

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC ...  
CM 45/2022  
(Arising in CR 14/2022)

In the matter between:

**THE REPUBLIC**  
(rep. by Ms. Nissa Thompson)

**Prosecution**

versus

**FRED EMMANUEL**

**1<sup>st</sup> Respondent / 1<sup>st</sup> Accused**

and

**STEVE NICETTE**  
(Both represented by Mr. William Herminie)

**2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Accused**

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**Neutral Citation:** *Republic vs Emmanuel & or* ( CM 45/2022 Arising in CR 14/2022) [2022]  
SCSC (2<sup>nd</sup> August 2022)

**Before:** Adeline, j

**Summary:** Application for an order for the 1<sup>st</sup> Respondent / 1<sup>st</sup> Accused and the 2<sup>nd</sup>  
Respondent/ 2<sup>nd</sup> Accused to be remanded in Police custody

**Heard:** 16<sup>th</sup> March 2022 & 8<sup>th</sup> July 2022

**Delivered:** 2<sup>nd</sup> August 2022

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**FINAL ORDER**

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**Application for the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Accused to be remanded in Police custody – Application made pursuant to Section 179 of the Criminal Procedure code read with Article 18 (1) and Article 18(7) (b) and (c) of the Constitution – Prosecution has adduced uncontroverted evidence of a prima facie case against the two accused persons – Grounds are made out – Guide lines in the case of Beharry followed – Application is allowed, and accordingly, the 1<sup>st</sup> Respondent/ 1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Accused are remanded in Police custody to be caused to reappear before this Court on the 16<sup>th</sup> August 2022 at 9 am.**

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**RULING**

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**Adeline, J**

[1] By way of a formal charge dated 16<sup>th</sup> May 2022 pertaining to CB 1364/2/22, Central Police Station, filed in Court by the Republic on the same day, one Fred, Emmanuel of Bel Air, Mahe, Seychelles and one Steve, Nicette of Mont Buxton, Mahe, Seychelles are both indicted with one count of Robbery with Violence contrary to Section 280 as read with Section 22 (a) and punishable under Section 281 of the Penal Code, Cap 158.

[2] The particulars of the offence allegedly committed by the accused persons jointly as narrated in the formal charge read as follows;

“ Fred Emmanuel of Bel Air, Mahe, together with Steve Nicette of Mont Buxton, Mahe with common intention or design did rob one Balamugaran Kaliamoorthly and stole SCR 10,000, 10 tin of Mahe King Cigarettes valued at SCR 11,300, and 5 packets of tobacco valued at SCR 3,675, and at or immediately before or immediately after the commission of such robbery, did use actual violence against the said Balamugaran Kaliamoorthly”.

[3] On the 16<sup>th</sup> March 2022, pursuant to Section 179 of the Criminal Procedure Code read with Article 18(1) and 18(7) (b) and (c) of the Constitution, the Prosecution also (“the Applicant”) filed at the registry of this Court as CM 45/2022 an application for an order of this Court for the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused, and the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Accused to be committed to prison. That is to say to be remanded in Police custody pending the bringing of the case to a finality. The grounds of the application as pleaded and supported by affidavit evidence sworn by the Investigating Officer, one Police Detective CPL Cherly, Jones, *inter alia*, are the following;

“i. That the offence of Robbery with violence of which the Respondents stand charged is serious in nature and carry a minimum sentence of 15 years imprisonment and a maximum sentence of life imprisonment.

ii. That the charged offence is on the rise in the country and endangers peace, public order and tranquillity of the society

iii. That there are substantial grounds to believe, that if the Respondents are released on bail and not remanded, the Respondents may try to obstruct the due course of justice by interfering with the key witness in this matter for the said witness is known to the Respondents.

iv. That there are substantial grounds to believe, that if the Respondents are released on bail, the Respondents are not remanded, the Respondents may fail to turn up for the trial as the Respondents have attempted to hide from the Police after the commission of the offence on 12<sup>th</sup> February 2022”.

[4] The 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Accused, deferred their response to the application to another date which they informed the Court would be after they secure the services of Counsel for their defence of the charge against them.

[5] As I ponder over the merits of this application, I remind myself, that the grant or refusal to grant bail lies within the discretion of this Court. The grant or denial is determined by way of application of the law, and to a large extent, by the facts and circumstances of each particular case. But, that at the same time, the right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in criminal case, are to relieve the accused of imprisonment, to relieve the state of the burden of keeping the accused pending trial, and at the same time, to keep the accused constructively in the custody of the Court whether before, or after conviction, to ensure that he will submit to the jurisdiction of the Court, and be in attendance thereon, whenever his presence is required.

[6] As per the affidavit evidence in support of the motion, it was on the 12<sup>th</sup> February 2022, at 20:06 hrs, that one Rupert Stravens reported an incident at the Victoria Central Police Station on behalf of one Balamugaran Kaliamoorthly, a 28 year old shop Manager of Shalini Trading, in Market Street. The said Balamugaran Kaliamoorthly, (“ the complainant”) told CPL Jones, that he was alone as he closed the doors of the Shalini

Shop on the 12<sup>th</sup> February 2022, when two men, unknown to him, entered the shop with a knife and attacked him.

[7] As per his description of his attackers, one of the two men was not wearing a shirt. He was wearing a white short, and had a t-shirt wrapped over his head and face. The other man was wearing a cap, a red t-shirt and a yellow short. The two men stole the sum of SCR 10,000.00, 10 tins of Mahe King Cigarettes valued at SCR 11,300 and 5 packets of Tobabbo Cigarette valued at SCR 367.00.

[8] The scene of the alleged offence was examined by police, and on the shop floor of the shop the police found different notes of Seychelles currency, and coins, as well as bottles of water, sweets and twisties. The police also found blood on the floor. Upon examination of the complainant by Police Officer WPC Lafortune, he found a laceration on his right arm and blood from his mouth. Reddish marks were also found on the left hand side of his arm and both sides of his neck as well as a small cut under his right ear. He was taken to a doctor to be medically examined.

[9] As deponed by CPL Jones, Mr. Rupert Stravens who reported the incident to the police, had earlier on that particular day, saw two men whom he said are well known to him, one by the name of Fred Emmanuel, the other by the name of Steve Nicette (the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Accused) loitering round the shop acting suspiciously. On request, finger print expert, one CPL Lucas attended the scene. Video footage were retrieved and viewed from the building opposite the shop where the incident happened, and from OJ Mall building. The men were seen going toward the shop. As per his deposition, during the struggle between the complainant and his assailants the former managed to pull off the t-shirt from one of the assailant's face and he was able to identify him.

[10] It is also the evidence of CPL Jones, that on the 8<sup>th</sup> March 2022, police officer WPC Andre arrested the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused. He refused to give a statement under caution, and to participate in an ID parade. On the 15<sup>th</sup> March 2022, the 2<sup>nd</sup> Accused/2<sup>nd</sup> respondent was arrested. He participated in an ID parade where he was picked out by the complainant.

- [11] An application of this nature, strikes at the core of one of the most important constitutional rights afforded to every person. This is the right to liberty under Article 18(1) of the Constitution. It follows, that every person charged with a criminal offence has a right to bail, and that such right can only be denied after the Court has properly ascertained that compelling reasons exist in law and on the fact which justify denial, *Esparon v Republic [2014] SLR 331*.
- [12] Therefore, for this application to succeed, first and foremost, the prosecution/ applicant had to establish a *prima facie* case against the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Accused ( see *Beeharry v Republic SCA 11 of 2009*). In other words, whether on the face of the evidence at first sight, there are some evidence linking the two accused persons with the alleged offence. That, of course, will enable the Court to evaluate the case at an initial stage. To establish a *prima facie* case, a prosecution need only to offer credible evidence against the accused and the standard of proof the prosecution must satisfy at a *prima facie* case stage is lower than that for proof of an accused guilt. I hold the view, that, if a prosecutor cannot establish a *prima facie* case against an accused, that almost certainly means, that the police did not have probable cause to support the arrest of the accused in the first place.
- [13] The affidavit evidence shows, that the two accused persons were seen by an eye witness whom the witness knows quite well, as they loitered around the shop where the incident happened, and acting suspiciously. Furthermore, the complainant managed to see the face of one of the two accused persons whom he later picked out in an ID parade. In addition, the two accused persons were seen on video footage heading towards the shop and leaving the area where the shop is located. I am therefore satisfied, that there is evidence of a *prima facie* case against the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/ 2<sup>nd</sup> Accused.
- [14] In his endeavour to highlight the weaknesses as regards to the affidavit evidence in support of the motion, in his submission, made *viva voce* in answer to the application, learned defence Counsel for the Accuseds/Respondents argued from the premise, that his clients are innocent until they plead or are proven guilty. Learned counsel then proceeded

to add, that in view of the right to liberty which is afforded to his clients by the constitution, his clients have a right to bail and that no grounds have been made out by the prosecution to deny his clients of their right to liberty.

[15] Learned counsel explained, that although it may well be the case that his clients are charged with an offence that is serious in nature, that alone, cannot be a good reason to detain them in police custody. Learned counsel proceeded to add, that the proposition that the crime allegedly committed by the Accused/ Respondents is on the rise, is not supported by anything and is therefore baseless. Learned Counsel submitted, that in his opinion, the absence of evidence means, that such proposition is merely based on assumption.

[16] Over the proposition that the Accused persons/Respondents may obstruct the course of justice by interfering with key witnesses if they are remanded to bail, learned counsel submitted, that not a shred of evidence has been laid before this court to support the proposition, and that the averments made in the supporting affidavit to the motion are not backed up with evidence. Learned Counsel contended, that “the right to liberty is too precious and too important to a human being” that it cannot be denied merely on the basis of assumptions made.

[17] As regards to the proposition that if the Accused/Respondents are remanded to bail they may fail to turn up for trial, learned counsel submitted, that there is no basis for this assertion given that no evidence has been tendered to support the proposition. Learned counsel explained, that too often, it has been too easy for the prosecution to rely on unfounded averments that are not proved by evidence to deprive the Accused of their right to liberty and their right to bail, although, they are innocent until proven guilty. Learned counsel moved the court to remand the two Accused/ Respondents to bail on strict bail conditions. Learned counsel proposed such conditions as curfew, cash bail, report to the police station, surrender of travelling documents and other conditions that the Court may find necessary to cause the two Accused persons/ Respondents to surrender themselves to the custody of the court as and when they would be required to do so.

- [18] With emphasis on the law as present it stands, learned Counsel for the Accuseds/ Respondents vehemently expressed his opposition to the application for an order of this Court remanding his clients in police custody, contending, that there is no legal basis for the making of the order. Instead, learned Counsel urged the Court for an order remanding his clients to conditional bail. Learned counsel emphasised, that his clients have a constitutional right to liberty, arguing, that the right to bail emanates from the right to liberty, and in determining whether bail should be granted or refused, the Court should be minded, that the Constitution says, that every person charged with a criminal offence is innocent until he pleads guilty or is found guilty for the offence charged.
- [19] The question to ponder is, can the right to liberty under Article 18(1) of the Constitution be restricted? As much as the right to liberty under Article 18(1) of the Constitution is not on absolute right because it has limitations, it is equally the case, that the right to bail is also non-absolute because it has limitations too that allow the taking away of this right. Article 18(7) (b) and (c ) sets out clearly two instances where the right to liberty can be denied.
- [20] Furthermore, Section 179 of the Criminal Procedure Code, empowers this Court to lawfully exercise its discretion, upon an application being made, to commit an accused person to prison while awaiting trial, or to release him upon him entering into a recognisance with or without sureties, and or with other conditions as the Court may finds necessary for the accused to surrender himself to the custody of the Court when he is required to do so.
- [21] I will now turn to the grounds which the Applicant/Prosecution seeks to rely upon for the remand of the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Accused in police custody. It is the submission of the Applicant/ Prosecution, that the offence of which the two accused persons have been charged is serious in nature, and that it carries a minimum sentence of 15 years of imprisonment, and a maximum sentence of life imprisonment. Although, admittedly, it is well settled law, that the seriousness of the offence cannot be a standalone ground to remand an accused person in police custody (see *Beehary SCA 11 of 2009, LC 326 and Hoareau v R SCA 27 and 28 of 2010*) it was held in *Beehary* (supra)

that “the seriousness of the offence and the severity of the penalty likely to be imposed on conviction, are factors relevant to the decision whether in all circumstances, it is necessary to deprive the Accused of his liberty. Furthermore, in *Beehary (supra)* the Court said, that the seriousness of the offence are not irrelevant to the assessment of the risk of the defendant absconding or reoffending. This therefore, is something which this Court has to consider.

[22] It is also the contention of the Applicant/Prosecution, that should the two Respondents/Accuseds be remanded to bail, they are likely to obstruct the due course of justice by interfering with the key witness. This is a case of robbery with violence which if convicted, the two Respondents/ Accused persons are likely to face a long term custodial sentence. In the course robbing the complainant/victim, they allegedly used violence which resulted into the complainant/victim sustaining physical injuries. There is therefore, substantial ground to believe that if they are remanded to bail, they are likely to interfere with the complainant/victim who is the star prosecution witness in this case. There is more reason to be concerned, given that the complainant victim did identify the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused.

[23] It is contended by the Applicant/Prosecution, that following the commission of the offence, the two Respondents/ Accuseds tried to evade arrest by going into hiding. This, therefore, provides substantial ground to believe, that if they are remanded to bail, they may fail to turn up for trial, and therefore, fail to surrender to the custody of this Court.

[24] In the final analysis, I am satisfied, that the grounds upon which the Applicant/Prosecution relies for the making of the order for the 1<sup>st</sup> Respondent/1<sup>st</sup> Accused and the 2<sup>nd</sup> Respondent/2<sup>nd</sup> Accused to be remanded in police custody have been made out, and therefore, this application succeeds. Accordingly, I remand the two Respondents/Accused in police custody to be caused to reappear before this Court on the 16<sup>th</sup> of August 2022 at 9:00 am.



Signed, dated and delivered at Ile du Port on 2<sup>nd</sup> August 2022.

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Adeline, J