

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 35/2014

[2014] SCSC

THE REPUBLIC

versus

TERRENCE ALPHONSE
Accused

Heard: 1 August 2014
Counsel: Mr Robert, Attorney General for the Republic
Mr Camille for the accused

Delivered: 8 August 2014

RULING

Akiiki-Kiiza J

[1] The charge sheet in this case reads as follows:-

Statement of offence

[2] Trafficking in a controlled drug namely Diamorphine (heroin), contrary to section 5 read with section 14 (c) and 15 (3) with section 26 (1) (a) of the misuse of Drugs Act, Cap 133 and punishable under section 29 (1) and the second schedule referred to in the said Act.

Particulars of the offence

- [3] Terrence Davis Aphonse of Anse Boileau, Mahe and Charles Ogilvy Ventigadoo of Belonie, Mahe on the 20th day of July 2014 at Belonie, Mahe were found to be jointly in possession of 6.75 grams of heroin (diamorphine) with the knowledge and consent of one another in circumstances which give rise to the presumption that they were trafficking in the said controlled drug.
- [4] Consequently, the prosecution, through State Counsel George Robert moved this Court by way of a Notice of motion taken out under the provisions of section 179 of the Criminal Procedure Code read together with Articles 18 (7) of the Constitution to remand both respondents in custody pending their trial. The application is supported by the affidavit of one Lester Solin, an Agent with National Drug Enforcement Agency (NDEA) which he made and deponed on the 28th of July 2014.
- [5] Mr Lester Solin, raised the following grounds justifying the remand of the accused persons, namely;
- (i) The offence committed by both accused persons herein is of a serious nature, trafficking in a controlled drug namely heroin being a class “A” drug; having a net weight of 6.76 grams which carries a minimum mandatory sentence of 20 years imprisonment and maximum sentence of 60 years imprisonment and a fine of SR 500,000 upon conviction. That on the evidence adduced above a *prime facie* case for trafficking in a controlled drug, being class “A” Drug contrary to section 5 read with section 14 (c) and 15 (3) of the Drugs misuse Act has been established.
 - (ii) That there are substantial grounds to believe that if the accused persons are released on bail and not remanded, facing a minimum mandatory sentence of 20 years imprisonment if convicted, they are likely to abscond; thus obstructing the course of justice. This is based on the magnitude of 20 years minimum mandatory sentence.

(iii) The Drug offences are on the rise in the country endangering the peace, public order and morality especially the young generation.

[6] When the matter came up for the hearing Mr Camille, the learned counsel for the accused persons opposed the application to keep his clients on remand basically on the following grounds:-

(1) That the facts deponed by Mr Solin, in his affidavit are still in dispute and not yet proved in this Court.

(2) That his clients have a right to liberty under Article 18 of the Constitution and can only be restrained under Article 18 (7) read with section 179 of Criminal Procedure Code. That the main ground is based on the seriousness of the offence which is not enough to deny his clients to be enlarged (released on bail).

[7] Mr Camille also submitted to the effect that apart from the averment of Mr Solin, the cases involving drugs are on the increase in Seychelles, though he has not provided the Court with any statistics to substantiate this allegation. In conclusion Mr Camille urged the Court to release both accused on bail on the terms the Courts deems appropriate.

[8] It must be noted from the outset that in Seychelles an accused person is presumed innocent till proved guilty in a Court of law. This is in accordance with Article 19 (2) (a) of the Constitution of the country.

[9] Secondly an accused person is entitled to be granted bail by a competent Court save in certain circumstances set out in Article 18 (7) of the Seychelles Constitution. These are the following:-

Article 18 (7)

(a) Where the Court is a Magistrate's Court, the offence is one of treason or murder.

(b) The seriousness of the offence.

- (c) *There are substantial grounds for believing that the suspect will fail to appear for trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release.*
- (d) *There is necessity to keep the suspect in custody for the suspect protection or where the suspect is a minor, for the minor's own welfare.*
- (e) *The suspect is serving a custodial sentence.*
- (f) *The suspect has been arrested pursuant to a previous breach of the condition of release for the same offence.*

[10] In the instant case, the prosecution is relying on grounds 18 (7) (b) and (c). This is in accordance with paragraph 11 of Mr Lester Solin's affidavit deposed in support of the application to remand both accused persons.

[11] The Seychelles Court of Appeal has had occasion to pronounce itself on the circumstances of granting or refusing bail in the case of **Steven Hoareau vs the Republic Criminal Seychelles Court of Appeal No. 28/2010.** Their Lordship stated as follows:-

“the seriousness of the offence is a determination the Court would have to make taking into consideration the maximum penalty the legislature had decided to impose, for the commission, the likelihood of the maximum sentence being imposed, whether the sentence is mandatory or not, the manner the offence has been committed, the impact the commission of such offences has on society and economy, the age of the offender and whether the offender has a propensity for commission of the offence similar to the one before the Court. It is the consideration of all these factors that makes an offence serious or not... The seriousness of the offence constitutes one factor but need not be the sole factor for determination of bail.”

[12] In the case of **Roy Beehary vs The Republic S.C.A Seychelles Criminal Appeal 11/09** the same Court had the following to say in this regard.

“ The overriding rationale in favour of such interpretation may be found in the fact that were that not the case, the State by mere change in the law and by merely creating an offence as a serious offence, would end up by precluding the Court from adjudicating on the bail application of any person ...and (thereby) the jurisdiction of the Court to determine matters on bail in those cases would be ousted. The result would be that the Court would become a rubberstamp of the legislature...”

- [13] In the instant case, the accused persons have been charged with Trafficking in a controlled drug (heroin) contrary to section 5, 14 (c), 15 (3) and section 26 (1) (a) of the Misuse of the of Drugs Act, and punishable under section 29 (1) and the Second Schedule of the said Act.
- [14] The particulars allege that, both accused persons on the 20th July 2014 were found to be jointly in possession of 6.75 grams of heroin (diamorphine) in circumstances which give rise to the presumption that they were trafficking in the said drugs.
- [15] Applying the guidelines laid down by the Court of Appeal in **Steve Hoareau** case cited above regarding the seriousness of the case, the maximum penalty upon conviction is currently at 60 years and a fine of SR 500, 000 and a mandatory minimum sentence of 20 years imprisonment. The accused were found in possession of 6.75 grams of heroin (diamorphine).
- [16] As to the impact of this offence on society, it is common knowledge that the use of drugs can have a dire consequences on our society as well as on the economy. Apart from drugs use encouraging crime and lawlessness in the society, it also affects the moral fibre of the youth who are the leaders and nation builders of tomorrow. This no doubt would adversely affect the well being of society and the economy of the country.
- [17] In the case of **Republic vs Hoareau**, Seychelles Court of Appeal Criminal Side No. 28/10 their Lordships had the following to say:-

“Where the case involves trafficking in a controlled drugs referred to in section 14 (a) (b) and (c) which are all Class ‘A’ drugs, a Court cannot ignore deleterious effect that drugs like opium, morphine and diamorphine has on society. The misuse of Drug’s Act has drawn a distinction in the imposition of punishment for Class ‘A’ and class ‘B’

drugs by prescribing a higher mandatory jail term for trafficking in class ‘A’ drugs. Therefore the judgment of the Court in Beehary case has to this effect be subject to this qualification”.

[18] Their Lordships in the **Republic vs Hoareau** already referred to above also had the following to say:-

“ We are however of the view that drugs cases, like sexual abuse of young children, are certainly different to normal rung of criminal cases that come before our Courts because of their impact on society and the manner the legislature had decided to deal with such cases by the imposition of mandatory jail terms”.

[19] Putting everything into consideration given the averment of Mr Solin, in his unchallenged affidavit, and the law applicable, I find that the case facing both accused persons is serious within the meaning of Article 18 (7) (b) of the Constitution of Seychelles.

[20] Mr Solin in addition to the seriousness of the offence facing the accused persons, he deponed in paragraph 11(ii) that given the stiffness of the mandatory minimum and maximum sentence facing the accused person, the temptations to abscond from justice were real. This belief is reflected in Article 18 (7) (c) of the constitution and has to be based upon the evidence placed before me. Given the existence of the 20 years minimum mandatory sentence, also given the quantity of heroin of 6.75 grams (the required amount under section 14 (c) of the Act, is 2 grams.) The chances of imposing a minimum mandatory sentence in case of the accused being convicted are real.

[21] All in all I find that the prosecution has made out a case for the accused person to remain on remand as the case is being heard. The application succeeds in this respect. The matter could however be reviewed if and when circumstances change.

[22] Order accordingly.

Signed, dated and delivered at Ile du Port on 8 August 2014

D Akiiki-Kiiza
Judge of the Supreme Court