

IN THE SUPREME COURT OF SEYCHELLES

**THE REPUBLIC
VS.
MARCUS ADELA**

Criminal Side No. 5 of 2009

Mr. Esparon for the Republic
Mr. Hoareau for the Accused

ORDER**Burhan J**

I have considered the submissions of learned counsel for the accused in respect of his application for bail and the objections of the learned prosecution counsel.

I note that most of the matters raised, have already been considered by court and bail refused having considered the seriousness of the offence committed by the accused, which is a permitted derogation under Article 18 (7) (b) of the Constitution of the Republic of Seychelles. In such a situation it is clear, that the prosecution has already satisfied court under Article 18 (7) (b), that due to the circumstances regarding the seriousness of the offence committed, the accused should be remanded and thus the accused loses his right to be released, guaranteed under Article 18 (7) of the Constitution. It is not the duty of the prosecution there after, every time the accused is produced in court to satisfy court, over and over again, of the seriousness of the offence when the prosecution has already done so once. As the accused has under an Article of the Constitution itself, lost his right to be released, it is now for the accused in this instant case, to satisfy court

that a change of circumstance with regard to Article 18 (7) (b) has occurred to warrant a regaining of the right to released, guaranteed under Article 18 (7).

When there is no change in circumstances, there is no need for counsel to repeat the same argument on every occasion the accused is produced thereafter. To do so, would be to say least, a superfluous exercise, as however many times counsel will attempt to convince court on the same circumstances, court having reached a conclusion, would be slow to change its decision, unless a change in circumstances could be shown. It is for this reason that counsel who make continuous applications for bail of already remanded persons, must realise, that the mere fact that the remanded accused is being 'produced in court' does not entitle him to be released on bail, when the remand order falls within Article 18 (7) (a), (b), (c), (d), (e) and (f) of the Constitution of the Republic of Seychelles, but a change of circumstances mentioned in these Articles is necessary for court to reconsider its original decision to remand the accused.

Practice Direction 1 of 2009 dated 12th January 2009 is in line with this approach.

In this instant application, the mere fact that an alternative charge has been filed by the prosecution does not in anyway diminish the seriousness of count one which is a charge of manslaughter. As to whether the charge of manslaughter could be maintained or not or whether the accused will plead to the alternative count, are matters to be decided on, at the appropriate time. Court cannot take those matters or any matters arising there from, into consideration at this present moment of time. Furthermore the fact that the child of the accused is missing his father and misbehaving or that the

accused is in danger of loosing his job are predicaments faced by all remandies and not sufficient grounds to release the accused in this instant case, considering the seriousness of the offence he is charged with namely manslaughter, which carries a maximum term of life imprisonment if convicted. The fact that the accused is willing to keep Rs 100,000/= as cash bail does not entitle him to 'encash' his way to freedom in the face of such a serious charge.

For the aforementioned reasons the application for bail is refused.

M.N. BURHAN

JUDGE

Dated this 9th day of April, 2009.