

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 2/2015

[20115] SCSC 78

THE REPUBLIC

versus

MARCUS MERVIN ROUCOU
Accused

Heard: 27 February 2015

Counsel: Mr Hemant Kumar , Attorney General for the Republic
Mr Gabriel for the accused

Delivered: 13 March 2015

RULING

Akiiki-Kiiza J

[1] The accused is charged with the offence of Trafficking in a Controlled Drug contrary to section 5 with read with section 14 (1) (e) and section 26 (1) (a) of the Misuse of Drugs act chapter 133 and punishable under section 29 (1) of the same Act and its second schedule.

Particulars whereof are that, Marcus Mervin Roucou of Rochon, Mahe on the 12th day of January 2015, at Rochon, Mahe was found in possession of Controlled Drugs namely

32.2 grams of cannabis herbal material which gives raise to the rebuttable presumption of having possessed the said Controlled Drug for the purpose of Trafficking. When the matter was presented to the Court for the first time the prosecution filed a motion supported by an affidavit seeking the remand of the accused person. Thereafter the accused was remanded for about 4 times then on the 27th of February 2015 he applied for bail through his learned counsel Mr Nicol Gabriel. His learned counsel submitted to the effect that the quantity of drugs involved was small and that there is a need to strike a balance between the freedom of an accused and keeping the accused on remand. That the application for bail is independent of the main charge as that had been pointed out by the Court of Appeal in **KENNETH ESPARON VS THE REPUBLIC SCA Cr. Appeal No. 1/2/14**. That also the drug is class “B” and not class “A”. That the Court should look beyond section Article 18 (7) of the Constitution and consider such things as whether he is a habitual offender or nor, whether he is a danger to the public, whether he has a fixed place of abode of his own, means of travel whether he would disturb the public while on bail, whether the maximum sentence is likely to be imposed or not, that also his personal character and his morals, his home and his family.

[2] Fundamentally I agree with Mr Gabriel as to what the Court should consider.

[3] On this part the prosecution, relied on the notice of motion filed at the exception of the case. It is taken out under Article 18(7) of the Constitution. It is also supported by an affidavit of Agent Terrence Dixie. In that affidavit he gives the background of the case and relies on paragraph 4 thereof to pray for remand of the accused person. It is in the following terms:-

[4] “4: Hence it is humbly prayed that the above said accused herein (is) to be remanded in custody on the following grounds:-

(i) ***The offence committed by the accused is of serious nature, committing the offence of Trafficking in a Controlled Drug where the quantity is more than 25 grams, which comes a minimum sentence of 16 years for a first offence and maximum of 50 years and a fine of SR 500,000 if convicted.***

(ii) That there are substantial grounds to believe that if the accused is released on bail and not remanded he is likely to abscond thus obstructing the course of justice because the accused herein is facing a serious charge.

(iii) That drug offences are on the increase in the country endangering peace, public order and morality in the society especially the youth generation”.

[5] I have carefully considered all the submissions from both sides. The Court has to determine the merits of the application at hand. In the instant case the minimum sentence for conviction under section 5 read with section 26 (1) (a) and the second schedule for class “B” drugs where cannabis falls, comes a minimum sentence of 16 years for first offenders and a maximum of 50 years and a fine of SR 500,000/-.

[6] In my view these sentences are stiff which means that the Legislature intended that upon conviction the accused should spend a considerable time on remand. Given the fact that there are drug related offences there is a likelihood that the Court would impose a substantial term of imprisonment on the accused in case there is a b conviction.

[7] There is no doubt that drugs have a negative effect on the population of the nation especially among the youth which can translate into decreased productivity on their part which in turn could translate into reduction of economic benefits of this nation.

[8] After considering everything, the application by the prosecution to keep the accused on remand succeeds. He will be appearing every 2 weeks in the Court until further orders. If circumstances change, for example there are unreasonable delays in prosecuting him due to no fault of his own, the matter could be reviewed. Otherwise, he has a right to appeal to the Court of Appeal for redress.

[9] Order accordingly.

Signed, dated and delivered at Ile du Port on 13 March 2015

D Akiiki-Kiiza
Judge of the Supreme Court