

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC 641
CO51/2022

In the matter between:

THE REPUBLIC
(rep. by Mr. Hermanth Kumar)

Prosecution

And

KAHN MOHAMMAD

1st Accused

And

NASIR NOHANI

2nd Accused

And

AMIR BAKSH NOHANI

3rd Accused

And

ABDUL BASHT

4th Accused

And

SALEEM NOHANI

5th Accused

And

QASIM AZADI

6th Accused

And

MOHAMMAD HASSAN

7th Accused

And

GUL MOHAMED

8th Accused

(all rep. by Mr. Clifford Andre)

Neutral Citation: *Republic v Mohammad & ors* (CO51/2022) [2023] SCSC 641

Before: 22nd August 2023
Adeline J
Summary: Sentencing of convicted persons
Heard: 8th August 2023
Delivered: 22nd August 2023

FINAL ORDER

I sentence all the 8 convicts to serve a term of imprisonment of 20 years in respect of Count NO 1, and 20 years in respect of Count NO 2. I also sentence all the 8 convicts 15 years imprisonment in respect of Count NO 3, and 15 years in respect of Count NO 4. All the four sentences shall run concurrently, in that, all the 8 convicts shall serve a term of imprisonment of 20 years.

In accordance with Article 18 (14) of the Constitution, time which the 8 convicts have spent on remand shall be deducted from their 20 years prison sentence.

SENTENCE

Adeline J

INTRODUCTION (The indictment)

[1] By reason of an amended formal charge sheet pertaining to CB No: 302/10/2022, Central Police Station, dated 25th day of July 2023, the following accused persons, now convicts, namely;

(1) *Kahn Mohammad aged, 42 years old, Iranian National, Captain of the Iranian Dhow, namely, Basadi.*

- (2) *Nasir Nohani aged, 20 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi.*
- (3) *Amir Baksh Nohani, aged 27 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi.*
- (4) *Abdul Basht, aged 40 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi.*
- (5) *Saleem Nohani, aged 28 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi.*
- (6) *Qasim Azadi, aged 30 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi.*
- (7) *Mohammad Hassan, aged 30 years old, Iranian Nationality, crew on board of Iranian Dhow, namely, Basadi, and*
- (8) *Gul Mohammad, aged 40 years old, Iranian National, crew on board of Iranian Dhow, namely, Basadi, were all convicted on their guilty plea on the 2nd of August 2023, after they admitted the facts as narrated by the prosecution pertaining to the offences specified herein below;*

1. Conspiracy to commit the offence of Importation of a Controlled Drug, namely, Heroin,(Diamorphine) contrary to Section 16 (a) of the Misuse of Drugs Act, 2016 read with Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act

Count 2

2. Importation of a Controlled Drug, namely, Heroin (Diamorphine) Contrary to Section 5 of the Misuse of Drugs Act, 2016 read with Section 22 (a) of the Penal Code and punishable under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act.

Count 3

3. Conspiracy to commit the offence of Importation of a Controlled Drug, namely, Opium contrary to Section 16 (a) of the Misuse of Drugs Act, 2016 read with Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 of the Misuse Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act.

Count 4

4. Importation of a Controlled Drug namely, Opium contrary to Section 5 of the Misuse of Drugs Act, 2016 read with Section 22 (a) of the Penal Code and punishable under Section 5 of the Misuse of Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act.

PLEA IN MITIGATION

- [2] In plea mitigation, Learned Counsel for the accused, now convicts, urged the Court to take into account the fact that all the accused pleaded guilty to the amended charges at the first available opportunity. This, as submitted by Learned Counsel, is a mitigating factor under the Misuse of Drugs Act, 2016 (MODA) which the Court ought to consider in determining the right sentences in this case. Learned Counsel also submitted, that by pleading guilty, the accused have not wasted the Court's time, and furthermore, that they are all first time offenders.
- [3] As for the possible appropriate sentences that the Court should consider, Learned Counsel cited the case of *Republic vs Francis Ernesta & ors* SCA 27/ 2018 (Appeal from the Supreme Court decisions in CR26 /2016) in which case, the four Appellants were charged under the former Misuse of Drug Acts 1990 with the offences of importation, conspiracy to commit the offence of importation, trafficking in a controlled drug and conspiracy to commit the offence of trafficking in a controlled drug, and had their appeal dismissed, maintaining the sentences varying from 4 - 9 years.

[4] Learned Counsel also cited the case of *The Republic vs Fabio Soopromanian and ors* CR 113/2021 & CR 115/2021 involving Iranian nationals who on their guilty plea to conspiracy to commit the offence of trafficking in person contrary to Section 3 (1) (c) (e) (f) and (g) of the Prohibition of Trafficking in Persons Act 2014 read with Section 38 (1) of the Penal Code and punishable under Section 3(1) of the said Prohibition of Trafficking in Persons Act where accordingly convicted for the offence and sentenced to serve a term of imprisonment of 15 years. I note, however, that the sentence so imposed on the Iranian Nationals in that case was for a different offence that those they have been charged and convicted of in the instant case. For that particular reason, I find this case tendered as precedent, unhelpful. Relying on the same case, I also take note of learned counsel's request for the Court to make an order that the accused/convicts be declared "Prohibited immigrants".

THE LAW AND SENTENCING UNDER MODA

[5] The court's approach to sentencing a person or persons convicted of a drug offence under the Misuse of Drugs Act, 2016 (MODA) is guided by various statutory provisions under the said Act as well as the recommended sentences for the offences of which the 8 accused have been charged and convicted under MODA which are;

- (i) Two counts of Conspiracy to Commit the Offence of Importation of a Controlled Drug, and
- (ii) Two counts of Importation of a Controlled Drug.

[6] The offence of Conspiracy to commit the offence of Importation of a Controlled Drug under Section 16 (a) of MODA is couched in the following terms;

"16. A person who agrees with another person or persons that a course of conduct shall be pursued which, if pursued;

- (a) Will necessarily amount to or involve the commission of an offence under this Act by one or more of the parties to the agreement".*

[7] The 8 accused, have also been charged and convicted under MODA for two counts of Importation of a Controlled Drug. The offence is prescribed under Section 5 of MODA, and is couched in the following terms;

“5. A person who imports or exports a controlled drug in contravention of this Act commits an offence and is liable on a conviction to the penalty specified in the Second Schedule.”

[8] The penalty specified in the Second Schedule of MODA applicable to the offence under Section 16 (a) and the offence under Section 5 of the MODA for a conviction for a class A drug is life imprisonment and a fine of SCR 1 million.

[9] Part VI of MODA specifically provides for sentencing. Section 47 (1) reads as follows:

“47 (1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea following trial, the Court shall have regard to

(a) The objective of the Act

(b) The degree of control to which the relevant controlled drug is subjected, and

(c) The general objective of transparency and opportunity in sentencing”

[10] Section 48 of MODA provides for aggravating factors that support a more serious sentence. They include the following;

“48.(a) The presence and degree of a commercial element in the offending, particularly, where the controlled drugs have been imported into Seychelles.

(b) The involvement in the offence of an organised criminal group to which the offender belongs.

(c) The involvement of the offender in other offences facilitated by or related to the commission of the offence.

[11] Section 49 provides for the mitigating factors for consideration that support a reduction in sentence for the offence. They include the following which I find the most relevant for the purposes of this exercise;

“49 (a) The offender’s admission of the truth of the charge through a guilty plea, particularly an early guilty plea

(b) The offender’s acceptance of responsibility for the harm or potential harm associated with his or her offence.

(c) ...

(d)

(e)

(f) The absence of prior convictions or formal caution under this Act

(g)

[12] I am bound by the provision under Section 47 (2) of MODA that reads as follows;

“where an aggravating or mitigating factor identified in Section 48 or 49 applies to the circumstances of the offence, the court shall expressly identify that factor and give weight to it in considering the appropriate sentence”.

[13] A quick reference to the recommended sentencing guidelines made under MODA for a Class A drug as in the instant case in respect of a first time offender, indicates, that if I am to follow the recommendation, the starting point should be a term of imprisonment of 20 years given that the weights of the drugs are 1740.40 grams containing a purity of Heroin (Diamorphine) content of 1032 .61 grams and 457.80 grams of Opium both substantially more than 600 grams.

[14] It is noted, that through plea in mitigation, learned counsels for the accused/convicts mentioned few of the mitigating factors spell out under Section 49 of MODA which he said have to be taken into account for a reduced sentence, notably, the following:

(a) The fact that the accused/convicts admit the charge in an early guilty plea.

(b) The absence of previous convictions or cautions for similar offence.

[15] Is it settled law, that a guilty plea earns an accused/convict credit in respect of a possible sentence on conviction. The principle that a guilty plea should have the effect of reducing a sentence is discussed in one of the most authoritative criminal law practice handbook, Blackstones's Criminal Law Practice. This principle is also supported by case law (see for example Labiche v Republic SCA 1 (a) 2004 LC 288)

THE SENTENCE

[16] Within the background of the discussion of the law above, and to some extent the facts and circumstances of which the 8 accused/convicts committed the offences of which they have been convicted, and in consideration of the other matters raised by defence counsel in plea in mitigation, I therefore sentence the accused/convicts as follows;

(i.) I sentence all the 8 convicts to serve a term of imprisonment of 20 years in respect of Count NO 1, and 20 years in respect of Count NO 2. I also sentence all the 8 convicts 15 years imprisonment in respect of Count NO 3, and 15 years in respect of Count NO 4. All the four sentences shall run concurrently, in that, all the 8 convicts shall serve a term of imprisonment of 20 years.

In accordance with Article 18 (14) of the Constitution, time which the 8 convicts have spent on remand shall be deducted from their 20 years prison sentence.

- (ii.) As to learned counsel's request for the Court to order that the 8 convicts be declared Prohibited Immigrants under the provisions of Section 19 (1) (i) read with Section 20 (1) of the Immigration Decree, this Court declines from making such an order because it is of the opinion that the same should be left to the executive in exercise of their prerogative powers conferred upon them by the Immigration Decree.

Signed, dated and delivered at Ile du Port on 22 August 2023

