

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO25/2016**

**[2018] SCSC**

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**THE REPUBLIC**

versus

**EMAM BAKSH TARANI**

**HATTAM MOTHASHIMINA**

Accused

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Heard: 23 January 2018

Counsel: Mr. David Esparon, Principal State Counsel for the Republic  
Mr. Clifford Andre Attorney at Law for the accused

Delivered: 26 January 2018

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**SENTENCE**

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**Burhan J**

[1] The 1<sup>st</sup> convict, Emam Bakhsh Tarani, the Captain of the vessel Payam Al Mansur and the 2<sup>nd</sup> convict Hattam Mothashimina son of the owner of the vessel, have been found guilty of the following offences under the earlier Misuse of Drugs Act CAP 133 that was in force on the 16<sup>th</sup> of April 2016.

Count 1- Importation of a quantity of 97,795.1 grams (heroin content 65,211.4grams) of a Class A drug heroin.

Count 2 -Trafficking in a quantity of 97,795.1 grams (heroin content 65,211.4grams) of a Class A drug heroin.

Count 3- Importation of a controlled drug namely 784.6 grams of Opium a Class A drug.

Count 4 -Trafficking in a controlled drug namely 784.6 grams of Opium a class A drug.

[2] I have considered the plea in mitigation made by learned counsel for both the convicts. He stated that the 1<sup>st</sup> convict was 35 years of age had a seven year old son and a wife who was not employed and relying on the income he earned as a Captain of the vessel. He stated that the 1<sup>st</sup> convict had co-operated fully with the authorities at the time of arrest. He stated that the 2<sup>nd</sup> convict had 24 siblings in total. He further stated that he too had co-operated with the authorities at the time of arrest. Learned Counsel further stated that the consignment was not destined for the Seychelles but for Tanzania.

[3] In the case of *Cousin v R SCA 21 of 2013* and in the case of *Kelson Alcindor v R [2015] SCCA 7*, it was held that the Appellant should benefit from the change of law in his favour, along the principle of “*la peine la plus douce.*” – See *Aubeeluck Gangasing v The State of Mauritius [2010] UKPC 13*. The Appellants’ sentence in both cases were reduced to be in conformity with the amended law which was beneficial to the Appellants. Further Section 51 (2) of the new Act states outstanding sentences under the earlier Act must be reviewed in accordance with the new MODA.

[4] Based on the aforementioned case law, it is the duty of this court in passing sentence to ensure the benefits applicable to the convict brought about by the change of law are considered. The only benefit that both convicts are entitled to under the new law, is that the punishment for importation and trafficking in over 250 grams of controlled drug is not a mandatory life term of imprisonment but a person is liable to a maximum term of life imprisonment.

[5] In such instances, it is settled law that life imprisonment is to be considered only as the maximum and courts are free to impose a sentence lower than the maximum when circumstances demand.

[6] I see no exceptional circumstances that could be considered in mitigation for both the convicts.

[7] On the contrary many aggravating factors exist. The quantity of controlled drug is well over the prescribed amount of 250 grams set out in the Second Schedule. Both convicts have been found guilty and convicted of Importation of a large quantity of a Class A drug heroin approximately 97 kilograms. The quantity itself clearly indicates the presence of a commercial element. It is clear to this court that the quantity of controlled drug taken into custody, clearly indicates that both convicts were involved on a very large scale in the trafficking of the controlled drug and therefore suitable deterrent punishment should be given considering the adverse, dangerous and devastating effects this drug has on society, especially the younger generation in any country. The fact that both the controlled drugs are Class A drugs in large quantities well over 250 grams further aggravates the circumstances in this case.

[8] In **R v Jean Francois Adrienne & Anr CO 20/2015**, this Court sentenced both convicts to life imprisonment for the offence of trafficking in a quantity of 47,435.0 grams of Cannabis, a Class B drug. The said sentence was unanimously upheld by the Seychelles Court of Appeal. I note that in this instant case the quantity of controlled drug is very much more than the Adrienne case 97,945.1grams (pure quantity 65,211.4 grams) and in respect of heroin a Class A drug and Opium.

[9] I am therefore satisfied that considering the nature and quantity of controlled drug imported and trafficked, this is a fit and proper case to impose a term of life imprisonment on each of the convicts which would be a just and appropriate punishment even having considered the plea in mitigation of learned counsel for the convicts.

[10] I therefore proceed to sentence each convict as follows:

The 1<sup>st</sup> convict Emam Bakhsh Tarani on

Count 1- sentenced to Life imprisonment

Count 2- sentenced to Life Imprisonment

Count 3- sentenced to 20 (twenty) years imprisonment

Count 4- sentenced to 20 (twenty) years imprisonment

The terms of imprisonment in all four Counts to run concurrently

[11] I proceed to sentence the 2<sup>nd</sup> convict Hattam Mothashimina as follows:

Count 1- sentenced to Life imprisonment

Count 2- sentenced to Life Imprisonment

Count 3- sentenced to 20 years imprisonment

Count 4- sentenced to 20 years imprisonment

The terms of imprisonment in all four counts to run concurrently

Signed, dated and delivered at Ile du Port on 26 January 2018

M Burhan  
**Judge of the Supreme Court**