IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

VERONICA MOUSTACHE & ANOR

Criminal Side No. 46 of 2009

Mr. Esparon for the Republic

RULING

Gaswaga, J

This is an application for release on bail by the second accused, Micheal Uranie. The first accused was enlarged on bail on medical grounds. The two are jointly charged with the offences of aiding and abetting the importation of a controlled drug c/s 3 as read with sections 27(a) and 26(1) of the Misuse of Drugs Act and punishable under sections 27 and 29 of the Misuse of Drugs Act and the Second Schedule referred therein to wit 433.2 grams of heroin and on the second count, conspiracy to commit the offence of importation of the same drug as read with sections 28(a) and 26(1) of the Misuse of Drugs Act and punishable under sections 28 and 29 of the Misuse of Drugs Act and the Second Schedule referred to therein.

I have considered the application for bail urged on behalf of the second accused as well as the reply and or objection thereto by the prosecution. First it should be noted that bail is a constitutional right which every person produced before a court of law,

like the accused, should enjoy unless their circumstances fall in the exceptions to Article 18 (7) of the constitution. And further, that the accused is innocent until proved guilty. See **DPP Vs Woolmington (1935) AC 465** and Article 19(2).Moreover, 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.

Bearing this in mind any court of law entertaining such application should not refuse it unless with very good reason. Like I stated in **R vs. P. Gemmell Cr Side No. 11 of 2007** where there is substantial likelihood of the applicant failing to turn up for trial, bail may be granted for only less serious offences, similarly where there is substantial likelihood of interference with witnesses. 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 guilty 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 a 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.

In the present case there is no doubt that the accused face serious charges carrying long term imprisonment in case of a conviction. Moreover, I take judicial notice of the increasing number of similar or related cases and there effects on our society. There is also this unchallenged evidence by Seargent Seeward in his affidavit of 12th October, 2009 especially paragraphs 3 and 5 clearly pointing to the participation of the applicant in the offence charged. This court is convinced that high chances of the applicant interfering with the witnesses, as deponed by the said police officer, do exist given the proximity of the business of the main witness herein which is just opposite the house of the applicant. Further, given the seriousness of the charges and the likely consequences in case of a conviction it highly probable that the applicant may simply

not answer his bail and therefore avoid trial and such burden. See HARNAM and BEEHARRY.

Besides, the trial herein will be commencing in two weeks time. I strongly believe that the justice of the case dictates that the proper course to take now is pre-trial incarceration. However, such detention should not be seen as a punishment but a transitory period before the trial proper.

Accordingly, the application for bail is dismissed and accused further remanded under section 179 of CPC till 17TH February, 2010 when he should appear before the trial judge for the hearing to start.

The Registrar is directed to forward this file to the trial Judge.

D. GASWAGA

JUDGE

Dated this 3rd day of February, 2010.