

REPUBLIC v MOUSTACHE

(2011) SLR 126

V Benjamin for the Republic

J Camille for the accused

Ruling delivered on 13 May 2011 by

GASWAGA J: The accused stands charged with the offence of trafficking in a controlled drug contrary to section 5 of the Misuse of Drugs Act as read with section 14(d) and 26(1)(a) of the same as amended by Act 14 of 1994 and punishable under the Second Schedule of the said Misuse of Drugs Act read with section 29 of the same.

The particulars of the offence allege that Garry Moustache of Plaisance, on 6 May 2011 at Gaza Estate, was trafficking in a controlled drug by virtue of having been found in possession of 31.0 grams of cannabis (herbal materials) which gives rise to the rebuttable presumption of having the said controlled drug for the purpose of trafficking.

This Court has considered the submissions by both counsel as well as the application and the supporting affidavit. First, I note that under article 18(7) bail is a constitutional right which every person produced before a court of law should enjoy unless his circumstances fall under the exceptions outlined therein (a) - (f).

It has been deponed that following reliable information, the accused, who was at the time driving a car, was trailed by NDEA officers, stopped, searched and arrested upon being found with 31.0 grams of cannabis (herbal material). The defence has vehemently objected to the prosecution's application to have him remanded in custody on the grounds so adduced given that they are not substantiated.

As I had stated in the case of *Rep v P Gemmel* Cr No 11 of 2007 (which defence counsel has cited), the grounds on which the applicants rely must be substantiated and not merely alleged. Further that there was no reason to stop a court from hearing some evidence, either orally or by affidavit, at this early stage of the trial, say from an arresting officer, if it would assist the court in reaching a just decision on whether to release or remand the accused in custody.

It has been deponed in the accompanying affidavit by Sergeant Johnny Malvina that they had credible information that the accused was carrying illicit drugs in the car he was driving. When the accused was stopped and searched, the alleged drugs were recovered from the car. Defence counsel has submitted that the affidavit discloses no connection between the accused and the envelope which contained the drugs. While in the box, Sergeant Malvina deponed that the accused was the driver and only occupant of that car. Defence counsel did not cross-examine Sergeant Malvina on that matter. Neither did he do so on the aspect of the accused attempting to resist arrest.

According to section 18 of the Misuse of Drugs Act, where a controlled drug is found in a vehicle it shall be presumed to be in the possession of the owner of the vehicle and or of the person in charge of the vehicle for the time being.

This Court is aware that any person incarcerated in a prison facility will suffer some hardships which will in turn be extended to his or her family. Indeed this is regrettable but the law must be applied to all who fall within such category the same way. The argument that the amount of drug weighed only 6 milligrams above the threshold is untenable because such limits were set by the legislature and either one is on this side or the other side. It is immaterial whether the threshold is exceeded by 1 milligram or 100 milligrams.

Whereas each case should be determined on its own merits, the authorities cited by counsel are crucial in giving guidance to the Court for purposes of consistency. Having scanned through the list of those cases, I noted that the accused had been enlarged on bail on various grounds and conditions, and their cases were of dissimilar circumstances and magnitude. They ranged from long stay on remand, grave illness and unpreparedness on the side of the prosecution to considerable changes in the circumstances of each case. I have not seen any case that is on all fours with the one at hand and would therefore warrant an immediate release on bail.

The act of the accused resisting lawful arrest is an indication of a high likelihood of him absconding and failing to turn up in court or dishonoring court orders. I also take judicial notice, even without statistics, that drug related offences are rampant in this country and have caused grave effects on the public, that is why the punishments prescribed for them are relatively harsh.

Bearing in mind the case of *Roy Beeharry v Republic* SCA 11 of 2009 and considering the above factors together, I have no doubt in my mind that the accused stands charged with a serious offence which would require that he be removed from the public and kept on remand in the detention facility of Montagne Posee for 14 days pursuant to section 179 of the Criminal Procedure Code.

The application is granted and I so order.