

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CO33/2017**

**[2017] SCSC**

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**THE REPUBLIC**

versus

**FRANCIS BARREAU**

Accused

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Heard: 20 July 2017  
Counsel: Mr Ananth , Attorney General for the Republic  
Mr Anthony Juliette for the accused  
Delivered: 20 July 2017

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**RULING**

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R. Govinden, J

The accused stand charge before this Court on 2 Counts namely:-

- [1] **Count 1** trafficking in a controlled drugs by virtue of being found in unlawful possession of a controlled drug namely heroin (Diamorphine) with intent to traffic, contrary to Section 9(1) read with Section 19(1)(c) of the Misuse of Drugs Act, 2016 and punishable under Section 7(1) of the Second Schedule of the said Act. Particulars of offence is that Francis Allen Barreau of Cote D’or, Praslin on the 17<sup>th</sup> of July 2017 at his residence at

Cote D'or was trafficking in a controlled drug, by virtue of having been found in unlawful possession of a substance having a total weight of 12.54 grams which contained a controlled drug namely heroin with a purity of 51%. Giving rise to the rebuttable presumption of having possessed the said controlled drug with the intent to traffic.

- [2] **Count 2** Possession of a controlled drug namely cannabis herbal material, contrary to Section 8(1) and punishable under Section 8(1) of the Second Schedule of the Misuse of Drugs Act 2016. Particulars of the offence that Francis Allen Barreau of Cote D'or Praslin, on the 7<sup>th</sup> of July 2017 at his residence at Cote D'or, Praslin was found in possession of a controlled drug, namely cannabis herbal material having a total weight of 1.91 grams of cannabis herbal material.
- [3] The Prosecution is moving the Court on a motion under Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution to remand the Accused person pending the full determination of the case. The motion is supported by the Affidavit of Mr Hussein Ja'far an Agent of the National Drug Enforcement Agency. The Affidavit relates to the facts and circumstances in which the Accused was allegedly found in possession of the controlled drug to which he stands charge in this case.
- [4] The Prosecution claims that the offences he is charged with are serious in view that the offence is serious giving the maximum penalty of life imprisonment and a maximum fine of Rs750,000/-. Further it is averred that the offences together are serious due to the fact that the Accused has a previous conviction and that this is an aggravating factor under Section 48(1)(h) of the Misuse of Drugs Act 2016.
- [5] It is being further contended by the Prosecution that the offence is also serious given the commercial elements involved in the offence. The Prosecution further avers that the controlled drug seized is of high quality and therefore that amounts to serious offence also. It is also averred that the offences of this kind is endangering the peace, public order and morality of the younger generation.

**[6]** Lastly, the Prosecution avers that given the seriousness of this offence there is a possibility of the accused absconding and therefore obstructing the due course of justice and that there is a high likelihood of the Accused committing similar offences if he is released on bail.

**[7]** Having carefully considered the submission of Counsel for the Prosecution and having scrutinized the Affidavit in support of the Application and looking at the objection of the Accused, the Court determines as follows:-

**[8]** It is law that once a person is charged with an offence the release of the Accused on bail, either conditionally or unconditionally, is the rule and his remand in Police custody is the exception. It is up to the Prosecution to show that there is the applicability of the exceptions, through evidence and that the accused has to be remanded in Police custody. The Prosecution will succeed only if it satisfy this Court that the requirement of Article 18(7) of the Constitution is met by adducing evidence through Affidavits or verbal testimony.

**[9]** In this case the Prosecution is relying on 3 grounds under Article 18(7) is to remand the Accused in custody pending the determination of the case namely:-

1. The seriousness of the offence.
2. There are substantial grounds for believing that the suspect will fail to appear for trial.
3. That there are substantial grounds to believe that the Accused will commit an offence whilst release on bail.

**[10]** As to the seriousness of the offence this Court see that the offence is serious. However, in terms of the seriousness as compared to other possible offences under the Misuse of Drugs Act, it is not the most serious offence both in terms of the facts and the law. It may be that an offence is so serious so abhorrent and so grave, that the Court given the

public revulsion it may decide to remand an Accused based solely on the seriousness of the case. This is not one of those cases

- [11] Secondly, as to whether there are substantial ground for believing that the Accused will fail to appear for trial Article 18(7) dictates there should be substantial ground which established that the accused will possible abscond.
- [12] On the face of the Affidavit as sworn by officer Ja'far this Court is of the view that no such substantial ground is shown in support of the possibility of the Accused absconding. Beside the averment as to the serious nature of the offence, the Prosecution has not adduced any other grounds in support of that case that the accused will fail to appear and therefore this ground also is untenable.
- [13] The Prosecution also submit that there is a possibility of the Accused committing similar offences whilst on bail. They ground their argument on the fact that the accused was released from custody of 10 years imprisonment for the offence of possession of a controlled drug in August 2016 that the release was a premature release, though legal. It was premature as it was effected by a tribunal set up under Section 51 under new Misuse of Drugs Act.
- [14] It is argued that this prove that the Accused will possible commit another offence whilst he is on bail. This seems to be a more stronger ground for Prosecution. The Accused had been shown clemency and despite that he committed a more serious offence than the one that he was released for committing by the Tribunal.
- [15] However, does this show substantial ground for believing that the Accused will commit a similar offence if released? It is to be noted that the Accused did not allegedly commit an offence whilst he was on bail after he had committed another offence. He was released unconditionally by the Special Tribunal under Section 51 of the new Misuse of Drugs

Act. He was therefore not in breach of a condition of his released whilst he was arrested in this case.

**[16]** Accordingly, the Court cannot see a tendency or propensity on the part of the Accused to commit repetitious offences of similar nature whilst he is on bail. This may have proved to be substantial ground to believe that he will again commit similar offences whilst he was released. At any rate committing an offence whilst he is on bail which will entail the Accused to be remanded can be cured by the Court imposing necessary conditions in this case to make sure that this doesn't happened.

**[17]** Therefore, the Court will release the Accused on very strong conditions which are as follows:-

1. That he reports to the Baie Ste Anne Police Station every week on Monday at 5.00 p.m and this will be noted in the Occurrence Book of that station.
2. That he will surrender his passport or any travel document that he may have in his possession to the Registry of this Court.
3. That to deposit a sum in the sum of Rs25,000/- with the Registry of this Court that will be forfeited in the event that you failed to attend any proceedings in this case.
4. That he does not commit any offence whilst you are release on bail.
5. That he does not interfere with any witnesses for the Prosecution.
6. Any breach of those conditions will entail your possible remand in Police custody or NDEA until the whole determination of this case.

**[18]** That the Immigration Department does not issue to you any passport or travelling documents until further orders of this Court.

**[19]** The case is fixed for **mention on the 1<sup>st</sup> of September 2017 at 1.45 p.m.** The accused is released on bail on the conditions that the Court has imposed and to appear before this Court on 1.45 on the 1<sup>st</sup> of September 2017

Signed, dated and delivered at Ile du Port on

R Govinden , J  
**Judge of the Supreme Court**