

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 1031
CM 151/2022
(Arising in CR 5/2022)

In the matter between:

KEVIN GERARD QUATRE
(Represented by Mrs Alexia Amesbury)

Applicant

and

THE REPUBLIC
(Represented by Ms Ketlynn Marie)

Respondent

Neutral Citation: *Quatre vs Republic* (CM 151/2022) [2022] SCSC 1031 (25th November 2022)

Before: B Adeline J

Summary: Application to be remanded to bail with or without conditions in variation of existing order of remand to custody.

Heard: By submission

Delivered: 25 November 2022

FINAL ORDER

Application is dismissed because the affidavit evidence does not disclose any change in circumstances since the order to remand the Applicant/2nd Accused to custody was made.

RULING

Adeline, J

- [1] This ruling, arises out of case CR 5/2022, on an application filed as CM 151/2022, pertaining to the prosecution of one Hilda Anena of Kampala, Uganda (“the 1st accused”)

(now a convict) and one Kevin, Gerald, Quatre of La Louise, Mahe, Seychelles (“the 2nd accused”) for drugs related offences prescribed under the Misuse of Drugs Act 2016, as amended. The 1st accused, now a convict, has since been convicted on a single count of importation of a Controlled Drug , Heroin (Diamorphine) on her guilty plea and has accordingly been sentenced. She is presently serving a term of imprisonment of 10 years.

- [2] The 2nd accused, whose trial continues, having it fixed for continuation on the 6th December 2022, is on remand in police custody subject to a ruling of this court in MC 26/2022 (arising in CR 5/2022) dated 27th April 2022 on an application by the Republic/Prosecution.
- [3] By an application made by way of notice of motion supported by an affidavit of facts and evidence, the 2nd accused, (“the Applicant”) now applies to this court for an order that he be released from police custody and be remanded to bail on stringent bail conditions.
- [4] In the supporting affidavit to the application, interalia, the Applicant makes the following averments;

“4. That I am advised by counsel and verily believe the same to be true that bail is my constitutional right and that this was declared to be so in the case of Chang-Tave & Ors vs The Republic/State CP 13/191 where the Constitutional Court confirmed, that bail is a constitutional right which can only be denied if one or more of the reasons contained in Article 18 (7) exists.

5. That I have been remanded to custody by order of the court dated 2nd February 2022 which order has been “automatically extended” every 14 days. Pursuant to Article 18 (7) of the constitution none of the reasons enumerated in paragraph 23 in which I am mentioned, as all the other grounds refers specifically to the 1st Respondent. None of these reasons of the remand application Article 18 (7) there in exists save the fact that the charge is of a serious nature and this, I am advised, and believes to be true that in the court of Appeal case of Roy Beehary vs Rep is not a stand alone provision.

6. That in the affidavit sworn by the investigating officer on which the court ordered my remand to custody, is no longer valid as there is no longer a 2nd Respondent as she has pleaded guilty and is awaiting sentencing.

7. That one of the reasons that I was averred was that I should be remanded to custody is found in the last two bullet points of the affidavit of the investigating officer and I quote ;

- That if I am released on bail, there are substantial grounds to believe that I will commit similar offence while on bail as I was convicted of a similar offence in CR 20 of 2016. I am advised by counsel, and verily believe the same to be true, that the record of the said conviction being more than five years ago has been expunged and is spent. So it cannot be used as a ground for my remand.
- That the other ground raised in the 2nd bullet point is that my phone number was registered in an ongoing matter before the court in CR 113 of 2021, with respect to the registering of a phone number in another case unconnected to the present case is not a ground for denying me bail... neither as per Article 18 (7) or case law.
- The next ground is the one that is totally redundant because upon the guilty plea and conviction of the 1st Respondent, the Republic should, on its own motion, have remanded me to bail because it was averred by the Republic in this paragraph that if I am released on bail there are substantial grounds to believe that I may obstruct the course of justice by interfering with the 1st Respondent without saying how I am going to obstruct the course the course of justice by interfering with her when she is in prison awaiting her sentence.
- The other point raised in this paragraph, is that, I may interfere with the 1st Respondent because when she was in hospital many people have attempted to see her and yet it is her first time in Seychelles “and I am the only person who knows her”. It is not averred that I or the many persons who attempted to see her were either sent by me or connected to me.

8. That there were no averments that I had interfered with any witnesses but only one “where many people attempted to see her, not even an averment that those people attempted to interfere with her, and since the investigation is complete, as I have been

charged and the 1st Respondent has pleaded guilty, I cannot obstruct the course of the investigation and justice.

9. Bail may only be denied, after the court has properly ascertained that compelling reasons exist in law and on the facts which justify the denial such as these enumerated in the constitution “and in the above averments”.

10. That I have no previous conviction as the one quoted by the Republic is now spent, having happened more than 5 years ago. I have been informed that the existence of previous convictions may become one of the issues to deny me bail but as pointed out none exists.

11. That I am advised by counsel and verily believe the same to be true that under Article 19 (2) (a) I am innocent until either I plea guilty or I am found guilty.

12. That if, as per the constitution I am innocent, to remand me in custody is torture, cruel, inhuman, or degrading treatment or punishment, and would amount to a contravention of my right under Article 16 which right is the only absolute right with no permissible derogations.

13. That based on the foregoing, I am advised by counsel, and verily believe the same to be true, that the Republic does not even have a prima facie case against me on both counts and that I am since innocent until I plea guilty or I am found guilty. I have a right to liberty under Article 18 (1) of the constitution and I have a right to be remanded to bail under Article 18 (7) either unconditionally or on such conditions as the court might deem fit to impose, to ensure that I attend my case pursuant to Section 179 of the Criminal Procedure Code, as was done in the case of Bresson by the Court of Appeal.

14. I aver that the automatic fortnightly “extension of remand” without more, based on the above averments is a disproportionate punishment for crimes I have not been found guilty of, not pleaded guilty to, as less intrusive measures could be applied to ensure my attendance for my trial”.

- [5] In her objection to the application, state counsel representing the Republic/Prosecution reminds this court that, the Applicant is charged with serious drugs offences under the Misuse of Drugs Act, 2016 as amended, and that he is being remanded in police custody following a successful application for remand made by the Republic/Prosecution under

Section 179 of the Criminal Procedure Code as read with Article 18 (7) of the Constitution on the 14th February 2022. Learned state counsel adds, that in making its decision to remand the Applicant in police custody, the court did consider the grounds upon which the application for remand was based, which I would summarise as follows;

- (i) The seriousness of the offences of conspiracy to import a controlled drug
- (ii) The seriousness of the offence of trafficking in a controlled drug
- (iii) The high commercial value of the controlled drugs seized and the detrimental impact they would have had on our society at large, hindering the national efforts to deal with the drugs problem amid the public outcry.
- (iv) The drugs being Heroin (Diamorphine) weighing 999.98 grams with purity of 564.60 grams, and
- (v) The prevalence of the offence in our country.

[6] As regards to the law, learned state counsel submits, that there is no disagreement by the Republic over the proposition that bail is a constitutional right, but remarks that, such right is not an absolute right because Article 18 (7) of the Constitution clearly indicates, that there are limitations.

[7] Learned state counsel, cites the case of R vs Julie SSC 49/2006 to support her proposition, that the offences are considered serious, not only on the basis of the penalty prescribed by law, but also, because of their prevalence in our small community. Learned counsel explains, that as such, there is a genuine requirement of public interest that has to be taken into consideration and that in this instance, public interest ought outweighs the rule in respect of individual liberty.

- [8] Learned counsel also cites the case of Beehray vs R SCA 11 of 2009, agreeing with counsel for the Applicant/2nd accused, that the seriousness of the offence cannot be a stand alone ground to remand an accused person in police custody, and adds, that in the very same case, the court did say that “the seriousness of the offence and the severity of the sentence are not irrelevant to the assessment of the risk of a Defendant absconding or reoffending”.
- [9] Learned counsel submits that, the drugs offences of which the Applicant/2nd Accused stands charged are of an aggravated nature by virtue of Section 48 of the Misuse of Drugs Act, given the amount that indicates that, there is a commercial element to it and are the activities of organised crimes.
- [10] Learned counsel also submits that, the Applicant/2nd Accused has not shown any change in circumstances which was incumbent on him to do. Learned counsel cites the case of Republic vs Hoareau [2011] SCCS 23, in which case, the Court of Appeal made few interesting pronouncements on the issue of bail, including but not limited to the following;
- “It will be misconceived to argue that once a person has been charged before a court, he can be committed to custody only for a period of 15 days before or during the hearing and he should, as of right, be released thereafter”.
- [11] Learned counsel also quotes another extract of the court’s ruling which reads as follows;
- “further, nothing prevents court as the case proceeds from releasing the suspect on bail, if court feels that the evidence is weak though the charge may be of a serious nature.”
- [12] I have considered carefully this fresh application for bail, with or without conditions. The facts leading to where the Applicant/2nd Accused is as at today need not be reiterated. I also do not wish to repeat myself as regards to the substantive law, as the court, and as do counsels representing the parties are well versed in this area of law. It is not to be denied that, the right to bail is a constitutional right stemming from the right to liberty under

Article 18 of the constitution. It is not to be denied, that the right to liberty is not an absolute right, but does have limitations by virtue of Article 18 (7) of the constitution. It is not to be denied, that the Applicant/2nd Accused is innocent until proven guilty or has pleaded guilty.

[13] In the ruling of this court made on the 27th April 2022 remanding the Applicant/2nd Accused in police custody, this court spelt out the reasons why the Applicant/2nd Accused has to be remanded in police custody. This was after the Republic/prosecution had tendered evidence of a prima facie case against him as well as making out the grounds for continued detention in police custody which the Republic/Prosecution contend are;

- (i) The seriousness of the offences of which the Applicant/2nd Accused has been charged with.
- (ii) That there are “substantial grounds for believing, that if he is not remanded in police custody, the Applicant/2nd Accused is likely to commit similar offences which offences are not only serious, but also, are having a negative impact on the country’s socio economic development. That belief, stems from the fact that the Applicant/2nd Accused was convicted of a similar offence before the Supreme Court in CR 20 of 2016, and there was an ongoing matter before the Supreme Court against him in CR 113/2021.
- (iii) That if the Applicant/2nd Accused is released on bail, he will interfere with witnesses, and therefore obstruct the court of justice.

[14] The Applicant/2nd Accused did make a bail application on the 22nd of June 2022 seeking to have him remanded to bail with or without conditions in variation of the order made on the 27th April 2022. In a ruling delivered on the 22nd July 2022, this court dismissed the application, stating at paragraph [19] of the ruling the following;

“[19] that being the case, therefore, it is the finding of this court, that there is no evidence of any change in circumstances that would warrant a variation of the court order made on the 27th April 2022 for the 2nd accused to be remanded to bail on strict bail conditions”

- [15] I have read the instant bail application made by way of notice of motion, and its supporting affidavit of facts and evidence. In substance, it is the same bail application made on the 23rd June 2022 with the averments in the supporting affidavit being the same, except paragraph 3 which has been slightly amended to read;

“3. That I have been remanded to custody since 2nd February 2022 when I was first arrested with a co-accused from Uganda who has since pleaded guilty and has already been sentenced to serve 10 years imprisonment”.

- [16] Paragraph 3 of the previous application reads;

“That I have been remanded to custody since 2nd February 2022 when I was first arrested with a co-accused from Uganda who has since pleaded guilty and is currently awaiting to be sentenced”

- [17] Clearly, therefore, it is the same application being made twice each bearing different dates. That being the case, means, that the Applicant cannot be expecting a different out come as was the case then, because the affidavit in support of the application did not disclose a change in circumstances to warrant remanding the Application/2nd Accused to bail with or without conditions, effectively, varying the original order of remand in police custody. The application was accordingly dismissed.

- [18] In view that the application is still the same, and that based on the affidavit evidence nothing has since changed since the last bail application was made, the inevitable consequence, therefore, is that the instant bail application has to suffer the same fate, in that, it has to be dismissed for the same reason, that is, that the affidavit of facts and evidence does not disclose any change in circumstances.

[19] The application is therefore dismissed.

Signed, dated and delivered at Ile du Port 25 November 2022.

