

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 405
CO 05/2023

In the matter between:

THE REPUBLIC

(rep. by Alvin Marie)

Republic

and

JEAN PIERRE POOL

(rep. by Anthony Juliette)

1st Accused

ROBIN SAMSON

(rep. by Joel Camille)

2nd Accused

CHRISTOPHE KILINDO

(rep. by Daniel Cesar)

3rd Accused

SANDY VIDOT

(rep. by Jean-Marc Lablache)

4th Accused

KEVIN PROSPER

(rep. by Basil Hoareau)

5th Accused

AYSHA ANTAT

(rep. by Clifford Andre)

6th Accused

FRANCESCA MALVINA

(rep. by Basil Hoareau)

7th Accused

DARREL POTHIN

(rep. by S. Rajasundaram)

8th Accused

Neutral Citation: *Republic v Jean-Pierre Pool & Ors* (CO 05/2023) [2023] SCSC 405
(02 June 2023)

Before: Burhan J

Summary: Application for bail

Heard: 19 and 24 May 2023

Delivered: 02 June 2023

ORDER

Application for bail is declined.

ORDER

BURHAN J

[1] The aforementioned eight accused have been charged by amended charge sheet dated 10th March 2023 as follows:

Count 1

Agreeing with another person or persons to commit the offence of trafficking in a controlled drug contrary to Section 16 (a) as read with Section 7 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) as read with Second Schedule of the Misuse of Drugs Act 2016.

Jean-Pierre Pool of Baie St Anne, Robin Marcel Samson of Baie St Anne, Praslin, Christophe Brian Kilindo of Grand Anse Praslin and Sandy Norbert Vidot of Anse Kerlan Grand Anse Praslin, on or before the 2nd December 2022 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence of trafficking in a controlled drug by sailing from Praslin to St. Pierre Island to collect and transport consignments of controlled drug.

Count 2

Agreeing with another person or person to commit the offence of Trafficking in a controlled drug contrary to Section 16 (a) as read with Section 7 (1) of the Misuse of Drugs Act 2016 and punishable under section 7 (1) as read with Second Schedule of the Misuse of Drugs Act 2016.

Jean-Pierre Pool of Baie St. Anne Praslin, Robin Marcel Samson of Baie St. Anne Praslin, Christophe Brian Kilindo of Grand Anse Praslin and Kevin Prosper of Cote Dor Praslin

on or around the 24th December 2022 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amount to or involve the commission of an offence of trafficking in a controlled drug by sailing from Praslin to St. Pierre Island to collect and transport consignments of controlled drug.

Count 3

Agreeing with another person or persons to commit the offence of Importation of a controlled drug contrary to Section 16 (a) as read with Section 5 of the Misuse of Drugs Act 2016 and punishable under Section 5 as read with the Second Schedule of the Misuse of Drugs Act 2016.

Jean-Pierre Pool of Baie St. Anne Praslin, Robin Marcel Samson of Baie St Anne Praslin, Christophe Brian Kilindo of Grand Anse Praslin, Kevin Prosper of Cote Dor Praslin, Aysha Coreen Madeleine Antat of Mont Buxton, Franchesha Ginny Malvina of Foret Noire and Darrel Pothin of Anse Louis, Mahe on a date unknown to the Republic in the year 2022 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amounts to or involve the commissions of an offence of conspiracy to import a controlled drug from Madagascar to Seychelles.

[2] I have considered the submissions made by Learned Counsel Mr Juliette, Mr Camille, Mr Hoareau, Mr Lablache and Mr Rajasunderam on behalf of the aforementioned accused in respect of bail. The main grounds urged by them could be summarised as follow;

- a) The accused have been in remand for a substantial period of time.
- b) No controlled Drugs have been found in the case. Allegations concern Class B drug.
- c) By the time the trial date is reached the accused would have spent more than one year in custody.
- d) There is nothing in the remand application to state the accused will abscond.

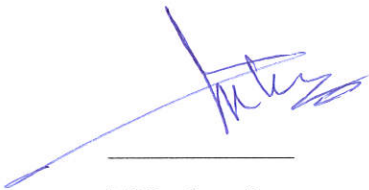
- e) There are no grounds under Article 18 (7) of the Constitution that warrant the remand of the accused. The seriousness of the offence cannot be the only ground to deprive an accused person of his right to liberty.
- f) The 4th accused has cooperated with the police.
- g) The charge against the 8th accused is very vague and the 4th accused was included only at the last minute in the charge sheet. His incarceration has deprived the family from any support as he is the sole breadwinner.
- h) The accused are innocent until they are proven guilty.
- i) The prosecution has failed to establish a prima facie case.
- j) Aggravating factors should be taken into consideration at the time off sentencing.
- k) Though alleged there are persons in Madagascar and South Africa connected to the offences no arrests have been made.
- l) No substantial grounds have been averred to indicate the accused would abscond or interfere with the witnesses and the course of justice.
- m) The effect the offence has on society is a matter that should be considered at the time of sentencing

[3] Learned Counsel for the prosecution Mr Marie submitted that pursuant to Section 16 of the Misuse of Drugs Act 2016, a person who commits the offences of Conspiracy to Traffic and Conspiracy to Import a controlled drug is in fact liable to the same punishment provided for the primary offences of Trafficking and Importation of a controlled drug as set out under Section 51 of the Misuse of Drugs Act. I am inclined to agree with this contention of Learned Counsel Mr Marie. The charges attract a maximum term of imprisonment for life and a fine of SCR one million. This in itself speaks of the seriousness of the Offences.

- [4] Learned Counsel Mr Marie further submitted as per the affidavit of the Investigating Officer dated 13th February 2023, the conduct of the 5th accused indicates that he has a history of using financial incentives to influence individuals to commit an offence. Mr Marie further submitted that this is a substantial ground to believe that if released on bail there is a risk that the accused may in fact interfere with witnesses involved in the case particularly state witnesses who have entered into conditional agreements with the Attorney General's office.
- [5] I observe from the submissions of Mr Marie that the prosecution is relying on the evidence of five witnesses who were formerly accused in the case and were given conditional pardons by the Attorney General. Being former accused and persons who participated in the alleged offences these witnesses are well known to the accused. The probability of the accused interfering with these witnesses who are well known to them is high. Further two of the accused are police Officers and therefore well versed in the court procedure. Giving due consideration to all these factors taken together, there exists substantial grounds in the view of this Court to believe that the accused would interfere with the prosecution witnesses and thereby obstruct the course of justice in the face of such serious charges.
- [6] It is also alleged by the prosecution that there is an organised foreign element from Madagascar which is borne out in the particulars of the offences which increases the possibility of the accused leaving Seychelles and absconding if released on bail, in the face of such serious charges. Further some of the accused are competent seafarers and therefore it would be impossible to stop the accused absconding from the jurisdiction as Seychelles being an Island it would not be possible to stop them leaving.
- [7] The fact that the accused have cooperated with the police or that an accused was included at the last minute or that due to incarceration of an accused the family has been deprived from any support are not matters that warrant the release of the accused at this stage, considering the aforementioned serious consequences that could result if the accused were to be released on bail

- [8] I also observe the trial dates 9, 10, 14 of November 2023 and also 11th and 12th December were fixed for the convenience of all Counsel so the accused cannot complain as these were the earliest dates agreed by them even though the Court had free dates from June onwards 2023.
- [9] I do agree that the accused have a right to bail under Article 18 of the Constitution but as mentioned by Learned Counsel Mr Marie, the right is not an absolute right but 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.
- [10] I am satisfied on perusal of the facts before court as set out in the affidavits filed that a prima-facie case exists against the accused.
- [11] For the aforementioned reasons, I proceed to decline the application for bail in respect of all the accused and am satisfied on consideration of all the above facts that substantial grounds exist for the further remand of all the accused into custody. 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 02 June 2023.



M Burhan J