

SUPREME COURT OF SEYCHELLES

Reportable/Not
Reportable /Redact
[2021] SCSC 178
FH 13/2021

REPUBLIC
(rep. by Mr. Kumar)

Applicant

and

FRANCIS BASSET
(rep. by Mr. Cesar)

TRAVIS RAMASAMY OH-PENG

SYLVESTER CESAR
(rep by Mr. Clifford Andre)

Respondents

Neutral Citation: Republic v Basset & Anor (FH 13/2021) [2021] SCSC 178 (26 April 2121).

Before: E. Carolus J

Summary: Application for further holding of suspects - Section 101 Criminal Procedure Code.

Delivered: 26 April 2021

ORDER

- (a) Suspect No. 1 is remanded until **5th May 2021** when he shall be produced in Court at 9:00 a.m.

 - (b) Suspects No. 2 and 3 are remanded to custody until **10th May 2021** when they shall be produced in Court at 9:00 a.m.
-

RULING

CAROLUS J

Background

- [1] The Republic has applied for the further holding of three suspects under section 101 of the Criminal Procedure Code (“CPC”) Cap 54. The application is supported by an affidavit sworn by Detective Police Corporal Davis Simeon of the Criminal Investigation Division and a statement of Mick Benoit, victim of the offences allegedly committed by the suspects.
- [2] The suspects are suspected of having been involved in the commission of offences of Armed Robbery contrary to section 280 of the Penal Code, Stealing contrary to section 260 of the Penal Code, Assault Occasioning Actual Bodily Harm contrary to section 236 of the Penal Code, Unlawful Use of Vehicle contrary to section 279 of the Penal Code and Being Armed with Intent to Commit a Felony contrary to section 293 of the Penal Code.
- [3] In summary, the evidence on which the suspects were arrested and detained are that on 22nd April 2021 at 2045 hours the complainant, Mick Benoit while driving car registration number S5095, was followed around Anse Royale, by two cars namely a silver gray Kia Picanto bearing registration No. S24548 and a rented blue car, make Hyundai, with tinted windows bearing registration No. S35414. Jean-Eve Roseline another suspect who is currently on remand in this case was driving vehicle S24548. He is well known to the complainant.
- [4] Vehicle S35414 continued following the complainant’s car up Mont Plaisir road on complainant’s way home. It overtook him near the Mont Plaisir Cemetery and blocked his car from the front. Three men with one holding a machete disembarked from the vehicle. The one with the machete used it to smash the front passenger window of complainant’s car. The men shouted that they were ANB officers and, afraid, the complainant disembarked from his car and asked them what they were doing. One of the men who was fair skinned sprayed tear gas in the complainant’s face, forced him to the ground, and ordered another of the men to take his car. The other man did so and drove towards Mont Plaisir. The one with the machete threatened him and told him not to do anything stupid. The

complainant remained lying on the road until the men had left, after which he sought help from a nearby house. While doing so he saw Jean-Eve Roseline drive past in driving vehicle S24548 which he had been driving earlier.

- [5] Complainant informed the police who attended the scene. He was physically examined and his right side eye found to be swollen scratch marks were observed on his back. His vehicle was found by the police at Pointe Au Sel and money and items up to a total value of SCR17,700 were missing from it.
- [6] Following investigation suspect Jean-Eve Roseline was arrested the following day 23rd April 2021 at ANB Phoenix House. A search of his car Kia Picanto S24548 revealed a machete and an axe inside his boot door which were seized. He was interviewed and stated that on 22nd April 2021 at 2000 hrs he was at Anse Royale in his car and spoke to someone in a blue rented Hyundai with tinted windows whom he identified as Savio Paul another suspect currently on remand in this case. Savio Paul was arrested and cautioned on 1018 hrs. He confirmed that he did drive up Mont Plaisir road that day.
- [7] On the same day 23rd April 2021 at around 1730 hrs complainant spotted vehicle S35414 being driven on the road at Roche Caiman. He alerted the police who found the car parked outside suspect No. 1's house who was arrested after his wife told the police that he had been driving the car.
- [8] On the same date at 1600 hrs Savio Paul admitted being in vehicle S35414 on the night of the incident at Anse Royale. He stated that suspect No.1 who had provided the vehicle and suspect No. 3 were also present as was suspect No. 2 who had been driving the vehicle. He further stated that they acted under the instructions of ANB officer Jean Eve Roseline and suspect No. 3 to follow the complainant. The latter was the one who ordered suspect No.2 to block complainant's vehicle and thereafter suspects No. 1, 2 and 3 attacked the complainant and suspect No. 3 drove complainant's car away.

- [9] CCTV footage showing vehicle S35414 following complainant's car at Mont Plaisir was retrieved. Suspect No 1 was arrested and interviewed and stated under caution that he was at Anse Royale in vehicle S35414 being driven by suspect No.2 together with suspect No. 3 and Savio Paul but denied driving through Mont Plaisir road, contrary to what the CCTV footage reveals. Suspects No. 2 and 3 were arrested on Praslin and voluntarily confessed to witnessing the attack: suspect No. 2 admitted driving vehicle S35414 and stated that it was suspect No. 1 who smashed complainant's car window on the request of Jean Eve Roseline and Savio Paul. Results for fingerprints lifted in vehicle S35414 are being awaited
- [10] The enquiry by the police into the alleged offences are ongoing. So far they have arrested and interviewed five suspects including the three whose remand is sought in this application. Police have yet to examine the machete seized in Jean-Eve Roseline's car and for SS&CRB to process it, identify and interview other potential witnesses, retrieve and examine offensive weapons used in the commission of the alleged offences, conduct analyses of fingerprints in car S24548, obtain and execute search warrants in different locations, extract and examine CCTV footage, carry out forensic digital examination of CCTV footage, conduct identification parade and retrieve and examine exhibits.
- [11] The reasons for requesting the further holding of the suspects are:
- (a) The seriousness of the offences alleged to have been committed which carry maximum sentences ranging from 6 months to 18 years.
 - (b) That suspect No.1 is an ANB officer within the Police Force which has as its purpose the prevention of commission of crimes, which amplifies the seriousness of the alleged offences. The involvement of a Police Officer also indicates that there might be other police officers involved.
 - (c) That the alleged offences were well planned and organised and carried out by an organised group of criminals using violence thereby amplifying the seriousness of the offences.

- (d) That the alleged offences are being assisted by police officers.
- (e) The evidence shows a group of four armed suspects attacking an unarmed young male adult using violence.
- (f) That the seriousness of the alleged offences gives rise to substantial grounds for believing that the suspects might abscond from the jurisdiction if released on bail as when the police were searching for suspects No. 2 and 3 they escaped from Mahe to Praslin.
- (g) That, due to the seriousness of the alleged offences, there are substantial grounds for believing that the suspects might interfere with the victim and other witnesses if released. Given the degree of violence used against the victim in the commission of the alleged offences, that the alleged offences were conducted by a group of four people, and the fact that the suspects are aware of his identity, the further holding of the suspect is necessary for the victim's protection and safety. It is averred that he is afraid for his life and safety as his job as a driver involves working at all hours including at night.
- (h) That some exhibits have not yet been retrieved and the suspects may tamper with such evidence if released, hence affecting the investigation.

[12] Mr. Cesar representing suspect No. 1 did not object to the further remand of said suspect until 5th May 2021 for the police to carry out their investigations. Prosecuting counsel confirmed that this was agreeable to them.

[13] Mr. Andre appearing on behalf of suspects No. 2 and 3 objected to the application essentially on the grounds that the grounds on which the further holding of the suspects was being sought (as stated at page 6 of the application) did not fulfill the requirements of Article 18(7) of the Constitution or 101 of the CPC. He submitted that there are 5 reasons for remanding a suspect and that none of the reasons stated in the application fall within these five reasons.

- [14] Mr. Andre submitted that none of the enquiries that are yet to be carried out by the police as identified at page 5 of the application require the further holding of suspects No. 2 and 3. He argued that their release on bail with stringent conditions would not inhibit the police in any way from carrying out such further enquiries.
- [15] Further Mr. Andre submitted that according to the application three unidentified men carried out the alleged attack on complainant (see paragraph 2 of page 3 of the application). Five suspects have now been arrested whereas only three people were involved in commission of the offence. He argues that suspects No. 2 and 3 who were only mentioned by Savio Paul whom he has not stated did anything wrong, should therefore be released.
- [16] He also argues that since the complainant was alone at the time of the incident, there could not be any further witnesses to be identified and interviewed.
- [17] On that basis, Mr Andre moved for the release of suspects No. 2 and 3 on stringent conditions. I have given serious consideration to the objections of counsel for suspects No. 2 and 3 and I am not of the view that they have any merit for the reasons stated below.
- [18] Section 101(1) of the CPC provides that subject to section 100, a police officer who has reasonable grounds for believing that the holding of the suspect, beyond the period specified in section 100, is necessary, may apply to the court for the further holding of the suspect. In terms of section 101(2) such application shall state *inter alia* “*the reasons for believing the continued holding of the suspect to be necessary for the purpose of any further enquiries.*” Upon application being made to it, the court may release the suspect unconditionally or upon reasonable conditions or remand the suspect to custody. Subsection (5) of section 101 sets out the circumstances to which a court must have regard in determining whether to remand a suspect in custody.
- [19] Jean Eve Roseline and Savio Deano Paul have already been remanded for 14 days pursuant to an application under section 101 of the CPC. The grounds on which

they were remanded all fall within the circumstances prescribed under section 101(5). Since then the three suspects subject matter of this application have been arrested and interviewed. Further suspects No. 2 and 3 both gave voluntary confessions. Other progress has also been made in the investigation.

[20] Some of the grounds on which the further holding of the three suspects in the present application is sought, are the same grounds on which this court remanded Jean-Eve Roseline and Savio Deano Paul. Some of this grounds still hold true in spite the developments in the investigation.

[21] The alleged offences remain of a serious nature for the reasons given in this Court's Ruling on the application for further remand of Jean Eve Roseline and Savio Deano Paul. Further the involvement of Jean Eve Roseline an ANB officer compounds the seriousness of the alleged offences.

[22] There are also substantial grounds for believing that the suspects No. 2 and 3 might attempt to leave the jurisdiction as they attempted to evade arrest by escaping from Mahe to Praslin when the police were searching for them.

[23] The suspects are also aware of the victim's identity and in view of the seriousness of the alleged offences and that they involved the use of violence, this gives rise to substantial grounds for believing that the suspects may interfere with the victim and other potential witnesses. I do not agree with Mr. Andre that the fact that the complainant was alone means that there are no further witnesses. This can only be determined after further investigation.

[24] It is also of great importance that some exhibits have not yet been retrieved. There are therefore substantial grounds to believe that if the suspects are released they are likely to tamper with such evidence.

[25] As to the view expressed by Mr. Andre that there is no serious evidence implicating suspects No. 2 and 3 in the alleged offences other than that of Savio Paul who did not state that they did anything wrong, only further investigation will reveal the extent of their involvement.

[26] For the reasons given for the further remand of Jean Eve Roseline and Savio Deano Paul as far they are applicable to the present application, and for the reasons given above, I am satisfied that it is necessary to remand the suspects in custody so that the police may continue their investigations in the alleged offences without any attempts from the suspects at obstructing such investigations. I am of the view that the release of suspects No. 2 and 3 even on stringent conditions, would result in compromising the police investigation and obstructing the course of justice.

[27] I therefore allow the application and:

(a) remand suspect No. 1 until **5th May 2021** when he shall be produced in Court at 9:00 a.m.

(b) remand suspects No. 2 and 3 to custody until **10th May 2021** when they shall be produced in Court at 9:00 a.m.

Signed, dated and delivered at Ile du Port on 26 April 2020

E. Carolus J