

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 90
CR 82/2020

VINCENT SAMSON
(rep. by Joel Camille)

Applicant

and

REPUBLIC
(rep. by Steven Powels)

Respondent

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| Neutral Citation | <i>Samson v R</i> (CR 82/2020) [2021] SCSC 90 (15 th March 2021) |
| Before: | Vidot J |
| Summary | Bail Application, Article 19(1) Trial within a reasonable time, change in circumstances |
| Heard: | 01 March 2021 |
| Delivered: | 15 March 2021 |

RULING

VIDOT J

[1] On 13 November 2020, this Court made an Order remanding the Accused to custody. The Accused is charged with several counts of offences which this Court considers to be exceedingly serious. By further Order dated 10th December 2020, this Court confirmed the previous aforementioned Order. The offences the Accused are charged with are aggravated trafficking in person contrary to section 3(1) (e), (f) and (g) and section 5 (1) (d), (f) and (g) of the Prohibition of Trafficking in Persons Act of 2004 and punishable under section 5(2) of the same Act. The second charge is of Trafficking in persons contrary to section 3(1)(e), (f) and (g) and punishable under section 3(1) of the said Act.

[2] The Accused has now filed a Notice of Motion supported with affidavit seeking his release to bail. The Accused relies on Article 19 (7) on the Constitution which reads thus;

“A court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

[3] Counsel for the Accused argues that unless his client is granted bail with immediate effect his constitutional right as laid down under that article will be affected. The submission of Counsel was that his client was not being afforded a trial within a reasonable time. The case has been fixed for trial commencing 22nd June 2021 and ending on the 12th July 2021. Counsel for the Accused thus submits this is too much of a long time for the Accused to await trial. He adds that this is a clear violation of the Accused’s right to trial within a reasonable time.

[4] Learned Counsel for the Accused relied on **Danny Bresson v Republic SCA 44/2014** in wherein the following was held;

“the fact remains that where a trial cannot be completed within a reasonable time, the defendants should be granted bail. The conditions imposed should be such so as to eliminate the risks of flight from jurisdiction...”

[5] Counsel for the Respondent objected to the application and submitted that once a court has remanded a person, that court should not entertain further application for bail unless there is a change of circumstances that would permit review of such remand order. In fact in **R v Emmanuel [2004] SLR 11**, it was held that the court should not hear arguments which have previously been heard unless there is a change of circumstances that may affect the original decision to remand the Accused.

[6] Counsel went on to refer to **Republic v Terrence Alphonse CR47/2006** where it was held *“that a court should not hear arguments as to fact or law which has previously been heard, unless there has been a change of circumstances as might have affected the earlier*

decision.” He went on to quote **Republic v Roseline & Ors** in which it was stated that “..... *when the circumstances under which the accused were remanded have not changed, it is justifiable to extend the remand.*” **Emmanuel and Anor. v Republic CR 83 /2003** held that “*Once the Court has remanded an accused on this ground, the prosecution need not canvass the same ground each time as further remand is considered by the court. As was held in the case of R v Slough Justices, ex-parte Duncan (1982) Cr. App. R 384, the Court should not hear the arguments as to fact or law which it has previously heard unless there has been such a change in circumstances as might have affected that decision.*”

[7] Article 19(7) was not per se raised in the previous bail applications. However, Courts are always alive to constitutional provisions so as to ensure that whatever decision they take does not affect the constitutional rights of those who appear before them. Courts are the institution towards which citizens seek redress for any alleged breaches of such right and courts should always engage in promoting and safeguarding the citizens’ constitutional rights. In the aforementioned Rulings I explained the law that applies to bail and remand. The primary consideration is to ensure that an accused does not abscond and always appear before Court when requested to do so. These are considerations laid down in Article 18(7) of the Constitution. This Court was always alive to provisions of the Constitution and in particular to the Charter of Fundamental Rights (Chapter III) when dealing with previous bail and remand applications in this case.

[8] Nonetheless, this Court think it necessary and fair to deal with the ground on which the present application for bail is based. I however, endorse the position of Counsel for the Respondent as being an accurate submission on the law. In fact Counsel for the Respondent further quoted **Republic v Marcus Adela (5/2009)** in which was stated that “*Once the prosecution has satisfied Court under Article 18(7)(b), that due to the circumstances regarding the seriousness of the offence committed, the accused should be remanded... it is not the duty of the prosecution thereafter, every time the accused is produced in Court, to satisfy Court, over and over again, of the seriousness of the offence. As the accused has under an Article of the Constitution, lost his right to be released, it is now for the accused in this instant case, to satisfy Court that a change in*

circumstances with regard to article 18(7) has occurred to warrant a regaining of right to be released, guaranteed under Article 18(7).” I indeed remanded the Accused because the Prosecution had not only satisfied Court as to seriousness of the offence but also that there was real likelihood that the accused will abscond and that there is likelihood of interference with witnesses or will otherwise obstruct the course of justice. These are grounds, as provided Article 18(7) (b) and (c), on which an accused may be remanded. This Court believed such possibilities still exist should the Accused is released on bail.

[9] This Court decided to entertain this application because even if the Court was very much alive to Article 19(7), it holds the view that the Accused though aware that the Court could remand him, as it did, would not have known the length of such remand. Article 19(7) is absolute. There are no derogations. The case of **Danny Bresson v Republic**, which made reference to **Gonta v Romania [Application No, 38494/04]** dated 1 October 2013 and **Novruz Ismayilov v Azerbaijan [Application No. 16794/05]** decided on 2014, can be distinguished from the present case. In **Bresson**, the accused were remanded on 7th December 2017. The Court of Appeal heard the appeal on the Remand Order on 08 April 2015 and Judgment delivered on 17th April 2015. This means that the accused were on remand for over 3 years. That case took more than 8 months to complete. Therefore, an application Article 19(7) was warranted. The accused in the other two cases referred to in **Bresson** had also been on remand for much longer than in the present case.

[10] At the same time, this Court has already noted the grounds on which the Accused was remanded continue to remain a concern for this Court. Furthermore, the Court noted in its order of 10th December 2020 that whilst being remanded the Accused was involved in an incident whereby drugs was smuggled in food by the Accused’s daughter and delivered to him whilst on remand. Recently, according to a letter dated 03rd March 2021, received by Office of the Chief Justice from the Superintendent of Prison noted that the Accused was removed from the Detention Remand Facility to the Montagne Posee Prison, on allegation of aggression by the Accused on younger detainees. This sort of behaviour by the Accused does not inspire confidence in this Court that if released on bail the Accused will not attempt to interfere with witnesses and obstruct the course of justice.

[11] As mentioned, this case has been set for hearing from the 26th June 2021 to 12th July 2021. This Court is of the opinion that this time period for remanding the Accused was not a violation of Article 19(7). The Court finds such time period to be reasonable. The Accused continues to demonstrate that to release him on bail will be an absolutely grave risk and one which this Court is not willing to entertain.

[12] Therefore, the Application is denied and the Accused is remanded to custody.

Signed, dated and delivered at Ile du Port/ Victoria on 15th March 2021

M Vidot J