

IN THE SUPREME COURT OF SEYCHELLES

Reportable
CR 98/23

THE REPUBLIC
(rep. Mr. Francois)

Plaintiff

Versus

ALDRIN SOPHOLA

1st Accused

(rep. Mr. Joshua Revera)

Neutral Citation: *The Republic vs Aldrin Sophola (CR 98/2023) 22 December 2023*

Before: Vidot M Judge

Summary: Bail Application

Heard: 22nd December 2023

Delivered: 22nd December 2023

RULING

M. VIDOT JUDGE

[1] This is an Application for an order to remand the Accused into custody in accordance with Section 179 of the Seychelles Code of Civil Procedure read with articles 18 (7) of the constitution. The Accused stands charged with the offence of agreeing with another person or persons to commit the offence of importation in 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 Second Schedule of the Misuse of Drugs Act, 2016.

[2] The Application is supported by the affidavit of Detective woman Police Constable Juliette Naiken attached to the Organized Crime Unit of the Seychelles Police.

- [3] In her affidavit, Officer Naiken avers that the one Stephen Mondon one of the suspects in this case is a convict at Montagne Posee Prison contacted the accused and other suspects in this case and orchestrated a plan to import controlled drugs into Seychelles using a boat named "*Mahe One Love*" ("the Vessel"). She further avers that during the investigation it was revealed that the Accused and Mondon recruited several mechanics. The vessel belongs to Mr. Mondon but paper work for the purchase was still being finalized.
- [4] The Accused phone and the phones of other suspects namely mechanics revealed that the Accused was in constant contact with them. Further to that analysis carried out on the Accused phone revealed that he was in contact with foreign WhatsApp account whereby he expressed the desire to import drugs into the country form overseas by sea.
- [5] It is averred that as part of the investigation it was confirmed that the Accused with the assistance of others, purchased a large amount of fuel in preparation to carry out the long journey at sea to collect the controlled drugs. It is stated that it was the Accused that has been organizing the trip at sea to collect the consignment of drugs. That was the information gathered from one of the suspects involved who revealed the same to the police.
- [6] It was further averred that police investigation revealed that information given to the mechanics by the Accused in respect of the destination of travel of the vessel were cross referenced and confirmed that the National Information Coordination Centre (NISCC) & REFLEC S3 Boie De Rose, to be the same coordinates confirmed by the intelligence that foreign Dhow was located in the high seas and around the same date that the vessel was set to depart from Eden island dock. Thus as a result thereof, the Accused was arrested.
- [7] The grounds on which this application is rooted are;

- I. *The offence charged is conspiracy to import a control drug carries a maximum sentence of life imprisonment in the event of a conviction and a fine of 1 million rupees.*
- II. *That there are reasonable grounds to believe that the said Accused will fail to appear for the trial and or to do other activities to obstruct the course of justice if released on bail considering the seriousness of the offence severity of punishment for such an offence.*
- III. *That given the organized nature of the criminal network and that the accused are operating there are substantial grounds to believe that if the Accused is released on bail that there is a strong likelihood that he will interfere with witnesses and that obstruct the Court of justice.*
- IV. *The other suspects connected to the case have been arrested and being detained as suspects. Given the organize nature of this criminal network there are few other suspect at large yet to be arrested.*
- V. *That the drug offences and the related consequences are menace on health and wellbeing of the small island state with serious impact on the younger generation and its potential negative impact on tourism and image of the nation in the international platform.*

[8] Bailed is always the rule and remand the exception; in **R v Esparon (SCA 1 of 2014) [2014] SCCA 19**. An application for bail or remand strikes at the core of one of the most important constitutional right. The right to liberty guaranteed under article 18 (1) of the Constitution. Though that right is subject to certain derogations, such derogations are very specific and should be used in exceptional circumstances. There are a number of cases from this Court that has echoed such sentiments which have also been espoused in **Esparon v Republic**, which is that such right can only

be curtailed in exceptional cases where the prosecution has satisfied Court that there are compelling reasons both in law and on facts, for remand in the accused. In fact, at the core of Counsels for the Accused submissions is that the prosecution has failed to establish such substantial grounds, mainly by presenting averments that are untrue and unsubstantiated.

[9] In placing emphasis that bail should be the rule and remand, the exception, I find support in the International Covenant on Civil and Political Right (ICCPR) which Seychelles ratified in 1992 which provides that “*it shall not be the general rule that persons awaiting trial be detained in custody, but release may be subject to guarantees to appear at trial and of Court.*”

[10] In **R v Julie SSC 49/2006, 13 March 2007**, it was held that bail is a constitutional right which should be granted to every person Accused of an offence who appears before the Court. It added that pre-trial incarceration should not be used to punish an accused person. Further, seriousness of the offence should be calculated through the balancing of a number of factors, including the prevalence of the offence in the community. We all appreciate that elicit drug poses a menaces to society. The evidence is out there and all our citizens are aware of it. An offence that is prevalent and may be seen as serious.

[11] I have said before and herein reiterate that the mantra that should resonate in the mind of a judge when hearing a remand application is that an Accused is innocent until he is proven or has pleaded guilty. This is enshrined in article 19(2) of the Constitution. There will be a need for the Republic to substantiate grounds which they advance in support of the remand application. The Court cannot just accept blanket statements and the Court has to evaluate if such grounds that the Prosecution has advanced, in fact establishes the likelihood that the Accused will abscond if released on bail. Even before ruling on whether the concerns of the Prosecution for releasing the Accused have merit, the Court has to evaluate if releasing the Accused on bail conditions will curtail the concerns.

[12] **In R v (on application of F) v Southampton Crown Court [2009] EWHC 2206 (Admin)** the Judge had refused bail on the basis that he was “*not sure*” that the Accused would “*turn up and stay out of trouble*”. On appeal Collins J held that the wrong test was applied: “*it is not a question of him not being sure that the defendant would turn up or stay out of troublehe was not entitled to refuse bail if there were no substantial grounds for believing that he would breach, he would fail to turn up or commit other offences.*” The importance of applying the correct test was emphasized in **R (on an application of S) v Newcastle Crown Court [2012] EWHC 1433 (Amin)**. It is a not a question that has to be answered in accordance with strict rules of evidence, eg. In **Re Moles [1981] Crim L.R.170**, it was held that it was permissible for a police officer to narrate what he had been told by a potential witness about threats that he has received.

[13] Articles 18(7) of the Constitution states;

“*A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regards to the following circumstances determine otherwise –*

- (a) where the court is a magistrate ‘ Court, the offence is of treason or murder;*
- (b) the seriousness of the offence;*
- (c) where there are substantial grounds for believing that the suspect will fail to appear for trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;*
- (d) there is necessity to keep the suspect in custody for the suspect’s own protection or where the suspect is a minor; for the minor’s own welfare;*
- (e) the suspect is serving a custodial sentence;*
- (f) the suspect has been arrested pursuant to previous breach of the conditions of release for the same offence;*

- [14] It was stated in **Esparon v Republic (supra)** “*the primary concern in a bail application is under the rule of law. Article 18(7) provides for the exceptions but the Court should be satisfied that those exceptions exist. They are only circumstances which will assist the Court in determining whether the person should be kept in custody.*” So, to my mind, is not whether the prosecution believes these exceptions exist, but do these exceptions actually exist?
- [15] When deciding the applications for remand, the Court is required to evaluate the likelihood of the accused absconding. The most important consideration is to ensure the Accused does not abscond. In the first place the Court has to consider whether the Accused may be released on bail without any or on strict conditions. Only if it is felt that condition will curtail concerns that the prosecution has that the last option of remand should be considered.
- [16] The defense has argued that the prosecution has through the affidavit of officer Naiken merley made blanket averments. In fact, Counsel for the Accused called officer Naiken to the stand to be cross-examined on her affidavit. She admitted that the Counsel for the Prosecution has mislead the Court by asserting that there was attempt by the Accused to assign the mechanics as skippers.
- [17] Counsel for the Accused further made reference to the section 101 of the CPC Application made before the Magistrate whereby allegations that the accused had been in contact with one Allah. It was confirmed by Counsel that an examination conducted on the phone of the Accused revealed one WhatsApp conversation whereby the Accused had told the said Allah that “*Right now I have money problem, I am looking for money..... It is not easy to get money you understand*”. Allah had replied “*inshallah, you will come in Seychelles big big rich man.*” That conversation was on the 9th November 2023. Although Counsel argues that this issue is not before this Court as it does not form part of the attached affidavit, it became evidence before this Court once the question was put to officer Naiken regarding phone call. The Court cannot now ignore that fact.

[18] In submission counsel for the Accused complained that the Prosecution has through the affidavit made blanket averments and that it does not satisfy Article 18(7) of the Constitution. I believe that the relevant provisions under article 18(7) to this case are article 18(7)(b) dealing with seriousness of the offence and article 18(7)(c) that there are substantial grounds to believe that the Accused will abscond or will interfere with witnesses and obstruct the course of justice and commit an offence while on bail. In **In R v (on application of F) v Southampton Crown Court** it was stated that the Prosecution has to establish substantial grounds of the possibility of the Accused acting in contravention on such requirement.

[19] In assessing the affidavit, I can comfortably state that it is lacking and comes short of being considered a fully competent affidavit. I shall firstly refer to **Union Estate Management (Pty) Ltd v Hebert Mitternayer** wherein Sauzier J stated “ ... *an affidavit which is based on and belief must disclose the source of information and grounds of belief. It is therefore necessary for the validity of an affidavit that the affidavit should distinguish what part of the statement is based on the information and belief and that the source of the information and the ground of belief should be disclosed*”. The affidavit fails to comply to form in that respect.

[20] Furthermore, S170 of the SCRП states that – “*Affidavit shall confine to such facts as the witness is able of his own knowledge to prove, except in interlocutory application on which statement as to his belief, with grounds there of maybe admitted*”. Counsel relied on **Mica Solange Faure v The Republic** which referred to **Subramanian v Public prosecutor (1956)** wherein it was held that “*evidence of a statement made to a witness by a person who is not himself called as a witness is hearsay and inadmissible where the object of the evidence is to establish the truth of what is contained in the statement*”. However I find that in a remand application a statement in an affidavit by another person other than who swears the affidavit is permissible provided it meets the criteria established by L’union Estate Case.

[21] Considering the grounds being relied on by the Prosecution for the remand of the Accused. I find that the offence is indeed one that is serious in nature. However,

seriousness of the offence cannot be a standalone provision. That was established in the case of **Beehary**.

[22] The prosecution has also argued that the Accused may abscond if released on bail. It has to be reminded that before remanding and Accused to custody, Court have to assess whether the Accused could be released on a bail without condition or with condition. The Prosecution submits that due to seriousness of the offence the Accused could abscond. It is easy to make such averment. I believe that such averment should be substantiated. The affidavit also avers at paragraph 11(d) that “*other suspected connected to this case have been arrested and are being detained as suspects.*” However, it then goes on to add that “*given the organized nature of this criminal network, there are a few more suspects at large and yet to be arrested.*” I find that this last averment contradicts the former one. The phrase the suspects connected to this case have been arrested “*suggest that all connected to the case have been arrested*”. The latter averment was made merely to suggest that the investigation is ongoing and therefore there could be interference with the case that may result in an obstruction to the course justice. The affidavit has to be clear in the averment.

[23] I take serious note of averments made that one of the mechanic gave coordinates which would have emanated from the Accused and that intelligence have also located a dhow in the exact area of the given coordinates. If that could have been clearly established I would have not hesitated in remand the Accused. My concern nonetheless is that despite allegation of a dhow in that area, the Vessel was still berth at Eden Island.

[24] Based on the incompetence of the Affidavit I find that I have no options but to deny the application. Nonetheless the Accused will be released on the following bail condition;

I. The Accused shall pay a cash bail in the sum of SR75000. This is to secure the attendance of the Accused before Court each time that he is requested to appear. Failure to appear will result in the cash being forfeited. The

Accused shall also provide 2 sureties who shall each sign a bail bond in the sum of SR50000. If the accused defaults appearance they will need to pay the sum into Court.

- II. The accused shall not leave the Republic until the final determination of the case and to that end shall forthwith, and before his release on bail, surrender his passports and all travel documents to the Registrar of the Supreme Court and the Immigration Authorities is directed not to issue any travelling documents to the Accused and not to allow the Accused to travel out of Jurisdiction.
- III. The accused shall report to the Police Station nearest to his place of residence every Mondays, Tuesdays and Fridays and every Tuesdays and Saturdays to the Organized Crime Unit of the Police Force.
- IV. The Accused shall until this case is completed remain on Mahe and shall not travel to any other island of the Seychelles jurisdiction. For avoidance of doubt the Accused shall not while on bail go out at sea for any purpose whatsoever and shall not board any sea going vessels.
- V. The Accused shall not whilst on bail commit any other offence;
- VI. Before being released on bail the Accused shall furnish to Court and the Police a telephone number whereon he can be contacted at all times.
- VII. The Accused shall not interfere with the investigation of this case and in particular not to have contact of whatever nature with prospective witnesses.

Signed, dated and delivered at Ile du port on the 22nd December 2023



Vidot J