

**SUPREME COURT OF SEYCHELLES**

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**Reportable**  
[2021] SCSC 343  
CR60 /2021

In the matter between

**THE REPUBLIC**  
(rep. by Mr Esparon)

**Applicant**

and

**Faiz Ali Mubarak**  
(rep by Mr Cesar)

**1<sup>ST</sup> Respondent**

**Mickey Paul Barbier**  
(rep by Mr Andre)

**2<sup>ND</sup> Respondent**

**Francois Richard De Letourdie**  
(rep by Mr Andre)

**3<sup>RD</sup> Respondent**

**Toripin**  
(unrepresented)

**4<sup>TH</sup> Respondent**

**Oman Zul Fahmy**  
(unrepresented)

**5<sup>TH</sup> Respondent**

**Awal**  
(unrepresented)

**6<sup>TH</sup> Respondent**

**Hamja Mohammad**  
(unrepresented)

**7<sup>TH</sup> Respondent**

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**Neutral Citation:** *The Republic v Faiz Mubarak and Ors* (CR60/602021) [2021] SCSC 343  
**Before:** Govinden CJ  
**Summary:** Bail denied ; *prima facie* case for remand established ; offences serious ; substantial grounds to suspect that each may interfere with the evidence and abscond.  
**Heard:** 7<sup>th</sup> June 2021  
**Delivered:** 21st June 2021

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**ORDER**

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The prosecution has proven that there is a *prima facie* case to detain all of the Respondents in custody in pursuant to Section 179 of the Criminal Procedure Code, read with Article 18(7) (b) and (c) of the Constitution.

## GOVINDEN CJ

- [1] The prosecution has on the 7<sup>th</sup> of June 2021 moved this court on a motion for an order that all of the Respondents in this case be remanded in custody in accordance with Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution on the grounds set forth in an affidavit. The supporting affidavit is sworn by the Investigating Officer, Detective Police Constable Davis Simeon.
- [2] The motion is filed following the indictment or charging of the Respondent on the same date. The charges filed against the accused persons are as follows;

### “Count 1

#### Statement of Offence

***Importation of a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the said Section 5 as read with the Second Schedule of the Misuse of Drugs Act 2016.2***

#### Particulars of Offence

*Faiz Ali Mubarak (a Seychellois Citizen being the owner of the Vessel Baba Ali), Micky Paul Barbier (a Seychellois citizen), Francois Richard De L’etourdie (a Seychellois Citizen), Toripin (an Indonesian Citizen being the skipper on board the vessel Baba Ali), Oman Zul Fahmy (an Indonesian Citizen), Awal (an Indonesian Citizen) and Hamja Mohammad (an Indonesian Citizen) on the 22<sup>nd</sup> of May 2021 on the vessel Baba Ali, being a vessel registered in Seychelles (Seychelles Flag State) in the Seychelles territorial waters was found importing into Seychelles a controlled drug namely 8917.60 grams of Cannabis Resin.*

## Count 2

### Statement of Offence

***Importation of a controlled drug contrary to Section 5 of the Misuse of Drugs Act 2016 and punishable under the said Section 5 as read with the Second Schedule of the Misuse of Drugs Act 2016.***

### Particulars of Offence

*Faiz Ali Mubarak (a Seychellois Citizen being the owner of the Vessel Baba Ali), Micky Paul Barbier (a Seychellois citizen), Francois Richard De L'etourdie (a Seychellois Citizen), Toripin (an Indonesian Citizen being the skipper on board the vessel Baba Ali), Oman Zul Fahmy (an Indonesian Citizen), Awal (an Indonesian Citizen) and Hamja Mohammad (an Indonesian Citizen) on the 22<sup>nd</sup> of May 2021 on the vessel Baba Ali, being a vessel registered in Seychelles (Seychelles Flag State) in the Seychelles territorial waters was found importing into Seychelles a substance with a total net weight of 8019.40 grams containing 3839.31 grams of a controlled drug namely Heroin (Diamorphine).*

## Count 3

### Statement of Offence

***Trafficking in a controlled drug contrary to Section 7(1) as read with Section 2 of the Misuse of Drugs Act 2016 and punishable under Section 7 (1) of the Misuse of Drugs Act 2016 as read with the Second Schedule of the said Misuse of Drugs Act 2016.***

### Particulars of Offence

*Faiz Ali Mubarak (a Seychellois Citizen being the owner of the Vessel Baba Ali), Micky Paul Barbier (a Seychellois citizen), Francois Richard De L'etourdie (a Seychellois Citizen), Toripin (an Indonesian Citizen being the skipper on board the vessel Baba Ali), Oman Zul Fahmy (an Indonesian Citizen), Awal (an Indonesian Citizen) and Hamja Mohammad (an Indonesian Citizen) on the 22<sup>nd</sup> of May 2021 on the vessel Baba Ali, being a vessel registered in Seychelles (Seychelles Flag State) in the Seychelles territorial waters was found trafficking in a controlled drug by means of transporting, or offering to do any act preparatory to or for the purposes of selling, transporting, supplying, delivering or distributing a controlled drug namely 8917.60 grams of Cannabis Resin.*

#### Count 4

##### Statement of Offence

**Trafficking in a controlled drug contrary to Section 7(1) as read with Section 2 of the Misuse of Drugs Act 2016 and punishable under Section 7 (1) of the Misuse of Drugs Act 2016 as read with the Second Schedule of the said Misuse of Drugs Act 2016.**

##### Particulars of Offence

*Faiz Ali Mubarak ( a Seychellois Citizen being the owner of the Vessel Baba Ali), Micky Paul Barbier (a Seychellois citizen), Francois Richard De L'etourdie (a Seychellois Citizen), Toripin (an Indonesian Citizen being the skipper on board the vessel Baba Ali), Oman Zul Fahmy (an Indonesian Citizen), Awal (an Indonesian Citizen) and Hamja Mohammad (an Indonesian Citizen) on the 22<sup>nd</sup> of May 2021 on the vessel Baba Ali, being a vessel registered in Seychelles (Seychelles Flag State) in the Seychelles territorial waters was found trafficking in a controlled drug by means of transporting, or offering to do any act preparatory to or for the purposes of selling, transporting, supplying, delivering or distributing a substance with a total net weight of 8019.40 grams containing 3839.31 grams of a controlled drug namely Heroin (Diamorphine)."*

- [3] The supporting affidavit of detective Simeon, to the extent that it is relevant to this application, avers as follows;
- [4] *"The facts herein are that, on Sunday 23rd May 2021 at 0916 hours, a report was lodged at the Priority Unit at the CID by Inspector Joseph BIBI of the National Information Sharing and Coordination Centre (NISCC) stating that one (01) fishing vessel namely BABA ALI SZ 1419 has been intercepted by the Seychelles Coast Guard and upon interception they seized a white gunny bag containing packets suspected to contain therein controlled drugs, wherefore police assistance is required.*
- [5] *According to the report, as a result of a joint international operation, on Tuesday 18th May 2021, the NISCC received credible information from an International partner that there is a dhow suspected to be Iranians heading towards the Seychelles Exclusive Economic Zone*

(EEZ) , coordinate 01 20 500 S, 58 35 500 E. It was also informed that the dhow is suspected to be carrying controlled drugs. As a result, NISCC reacted whereby a joint intercepting operation ensued with the Seychelles Coast Guard, Seychelles Air Force and Seychelles Police Force.

[6] On Thursday 20th May 2021, during the joint operation to locate the Iranian dhow suspected to be carrying controlled drugs, aircraft 010 of the Seychelles Air Force (SAF) spotted a fishing vessel namely BABA ALI SZ1419 routing at a high speed towards the area where the Iranian dhow suspected to be carrying controlled drugs was spotted coordinate 01 20 500 S, 58 35 500 E. The SAF monitored the fishing vessel BABA ALI and gathered that on Thursday 20th May 2021 at 1800 hours in the North East of the borderline of the Seychelles EEZ, BABA ALI fishing vessel switched off its Vessel Monitoring System (VMS). Continual monitoring of BABA ALI's movements by the SAF showed that on Friday 21st May 2021 at around 0602 hours, BABA ALI fishing vessel switched its VMS back on and its track showed that it went out of the Seychelles EEZ and was heading back into Seychelles EEZ.

[7] Consequently, this information was communicated to the Seychelles Coast Guard for assistance. Subsequently, on Saturday 22nd May 2021 at 1632 hours, Seychelles Coast Guard Patrol vessel PS Etoile was deployed towards BABA ALI fishing vessel and intercepted the fishing vessel BABA ALI at 02 07 76 S, 056 12 71 E which is 102 NM North North East with Ile Denis and 150 NM North North East with North point of Mahé. Upon interception, a PS Etoile crew saw the 2<sup>nd</sup> Respondent throwing a white gunny bag overboard BABA ALI fishing vessel into the sea. Second Lieutenant ELIZABETH c/o PS Etoile immediately proceeded to pick up the white gunny bag from the sea that was thrown overboard by the 2<sup>nd</sup> Respondent and consequently, PS Etoile's boarding team immediately boarded BABA

*ALI fishing vessel. Upon inspection of the white gunny bag by Second Lieutenant ELIZABETH, he found seventeen (17) sealed packets in the gunny bag. Second Lieutenant ELIZABETH seized the white gunny bag with the seventeen (17) sealed packets and kept it in his possession. Second Lieutenant ELIZABETH questioned the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents whereby the 1<sup>st</sup> Respondent stated that BABA ALI fishing vessel belongs to him and the skipper onboard BABA ALI is the 4<sup>th</sup> Respondent. Second Lieutenant ELIZABETH informed all the Respondents that they are being suspected of trafficking in a controlled drug and that they will be escorted to the Seychelles Coast Guard.*

*[8] On Sunday 23rd May 2021 at 1721 hours, BABA ALI Fishing vessel along with the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th Respondents were escorted by PS Etoile and berthed at the Seychelles Coast Guard. At 1735 hours, in the presence of the 1<sup>st</sup> Respondent, Second Lieutenant ELIZABETH handed over the white gunny bag containing the seventeen (17) sealed packets of which eight (08) are gold, seven (07) purple and one (01) blue over to Inspector OMBLIME of Scientific Support and Crimes Record Bureau (SS&CRB) for forensic laboratory analysis thereafter the same was photographed by CPL ALLISOP of SS&CRB.*

*[9] After receiving clearance from the Public Health Authority, at 1808 hours, SGT BENOITON and agent VICTOR of the Anti-Narcotic Bureau (ANB) dog unit along with their sniffer narcotic dogs boarded BABA ALI fishing vessel in which the sniffer dogs indicated possible traces of controlled drugs on board BABA ALI fishing vessel. At 1833 hours, law enforcement officers from the Seychelles Fishing Authority (SFA), Criminal Investigation Division (CID) and Inspector OMBLIME, WPC MOREL and CPL ALLISOP from SS&CRB and Inspector ESPARON boarded the BABA ALI fishing vessel.*

- [10] *Inspection onboard BABA ALI fishing vessel was conducted by SFA officers in the presence of CID officer, SS&CRB officers and the 1<sup>st</sup> Respondent, showed that there were no fish onboard BABA ALI fishing vessel. Inspector ESPARON c/o digital forensic examination expert seized various digital devices such as mobile phones, satellite phones and GPS onboard the BABA ALI fishing vessel for digital extraction and examination. SS&CRB officers processed, examined and photographed the BABA ALI fishing vessel. At 1836 hours, Financial Crime Investigation Unit (FCIU) officers, Marine Police officers and ANB Marine officers boarded BABA ALI Fishing vessel to conduct a search.*
- [11] *The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents were interviewed whereby it was found out that the 4<sup>th</sup> Respondent and the 7<sup>th</sup> Respondent are Indonesian who can hardly speak and understand English. All of the Respondents were arrested and upon being arrested, the 4<sup>th</sup> Respondent requested for a pen and a piece of paper which was given to him whereby he wrote a coordinate 01 20 500 S, 58 35 500 E and stated that the 1<sup>st</sup> Respondent directed him to navigate to the aforesaid coordinate to meet up with Iranian dhow. Coordinate 01 20 500 S, 58 35 500 E was given to Inspector BIBI c/o National Information Sharing and Coordination Centre (NISCC) for plotting where Inspector BIBI verified the coordinate 01 20 500 S, 58 35 500 E and confirmed that this coordinate was the coordinate where the Iranian dhow was spotted earlier.*
- [12] *On the same day, the 2<sup>nd</sup> and the 7<sup>th</sup> Respondent were questioned whereby they both stated that during their trip, they stopped at a location whereby an Iranian dhow coloured red berthed at the back of BABA ALI fishing vessel where a rope from the Iranian dhow was thrown onto BABA ALI's fishing vessel and the 1<sup>st</sup> Respondent removed a packet containing foreign exchange in US dollars*

*wrapped in clear cling film from BABA ALI's cabin whereupon the 1<sup>st</sup> Respondent tied the packet with the rope thrown from the Iranian dhow which the crew on the dhow pulled and took the money. Thereafter, the crew on the Iranian dhow tied three (03) gunny bags to a rope whereupon the 2<sup>nd</sup> Respondent and the 3<sup>rd</sup> Respondent pulled the three (03) gunny bags onto BABA ALI's fishing vessel. The 1st Respondent opened one (01) of the gunny bags and 1st Respondent informed them that it contained drugs. Subsequently after a certain time, the Seychelles Coast Guard Patrol Vessel intercepted them whereupon the 1st Respondent instructed the 2nd and the 3rd Respondent to throw the three (03) gunny bags into the sea which they did. However, the Seychelles Coast Guard picked up one (01) of the gunny bags.*

*[13] The exhibits seized were sent to the Forensic Drug Analyst and the Drug Analyst concluded that the exhibits contained controlled drugs namely 8917.60 grams of Hashish (Cannabis Resin) and further contained a substance with a total net weight of 8019.40 grams containing 3839.31 grams of Heroin (Diamorphine).*

*[14] It is humbly prayed that the Respondents, Faiz Ali MUBARAK, Micky Paul BARBIER, Francois Richard DE L'ETOURDIE, Toripin, Oman Zul Fahmy, Awal and Mohammad HAMJA, are remanded in custody pursuant to section 179 of the Seychelles Code of Criminal Procedure as read with Article 18(7) of the Constitution of Seychelles.*

*[15] That the Respondents, Faiz Ali MUBARAK, Micky Paul BARBIER, Francois Richard DE L'ETOURDIE, Toripin, Oman Zul Fahmy, Awal and Mohammad Hamja, be remanded in custody on the following grounds:*

- a. *The offence of Importation in a controlled drug is serious in nature and carries a maximum sentence of life imprisonment and a fine of SCR 1 million if convicted;*
- b. *The offence of Trafficking in a controlled drug is serious in nature and carries a maximum sentence of life imprisonment and a fine of SCR750,000/- if convicted;*
- c. *That the charged offence is on the rise in the country endangering the peace, public order and tranquility of society in nature and the need to protect the interest of the society within the legal, social economic and political environment of society.;*
- d. *The amount of controlled drugs namely Heroin (Diamorphine) has a net weight of 8019.40 grams and the controlled drugs Hashish (Cannabis Resin) 8917.60 grams brought into Seychelles, and the large sum of money obtained through illegal means, shows the presence and degree of a commercial element involving a transnational and organized criminal group involving Sri Lankans, Iranians, Indonesians and Seychellois to which the Respondents belong to;*
- e. *There are substantial grounds to believe that if the Respondents are released to bail, they may not turn up for trial and abscond from the country by sea as the 1st Respondent owns other vessels besides BABA ALI;*
- f. *There are substantial grounds to believe that if the Respondents are released to bail, they may obstruct the course of justice as upon the commission of the offence they were found throwing three gunny bags overboard whereupon only one of the three gunny bags was recovered; and*
- g. *The 1st Respondent is an ex-Seychelles Coast Guard Officer and the 2nd Respondent is an ex-Police Officer and ex-NDEA Agent showing the aggravated circumstances of the offence*

*charged with being persons with knowledge of the procedures in the Police Narcotic operations.*

[16] *That the averments contained in paragraphs 1 to 15 of this Affidavit are true to the best of my knowledge, information and belief.”*

[17] The Learned counsel for 1<sup>st</sup> Respondent has indicated that he is going to file a formal bail application within the next 14 days and that for the time being he is not objecting to the motion for remand.

[18] The 4<sup>th</sup> to 7<sup>th</sup> Respondent, who withdrew their instructions from the Learned counsel for the 1<sup>st</sup> Respondent indicated that they would resist the application through their legal aid counsel, which they had applied for.

[19] On the other hand, Learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> accused strenuously objected to his clients being remanded in custody. The argument of counsel is that his two clients were crew members of the vessel and employees of the 1st Respondent and as such due to their relationship of subordination to the latter they could not refuse to participate into the various acts which may show culpability such as transferring the alleged controlled drugs from an Iranian dhow to the Baba Ali Vessel and to transferring money from the latter to the former. According to counsel, the same can be said to the alleged acts of throwing two gunny bags containing controlled drugs overboard the Baba Ali, upon being spotted by the Coast Guard. According to counsel, as this was done with the strict instructions of the employer and as such their acts cannot be said to have been done with common intent. As a result, counsel argued that there are no grounds adduced which shows that there is a *prima facie* case against his two clients.

[20] I have carefully considered the submissions of Learned counsel regarding the fact that his clients lacked the *mens rea* for the several offences given their position of subordination to the 1<sup>st</sup> Respondent. Having done so, I find that so far the prosecution need to prove on a *prima facie* basis that the offences charged are inter alia serious on a *prima facie* basis and that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents voluntarily participated in the

commission of the offences. It rests however to be proven whether this is the case beyond reasonable doubt. Having scrutinised the supporting affidavit I have come to the conclusion that the facts so far prima facie proves that the 2<sup>nd</sup> and 3<sup>rd</sup> accused voluntarily participated in the commission of the several offences that they stand charged of , accordingly I find no merits in this argument.

- [21] As to all the Respondents, I find that the offence of Importation in a controlled drug is serious in nature and carries a maximum sentence of life imprisonment and a fine of SCR 1 million if convicted. On the other hand, the offence of Trafficking in a controlled drug is serious in nature and carries a maximum sentence of life imprisonment and a fine of SCR 750,000/- if convicted.
- [22] That the charged offences are on the rise in the country endangering the peace, public order and tranquility of society in nature and the need to protect the interest of the society within the legal, social economic and political environment of society. This is tarnishing the image of this country and it is having a serious impact on our socio cultural wellbeing. I give special consideration to the amount of controlled drugs involved, which are very high and consequently further impacts the seriousness of the offences.
- [23] The *modus operandi* of the commission of this offence shows a high level of organization and operational capacity of the accused persons. They were prepared to strategise their operation and rendez-vous with non-national in open sea and there and then transhipped the controlled drugs and effect payment. This shows a strong commercial element, at least on a *prima facie* basis.
- [24] For these reasons, I am of the view that if they are released there are substantial grounds to believe that all of the Respondents would abscond from the due course of justice in an attempt not to face the consequences of their acts or that they would attempt to temper with the evidence of the prosecution and with so doing also in so doing also defeat the due course of justice.

[25] I therefore find that the prosecution has proven that there is a *prima facie* case to detain all of the Respondents in custody in pursuant to Section 179 of the Criminal procedure Code, read with Article 18(7) (b) and (c) of the Constitution.

Signed, dated and delivered at Ile du Port on 21 June 2021

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Govinden CJ