

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2021] SCSC 231

CR 43/2021

In the matter between

**THE REPUBLIC**

*(rep. by Joshua Revera )*

and

**JEAN YVE ROSELINE**

*(rep. by Mr F Bonte and J Camille)*

**1<sup>ST</sup> Accused**

**FRANCIS BASET**

**SAVIO DEANO PAUL**

*(rep. by D Cesar)*

**2<sup>ND</sup> Accused**

**3<sup>RD</sup> Accused**

**TRAVIS RAMASAMY OH-PENG**

**SYVESTER JEAN-PIERRE CESAR**

*(rep by C Andre)*

**4<sup>TH</sup> Accused**

**5<sup>TH</sup> Accused**

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**Neutral Citation:** *R v Roseline & Ors* (CR 43/2021) [2021] SCSC 231 (17 May 2021)

**Before:** Govinden CJ

**Summary:** Bail application granted. No prima facie case established

**Heard:** 10<sup>th</sup> May 2021

**Delivered:** 17<sup>th</sup> May 2021

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**ORDER**

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**GOVINDEN CJ**

[1] The 1<sup>st</sup> to 5<sup>th</sup> Accused are charged in the 1<sup>st</sup> count with committing the offence of Robbery with Violence with common intention, contrary to Section 280 as read with Section 22(a) and punishable under Section 281 of the Penal Code. The particulars of offence avers, *inter alia*, that all of the accused persons on the 22<sup>nd</sup> day of April 2021, at Mont Plaisir, Mahe, with common intention or design robbed one Mick Benoit and stole his motor vehicle, a metallic green Toyota registration number S5095, an amount of SC 8,500/-

cash, one mobile phone make Samsung A10 valued at SCR8,500 and one mobile phone make Nokia 206 valued at SCR 700 and at or immediately before or after the commission of such robbery , threatened to use actual violence against the said Mick Benoit by using a machete and spraying tear gas in his face.

- [2] In the alternative to the 1st count.
- [3] In count 2, the 1st accused is charged to have aided and abetted the other co-accused in committing the offence in count 1 and in count 3, he is charged to have counselled or procure the other co-accused to have committed the offence on count 1.
- [4] In the 3<sup>rd</sup> count the 1<sup>st</sup>; 2<sup>nd</sup> and 3<sup>rd</sup> accused are charged jointly with the offence of agreeing with one another to commit the offence of trafficking in a controlled drug, contrary to Section 16 (a) and Section 7 (1) of the Misuse of Drugs Act, 2016, in that they agreed to pursue a course of conduct which, if pursued, will necessarily amount to or involve the commission of an offence of Trafficking in the said controlled drug.
- [5] In the 4<sup>th</sup> count all the co-accused are charged with having conspired to commit the offence in count 1.
- [6] In count 5, the 3<sup>rd</sup> to 5<sup>th</sup> accused are charged with damaging the passenger side door window of the virtual complainant's car, with common intent, on the 22<sup>nd</sup> of April 2021.
- [7] 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, and subsequently they were formally charged on the 10<sup>th</sup> of March 2021. Upon being indicted the prosecution has filed a Notice of Motion applying to have them remanded in custody in accordance with Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The application is supported by the affidavit of Detective Police Corporal Davis Simeon the Investigating Officer in this case.
- [8] The main thrust for the prosecution application for remanding the accused are that the offences charged are very serious given that the maximum penalty for the most serious

offence, namely Robbery with Violence, which carries the maximum sentence of life imprisonment; that the offences charged are on the rise in the country; that there are substantial grounds to believe that the accused if released on bail they may try to obstruct the due course of justice by interfering with the key witness in this matter or will commit similar acts and that if release they will go in hiding or abscond or fail to appear in court.

[9] The affidavit of Detective Simeon avers the facts upon which he is seeking this court to remand the accused persons for the above reasons, in paragraphs 1 to 25 it avers as follows:

*“That I am the deponent above named and the investigating officer in this case.*

*The facts of the matters deposed to herein are true where the same are within my knowledge and are otherwise true to the best of my information and belief.*

*That the Respondents stands charged before the Supreme Court No. \_\_\_\_\_, for the offence(s) of **Robbery with Violence contrary to Section 280 as read with Section 22 (a) and punishable under Section 281 of the Penal Code Cap 158, Aiding and Abetting another person in committing the offence of Robbery with Violence contrary to Section 280 as read with Section 22 (c) and punishable under Section 281 of the Penal Code Cap 158, Counseling or Procuring another person to commit the offence of Robbery with Violence contrary to Section 280 as read with Section 22 (d) and punishable under Section 281 of the Penal Code Cap 158, Conspiracy to commit the offence of Robbery with Violence contrary to and punishable under Section 381 of the Penal Code Cap 158 and Damaging Property contrary to Section 325 (1) as read with Section 22 (a) and punishable under Section 325 (1) of the Penal Code Cap 158. CR No.***

*On the 22<sup>nd</sup> day of April 2021, a complaint was made at the Police Station by one Mick BENOIT of Mont Plaisir, Mahé, the alleged victim herein, stating that he was attacked on his way home by a group of men.*

*That in the evening of the 22<sup>nd</sup> day of April 2021, he was being followed by two motor vehicles, one silver grey Kia Picanto Registration Number S24548 and one blue Hyundai Registration Number HV S35414, from Anse Royale to Mont Plaisir.*

*Upon reaching near the Mont Plaisir cemetery the blue Hyundai overtook the alleged victim who was driving a metallic green Toyota Registration Number S5095 and the said motor vehicle was manoeuvred in front of him so as to block his way. Thereafter, three (3) men disembarked the blue Hyundai, one of whom was armed with a machete who used the same to smash his passenger side door window and forced him out where he was sprayed with tear gas in the face and told to lie down on the floor.*

*It is alleged that one of the assailants embarked the alleged victims' motor vehicle and left with it along with an amount of SCR8,500 cash, one (1) mobile phone make Samsung A10 valued at SCR8,500 and one (1) mobile phone make Nokia 206 valued at SCR700.*

*The alleged victim recognised the first Respondent who was driving the silver grey Kia Picanto Registration Number S24548 who was arrested and detained on the 23<sup>rd</sup> day of April 2021, at the Anti Narcotics Bureau, Phoenix House.*

*The third Respondent was arrested on the same day.*

*During police investigation, on the 23<sup>rd</sup> day of April 2021, the blue Hyundai Registration Number HV S35414 was spotted in the vicinity of Roche Caïman, Mahé, and is being rented by the wife of the second Respondent whereupon he was subsequently arrested and detained.*

*On the 25<sup>th</sup> day of April 2021, the Police arrested and detained the fourth and fifth Respondent who had fled to Marie-Jeanne Estate, Praslin.”*

[10] These averments need to show to this court that a prima facie case of facts proving the existence of circumstances set out in Article 18 (7) (a) to (e) of the Constitution exist and that this is sufficient to convince the court that the accused should not be released, either

conditionally or unconditionally for them to appear at a latter date for trial. A right as important as a right to liberty cannot be curtailed.

[11] I am guided in my opinion by the guideline set out in the case of ***Roy Beeharie vs The Republic, Seychelles Court of Appeal case 11/2009***, where the Court of Appeal rule as follows;

*to support detention, the prosecution must demonstrate a prima facie case against the accused, then the Court should determine whether the Defendant may be released with or without condition for the purpose of ensuring that the Defendant appears on a subsequent trial date. The seriousness of the charge requires the consideration of the facts of each particular and the evidence of the prosecution gathered so far. This is independent of consideration such as whether there may be interference with witnesses or there is breach of bail conditions".*

[12] “*Prima facie*’ is a Latin term meaning “*at first sight*” or “*at first look*.” This refers to the standard of proof under which the party with the burden of proof need only present enough evidence to create a rebuttable presumption that the matter asserted is true. A prima facie standard of proof is relatively low. It is far less demanding than the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt standards that are also commonly use.

[13] I find that adducing averments the proving of a prima facie case is even more important than the adducing of averments relating to the grounds upon which the Republic is seeking the remand. For if substantial averments of facts are deponed to showing the streing existance of a prima facie case, those averments should be able to contain enough facts proving on a prima facie basis the existence of circumsatances that would justify the existence of reasons to the court exercisng its powers under Article 18 (7) (a) to(e) . As to grounds these are already in law present and can the subject matter of submissions.

- [14] Once a prima facie case is established the burden will shift to the accused person to show that they should be released upon condition or without conditions for later appearance for trial. Here there is no size that fits all, how this burden will be discharge will depend upon the facts of each case. Some cases might call upon filing of affidavit in reply in order to counter facts adduced by the Republic, whilst others might simply need to have oral submissions in order to tip the balance.
- [15] From evidence adduced by the prosecution it is shown that in the evening of the 22<sup>nd</sup> day of April 2021, the Virtual Complainant was being followed by two motor vehicles, one silver grey Kia Picanto Registration Number S24548 and one blue Hyundai Registration Number HV S35414, from Anse Royale to Mont Plaisir and that upon reaching near the Mont Plaisir cemetery the blue Hyundai overtook the alleged victim who was driving a metallic green Toyota Registration Number S5095 and the said motor vehicle was manoeuvred in from of him so as to block his way. Thereafter, three (3) men disembarked the blue Hyundai, one of whom was armed with a machete who used the same to smash his passenger side door window and forced him out, where he was sprayed with tear gas in the face and told to lie down on the ground. Then allegedly, one of the assailants embarked in the alleged victims' motor vehicle and left with it along with an amount of SCR8,500 cash, one (1) mobile phone make Samsung A10 valued at SCR8,500 and one (1) mobile phone make Nokia 206 valued at SCR700. There is no proof of identification of any of those three attackers and to what extent they relate to the 5 accused in this case.
- [16] The deponent then goes on to state that alleged victim recognised the first Respondent who was driving the silver grey Kia Picanto Registration Number S24548 who was arrested and detained on the 23<sup>rd</sup> day of April 2021, at the Anti Narcotics Bureau, Phoenix House. On these facts the 1<sup>st</sup> Respondent was only following the Virtual Complainants car. No averments as to participation in the Robbery is made agsint this peron.
- [17] The rest of the material averments are about the arrest of the accused , namely that the third accused was arrested on the same day; the second accused arrested on the 23<sup>rd</sup> of

April and the 4<sup>th</sup> and 5<sup>th</sup> accused were arrested on Praslin on the 25<sup>th</sup> day of April 2021 on Praslin.

[18] Moreover, I am struck by the used of the words in the said affidavit, in paragraph 3 the term “ *alleged victim*” is used . In paragraph 7 it avers “ *one of the alleged assailants*” and in paragraph 8 the term “ *alleged victim*” is repeated. This is the choice of words chosen by the Investigating Officer in his affidavit. Those allegations, instead of verifiable facts further dilute the veracity of his deposition.

[19] From the evidence adduced by the prosecution so far they have not shown on a prima facie case that any of the 5 accused were involved in the incident of robbery that allegedly took place against the Virtual Complainant on the 22<sup>nd</sup> of April. Apparently, it appears that he was attacked by unknown attackers. The only identification is one of recognition of the 1<sup>st</sup> accused, who was according to the prosecution version, only following him in his car.

[20] It is hence apparent that no prima facie case has been adduced by the Republic to reverse the presumption of liberty under Article 18(7) of the Constitution. This application is an example of how an affidavit supporting an application for remand should not be drafted. I accordingly release the accused persons on the following conditions;

(1) The accused persons shall not leave the Republic during the course of their bail and they shall surrender their passport or any travelling documents to the Registry of this court.

(2) They shall not approach or interfere with the Virtual Complainant whilst on bail.

(3) They shall each sign a bail bond in the sum of SR 25,000.

(4) They shall each report to their nearest police station on every Mondays at 5pm, with the 1<sup>st</sup> accused reporting to the Anse Aux Pins Police Station and the rest at the Mt Fleuri Police Station

(5) They shall not commit any other offences whilst being on the bail of this court.

Signed, dated and delivered at Ile du Port on 17 May 2021

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Govinden CJ