

## SUPREME COURT OF SEYCHELLES

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### Reportable

CM14/2025

(Arising in CR2/2025)

In the matter between

### **THE REPUBLIC**

(Present / represented by Mrs. Luthina Monthy)

### **Prosecution**

and

### **TONY DUBIGNON**

(Present / represented by Mrs Alexia Amesbury)

### **Accused**

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**Neutral Citation:** *Republic v Dubignon* (CM14/2025 Arising in CR2/2025) 6<sup>th</sup> March 2025

**Before:** A. Madeleine, J

**Summary:** Application for bail

**Delivered:** 6<sup>th</sup> March 2025

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### **ORDER**

Bail application is refused and dismissed. Accused no. 5 is remanded to custody.

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### **RULING**

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### **A. MADELEINE, J**

#### Introduction

- [1] This Ruling arises from the application of Accused No. 5 – Tony Dubignon – to be released on bail pending trial.
- [2] The Accused is charged together with four other Accused persons in *CR2/2025 Republic v Marc Woodcock and others* under three out of six counts of formal charge dated 24<sup>th</sup> January 2025 for the following offences –

- Under *Count 1*, for the offence of *Conspiracy to import a controlled drug* contrary to section 16 (a) as read with section 5 of the Misuse of Drugs Act, 2016;
- Under *Count 2*, for the offence of *Trafficking in Persons* contrary to section 3(1)(b) & (e) as read with section 5(1)(a) and (g) of the Prohibition of Trafficking in persons Act, 2014; and
- Under *Count 3*, for the offence of *Intentionally benefitting from the exploitation of Trafficking in persons* contrary to and punishable under section 6 of the Prohibition in Trafficking in Persons Act, 2014.

#### Remand Application

[3] By notice of motion supported by the Affidavit of Detective Sergeant Tania Solin dated 24<sup>th</sup> January 2025, the prosecution moved for the remand of all Accused persons, including the Accused No. 5 (the Applicant herein), in custody on the following grounds–

- (i) The alleged offences are serious in nature and carries severe penalties in the event of conviction.
- (ii) For the protection of the victim of Trafficking in person and to prevent further victimisation and intimidation of the said victim who is still vulnerable and traumatized after 5 years in captivity and under torture.
- (iii) The victim is a resident of Mahe and is well known to the Accused persons and to other suspects at large. Considering the acts of the Accused persons to forcibly send the victim as a drug guarantor, abduct him along with accomplices, and threaten to kill the presumes victim there are substantial grounds to believe that if released on bail the Accused persons would harm the victim and thus obstruct the course of justice as the victim is the principal witness in the matter.
- (iv) *The case is dated for more than five years and the con*
- (v) The Respondent poses a flight risk, as the investigation shows that the suspects have connections outside the jurisdiction of Seychelles and have resources by sea to escape

*the jurisdiction of Seychelles. Most of the Respondents are experienced seamen and they have journeyed outside the jurisdiction of Seychelles.*

- (vi) *The Respondents form part of well-organized criminal groups that have also linked abroad and conspired to import a controlled drug into Seychelles, and they are recruiting, receiving, harbouring and transporting vulnerable young Seychellois who are drug addicts to exploit as human drugs guarantor to foreign land. The mode of importing drugs into Seychelles through the trafficking of persons, especially drug addicts, is a growing national concern that is currently on the rise, and it is negatively impacting the country.*
- (vii) *The offences are very serious and complex in nature, with several persons appearing to be involved in a conspiracy to import controlled drugs and trafficking in person in well-organized fashion.*
- (viii) *There is potential risk for evidence tempering, the police are investigating a case of Trafficking in person and Conspiracy to import a controlled drug, and the evidence shows a well-organized criminal network from Seychelles and Iran. The primary evidence is even showing that an Iranian suspect had even reached Mahe on land to transport the victims by sea. This shows that the Respondents could temper with the evidence, witnesses and victims.*
- (ix) *There are reasonable grounds to believe that the said Respondents will fail to appear for trial and/ or do other activity thus obstructing the course of justice, if released on bail considering the seriousness of the offence, severity of punishment for such offence.*

#### Bail Application

- [4] Now, Accused No. 5 moves this court for his release on bail pending trial. His application is grounded principally upon his medical conditions as particularised in the Affidavit in support of motion.
- [5] According to his Affidavit, the Accused was being the detained in custody since his arrest on 11<sup>th</sup> January 2025. First, at the Central Police Station and then at the Perseverance Remand

Centre. At the time of making the Affidavit, Accused No. 5 described his detention conditions at the Perseverance Remand Centre as follows –

*“I am kept in a cell in complete solitude/darkness with no access to natural sunlight, no proper ventilation, a concrete slab as bed, and I am kept for 24 hours in a dark cell, made to eat and sleep in close proximity to the toilet and showering facilities.”*

[6] Based on legal advice obtained, Accused No. 5 stated that –

*“.... the present conditions of my detention at Perseverance Remand Centre are inhumane and degrading and a violation of rights under Article 16 of the Constitution...”*

[7] The Accused produced medical reports in his Affidavit confirming that in 2012 he was diagnosed with severe aortic valve regurgitation, aneurysm of ascending aorta with severe left ventricular dysfunction. He underwent the Bentall procedure at the Miot Hospital, India in 2012 itself and as a result he is on lifelong medication. Counsel referred the Court to the 2012 medical report and more particularly to the recommendations that the Accused’ blood prothrombin level should be estimated every 15 days. The Court notes that this was recommended for the first three months’ post-operative surgery and subsequently at intervals to be determined during review with one Dr Bashin. Counsel also referred to the Court to the report’s warning that the Accused should avoid certain types of medications and green leafy vegetables that are rich in vitamin K.

[8] The Accused also produced a medical examination certificate from Dr Sara Ahmed Abdelfatah Elsioufy of the Department of cardiology of the Seychelles Hospital confirming that an echo was performed in relation to Accused No. 5 on 28<sup>th</sup> January 2025. It is reported that the Accused has a medical history of aortic valve replacement and aorta repair in 2012 and is now on medications. According to the said report, the Accused requires a special diet with monitored amount of green vegetables and proper care to avoid bleeding (no heavy stress, proper sleeping conditions etc.) which he complains he is not receiving where he is kept in custody.

- [9] The Accused produced a further medical report dated 3<sup>rd</sup> February 2025 from Dr. Ribail Babie Reyes of the NOVA CLINIC. According to the said report the Accused was seen at clinic with recurrent knee pain. Right knee x-ray and ultra sound was performed and it showed knee degenerative changes. MRI lumbar spine showed multilevel degenerative intervertebral joint and disk, and bulging disk. The Accused needs surgery and to readjust his regular anti-coagulant for the operation. He is to avoid heavy duty and to continue with his current treatment until evaluation by an anaesthetist.
- [10] At the hearing of the application, the Accused Counsel tendered a new medical report from the Lifeline Specialist Clinic recommending a balanced diet, avoiding green leafy vegetables and medications like aspirin, ibruprofen, diclofenac and precautions to be taken against injuries.
- [11] Accused deponed that despite providing the authorities with his medical records, he has not received the medical and dietary requirements that his medical conditions requires including regular access to his heart medications. He also deponed that due to the conditions at the Perseverance Remand Centre, he is in severe risk of developing further medical issues as he is unable to eat and sleep properly, not able to follow a strict special diet for his health with no access to ventilation and sunlight which leads to congestion and tightness in the chest as well as physical conditions which are severely impacting his back and knee problems. He fears that since he is kept alone in the heat at all times, should there ever be a medical emergency, especially in the night, no one would be able to hear his calls for assistance or even see that he is in urgent medical attention. In view of his medical conditions, the conditions of his detention at the Perseverance Remand Centre is tantamount to psychological and physical torture.
- [12] The Accused also complained that he is not being provided with the appropriate diet for his medical condition and his faith as a Muslim. Furthermore, he is not allowed to perform the required number of prayers.
- [13] Based on legal advice of his Counsel, the Accused stated that the '*application for further holding*' is grounded solely under section 101(7) of the Criminal Procedure Code Ignoring Article 18(7) of the Constitution in regards to the constitutional criteria for denying a person their right to liberty. Notably, there are no averments in the affidavit that the Accused interfered with any witnesses and since the investigation is still ongoing hearing dates have not been fixed

nor a plea taken, he cannot obstruct the course of investigation and justice. At this stage it is unknown when the case will be finally completed and a judgment delivered. There is no guarantee that the case will be completed this year despite his constitutional guarantee of a fair trial within a reasonable time and the authorities of *Danny Bresson and Ors v/s The Republic* which further referred to two cases of the European Court of Justice *Gonta v Romain* [Application no. 38494/04] (where detention from arrest to sentence over a period of two years was in breach of constitutional right to a fair hearing] and in *Novruz Ismayilov v Azerbaijan* [Application No. 16794/05] (where detention for one year and four months on charges of breach of revenue laws held to unwarranted).

[14] The Court notes that the averments of the Accused are incorrect as the Republic's application for remand of all the Accused persons was made under Section 179 of the Seychelles Code of Criminal Procedure as read with Article 18(7) of the Constitution. The grounds on which remand is sought are well articulated under paragraph 37 of the remand application and are maintained in the Republic's objections to the bail application.

[15] The Accused is also advised by Counsel and verily believes that where trial cannot be completed within a reasonable time, he should be released on bail, he is innocent until he is proven or he pleads guilty, he is a sickly middle-aged man with sever medical conditions whose circumstances does not fall within the one or more of the exceptions to Article 18(7) of the Constitution and therefore has a legitimate expectation to be remanded to bail subject to stringent conditions.

#### Republic's opposition to bail application

[16] The Prosecution objected to the bail application largely on the same grounds as their initial remand application as referred to above. The prosecution objected that the application is unfounded. It not only fails to show change in circumstances, but it merely raises issues with the Perseverance Detention Centre where the Accused was being detained initially. Prosecution referred to Report of Chief Inspector G Uranie dated 13<sup>th</sup> February 2025 which addressed the issues raised by the Accused in his Affidavit in support of bail application. The

said report is annexed to the Prosecution's objections to the bail application. No objections were raised to the reliance on the said report.

[17] According to the said report, the Accused has been transferred from the Perseverance Detention Centre to the Vulnerable Prisoner's Unit at the Montagne Posee Prison on 7<sup>th</sup> February 2025 *"after careful consideration of his health condition; in consultation with the prison doctor"*. *"Moving him to the VPU meant that he can now have access to the onsite prison clinic and can be more closely monitored by the Prison doctor. VPU is also located in the same building as the prison clinic."*

[18] The report considers all other allegations made in the Affidavit in support of the bail application concerning his detention at the Perseverance Remand Centre. Since his transfer to the VPU, he is unlocked from cell from 0800hours to 1600 hours where he can move freely around the unit including its open outdoor area. Further, refers to the report of Dr Mills, which was unfortunately not disclosed to the court.

#### Law and Analysis

[19] I have carefully considered the application for bail by the Accused and the objections raised by the Prosecution.

[20] I also consider the applicable principles of the law of bail pending trial, namely that the release of an Accused person on bail is the rule, and that remanding him/her in custody is the exception [*Vide: Article 18(7) Constitution read with Section 179 of the Criminal Procedure Code*] and the case of *Roy Beehary v. The Republic*<sup>1</sup> to the effect that—

*A person must be released unless the state can show there are relevant and sufficient reasons for continued detention, including an assessment of risks of absconding or re-offending.*

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<sup>1</sup> SCA No 11/09

*Continued detention can be justified if there are specific indications of a genuine requirement of public interest, which, notwithstanding the presumption of innocence, outweighs the rule for respect of individual liberty.*

*To support detention, the prosecution must show a prima facie case against the accused, and where not released on bail, the accused has the right to be tried within a reasonable time.*

*Further, that seriousness of the offences charged and the severity of the penalty linked to that offence though relevant to a decision of whether the accused should be refused bail and denied the right to personal liberty, are not of themselves grounds for refusing bail.*

[21] I first consider that the Accused is presumed to be innocent until he pleads or is proven guilty, that he has the constitutional right to personal liberty and in accordance with the Constitution, is to be released on bail pending trial unless the risks inherent in his release on bail cannot be made negligible by the imposition of stringent bail conditions.<sup>2</sup> I also weigh in his medical conditions.

[22] I am satisfied from medical reports produced, that the Accused suffers from the medical conditions stated therein and that he requires appropriate diet and medications. All medical reports provided to the Court confirms his medical history and recommends that he maintains his current medications and diet. However, none of the medical reports state in explicit terms, or at all, that his current medical condition(s) are incompatible with pre-trial detention. None of the reports recommends that he should not be detained in custody on account of his medical conditions.

[23] I now consider the grounds on which the Republic moved for the remand the Accused, and his release on bail.

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<sup>2</sup> *Hurnam v State (Mauritius)* [2005] UKPC 49 (15 December 2009); *Maloupe v DM of Grand Port* [2000] SCJ 233



[24] Indeed, the offences with which Accused no. 5 stands charged carries severe penalties. Trafficking in persons under aggravating circumstances and the offence of intentionally benefitting from the exploitation of Trafficking in persons carries a maximum term of imprisonment of 25 years and or a fine not exceeding SCR800,000/-. The offence of conspiracy to commit the offence of trafficking in a controlled drug is punishable by life imprisonment and a fine of SCR1Million.

[25] However, the seriousness of these offences and the severity of the respective penalties ascribed are not the sole grounds upon which the Republic moved for the remand of all Accused persons including Accused no. 5.

[26] I weigh in the need for the protection of the victim, being the principal witness in this criminal matter and who is alleged to have been forcibly sent to Iran as a drug guarantee where he has been held captive for 5 years and allegedly suffered physical abuse and torture, including involuntarily drugged with opium. I consider of high relevance, the allegation that the victim is well known to all the Accused persons and other suspects who are still at large and that the Accused forms part of a well-organized criminal group with connections abroad. The offences charged are of national concern and are currently on the rise and impacting negatively in the country. It is my view that the risks of interference with the principal witness and with the evidence in this matter and ongoing police investigations for other suspects who may still at large are very likely to materialize if the Accused is released on bail notwithstanding the imposition of bail conditions. I find highly relevant to the risk of absconding the allegation that Accused no. 5 owned the boat '*DADI ANZ*' used or involved to transport the principal witness and the allegation that all Accused persons, including Accused no. 5, have connections outside Seychelles and that some are experienced seamen.

[27] The issues raised by Accused no.5 regarding his detention at the Perseverance Detention centre do not fall to be determined as he has since moved to the Vulnerable Prisoners Unit at the Montagne Posse prison in the same building as the Prison Doctor. Unless and until there are further changes to his medical conditions, based on the reports tendered and having regard to

the grounds for the remand application by the Republic, I find that the balance tilts in favour of remanding the Accused in custody pending his trial.

[28] Further, the Accused was only charged before this court on 27<sup>th</sup> January 2025, exactly one month ago. The Accused is yet to take the plea and trial dates are yet to be set. Thus the Accused's arguments that he is unlikely to be tried within a reasonable time and should therefore be released on bail are unfounded. I find that the case of *Bresson* and the authorities of European Court of Justice, referred to this Court, although they enunciate the correct legal principles, are not applicable here and are distinguished from the present application.

### Conclusion

[29] Having considered the Accused's medical reports and the grounds raised by the Prosecution, I find that the balance tilts in favour of the continued detention of the Accused No. 5 as long as he is provided with all his medical needs, namely access to his prescribed medications, medical care including access to specialist cardiologist, and he is given the appropriate diet and allowed adequate rest.

### Order

[30] Bail application is refused and accordingly dismissed. Accused No. 5 is remanded to custody.

Signed, dated and delivered at Ile du Port, Mahe on 6<sup>th</sup> March 2025.

  
A. Madeleine, J

