

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 20/2015

[2015] SCSC 106

THE REPUBLIC

Versus

CLAUDE FADDY FANCHETTE

Accused

Heard: 19 March 2015
Counsel: Mr. Asba, State Counsel for the Republic
Mr. Julie for the accused
Delivered: 2 April 2015

RULING

Akiiki-Kiiza J

- [1] The accused person is charged with 3 counts relating to the in infringement of the misuse of *Drugs Act cap 133*.
- [2] The first count is possession of a Controlled Drug *Contra Section 6 (a) read with Section 26 (1) (a) of the misuse of Drugs Act*, and punishable under *Section 29 (1) and the 2nd schedule of the same Act*.

- [3] Particulars whereof are that the accused on the 28th February 2015 at Pascal Village, Mahe was found in possession of a Controlled Drug namely 0.99 grams of Cannabis herbal material.
- [4] The second count offends similar legal provisions as in the first count, and in similar circumstances, but this time around he had 0.96 grams of Cannabis Herbal material.
- [5] In the third and last count, the accused is charged with trafficking in a Controlled Drug, *Contra Section 5 read with Section 14 (1) (e) (i) under section 26 (1) (a) of the misuse of Drugs Act Cap 133 and punishable under Section 29 (1) under second schedule of the same Act*. Particulars where of are that the accused on the same day and place he was found in possession of a Controlled Drug, namely 264.9 grams of Cannabis herbal material which gives rise to the rebuttable presumption of having possessed the said Controlled Drugs for the purposes of trafficking.
- [6] The case came to court for the first time on the 13th of March 2015. Mr Asba represented the Republic whereas Mr. Julie appeared for the Accused. This was on the 19th of March 2015. On that day he applied for bail on behalf of his client.
- [7] Mr. Julie basically opposed the reason advanced in the affidavit deponed in support of the Notice of Motion, filed by the prosecution seeking the remand of the accused until the case is heard and disposed of.
- [8] At the hearing Mr. Asba, relied on the affidavit of Agent Lester Solin of the NDEA, wherein he described the circumstances leading to the finding of the drugs in possession of the accused person and his subsequent arrest.
- [9] This background is narrated in *paragraph 1-10* of the affidavit sworn in support of the Notice of Motion seeking the remand of the accused. The grounds for his remand are to be found in *paragraph 11* there of and state as follows:-

“11. that the respondent, Claude Faddy Fanchette be remanded in custody on the following grounds:-

- i. *The offence with which the accused... has been charged herein is of serious nature. The offence of trafficking in a Controlled Drug, of which the accused person stands charged, where the quantity is more than 250 grams, carries a minimum sentence of life imprisonment in event of conviction.*
- ii. *That there are substantial grounds to be believed that the accused if released on bail, and not remanded is likely to commit similar offences since he was arrested the previous day, the 27th of February 2015 with more than four cling films of herbal materials suspected of being controlled. **Case CB 131/15 NDEA** was registered against him.*
- iii. *The drug offences are on the rise in the country endangering the peace, public order and morality in the society especially the younger generation. The learned counsel for the appellant literally argued that the above grounds have not been proved and prayed the court to release his client on bail.*

[9] I have carefully considered all the submission of both learned counsel and read *Section 179 CPC and Article 18 (7) of the Constitution* along with case law.

[10] It is now settled that the court in each case has to determine whether an accused deserves to be enlarged on bail or not, in accordance with that particular case. However, there is also need to be consistent with earlier decisions on similar cases, so that the law becomes certain and predictable. The general trend of the judges of the Supreme Court in Seychelles is that, no bail is granted to accused person charged with Drug related offences, especially where the sentences, in case of a conviction, are stiff. Generally what is cited in the seriousness of the offences, and the likely hood of accused not answering bail, and the likely effect of such drugs on the population, especially on the youth. The Court of Appeal in the case of **BARREAU VS REPUBLIC SCA 7/2011** discussed the phrase “seriousness of the offence” within the meaning of *Article 18 (7) of the Constitution as follows:-*

*“.....as we have already stated in the case of **STEVE HOAREAU VS REPUBLIC SCA 28/10** that seriousness of the offence is a determination the court would have to make taking into consideration the maximum penalty the Legislature has decided to impose for its commission, the likelihood of the maximum sentence being imposed, whether the sentence is mandatory or not, the manner of the offence had been committed, the impact the commission of such offence has society and the economy, the age of the offender , and whether the offender has a propensity for commission of similar offence to the one before the court. It is a consideration of all these factors that makes an offence serious or not....”*

[11] Now applying the above guidance to our facts, the maximum penalty under the relevant law regarding the charges against the accused is life imprisonment. Given the fact that drugs related cases are a menace to the well being of the public, a stiff sentence is likely if the accused is convicted. Given no alternative to life imprisonment, the sentence is *prima facie* mandatory in nature; the impact of dealing in prohibited drugs definitely has a negative effect on society and especially on the youth who are the future leaders and nation builders of Seychelles.

[12] The accused is alleged to have been found with drugs materials a day before his arrest, vid case **CB131/15 NDEA**, and on the following day he was found with what he is charged with here. This shows propensity on his part to commit similar crimes. All these tend to out weigh his pleas of being released on bail.

[13] Putting everything into consideration, the application to keep the accused on remand succeeds and will remain on remand till there is a change in prevailing circumstances change substantially. He will appear fortnightly till further orders of this court. He is also advised of the right to appeal to the Court of Appeal for redress.

Order accordingly

Signed, dated and delivered at Ile du Port on 2 April 2015

D Akiiki-Kiiza

Judge of the Supreme Court