

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC

CR 43/2021

231

In the matter between

THE REPUBLIC

(rep. by Joshua Revera)

and

JEAN YVE ROSELINE

(rep. by Mr F Bonte and J Camille)

1ST Accused

FRANCIS BASET

SAVIO DEANO PAUL

(rep. by D Cesar)

2ND Accused

3RD Accused

TRAVIS RAMASAMY OH-PENG

SYVESTER JEAN-PIERRE CESAR

(rep by C Andre)

4TH Accused

5TH Accused

Neutral Citation: *The Republic v Roseline and Ors* (CR 43/2021) [2021] SCSC 231

Before: Govinden CJ

Summary: Bail application granted. No prima facie case established

Heard: 10th May 2021

Delivered: 17th May 2021

ORDER

GOVINDEN CJ

- [1] The 1st to 5th Accused are charged in the 1st count with committing the offence of Robbery with Violence with common intention, contrary to Section 280 as read with Section 22(a) and punishable under Section 281 of the Penal Code. The particulars of offence avers, *inter alia*, that all of the accused persons on the 22nd day of April 2021, at Mont Plaisir, Mahe, with common intention or design robbed one Mick Benoit and stole his motor vehicle, a metallic green Toyota registration number S5095, an amount of SC 8,500/-cash,

imprisonment; that the offences charged are on the rise in the country; that there are substantial grounds to believe that the accused if released on bail they may try to obstruct the due course of justice by interfering with the key witness in this matter or will commit similar acts and that if release they will go in hiding or abscond or fail to appear in court.

[9] The affidavit of Detective Simeon avers the facts upon which he is seeking this court to remand the accused persons for the above reasons, in paragraphs 1 to 25 it avers as follows:

“That I am the deponent above named and the investigating officer in this case.

The facts of the matters deposed to herein are true where the same are within my knowledge and are otherwise true to the best of my information and belief.

That the Respondents stands charged before the Supreme Court No. _____, for the offence(s) of Robbery with Violence contrary to Section 280 as read with Section 22 (a) and punishable under Section 281 of the Penal Code Cap 158, Aiding and Abetting another person in committing the offence of Robbery with Violence contrary to Section 280 as read with Section 22 (c) and punishable under Section 281 of the Penal Code Cap 158, Counseling or Procuring another person to commit the offence of Robbery with Violence contrary to Section 280 as read with Section 22 (d) and punishable under Section 281 of the Penal Code Cap 158, Conspiracy to commit the offence of Robbery with Violence contrary to and punishable under Section 381 of the Penal Code Cap 158 and Damaging Property contrary to Section 325 (1) as read with Section 22 (a) and punishable under Section 325 (1) of the Penal Code Cap 158. CR No.

On the 22nd day of April 2021, a complaint was made at the Police Station by one Mick BENOIT of Mont Plaisir, Mahé, the alleged victim herein, stating that he was attacked on his way home by a group of men.

That in the evening of the 22nd day of April 2021, he was being followed by two motor vehicles, one silver grey Kia Picanto Registration Number S24548 and one blue Hyundai Registration Number HV S35414, from Anse Royale to Mont Plaisir.

[11] I am guided in my opinion by the guideline set out in the case of *Roy Beeharie vs The Republic, Seychelles Court of Appeal case 11/2009*, where the Court of Appeal rule as follows;

to support detention, the prosecution must demonstrate a prima facie case against the accused, then the Court should determine whether the Defendant may be released with or without condition for the purpose of ensuring that the Defendant appears on a subsequent trial date. The seriousness of the charge requires the consideration of the facts of each particular and the evidence of the prosecution gathered so far. This is independent of consideration such as whether there may be interference with witnesses or there is breach of bail conditions".

[12] “*Prima facie*’ is a Latin term meaning “*at first sight*” or “*at first look*.” This refers to the standard of proof under which the party with the burden of proof need only present enough evidence to create a rebuttable presumption that the matter asserted is true. A prima facie standard of proof is relatively low. It is far less demanding than the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt standards that are also commonly use.

[13] I find that adducing averments the proving of a prima facie case is even more important than the adducing of averments relating to the grounds upon which the Republic is seeking the remand. For if substantial averments of facts are deponed to showing the streing existance of a prima facie case, those averments should be able to contain enough facts proving on a prima facie basis the existence of circumsatances that would justify the existence of reasons to the court exercisng its powers under Article 18 (7) (a) to(e) . As to grounds these are already in law present and can the subject matter of submissions.


[14] Once a prima facie case is established the burden will shift to the accused person to show that they should be released upon condition or without conditions for later appearance for trial. Here there is no size that fits all, how this burden will be discharge will depend upobn the facts of each case. Some cases might call upon filing of affidavit in reply in order to

[19] From the evidence adduced by the prosecution so far they have not shown on a prima facie case that any of the 5 accused were involved in the incident of robbery that allegedly took place against the Virtual Complainant on the 22nd of April. Apparently, it appears that he was attacked by unknown attackers. The only identification is one of recognition of the 1st accused, who was according to the prosecution version, only following him in his car.

[20] It is hence apparent that no prima facie case has been adduced by the Republic to reverse the presumption of liberty under Article 18(7) of the Constitution. This application is an example of how an affidavit supporting an application for remand should not be drafted. I accordingly release the accused persons on the following conditions;

- (1) The accused persons shall not leave the Republic during the course of their bail and they shall surrender their passport or any travelling documents to the Registry of this court.
- (2) They shall not approach or interfere with the Virtual Complainant whilst on bail.
- (3) They shall each sign a bail bond in the sum of SR 25,000.
- (4) They shall each report to their nearest police station on every Mondays at 5pm, with the 1st accused reporting to the Anse Aux Pins Police Station and the rest at the Mt Fleuri Police Station
- (5) They shall not commit any other offences whilst being on the bail of this court.

Signed, dated and delivered at Ile du Port on ^{12th} May 2021


Govinden CJ

