

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 240

CR 46/2021

In the matter between

THE REPUBLIC

(rep. by Mr Ananth)

and

NEDDY LAGRENADE

(rep. by Mrs Amesbury)

1ST Accused

NIGEL WILLIAM

(rep by Mr Joel Camille)

2ND Accused

LUCIANA CALVA

(rep. by Mr L Bonoface)

3RD Accused

SHAMIAL BARRA

4TH Accused

RYAN FRED

(rep by Mr A Juliette)

5TH Accused

Neutral Citation: *The Republic v N Lagrenade and Ors* (CR 46/2021) [2021] SCSC 240

Before: Govinden CJ

Summary: Bail denied ; *prima facie* case for remand established ; offences serious ; Accused collectively involved in the commission of the principal offences with each confederates playing an important role in the *participate criminis*; substantial grounds to suspect that each may interfere with the evidence and abscond.

Heard: 10th May 2021

Delivered: 24th May 2021

ORDER

The prosecution has proven that there is a *prima facie* case to detain all of the accused persons in custody in pursuant to Section 179 of the Criminal procedure Code, read with Article 18(7) (b) and (c) of the Constitution.

- [1] The facts of this case show that 5 accused were subsequent to their arrest, remanded into custody by this Court as suspects in offences committed under the Misuse of Drugs Act, 2016, following an application made by the Republic under section 101 of the Criminal Procedure Code. They were after that formally charged on 7 of May 2021 for the following offences;

Count 1

Statement of Offence

Importation of a controlled drug by causing to be imported controlled drugs into Seychelles contrary to Section 5 of the Misuse of Drugs Act, 2016 and punishable under the Second Schedule as read with Section 48 (1) (a) & (b) of the Misuse of Drugs Act, 2016.

Particulars of offence

Neddy Roger Lagrenade of Roche Caiman, Mahe on or about the 17th November 2020 to 1st of April 2021, at Mahe imported into Seychelles, a controlled drug weighing a net weight of 1207.40 grams namely Methylenedioxymethamphetamine (Ecstasy), by causing the said controlled drug to be imported into Seychelles through the Seychelles Postal Services, Victoria, Mahe in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 INL** by using the facility of Seychelles Postal services, in contravention of the Misuse of Drugs Act, 2016.

Count 2

Statement of Offence

Organizing to commit the offence of importation of a controlled drug contrary to Section 5 as read with Section 10 of the Misuse of Drugs Act, 2016 punishable under Section 5 read with Section 48(1) (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of offence

Neddy Roger Legrenade of Roche Caiman, Mahe, on or about 17th November 2020 to 1st April 2021 at Victoria, Mahe was organizing by making contacts with persons to commit the offence of importation of a controlled drug into Seychelles having net weight of 1207.40 grams namely Methylenedioxymethamphetamine (Ecstasy) contained in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 I NL**.

Count 3

Statement of Offence

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 read with Section 48(1) (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of offence

*Neddy Roger Lagrenade of Roche Caiman, Mahe, **Nigel Robert William** of Anse Aux Pins, Mahe and **Louicianna, Valerie, Vanessa CALVA** of Beau Vallon, Mahe , on or before the 1th November 2020 to the 1st April 2021 agreed with one another, to pursue a course of conduct that if pursued would necessarily amount to or involve the commission of an offence of importation of a controlled drug namely Methylenedioxymethamphetamine (Ecstasy), having a total net weight of 1207.40 grams, contained in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 1 NL**.*

Count 4

Statement of Offence

Aiding and abetting in the importation of a controlled drug contrary to Section 15 (1) (a) & (c) read with Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 read with Section 48(1) (b) and Second Schedule of the said Act.

Particulars of offence

***Nigel Robert William** of Anse Aux Pins, Mahe, on or about the 17th November 2020 to 1st of April 2021 at Victoria, Mahe aided and abetted Neddy Roger Legrenade of Roche Caiman, Mahe to import into Seychelles, a controlled drug weighing a net weight of 1207.40 grams namely Methylenedioxymethamphetamine (Ecstasy), by causing the said controlled drug to be imported into Seychelles in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 1NL** by using the facility of Seychelles Postal services, in contravention of the Misuse of Drugs Act, 2016.*

Count 5

Statement of Offence

Aiding and abetting to the importation of a controlled drug contrary to Section 15 (1) (a) & (c) read with Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 read with Section 48(1) (b) and Second Schedule of the said Act.

Particulars of offence

Louicianna, Valerie, Vanessa Calva of Beau Vallon, Mahe , on or about the 17th November 2020 to the 1st April 2021 at Victoria, Mahe aided and abetted Neddy Roger Legrenade of Roche Caiman, Mahe and Nigel Robert William of Anse Aux Pis, Mahe by assisting them to get into contact with a law enforcement officer in order to import into Seychelles, a controlled drug weighing a net weight of 1207.40 grams namely Methylenedioxymethamphetamine (Ecstasy), in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 INL** by using the facility of Seychelles Postal services, in contravention of the Misuse of Drugs Act, 2016.

Count 6

Statement of offence

Trafficking in a controlled drug contrary to Section 7 (1) as read with Section 2 of the Misuse of Drugs Act, 2016 punishable under Section 7 (1) read with Section 48(1) (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of offence

Shamila Stephanie, Cecile Barra of Au Cap, Mahe, on the 13th of April 2021 at Road, Victoria, Mahe aided and abetted Neddy Roger Legrenade of Roche Caiman, Mahe to traffic in a controlled drug namely Methylenedioxymethamphetamine (Ecstasy), having a total net weight of 1207.40 grams, contained in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 1** by going to collect the said controlled drug at Dolce Vita restaurant, State House, Avenue, Victoria, Mahe.

Count 7

Statement of Offence

Agreeing with another person to commit the offence of trafficking in a controlled drug, contrary to Section 16 (a) & Section 7 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7(1) read with Section 48(1) (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of offence

Shamila Stephanie Cecile Barra of Au Cap, Mahe, **Ryan Dominic Fred** of Au Cap Mahe and **Neddy Roger Lagrenade** of Roche Caiman, Mahe, on or before the 1st April 2021 to 13th April 2021 agreed with one another, that a course of conduct shall be pursued which, if pursued, will necessarily amount to or involve the commission of an offence of trafficking in a controlled drug namely Methylenedioxymethamphetamine (Ecstasy), having a total net weight of 1207.40 grams, contained in a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having **Tracking number CC 08187487 1 NL**.

Count 8

Statement of Offence

Corruptly offering to give benefit to a person employed in the Public Service contrary to and punishable under Section 91 (b) of the Penal Code.

Particulars of offence

Shamila Stephanie Cecile Barra of Au Cap, Mahe, on the 13th of April 2021 at Dolce Vita restaurant, State House, Avenue, Victoria, Mahe corruptly offered a sum of SR 2000/- to a person employed in the public service, namely Mary Oogada, a Customs Officer working with Seychelles Revenue Commission and also by stating that anything that the said officer wanted on account of her agreeing to hand over a parcel addressed to one Patrick Moustache of Beau Vallon, Mahe and having Tracking number CC 08187487 1 NL to the said Shamila Stephanie Cecile Barra.

Count 9

Statement of Offence

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 read with Section 48(1) (b) and Second Schedule of the Misuse of Drugs Act, 2016.

Particulars of offence

*Neddy Roger Lagrenade of Roche Caiman, Mahe, Nigel Robert William of Anse Aux Pins, Mahe and Louicianna Valerie Vanessa Calva of Beau Vallon, Mahe, on or about 17th November 2020 agreed with one another at Victoria, Mahe, that a course of conduct shall be pursued which, if pursued, will necessarily amount to or involve the commission of an offence of importation of a controlled drug namely Methylenedioxymethamphetamine (Ecstasy), contained in a parcel addressed having Tracking number **CC082734836NL** addressed to Sajita Pillay, Orion Mall”*

- [2] Upon being indicted, the prosecution filed a Notice of Motion applying to have the 5 accused remanded in custody in accordance with Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The application was supported by the affidavit of police officer, Egbert Payet, an Anti-Narcotics Bureau Officer appointed as the investigating officer in this case.
- [3] The main thrust for the prosecution’s application for remanding the accused are that;

“

- (a) *the offence against the first accused is serious and aggravated in nature. Importation of a controlled drug carries a maximum sentence of life imprisonment and/or a fine of SCR 1 million, with an indicative minimum sentence of 20 years, if convicted and further, trafficking in a controlled drug also carries a maximum sentence of life imprisonment and/or a fine of SCR 750,000, with an indicative minimum sentence of 20 years due to aggravated circumstances in this case.*
- (b) *the offences against the second and third accused herein are also serious and aggravated in nature. Aiding and abetting to commit the offence of importation of controlled drugs and conspiracy to commit the offence of importation of controlled drugs are as serious as importation of controlled drugs, which carries a maximum sentence of life imprisonment and/or a fine of SCR 1 million, with an indicative minimum sentence of 20 years, if convicted.*
- (c) *the offences against the fourth and fifth accused herein are also serious and aggravated in nature. Conspiracy to trafficking in a controlled drug and aiding and abetting to commit the offence of trafficking in a controlled drug are as serious as trafficking which carries a maximum sentence of 50 years imprisonment and/or a fine of SR 500,000, with an indicative minimum sentence of 15 years imprisonment, if convicted.*
- (d) *the amount of controlled drug involved, namely Methylenedioxymethamphetamine (Ecstasy), having a total net weight of 1207.40 grams (though it is a class B drug) in the form of 2943 pills, shows the presence and degree of a commercial element and making the offence an aggravated one.*
- (e) *that from the facts and circumstances of the case there are substantial grounds to believe due to their modus operandi in the commission of offence, that the said accused will fail to appear for the trial and will abscond / or do other activity thereby obstructing the course of justice, if released on bail considering the seriousness of the offence, severity of punishment for such an offence.*
- (f) *further, from the facts and circumstances of the case that there are substantial grounds to believe, due to their modus operandi in the commission of the offence, that there was an organized group, offering money to a public servant, procuring and financing to commit the above mentioned offences, that the accused will likely to interfere with potential witnesses to avoid any conviction in the case, thereby obstructing due course of law, if released on bail.*
- (g) *that the drug offences and the related consequences are a menace on the health and wellbeing of our small island state with serious impact on the younger generation and its potential negative impact on tourism and image of the Nation in the international platform. ”*

- [4] The affidavit of Egbert Payet contains the facts in support of which the prosecution is asking this Court to remand the accused persons for the above stated reasons, the substantial parts are found in paragraphs 1 to 18, are as follows;

“AFFIDAVIT IN SUPPORT

“ I, Egbert Payet, an officer presently attached to the Anti – Narcotic Bureau (ANB), Bois De Rose, Mahe, and being a Christian make oath and state as follows:-

- [1] *I am the deponent above named and the investigating officer, in CB 188/21ANB, in the instant case and well aware of the facts and circumstances of this case based on the information received, collected during investigation of this case.*
- [2] *That On the 17th November 2020, the third Respondent herein namely Valerie Calva an ex-post office worker approached a law enforcement officer (Custom Officer) which she knew while working at the post office. During their conversation Valerie Calva told the law enforcement officer that a friend of hers, namely Neddy Lagrenade alias “Kwako”, the first Respondent herein, is expecting a parcel which was addressed on one Sajita Pillay, Orion Mall Seychelles and further stated that the parcel contained ecstasy and that the way the parcel box has been packed even though it goes through scanning machine they will not detect it and they were worried that they might get caught at the point of collection when custom conduct searches. She also explained that they are aware that they need to produce an ID to remove the parcel and they do not know how to go around this because the sender and receiver on the parcel are both bogus names. She told the law enforcement officer to text her on her phone number 2577779 so she can communicate with her and send her the details.*
- [3] *That after establishing their contacts through mobile said Valerie Calva forwarded the tracking number of one parcel via WhatsApp to the custom officer CC082734836NL and a screen shot picture of a parcel addressed on Sajita Pillay from her number 2577779. The said Valerie Calva remained in contact with the law enforcement officer and made arrangements for the first Respondent herein namely Neddy Lagrenade alias “Kwako” to meet and have a proper discussion, where both Neddy Lagrenade and the law enforcement officer agreed to meet at La Dolce Vita in the late afternoon on the 24th November 2020.*
- [4] *That the law enforcement officer informed the ANB officers about the matter and she proceeded as planned. On the 24th November 2020 late afternoon, the law enforcement officer proceeded to La Dolce Vita and waited for Neddy Lagrenade. Whilst waiting for him the second Respondent herein namely Nigel*

William came and sat with her at the table and introduced himself and informed the law enforcement officer that he had come on behalf of Neddy Lagrenade. Nigel William said that Neddy Lagrenade was on his way but was running a bit late. The law enforcement officer sat with Nigel William for a little while and talk then after the law enforcement officer was informed that Neddy Lagrenade was near and they proceeded outside.

[5] That they went outside and proceeded to the gymnasium car park. There they met with the Neddy Lagrenade who had parked there in a vehicle. The law enforcement officer got in the car with Neddy Lagrenade and Nigel William also got in the car with them. They made a brief introduction and they proceeded on their way. The said Nigel William who parted ways with them and went in his own car. The law enforcement officer and suspect Neddy Lagrenade had a discussion about the two parcels, how the plan will be done once the law enforcement officer comes across the two parcels and if successful, the law enforcement officer will be paid a great deal in terms of money. Their contact was established through exchanging phone numbers to keep in contact. Neddy Lagrenade gave the law enforcement officer the number 2543838 as his contact number and also send the law enforcement officer via WhatsApp from his number 2543838 two tracking numbers (CC081874871NL) and (CC082734836NL) for two parcels.

[6] That from there on the law enforcement officer tracked the two parcels informed Neddy Lagrenade that the two parcels have not yet arrived in Seychelles. Neddy Lagrenade requested that the law enforcement officer keep on monitoring the two parcels for him and to let him know when it arrives in the country. The law enforcement officer kept a close monitoring on the two parcels and was in continuous contact with Neddy Lagrenade to give him updates on the said expected parcels.

[7] That on the 01st April 2021 one of the two parcels arrived in Seychelles bearing the tracking number CC 08187487 1 NL which was addressed on Patrick Moustache of Beau Vallon from the Netherlands, with J. WIERINGA OF BIJMER 7941103DT Amsterdam Netherlands as the addressee or sender. On the 01st April 2021, the parcel which is a carton box was scanned by custom officer in the presence of ANB Officer which confirmed that it contained high concentration of organic material in the four sides of the carton and same was suspected to be concealments of controlled drug or an illicit merchandise.

[8] That In the presence of ANB officer, Post Office Security and Custom Officers, the said carton box was cut opened. They found that the parcel contained a small number of boxes of different sizes and upon inspection, and tearing, the layers of each side of the carton box, the officers discovered 5 relatively slim silver-colored packages concealed in between the layers of each of the sides of the carton box. The said packages were removed and they were suspected to contain controlled drugs. One of the packets was slightly cut open, which contained tablets suspected to be controlled drugs namely (hA) Methylenedioxymethamphetamine commonly known as ecstasy, a Class B drug

under the Misuse of Drugs Act, 2016. ANB officer seized all the five silver packets to conduct further formalities thereon.

[9] That Upon arrival in Seychelles at the Postal Service of the parcel bearing tracking number CC 08187487 1 NL (hereinafter the "Parcel"), the law enforcement officer made contact with Neddy Lagrenade and also Nigel William and informed them of the arrival of one of the two parcels. Neddy Lagrenade agreed to arrange for collection of the Parcel although he stated to the law enforcement officer "en mon tande dil I so kot lapos" (I heard things are hot (under tight control) at the post office). Although Neddy Lagrenade told the law enforcement officer that he will be calling her to inform of the plan. On several occasions after their last contact, the law enforcement officer called or sent text messages to Neddy Lagrenade and Nigel William but they did not make any further contact with the law enforcement officer.

[10] That on the 13th April 2021, ANB officers were briefed that the fourth Respondent herein namely Shamila Barra had made certain contacts with the same law enforcement officer at the postal service regarding the parcel that Neddy Lagrenade had contacted earlier for the release and delivery of the Parcel bearing tracking number CC 08187487 1 NL. The Authorization was given by the Acting Commissioner of Police for the ANB officers to proceed with a controlled delivery in respect of the said parcel. In anticipation of the controlled delivery it was decided that the parcel would be substituted for a brown envelope containing silver colored packets packed with flour that the law enforcement officer would deliver to the said Shamila Barra.

[11] That As part of the exercise for the controlled delivery, the law enforcement officer went with the substituted brown envelope from the Post Office to Dolce Vita restaurant, State House, Avenue, Victoria, where the parcel was to be delivered to Shamila Barra. Under the observation of ANB officers, the law enforcement officer in possession of the parcel proceeded to the said location. They observed Shamila Barra entering the Dolce Vita Restaurant, State House, Avenue, Victoria. When the law enforcement officer entered the said restaurant, Shamila Barra was given and she took possession of the brown envelope from the law enforcement officer then she gave a sum of SR 2000/- to the law enforcement officer and also informed that she will give some more money the following day. While Shamila Barra was leaving the Dolce Vita Restaurant, ANB officers approached her and introduced themselves. ANB officers asked Shamila Barra to hand over the brown envelope which was in her possession and which she took possession of from the law enforcement officer, which complied with. Shamila Barra was then transported to ANB Station at Bois De Rose and arrested for the offence of Conspiracy to Import a controlled drug and she was cautioned and informed of her constitutional rights whereupon Suspect Shamila Barra stated that "mon pa konn naryen dan sa zafer mon. Monn ganny zis anvoye pou vin sers sa par Ryan" (I don't know anything in this matter, I was sent by Ryan to come and collect this).

[12] That in light of the said statement, Shamila Barra confirmed that the fifth Respondent herein namely Ryan Fred was the one told her to collect this parcel and on the suggestion of the ANB Officer Shamila Barra agreed to contact Ryan Fred. She made the call Ryan Fred where she stated, 'Ryan mon fini ganny ou parcel ki mon pou fer avek' (Ryan I have already obtained your parcel, what shall I do with it?). The call was of short very short duration but the ANB officer was not privy of the entire exchange between Suspect Shamila Barra and the person who she called as the speaker on her mobile phone could not be activated at that time due to certain problem on the touch screen of her phone. However, Suspect Shamila Barra informed the ANB officer that she spoke to Suspect Ryan Fred who during her short conversation advised her to "pran sa konmisyon kit ek ou ma fer en dimoun pas kot ou pou pran apre ma war ou plitar" (Take the thing and leave it with you and I will get someone to pass by later to collect it). Immediately after Ryan Fred contacted the Shamila Barra by calling her on her personal phone. ANB officer suggested her to activate speaker on her phone which she agreed. The conversation between Ryan Fred and Shamila Barra was in the presence and within the hearing of the ANB officer. During the said telephone conversation the person that Ryan Fred said to Shamila Barra "ki arive ki ou pa ankor al anmas Cael" (what's wrong that you have not yet picked up Cael) to which she replied "mon anvil mon pri dan en tranzaksyon ou pa pou kapab al anmas cael pou mon" (I am in town, I am stuck in a transaction, will you be able to go and pick up Cael for me?" and Ryan Fred replied "kote ou ete ou asire ou pa dan problem aköz mon santi ou pa byen gard pann antrap ou" (where are you? Are you sure you are not in any problem? I can feel that you are not well, have you been arrested by the police?)" and she replied "non mon byen mon" (No I am ok) and Ryan replied "non ou lavwa pa parey taler ler u ti call (No your voice is not the same like when I called you earlier)" and she replied "be sa konmisyon keler ou pou vin serse" (when will you come to collect the stuff?) and Ryan replied "mon pa asire si ou an sekirite mon kwar ou dan problem pran sa konmisyon pran zete" (I am not sure if you are safe, I think you are in trouble take the stuff and throw it away). Shamila Barra then ended the phone call. At the ANB station a search was conducted in vehicle S29819 a fiery red Hyundai grand i10 registered to Lousette François in the presence of Shamila Barra. Nothing illegal was found. While searching in Suspect Shamila Barra's handbag, a black Nokia phone was found along with a black Samsung Note 9. A small piece of white paper was found hidden behind the black Samsung note 9 phone pocket and on it the following number was written CC082734836NL and CC081874871NL. All were seized for the purpose of investigations. Some documents were seized from the red car along with a red Scan Disk Pen drive for the purpose of investigation.

[13] That On the 14th April 2021, as part of the ongoing investigation and operation in case CB 188/21 ANB, the ANB mounted an operation to locate and arrested the Fifth Respondent herein namely Ryan Fred. Some mobiles phone and laptops were seize for purpose of investigation.

[14] That on the 16th April 2021, ANB officers proceeded to Pointe Aux Sel to a house where the first Respondent herein namely Neddy Lagrenade had been spotted. ANB officers arrived at the house. The officers identified themselves

to all those present along with Neddy Lagrenade. The Officers informed Neddy Lagrenade that a search will be conducted in a car he had been seen in early that day a Toyota CHR Burgundy registration number S 34094 registered to Richard Mike Lagrenade who was parked outside the said house. During the search in the vehicle, 5 USB drives and some documents were seized for purpose of investigation. They also seized one black Nokia Phone found in possession of Neddy Lagrenade. Nothing illegal was found in the car. ANB officers then informed those present that a search will be conducted in the house for controlled drug. During the search in the house several phones and documents was seize for purpose of investigation. Then Neddy Lagrenade was then escorted to Roche Caiman to a house which he occupies. There was no one present inside the house at that time. He opened the doors of his house in the presence of the ANB officers with a set of keys which was in his possession. Search started in a storage area and proceeded in a bathroom close to it and nothing illegal was found. Search then proceeded in the living room and the kitchen. One silver Samsung mobile phone was found in the kitchen and one pink apple laptop was found in the living room were seized for purpose of investigation. In the same living room one black laptop, two passports were also seized in the living room for Raymond Serge Hoareau and Terence Pascal Songoire. In the living room, inside the drawer of the TV stand one SIM card starter pack bearing phone number 2645530 was seized. In a pantry close to the kitchen one white Samsung mobile phone in a white pocket was found and seized. Search was then conducted in the bedroom occupied wherein some documents were seized along with 3 USB drives and 2 black nokia phones. Search then proceeded to another bedroom in the house and some more documents were seized along with another starter pack from the bedside table drawer bearing phone number 2543838 and two USB drives. The officers then conducted a search outside the house but nothing illegal was found. Then Neddy Lagrenade was brought to the ANB station Bois De Rose and at the ANB station officer showed Neddy Lagrenade the pills suspected (hA) Methylenedioxymethamphetamine commonly known as "ecstasy" which were seized at the post office on 01st April 2021 from the parcel arrived in Seychelles **bearing the tracking number CC 08187487 1 NL** which was addressed on Patrick Moustache of Beau Vallon. He was arrested for the offence of conspiracy to import a controlled drug and he was cautioned and informed of his constitutional rights. Upon his request, ANB officers contacted his lawyer on number 2501505 where she was informed of her client's arrest.

- [15] That on 26th April 2021, as a result of continuous operation and investigation in case CB 188/21, ANB officers conducted a house search at Anse Aux Pins in a house where the Second Respondent herein namely Nigel William was residing. The following electronic item was seized for the purpose of investigation; (1) one silver apple laptop, (2) one blue acer laptop, (3) one black Acer laptop, (4) a black mouse for laptop, (5) one black iphone 7 with a green and clear back cover, (6) one blue nokia phone. At 1845hrs, Nigel William was arrested for offence of conspiracy to import a controlled drug. He was caution and informed of his constitutional rights. He was then brought to the ANB station. At the ANB station Nigel William requested to the ANB officers contacted his lawyer several time but there was no response.

[16] *On the 26th April 2021 at around 2145hrs, ANB officers proceeded to a house at Ile Perseverance 01, upon intelligence gathered that Third Respondent herein namely Valerie Calva was residing at that time. Arriving at the said house officers in the presence of owner they arrested the said Valerie Calva for conspiracy to import a controlled drug. She was cautioned and informed of her constitutional rights. A white Samsung phone in black and pink cover was seized from Suspect Valerie Calva for purpose of investigation. ANB officers then escorted her to the residence of her mother at Beau Vallon, where search was conducted in her bedroom by ANB officers which she occupies along with her partner. Upon conducting search in the bedroom ANB officers found some herbal materials suspected to be controlled drug namely Cannabis, a piece of plastic wrapping sticky substance suspected to be controlled drug namely Cannabis resin and a black digital scale. The partner of Suspect Valerie Calva told ANB officers that this is for her and it is for her own consumption. They were brought to the ANB station for further formalities. After formalities and investigation at the ANB station her partner was released.*

[17] *That the ANB officers sent the seized Exhibits for analysis by Forensic Analyst and found to be controlled drug namely Methylenedioxymethamphetamine (Ecstasy), having a total net weight of 1207.40 grams (of 2943 pills).*

[18] *That based on the investigation that the First Respondent herein namely Neddy Lagrenade has been charged with the offence of Importation in Controlled Drug, conspiracy to import a controlled drug into Seychelles and organizing to import controlled drugs in to Seychelles in contravention to the Misuse of Drugs Act, 2016. The Second and Third Respondents herein namely Nigel William and Valerie Calva are charged with the offence of conspiracy to import controlled drug into Seychelles and aiding and abetting to import controlled drug into Seychelles. The Fourth Respondent herein namely Shamila Barra has been charged with the offence of Trafficking in a controlled drug, conspiracy to commit the offence of trafficking in a controlled drug, aiding and abetting to commit the offence of trafficking in a controlled drug and corruptly offering benefits to public officer. The Fifth Respondent herein namely Ryan Fred has been charged with the offence of Conspiracy to commit the offence the offence of trafficking in a controlled drug.*

Dated this 07th May 2021.

Deponent

Sworn before me at the Registry of the Supreme Court, this the 07th day of May 2021."

[19] These averments by the Republic need to show to this Court that on the facts, a *prima facie* case proving the existence of circumstances set out in Article 18 (7) (a)

to (e) of the Constitution exists, and that these are sufficient to convince the court that the accused should not be released, either conditionally or unconditionally for them to appear at a later date for trial. A right as important as a right to liberty cannot be curtailed unless this happens.

[20] The defence counsels strenuously objected to the grant of the remand application and argued that their clients be released on bail, albeit on stringent conditions, Mrs Amesbury for the 1st accused submitted that no *prima facie* case has been established against her client. She further laid emphasis on his medical conditions. According to her, he has only 1 kidney, which is only 30 percent functional, further that he has uncontrolled diabetes, high blood pressure and has also contracted COVID 19. He was previously admitted at the Anse Royale Hospital and at the time of her submissions was quarantined at Avani. She accordingly prays that the court orders that he be placed under home quarantine.

[21] Mr Camille on the other raised a preliminary objection to certain amendments made to the affidavit of Mr Payet, his contention is that there has been some cross overs (cross outs or cancellation of existing text) in the affidavit that were done before it was presented in court, and that this makes the affidavit defective as a whole, especially when there has been no application to amend it. Accordingly he submitted that the document should be struck out. Mr Camille further submitted that the prosecution's fear that his client would abscond or interfere with witnesses is unfounded, his client has been charged with secondary offences involving a class B controlled drug and he had played no primary part in the commission of the offences. This coupled with the fact that his client would be willing to comply with strong bail conditions calls for him to be released on bail.

[22] Mr Boniface for the 3rd accused joined the motion regarding the defective affidavit. He also claimed that his client has not played a primary role in the offences and had been cooperative with the police and moreover that she has 2 underage children.

[23] Mr Cesar for the 4th accused also joined in the motion regarding the alleged defective affidavit. He further submitted that his client had fully cooperated with the police and had not even defended the 5th accused, her boyfriend. He further stated that she has an 18 month old baby.

- [24] Mr Juliette argued that the 5th accused has only been charged with one count, that is count 9, being the offence of Agreeing to Traffic in a class B drug and that the grounds for remand are set out in paragraph 19 of officer Payet's affidavit. According to him the seriousness of the offence cannot be a stand-alone ground to deny bail. He also submitted that there are no details set out as to how his client was involved in the *modus operandi* of the offence. Further there was no proof adduced that shows that he would abscond or interfere with witnesses. He also argued that his client had all along cooperated with the police when they needed time to investigate, however now that the investigation is over he should be released on bail, especially given that there are no provable grounds adduced for his detention.
- [25] I have thoroughly considered the prosecution's remand application and its' attached supporting affidavit. I have also strongly considered the submissions for bail made by the different learned counsels. Having done so I find that their objection mostly relates, beside the alleged defects in the affidavit, to mainly the fact that they are not involved in the most serious offences in the information and that their involvement were mostly as accessories.
- [26] The 1st issue that I will address is in respect of the objection raised to the amendments in the prosecution's affidavit, as raised by the learned counsel for the 2nd accused and joined into by the other counsel. All of the amendments relate to the changes in the amount of controlled drug from 461.10 grams to 1207.40 grams and the changes in the amount of pills from 1243 to 2943. Upon being queried by this Court on the circumstances under which the changes were effected. Learned counsel for the Republic indicated that this was done before the Deputy Registrar, and before the affidavit was sworn to by officer Payet. Upon scrutinising this document I see that the officer has put his initial next to all the changes that were effected. This being the case, I am of the view that the amendments were done in accordance with the law, they were effected prior to the affidavit being deposed to by the deponent and attested to before the Deputy Registrar. Moreover the deponent initialled next to all changes that he made in his own handwriting. The amendments being properly effected, the affidavit cannot be said to be defective on the ground being proposed by counsels.

- [27] In coming to my determination on the issues regarding the merits of the application, I bear in mind 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 [case] the judgments referencing this case on Seylii all seem to be missing the word 'case' so this is why it is in brackets. The Roy Beeharie case is also not available on Seylii, and I will make a point to trace it 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".

- [28] "*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, on the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt, standards that are commonly used.
- [29] I find that adducing averments to prove a *prima facie* case is even more important than the adducing of averments relating to the grounds upon which the Republic is seeking a remand under Section 101 of the Criminal Procedure Code. For if substantial averments of facts are deponed to, showing the strong existence of a *prima facie* case, those averments should be enough to convince the court of the existence of circumstances that, if any, would justify the court to exercise its powers under Article 18 (7) (a) to (e) of the Constitution. As to what of those sub-articles are proven, this can be left to legal submissions.
- [30] 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 discharged will depend upon the facts of each case. Some cases might call upon

filing of an affidavit in reply, in order to counter facts adduced by the Republic, whilst others might simply need to have oral submissions in order to tip the balance.

[31] The 2nd to 5th accused has all taken the objection that they should be released on bail as the several offences that they are charged with are not serious offences but secondary offences. However, when I look at the different counts I see the following:

[32] The 1st accused is charged with the offence of trafficking in 1207.40 grams of ecstasy pills in count 1 and he is also charged with organising the importation of the same controlled drug in count 2. These offences are serious and aggravated in nature. Importation of a controlled drug carries a maximum sentence of life imprisonment and/or a fine of SCR 1 million, with an indicative minimum sentence of 20 years, if convicted. Further, trafficking in a controlled drug also carries a maximum sentence of life imprisonment and or a fine of SCR 750,000, with an indicative minimum sentence of 20 years due to aggravated circumstances in this case. This makes these offence very serious. Moreover, the facts as related by the prosecution, read with the particulars of the offences, show a series of transactions which took place over a number of days, involving several persons. It revealed the presence of a commercial element, a level of organisation and some degree of sophistication in its execution, this aggravates the offences.

[33] In count 3, the 2nd and 3rd accused are charged together with the 1st accused to have imported the said controlled drug as charged in count 1. In count 4, the 2nd accused is said to have aided and abetted the 1st accused to have imported the controlled drug. In count 5, the 3rd accused is said to have aided and abetted the importation by the 1st accused of the controlled drug. In count 6, the 4th accused is said to have aided and abetted the 1st accused in trafficking the controlled drug. In count 7, the 4th accused is said to have aided and abetted the 1st accused to traffic the controlled drug. In count 8, the 4th and 5th accused are said to have agreed with the 1st accused person to import the controlled drug. Those charges coupled with the facts of the case proves to me on a *prima facie* basis that all the charges are related to one another and consist of an integrated whole. Accordingly, the seriousness of the offence has to be looked at from this angle. Though some of the accused are treated in a secondary capacity, their active involvements in aiding and abetting the 1st

accused's actions culminated in the 1st and 2nd offences taking place. Therefore, they appear as vital cogs in the machinery of these offences, making all counts serious offences.

[34] That being the case, this Court is led to the inevitable conclusion that the accused persons can be seen as co-conspirators in the commission of the main offences, as such if they are released on bail there is a substantial likelihood that they will abscond and fail to appear at the trial with the hope that they will not face justice, but also that their absence will assist the others to defeat the due course of justice.

[35] This apprehension in the mind of the Court also exists when it comes to the possibility of the accused interfering with the prosecution witnesses or the evidence involved in this case. As I have found the offences are interconnected on the facts, and any attempt by one accused to interfere with the evidence would most likely benefit all accused.

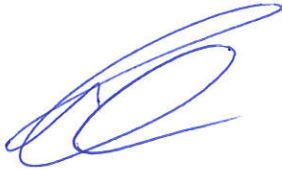
[36] In relation to the assistance given to the police and prosecution by any of the co-accused during the course of the investigation, I find this to be irrelevant for the purpose of this application. All of the accused now stand charged, irrespective of alleged the level of cooperation that they have given to the law enforcement authorities during the course of the investigation. It is the consequences of their current circumstances that would be decisive when it comes to this court assessing their current and future decisions in this case, and not the pre-indictment cooperation.

[37] As to the submission of learned counsel for the 1st accused regarding the health of her client. I am of the view that his health conditions at this stage cannot be an impediment to his detention. I note that all that I have said above regarding the 2nd to 5th accused also applies to the 1st accused. Moreover, *prima facie* he appears to be the master mind in this drug importation operation, and to my mind he carries the greatest risk of absconding and or interfering with the due course of justice in this case. I have to therefore balance his right to be at large with the right to protect society, by ensuring that persons charged with serious offences are denied the opportunity to illegally affecting the outcomes of the said offences pending the

completion of the case. His health condition can and will be taken care of whilst he is in detention.

- [38] For the reasons aforesaid, I therefore find that the prosecution has proven that there is a *prima facie* case to detain all of the accused persons in custody in pursuant to Section 179 of the Criminal procedure Code, read with Article 18(7) (b) and (c) of the Constitution.

Signed, dated and delivered at Ile du Port on the 24th May 2021.



Govinden CJ