

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VERSUS**

**1. BARNESLEY LEBON**

**2. PAUL JAPHET**

Criminal

Side No 22 of 2008

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Mr K. Labonte for the Republic

Mr. Gabriel together with Mr Georges for the 1<sup>st</sup> Accused

Mrs Antao for the 2<sup>nd</sup> Accused

**RULING**

**Gaswaga J**

Mr Barnesley Lebon (Applicant) is charged with the offence of trafficking in a controlled drug contrary to Section 5 of the Misuse of Drugs Act read with Section 14(d) and 26(1) (a) of the same amended Act of 1994 and punishable under the second Schedule of the said Misuse of Drugs Act read with Section 29 of the same. The charge alleges that on the 10/3/2008, being a front seat passenger in a motor vehicle bearing registration number S.2279 at Petit Paris the applicant was found in possession of a controlled drug namely 78 grams of cannabis (herbal material) which gives rise to the rebuttable presumption of having possessed the same for the purpose of trafficking. On the same charge sheet Mr. Paul Japhet faces a charge of 'possession of a controlled drug' after he was found traveling in the same car with 21.7 grams of cannabis (herbal material) on him. He occupied the rear seat. He remains at large as no application for his remand in custody was filed. Mr Georges, Counsel for the applicant conceded that 'seriousness of the offence' is one of the

factors to be considered when entertaining a bail application. However, he submitted that this should be reconsidered. He also wondered why in this case of all the three occupants of the said vehicle only two were presented before the Court and charged and later on the second one released and the applicant detained. That this kind of affairs causes a feeling of grievance. The decision to prefer charges entirely rests in the province of the Attorney General ..... The Court will therefore confine itself to what has been placed before it with out inquiring into what is outside its mandate. Generally where several persons are charged jointly with the same offence under one count, it would be presumed that they be treated alike. See. R. v. Suke Samwe and Others (1947) 14 EACA 134. Although three people were arrested in the same car and two charged on the same charge sheet, it is clear from the said charge sheet that each one of them faces a different offence under a separate count. The offences are indeed of distinct gravity. In such circumstances the Court goes further and investigates into the extenuating factors, as far as they are known, in respect of each accused in relation to the case, the law and prevailing circumstances. It is therefore not surprising that going by these factors the Court finds that the circumstances of the applicant and his co-accused are dissimilar and cannot warrant their uniform treatment.

Mr. Georges also urged the Court to only grant a remand application where the offence is exceptionally serious, or evidence against the accused is overwhelming or the accused is potentially dangerous to the public or the victim. At this point the Court is not in full possession of all the evidence of the case. However, in the supporting affidavit to the motion, it is alleged by the Investigating Officer, Corporal Maryse Souffe that when the Police stopped and searches at Petit Paris the vehicle in which the accused were traveling, 78 grams of cannabis (herbal material) was

recovered the on the floor in between the legs of the applicant. A further search revealed a discovery of 21.7 grams of cannabis (herbal material) in the possession of Mr Paul Japhet. Hence, one need not say more with regard to the subsequent offences preferred against each one of the accused and their treatment. Although the cannabis (herbal material) is a class C drug and the lowest in the ranking prescribed by our law, the amount found on the applicant is well above the set threshold (25 grams) and therefore attracts a rebuttable presumption of trafficking in that drug. Indeed the legislature (our National Assembly) in its wisdom, well knowing that cannabis was not as dangerous as say heroin went a head to classify it in the category where if the material impounded exceeds 25 grams would attract the 'rebuttable presumption of trafficking' and to prescribe a minimum mandatory sentence of 8 years imprisonment. Unless the law is changed this remains the position.

I do agree that "prevalence of an offence" is a matter to be considered while sentencing. In the same vein I wish to state that I have not come across any law preventing a Court from considering that factor during bail proceedings. I would be very surprised to see a Court turning a blind eye to or disregarding the prevailing situation of a crime it is entertaining simply because it has not yet reached the point of sentencing. It shall then be stressed that a Court sitting to properly administer justice should always endeavour as much as possible to bring all the factors touching the matter at hand, whether preliminary or miscellaneous, in purview before reaching its decision. How will a Court know the seriousness or the state of a given matter without taking into account its levels. For example it may not be wise to enlarge an accused on bail where there is a public out cry of a given crime or its effects. Moreover, societies usually legislate depending on their problems and

needs. The public then looks up to the Judiciary and other law enforcement agencies for protection and fulfillment of their aspirations. In deciding a bail application the Court has to strike a balance between the rights of the individual, viewed in isolation, and the wider interest of the community as a whole.

This application cannot be handled in isolation of the circumstances of the Community in which the offence was allegedly committed. I take note of the increasing number of cases of narcotics being registered in this Court despite the many Police warnings on radio, television and posters. I take further note of the manner in which such offences are committed thus they involve a number of people and detailed prior planning. They do not occur spontaneously. There is no ignorance but full knowledge of the consequences before one getting involved. Unfortunately, the effects of this very lucrative but illicit business of drugs have slowly but steadily dealt a very heavy blow on the individual, family and entire Society.

A consideration of the above discourse would lead me into concluding that the charge herein is exceptionally serious. It also points to the seriousness of the offence the accused faces and if released on bail there is a high likelihood of him absconding.

He is accordingly remanded in custody for 14 days until 17/4/2008 of April, 2008 at 9.00 a.m. under Section 179 of Criminal Procedure Code, Cap 54.

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D.GASWAGA

**JUDGE**

Dated this 3<sup>rd</sup> day of April 2008