

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC

CR 46/2021

262

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 262

Before: Govinden CJ

Summary: Bail denied ; *prima facie* case for remand established ; offences serious ; substantial likelihood of suspect absconding and or interfering with the evidence and witnesses; adequate treatment being afforded whilst in detention

Heard: 24th May 2021

Delivered: 31st May 2021

ORDER

Application for bail dismissed

GOVINDEN CJ

- [1] The use of pre-trial detention or remand is restricted by several international human rights treaties. The International Covenant on Civil and Political Rights, to which Seychelles is a party and which binds the court by virtue of Article 48 of our constitution, states the following in the relevant part (2):
- [2] “ *Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial*”.
- [3] International standards permit detention before trial only under certain, limited circumstances. In 1990, the *Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders* (6) established the following principle:
- [1] Pre-trial detention may be ordered only if there are reasonable grounds to believe that the persons concerned have been involved in the commission of the alleged offences and there is a danger of their absconding or committing further serious offences, or a danger that the course of justice will be seriously interfered with if they are let free.
- [2] One of the major achievements of the Eighth United Nations Congress was the adoption, by consensus, of the *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)* These rules provide that pre-trial detention shall be used as a means of last resort in criminal proceedings, and that alternatives to pre-trial detention shall be employed at as early a stage as possible.
- [3] The tenor of international norms and standards in relation to pre-trial detention is clear: restricting a defendant’s freedom should be used sparingly and under prescribed circumstances only. It follows that detention of an accused should occur under circumstances that preserve the presumption of innocence and will not entail a punishment without a trial.

It is from this perspective that we should interpret S79 of the Criminal Procedure Code and Article 18 (7) of the Constitution.

Interruption of treatment is one of the most complex issues facing pre-trial detention centres and detainees, this is especially true for the ones with chronic illnesses. For people who have been receiving treatment for a medical condition in the community, arrest and detention

represent a potentially deadly interruption of treatment. Treatment may be discontinued for short or long periods of time following arrest and detention in police cells, when detainees are transferred to other facilities or have to appear in court, and upon release. Even where pre-trial detainees have access to the same services as convicted prisoners, prison health care is limited. It is hence up to the courts which orders for detention, whether pre- or post-trials, to ensure that the detainees receives treatments which equates their needs, nothing less will suffice.

In this case the 1st accused had contracted the COVID 19 virus, however he is now cured. He has uncontrolled diabetes; hypertension and is living on one kidney, which has a function of thirty percent. As a result he has come with an application to be released on bail on the ground of his prevailing medical, conditions. His fear is that if he gets a second COVID 19 infection whilst on remand that might be fatal to him. After his arrest he deponed that he has been already hospitalized on an emergency basis on two occasions already.

I have scrutinized this application and its accompanied affidavit and I have thoroughly considered The submissions of counsels. Having done so I find that the medical conditions of the 1st accused is not being factually contested by the Republic. However, it is their position that he can conveniently and properly be detained at the Bois des Rose Detention Centre, notwithstanding his medical situation. At any rate it is the contention of the Republic as shown in their original application for remand that the offences for which this accused is charged are very serious and that their exist sufficient facts adduced by them that shows that there are substantial grounds to suspect that he would abscond or interfere with the evidence or witnesses if releases on bail.

As there is an application to remand the accused and the Republic is contesting his released on bail on the grounds of ill health. The court has to carry out the following exercise, first, of all see whether a prima facie case against the 1st accused on the facts adduced so far by the prosecution and whether the offences to which he stands charged are serious which hence merits him being remanded in custody. Secondly, whether his conditions are such that, even if under normal conditions he should have been remanded, he should be released on bail.

As to the 1st part of this exercise this court has already ruled that the offences allegedly committed in this case are serious in its decision of the 24th of May. That Ruling is still relevant and applicable when it comes to the 1st accused. As I have held before the Applicant appears, at least on a prima facie basis, to have been the ring leader in this case. My decision regarding the fact that all the counts in this case are interconnected on the facts and that there are substantial reasons to believe that if released all of the accused stood the chance of absconding or interfering with the due course of justice, by tampering with the evidence or witnesses so as to help one another, applies as much to the other accused as it does to the Applicant in this motion.

As to the 2nd set of this exercise given that the 1st accused has formally moved this court to be released mostly based on his medical conditions I believe that though I made a finding on this aspect in my former Ruling, it now merits further and fresh considerations.

According to a Medical Certificate attached to his application the applicant, the following was his medical history since he has been remanded by this court. He was admitted to the Seychelles Hospital with Uncontrolled Diabetes Mellitus on the 23rd of April 2021 and was discharged on the same date. Subsequently, on the 4th of May 2021 he developed fever and had a high sugar index, he was tested positive for COVID 19 and was referred to the Anse Royale hospital, where he was admitted and treated for COVID 19 infection and Uncontrolled Diabetic. The Applicant has also averred that he has only 1 kidney, the other one having "dissolved" and his remaining kidney is only thirty percent functional.

Every person, who is accused of an offence, even if the offence is a serious offence, requires to be treated humanely and with dignity by the law enforcement authorities and the prison authorities. This obligation includes given to a detainee who is suffering from an ailment treatment and care that an ordinary citizen at large should have been given in the circumstances, in other words there should be parity of treatment between a prisoner and a person who is not incarcerated, irrespective of the ailments being suffered by the individual concerned. If the prison authorities are incapable to give this parity of treatment, the detainee should be released on bail if he is on remand and be released on a License if he is a convict.

In this particular case, having scrutinized the facts of the case before me, I see a great willingness on the part of the prison authority to ensure that the Applicant is given all the medical attention that he requires as and when it is required. They are aware of his exact medical condition and he is allowed to have immediate access to the medical facilities if his situation requires it. In other words he is being given parity of access to medical treatment similar to an ordinary citizen at large. He has been given access to both a medical practitioner and treatments whenever the necessity calls for it. Further, taking cognizance that a specialized diet is also important for a person with Uncontrolled Diabetes the Court has already granted the Applicant access to home cook meal, which would go a long way to cater for his situation. As a result, I consider that his prevailing medical situation can be satisfactorily accommodated and catered for whilst he is in custody and he should not be released on bail.

For these reasons this application is dismissed.

Signed, dated and delivered at Ile du Port, Victoria, Mahe on this..... day of May 2021


R Govinden

Chief Justice