

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
CO 71/2021

In the matter between:

THE REPUBLIC
(rep. by Aaishah Molle)

Republic

and

MICHAEL ANDY FRED
(rep. by Basil Hoareau)

Accused

Before: Burhan J
Heard: 08th July 2021
Delivered: 12th July 2021

ORDER

BURHAN J

[1] The accused Michael Andy Fred stands charged as follows: -

Count 1

Trafficking in a controlled drug by means of having been found in possession with intent to traffic on a controlled drug contrary to section 9 (1) of the Misuse of Drugs Act and punishable under Section 7 (1) as read with the Second Schedule of the Misuse of Drugs Act, 2016

Count 2

Corruptly offering to give benefit to a person employed in the Public Service contrary to and punishable under Section 91 (b) of the Penal Code.

[2] I have considered the submissions of learned Counsel Mr. Basil Hoareau on behalf of the accused in respect of bail and the objections of learned State Counsel Ms. Aaiysha Mole in respect of same.

The main grounds urged by learned Counsel for the accused in his application for bail are:

- a) The prosecution should not have stated at this stage that the indicative sentence is 15 years as this is applicable only at the time of sentencing after the accused has been convicted and court decides whether there are any aggravating circumstances prior to sentencing in accordance with section 48 and 49 of the Misuse of Drugs Act (MODA 2016). At this stage it is not applicable as the accused is presumed innocent until he is proved guilty.
- b) There is no commercial element as alleged by the prosecution.
- c) As to whether there is a rise in the trafficking of this particular drug is a matter to be taken into consideration at the time of sentencing and not now.
- d) That there are no substantial grounds to indicate that the accused will interfere with the witnesses or obstruct the course of justice and
- e) The controlled drug is a Class B drug.

[3] It is the contention of learned Counsel for the prosecution that considering the seriousness of the charge, the possibility of the accused absconding and interfering with the witnesses and as 509 pills of the substance have been taken into custody at the detection, it indicates a commercial element being present.

[4] The fact that the Constitution provides that the accused is innocent until proven guilty does not preclude a court from remanding persons into custody pending trial, provided that there exists circumstances referred to in Article 18 (7) of the Constitution.

[5] I see nothing wrong in the prosecution referring to the sentence that could be imposed for the relevant Counts in order to bring the attention of court to the seriousness of the offence with which the accused is charged. However in this instant case in attempting to

emphasise the indicative sentence, the prosecution has failed to mention a material part i.e the maximum sentence of imprisonment which is 50 years. It is apparently for this reason that learned Counsel takes objection to the fact that unnecessary emphasis has been made on the indicative sentence which is a matter to be decided at the time of sentencing. In my view the prosecution cannot be faulted when they place before court the sentence as prescribed by law but should not leave out any part of it.

[6] I would next consider the nature of the charges with which the accused has been charged. The accused has been charged in respect of not one but two offences. The first, Count 1 being Trafficking in a quantity of 163.30 grams of 3, 4 methylenedioxymethamphetamine (MDMA) a Class B controlled drug. The second offence, Count 2 is: Corruptly offering to give benefit to a person employed in the Public Service an offence punishable under section 91(b) of the Penal Code. The punishment by way of imprisonment embodied in the law for such offences is for Count 1 a maximum of 50 years imprisonment and for Count 2 a maximum of 7 years imprisonment. This in itself speaks of the seriousness of the offences with which the accused has been charged.

[7] It would be pertinent at this stage to consider the seriousness of Count 2. It not only is a serious charge per se but it creates substantial grounds to believe that the accused if released on bail, would attempt to interfere with witnesses and obstruct the course of justice or even abscond in the face of such a serious charge. This is not a case where it is merely averred in the affidavit filed by the prosecution that the accused attempted to run away on being arrested, the prosecution has substantiated the facts in the affidavit by going a step further in filing a charge which fact warrants consideration by court. In respect of the quantity of controlled drug taken into custody at this stage, it would be premature for me to decide on whether it was for commercial purposes or not. However according to the existing law in the MODA the quantity attracts a charge of Trafficking.

[8] Having considered the facts set out in the preceding paragraphs in my view, the existence of Count 2 aggravates the facts and circumstances of this case and gives rise to substantial grounds referred to in paragraph [7] herein to remand the accused into custody which circumstances fall under Article 18 (7) of the Constitution.

[9] For the aforementioned reasons, I proceed to decline the application for bail and am satisfied on consideration of all the above facts that substantial grounds exists for the further remand of the accused into custody. The application for bail is declined. The need to consider stringent conditions therefore does not exist.

Signed, dated and delivered at Ile du Port on 12 July 2021

M Burhan J