

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**Plaintiff**

**VS.**

**FRANKY LESPERANCE**

**Accused**

Criminal Side 52 of 2006

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Mr. Govinden for the Republic

Mr. Herminie for the Accused

**RULING**

***Gaswaga, J***

Two motions have been filed where upon the accused, now applicant prays the court for the following orders:-

- (a) That the accused be released on bail.
- (b) That the accused be transferred to a different location for his remand.

To substantiate both motions and prayers therein Mr. Herminie, counsel for the applicant, deposed affidavits in support thereof. Mr. Govinden, the Principal State Counsel appearing for the respondent filed only one set of objections to the motion, which he said was in respect of both applications since the two were interrelated and the grounds almost similar. Since his submissions and therefore those of Mr. Herminie covered both applications the court will pronounce itself on the two issues involved in this ruling.

I shall start with the first ground of release on bail where, according to Mr. Herminie's affidavit, the applicant is reportedly sick and recently underwent a major surgical operation at the Mont Fleuri Hospital. A medical report dated 21/02/2007 prepared by a Consultant Surgeon, Dr. L. Reginald was attached to the affidavit and it reads as follows;

**MEDICAL REPORT:**

*Patient's Name: Franky Lesperance*

*Age: 37 yrs*

*Address: Mt Buxton*

*The above named patient was admitted under my care on 12.02.07 on D'Offay Ward with a history of left un-descended testis, which was operated on when he was 13 yrs old.*

*On examination the testicles was small and hard, and very suspicious for malignancy. I operated on him on 15.2.07 and removed the testis. He is still recovering from his surgery, and still awaiting the results of his histology.*

*I believe my patient is currently in police custody and I feel the conditions are not hygienic enough at the place he is being held.*

*I would recommend that upon his discharge from hospital that due to his medical condition and his surgery, be allowed to go home and recover, and will probably need further treatment upon the definite histology report.*

It should however be noted that by the time this application was argued on the 28/02/2007 the accused had been placed back on remand at the Montagne Posee prison facility. In yet another affidavit dated 27/02/2007 Mr. Herminie stated that a clean, hygienic and comfortable environment was indispensable for the applicant's recovery that also needed to be remanded close to the hospital for the surgeon to monitor the progress of his healing process.

Mr. Govinden submitted that the offence with which the accused was charged was of a serious nature yet the accused himself had fully healed and there was no ground for the court to release him. According to Article 18 (7) of the Constitution 1993 bail is a constitutional right that should be granted to an accused unless he is charged with murder, a serious offence etc. There is no doubt that attempted murder contrary to section 207 of the Penal Code Act and, an Act intended to cause grievous harm contrary to section 219 of the Penal Code Act, which are the charges in this file are serious offences.

The question before court now is whether the accused's medical condition is sufficient to have him released on bail pending trial. Coincidentally the accused persons in the cases of **R Vs Jude Lespoir (Criminal side No.33 of 2005) and R Vs Johnathan Volcere (Criminal Side No.34 of 2005)** were charged with trafficking in heroin and while on remand in prison, at different intervals, they underwent an operation for hemorrhoids and the surgeon recommended that they needed to have a bath in a hygienic area. Upon the police confirming that such a facility was not available at the central police station and the prison at Long Island prison each of the accused were enlarged on bail. On the other hand, Perera, J, while denying bail to an accused who had advanced medical grounds in his application in the case of **R Vs Cecile Morel and Others (Criminal Side 25 of 2005)** had this to say "*where any health condition can be treated in prison or if*

*necessary upon being transferred to hospital under the usual safeguards, such a condition would not arise”.*

In the present case the surgeon has recommended that since the accused has now been discharged from hospital he be allowed to go home and recover in a hygienic place other than the prison. There is no medical evidence to support Mr. Govinden’s assertion that the accused has fully recovered. Merely being discharged from hospital and being able to walk after an operation does not mean one has completely healed.

Be that as it may, ‘bail’ is a contract between the accused together with his sureties and the court. It is also an order, just like other court orders, whose terms and conditions are to be honored to the letter otherwise the court reserves the right to terminate it where no plausible explanation is offered for any breach thereof. The unchallenged affidavits (evidence) of Mr. Govinden and Police Constable Andy Marianne show that on the 26<sup>th</sup> day of February 2007 at 09.30 am the accused, while undergoing treatment at Victoria Hospital where he had been admitted for some days escaped from lawful custody thereby breaching an order of this court. The court now wonders whether the accused, if released on bail will respect its orders and return for his trial! This being a very serious offence carrying a maximum sentence of imprisonment for life upon conviction there is a high likelihood of the accused jumping bail. There are clear indications. Sick as described by the surgeon he managed to beat the 24-hour police and hospital security guarding him. Moreover, as it was submitted by his counsel by this time the accused had not fully recovered. The court strongly observes that from this conduct neither sureties nor stringent conditions can sufficiently confine the accused within the limits of a court order for bail. I think I would also be right to say that it is risky to have him transferred and kept on remand at a police station as requested by him.

Although the condition under which a prisoner is kept in custody is a matter for the Commissioner of Police or the Superintendent of Prisons as the case may be, and given that his health is at stake yet under the law an accused is presumed innocent till proven guilty, this court will on humanitarian grounds grant the second prayer. Let the relevant authorities arrange to have the accused remanded at a police station until he fully recovers. Otherwise the application for release on bail fails.

**D. GASWAGA**

**JUDGE**

Dated this 2<sup>nd</sup> day of March, 2007.