

IN THE SUPREME COURT OF SEYCHELLES

Reportable
CR 41/2023

H.L
(rep by France Bonte)

Applicant

and

REPUBLIC

Respondent

(rep. Rea Alcindor)

Neutral Citation: *H.L v Republic* (CR 41 of 2023, delivered on 17 March 2025)

Before: Vidot J

Summary: Bail Application, change in circumstances not pleaded

Heard:

Delivered: 17 March 2025

RULING

VIDOT J

- [1] The Accused stands charged of two counts of sexual assault offences contrary to section 130(1) as read with sections 130(2)(d) and read with section 130(4)(c) of the Penal Code and punishable under section 135 (1) of the Penal Code.
- [2] On 11th February 2023 the Accused filed a Notice of Motion moving the Court to grant him bail pending final determination of his case. This is not the first such application filed by the Applicant. On the 16th September 2023 the Accused filed a similar application and

the same was denied. The Notice of Motion is supported with a very scanty and inadequately drafted affidavit wherein the Accused states that his Counsel has advised him that he has a right to bail and that he is willing to abide to any reasonable conditions that this Court may impose and gives an undertaking not to abscond and to report to the police as the Court may direct. By this averment, I have the sentiment that if Court was to grant him bail and he considers the bail conditions not to be reasonable, he will not abide by them.

- [3] The Republic objected to the application. Counsel for the Republic noted that the offences are serious in nature and carries a maximum sentence of 20 years. Counsel stated that the offences are aggravated due to the nature in which it was committed. She adds that the alleged victims are young and vulnerable and as such that there are grounds to believe that that the Applicant will abscond. Counsel also avers that the "*Respondent*" will interfere with the course of justice, that there is a high propensity that the "*Respondent*" will re-offend. It is the Republic that is the Respondent to this application. Therefore, I assume that, that was a genuine mistake on the part of Counsel for the Respondent in that she should have referred to the Applicant rather than the Respondent. Counsel also states that the Applicant failed to provide grounds on which the application is rooted. Unfortunately, the Respondent also made averments which are not substantiated in any way whatsoever. Therefore, I call on Counsel for the Respondent not to just merely attack but into doing so, to be better than the party against whom the attack is directed.

- [4] Bail is always the rule and remand the exception; see **R v Esparon (SCA 1 of 2014) [2014] SCCA 19**. An application for bail or remand strikes at the core of one of the most important constitutional right; the right to liberty guaranteed under Article 18(1) of the Constitution. Though that right is subject to certain derogations, such derogations are very specific and should be used in exceptional circumstances. There are a number of cases from this Court that has echoed such sentiments which have also been espoused in **Esparon v Republic**, which is that such right can only be curtailed in exceptional cases where the prosecution has satisfied court that there are compelling reasons both in law and on facts, for remanding the accused. The fact that the Applicant is already on remand, suggests that the Republic did not satisfy Court on both law and facts that there were substantial grounds for the

remand of the Applicant. Equally, the Applicant did not provide substantial grounds to the satisfaction of the Court to order his release on bail.

- [5] In **R v Julie SSC 49/2006, 13 March 2007**, it was held that bail is a constitutional right which should be granted to every person accused of an offence who appears before the Court. It added that pre-trial incarceration should not be used to punish an accused person. Further, seriousness of the offence should be calculated through the balancing of a number of factors, including the prevalence of the offence in the community. An offence that is prevalent may be seen as serious.
- [6] It was stated in **Esparon v Republic (supra)** *"the primary concern in a bail application is under the rule of law. Article 18(7) provides for the exceptions but the Court should be satisfied that those exceptions exist. They are only circumstances which will assist the court in determining whether the person should be kept in custody."* So, to my mind, is not whether the prosecution believes these exceptions exist, but do these exceptions actually exist.
- [7] In this case, the Applicant is on already on remand. Trial has started and the alleged victims have testified. Therefore, if the Applicant was to be released on bail there is hardly any likelihood that he will interfere with them and in any case, conditions may be imposed that will make such possibility almost inexistant. The Republic has also stated that there is likelihood of him absconding. In **R v (on application of F) v Southampton Crown Court [2009] EWHC 2206 (Admin)** it was stated that such statement on its own is not sufficient to remand an accused. There needs to be evidential grounds to support such an averment. However, I note that the Applicant has made application at least on one occasion apart from the initial application of remand filed by the Republic. The judge who heard the application found it necessary to remand the Applicant. I am sure the Judge considered the Application fully and considered that remand was the best safeguard in the circumstances. I also note that apart from this present case, the Applicant stands charged of a similar offence before another Court, but I do bear in mind that an accused person is innocent until he has pleaded or been found guilty as provided for under Article 19(2)(a) of the Constitution.

[8] Therefore, at this point the Applicant needed to plead and prove that there has been a change in circumstances from the initial remand and the present application. The Applicant has not established the same. The need to establish a change in circumstances is clearly spelt out in the case of **Republic v Hoareau [2011] SCCA 23**. In the absence of such averments and any material to substantiate such claims it the event that it had been pleaded this Court cannot allow the application.

[9] Therefore, the application is hereby denied and dismissed. The Applicant is remanded to custody for the next 14 days.

Signed, dated and delivered at Ile du Port 17 March 2025


Vidot J

