

# **IN THE SUPREME COURT OF SEYCHELLES**

**Republic**

**Vs**

**Jonathan Volcere**

**Defendant**

**Criminal Case No: 34 of 2005**

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Mr. E. Chetty for the Republic

Ms. K. Domingue for the defendant

## **RULING**

**D.KARUNAKARAN J**

The defendant above-named stands charged before the Court on Counts 1 and 2 respectively, with the offence of “trafficking in a controlled drug” contrary to Section 5 read with Section 14(d) and 26(1) (a) of the Misuse of Drugs Act and punishable under Section 29 and the Second Schedule of the said Act. On count 3 and 4 respectively, with the offence of the “Importation of a controlled drug contrary to Section 3 and read with Section 26(1) (a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994.

The particulars of offence under Count 1, allege that the defendant on the 5<sup>th</sup> of June 2005, at Seychelles International Airport was trafficking without lawful authority in a controlled drug in that, he had in his possession 13 grams and 990 milligrams of diamorphin (heroin), which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The particulars of offence under Count 2, allege that the defendant on the 5<sup>th</sup> of June 2005, at Seychelles International Airport was trafficking without lawful authority in a controlled drug in that, he had in his possession 853 grams and 800 milligrams of cannabis resin, which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

The particulars of offence under Count 3, allege that the defendant on the 5<sup>th</sup> of June 2005, at Seychelles International Airport was found to have imported without lawful authority a controlled drug namely, 13 grams and 990 milligrams of diamorphin (heroin).

The particulars of offence under Count 4, allege that the defendant on the 5<sup>th</sup> of June 2005, at Seychelles International Airport was found to have imported without lawful authority a controlled drug namely, 853 grams and 800 milligrams of cannabis resin.

Having produced the defendant before the court on charges hereinbefore mentioned, the State Counsel Mr. E. Chetty, on behalf of the Republic applied to the Court seeking an order for the remand of the defendant in custody pending trial, in terms of Section 179 of the Criminal Procedure Code read with Article 18 (7) of the Constitution, for reasons set out in an affidavit deposed by a police officer involved in the arrest and investigation of the crime alleged against the defendant. It is evident from paragraph 5 of the affidavit that the Republic seeks remand of the defendant in custody, mainly on three grounds, namely:-

- (i)** the offences of trafficking as well as importation with which the defendant stands charged are serious ones, as these offences carry a minimum sentence of prison term 8 and 10 years respectively, in the case of conviction.

- (ii)** The drugs concerned in this case are both Class “A” and Class “B” drug.
- (iii)** Furthermore, the offences of this nature are on the increase in Seychelles.

Section 179 of the Criminal Procedure Code reads thus:

*“Before or during the hearing of any case, it shall be lawful for the court in its discretion to adjourn the hearing to a certain time ..... And in the mean time the court may suffer the accused person to go at large or may commit him to prison, or may release him upon his entering into a recognisance with or without sureties, at the discretion of the court ...”*

Article 18 (7) of the Constitution reads thus:-

*“A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise –*

- (a)** *where the court is a magistrates’ court, the offence is one of treason or murder;*
- (b)** *the seriousness of the offence;*
- (c)** *there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or commit an offence while on release.*
- (d)** *There is a necessity to keep the suspect in custody for suspect’s protection...*
- (e)** *The suspect is serving a custodial sentence;*
- (f)** *the suspect has been arrested pursuant to a previous breach of the condition ...”*

It was the submission of the State Counsel Mr. Chetty that (i) the offences alleged carry a minimum mandatory prison term of 8 and 10 years respectively, (ii) The Drugs concerned in this case are both Class "A" and Class "B" drugs, and (iii) the offences of this nature are, of late on the increase in the country. These three factors, according to Counsel constitute the seriousness of the offence in terms of Article 18(7) (b) of the Constitution. Therefore, he invited the court to exercise its discretion conferred on this court by Section 179 of the Cr. P. Code supra and remand the defendant in custody pending trial. Further, he contended that mere seriousness of the offence, as a single factor constitutes a valid ground under Article 18(7) of the Constitution to remand an accused person in custody pending trial. In the circumstances, Learned State Counsel urged the court to order remanding the defendant in custody pending trial in this matter. The Court accordingly, ordered remand of the defendant pending trial.

On the other side, Learned Defence Counsel Ms. Domingue since then, having resisted the extension of remand, moved the Court a couple times for an order enlarging the defendant on bail pending trial. In the present bail application, the main contention of Ms. Domingue is that the defendant has been continuously ill whilst in custody. Consequently, the trial, which had been fixed for the 30<sup>th</sup> of September 2005, had to be postponed to a subsequent date i. e to the 1<sup>st</sup> and 7<sup>th</sup> of December 2005. Again the defendant has now fallen sick and will be undergoing an operation on 16<sup>th</sup> of November 2005. The common bathroom facility available in prison is neither hygienic nor conducive to his present health condition. For these reasons, the defence counsel seeks release of the defendant on bail pending trial, even on stringent conditions.

I gave meticulous thought to the submissions of Counsel on both sides. Herein I would like to repeat what the court had to state in its ruling delivered in a similar case CR 23 of 2005 on 6<sup>th</sup> of May 2005.

*“Under Article 18(7) of the Constitution any person produced before a court in respect of any criminal proceeding has a Constitutional right to be released on bail conditionally or unconditionally. Undoubtedly, this is the Rule. However, the Court may refuse bail, and remand him in custody pending trial having regard to the six circumstances or grounds, which are enumerated in paragraphs (a) to (f) thereunder. They are the constitutional exceptions to the said Rule. One among those exceptions is the “seriousness of the offence”*

As I see it, the seriousness of an offence is a question of degree. In determining seriousness, it is in my opinion perfectly clear that the duty of the judge is to take into account all relevant facts and circumstances peculiar to the offence, as they exist at the date of hearing the bail application, that he must do, in what I venture to call a broad commonsense way as a man of the world and come to his conclusion, giving such weight as he thinks right to various factors in the situation that constitute the seriousness of the offence. Some factors may have little or no weight others may be decisive but it is quite wrong for him to exclude from his consideration matters which he ought to take into account.

Obviously, the submission of learned defence counsel on the issue of defendant's health condition is not supported by any medical opinion or report. In any event, should the defendant need to undergo any emergent operation, he can still be admitted in hospital upon consultant-surgeon's advice, while in custody and the surgeon may perform the operation as and when necessary. Of course, every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel,

inhuman or degrading treatment or punishment. However, I observe, when a person is detained in prison by virtue of any lawful order of the Court, his or her general civil rights are impliedly suspended. Such a detainee cannot complain and claim preferential or special treatment or comforts of his choice and lifestyle, in order to have a separate bathroom, bedroom etc. in prison. The Courts cannot and should not entertain such complaints and intervene in matters of prison administration, management and security issues, which all should be left to the good sense of the authority concerned, unless extraordinary circumstances exist in a particular case to warrant such judicial intervention. It is easier for any detainee or prisoner to complain that he or she is not able to enjoy all comforts of life and five-star facilities in the prison, than to remember an important fact of life that prison is not his or her private home. It is a public building used and meant to house convicted criminals and accused persons remanded in custody awaiting trial. Be that as it may. In the instant matter, I do not find any valid reason or extraordinary circumstances warranting the Court to intervene. Therefore, I conclude that the instant bail application is devoid of merits and liable to be dismissed.

Having said that , I find in the case on hand that (i) the offences alleged carry a minimum mandatory prison terms of 8 and 10 years respectively, (ii) The drugs involved in this case fall under both, Class “A” and Class “B” drugs and (iii) the offences of this nature are, of late, on the increase in the country. These three factors in combination obviously, constitute the seriousness of the offence in terms of Article 18(7) (b) of the Constitution. Hence, in exercise of the discretion conferred on this court by Section 179 of the Cr. P. Code, I hereby reaffirm the necessity of remanding the defendant in custody pending trial. I decline to grant bail as no valid or convincing reason has been shown by the defence necessitating the court to do otherwise.

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**D. Karunakaran**

**Judge**

**Dated this 11<sup>th</sup> day of November 2005**