

SUPREME COURT OF SEYCHELLES

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Reportable

CM 50/2024

Arising in CR 18/2024

In the matter between:

**THE REPUBLIC**

*(represented by Mrs Kimberly D'offay)*

**Applicant/Petitioner**

V/S

**LEON FARABEAU**

*(represented by Mr. Anthony Juliette)*

**Respondent/Accused**

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**Neutral Citation:** *Rep vs Farabeau (CM50/2024 Arising in CR18/2024) (07<sup>th</sup> June 2024)*

**Before:** Adeline, J

**Summary:** Application made by way of notice of motion supported by affidavit evidence for Respondent/Accused to be remanded in Police custody pending trial, made pursuant to Section 179 of the Criminal Procedure Code read alongside Article 18 (7) of the constitution.

**Heard:** 15<sup>th</sup> May 2024

**Delivered:** 7<sup>th</sup> June 2024

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**RULING**

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**Adeline J,**

[1] By a formal charge dated 4<sup>th</sup> April 2024 pertaining to CB185/3/24 Anse Aux Pins, Leon Farabeau of Anse Aux Pins, Mahe, (the Respondent/ Accused) stands accused of one count of Permitting the Premises to be Used for the Purpose of Trafficking in a Controlled Drug contrary to Section 11 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 11 (1) as specified in the Second Schedule of the Misuse of Drugs Act, 2016, (Count 1), one Count of Permitting the Premises to be Used for the Purpose of the Use of a Controlled Drug contrary to Section 21 (1) of the Misuse of Drugs Act, 2016, and as specified in the Second Schedule of the Misuse of Drugs Act, 2016, (Count 2), 4 Counts of Possession of a Controlled Drug contrary to and punishable under Section 8 (1) of the Misuse of Drugs Act 2016 as specified in the Second Schedule of the Act (Count 3, Count 4, Count5, Count

6), and 1 count of Possession of Articles Intended to Facilitate the Use of Controlled Drugs contrary to and punishable under Section 8 (2) of the Misuse of Drugs Act 2016 as specified in the Second Schedule of the said Act, (Count 7).

[2] The Prosecution, the Applicant in the instant application, now applies to this Court by way of Notice of Motion supported by an affidavit pursuant to Section 179 of the Criminal Procedure Code read with Article 18(7) of the constitution for an order of this Court remanding the accused Respondent/Accused in Police custody pending trial.

[3] The affidavit in support of the application is sworn by police Officer Woman Police Constable (PC) Nicolette Marie, the investigating Officer in the main case, CR18 of 2024.

[4] In her affidavit evidence in support of the application, Police Constable Marie avers, that on the 13<sup>th</sup> March 2024, Police officers from the Organise Crime Unit (OCU) received credible information that the Respondent/Accused was conducted illegal drug transactions at his residence at Anse Aux Pins. The Police Officers proceeded there and on their arrival they saw several people at the house. They were told by the Officers that a body search will be carried out on them, as well as a search inside the house. At that time the officers were unaware who was the owner of the house and when asked this question the people present replied "Leon". It is deponed by constable Marie, that nothing illegal was found on the body of those who were present at the house. Inside the house the Police found one digital scale. On the premises where the house is located next to a boundary wall, the Police found several items, namely-

1. 3 piece of cling film each wrapping substances suspected to be heroin
2. Clear plastic containing substance suspected to be Crystal Meth
3. Clear plastic containing substance suspected to be heroin
4. Clear plastic containing dark substance suspected to be Cannabis Resin (Hashish)

5. A piece of Khaki paper containing herbal material suspected to be cocaine
6. A piece of khaki paper containing herbal material suspected to be Cannabis
7. A plastic container, a piece of clear plastic containing substance suspected to be cocaine
8. One yellow pen knife with traces of substance
9. One small black pocket digital scale bearing traces of clear crystalline substance and herbal material suspected to be controlled drug

[5] It is averred by Constable Marie, that on the 20<sup>th</sup> of March 2024, the Special Operation Unit (SOP) received Credible information that the Respondent/ Accused is conducting drugs transactions at his residence. The Officers proceeded there where they met the Respondent/ Accused. The Respondent/Accused was informed that a search for controlled drugs would be carried out in his house and in the vicinity of his premises. The Police found syringes, a plastic bottle with a straw in it, a piece of glass and razor blades and two pieces of roll cigarettes suspected to contain drugs.

[6] It is also averred by Constable Marie, that as a result of the exhibits found, the Respondent/ Accused was arrested for the offence of Possession of a Controlled Drug, and the offence of Use of Premises to Commit Drug Offences based on the exhibits collected during the search at his house on the 13<sup>th</sup> March 2024.

[7] Constable Marie avers, that the exhibits seized at the premises of the Respondent/ Accused are, Class A drugs, namely, Heroin (Diamorphine) 2.70 grams, 0.34 grams and 7.42 grams. Constable Marie also avers, that there were Class B controlled drugs, namely, Methylamphetamine (Crystal meth) a net weight of 0.26 grams, and Cannabis Resin (Hashish) having a net weight of 0.17 gram and 2.22 grams. It is averred by Constable Marie, that the analysis also found traces of the drugs on the utensils found as well as a

large amount of Sodium Carbonate in a piece of Khaki paper held with brown elastic band of a net weight of 10.33 grams as well as in a micro-tube.

- [8] The grounds upon which the Applicant relies for the making of the order to remand the Respondent/ Accused in Police custody which I find relevant for the purpose of determining this application are the following: -

*“(a) That there are substantial ground to believe that if the Respondent is released, he would continue to conduct these illegal activities of using the premises for drug transaction, thus affecting the surrounding community and creating a negative influence throughout the social environment.*

*(b) The offences charged are Use of Premises to Commit an Offences of Use of Premises for the Illegal Activities relating to controlled drug namely Heroin (Diamorphine) Methylamphetamine (Crystal Meth) and Cannabis Resin and Possession of Control Drugs, Possession of Utensils which are serious offenses that both carry an indicative minimum mandatory sentence of 10 years imprisonment and maximum sentence of 30 years imprisonment with a fine of SCR 500,000.*

*(C) That the drug offences and the related consequences are a menace on the health and well-being of a small island state with serious impact on the younger generation and its potential negative impact on tourism and image of the nation on the international platform.*

- [9] In opposition to the application, learned defence counsel submitted, that although the Respondent/ Accused is charged with 7 counts of different drugs offences, they are basically possession of a minute amount of controlled drugs, and use of premises for the purpose of either possession or trafficking. It was the submission of learned defence counsel, that those offences are not serious enough to warrant the making of an order to remand the Respondent/ Accused in police custody pending trial when he can be remanded

to bail with strict bail conditions. Learned counsel cites few cases where the Respondent/ Accused charged with more serious drugs offences were remanded on bail. Learned counsel cited the case of Republic v/s Dave Constance and others, in which case the Respondents/ Accused imported 412 grams of heroin and was granted bail on payment of a cash bail of SCR10,000. Learned counsel also cited the case of the Republic V/S Dwayne William CR33/2022 in which case the amount of drugs was 60 grams of heroin and yet the Accused was granted bailed.

- [10] 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.
- [11] 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) read with Article 18 (7) as well as the jurisprudence in this area of law.
- [12] 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 the conviction to ensure that he will submit to the jurisdiction of the court, and be in attendance thereon whenever his presence is required.
- [13] 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.

- [14] 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 his right to liberty and therefore 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”.
- [15] It is settled law, following the case of *Beharry vs 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 it 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”.
- [16] 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 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.
- [17] 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.

Having read the affidavit of PC Nicolette Marie in support of the application for remand, I am satisfied, that a prima facie case has been made out against the Respondent/Accused.

[18] It now remains for the court to establish, whether, the grounds which the Applicant/Republic seeks to reply upon to justify 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 rights to liberty and denying him his right to bail.

[19] The first ground which the Republic/Applicant seeks to reply 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.

[20] 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 his 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.

[21] 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 his permanent residence, there is a real risk that he reoffends.

[22] 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 his residence, failing which he run the risk of losing his liberty until the case is fully disposed of, having already spent 48 days in police custody.

- [23] 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, that there are responsibilities. I am informed, that the Respondent/Accused lives at Caryol Estate, 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 his neighbours.
- [24] One of those rights is the right to peaceful and quiet enjoyment of their property which the Respondent/Accused cannot interfere with to his benefit and their detriment. The Respondent/Accused needs to behave like a responsible neighbour, in that, he has to take his responsibilities and refrain from any drugs related activities at his residence at Caryol Estate which activities interfere with his neighbour's quiet enjoyment of their property.
- [25] 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 in the sum SCR 10,000 and provide two sureties.
  - (iii) The Respondent/Accused shall not leave the jurisdiction without leave of this court.
  - (iv) The Respondent/Accused shall surrender his 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 him 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 him in this case.
  - (vii) The Respondent/Accused shall not be arrested or charged with any drugs related offences whilst on bail.
  - (viii) The Respondent/Accused shall not venture outside his 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 his house except his immediate family member, nor allow any person at close proximity to his 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 report any breach of either of these bails conditions.
- (xii) The Respondent/Accused shall submit himself 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 him liable to a revocation of bail, and consequently, the Respondent/Accused shall be remanded in police custody until the case is full disposed of.

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

Signed, dated and delivered at Ile du Port on 7<sup>th</sup> June 2024.

  
Adeline J.  
