

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2022] SCSC  
CO46/2022

In the matter between:

**THE REPUBLIC**  
*(Rep. by Mr Alvin Marie)*

**Republic**

and

**SHABANI KIZAMBA SHABANI**  
*(Represented by Mr Cesar)*

**Accused**

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<b>Neutral Citation:</b>	<i>Republic vs Shabani</i> (CO46/2022) [2022] SCSC	(20 <sup>th</sup> October 2022)
<b>Before:</b>	D. Esparon, J	
<b>Heard:</b>	20 <sup>th</sup> October 2022	
<b>Delivered:</b>	20 <sup>th</sup> October 2022	

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**RULING**

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**D. Esparon, J**

- [1] The Accused which is the Respondent in the matter, is charged with the offence of Importation of a Controlled Drugs contrary to and punishable under Section 5 of the Misuse of Drugs Act, 2016 read with the second schedule thereto referred to the Act.
- [2] As particulars of the offence is that he is charged with the offence of importation of 1.89kg of Cocaine allegedly to have been imported into Seychelles at the Seychelles International Airport.
- [3] The Application before the Court is an application seeking an order from this Court to remand the Accused person in accordance to Section 179 of the Criminal Procedure Code read with Article 18 (7) of the Constitution.
- [4] The Application is supported by the affidavit of the Assistant Superintendent Janet Georges who avers in her affidavit that the Accused arrived on flight QR78 from Doha and landed in Seychelles International Airport amongst the 206 passengers.

- [5] The Respondent Shabani Kizamba Shabani, a Tanzanian Male National was questioned and searched. The Deponent avers at paragraph 5 of the affidavit that upon conducting the search, in the Respondent's pink coloured suitcase, the custom officers removed what was inside, and of course after scanning they found a hidden compartment. After the Police officers cut off the false compartment of the pink suitcase, they found two packets made of yellow tape each containing substances suspected to be controlled drugs.
- [6] The Respondent was cautioned and informed of his constitutional rights whereby he gave certain explanations as to his visit to Seychelles and his alleged contact overseas.
- [7] A controlled delivery was attempted by the Police Officers but unfortunately it was not fruitful and it failed.
- [8] After that the Respondent's contact abroad seized communication with the Accused/the Respondent, The Respondent was then arrested for the offence of importation of a controlled drug and was cautioned and informed of his constitutional rights whereby he was detained at that point in time in police custody.
- [9] The deponent further avers in her affidavit that the suspected controlled drugs was later analysed and found that it contained cocaine having the total net weight of 1892.60 grams.
- [10] The grounds of which the Republic, the Applicant in the matter is relying upon to move the Court to remand the accused in custody are as follows;
- i. That the offence with which the Respondent has been charged is serious in nature and contrary to the law.
  - ii. Importation of the above controlled drugs namely cocaine is a Class A drug which carries a maximum sentence of life imprisonment and a fine of 1 million rupees if convicted.
  - iii. The Accused herein is a foreign national and there are substantial grounds to believe that if the Accused person is released on bail and not remanded, he is

likely to abscond and thus obstructing the course of justice since he is facing such a serious charge against him in this case.

iv. Furthermore, the Respondent being a foreign national does not have a fixed place abode in the country.

v. The drug offences are on the rise in the country endangering peace, public order, security, health especially affecting the young generation in the society.

[11] On the other hand, counsel for the Respondent, the Accused person in the matter Mr Daniel Cesar objected to the bail application by stating that there are certain video footages that he needs to obviously take instructions from his client since there are certain video footages which are at the Airport.

[12] Hence needs to seek instructions from his client to file an affidavit as to the bail application. But he is objecting to this remand application.

[13] First and foremost, this Court would like to remind itself of two cardinal principles of the law of bail;

1. The Accused person has a right to bail and his remand is the exception.
2. The Accused is presumed to be innocent until he is found guilty under the constitution of this country.

[14] Be that as it may, the first pre condition that the prosecution has to satisfy this Court in order to be able to satisfy this Court before considering grounds to remand the Accused person is that first and foremost the prosecution needs to establish a *prima - facie* case against the Accused person.

[15] *Ex-Facie* the affidavit, I find that the prosecution has established a *prima - facie* case against the Accused as regards to the remand application.

- [16] The rationale of the law of bail is that bail is the rule and remand is the exception and that the Court should only remand the accused person in the event that the Court finds that the imposition of stringent conditions on the Accused person would not make certain risk negligible, that is the risk of absconding or the risk to the administration of justice.
- [17] I bear in mind that for the purpose of the present matter, the grounds of which the Republic is relying upon is twofold, one is the Republic is seeking the remand of the Accused person since they are of the view that the offence is a serious offence carrying a maximum sentence of life imprisonment and a fine of 1 million rupees in the event of conviction.
- [18] Further there are substantial grounds to believe that the Accused may abscond and not turn up for trial as a result of the seriousness of the offence, the likely sentence that the Accused may face in the event of conviction and that he is a foreign national with no, fixed place of abode.
- [19] Hence taking into account the case of *Behary vs the Republic SCA 11 2009* Court of Appeal, the prosecution is not relying only on the ground of the seriousness of the offence but on other grounds relating to the risk of administration of Justice namely that the Accused may abscond.
- [20] I have meticulously considered the affidavit filed by the Republic, the submission of counsel for the republic and the objections raised by counsel for the Accused, the Respondent in the matter and I find that the offence of which the Accused stands charged of which is the offence of importation of a controlled drugs namely 1.89kg of cocaine, having an aggravating factor present namely it is serious in nature being also a Class A drug.
- [21] This Court further finds that since the Accused person is a foreign national with no place of abode and facing the charge carrying a maximum sentence of life imprisonment in the

event of conviction, this Court is satisfied that in the event the accused is released on bail, there are substantial grounds to believe that he may abscond and not turn up for his trial.

[22] Hence this Court finds that the imposition of stringent conditions will not make the risk of absconding or a risk to the administration of justice negligible.

[23] As a result of the above, this Court will remand the Accused person into custody.

Signed, dated and delivered at Ile du Port on 20<sup>th</sup> October 2022.

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D. Esparon, J