

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 67/2014

[2015] SCSC 80

THE REPUBLIC

Versus

PATRICK EULENTINE

Accused

Heard: 2 March 2015
Counsel: Mr. Thachet, Assistant Principal State Counsel for the Republic
Mrs. Amesbury for the accused
Delivered: 16 March 2015

RULING

Akiiki-Kiiza J

- [1] This is an application for bail filed by way of a Notice of motion supported by an affidavit sworn and deponed by the accused person; Patrick Eulentine dated the 13/11/14. The Notice of motion is taken out under the provisions of *Article 18 (7) of the Constitution*.
- [2] The affidavit contains various grounds and reasons why the applicant should be released on bail. The accused has been on remand since the 29th October, 2014, pursuant to the Attorney General's application to remand him which also had been taken out under the same provision of the Seychelles Constitution.

[3] The brief back ground of the case is that, the applicant is charged with the offence of trafficking in a controlled drug, to wit, 6.9 grams of heroin (2.3 gms purity) which gives raise to the rebuttable presumption of having possessed the said controlled drug for the purposes of trafficking. The Applicant also included the following paragraph in his application:-

“7: That I am advised by my counsel and verily believe in Seychelles Court of Appeal decision of ESPARON VS THE REPUBLIC 2014, it was held that a judge may for good reason, grant bail on being satisfied that the case is taking too long, the defendant is one that will not abscond, the facts are too tenuous against him and for any other reasons such as there have been change of circumstances since the decision to deny him bail”

The applicant also denies his alleged intention to interfere with police investigations team.

[4] The respondent filed an affidavit in reply wherein he, *inter alia*, in *paragraph 5* that there was a seizure of a digital scale and a large amount of money at the time of the arrest.

[5] In paragraph 6; the affidavit for the respondent reads as follows:

6: that after considering the notice of motion filed on the 20/10/14 (for the applicant), including the averments that the accused had tried to interfere with the due process of the law by offering SR 300,000 to the NDEA agents to let him go”

The respondents also stated that since the time of his remand in October 2014, there has not been any substantial change in the circumstances which made him to be remanded. He prayed that the accused should remain on remand as earlier ordered.

[6] I have carefully and critically perused both affidavits filed by the opposing parties, and I have also carefully reviewed the case law from this jurisdiction regarding the grant and/or refusal of bail, especially in drug related cases. The emerging trend is that, bail is rarely granted in such cases, especially by the Supreme Court. These include REPUBLIC VS MOUSTACHE [2011] SLR 126, REPUBLIC VS JULIE [2006] SLR 27, THE REPUBLIC VS RICKY CHANG-TY-SU SCC 53/07, THE REPUBLIC VS AGATHINE [2005] SLC 8, to name but a few. In all these case the court had emphasized that each case should be treated on its own particular facts or merits. In the AGATHINE case, the court stated further that though the quantity of the drug involved in the case plays an important part in deciding and determining the seriousness of the offence, a smaller or even a trivial quantity of the drug involved in a case cannot, as a single factor, reduce the degree of seriousness of the offence to zero or negate its effect. In other words in addition to the small quantity of the drug involved there must be other supporting factors in favour of the grant of bail, so that it is not outweighed the other factors contributing to the seriousness of the offence warranting the accused to be remanded in custody.

[7] The court therefore, takes into account such factors as the, minimum and maximum sentence upon conviction, the likelihood of the maximum sentence being imposed by the court in the case of a conviction resulting from that particular trial, whether the sentence is mandatory or not, the manner of how the offence was committed, the impact of the commission of such offences has on society and the economy, e t c. (see STEVE HOAREAU VS REPUBLIC SCA 28/10)

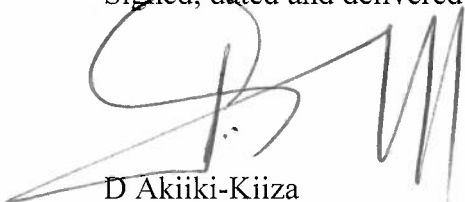
[8] In the instant case, in case of a conviction the mandatory minimum sentence is 20 years and maximum is 60 years and a fine of SR 500,000/-/. In case the prosecution proves its case beyond reasonable doubt the chances of a heavy sentence to be imposed on the accused is likely. It also goes without saying that the effect of prohibited or controlled drugs on the fabric of society could be catastrophic especially among the youths; who are

the future of the nation and if destroyed morally then such could affect the economic development of the Seychelles.

[9] Another factor to consider is the alleged attempt of the applicant to offer a sum of money to the NDEA agents so as to kill this case. If this is true, it would amount to perversion of justice, by interfering with proper and fruitful investigation and completion of the case.

[10] After putting everything to consideration I find that no significant circumstances have changed since the 29/10/14 when the accused was first remanded. This application for bail in the circumstances fails. The applicant will be produced fortnightly until further orders of the court. However, he is advised to appeal to the Court of Appeal, if he so wishes.

Signed, dated and delivered at Ile du Port on 16 March 2015

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by several vertical strokes, resembling the letters 'D Akiiki-Kiiza'.

D Akiiki-Kiiza

Judge of the Supreme Court