

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**AGNIELLES FRANCOURT**

Criminal Side No. 48 of 2006

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Mr. Govinden for the Republic

Mr. Elizabeth for the Accused

**RULING**

*Gaswaga, J*

The accused, now applicant herein stands charged with two counts, count 1 with trafficking in a controlled drug namely heroin, and count 2 trafficking in a controlled drug namely cannabis resin and she is making a second bail application relying on medical grounds. It was submitted on her behalf that she suffers from anaemia and frequent bouts of ‘blackouts’ and that her state was serious and could pose a greater danger to her life if she was to continue living in the prison conditions. That the applicant’s counsel Mr Frank Elizabeth once visited her at Anse Etoile police station when she had collapsed. Dr. Marc Felix working with the Ministry of Health certified the said ailments and his report, addressed to Mr Frank Elizabeth, reads as follows;

*10<sup>th</sup> October 2006.*

*RE: Agnielles Francourt, 26 years, Anse Boileau.*

*Reference is made to the above named patient who was seen by me on Sunday 1<sup>st</sup> October 2006 at English River health centre with symptoms of anaemia.*

*Blood investigations were carried out and she was advised to continue on Ferrous Sulphate tablets prescribed a week previously.*

*The diagnosis of anaemia is mainly clinical, from the symptoms elicited physical signs are few notably pallor.*

*As your client is experiencing frequent episodes of blackouts it is of my opinion that she should not be kept in confinement.*

*Signed*

*Marc Felix MBChb.*

Principal State Counsel Mr. Govinden lambasted this report with regard to both its form and content leading to the author thereof being summoned. On the day of his appearance another report dated 11<sup>th</sup> October 2006, with the same contents but on a Ministry of Health letter head and official seal, was presented. When asked by Mr. Govinden Dr. Marc offered the following answers;

*“She complained of dizziness and blackouts and she presented a history of anaemia so we did a blood count....I came to a diagnosis upon the history as told to me and the physical examination.”* The Doctor agreed with Mr. Govinden that to come to a meaningful conclusion there was a need to consider everything together thus the history of the patient, the physical examination and the blood test

results but that the blood test results were not yet out by the time he wrote the report and were therefore not considered. Had the Doctor considered the said results he would have come to a different conclusion. That however the blood test results revealed that her haemoglobin was 11.4 grams per decimal, a level slightly different from the normal level in a female which ranges between 11.5 and 15.5 grams per decimal.

Mr. Elizabeth and Mr. Juliette urged the court to release the applicant on very stringent conditions and if need be to impose a twenty four hour curfew in addition. They cited the cases of **Republic Vs. Noddy Agathine Criminal Side No. 38 of 2005** and that of **Rep Vs. Bernard Loizeau Criminal Side No. 83 of 2005** wherein the Supreme Court released the accused persons basing on their respective illnesses despite the fact that they, like the present applicant, were both charged with very serious offences of trafficking in a controlled drug. Indeed the provisions of Section 101 (4) of the Criminal Procedure Code (as amended by Act No. 15 of 1995) and the Constitution Article 18 (7) thereof are couched in mandatory terms authorising the court to enlarge on bail an accused person placed before it unless the said accused falls within the category of the exceptions outlined therein. The applicant remains in custody at the moment as she was denied bail on grounds of seriousness of the offences with which she is charged.

It is imperative for the court to look at the cited cases in detail and the one at hand and if possible draw a distinction. In the **Loizeau case** (supra) the accused was warded in Victoria Hospital with a back pain, frequency of micturition, shortness of breath and insomnia and was being given absolute bed rest with two hourly side to side turn. Various medications were recommended and pethedin injections administered in addition to short wave diathermy being done. Dr. Gupta testified before court that the patient was still under observation, but if released he would need a 'comfortable bed' (which was not available in the detention facility) as

there was the possibility of a relapse .It was averred in **Noddy Agathine** (supra) that he was suffering from headaches, dizziness, vomiting, blackouts and high blood pressure. The report by Dr. Kumaran Chetty recommended that an M.R.I scan of the brain be done overseas. A letter from the Director General Hospital Services stated that “the patient needs a consultation with a neurologist or physician to enable us evaluate his medical needs and to be able to confirm his future diagnostic proceedings”. Since the M.R.I scanning facilities are not available in this country the accused was enlarged on bail and allowed to proceed to Mauritius to carry out the said tests well in time to ascertain the cause of his illness before the condition of his health deteriorates. It should be noted that the conditions in the above two cases cannot be compared to the present one as the ailments in the former cases were complex and serious in nature and could not be handled while the accused were in detention.

Again, this court in (**R Vs. Jude Lespoir Criminal Side No. 33 of 2005**) and **R Vs. Jonathan Volcere (Criminal Side No. 34 of 2005)** released the accused persons respectively on bail when the surgeon, following an operation for haemorrhoids on each one of them, made a recommendation that they needed to have a bath in a hygienic area yet the police had confirmed that such a facility was not available at the central police station and the Long Island prison.

On the other hand the court did not deem the medical condition of a 54-year-old woman with ulcers and high blood pressure as being a sufficient consideration for release on bail as those ailments could be treated while she was on remand See **Ngui Vs. Republic of Kenya (1986) L.R.C. (Constitution) 308**. Further, the ruling by Perera J in **R Vs. Cecil Morel & Ors (Criminal Side No. 25 of 2005)** was to the effect that bail should not be granted where any health condition complained of can be treated in prison or if necessary upon the accused being transferred to hospital under the usual safeguards.

In the present case Dr. Felix said that it was his own opinion (though another Doctor could give a divergent opinion) that the accused should not be kept in confinement and further that the said opinion was subjective. In answer to the questions asked by the court and later on by Mr. Juliette the Doctor clearly stated that despite his opinion the accused's ailments or medical condition could well be treated in this country and even while she is confined in the prison. In conclusion therefore, and while being mindful of the constitutional rights of an accused person in detention, I rule that there are no sufficient grounds on which the court can enlarge the accused on bail. The application is rejected and accused further remanded in custody to the.....of November 2006.

**D. GASWAGA**

**JUDGE**

Dated this .....day of November, 2006.