

## SUPREME COURT OF SEYCHELLES

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### Reportable

CM 4/2024

(Arising in CR 17/2024)

In the matter between:

**THE REPUBLIC**

*(Represented by Mr Brandon Francois)*

**Applicant/Prosecution**

and

**MARGARET JEANINE LESPERANCE**

*(Represented by Mrs Alexia Amesbury)*

**Respondent/Accused**

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**Neutral Citation:** *Rep vs Lesperance* (CM 04/2024) (17<sup>th</sup> May 2024)

**Before:** Adeline J

**Summary:** Notice of motion supported by affidavit/Application for Respondent/Accused to be remanded in police custody/Application opposed by the Respondent/Accused/Application made pursuant to Section 179 of the Criminal Procedure Code/Article 18 (7) of the Constitution/Cross application by Respondent/Accused to be remanded to bail with or without conditions.

**Heard:** 2<sup>nd</sup> April 2024 & 26<sup>th</sup> April 2024

**Delivered:** 17<sup>th</sup> May 2024

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## RULING

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**Adeline, J**

- [1] By way of a formal charge dated 2<sup>nd</sup> April 2024 pertaining to CB 305/03/24 filed in court, the accused, now the Respondent to this application, one Margaret, Jeanine, Lesperance of Anse Aux Pins, Mahe was indicted with one count (Count 1) of use of premises for the use of controlled drug contrary to Section 11 (1) (c) read with Section 21 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 11 (1) specified in the 2<sup>nd</sup> Schedule of the Misuse of Drugs Act, 2016. The accused was also indicted with one count of Possession

of an apparatus intended to facilitate the use of a controlled drug contrary to Section 8 (2) of the Misuse of Drugs Act 2016, and punishable under the same Section read with the Second Schedule of the same Act.

- [2] On the same day that the formal charge was filed in court, the Republic, (the Applicant) filed in court a notice of motion supported by an affidavit sworn by woman police constable Esther Andre of the police force attached with the Organised Crime Unit, for an order of the court for the Respondent/Accused to be remanded in police custody, which application was put before the court for a determination on the same day.
- [3] Learned counsel for the Accused/Respondent indicated, that the fact that she had just been instructed, she was not prepared and ready to reply to the application. She did nonetheless, raise some preliminary issues which were dealt with by the court, notably, her contention that the police has charged and served the wrong person with the summons to appear before this court to answer the charges because the full name and the national identity number of the person that was summoned and was in court were different to those featured on the charge sheet.
- [4] As regards to the application proper, on the 4<sup>th</sup> April 2024, the court made an interim order for the Respondent/Accused to be remanded in police custody for 14 days on account of the uncontroverted affidavit evidence of PC Esther Andre giving the Respondent, through counsel, time to reply to the application pending a hearing on the application.
- [5] Instead of replying to the initial application for an order of this court for the Respondent/Accused to be remanded in police custody, learned defence counsel filed a cross application by way of Notice of Motion supported an affidavit sworn by the accused (Applicant) praying that the accused be remanded to bail.
- [6] I have read the averments made by the Applicant/Accused in her affidavit in support of her application to be remanded to bail. Affidavit are meant to be evidence of facts. The affidavit

in support of the application does not say much about the facts. Rather, most of the averments made by the Applicant in her affidavit are in respect of the law.

- [7] The Republic (Respondent), in pursuing its application for the Respondent/accused to be remanded in police custody, opposes the application for bail. In its objections to granting the Applicant bail filed in court, the Respondent raises a number of legal issues in reply to the legal points raised by the Applicant/Accused in her affidavit in support of her application for bail. I will only venture into considering some of those points in so far as they are relevant for the purpose of determining whether the accused should be remanded in police custody or remanded to bail with or without conditions.
- [8] It must once again be reiterated, that an application for a person accused of having committed an offence to be remanded in police custody or to be remanded to bail with or without conditions pending trial, strikes at the core of one of the most fundamental constitutional rights afforded to every person charged with an offence in this country.
- [9] This is the right to liberty under Article 18 (1) of the constitution. The right to liberty is nonetheless not an absolute right. It is subject to limitations, and the fact that we do not have a specific legislation on bail such as a Bail Act, for example, the court's approach when dealing with applications for remand or bail has been to interpret the relevant Article of the constitution, notably, Article 18 (1) and 18 (7) as well as the jurisprudence in this area of law.
- [10] It must be reminded, that the purposes of bail in a criminal case, are to relieve the accused of imprisonment pending trial, to relieve the state from 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 to ensure that he will submit to the jurisdiction of the court, and be in attendance thereon whenever his presence is required.
- [11] The court is always reminded, when considering an application for remand or bail, as learned defence counsel always reminds us, that under Article 19 (2) (a) of the constitution,

“every person who is charged with an offence is innocent until proven guilty”. When one reads Article 18 (1) together with Article 18 (7) of the constitution, as correctly stated by **Dodin J in the Republic vs S J & Ors, 2020**, “bail is a right and remand is an exception to the right to bail”. However, although bail is a right that emanates from the right to liberty, my reading of Article 18 (7) is that it is not an absolute right. It is a right that can be restricted as necessary in a democratic society.

- [12] Within these backgrounds, this begs the question, whether, on the facts and circumstances of this case, the accused should be remanded in police custody, thus have her right to liberty and to bail curtailed or the accused should be remanded to bail with or without conditions. At this juncture, I am also reminded, that in *Esparon vs The Republic* [2014] SLR 331, the court did say that “bail can only be denied after a court has ascertained that compelling reasons exist in law and on the facts which justified denial”.
- [13] It is settled law, following the case of *Beharry v The Republic*, SCA 11 of 2009, that the seriousness of the offence cannot be a standalone ground to remand a person charged with a criminal offence in police custody pending trial, although the seriousness of the offence can be taken into account when assessing the likelihood of the accused failing to put up appearance in court for trial. In the *Beharry* case (*supra*) 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 terms translate from latin, is essentially “the case at first sight”.
- [14] Therefore, the prosecution carrying the burden of proof of a *prima facie* case, has to only present evidence to create a rebuttable presumption that the allegations asserted are true. As such, the standard of proof that the prosecution must satisfy the court at a *prima facie* case stage, is lower than proof that the accused is guilty which is “beyond reasonable doubt”. That being the legal position, it therefore 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 on the first place.

- [15] Therefore, the first issue that calls for a determination, is whether the affidavit evidence tendered before this court give rise to a prima facie case against the Respondent/Accused. Having read the affidavit of PC Esther Andre in support of the application for remand, I am satisfied, that a prima facie case has been made out against the Respondent/Accused.
- [16] It now remains for the court to establish, whether, the grounds which the Applicant/Republic seeks to rely upon to justified remanding the Respondent/Accused in police custody are made out that would warrant the making of the order which effectively will amount to restricting the Respondent/Accused's right to liberty and denying him his right to bail.
- [17] The first ground which the Republic/Applicant seeks to rely upon to have the Respondent/Accused remanded in police custody is that the offences of which the Respondent/Accused has been charged is very serious, carrying long prison sentences. As stated earlier, that alone, cannot be a basis to remand an accused in police custody.
- [18] The 2<sup>nd</sup> ground upon which the Applicant/Prosecution relies, is the fact that the Respondent is an ex-convict for drug possession offences, thus showing her propensity to reoffend. Previous convictions, is not a matter to be taken into account when determining whether an accused should be remanded in police custody or remanded to bail with or without conditions.
- [19] The third ground upon which the Applicant/Republic relies in support of the application to remand the Respondent/Accused in police custody, is that given that the premises used by the Respondent/Accused to commit the alleged drugs offences is her permanent residence, there is a real risk that she reoffends.
- [20] In respect of the last ground, I am of the view, that the court can impose stringent bail conditions that would restrain the Respondent/Accused from indulging in any drugs related

activities in the future particularly at her residence, failing which she run the risk of losing her liberty until the case is fully disposed of having already spent 48 days in police custody.

- [21] I have always been persuaded by the argument, that alongside all rights including the fundamental human rights afforded to us all by our country's constitution, there are responsibilities. I am informed, that the Respondent/accused lives at Chetty flats, Anse Aux Pins. One of the hot spots for drugs related activities in this country. As much as the Respondent/Accused has rights, so have her neighbours.
- [22] One of those rights is the right to peaceful and quiet enjoyment of their property which the Respondent/accused cannot interfere with to her benefit and their detriment. The Respondent/Accused needs to behave like a responsible neighbour, in that, she has to take her responsibilities and refrain from any drugs related activities at her residence at Chetty flat which activities interferes with her neighbours' quiet enjoyment of their property.
- [23] For the reasons discussed in the preceding paragraphs of this ruling, I therefore remand the Respondent/Accused to bail on the following bail conditions;
- (i) The Respondent/Accused shall pay a cash bail of SCR 20,000 into court.
  - (ii) The Respondent/Accused shall enter into a bail bond at its own recognizance and provide two sureties
  - (iii) The Respondent/Accused shall not leave the jurisdiction without leave of this court.
  - (iv) The Respondent/Accused shall surrender her passport or any travelling documents if any, to the Registrar of the Supreme court.
  - (v) The immigration Authority shall not issue any passport or other travelling documents to the Respondent/Accused, nor allow her to leave the jurisdiction without an order of this court.
  - (vi) The Respondent/Accused shall not interfere with any witnesses or potential witnesses likely to testify against her in this case.
  - (vii) The Respondent/Accused shall not be arrested or charged with any drugs related offences.

- (viii) The Respondent/Accused shall not venture outside her abode within the hours of 10 pm to 6 am, unless there is a need to in case of emergency.
- (ix) The Respondent/Accused shall not allow or invite any person at her house except her immediate family member, nor allow any person at close proximity to her house at any time.
- (x) The Respondent/Accused shall report to the Anse Aux Pins police station every Friday between 4-6 pm commencing the 24<sup>th</sup> of May 2023.
- (xi) The police shall monitor compliance with the relevant orders by carrying out random monitoring and patrol in the surrounding areas of the Respondent/Accused's abode, and to report any breach of either of these bail conditions.
- (xii) The Respondent/Accused shall submit herself to the jurisdiction of this court by putting appearance in court on the date and time she is required to do so, up and until the conclusion of the case.
- (xiii) Any breach of either of these conditions by the Respondent/Accused will render a revocation of bail, and consequently, the Respondent/Accused shall be remanded in police custody until the case is full disposed of.

[24] A copy of this order is to be served on the Commissioner of Police.

Signed, dated and delivered at Ile du Port 17 May 2024.

