

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2023] SCSC 320  
CM 35/2023  
Arising in CO 17/2023

In the matter between:

**DARREL JUDE TROY CHARLES**  
*(rep. by Mr. Olivier Chang-Leng)*

**Applicant**

and

**THE REPUBLIC**  
*(rep. by Mr. Hemanth Kumar)*

**Respondent**

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**Neutral Citation:** *Charles v The Republic* (CM 35/2023) [2023] SCSC 320

**Before:** 28 April 2023  
Esparon J  
**Heard:** 28 April 2023  
**Delivered:** 28 April 2023

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**RULING**

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**ESPARON J**

**INTRODUCTION**

- [1] This is an Application seeking an order from this Court to release the accused Darrel Charles on bail subject to stringent conditions.
- [2] The Respondent Darrel Jude Troy Charles has been charged with the offence of Trafficking in a controlled drug contrary to section 7(1) of the misuse of drugs act and the particulars of the offence reads as follows;

Mr Alex Jimmy Cecile aged 26 years old, of Bel Au, Mahe, Mr Darrel Jude Troy Charles of Beau- Vallon, Mahe on 10<sup>th</sup> March 2023 at Mahe, committed acts of Trafficking relating

to the controlled drug which has the net total weight of 322.40 grams of cocaine, in contravention of the said Act.

## PLEADINGS

- [3] The Application is supported by the Affidavit of Darrel Jude Troy Charles who avers at paragraph 5 of his Affidavit that “ I have been informed by my legal Counsel and verily believe the same to be true, that the right to bail is enshrined in our constitution and that bail is the rule rather than the exception. Unless the prosecution has pleaded substantial reasons as to why the accused must be remanded, the Court should generally release the accused on bail.
- [4] He further avers in his Affidavit that” I am informed by my legal Counsel and verily believe the same to be true that the Respondent failed to bring any real reason or substantial reasons as to why I should be remanded as;
- A. Seriousness of the offence is not a reason for the denial to bail;
  - B. The 2<sup>nd</sup> ground, i.e that the 1<sup>st</sup> and 3<sup>rd</sup> accused have previous convictions is not relevant to me;
  - C. I have not been charged with importation of a controlled drug;
  - D. I am a Seychellois with fixed place of abode in Seychelles and thus not a foreigner who will abscond from the jurisdiction; and
  - E. The fact that drug offences are on the rise has no bearing on whether or not I should be remanded into custody.
1. On the other hand Counsel for the Republic relies on his Affidavit filed in support of the remand Application dated the 24th day of March 2023.
  2. The pertinent paragraph relating to the Applicant Darrel Charles is the averments made in paragraph 12 of the Affidavit sworn by woman Police constable Ms Nicolette Marie who avers that “ At that point in time at the base in Bois de Rose, the Police noticed a silver kia picanto HV S 295 passing by with a male driver who was later identified as the 4th

accused in this case as Mr Darrel Charles along with a male passenger known as Alex Cecile, the 3rd accused of this case going towards the sea at Ex- Coast Guard jetty. All police officers present at the base reacted by running towards the direction of the said car and the said 3 convicts. All the five of them suspected at this scene were restrained by the police and body searched was conducted on all of them.

3. The deponent further avers in her Affidavit that'' Remarkably during the search in a silver Kia Pikanto car HV S295, police officer found a parcel on the rear left passenger seat and same parcel was confirmed and opened as the parcel that have the decoy inside, used for controlled delivery on that day in connection with this case.
4. The reasons why the Republic is seeking the remand of the Applicant is contained in the averments of the said deponent at paragraph 19 of the Affidavit and are as follows;
  - I. The offence which has been charged against the above said accused persons are serious in nature and contrary to law.
  - ii. There are substantial grounds to believe that if the accused persons are released on bail and not remanded, they are likely to abscond thus obstructing the course of Justice since they are facing serious charges against them in the case.
  - iii. the drug offences are on the rise in the country endangering the peace, public order and public health especially affecting the young generation in the society.

#### **SUBMISSIONS OF COUNSELS**

- [5] Counsel for the Applicant submitted to the Court that at no point does the prosecution state in their remand Application how and what are those substantial grounds and that the only substantive ground they are relying upon is that the offence is serious in nature. He further submitted that the 2 cases relied on by the prosecution should be distinguished with the present case.
- [6] Counsel for the Applicant relied on the case of the Republic v Richard Jean-Louis (2021) SCSC350, Republic V/s Richard Allen Joseph and Ors (2016) SCSC892 and the Republic V/S Serge Esparon ( 2016) SCSC862 whereby all these 3 cases concerned drug offences and the accused were released on bail.

- [7] Counsel for the Applicant further submitted to the Court that bail is the rule rather than the exception. He submitted to the Court that there are countless precedents that seriousness of the offence is not a ground on itself but is a consideration and that the bail Application has been made purely based on the basis that the offence is serious.
- [8] On the other hand Counsel for the Republic relied on the case of Abdul Karim Khudhabin V/S the Republic in Cr 43 of 2022 and the Republic v/s Achile Christian Agathine and ors CR 02 of 2021 in support of his submissions. Counsel further submitted that the prosecution is not only relying on the ground of seriousness of the offence but also in view that they are facing serious charges they may obstruct the Course of justice of which they may not turn up in court or influence witnesses. He further submitted to the Court that the averments in the Affidavit clearly shows that the drugs were intended to be supplied to the convict at bois de Rose.

#### **ANALYSIS AND DETERMINATION**

- [9] In the case of Beehary V/S the Republic SCA 11 of 2009, the Court held that the prosecution in a remand Application has to establish a Prima- facie case. Based on the averments in the Affidavit in support of the Remand Application in paragraphs 12, 14 and 16 of the said Affidavit which was relied on by the Republic, this Court finds that the prosecution has proven that there is *prima-facie* case against the said Applicant Darrei Charles.
- [10] This Court would like to remind itself of the provision of Article 19(2) of the Constitution which provides that ‘‘ every person charged with an offence is innocent until the person is proved or pleaded guilty and hence in this Jurisdiction a person is innocent until proven guilty’’.
- [11] It is also trite law under Article 18(7) of our Constitution that a person has a right to bail and remand is the exception. In the case of Laura Valabjhi V/S the Republic SCA CR 08 2022) of which the Court of Appeal relied on the case of Beehary V/S Republic SCA 11 of 2009 which endorsed the case of Hurnam V/S State ( 2005 ) UKPC( 2006) 1 WLR, which held the following;

‘that seriousness of the offence and the severity of the sentence which an Applicant would be likely to incur are not of themselves grounds for refusing bail, but are factors relevant

to the Judgment in all circumstances, if it is necessary to deprive the Applicant of his Liberty’.

[12] Justice Robinson also stated in the case of Laura Valabhji ( Supra) that;

‘The European Court of Human rights has realistically recognized that severity of the sentenced faced is a relevant element in the assessment of the risk of absconding or re-offending (Vide Ilijkov V Bulgaria (Application no 33977/96, 26th July 2001, Unreported.

Her Ladyship further Stated that; In the case of Beehary, which endorsed the case of Hurnam, Lord Bigham, Lord Scott, Lord Carswell, Lord Brown and Lord Mances agreed and stated as follows;

‘It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him and thus this risk will often be great in drug cases’.

[13] In Laura Valabhji (Supra) Justice Robinson sated the following;

‘We are in agreement that in all Countries where human rights are respected, the function of the law of bail is likely to be the same, being to reconcile, as stated in Labonne (at page 22) on the other hand, the need to safeguard the necessary respect for liberty of the citizen viewed in the Context of the presumption of innocence and on the other hand, the need to ensure that society and the administration of Justice are reasonably protected against serious risk which might materialize in the event that the detainee is really the criminal which he is suspected to be.

Based on the above principles, it follows that a person should be released on bail if the imposition of conditions reduces the likelihood that a person will fail to appear for his trial or will interfere with witnesses or will otherwise obstruct the Court of justice or will commit an offence while on release under Article 18(7)(c) to such an extent that they become negligible, having regard to the weight that the presumption of innocence carry in the balance. When the imposition of conditions is considered to be improbable to make any of the risk negligible stated in Article 18(7)(c) negligible, then the person should not be admitted to bail’.

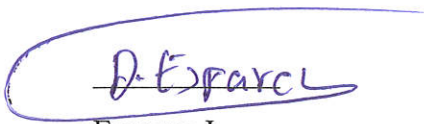
[14] This Court has meticulously considered the Affidavit in support of the Bail Application, the Affidavit in support of the remand Application, the submissions of Counsel for the Applicant and that of Counsel for the Respondent, this Court finds that since the offence

of which the said Applicant is charged namely the offence of trafficking in a controlled drug in a class A drug carries a maximum sentence of Life imprisonment with an indicative minimum sentence for aggravated offence of 20 years imprisonment in the event of conviction. The recommended sentence for such an offence relating to a class A drug of more than 200 grams to 400 grams is a sentence of 12 to 15 years imprisonment in the event of Conviction.

- [15] It transpires in the Affidavit in support of the Remand Application that such controlled drug transported by the Applicant albeit a decoy at the time was destined to a convict at a facility supposed to be administered by the prison services. This Court finds that such an offence, the way it was allegedly committed is viewed by this Court to be serious. This is because there is an aggravating factor present in view that the controlled drug was destined to a facility which is administered by the prison service or in its vicinity. Furthermore, it is apparent in the said Affidavit that the said controlled drug was allegedly imported into Seychelles in the first place.
- [16] It also appears from the averments contained in paragraph 16 of the Affidavit that it is alleged that the Applicant was not only the driver of vehicle number S 295 but was also allocated vehicle S4894 of which both vehicles were allegedly involved in the transportation of the controlled drugs showing his alleged involvement in the offence with an organized criminal group consisting even of convicts of which there were numerous persons arrested in relation to the alleged commission of the offences related to the same controlled drug which was allegedly imported in Seychelles.
- [17] In view of the seriousness of the offence, the likely sentence in which the accused is facing in the event of the conviction and the aggravating factors present, this Court finds that there are reasonable grounds to believe that in the event the Applicant is released on bail he may not turn up for trial and may abscond.
- [18] As a result of the above, this Court is of the view that the imposition of conditions is considered to be improbable to make any of the risk negligible stated in Article 18(7)(c) negligible namely that there is a risk that the Applicant/ 4th Accused may not turn up for trial and abscond or evidently obstruct the Course of Justice since it is apparent that there is the involvement in the offence of an organized criminal group to which the offender allegedly belongs involving convicts which are in the prison facilities which also raises an issue of public Order in the instant case.

[19] For the above reasons, this Court declines to release the Applicant/ 4th Accused on bail and I accordingly dismiss the Application. The Applicant/ 4th accused is accordingly remanded into custody.

Signed, dated and delivered at Ile du Port on 28 April 2023



Esparon J

Judge of the Supreme Court

