

IN THE SUPREME COURT OF SEYCHELLES

**THE REPUBLIC
VS.
RICKY CHANG-TY-SING**

Criminal Side No. 53 of 2007

Mr. Esparon for the Republic

Mr. Hoareau for the Accused

RULING

Gaswaga, J

The accused person stands charged in this court as follows:

Count 1

Statement of offence

Trafficking in a Controlled Drug Contrary to Section 5 of the Misuse of Drugs Act
Read with the Second Schedule of the same Act.

Particulars of offence

Ricky Chang-Ty- Sing, on the 12th day of September, 2007 at Mont-Buxton, Mahe, was trafficking in a controlled drug by virtue of having been found in the possession of 66.8 grams of Cannabis Resin which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

Count 2

Statement of offence

Trafficking in a Controlled Drug Contrary to Section 5 of the Misuse of Drugs Act
Read with Section 26(1) of the same Punishable under Section 29(1) of the said
Misuse of Drugs Act Read with the Second Schedule of the same Act.

Particulars of offence

Ricky Chang-Ty- Sing, on the 12th day of September, 2007 at Mont-Buxton, Mahe, was trafficking in a controlled drug by virtue of having been found in the possession of 19.4 grams of Heroin (Diamorphin) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

Count 3

Statement of offence

Possession of a Controlled Drug Contrary to Section 6(a) of The Misuse of Drugs Act Read with Section 26(1) (a) of the Same and Punishable under Section 29(1) of the Misuse of Drugs Act Read with the Second Schedule of the said Act.

Particulars of the offence

Ricky Chang-Ty- Sing, on the 12th day of September, 2007 at Mont-Buxton, Mahe, had in his possession 0.2 grams of Heroine (Diarmorphin).

On the 28th September 2007 Mr. Hoareau objected to the accused being remanded in prison and instead moved the Court to release him on bail since according to him there were no grounds to justify a further detention. He also argued that the “*seriousness of the offence*” as laid down in Art 18 (7) (b) of the constitution *per se*, unless considered together with one or more of the other exception(s) under that provision, was not a ground to base a remand or detention of an accused. However, it is a cardinal principle of constitutional interpretation that when interpreting an article or clause thereof, all articles bearing upon that subject matter under discussion have to be brought into purview and read or construed together as one whole so as to bring out the greatest effect of the document. In this regard Article 18 (7) shall be read together with Article 47 that deals with the scope of limitations, restrictions and exceptions.

Bail applications are not a one-man-affair, affecting only the rights of the individual accused whose liberty is in jeopardy or at stake. The interest of the accused, which is crucial, is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. No doubt, any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the victim of the offence (where applicable) and the community as a whole has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the accused or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit or get involved in further offences. In all this, the Judge must judiciously and generally deal with the tensions that may exist between the rights of the individual, viewed in isolation, and the wider interests of the relevant community as a whole.

Today, offences under the 'Misuse of Drugs Act' are considered to be of a serious nature not only in our jurisdiction but also elsewhere in the world. These offences are normally committed by groups of people and one is engaged either directly or indirectly or remotely. They are hard to eradicate as they involve a lot of people, coordination and detailed planning before execution. The grave effects of drugs on the society, extending to even unborn children carried by victim pregnant women, should not just be swept under the carpet. I believe it is in the same vein that the National Assembly, in its wisdom, decided to prescribe long imprisonment periods with set minimum mandatory sentences for drugs related offences to reflect the seriousness of these offences.

While the seriousness of the offence and the possible penalty that could be meted out upon conviction are some of the considerations in deciding whether or not to grant bail, an applicant must be at all times presumed innocent. The concept of bail owes its existence on the presumption of innocence and the fundamental

principles of justice declare that the accused is as innocent on the day before his trial as he is on the morning after his acquittal. **See. DPP vs. Woolmington (1935)AC. 462** and Article 19 (2) (a). The Court has to be satisfied that the applicant will appear for trial and would not abscond. The applicant should not be deprived of his/her freedom unreasonably and bail should not be refused merely as a punishment as this would conflict with the said presumption of innocence. The Court must consider and give the applicant the full benefit of his/her constitutional rights and freedoms by exercising its discretion judicially.

I find it imperative to reiterate the guidelines I outlined on this subject in the case of **R Vs Gimmell Cr. Side No. 11 of 2007**

“Where there is a substantial likelihood of the applicant failing to surrender or turn up for trial, bail may only be granted for less serious offences. The Court must weigh the gravity of the offence and all the other factors of the case against the likelihood of the applicant absconding. Where facts come to light and it appears that there is substantial likelihood of the applicant offending while on bail, it would be inadvisable to grant bail to such a person.

Similarly where there is substantial likelihood of interference with witnesses, this is normally relevant when the alleged offence is comparatively serious and there is some other indication of violence or threatening behavior by the accused, this would be a very strong ground for refusing bail. Bail could also be refused according to the status of the offence and the stage in the proceedings. The extent to which evidence pointing to proof of guilt or innocence of the applicant would seem to be one of degree in the circumstances of a particular case. There is no rule that such evidence cannot be placed before the Court. An investigating officer giving evidence of

arrest often to connect the applicant sufficiently with the offence, as such as to claim that he or she may fail to surrender for trial.

Bail should not be refused mechanically simply because the state wants such orders. The refusal to grant bail should not be based on mere allegations. The grounds must be substantiated. Remanding a person in custody is a judicial act and as such the Court should summon its judicial mind to bear on the matter before depriving the applicant of their liberty. What I have outlined above is by no means exhaustive. The Court should consider all other relevant circumstances.”

In the present case the accused faces three counts two of which are in respect of class ‘A’ drugs and therefore carrying a minimum mandatory sentence of 10 years each in case of a conviction while the other is a class ‘B’ drug and carries a minimum mandatory sentence of 8 years. It is worth noting that the Courts are registering many more such cases lately with every new arrest being made public. Police warnings on posters as well as on television and radio about the import, trafficking, use and effects of drugs are being aired in our country every day and nobody would feign ignorance about the escalation of the vice and the fact that all law enforcement agencies are out to curb it. Despite all these warnings some very courageous and daring individuals have continued to involve themselves in one way or another in this lucrative but illegal business well knowing the consequences.

But the Courts, while balancing the rights of an accused should always be very cautious and never lose sight of the possibility of an innocent person who may, for a variety of reasons be caught up in the criminal justice system. In this regard, the affidavit filed in support of the application for further remand by Lance Corporal Janet Thelermont of the Seychelles police force is apposite. Janet Thelermont

deposed that on the 12th day of September, 2007, the police conducted a foot patrol at Mont-Buxton, Mahe during which they came across Mr. Ricky Chang Ty-Sing, the accused herein, who was at the time carrying a red plastic bag. That when a search was conducted on his person and the red plastic bag the police recovered 66.8 grams of cannabis resin, 19.4 grams of heroin and another 0.2 grams of heroin. He was arrested and charged accordingly.

The above discourse points to the seriousness of the offences herein and there being no change in circumstances since the accused's initial detention to warrant his release, I believe the justice of the case dictates and warrants that pre-trial incarceration is the proper course of action to take at the moment. Such detention however is not a punishment but a transitory period before the trial proper especially given the evidence and high imprisonment terms involved which lead me into believing that if enlarged on bail there is a high likelihood of the accused not returning for his trial. **See R Vs. Gerard Kate Criminal Side No. 50 of 2004 and R vs. Cliff Emmanuel & Anor Criminal Side No. 85 of 2003.**

The case is adjourned and the accused person remanded in prison under Section 179 of the Criminal Procedure Code, Cap 54 for fourteen days.

The court so orders.

D. GASWAGA
JUDGE

Dated this 26th day of October, 2007.