

SUPREME COURT OF SEYCHELLES

Reportable
CM27/2025
(Arising in CR 68/2024)

In the matter between:

DICK VOLCERE
(Represented by Mr S Rajasundaram)

Applicant

And

THE REPUBLIC
(Represented by Mr Alvine Marie)

Respondent

Neutral Citation: *Volcere vs The Republic* (CM 27/2025) (20 June 2025)

Before: Adeline J

Summary: Notice of Motion supported by affidavit evidence for order to be remanded to conditional bail in variation of order of remand in police custody.

Heard: 20th March 2025

Delivered: 20th June 2025

FINAL ORDER

Conditional bail in variation of the order of remand in police custody is denied and accordingly, the application is dismissed.

RULING ON MOTION

Adeline, J

INTRODUCTION

- [1] The Applicant/Accused, one Dick Hansel Volcere of Grand Anse, Praslin is indicted before this court in CB 98/11/2024, Grand Anse Praslin Station, filed in court as CR 68/2024 on the 27th November 2024 for the following alleged offences;

Count 1

The statement of the offence pertaining to count 1 reads;

Unlawful wounding with intent to do grievous harm contrary to Section 219 (a) and punishable under Section 219 of the Penal Code.

The particulars of the offence in the indictment pertaining to count 1 reads;

Dick, Hansel, Volcere aged 38 years old, holding NIIN 988-0045-5-06 and resident of Grand Anse, Praslin in the early hours of the 14th November 2024, at the residence of Guillanne Owusu Agyapong, at Tamatave Estate, Grand Anse Praslin, with intent to cause grievous harm, unlawfully wounded one Guillianne Owusu Agyapong of Grand Anse, Praslin with a knife causing her to suffer a deep laceration on her right arm and a deep laceration of about 8 cm in length on interior lateral side of her right arm.

Count 2

- [2] In the alternative, count 2, the statement of offence reads;

"Grievous harm contrary to Section 221 of the Penal Code and punishable under Section 221 of the Penal Code".

The particulars of the offence in the indictment pertaining to the alternative count 2, reads;

"Dick Hansel Volcere, aged 38 years old, holding NIN 988-0045-5-51-86, and resident of Grand Anse, Praslin, in the early hours of the 14th November 2024, at the residence of Guillianne Owusu, Agyapong at Tamatave Estate, Grand Anse Praslin, unlawfully wounded one Guillianne Owusu Agyapong of Grand Anse Praslin with a knife causing her to suffer a deep laceration on her right arm and a deep laceration of about 8 cm in length on the interior lateral side of the right arm".

- [3] The Applicant/Accused is also indicted with the following offence, which statement of offence reads;

Count 3

“Assault occasioning actual bodily harm contrary to Section 236 of the Penal Code and punishable under Section 236 of the Penal Code”.

- [4] The particulars of the offence in the indictment pertaining to count 3 reads;

“Dick Hansel, Volcere, aged 38 years old, holding NIN 988-00-45-5-51-86, and resident at Grand Anse, Praslin, in the early hours of the 14th November 2024, at the residence of Guillianne Owusu Agyapong at Tamatave Estate, Grande Anse, Praslin unlawfully wounded one Alexandro Lesperance of Marie Jeanne Estate, Praslin with a knife causing him to suffer bodily harm in the form of superficial abrasions behind his right ear, a superficial abrasion on his right shoulder and bruises on the right side of his anterior abdomen”.

- [5] The Applicant/Accused, is further indicted with the following offence, which statement of offence reads;

Count 4

“Burglary contrary to Section 289(a) of the Penal Code and punishable under Section 289 of the Penal Code”.

- [6] The particulars of the offence in the indictment pertaining to count 4 reads;

“Dick, Hansel Volcere, aged 38 years old, holding NIN 988-0045-5-1-86 and resident of Grand Anse, Praslin in the early hours of the 14th November 2024, at Tamatave Estate, Grand Anse, Praslin broke and entered in the dwelling house of Guillianne Owusu Agyapong of Grand Anse, Praslin with intent to commit a felony therein, namely grievous harm”.

THE APPLICATION FOR REMAND IN POLICE CUSTODY

- [7] In accordance with Section 179 of the Criminal Procedure Code, read with Article 18(7) of the Constitution, by notice of motion filed in court as CM 142/2024, on the 27th November 2024, the Respondent/Prosecution (the Applicant/Prosecution then) applied for an order of this court for the Respondent/Accused to be remanded in police custody. The Notice of Motion was supported by affidavit evidence, which affidavit evidence was deposed by one detective police sergeant Vanessa Racombo.
- [8] On the 27th November 2024, the Applicant (who was then the Respondent/Accused) indicated, that he will instruct a lawyer to represent him. The accused, who did not answer the application for remand in police custody was remanded in police custody on account of the uncontroverted affidavit evidence of detective police sergeant Vanessa Racombo.

APPLICATION TO BE REMANDED TO CONDITIONAL BAIL AND ANSWER

- [9] In its affidavit in support of its application for an order of this court for conditional bail the effect of which will vary the order of remand dated 27th November 2024, *inter alia*, the Applicant deposes as follows;

“3. That I am currently at Montagne Posee prison being a detainee on remand in respect of criminal case CR 68/24 before the Supreme Court of Seychelles.

4. That there are four counts of criminal charges framed against me namely, unlawful wounding, causing grievous harm, assault occasioning actual bodily harm and burglary by virtue of a charge dated 27th November 2024.

5. That pursuant to a complaint by Guillianne Owusu Agyapong, Praslin, the police has arrested me since November 2024 and since then I have been detained for all proceedings against me.

6. That I verily believe that I am an innocent and the charges levelled against me are false.

7. That I verily believe that I would prove my innocence to this honourable court.

8. That I am given the assistance by legal aid and I got Mr Rajasundaram, Attorney at law to defend me in the above referred criminal case.

9. That I am legally advised by my Attorney that under the provisions of the constitution of the Republic of Seychelles, I am entitled to right to freedom and right to bail by this honourable court unless and until the prosecution proves the charges against me.

10. That I am also legally advised by my attorney that I have a strong case to succeed in that the charges framed against me would not sustain before this honourable court.

11. That I verily believe, therefore, that my curtailed by the prosecution by repeated remands and I have been detained since last five months.

12. That I verily believe that this honourable court can consider my Seychelles Nationality and further consider that I be enlarged on bail.

13. That this honourable court can impose all stringent conditions while granting me a bail and I would abide by the conditions that this honourable court would impose.

14. That I pray this honourable court therefore not to cause extension any further remand for my detention and further pray, that my Notice of Motion dated 16th March 2025 filed by my attorney for granting me a bail be considered and allow me to remain on bail until the criminal case CR 68/2024 is completed.

[10] In answer to the application for conditional bail to effectively vary the remand order made by this court on the 27 November 2024, the Respondent (the Applicant in the application for remand then) did file an answering affidavit deposed by defective sergeant Vanessa Racombo, the investigating officer of the alleged offences of which the Applicant/Accused has been indicted.

[11] In her affidavit in answer, detective sergeant Racombo avers, inter alia, the following which are most relevant for consideration to determine whether or not the order of remand in police custody should be varied to effectively remand the Applicant/Accused to conditional bail. The most relevant averments are;

“6. That in paragraph 9 and 10 of the Affidavit the Applicant avers that he is entitled to a right to freedom and a right to bail and that the charges framed against him will not succeed before the court.

7. That in reply the Respondent avers that the offence of acts intended to cause grievous harm, assault occasioning actual bodily harm and burglary with which the Respondent has been charged with are serious in nature. In particular, the offence of Acts intended to cause grievous harm carries a maximum sentence of life imprisonment.

8. The Respondent avers, that although bail is a right available to the Applicant, it is not an absolute right and in the instant case, the court would be justified in restricting the Applicant's right to bail in accordance with Article 18(7) (b) of the constitution of the Seychelles, having regard to the seriousness of the offences with which the accused has been charged in this case.

9. That in paragraph 12 and 13 of the affidavit in support of the Application, the Applicant avers, that this honourable court can consider his Seychellois nationality to release him on bail with stringent conditions, and that if he was to be granted bail he would abide to the conditions that the court would impose.

10. That in reply to the above, the Respondent avers that through her investigation in the instant police case of CB 98/11/2024 of Grand Anse Praslin, she has found that the Applicant has a pending case before the Praslin Magistrate court, namely CR 21/2024, in which he is charged with the offence of entering a dwelling house with intent to commit a felony, criminal trespass and threatening violence against one of the complainants in the instant case of CR 68/2024. Therefore, by committing the offences alleged in this affidavit the Applicant has breached conditions imposed by the court in CR 21/2024, including refraining from committing similar offences.

11. The Respondent further avers, that through her investigation, she also found that there is a Family Tribunal order in case No PFV5/23, prohibiting the Applicant from approaching within 30 meters of one of the complainants in the instant case CR 68/2024, and due to the Applicant having breached this condition, he was brought before the Family Tribunal in case No. PMA 11/24, and sentenced to a 12 month suspended term of imprisonment.

12. That based on the above mentioned findings, the Respondent avers that given that the Applicant on previous occasions has breached conditions imposed by both the Magistrate court and Family Tribunal in relation to the same complainants as in the instant case of CR 68/2024, this shows the Applicant's complete disregard to conditions and restrictions imposed by the court, and if he is released on bail there is a high risk that he will interfere with the complainant in this case, such that the imposition of stringent bail conditions cannot mitigate such risks.

13. That in the light of the above, that there is no change of circumstances in the case and there are no compelling reasons to release the Applicant on bail".

DUSCUSSIONS OF THE FACTS AND APPLICATION OF THE LAW

- [12] It is observed, that in its affidavit in support of its application to be remanded to conditional bail in variation of the order remanding it in police custody made on the 27th November 2024, that the Applicant does not address the grounds for remanding him in police custody averred in the affidavit in support of the application for it to be remanded in police custody made on the 27th November 2024.
- [13] Nor does it seeks to refute those grounds. All that the Applicant does in its supporting affidavit to the application to be remanded to conditional bail, is simply to aver about its personal circumstances that led to the charges against it, that he is an innocent man, and that he is of a Seychellois nationality and therefore is entitled to bail. Furthermore, that it has a right to bail and a right to its freedom. To aver that he should be remanded to bail on a stringent conditions because of its Seychellois nationality is an absurdity. In my considered opinion, the supporting affidavit to the application does not contain averments that make up a case in favour of varying the existing order of remand in police custody and remanding the Applicant/accused on stringent conditional bail.
- [14] The law on bail is well settled. In ***Kenneth Steve Esparon vs The Republic SCA No: 01 of 2014***, the Court of Appeal made the point, that bail is within the "fundamental functions of the Judiciary". That is to say, within our judicial functions as independent Judges. This means, that bail is a matter for the court only, and whether a person should or should not

be granted bail is at the discretion of the court. In *Kenneth Steve Esparon* (Supra) the court also made the point, that “a bail hearing is not part of a criminal case even if it has to be conceded, that it walks in the shadow of a criminal trial. It has an independent life free from criminal process yet walking hand in hand with it”. The court also stated, that “the primary concern in a bail matter is under the rule of law, and that Article 18(7) of the constitution provides for exceptions. The court went on as to say, that the court should be satisfied that those exceptions exist based on prima facie evidence against the Applicant/Accused.

- [15] One of the grounds that this court found very pertinent and put more weight on when it considered whether the application for remanding the Applicant/Accused (previously Respondent/Accused) in police custody, was the fact that it was averred by detective Police sergeant Vanessa Racombo, that because of the seriousness of the offences of which the Respondent (now the Applicant) is charged with, “there is a high risk that if he is released on bail he would interfere with the witnesses and/or further harm the two victims in the case”.

- [16] Under Article 18(7) (c) of the constitution, the Applicant/Prosecution had to demonstrate, by adducing “prima facie” evidence, that are substantial grounds for believing, and that these grounds must have factual basis. In the instant case, it was demonstrated, that the factual basis are, the seriousness of the offences, the Applicant previous violation of the family tribunal Protection Order and other restraint orders, and the Applicant’s history of violence against the complainant/victim, Mrs Agyapong. Unfortunately, the Applicant in the instant case, has failed to address those grounds in its affidavit in support of its application.

- [17] As discussed in the preceding paragraphs of this ruling, the grant or refusal to grant bail lies within the discretion of the court. The grant or denial is determined by interpretation of the existence of the exceptions under Article 18(7) and the facts and circumstances laid before the court in evidence. However, the right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the state of the burden

of keeping the accused pending the trial and at the same time, to keep the accused constructively in the custody of the court.

- [18] There can be no dispute over the fact, that the offences of which the Applicant/Accused have been indicted are serious in nature and carry substantial custodial sentences if conviction for them ensue. However, as stated in the case of *R v Abdul Khudabin CR 59/2020*, it is now trite law, that the “seriousness of the offence” is not a stand-alone ground to remand the accused person in police custody pending trial.

- [19] It is undeniable, that consideration whether or not to grant the Applicant conditional bail in variation of the existing order of remand in police custody, strikes at the core of the constitutional right of a person to liberty. In that regard, there is a plethora of case law authorities, such as *Esparon vs The Republic SCA 1 of 2014*, where the court has emphasized, that such right to liberty can only be interfered with in exceptional circumstances where the prosecution has satisfied the court, that there are substantial grounds to remand the accused in police custody.

- [20] In the instant case, following the application for the Applicant/Accused to be remanded in police custody, on account of the uncontroverted affidavit evidence of detective Police sergeant Vanessa Racombo, this court was satisfied, that the grounds necessary to make out a case to remand the Respondent (now Applicant) in police custody were made out based on prima facie evidence, and accordingly, the Applicant/Accused was remanded in police custody.

- [21] The fact that the Applicant/Accused is remanded in police custody, it is established (reaffirmed) by case law, for example the case of *Republic vs Alphonse CO 47/2006 and SM vs The Republic CR 101/2021*, that bail should not be granted unless there is a change in circumstances warranting reconsideration of remand. Similar point was made by the court in *the Republic vs Cliff Emmanuel and Richard Freminot CR 58/2003*, in which case, the case of *R vs Slough Justices, ex parte Duncan, 1982 Criminal Appeal R384* was cited, and in which case the court had stated, that the court should not hear arguments to the fact or law which it has previously heard, unless there has been a change of circumstances that might have affected the earlier decisions.

- [22] It is also of great significance to also cite the case of Nottingham Justices *ex parte Davies 1980, Criminal Appeal Report 178*, in which case the Nottingham city Justices refused to hear full arguments in support of an application for bail, unless they are informed that there are new circumstances, and they further considered that the nature of the new circumstances is such as to satisfy them in hearing full arguments. The courts in England have taken similar approach in other cases. See for example, Reading Crown Court *ex parte Malik 1981, Criminal Appeal Report 146*.
- [23] Based on the facts as averred by detective sergeant Racombo, it is worth reminding ourselves, that in *Roy Beeharry v The Republic*, amongst other things, the court did say, that a person must be released, unless the state can show, that there are relevant and sufficient reasons for continued detention, including an assessment of the risk of absconding or re-offending. In consideration of the facts and circumstances as averred in the affidavit in support of the application for remand made on the 27th November 2024, the court was satisfied, that the Applicant/Accused was likely to reoffend if released on bail.

CONCLUSION

- [24] In the final analysis, having given due consideration to the facts and circumstances that led to the Applicant/Accused indictment for the alleged offences, as well as the law on bail expounded above, coupled with the fact that the Applicant has neither pleaded (see *HL vs Republic (CR 41 of 2023) [2025] SCSC 43 (17th March 2025)*), nor shown that there has been a change of circumstances since the order for remand in police custody was made, I find, that the balance tilts in favour of continued detention of the Applicant/accused in police custody. This application therefore fails and is accordingly dismissed. As a consequence, the Applicant/Accused shall continue to be remanded in police custody.

Signed, dated and delivered at Ile du Port 20th June May 2025.

