

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC376

FH33/2021

In the matter between

THE REPUBLIC

(rep. by Mr Esparon)

Applicant

and

Andrew Estarale^{1ST} Respondent

(unrepresented)

Jimmy Roy Azemia^{2ND} Respondent

(France Bonte)

Neutral Citation: *The Republic v Andrew Estrale and Anor*(FH 33/2021) [2021] SCSC 376

Before: Govinden CJ

Summary: Bail denied ; *prima facie* case for remand established; offences serious; substantial grounds to suspect that each may interfere with the evidence and abscond.

Heard: 30th June 2021

Delivered: 2nd July 2021

ORDER

The prosecution has proven that there is a *prima facie* case to detain all of the Respondents in custody in pursuant to Section 101 of the Criminal Procedure Code as read with Article 18(7) (b) and (c) of the Constitution. The Court remands both Respondents up to the 14th of July 2021.

GOVINDEN CJ

The application

[1] The prosecution has on the 30th of June 2021 moved this court on a motion for an order that the above two Respondents in this case be remanded in custody in accordance with Section 101 (1) of the Criminal Procedure Code as read with Article 18(7) of the Constitution on the grounds set forth in an affidavit. The supporting affidavit is sworn by Detective Woman Police Seargeant Marianna Eulentin attached to the Investigating Division Headquarters, she is also the Applicant in this case . The suspects are suspected in the commission of the following offences; Possession of Explosive contrary to section 84 (1) of the Penal Code; Possession of explosive with intent to endanger life or cause serious injury to property contrary to section 16 (b) of the Explosive Act; Making explosive contrary to section 17 of the Explosive Act; Conspiracy to commit the offence of Terrorism section 17 (1) of the Prevention of Terrorism Act (2004) and Participation in the commission of the offence of Terrorism contrary to section 20 (b) & (c) of the Prevention of Terrorism Act (2004).

[2] The applicant avers that the following are the actions that they have taken so far;

- I. Andrew Estrale (suspect No.1) and Jimmy Roy Azemia (Suspect No.2) has been arrested, cautioned and interviewed.
- II. Explosive materials has been seized as exhibit.
- III. Vehicle S22762 has been seized partly processed and examined by the SS&CRB.
- IV. Several search has been conducted at different location
- V. Digital devices has been seized which include four mobiles phones.

[3] The applicant further avers that the following are the investigation that needs to be further carried out in this case;

- I. More suspects to be arrested as a result of ongoing investigation.
- II. Searches needs to be conducted at different locations as a result of ongoing investigations to seize other explosive that can endanger human life.
- III. Arms and ammunition needs to be trace and seized.
- IV. Further analysis to be conducted on vehicle S 22762.
- V. CCTV footage needs to be retrieved and examined.
- VI. Explosive materials and the liquids needs to be analysed.
- VII. Digital examination needs to process on digital equipment.
- VIII. Phonewarrants needs to be executed at the Cable &Wireless and Airtel Telecommunication services.
- IX. Other witnesses needs to be interviewed in relation to this case.

[4] The applicant further avers that the reasons upon which they want the suspects to be detained for more than 24 hours are that;

- I. *“The alleged offences committed are of serious nature whereby Possession of Explosive carries a maximum sentence of seven years imprisonment. Possession of explosive with intent to endanger life or cause serious injury to property carries a maximum sentence of fourteen years imprisonment, making explosive carries a maximum of fourteen years and conspiracy to commit the offence of Terrorism carries a maximum sentence of 30 years imprisonment and participation in the commission of the offence of Terrorism also carries a maximum sentence of 30 years imprisonment.*

- II. *The Police requires more time to conduct searches at different locations and thus other pertinent exhibits are to be retrieved in relation to this case. Consequently and in view of the seriousness of the alleged offences suspects are being investigated for, that if released on bail, suspects may temper with these evidence and or exhibits that are pertinent, further suppress any evidence and or exhibits that will incriminate the suspects and other accomplices, hence affecting the course of justice. Therefore, to prevent such, the police requires that the suspects are remanded into police custody.*
- III. *Andrew Estrale (suspect No.1) and Jimmy Roy Azemia (Suspect No.2) had makes and was in possession of explosive with intent by means thereof to endanger human life or cause serious injury to property. The suspects had planned to detonate an explosive at a petrol station which is near a residential area having no regards to other human life.*
- IV. *The Jimmy Roy Azemia (Suspect No.2) has a similar case before the Supreme Court for possession of a firearms where he was release on bail on serious conditions CR 83/2019 (please see attachment).*
- V. *That there are strong reason to believe that that in view of the seriousness of the alleged offences suspects are being investigated for, that if suspects are to be released on bail, there are reasonable grounds to believe that they may not turn up for trial and they may abscond from the country by air or sea.*
- VI. *The alleged offences committed indicates a well and organized criminal groups as primary investigation shows that implications of a groups of individuals that was ready to used violence, intimidation against civilians in pursuit of political aims.*
- VII. *That the police needs time to investigate the matter since there is a number of telephonic communications that require further analysis as preliminary evidence*

shows that communication that Suspects have had with other potential suspects both on Mahe and outer island.

- VIII. *The Grand Anse Petroleum station is currently located near a residential area of government housings. Thus, the fact that suspects are planning to explode the station which would have endangered the lives of many residents and potentially lead to deaths aggravates the circumstance of the offence.*
- IX. *The alleged offences that suspects are suspected to have committed are offences against the Republic and the state which further aggravate the circumstances of the alleged offences.*
- X. *Additional time is required for the technician to complete their work in relation to the seizure of several electronic devices seized from the suspects.*
- XI. *The investigation is at it beginning stage and the serious nature of the offences and other information received during preliminary investigation requires more time to deeply investigate into this case for the reason of threats to the nation and the entire community.”*

Affidavit in support

[5] The supporting affidavit of officer Eulentin to the extent that it is pertinent and relevant to this application is as follows;

“3.1 On Monday 28th June 2021 at 1700 hours, credible information was received at the Criminal Investigation Department Headquarters at Bois De Rose that a group of individuals have conspired and planned to explode several locations on Mahe. Informant requested that the matter be taken seriously and urgent police assistance was sought to react on the matter as this may endanger lives. Consequently, the sensitive information was relayed to the Commissioner of Police and a special task

force involving military and police officers were set up and located at different locations around Mahe on observation and patrol.

3.2 Subsequently, at 2245 hours, Detective Police Sergeant Dave Jeanne of the Financial Crime Investigation Unit (FCIU) reported through a phone call that a white Hyundai H1 vehicle registration number S22762 has been intercepted at La Misere. D/SGT Jeanne furthered that upon interception, they found that the white Hyundai H1 was being driven by Jimmy Roy Azemia alias Rombo of Glacis (Suspect No.2) and seated in the front passenger seat was one (01) Andrew Estrale of Maldives (Suspect No.1). Examination of the registration document of the White Hyundai H1 S22762 showed that it belonged to 24/7 Company Limited which belongs to Marcel Naiken. Searches were conducted in the White Hyundai H1 and on the two (02) suspects (Jimmy Roy Azemia and Andrew Estrale) and in their presences, D/SGT Jeanne found a green cotton bag written red roses. D/SGT Jeanne opened the green cotton bag and inside found four (04) bottles; two big coca cola bottles containing light yellowish liquid, a small coca cola bottle containing white powder and a black bottle Caltex Havoline 250ml wrapped in clear sellotape. As the intelligence indicated explosives, safety and security precautions were taken by trained military officials to seize the aforementioned items as they were suspected to be an explosive.

3.3 These aforementioned items in addition to the White Hyundai H1 vehicle S 22762, one (01) black Nokia mobile phone and one (01) gold Alcatel mobile phone were seized and brought to the CID Headquarters by D/SGT Jeanne for further processing. Consequently, Jimmy Roy Azemia (Suspect No.2) and Andrew Estrale (Suspect No.1) were both arrested by D/SGT Jeanne with the former being at 2247 hours and the latter at 2248 hours. They were informed of their constitutional rights and cautioned and then brought to the CID Headquarters for questioning. Similarly at 2255 hours, the green cotton bag written red roses containing two big coca cola bottles containing light yellowish liquid, a small coca cola bottle containing white powder and a black bottle Caltex Havoline 250ml containing a

clear liquid wrapped in clear sellotape and the White Hyundai H1 S 22762 were photographed by the Scientific Support and Criminal Record Bureau (SS& CRB) officers and kept as exhibits at the CID HQ office.

3.4 At 2359 hours, Andrew Estrale (Suspect No.1) was cautioned whereby he stated that he knows Jimmy Roy Azemia (Suspect No.2) and one (01) Marcel Naiken for a long time with the former being since childhood and the latter being that they worked together previously. According to Andrew Estrale (Suspect No.1) in late May 2021, Marcel Naiken met him in Gran Kaz (Victoria branch) and they spoke on how the current government is operating. On Sunday 27th June 2021, Marcel Naiken phoned and asked him to come to his 24/7 Company Limited's office at Perseverance. He went and there Marcel Naiken started talking about organizing something to overpower the President of Seychelles Mr Wavel Ramkalawan. Whilst they spoke, he saw Jimmy Roy Azemia (Suspect No.2) entered the office and he heard Marcel Naiken asked Jimmy Roy Azemia (Suspect No.2) regarding two (02) firearms. Thereon, Jimmy Roy Azemia (Suspect No.2) phoned one (01) Jean-Pierre Pool of Praslin regarding the firearms who replied that the firearms are ready and it will cost SCR 5000/-. Thereon, Marcel Naiken phoned one (01) Vincent of Cascade and made arrangements to collect the firearms from Praslin by boat. Andrew Estrale (Suspect No1) furthered that on Monday 28th June 2021, at around 1700 hours, Marcel Naiken phoned and asked him to come to his 24/7 Company Limited's office at Perseverance. He went and there with Jimmy Roy Azemia (Suspect No.2) it was decided to organize something to overpower the President Wavel Ramkalawan. However, Andrew Estrale (Suspect No.1) claimed that he did not know what exactly was being organized. Andrew Estrale (Suspect No.1) added that he then saw Marcel Naiken left his office and later came back with a gelican of petroleum (benzene) which he poured it in a plastic Coco Cola bottle assisted by Andrew Estrale (Suspect No1) and Jimmy Roy Azemia (Suspect No.2). He also saw Marcel Naiken bring in a small coco cola bottle containing Chlorine powder and two (02) other bottles. He furthered that Marcel Naiken asked him to bring the aforementioned items downstairs whereby Marcel Naiken tested the mixture to check if it worked. They

tested it a few times but failed but then it worked. Present at that time was Jimmy Roy Azemia (Suspect No.2) and Marcel Naiken who was doing all of the mixture. According to Andrew Estrale (suspect No.1), Jimmy Roy Azemia (Suspect No.2) then embarked in a white Hyundai H1 S22762 and he was instructed by Marcel Naiken to embarked in the same vehicle, which he did. Whilst he was in the vehicle, he heard Marcel Naiken said to Jimmy Roy Azemia (Suspect No.2) that they will explode the Grand Anse Petroleum Station and that he will clear the way first and revert back to them. Jimmy Roy Azemia (Suspect No.2) and Andrew Estrale (Suspect No.1) followed Marcel Naiken's vehicle and on their way they were informed by Marcel Naiken through a phone call that the coast is clear and that they can go to explode the Grand Anse Petroleum shell. However as they reached the Grand Anse Petroleum station they noticed a vehicle parked and decided to back off.

3.5 Jimmy Roy Azemia (Suspect No.2) was also cautioned and interviewed whereby he refused to give a written statement but he stated verbally that he was instructed by Marcel Naiken to drive Andrew Estrale (Suspect No.1) to the Grand Anse Petroleum station to explode the Grand Anse Petroleum station, but on their way, they decided to not proceed with the plan.”

Objections to application

[6] The 1st Respondent applies to be released on bail. He stated that he has a small child who has been burnt and that the child's mother is an alcohol dependent person as a result of which the Social Services is investigating the case. He also states that he has a 14 yearold adopted son who is dependent upon him. Accordingly, he pressed for bail as he feels that he needs to be at large to cater for their needs.

[7] The Learned counsel for the 2nd Respondent, on the other hand, argues that the facts against his client are based on hearsay only. According to him, these averments rest to be proven. He insists that his client be released on bail albeit on stringent conditions. He went on to submit that if this court is mindful not to grant bail, that the period of remand be reduced and that a shorter period be given instead of the 14 days.

- [8] This court has thoroughly scrutinised the application and the facts averred in its affidavit in support and have given the same consideration to the plea made by the 1st Respondent and the submissions of counsel of the 2nd Respondent. The consideration given to the application has been effected on the basis that the rule is that the Respondents should be at liberty. The exception is for them to be deprived of their liberties and that this can only happen provided that the Republic manages to convince this court on a prima facie basis that their case for remand is proven.
- [9] Having carried out this exercise, the court is of the view that it is necessary that both Respondents be remanded in custody pursuant to section 101 (4) of the Criminal Procedure Code. The offences suspected of in this case are serious in many ways; the first is in the magnitude of the penalties provided for the offences in the event that any of the suspects are convicted. With all charges carrying with them long years of imprisonment in cases of convictions. The offences are also factually serious as bombing of a petrol station would no doubt have caused serious damages to property and human lives and devastated the local community. This is what would have happened if the Respondents had succeeded to put their plans in operation. Moreover, the impact of these offences on the reputation of Seychelles as a tourism destination would have been disastrous. The court takes notice that the economy of this country is already affected by the COVID 19 pandemic and a bombing incident would no doubt have brought our recovering economy to its knees by scaring away the much needed visitors.
- [10] Coupled with the seriousness of the offences, I find that there are substantial grounds for believing that the Respondents will fail to appear for trial or will interfere with witnesses of the prosecution if released.
- [11] I further bear in mind that there are possibly some co-suspects at large and enlarging them at this juncture may lead them to regroup and as a result obstruct the course of justice or commit further offences whilst at large.

[12] As for the 2nd Respondent, he is charged before another court for a similar offence in case CO83/20. In that case he was released on bail on the condition that he shall not commit similar offences whilst on bail.

[13] For these reasons, I am of the view that if they are released, prima facie, there are substantial grounds to believe that the two Respondents would abscond in an attempt not to face the consequences of their acts or that they would attempt to temper with the evidence of the prosecution and defeat the due course of justice.

[14] I therefore find that the prosecution has shown a case to detain the Respondents in custody in pursuant to Section 101 of the Criminal procedure Code, read with Article 18(7) (b) and (c) of the Constitution. I therefore make order and detain the 1st and 2nd Respondents up until the 14th of July 2021 at 9am.

Signed, dated and delivered at Ile du Port on 2nd July 2021

Govinden CJ