

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 15
CO 02/2021

In the matter between

THE REPUBLIC
(rep. by Mr. H Kumar)

and

ARCHILLE CHRISTIAN AGATHINE (rep. by Ms K Domingue)	1ST Accused
JULIUS SEBASTIAN ZIALOR (rep. by Mr C Andre)	2ND Accused
JEAN-PAUL MARIUS MARIE	3RD Accused

Neutral Citation: *The Republic v Agathine* (CO 02/2021) [2021] SCSC 15 (28th January 2021)
Before: Govinden CJ
Summary: Bail application
Heard: 25th January 2025
Delivered: 28th January 2025

ORDER

GOVINDEN CJ

[1] The three accused persons have been charged jointly with the commission of the following offences under the provisions of the Penal Code: one count of Conspiracy to commit a felony namely theft contrary to section 381 of the Penal Code read with section 264 (f) of the Penal Code and punishable under section 381 of the Penal code and two separate consecutive counts of breaking and entering into building and committing felony namely theft contrary to section 291 (a) and (b) of the Penal Code read with section 260 of the Penal Code and Section 22 (a) of the Penal Code, punishable under section 291 of the Penal Code; one count of sexual assault contrary to section 130(1) read with

Section 130 (2) (d) of the Penal code and punishable under Section 130(1) of the Penal Code.

- [2] The particulars of the offences avers, inter alia, that they committed those offenses during the course of their duties as police officers in the early hours of the 10th of January 2021.
- [3] The first count particularised that they conspired to commit the offence of theft. The second count averred that they broke and enter into a store situated at Hangard at the construction site belonging to Mr Kevin Selby Marie and stole the construction materials such as Orange coloured metal bolt cutter, Yellow coloured water hose, Black plastic measuring tape and a padlock with big chain from the store, which are the property of Mr Kevin Selby Marie. The third count is particularised that they broke into a store situated at Hangard, Anse Etoile, at the construction buildings belonging to Mr Andy Jude George Jean Louis and stole the construction materials such as padlock and three grinders from the said store, which are the property of Mr Jude George Jean Louis.
- [4] They have not yet pleaded to the said charges.
- [5] The accused were, subsequent to their arrest, remanded into custody by this court as suspects on an application made by the Republic under section 101 of the Criminal Procedure Code, this order lapsed on the 25th of January 2021, the date on which they were formally charged in this case.
- [6] Upon the accused persons being formally charged the Republic has now applied that they all be detained pending the determination of the case. The application which is made pursuant to section 179 of the Criminal Procedure Code as read with article 18 (7) of the Constitution is supported by the affidavit of Detective Woman Police Sergeant M Eulentin. The first ground of the application is based on the seriousness of the offences, namely given that they were allegedly executed in a well-planned and organised manner and the maximum penalty of the most serious offence of theft, which carries a maximum sentence of 14 years, and the second ground is alleged to be the substantial ground for the belief that the accused would influence the witnesses and hence tamper with the due course of justice, if released. Connected with this ground the prosecution has also

advanced a ground that their remand is also necessary “*in order to maintain law and order in the country especially the moral in public service.*”

[7] Learned counsel for the 1st Accused strenuously objected to the application, she impressed upon the court to release her client on bail as to her, the offence, although seemingly serious, seriousness of the offence cannot be a ground sufficient in itself to remand an accused person in custody. Counsel further argued that as the investigation is complete in this case, protection of witnesses is an irrelevant ground. Moreover, she submitted that the witnesses of the complainant appear not to be the types that can be easily intimidated and that they have not even complained of intimidation from the accused person. She also submitted on the personal circumstances that have befallen the family of her client as a result of this case and finally argued that the economic circumstances and public situation of the country merited that her clients be enlarged.

[8] Learned counsel for the 2nd and 3rd Accused take up the arguments of Learned counsel of the 1st Accused in favour of his clients. In addition counsel argued that under Article 18 (7) of the Constitution this court has to be satisfied that there exist substantial grounds to believe that the accused merit being remanded into custody instead of being enlarged and that the burden to prove this standard of proof lies on the prosecution. He contended that the facts led by the prosecution in support of this application does not discharge this burden. Learned counsel also laid emphasis on the social circumstances of the 2nd Accused and the fact that both of them has co-operated with the police and had voluntarily given statements under caution. For these reasons, counsel submitted, that the course of justice would be better served if his clients are released on bail, even on stringent conditions.

[9] In deciding whether to grant bail in this case, I remind myself that bail is a constitutional right that can only be restricted in cases where there are compelling reasons both in law and facts for denying the same (***R v Esparon and others (SCA No: 01 of 2014) [2014] SCCA 19 (14 August 2014)***). The compelling reasons are to be adduced by the prosecution and not the defence. Further, when the application is being made on the

ground of failure of the accused to appear for trial or interfering with witnesses or obstructing the course of justice, the prosecution needs to show that there are substantial grounds to believe that this would be the case. As to seriousness of the offence, as I have held previously, I am of the view that this might be a stand alone ground, depending of the facts of the case. This is so as each of the sub Articles of Article 18 (7) of the Constitution, from (a) to (f) are consecutive and disjunctive from one another and should be read separately. Indeed there might be certain offences that are so vile and abhorrent and so repugnant to the public interest that would merit the pre-trial detention of an accused on the ground of seriousness of the offence under Article 18 (7) (b) irrespective of whether the conditions of the other sub Articles are met.

[10] In this case I do not consider that the facts of the case shows that it merits pre-trial detention solely on the ground of the seriousness of the offence. However, I consider that the seriousness of the offence is relevant when it is considered together with the other grounds being adduced by the prosecution. This case is serious on the facts. Three police officers, whilst in uniform and whilst they should have been carrying out their duties to safeguard and protect the lives and properties of their countrymen allegedly committed the offences. The offences that they are alleged to have committed which includes the offence of theft carries with it the maximum custodial sentence of 14 years and is hence legally serious. Furthermore, during that eventful night they did not commit one but two offences of theft and house breaking, something that further aggravated their case. Moreover, those law enforcement officers acted in concert and for a common purpose in all of the alleged offences. All these shows that they now find themselves in a very serious situation. This, to my mind, creates substantial grounds for me to believe that they would interfere with the due course of justice by interfering with the witnesses if they enlarged on bail. It also creates the substantial possibilities of them interfering with the completed investigation in this case, something which will be facilitated by their status as police officers, given that though they have been interdicted, they are still police officers. If the offences were trivial there would not have been that substantial possibilities of interference as the consequences of a conviction would not be the same. The combined grounds put forth by the prosecution in this case therefore convince me that all of the three accused should be remanded to custody.

[11] In the event therefore I am satisfied, on consideration of all the above facts, that a *prima facie* case is made out by the prosecution to keep the three accused on remand. The application for bail is declined.

Signed, dated and delivered at Ile du Port on 28th January 2021

Govinden CJ