

IN THE SUPREME COURT OF SEYCHELLES

**THE REPUBLIC
VS.**

HYDNEY PASSENGI (Accused)

Criminal Side No. 1 of 2007

Mr. Camille for the Republic

Mr. Bonte for the Accused

RULING

Gaswaga, J

The accused herein is charged with the offence of trafficking in a controlled drug contrary to Section 14(d) and 26(1) (a) of the Misuse of Drugs Act 1990 as amended by Act 14 of 1994 and punishable under Section 29 and the Second Schedule referred thereto in the Misuse of Drugs Act 1990 as amended by Act 14 of 1994. The particulars are that, Hydney Bernard Passendji of Cote D'or Praslin, on the 28th day of December 2006, at the Seychelles International Airport, Pointe Larue, Mahe, was found in possession of a controlled drug namely 194.28 grams of Diamorphine (heroin) which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

This case has now come up for hearing and Mr. Camille submits that he is not ready to prosecute it now nor on the 4th of June 2007, the second date allocated for trial because his witnesses, especially, the government analyst, are out of the jurisdiction. He therefore, applied for an adjournment and new trial dates of 26th and 28th of March 2008 were fixed. Additionally, Mr. Camille moved for an order to have the accused kept on remand until then but also to be produced before the court after every 14 days. Mr. Bonte resisted the application and stated that it would be a contravention of the accused's right to be tried within a reasonable time. He emphasized that he was ready and prepared for today's hearing and as such the accused's right to liberty should not be taken away when it is the prosecution which has failed to do its job.

Indeed, on that note I agree with Mr. Bonte that the accused who was arrested and first remanded in prison on the 5th of January 2007, would have to spend more time in prison before being tried in March 2008. It is true that he is charged with an offence carrying a severe punishment as submitted by the state counsel. Article 19(2) states that an accused before a court is innocent until proved of pleads guilty. See the case of **Rep vs. Patrick Gemmell & Ors CR. 11 of 07.** All these factors must be viewed in light of accused person's rights.

The court is satisfied that there is a clear change of circumstances that would warrant the accused to be released on bail. **See R. vs. C. Emmanuel & Or CR 85 of 2003 and R. vs. S. David & Or CR 574 of 2004.** I feel the applicant could adequately be confined by the imposition of stringent conditions.

Accordingly, the accused is hereby admitted to bail shall be and released on the following conditions;

1. The accused should enter a bail bond in the sum of Rs. 20, 000/- with two sureties to be approved by the Court.
2. The accused should not leave the jurisdiction of Seychelles without an order of this Court.
3. The accused should not interfere with the witnesses or the course of justice in this case in any way or get involved in any criminal activity.
4. The accused should surrender his passport or any travel document issued to him to the Registrar of the Supreme Court before the release order is signed.

The accused should report to the nearest police station being the Baie Ste Anne Praslin Police Station every Monday and Friday before midday.

5. If any of these conditions are breached this order for bail will be revoked and the accused will be remanded in custody.

The Registrar is to convey this order to the Director of Immigration and the Commissioner of Police.

JUDGE

D. GASWAGA

Dated this 1st day of June, 2007.