

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC ...350
CR 56/2021

REPUBLIC
(rep. by Joshua Revera)

Applicant

And

RICHARD JOHN LOUIS
(rep. by Joel Camille)

Respondent

Neutral Citation *Republic v Richard John Louis (CR56 / 2021)* [2021] SCSC350 (17 June 2021)
Summary Application for remand in terms with section 179 of the Criminal Procedure Code read with article 18(7) of the Constitution
Before: Vidot J
Heard: 04th June 2021
Delivered: 17 June 2021

ORDER

VIDOT J

- [1] The Republic has filed a Notice of Motion for the remand of the Respondent to custody in terms with section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution. Attached to the Notice of Motion is an affidavit sworn by Annie William-Fondaumiere that sets out the reasons for the application. The Respondent stands charged with several drug related offences.
- [2] There are four charges of trafficking in a controlled drug contrary to section 7(1) read with section 19(1) of the Misuse of Drugs Act 2016 (hereafter MODA) and punishable

under section 7(1) read with the Second Schedule of said Act. These four counts involves the following controlled drugs;

- i. 820.91 grams of heroin (diamorphine);
- ii. 957.74 grams of hashish (cannabis resin);
- iii. 1086.9 grams of cannabis; and
- iv. 1.31 grams of methylenedioxyamphetamine (MDMA) (Ecstasy)

[3] According to the affidavit, the Respondent was apprehended further to an operation mounted by the Anti-Narcotics Bureau (ANB). The vehicle in which he was travelling was stopped. When questioned by the officers he admitted to that he had in his possession controlled drug which he handed over to the officers. A body search was conducted on him but nothing was found. Further to information received by the ANB, they decided to extend the search further and conducted a search at the house of the Respondent. The Respondent gave his consent for the search. During the search other controlled drugs and the sum of money were found and seized. They searched outside the yard where the Respondent dug up the ground and showed them more controlled drug which was concealed and then confiscated. He was cautioned and informed of his constitutional rights. He was transported to the ANB office where the cash was counted in his presence. The total sum was SR32, 475.00. The drugs were unwrapped and shown to him.

[4] Therefore, the grounds upon which the application is made are as follows;

- (i) The offence of trafficking in a controlled drug is serious in nature and carries a maximum sentence of life imprisonment and a fine of SR750,000.00;
- (ii) That the charged offences are on the rise in the country endangering the peace, public order and tranquillity of the society;
- (iii) The amount of suspected drugs namely heroin has a weight of approximately 840 grams, suspected cannabis resin approximately 980 grams, suspected cannabis approximately 920 grams and one digital scale and a large sum of money obtained

through illegal means, shows the presence and degree of a commercial element involving a group of organised criminal to which the Respondent belonged;

- (iv) There are substantial grounds to believe that if the Respondent is released on bail, there is a propensity that the Respondent may reoffend given that the Police have seized some exhibits on his property, moreover the Respondent kept misleading the ANB during the search and has admitted that the controlled drugs belonged to someone else and his role is to resupply other drug traffickers when they are out of stock.

[5] Counsel for the Respondent objected to the Application.

[6] When considering whether or not to remand or grant bail to an accused, the court's primary concern should always be to ensure that the accused does not abscond, particularly if bail is granted. The Court has to assess from averments presented in the affidavit whether or not the imposition of conditions will in effect alleviate any fear that the accused will abscond. At the end of the day it has to satisfy itself that either it should remand the accused or release conditionally or unconditionally. If there is overwhelming possibility that the Respondent will abscond, then the scale will tip in favour of remanding the Respondent.

[7] However, bail is a constitutional right guaranteed under Article 18(1) of the Constitution. Bail remains the rule and not the exception. As provided for in **Esparon v the Republic SCA 1 of 2014** such right can only be curtailed in *exceptional* cases where the prosecution has satisfied court that there are compelling reasons *in law and on facts* for remanding the accused. Article 18(7) advocates for release; either unconditionally or on reasonable conditions. That reinforces that remand should be adopted as a last resort. As was pronounced in **Esparon v The Republic (supra)**, in dealing with bail application, the court needs to ensure that "*the principle is not reversed in the sense that bail instead of jail becomes jail instead of bail*".

[8] In placing emphasis that bail should be the rule and remand, the exception, I find support in the International Covenant on Civil and Political Rights (ICCPR) which Seychelles

ratified in 1992 which provides that “*it shall not be the general rule that persons awaiting trial be detained in custody, but release may be subject to guarantees to appear at trial.*” . That reinforces the argument that when considering a remand application the primary consideration would be to assess whether an accused person will or is likely abscond.

[9] Counsel for the Applicant has reminded court that the offence is serious in nature. However, it is trite that seriousness of the offence is not a standalone provision as held in **Beeharry v Republic**. It has to be considered with other grounds of the application. The Applicant has averred seriousness of the offence coupled with several other grounds as above referred. The Applicant has pleaded that drug trafficking is serious and carries a maximum life imprisonment and a fine of SR750,000.00. The Court sentencing guidelines as far as the heroin is concerned is to impose a sentence in excess of 20 years imprisonment for such amount of controlled drug seized. The quantity of heroin is 840 grams. However, sentences are based on purity. The Applicant has not identified the purity of the 840 grams of heroin. As far as the 1086 grams of cannabis is concerned the sentencing guidelines provide for a sentence of 3 years imprisonment. However, both these offences are aggravated in nature. Counsel also argued that this large amount of controlled drug shows the presence and degree of a commercial element involving a group of organised criminal.

[10] The Applicant further noted that there are substantial grounds to believe that if released on bail, there is propensity for the Respondent to reoffend. The reason for that is that the drugs were seized on the Respondent’s premises and that he misled the ANB officers when they were carrying out the search. That ground is in conformity with Article 18(7)(c) of the Constitution. However, I noticed that in other parts of the affidavit the Respondent has been co-operative with the ANB. He showed them where some of the drugs were hidden. Though his action of retaining some of the facts from the Police could be interpreted as being devious, I cannot equate that as exhibiting signs of propensity to reoffend. The Applicant should establish ‘*substantial grounds*’ and I do not believe that the fact that drugs is seized on someone’s property constitute substantial ground that the

Respondent will likely reoffend and even if that was the case, I have to consider if releasing the Applicant on bail on stringent conditions could mitigate that possibility.

[11] The Applicant submits that the Respondent misled the ANB. Can that be an indication that he could reoffend? That is possible. I have to consider that averment together with the possibility of again imposing bail conditions. I feel that imposing stringent bail conditions can mitigate any fear or concern that the Respondent will reoffend and will abscond.


[12] Therefore, I accede to the request for bail and reject the motion for remand and the accused shall be released on bail on these conditions;

- i. The Respondent shall pay into court a cash bail of SR95,000/- with 2 sureties each to be approved by court who shall each sign a bond of SR80,000/-, in order to secure the appearance of the Respondent before court each time that they are requested to do so;
- ii. The Respondent shall not leave the Republic until the final determination of the case and to that end shall forthwith, and before his release on bail, surrender his passport and all travel documents he may possess to the Registrar of the Supreme Court and the Immigration Authorities is directed not to issue any travelling documents to the Accused;
- iii. The Respondent shall report to the ANB headquarters every Mondays, Wednesdays and Fridays and other days of the week to the police station nearest to their residence which in this case is Anse Aux Pins;
- iv. The Respondent shall until this case is completed remain on Mahe and shall not travel to any other islands of the Seychelles jurisdiction. For avoidance of doubt the accused shall not while on bail go out at sea for whatever reason whatsoever;
- v. The Respondent shall not whilst on bail commit any other offence;

- vi. The Respondent shall before being released provide to the court and the ANB his address of residence, so that the ANB and the police may monitor the Respondent to ensure that the bail conditions are observed;
- vii. The Respondent shall before release on bail furnish to the ANB, the police and Registrar of the Supreme Court a telephone number on which he may be contacted at all times.
- viii. The Respondent shall not interfere with the investigation of this case and in particular not to threaten any police or ANB officers;
- ix. The Respondent shall reside at his home only (which address he shall provide to the ANB) at all times until this case is completed;
- x. The Respondent shall not leave their homes between the hours of 6.00pm and 5 am. until the final determination of this case;

[13] If the accused breach any of the aforementioned bail conditions; he shall be arrested and produced forthwith before this court.

Signed, dated and delivered at Ile du Port/ Victoria on 17th June 2021



M Vidot J