

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 19/2015

[2015] SCSC 79

THE REPUBLIC

Versus

CHRISTOPHER BENOITON
ELVIS FIGARO
Accused

Heard: 3 March 2015
Counsel: Mrs Lansinglu, Assistant Principal State Counsel for the Republic
Mrs. Amesbury for the first accused
Mr. Gabriel for the second accused
Delivered: 17 March 2015

RULING

Akiiki-Kiiza J

[1] The 2 accused persons have been charged with a one count of trafficking in a Controlled Drug *C/S 5 of the Misuse of Drugs Act*, as read with *Section 14 (d) and 26 (1) (a)* of the same Act and read with *Section 23 of the Penal Code Act* and punishable under the amended second schedule (*Act 4/2012*) of the *Misuse of the Drugs Act* read with *section 29* of the same Act.

- [2] It is alleged that both accused persons on the 18th February 2015 at Anse Faure, Mahe with common intention were trafficking in a Controlled Drug by virtue of having been found in possession of 614 .9 grams of Cannabis Herbal materials, which gives raises to a rebuttable presumption of having possessed the said Controlled Drug for the purpose of trafficking.
- [3] When the case came up for the first time, Mrs. Lansinglu, the learned counsel for the Republic, moved the court by virtue by Notice of Motion which was taken out under provisions of *Section 179 of Criminal Procedure Code* and *Article 18 (7)* of the Seychelles Constitution, where by the prosecution sought the remand of the accused persons. The Notice of motion was supported by one agent Lina William; of the NDEA's affidavit sworn and deponed on the 2nd March 2015. In that affidavit, the agent narrates the background, which led to the arrest of the accused persons and being charged with this offence. This is in paragraphs 2-7.
- [4] The prosecution gives its reasons, for seeking the remand of the accused person in *paragraph 8*, which states as follows:-

“8: That it is prayed that the said respondents namely Christopher Jack Benoiton of Pointe Larue, Mahe and Elvis Michel Figaro resident of Chetty Flats, Anse Aux Pins, Mahe be remanded in custody on the following grounds:-

- a) **The offence charged is of serious nature. Trafficking in a Controlled Drug of more than 250 grams carries a mandatory sentence of life imprisonment.**
- b) **The respondents herein were found in possession of Cannabis herbal natural with a net weight of 617.9 grams. Which is way above the prescribed statutory limit warranting life imprisonment and gives raise to a rebuttable presumption of having possessed the said Controlled Drug for the purpose of trafficking.**

- c) **The occurrence of drug offences are on the rise and have serious impact on the society at large endangering the peace, public order and morality especially of the younger generation.**
- d) **That there are reasonable grounds to believe that the said respondent will fail to appear for the trial and /or do other activities thus obstructing the course of justice, if released on bail considering the seriousness of the offence and severity of the punishment for such an offence.**

[5] At the hearing, Mrs. Amesbury appeared for the first respondent and Mr. Gabriel appeared for the second respondent. Mrs. Amesbury submitted largely to the effect that whatever the prosecution had alleged were mere allegations yet to be proved at the trial. Secondly, that the drug involved is a class “B” drug. Thirdly that what we are dealing with here was a mere presumption of trafficking. She prayed for the release of the accused person on bail.

[6] As for Mr. Gabriel for the second respondent, he joined issues with Mrs. Amesbury and adopted her submissions. However added that the accused was a handicap person at birth, that he was asthmatic and was on treatment and needs adequate oxygen hence not to be confined in areas of inadequate oxygen. Secondly he submitted that given the physical condition of the second accused, it is unlikely that he will interfere with police investigation or running away from justice. He prayed for his release on bail.

[7] I have carefully considered the submission of all the counsel from both sides. I have also carefully perused the papers filed in court by the prosecution and I have also perused the relevant law applicable, both statutory and case law. It is clear that from a study of most cases involving prohibited/ Controlled Drugs; the courts in Seychelles are more inclined to deny the granting of bail. This appears to be the norm and the granting bail is the exception. The major reasons advanced by the judges include the seriousness of drug offences, the likelihood of the accused absconding from justice due to the heavy and mandatory sentences to be imposed in case of a conviction, the interference with prosecution witnesses, the effect of the drugs on the moral fibre of society especially the young general and likely to affect on the economy.

[8] The prosecution in this case has relied more or less on the same reasons raised in the Notice of motion seeking the remand of both accused persons. This is set out in *paragraph 8* of the affidavit of Agent Lina William sworn in support of the Notice of motion. The contents of *paragraph 8* have been reproduced herein above.

[9] The Court of Appeal has guided the courts as to what amounts to seriousness of the offence, as provided *Article 18 (7) of the Constitution*. This was in the case of **FRANCIS BARREAU VS THE REPUBLIC SCA 7/2011** in the following grounds:-

“...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 legislative has decided to impose for its commission, the likelihood of the maximum sentence being imposed whether the sentence a mandatory or not, the manner the offence has been committed, the impact the commission of such offence has on society and the economy, the age of the offender and whether the offender has propensity for commission of similar offences to the one before the court. It is a consideration of all these factors that makes an offence serious or not...”

[10] Now applying the above guidance by the Court of Appeal to our facts, the maximum sentence upon conviction is life imprisonment. It now no longer matters whether it is class “A” or a “B” of the drug if the quantity is more than 250 grams. This is in accordance with the *Act 4/12* which amended the *Misuse Drugs Act*. As life imprisonment is the only sentence provided. This means the Legislature intended it to be mandatory irrespective of the class of the drugs. In this case the amount of drugs involved is 614 grams, more than twice the minimum amount of 250gram. Given the amount involved, a heavy sentence is likely to be imposed upon conviction, the manner of its commission, involves the first accused being a law enforcement person, who is expected to be law abiding.

[11] The case has just come to court hence it cannot be said that there has been unreasonable delay in its disposal. The cases involving drugs are unfortunately on the increase, which no doubt could have a negative impact on the young generation of this country. Which in

turn would have a devastating effect on the economy as drugs tend to destroy the health and moral of society.

[12] Basing on the above analysis and *paragraph 8* of the affidavit of Agent Lina William, I am satisfied that the prosecution has made out a *prima facie* case warranting the accused to stay on remand. This is different as far as accused A1 is concerned. However, given the physical appearance of the second accused and his physical handicap, in addition to his health concerns as explained by his doctor as per medical form from Glacis medical facility dated the 20/02/18 and put on the file by the Accused 2's counsel, that A2 is an asthmatic person, who is on treatment and that he should be placed where there is adequate oxygen. The court, purely on medical grounds, finds it is in interest of justice and his life, that he should be released on bail. In the premises, and for the reasons given above:-

- i.** The second accused person is to be released on cash bail of SR 25,000 (twenty five thousand rupees only) with 2 sufficient sureties in SR50, 000 cash each.
- ii.** He has to surrender any travel documents to the Registrar, and he has to undertake never to leave the jurisdiction of this court generally and not to go beyond Mahe Island in particular, with out the leave of this court.
- iii.** He should not interfere or attempt to interfere directly or indirectly with any prosecution witnesses or investigations in this case.
- iv.** He must not commit any other offence while on bail or obstruct the course of justice in any way.
- v.** He should desist from any dealings in prohibited drugs or people involved with drugs related matters.
- vi.** He should report to Anse Aux Pins police station, Mondays, Wednesdays and Fridays between 5-6pm.

- vii. He shall appear in court as and when required to do so
- viii. In the event of any breach of the above bail conditions the accused bail would be cancelled and he would be remanded in custody until the hearing and disposal of the case.

[13] Failure to furnish the cash bail and or failure for him to produce sufficient sureties as approved by the Registrar, the second Accused will be remanded until he does so. The first Accused will be appearing every two weeks for further remand until this court orders otherwise. Of course he is advised of his right to appeal to the Court of Appeal if aggrieved by this ruling.

Order accordingly.

Signed, dated and delivered at Ile du Port on

D Akiiki-Kiiza
Judge of the Supreme Court