

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 1079
CO 41/2022

In the matter between:

THE REPUBLIC

(rep. by Hermanth Kumar)

Republic

and

HARRY BARRY FABIEN

(rep. by Valerie Freminot)

Accused

Neutral Citation: *Republic v Fabien* (CO 41/2022) [2022] SCSC 1079 (09 December 2022).

Before: Burhan J

Summary: Attempt to Murder – Acts intended to cause Grievous harm

Heard: 01 December 2022

Delivered: 09 December 2022

ORDER

The application for bail is declined.

RULING

BURHAN J

[1] The accused in this case has been charged as follows;

Count 1

Attempt to Murder contrary to and punishable under Section 207 (a) of the Penal Code.

Harry Barry Fabien of La Gogue, Mahe on 11th September 2022 at Lo Kan, La Gogue, Mahe, attempted unlawfully to cause the death of Mr. Tyrell Robin Hoareau of 18 years old of La Gogue, by an act of stabbing using a knife.

Count 2

Acts intended to cause Grievous harm contrary to and punishable under Section 219 (a) of the Penal Code.

Harry Barry Fabien of La Gogue, Mahe on 11th September 2022 at Lo Kan, La Gogue, Mahe, unlawfully did Grievous Harm on the person namely Mr. Tyrell Robin Hoareau of 18 years old of La Gogue, causing deep lacerations on his back side of the body which caused an internal bleeding and damage to his lungs, by an act of stabbing using a knife.

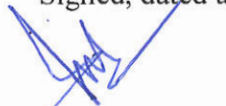
- [2] I have considered the submissions by learned Counsel Ms Valerie Freminot on behalf of the aforementioned accused in respect of bail.
- [3] The main grounds urged by learned Counsel for the accused are that:
- a) there has been a change in circumstances since the Court Order was made in that victim Mr. Hoareau is no longer undergoing treatment at the Seychelles Hospital. Mr. Hoareau was discharged from hospital and as such there is no longer any life-threatening situation for him.
 - b) the accused is not a threat to vulnerable people in the community as alleged by Detective Police Women Corporal Samia Lafleur in her affidavit of 26 September 2022. That prior to this present case her client has never been charged for a criminal offence.
 - c) the accused has no intention of committing any offences whilst released on bail and there is no substantial ground for believing otherwise.
 - d) although the offences with which the accused is charged are serious in nature, he is innocent until proven guilty.

e) the accused will not interfere with the witnesses or obstruct the course of justice and there is no substantial ground for believing otherwise.

- [4] I have also considered the objections of Assistant Principal State Counsel Mr. Kumar on behalf of the prosecution, in respect of granting the accused bail. Learned Counsel Mr. Kumar referred to the seriousness of the offence and the fact that there remained a high risk threat from the accused especially in respect of the victim. He also brought to the attention of Court the facts set out in the affidavit of detective Samia Lafleur of the CID dated 26th September 2022 seeking the remand of the accused.
- [5] I do agree that the accused has a right to bail under Article 18 of the Constitution but the said right is not an absolute right and subject to derogations contained in Article 18 (7) of the Constitution. The fact that the Constitution provides that the accused is innocent until proven guilty does not preclude a Court from remanding persons into custody pending trial, provided that there exist circumstances referred to in Article 18 (7) of the Constitution.
- [6] When one considers the charges against the accused both charges attract the maximum sentence of life imprisonment. The particulars of the offence indicate an offensive weapon had been used to cause several injuries in vulnerable areas of the body including the lungs. When one considers the affidavit of detective Lafleur it is alleged that in one day, on two occasions, the accused had confronted the victim and on the 2nd occasion stabbed him three times using a deadly weapon. This all indicates the propensity of the accused to further harm the victim. The victim being a vital witness for the prosecution in proving the charges further aggravates the issue and therefore in my view substantial grounds exist to believe the accused would harm the victim if released on bail.
- [7] For the aforementioned reasons, I proceed to decline the application for bail in respect of the accused and am satisfied on consideration of all the above facts that substantial grounds exist for the further remand of the accused into custody.

[8] The application for bail is declined. The need to consider stringent conditions therefore does not arise.

Signed, dated and delivered at Ile du Port on 09 December 2022



Burhan J