

**Republic v Agathine
(2005) SLR 8**

David ESPARON for the Republic
Anthony JULIETTE for the Defendants

Ruling delivered on 17 June 2005 by:

KARUNAKARAN J: The Defendant above-named stands charged before the Court on Count 1, with the offence of "importation of a controlled drug" contrary to Section 3 read with Section 26(1) (a) of the Misuse of Drugs Act and punishable under Section 29 and the Second Schedule to the said Act.

Particulars of offence are as follows:

The particulars of offence under Count 1 allege that the Defendant on 4 June 2005 imported into Seychelles a Controlled Drug namely, 3 grams and 499 milligrams of cannabis resin without lawful authority.

On count 2, the Defendant stands charged with the offence of Possession of a Controlled Drug contrary to section 6(a) of the Misuse of Drugs Act read with 26(1)(a) and punishable under second schedule to the said Act.

The particulars of offence under count 2 reads that the Defendant, on 30 May 2005, at the Seychelles International Airport, Pointe Larue, Mahe had in his possession a controlled drug namely, 3 grams and 499 milligrams of cannabis resin without lawful authority.

Having produced the Defendant before the Court on the charges hereinbefore mentioned, the state counsel Mr D. Esparon, on behalf of the Republic applied to the Court for an order remanding 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 filed by a police officer involved in the search, arrest and investigation of the crime alleged against the Defendant. It evident from paragraph 5 and 6 of the affidavit that the Republic seeks remand mainly on two grounds, namely:

- (i) the "offence of importation" with which the Defendant has been charged is a serious one, carrying a minimum sentence of 3 years imprisonment in the case of conviction: and
- (ii) Furthermore, the offence is one which is on the increase in Seychelles.

Be that as it may. 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 recognizance 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) [t]here 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 is the submission of the state counsel Mr D Esparon that (i) the offence alleged carries a minimum mandatory sentence of 3 years imprisonment in law and (ii) the offences of this nature are prevalent and of late, on the increase in the country. These two factors, according to the State counsel constitute the seriousness of the offence, in terms of Article 18(7) (b) of the Constitution quoted supra. Therefore, he invited the Court to exercise the discretion conferred on this Court by Section 179 of the Criminal Procedure Code 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 support of his contention, Mr Esparon cited the Ruling delivered by the Court in the recent case of *Republic v Jean-Claude Matombe and another* Criminal Side 23 of 2005, and read out a number of excerpts there from relevant to the point. For these reasons, learned State Counsel urged the Court to order remand of the Defendant in custody pending trial in this matter.

On the other side, learned defence counsel Mr A Juliette vehemently resisted the

application for remand sought by the prosecution and moved the Court for an order admitting the Defendant on bail pending trial, even on stringent conditions. The main contention of Mr Juliette is that the quantity of the controlled drug allegedly found in Defendant's possession was only 3 grams and 499 milligrams, a very trivial quantity, which according to him, cannot constitute the seriousness of the offence. Thus, he submitted in effect, that the offence alleged is not of such a serious nature so as to warrant the remand of the Defendant in custody pending trial. Mr Juliette further argued that when people charged with the offence of stealing large sum of money from the Government of Seychelles are enlarged on bail pending trial, there is no justification in refusing bail to an accused person for being in possession of a few grams of cannabis resin. Hence, counsel submitted that the degree of seriousness is less in the instant case, although the text books define "importation of drugs" as a serious one. Therefore, counsel submitted that the instant case does not fall under the exception of seriousness defined in article 18(7) of the Constitution. For these reasons, Mr Juliette urged the Court to admit his client on bail pending trial, even on stringent bail conditions

I gave meticulous thought to the submissions of learned counsel on both sides.

First of all, the comparison, made by the learned defence counsel, between persons accused of drug offences and those accused of stealing money, is logically a bad comparison, if I may say so. With due respect to the learned defence counsel, "a table" cannot be compared to "a cow" just because each stands on "four legs" that are equal in number and similar in terminology. Likewise, the "drug offences" can no way be compared to "economic offences" just because each category stands on the same terminology of "offences" in their respective appellation. Indeed, the former relates to a crime against humanity; if this cancerous crime spreads unchecked, it will completely destroy every fibre of the social structure and human values on which our civilization has thriven. However, the latter is an economic crime against the State resulting mere monetary loss to others, which can be compensated by suitable sanctions. Hence, the argument of counsel comparing these two different categories of offences, does not appeal to me in the least.

Having said that I would like to repeat what the Court had to state in its ruling delivered in a similar case CR 23 of 2005 on 6th 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) there under. They are the constitutional exceptions to the said Rule. One among those exceptions is the "seriousness of the offence".

As rightly submitted by the learned defence counsel "seriousness of an offence" is a question of degree. Indeed, as this Court held in *Matombe* supra, 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.

To my mind, the quantity of the drug allegedly involved in a case is no doubt, one among those various factors in the situation and constitutes and contributes to the degree of seriousness of the offence. The greater the quantity involved, the higher the degree of seriousness of the offence. Needless to say, the Court therefore ought to take that factor into account in determining the seriousness of the offence. At the same time, it is important to bear in mind that it is not the only factor, which primarily and solely constitutes the seriousness or otherwise of an offence under the Misuse of Drugs Act. The Court therefore, cannot exclude it; ought to consider this factor but along with other factors in combination, in the matrix of the relevant facts and circumstances that are peculiar to the offence alleged in the case on hand. Therefore, I find that the smaller or even trivial quantity of the drug involved in a case cannot as a single factor, reduce the degree of seriousness of the offence to zero or negate its effect to nothingness so as to treat the case of malignancy as a benign one.

Having taken all relevant facts, circumstances and factors into account in this particular case, I find that (i) the offence alleged herein carries a minimum mandatory sentence of 3 years imprisonment in law and (ii) the offences of this nature are prevalent and alarmingly on the increase in the country causing public concern. These two factors in combination, in my view, constitute the seriousness of the offence in this case, 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 remand the Defendant in prison custody pending trial. I decline to grant bail as no convincing reason has been shown by the defence necessitating the Court to do otherwise.

Record: Criminal Side No 38 of 2005