

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 30/2014

[2014] SCSC

THE REPUBLIC

versus

FABIO SOOPRAMANIAN

WALLACE REINE

Accused

Heard: 07 October 2014, 13 October 2014, 16 October 2014
Counsel: Mr. Ananth, Assistant Principal State Counsel for the Republic
Mrs. Amesbury Attorney at Law for the accused
Delivered: 30 October 2014

ORDER

Burhan J

- [1] I have considered the application for bail made by learned counsel Mrs. Amesbury on behalf of both the accused and the objections filed by learned counsel for the prosecution Assistant Principal State Counsel Mr. Ananth.
- [2] On perusal of the record and the proceedings therein, it is apparent that an application was made by the prosecution on the 3rd of July 2014 under section 179 of the Criminal Procedure Code read with article 18 (7) of the Constitution of the Republic of Seychelles

to remand both accused into custody. After an opportunity had been given for both parties to be heard and for reasons contained in its order dated 3rd July 2014, this court made order that there were sufficient grounds to remand both the accused. Based on the reasons given in the said order both accused thereafter continued to be in remand custody.

[3] Thereafter on 17th July 2014 and on the 8th of August 2014 learned counsel further pursued her submissions on the issue of bail. The prosecution formally replied to the various contentions of learned counsel and court made a further order in regard to bail on the 2nd of September 2014 on the various issues raised by learned counsel after the remand order of 3rd July 2014.

[4] Thereafter once again on the 7th of October 2014 an affidavit was filed by both accused seeking their release on bail setting out their personal circumstances. Learned counsel for the prosecution filed his reply and learned counsel for both the accused was given an opportunity to make further submissions on the 16th October 2014.

[5] Learned counsel for the accused contention is when does the trial court's discretion to remand an accused under section 179 of the Criminal Procedure Code become a denial of the accused right to bail? This question has been directly answered by A F T Fernando JA in the case of ***Roy Patrick Brioche v The Republic SCA MA 6 of 2013***. In the said ruling it was held at page 6-

“It is to be emphasized that the right to be released at the pre-trial stage under article 18 (7) of the Constitution and once a person has been charged under section 179 of the Criminal Procedure Code are qualified rights ((emphasis mine) to be determined judiciously by the courts on whom the drafters of the Constitution have vested the judicial power of Seychelles. The only difference being that once a charge has been laid out it becomes the duty of the court to ensure that the accused is afforded a fair hearing within a reasonable time.”

[6] It follows therefore that the right to be released at the pre trial stage and after being charged is not an absolute right but a qualified right. The courts must act judiciously and

not arbitrarily and in this instant case, having given ample opportunity for both accused to be heard, court has not acted arbitrarily but given detailed reasons in each of its orders dated 3rd July 2014 and 2nd September 2014 as to why both accused should be remanded into custody. Further court has constantly monitored the case every 15 days in order to see whether there were any change in circumstances that would warrant a change in each of its remand into custody orders. In addition the case has now been fixed for trial on the 4th of December 2014 in order to ensure a fair hearing within a reasonable time.

[7] The accused right to be released is a qualified right therefore one must not confuse the issue of the right of presumption of innocence of the accused under article 19 (2) (a) of the Constitution with this qualified right to be released. It is to be borne in mind that even though an accused may be detained by the courts as provided for by the law, it does not in any way have an effect on the presumption of innocence of the accused.

[8] Further at page 5 of the aforementioned **Roy Patrick Brioché** ruling AFT Fernando JA further held as follows;

“Thus the “Right to be released” postulated in article 18 (7) is essentially for the pre-trial period although it is a factor that necessarily would be considered (emphasis mine) whenever a court makes an order for detention under sections 179 and 195, since it has a bearing on the right to liberty of a person and his dignity”.

[9] Therefore the contention of learned counsel for the accused that the derogations contained in article 18 (7) of the Constitution are applicable only to suspects bears no merit. A reading of the judgment in the case of **Roy Beehary v The Republic 11/2009** clearly indicates the derogations contained in article 18 (7) of the Constitution were considered in the reasoning of the learned judges of the Seychelles Court of Appeal, in regard to the accused Roy Beehary who had already been charged with an offence and was being remanded under section 179 of the Criminal Procedure Code.

[10] In regard to who bears the burden of satisfying court that the accused should be remanded into custody has been discussed by this court in its order dated 2nd September 2014 and as to whether each time the case is called the same facts should be repeated has already been

given ear to in the same ruling. The seriousness of the offence and the likely hood and possibility of both the accused absconding in the face of a mandatory term of life imprisonment, far outweighs the personal circumstances set out in the affidavit dated 7th October 2014.

[11] For the aforementioned reasons and for the reasons contained in the orders of this court dated 3rd July 2014 and 2nd September 2014, the application for bail made by learned counsel for both the accused is declined.

Signed, dated and delivered at Ile du Port on 30 October 2014

M Burhan
Judge of the Supreme Court