

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 483

CO68/2021

In the matter between

THE REPUBLIC

(rep. by Mr. Hermanth Kumar)

PROSECUTION

and

OZUBAY IFENDU

(rep. by Mr. Clifford Andre)

1ST ACCUSED

ANSEL LARUE

(rep. by Mr. Clifford Andre)

2ND ACCUSED

Neutral Citation: *Rep v Ifendu & Or* (CR 68/21) [2021] SCSC 483 (2 August 2021)

Before: M Vidot J

Heard: 2 August 2021

Delivered: 2 August 2021

RULING

VIDOT J

[1] The 2nd Respondent Mr. Ansel Larue is charged with aiding and abetting to import a Controlled drug namely Cocaine, contrary to Section 15(1) (a) of the misuse of Drugs Act 2016, record with Sections of the same Act and punishable under Section 5 of the Act, read with the Second Schedule of the Act.

[2] The Applicant has filed a Notice of Motion supported with affidavit sworn by Corporal Stenio Cadeau praying for the remand of the Respondents to custody. The application is

made pursuant to Section 179 of the Criminal Procedure Code read with Article 18 (7) of the Constitution. The grounds on which that request is made are as follows:

- (i) The offence with which the Respondent has been charged with is serious in nature;
- (ii) Importation of above said controlled drug namely Cocaine (Class A Drug) carries a maximum sentence of life imprisonment and a fine of One million rupees if convicted;
- (iii) The identity of other persons involved in this drug importation are overseas and to be identified and overseas investigation agencies have already been approached to have information pertaining to the identity of these overseas persons.
- (iv) There are substantial grounds to believe that if released on bail and not remanded the Respondents are likely to abscond, thus obstructing the course of justice since they are facing such seriousness charges against them and;
- (v) Drug offences are on the rise in the country and endangering peace, public order and public health affecting the young generation in society.

[3] Counsel for the Respondent did not object to the application as far as the 1st Respondent is concerned. This is because the 1st Respondent is a foreigner with no fixed abode in Seychelles. However, he strenuously opposed the application in respect of the 2nd Respondent.

[4] Mr. Andre, counsel for the Respondent referred to Article 18(7) of the Constitution. He argues that the grounds do not satisfy the provisions of that Article. He added that based on the evidence rehearsed in the affidavit there is no nexus between the 1st Respondent and the people who allegedly sent him to Seychelles and the 2nd Respondent. Furthermore, as per the evidence, the 2nd Respondent was only contacted to assist with someone who was to come to Seychelles on business, mainly negotiate purchase of real

estate in Seychelles. There is no element of criminality in the assistance that was provided by the 2nd Respondent. The 2nd Respondent has been totally co-operative in giving to Anti-Narcotic Bureau Officers all information that was within his knowledge.

[5] This Court has in numerous Rulings delivered explain the law that concerns bail and remand. I shall not repeat them therein. Some of these cases are R v Richard Louis CR56/2021, R v Daniel Laurence CR66/21, R v Andrew Mein CR29/2019 and R v Vincent Samson CR82/20. More recently the Court delivered the Ruling in R v Joubert & Ors CR70/21 wherein I explained the consideration for remand or bail. I explained the need for the Prosecution to establish substantial grounds for its demand to remand of an accused or suspect. I explain that as per **R (on an application of F) v F Southampton Gown Court [2009] EWHC 2206** that mere belief is not sufficient and that a Judge is “only entitled to refuse bail if there are substantial grounds for believing that he would beach, he would fail to turn up or commit other offences.”

[6] When considering a remand application the Court needs first to be satisfied that the accused will not abscond and present himself before Court each time that he is requested to do so. The Court then has to consider if the Respondent can be bailed without condition. If it finds that is not possible to do so, then it has to consider releasing to bail subject to conditions only if that is not possible because the Prosecution has satisfied Court that there are substantial grounds for remanding the accused, then the accused will be remanded.

[7] In the circumstances I find that the Applicant has not satisfied me that there is a need to remand the 2nd Respondent. However, to mitigate any fears that the Applicant has, I shall release the 2nd Respondent on bail subject to the following condition;

- i. The 2nd Respondent shall pay into Court a cash bail of SR45,000/- with 2 sureties each to be approved by Court who shall each sign a bond of SR40,000/-, in order to secure the attendance of the 2nd Respondent before Court each time that he are requested to do so.

- ii. The 2nd Respondent shall not leave the Republic until the final determination of the case and to that end shall forthwith, and before release on bail, surrender his passport and all travel documents to the Registrar of the Supreme Court and the Immigration Authorities shall be directed not to issue any travelling documents to the 2nd Respondent and to prevent the 2nd Respondent from leaving this jurisdiction;
- iii. The 2nd Respondent shall report to the ANB headquarters on every Fridays.
- iv. The Respondent shall until this case is completed remain on Mahe and shall not travel to any other island of the Seychelles jurisdiction. For avoidance of doubt the 2nd Respondent shall not whilst on bail go out at sea for any purpose whatsoever.
- v. The 2nd Respondent shall not whilst on bail commit any other offences;
- vi. The Respondent shall not interfere with the investigation of this case and shall not do anything that will obstruct the course if justice in this case.

Signed, dated and delivered at Ile du Port on 2 August 2021.

M VIDOT
JUDGE