

SUPREME COURT OF SEYCHELLES

Reportable

CM6/2024

Arising in CO3/2024

In the matter between:

THE REPUBLIC

(represented by Mrs. Luthina Monthy)

Applicant

and

KERTTIS BERNARD MOOSA

(represented by Mr. Basil Hoareau)

Respondent

Neutral Citation: *Republic v Moosa* (CM6/2024) (22nd January 2024).

Before: Adeline J

Summary: Application by way of notice of motion supported by an affidavit to remand the Respondent/Accused in police custody – Application opposed by Respondent/Accused – Application made pursuant to Section 179 of the Criminal Procedure Code read with Article 18(7) of the Constitution.

Heard: 17th January 2024

Delivered: 22nd January 2024

FINAL ORDER

The Application by the Applicant/Republic for an order remanding the Respondent/Accused in police custody fails. The Respondent/Accused shall be remanded to bail on the following conditions;

- The Respondent/Accused, shall enter into a bail bond in the sum of fifteen thousand rupees at his own recognizance.
- The Respondent/Accused shall furnish two sureties both of whom shall sign a bail bond of Ten thousand rupees each.
- The Respondent/Accused, shall not absent himself from the jurisdiction of this Court without leave of this Court.

- The Respondent/Accused shall surrender his passport or any travelling documents to the Registrar of the Supreme Court, if any.
- The Immigration Authority shall not issue any passport or travelling documents to the Respondent/Accused person until the case against him is concluded.
- The Respondent/Accused shall not interfere with any witnesses or potential witnesses likely to testify against him in this case.
- The Respondents/Accused shall not be charged with any offences similar to the offence of which he had been charged in this case.
- The Respondent/Accused shall report to the nearest police station to where he lives, that is, the Perseverance Police Station, every Friday of the week before 6 pm commencing Friday 26th January 2024.
- The Respondent/Accused shall submit himself to the jurisdiction of this Court on the date and time he is required to do so, up and until the conclusion of the case.
- Any breach of either of these conditions by the Respondent/Accused without good cause, will render a revocation of bail, and consequently, the Respondent/Accused shall be remanded in police custody.

RULING

Adeline J

[1] By way of a formal charge pertaining to CB No: 11/01/2024 of Central Police Station, Victoria filed in Court on the 17th January 2024, one Kerttis Bernard Moosa of Perseverance, Mahe (“the Accused”) is charged with the following criminal offence;

Count 1

“Act Intended to Cause Grievous Harm contrary to and punishable under Section 219(a) of the Penal Code”

The particulars of the offence as featured in the said formal charge reads;

“Kerttis Bernard Moosa, a 41 year old of Perseverance, Mahe, on the 2nd January 2024, in the vicinity of the Barrel Discotheque Car Park, Victoria, unlawfully caused grievous harm to one Trevor Jouaneau by continuously hitting and punching him all over his body with intention to cause grievous harm”.

[2] In accordance with Section 179 of the Criminal Procedure Code read with Article 18(1) of the Constitution, the Applicant/Republic now files this application by way of notice of motion supported by an affidavit as CM6/2024, which affidavit is sworn by one Detective Police Constable Ted Legaie, presently attached to the Criminal Investigation Division of the Police Force at the Central Police Station.

[3] The grounds upon which the order to remand the Respondent/Accused in Police custody as averred by Detective Police Constable Legaie are the following;

“I. The nature of the alleged offence committed, namely Act Intended to Cause Grievous Harm, being a serious crime, carries a maximum sentence of life imprisonment in the event of a conviction.

II. The victim, Trevor Jouaneau, is in a critical medical condition and remains unconscious in the Intensive Care Unit. Keeping the suspect in remand ensures that he does not pose a potential threat to the victim’s well-being or interfere with the ongoing medical treatment.

III. The victim’s critical medical condition and unconsciousness not only highlight the gravity of the injuries sustained, but also, pose challenges in gathering first-hand information about the incident from the victim. Hence it is of utmost importance that the Respondent/Accused remains in custody so as not to interfere with the victim”.

[4] Learned Counsel representing the Respondent/Accused vehemently opposed the application, contending, that based on the averments in the affidavit in support of the application for remand, the Applicant/Republic has not made up a case to have the Respondent/Accused remanded in police custody.

- [5] Learned Counsel for the Respondent/Accused opted to cross examine PC Legaie, the Investigating Officer assigned to the case, on certain aspects of his affidavit evidence. One of the key questions put to PC Legaie which he answered in the negative, was whether he has received a medical report to back up the averments made in his affidavit in support of the application. Under cross examination, PC Legaie conceded, that the averments are based on information he received from the hospital about the alleged victim's medical condition, particularly, the fact that he was and continue to be unconscious, that he has linked his condition to the injuries he sustained as a result of the alleged incident. Under cross examination, PC Legaie confirms, that he is aware that the alleged victim is a drug addict.
- [6] It must be emphasised, that an application for an accused person to be remanded in police custody or to be remanded to bail, strikes at the core of one of the most important constitutional rights afforded to every person in this country. This is the right to liberty under Article 18(1) of the Constitution. That being the case, therefore, the grant or refusal to grant bail lies within the discretion of the Court.
- [7] The grant or denial of bail is regulated by law, primarily, by Article 18(7) of the Constitution, and depends to a large extent, on the facts and circumstances of each particular case. At the same time, it is well settled law, that the right to bail is not to be denied merely because of public sentiments. The primary purposes of bail in a criminal case, are to relieve the accused of imprisonment, to relieve the state of the burden of keeping the accused pending trial, and at the same time to keep the accused constructively in the custody of the Court whether before or after conviction in order to ensure that he will submit to the jurisdiction of the Court, and be in attendance thereon whenever his presence is required.
- [8] This application to remand the Respondent/Accused in police custody is being considered in the light of Article 19(2) (a) of the constitution which says, that "every person who is charged with an offence is innocent until proven guilty or pleads guilty. Within this background, therefore, the premise has to be that the Respondent/Accused have to be

remanded to bail unconditionally or upon reasonable conditions for reappearance in Court at a later date for proceedings preliminary to trial, unless the facts and circumstances of this case put before this Court by way of affidavit evidence persuade this Court to remand the Respondent/Accused in police custody.

[9] This begs the question, whether, based on the facts and circumstances of the instant case, the Respondent/Accused should be remanded in police custody, thus his right to bail denied and his constitutional right to liberty curtailed. As regards to bail, it is well settled by case law, notably, *Esparon v Republic* [2014] SLR 331 for example, that “bail may be denied only after the Court has properly ascertained that compelling reasons exist in law and on the facts which justify its denial.” This has to be shown by the Applicant/Republic by first establishing a prima facie case against the Respondent/Accused.

[10] As regards to the permitted scope of the denial of the right to liberty, the House of Lords in *O(FC) Appellant vs Crown Court at Harrow (Respondent)*, an appeal from the Court’s decision in *Lljkov vs Bulgaria*, one of the Strasbourg case law, the Court had this to say;

“84. The Court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty where the law provides for a presumption in respect of factors relevant to the grounds for continued detention the existence of the concrete fact ought weighing the rule of respect for individual liberty must be nevertheless convincingly demonstrated”.

[11] In *Beharry v Republic* SCA 11 of 2009, the Court formulated a set of guidelines to guide it in its approach to determining an application of this nature. The Court endorsed the proposition, that continued detention can be justified in a given case if there are specific indications of a genuine requirement of public interest, which notwithstanding the presumption of innocence, outweighs the respect of individual liberty. Quite

significantly, is that the Court indicated, that when considering an application of this nature made pursuant to Section 179 of the Criminal Procedure Code, as is the case here, it is incumbent of the prosecution to demonstrate the existence of a prima facie case which term translates from Latin to English is essentially “the case at first sight”.

[12] Therefore, the prosecution carrying the burden of proof has to only present evidence to create a rebuttable presumption that the allegation asserted is true. As such, the standard of proof that the prosecution must satisfy the Court at a prima facie case stage is lower than for proof that the accused is guilty. That being the legal position, it follows, that if the prosecution cannot establish a prima facie case in a given case, that almost certainly means, that the Police did not have probable cause to support the arrest of the accused in the first place.

[13] Therefore, the first issue that calls for a determination is whether the affidavit evidence tendered before this Court gives rise to a prima facie case against the Respondent/Accused. As per the averments deponed by PC Ted Legaie, on the 2nd January 2024, at 0300 hours, WPC Changtave who was at the Central Police Station in Victoria, received a phone call by which it reported to him that an assault has taken place at the Barrel Discotheque Car Park, and that police assistance was required. Thereafter, WPC Dine and WPC Moustache attended the scene where allegedly, the assault had taken place. Upon their arrival on scene, WPC Dine observed, that Trevor, (whose surname was not known then) lying on the ground. Upon examining the body of Trevor, WPC Dine observed a lump on his forehead along with red liquid suspected to be blood.

[14] An ambulance driven by one David Marianne, and a paramedic by the name of Pamela Barra as well as a Porter by the name of Sheldon Esparon then arrived on scene. Trevor was taken by ambulance to the Seychelles Hospital for medical attention. The scene was then cordoned by CPL Agathe and PC Kimende from SS CRB who then took photographs and collected blood samples for forensic analysis.

- [15] It is averred by PC Ted Legaie, that at 0948 hours, WPC Sinon visited the Seychelles Hospital to conduct a physical examination of Trevor. She found swelling on the left and right forehead, bruises on the shoulders and a bandaged left ear. He also found Trevor unconscious in the Male Ward at the Seychelles Hospital.
- [16] It is also averred by PC Ted Legaie, that at 1115 hours, the police commenced an investigation and as part of the investigation camera footages from Barrel Trading were reviewed that showed Kerttis Moosa assaulting Trevor until he fell to the ground. It is also averred by PC Ted Legaie, that an eye witness who was interviewed, confirmed, that Trevor Jouaneau was assaulted by Kerttis Moosa at approximately 1400 hours. PSGT Simeon consulted Dr Danny Slay from the Intensive Care Unit, who reported to him about Trevor's critical condition because of blood trauma to the brain, low blood pressure, an unstable heart, and persistent unconsciousness.
- [17] It is further averred by PC Ted Legaie, that at 1455 hours, Kerttis Moosa who was then a suspect, was arrested and interviewed. He voluntarily gave a confessionary statement admitting that he had assaulted Trevor Jouaneau after Trevor had thrown a glass at him. Kerttis admitted punching Trevor multiple times all over his body causing him to fall and hit his head to the ground. PC Legaie avers, that the victim of the assault, Trevor Jouaneau, is still in a very critical condition receiving care in the Intensive Care Unit.
- [18] On account of the affidavit evidence laid before this Court, I am satisfied, that the Applicant/prosecution has proved a prima facie case against the accused, Kerttis Bernard Moosa for his continued detention in police custody. It now remains for the Court to establish, whether, the grounds which the Applicant/Republic seeks to rely upon to justify continued detention of the Respondent/Accused in police custody are made out, that would warrant the making of the order being sought for by the Applicant/Republic thus effectively denying him his right to liberty under Article 18(1) read with Article 18(7) (a) – (f) of the Constitution. The first and most significant matter for consideration is whether there are compelling reasons, both in law and on the facts as averred by PC

Legai in his affidavit in support of the application, to justify remand in police custody thus a denial of bail.

[19] Based on my reading of PC Legai's affidavit in support of the application for remand of the Respondent/Accused in police custody, although not explicitly stated, the grounds upon which the Applicant/Republic seeks to rely on, is that;

(1) The accused is charged with a serious offence, and

(2) If release on bail the accused will interfere with witnesses.

In respect of the latter, the Applicant/Republic, has not convinced the Court how this is likely to happen. In other words, the ground that if the Respondent/Accused is release on bail, he will interfere with witnesses as averred by the Applicant/Republic are not substantiated. As regards to the seriousness of the offence of which the Respondent/Accused has been charged, it is settled law, that this cannot be a standalone ground to remand an accused person in police custody. The case of Beeharry (Supra) is one of the cases in point.

[20] Therefore, as regards to the proposition that if remanded to bail the Respondent/Accused will interfere with witnesses, in that, he will pose a potential threat to the victim who is unconscious in the Intensive Care Unit, the Applicant/Republic has failed to demonstrate how could this be possible, and convince the Court that this ground is made out. Clearly, therefore, although the Applicant/Republic has established a prima facie case against the accused for him to be remanded in police custody, it has failed to properly made out the grounds upon which it seeks for remand of the Respondent/Accused in police custody. As such, this application must fail. Therefore, the Respondent/Accused is remanded to bail on the following bail conditions;

- The Respondent/Accused, shall enter into a bail bond in the sum of fifteen thousand rupees at his own recognizance.
- The Respondent/Accused shall furnish two sureties both of whom shall sign a bail bond of Ten thousand rupees each.
- The Respondent/Accused, shall not absent himself from the jurisdiction of this Court without leave of this Court.

- The Respondent/Accused shall surrender his passport or any travelling documents to the Registrar of the Supreme Court, if any.
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- The Respondent/Accused shall not interfere with any witnesses or potential witnesses likely to testify against him in this case.
- The Respondents/Accused shall not be charged with any offences similar to the offence of which he had been charged in this case.
- The Respondent/Accused shall report to the nearest police station to where he lives, that is, the Perseverance Police Station, every Friday of the week before 6 pm commencing Friday 26th January 2024.
- The Respondent/Accused shall submit himself to the jurisdiction of this Court on the date and time he is required to do so, up and until the conclusion of the case.
- Any breach of either of these conditions by the Respondent/Accused without good cause will render a revocation of bail, and consequently, the Respondent/Accused shall be remanded in police custody.

[21] A copy of this order shall be served on the Immigration Authorities.

Signed, dated and delivered at Ile du Port on 22nd January 2024.

Adeline J