

SUPREME COURT OF SEYCHELLES

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Reportable  
[2024] SCSC ...  
CO 43/2022

**THE REPUBLIC**

*(Represented by Mr. Kumar)*

**PROSECUTION**

v/s

**ABDUL KARIM KHUDABIN**

*(Represented by Mr. Revera)*

**ACCUSED**

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**Neutral Citation:** *The Republic vs Abdul Khubabin* (CO43\_2022) [2024] (26<sup>th</sup> February 2024)  
**Summary:** Application for bail  
**Before:** Esparon J.  
**Heard:** 30<sup>th</sup> January 2024  
**Delivered:** 26<sup>th</sup> February 2024

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**ORDER**

Application for bail- Application is accordingly dismissed and accused is remanded in custody

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**RULING**

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**Esparon J**

**INTRODUCTION**

1. This is an Application for the accused to be released on bail with all the necessary conditions that this Honourable Court would deem fit.

2. The accused Abdul Karim Khudabin, being the Applicant in the application for bail, has been charged with the offence of unlawfully and with intent to destroy or damage property using explosive substance in any place contrary and punishable under Section 326 of the Penal Code.
3. On count 2, he is charged with the offence of wilfully and unlawfully destroys or damage any property contrary to and punishable under section 325 (1) of the Penal Code.

### **The Pleadings**

4. The Application is supported by the Affidavit of the Applicant Abdul Khudabin who avers as grounds to be released on bail in his Affidavit the following at paragraph 6 of his Affidavit;
  - a. I have been on trial for a long time and I'm continuously denied of my constitutional rights as to my freedoms, while I'm innocent until proven and held by this Honourable Court. The case commenced as from the 9<sup>th</sup> March 2023 and it is more than 10 months I am in the custody, thus losing my rights and freedoms.
  - b. That the major portion of this trial namely the case has been over since September 2023, thus there are no circumstances and or possibilities of claim that I may interfere with any witnesses of the prosecution while all the prosecution witnesses had deponed before this Honourable Court.
  - c. That the above Circumstances would tantamount to a change of circumstances as regards this bail application for this Hon'ble Court to consider.

### **Submissions of Counsels**

5. Counsel for the accused submitted to the Court that since the prosecution has closed its case that there is no chance that the accused might go and influence the witnesses. Furthermore, he has no one to look after his child since his father has health issues and the mother is following a drug rehabilitation program of which all these facts have been averred in the Affidavit of the Applicant.
6. On the other hand, the Republic has objected to the said Application and submitted to the Court that the dates for the defence has been fixed for the month of March. He further

submitted that while the accused was on a suspended sentence he allegedly committed this offence which is before this Court.

### **Analysis and determination**

7. First and foremost, this Court reminds itself that as a rule, the Applicant has a right to bail and the exception is remand, under Article 18(7) of the Constitution. In this jurisdiction, this court reminds itself that an accused person is innocent until proven guilty.
8. In a ruling dated the 4<sup>th</sup> of October 2022 the Court held the following,
  - a. This court has considered the submissions of counsel for the Applicant and counsel for the 1<sup>st</sup> Respondent and this court finds that from the averments in paragraph 3 to paragraph 16 of the affidavit that the prosecution has established a prima facie case against the first Respondent.
  - b. This court is also satisfied that the offences of which the Respondent stands charged is a serious offence in nature with the first count having a maximum sentence of 14 years imprisonment in the event of conviction and the second count having a maximum sentence of 2 years imprisonment in the event of conviction.
  - c. This court is also satisfied that there are reasonable grounds to believe that the first Respondent Abdul Karim Khudabin will interfere with witnesses namely Jade Monnaie in the event that he is released on bail since the said witness has given her phone to the police where it contained the voice recording of an alleged conversation which might incriminate the 1<sup>st</sup> accused person.
  - d. Secondly, as averred in paragraph 5 of the affidavit of the deponent in support of his application who avers that the said first Respondent has threatened the said witness Jade Monnaie to cause harm to the witness.

- e. This court is also satisfied that there are reasonable grounds to believe that the Respondent Abdul Karim Khudabin if released on bail, may abscond in view of the seriousness of the offence, thus obstructing the course of justice.
  - f. This court is also satisfied that such a ground is substantiated since the offences alleged to have been committed carry a maximum sentence of 14 years imprisonment and also as alleged in paragraph 9 of the affidavit in support, the deponent avers that the said Abdul Karim Khudabin, the first Respondent in the matter was avoiding arrest and once he was found at the residence where he was residing hiding in the ceiling and refused to come down when the police called him of which he threatened the police officer with a piece of wood.
  - g. Hence, this court finds that there are reasonable grounds to believe that in the event the first Respondent is released on bail, he may not turn up for his trial and may abscond.
  - h. Lastly, although this court would not be prejudiced by the averments made in paragraph 19 (d) of the said affidavit of the deponent relating to previous conviction of the 1st accused person and the suspended sentence he was still undergoing for the trial purposes as the accused is innocent until proven guilty, this court finds that in view of the fact that the 1<sup>st</sup> Respondent was convicted of a serious offence and serving a two years suspended sentence and whilst serving the two years suspended sentence he allegedly committed the offence as charged in the charge sheet, this court finds that there are reasonable grounds to believe that in the event that the first Respondent is released on bail, he may commit other offences whilst on bail.
9. In the case of *Republic V/S Terrence Alphonse, CO47/2006* where the Court relied on the case of *Republic V/S Cliff Emmanuel & Richard Freminot CR85/2003* which cited the authority the case of *R vs Slough Justices, Ex-parte Duncan, 1982 Criminal Appeal R384*, where it was said that the Court should not hear arguments to the fact or law which it has previously heard unless there has been a change of circumstances that might have affected the earlier decision.

10. In the case of *Nottingham Justices ex-parte Davies 1980, Criminal Appeal Report 178*, whereby the Nottingham City Justices refused to hear full arguments in support of an application for bail, unless they are informed that there are new circumstances and they further considered that the nature of the new circumstances in such as to justify them in hearing full arguments. A similar approach was also taken in the case of Reading Crown Court ex-parte *Malik, 1981, Criminal Appeal Report 146*.
11. I have meticulously considered both submissions of counsel for the Accused and the objection raised by counsel for the Republic. In this regard, I shall rely on the previous rulings given by this Court; the ruling of the 4<sup>th</sup> October 2022 and the Court's rulings thereafter and find there are no change of circumstances warranting the accused to be released on bail especially that the offence that the accused has been charged with is a serious offence in nature with the first count having a maximum sentence of 14 years imprisonment in the event of conviction and the second count having a maximum sentence of 2 years imprisonment in the event of conviction and that this court is also satisfied that there are reasonable grounds to believe that the Respondent Abdul Karim Khudabin if released on bail, may abscond in view of the seriousness of the offence taken together with the fact that the accused had tried to evade being arrested of which the particulars are as averred in paragraph 8(f) of this ruling.
12. Secondly that, this court finds that in view of the fact that the Applicant was convicted of a serious offence and serving a two years suspended sentence and whilst serving the two years suspended sentence he allegedly committed the offence as charged in the charge sheet, this court finds that there are reasonable grounds to believe that in the event that the first Respondent is released on bail, he may commit other offences while on bail.
13. As regards to the submissions of Counsel for the Applicant namely that the prosecution has closed its case and all witnesses have given evidence and cross-examined and hence there is no possibility that the accused person will influence the witnesses in the case is neither here nor there. The prosecution has closed its case and the Court has ruled that the accused has a case to answer. The trial has been fixed for continuation on the 5<sup>th</sup> of march 2024 and

the 19<sup>th</sup> March 2024 which is just around the corner and at this stage the Court would not be able to say in no certain terms as to whether the prosecution is going to call any evidence in rebuttal in the matter and which witness the prosecution is going to apply to the Court to call or to re-call subject to the discretion of this Court in accordance with the law. Hence the fact that the prosecution has closed its case does not mean that reasonable grounds are not present showing that the accused may interfere with witnesses in the case of which this court finds that there are still reasonable grounds to believe such is still present in the case before the Court. Hence this Court finds that in the present case that there are no change of circumstances warranting the accused to be released on bail.

14. This Court is of the considered view that the imposition of conditions on the Accused is considered by this Court to be improbable to make any of the risks negligible namely the risk of absconding, the risk of re-offending and the risk of interference with witnesses having regards to the weight that the presumption of innocence carry in the balance (vide: *Laura Valabhji V/S the Republic SCA CR 08 of 2022*).

15. For the above- reasons, I accordingly dismiss the Application and remand the accused in custody.

Signed, dated and delivered at Ile du Port on 26<sup>th</sup> February 2024.



Esparon J

