

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 27/2017

[2017] SCSC 580

THE REPUBLIC

versus

**BENNY MARCUS SAVY
AARON FREMINOT**

MICHEL JOSEPH BONNE
Accused

Heard:

Counsel: Mrs. Lansinglu, Assistant Principal State Counsel for the Republic
Mr. Gabriel for the first and second Accused
Mr. Andre for the third Accused

Delivered: 3 July 2017

ORDER

R. Govinden, J

[1] Having heard counsel for the Republic and counsel for the Defence on the application for further remand in custody by the Republic of the 1st and 2nd accused in this matter, I find as follows:

- The enlargement of the accused upon bail is the rule and he's remand in Police custody pending the completion of the case is the exception. This is the dictate

of Article 18 (1) and (2) of the Constitution as read with Article Section 179 of the Criminal Procedure Code. A person which is arrested can be remanded in custody provided the Prosecution can demonstrate inter alia that the detention is necessary for his production at a subsequent date before this Court and having regard to the seriousness of the offence, there is substantial grounds for believing that the accused will interfere with witnesses for the Prosecution or the Prosecutor or will defeat the due course of justice or will commit an offence of the same nature whilst being on bail. Or that there's the accused who has been arrested in pursuant to previous breach of the conditions of his release for the same offence.

[2] The accused has a right, as part of his right to fair hearing, to contest at any time the Prosecution's application and raise any facts that shows a change of circumstances that call upon this Court to assess and reconsider any previous Orders made in regards to their remand or even bail conditions.

[3] In this case the Prosecution is applying for remand based mainly on the following grounds:-

- The seriousness of the offence, especially given the facts and circumstances of the case. The nature of the facts of the case.
- The fact that the 1st accused being, Marcus Savy, is being prosecuted before the Magistrate Court for the offence of sexual assault of a minor and the case is still pending and that he has committed this offence whilst he was on release by the Magistrate on bail.
- Thirdly, that there are substantial grounds to believe that both accused will interfere with the victim in this case given the facts and circumstances as revealed by the Affidavit in this matter.

[4] The Prosecution had also attempt to rely upon a ground that the offence of drug is on the rise in this country but this is withdrawn. It is not relied upon by counsel for the Prosecution.

[5] The Defence through the able defence counsel, Mr. Gabriel, strenuously object to the remand of the two accused persons and he submits that from the strength of the Affidavit as tendered to this Court, the act of sexual assault is not proven and therefore the very basis of the jurisdiction and the competence of this Court is absent given that there are no offence stated. He also submits that there is no file that the Prosecution alleges consist of the charge of sexual assault on a minor against Marcus Savy before this Court and that is essential if we are to find charges level against his client.

[6] Mr. Gabriel also submits that the averment that the Respondents being the 1st and 2nd Respondents, knew or knows the victim is not substantiated and at any rate there are other methods and conditions that this Court can impose in order to prevent the 1st and 2nd accused from interfering with the virtual complainant, besides remanding them in Police custody.

[7] Having considered the submissions of both counsel for the Republic and that of the Defence counsel of the 1st and 2nd accused persons, having regards to the facts as revealed by the Affidavit of Officer Hendrick Leon in support of the application, the Court finds as follows:-

(1) That the offences charge against the 1st and 2nd accused persons is very serious, not only due to the fact that it carries with it a maximum penalty of 20 years imprisonment but also given the facts and circumstances in which the offence is averred to have committed. The alleged victim is averred to have lost her conscious whilst she was in the presence of the 1st and 2nd accused persons after she was taken in their car from the Barrel Discotheque. Thereafter she woke up naked and a video showing evidence of a sexual offences or sexual offences being committed against her was circulated on the internet for the rest of the world to see. This clearly aggravates the acts of sexual assault.

(2) The 1st accused is now arrested and detained after he has committed an offence of a sexual nature on a minor and a case is still pending before the Magistrate Court to be continued in October. It appears that there are strong substantial ground or possibilities of this accused committing similar offence if it is to be released on bail. I consider the

objection of Mr. Gabriel regarding the absence of this Court file, however in that regard I feel that there is no need for the Court to call the record of Magistrate Court in the matter of criminal number 513/15 Republic vs Marcus Savy. I am satisfied on the strength of the Affidavit of Police Assistant Superintendent Hendrick Leon that this is the case.

(3) Given that the accused both of them 1st and 2nd accused knows the victim, they know about her whereabouts, they know her identity, there are strong ground that they will interfere with her and as a result affect her evidence and defeat the due course of justice. If the fact of this case is as deponed in the Affidavit, it shows certain tendency of audacity on the part of the 1st and 2nd accused persons to go to a great length in posting, jointly committing acts that would defeated due course of justice in regards to the evidence of the virtual complainant.

[8] Or the reason aforesaid, I will remand both Benny Marcus Savy and Aaron Freminot in Police custody until the full determination of this case. They will be brought before this Court on the 17th of July 2017 at 1:45 pm.

[9] As regards to the accused person, given that there is no application for remand conditions to be imposed I would impose bail conditions upon the 3rd accused as follows:-

(a) That he reports to the Anse Aux Pins Police Station at 2 pm on every Monday of the week and that his report be recorded in the Occurrence Book of that Station.

(b) That any travelling documents in his possession including passport be surrendered to the Registrar of the Supreme Court.

(c) And I will impose that he signs a bail bond in the sum of SR25,000/- that would be forfeited in the event that he defaults on these bail conditions.

Signed, dated and delivered at Ile du Port on 3 July 2017



R Govinden , J
Judge of the Supreme Court