

**IN THE SEYCHELLES COURT OF APPEAL**

**[Coram: S. Domah (J.A) , M. Twomey (J.A) , J. Msoffe (J.A) ]**

**Criminal Appeal SCA 44/2014**

**(Appeal from Supreme Court Decision 02/2013)**

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Danny Bresson

Robert Billy Jean

Franky Clement Thelermont

Naddy Peter Delorie

Appellants

Versus

The Republic

Respondent

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Heard: 08 April 2015

Counsel: 1<sup>st</sup> Appellant represented by Mr. Clifford Andre

2<sup>nd</sup> Appellant represented by Mr. Melchior Vidot

3<sup>rd</sup> and 4<sup>th</sup> Appellant represented by Mrs. Alexia Amesbury

Mr. David Esparon with Mr. Hermanth Kumar for Respondent

Delivered: 17 April 2015

**JUDGMENT**

**S. Domah (J.A)**

[1] In an earlier appeal, in this very case, on a refusal by the trial court to admit the appellants and two others to bail, (vide **Esparon and Others v The Republic 2013 SCA no 1 of 2014**), the Full Bench of this Court decided as follows as a matter of law.

1. Bail is an inherent function of the Judicial arm of the State and that function cannot be taken away by the legislature by any law as such.

2. This inherent function of the Judiciary is so sacrosanct that, in a democratic society, it cannot be taken away even by a constitutional amendment.
3. In the exercise of this function, the judiciary needs to ensure that the principle is not reversed in the sense that bail instead of jail becomes jail instead of bail.
4. Bail may only be denied, after the Court has properly ascertained that compelling reasons exist in law and on the facts which justify the denial such as those enumerated in the Constitution.
5. Every application for bail is independent of the criminal case for which the person is being tried.
6. If the case is still awaiting trial and a defendant is still incarcerated he may apply to the Court for his release. If he is not released after an adversarial first instance hearing at the Magistrate's Court, he may appeal to the Supreme Court. If he is not released after an adversarial first instance hearing by the Supreme Court, he may appeal to the Court of Appeal.
7. If, on the other hand, his case is already listed to be heard before a particular judicial officer a motion may be made before that judicial officer unless there is a good reason against it such as the existence of previous convictions which may become one of the issues.
8. Even if a right to bail is often canvassed under a right to be tried within a reasonable time, it goes well beyond it.

[2] In the application of the law to the facts of the case and the personal circumstances of each appellant, we granted bail to two of the seven original appellants: Kenneth Steve Esparon and George Michel for reasons which have been given in the judgment.

[3] Those whom we had declined bail were Roy Patrick Briocche, Danny Bresson, Robert Billy Jean, Franky Clement Thelermont and Naddy Peter Delorie.

