 years imprisonment.

[13] It is because of these reasons that I believe that all the three suspects should be further detained in custody on remand up to the 28th of January 2021.

Signed, dated and delivered at Ile du Port on 25 January 2021

Govinden J
Chief Justice