

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC 108

CO 90/2021

In the matter of:

Jimmy Azemia

(rep by Mr. Bonte)

1st Applicant

and

Andrew Estrale

(rep. by Mr. Camille)

2nd Applicant

Versus

The Republic

(rep by Mr. Kumar)

Respondent

Neutral Citation: *Azemia & Anor v Republic* (CO 90/2021) [2023] SCSC 108 (10 February 2023)

Before: Govinden CJ

Summary: Bail during trial

Heard: 13 January 2023

Delivered: 10 February 2023

ORDER

The Court makes the following orders:

- (i) Application for Bail is denied
-
-

RULING

GOVINDEN CJ

- [1] This Ruling arises out of a Notice of Motion filed by the 1st and 2nd Applicant (collectively referred to as ‘the Applicants’) dated 13 January 2023, seeking to be

realised on bail subject to conditions. The Motion is supported by two affidavits sworn by each of the Applicants. Both Applicants are accused persons in the matter between the Republic v Azemia & Anor Cr No. 90 of 2021, which has so far commenced for trial.

[2] The supporting affidavits by the Applicant aver, for the most part, the same essence of their case in support of the Motion before this Court. As such, both will be treated together.

[3] To begin, the Applicants aver that since their arrest in June 2021, they have been remanded into custody and it has been 19 months spent in therein. That the matter was adjourned for March 2023 and a total period of 22 months would have elapsed pending the conclusion of the trial. That the time period since arrest and remand into custody, amounts to an inordinate delay in disposing of the charges. The Applicants further maintain that they have a right to be tried within reasonable time and the 22-month period is too long to remain detained in custody until trial has completed. The Applicants rely on the case of *Esparon & Ors v Republic* where the Court of Appeal ruled that where delays cannot be attributed to accused persons, the court ought to release such accused persons on bail, subject to reasonable conditions.

[4] The Republic, represented by State Counsel Mr Kumar, objects to the bail application by way of oral submissions on 13 January 2023. It is the Republic's main contention that there are no changes in circumstances to release the Applicants on bail. Moreover, it is submitted that there have been no adjournment of the case attributable to the fault of the prosecution or the Court. Furthermore, it is the position of the Republic that the offences the Applicants are charged with are serious offences, hence the Republic seeking remand which was previously granted by this Court.

[5] The Republic further submits that its case is at a critical point wherein the prosecution has established the explosive substance which the Applicants intended to use and was recovered from the Applicants' possession. Moreover, the Republic submits that there has been several evidence before the trial Court, which proves a strong prima facie case against the applicants. Furthermore, the Republic maintains that the prosecution has

reached the stage of completing their case and two remaining days for trial have been given by this Court for 28 March and 17 April of this year.

- [6] In *R v Dubignon* (CO 3 of 1998) [1998] SCSC 9 (23 July 1998), the Court considered an application for bail where trial had commenced. The issue of delay and a prolonged trial was argued to support the motion, particularly on the premise that there were several witnesses by the prosecution and further witnesses too from the defence. In rconsidering the application, Perera J took cognisance of the Practice Direction (Crime: Bail during Trial) [1974] 2 All ER 794. Therein, two considerations were vital for the Court to take into account, namely, (i) a point has been reached where there is a real danger that the accused will abscond, either because the case is going badly for him or for any other reason; and, (ii) that there is a real danger the accused may interfere with witnesses or jurors. In relying on this UK Practice Direction, Perera J also exercised a degree of caution taking due regard to the fact that these practice directions were not binding on the Seychelles Courts.
- [7] The circumstances in *R v Dubignon* were that all the witnesses had testified against the accused, and essentially, the prosecution's case was almost at the end. With this in mind, and with regard of the Practice Direction (Crime: Bail during Trial) [1974] 2 All ER 794, Perera J found no change in circumstances for the accused to be released on bail and proceeded to dismiss the application.
- [8] In the present case, the Republic is resisting the bail application by highlighting that the prosecution's case is at a critical point, among other things. From this, the Republic forms the view that a prima facie strong case has been established. I make no findings as to the latter submission by the Republic. I do however agree that the prosecution's case is at a critical point in terms of the evidence adduced, evidence to be later adduced in the remaining two days of trial and the overall finality of prosecution's case. In view of this, there is a real danger of the Applicants interfering with the case of the prosecution if released on bail at this critical point.

- [9] Moreover, nothing in the arguments presented in support of this Motion suggests that there is any change in circumstances in order to move this Court to decide any differently from its previous position of refusing to grant bail.
- [10] Furthermore, I do not consider that the trial has been unnecessarily prolonged to warrant a finding that there is a breach or likely to be a breach of the right to be tried within reasonable time. I state this on the premise that, whatever delays the Applicants suggest, such has not been due to the actions of the prosecution or this Court as earlier submitted by the Republic. The Applicants have also not substantiated their claim of delay to show, in a precise and concise manner, who has caused the delay. As such, the Applicants' reliance on *Esparon & Ors v Republic* cannot come to their aid.
- [11] On due consideration of the above, the Motion fails and the application for bail is therefore refused.

Signed, dated and delivered at Ile du Port on 10 February 2023.

Govinden CJ