

SUPREME COURT OF SEYCHELLES

Reportable
[2024] SCSC
CR 35/2023

In the matter between

THE REPUBLIC
(*rep. by Mr Kumar*)

and

YANIQUE BONNE
(*rep. by Mr F Bonte*)

1st Accused

ALISON LABICHE
(*rep. by A Molle*)

2nd Accused

AMIDA TRISHA MADELEINE MOUSTACHE
(*rep. by Mr J Camille*)

3rd Accused

Neutral Citation: *The Republic v Yanique Bonne and Ors* (CR 35/2023) [2024] SCSC
Before: Govinden CJ
Summary: Sentence on guilty pleas under the Misuse of Drugs Act. 2016
Heard: 26/4/24;27/5/24;7/6/2024;13/6/24
Delivered: 27 June 2024

ORDER

- i. On count 1, The court impose 4 years imprisonment on the 1st and 2nd convicts.
- ii. On count 2, The court impose 4 years' imprisonment on the 1st convict.
- iii. On count 3, The court impose 1 year imprisonment, suspended for 2 years on the 3rd convict.
- iv. The custodial sentence under count 1 and 2, with respect of the 1st convict, shall run concurrently.

SENTENCE

GOVINDEN CJ

The charges

- [1] The three accused, who for the purpose of this sentence shall be collectively referred to as “*the convicts*, respectively, have pleaded guilty to and have been convicted under the following counts in the Information, dated the 29th May 2023;

Count 1

Statement of Offence

Conspiracy to commit the Offence of Trafficking in a controlled drug namely Heroin (Diamorphine) contrary to section 16(a) of the Misuse of Drugs Act, 2016 read with section 7(1) of the Misuse of Drugs Act, 2016 and punishable under section 7(1) of the Misuse of Drugs Act, 2016 read with the Second Schedule referred thereto in the said Act.

Particulars of offence

Mr. Yanique Israel Elton Bonne, 29 years old, Coastguard Officer, of La Louise, Mahé, and Ms. Alison Labiche, 24 years old, Coastguard Officer, of Roche Caïman, Mahé agreed with one and another on the dates on or before 17th May 2023, that a course of conduct shall be pursued which, if pursued, will necessarily amount to or involve in the commission of an offence namely Trafficking in a Controlled drugs namely Heroin (Diamorphine) in Seychelles under the Misuse of Drugs Act, 2016 by one or more of the parties to the said agreement in connection to the controlled drug which has the net total weight of 837.98 grams of Heroin (Diamorphine).

Count 2

Statement of Offence

Possession with intent to Trafficking in a controlled drug namely Heroin contrary to section 9(1) of the Misuse of Drugs Act, 2016 and punishable under section 7(1) of the Misuse of Drugs Act, 2016.

Particulars of offence

Mr. Yanique Israel Elton Bonne, 29 years old, Coastguard Officer, of La Louise, Mahé, on 17th May 2023 at his premises in La Louise, Mahé, unlawfully possessed a controlled drug which has the net total weight of 837.98 grams of Heroin (Diamorphine), with intent to Traffic in contravention of the Misuse of Drugs Act, 2016.

Count 3

Statement of Offence

Possession with intent to Trafficking in a controlled drug namely Heroin contrary to section 9(1) of the Misuse of Drugs Act, 2016 and punishable under section 7(1) of the Misuse of Drugs Act, 2016.

Particulars of offence

Ms. Amida, Trisha, Madelaine Moustache 32 years old, Carer of Roche Caïman, Mahé, on 17th May 2023 at her house in Roche Caïman, Mahé, unlawfully possessed a controlled drug which has the net total weight of 49.69 grams of Heroin (Diamorphine), with intent to Traffic in contravention of th Misuse of Dugts Act, 2016.

The facts of the case

[2] The facts of the case of the case was read out by the prosecution and have been admitted by the Defendants. These facst are on record and they have been thoroughly scrutinised by the court and would form the basis of the court's consideration in making its determination as to what should be the most appropriate sentences in this case.

Mitigation

[3] According to Learned Counsel for the 1st convict, he has read the Probation Report of his client and he agrees with its recommendation that a minimal custodial sentence be imposed on his client.

[4] On his part, the Learned counsel for the 2nd accused, stated that his client had on the 26th of April pleaded guilty to one count of conspiracy under Count 1 of the charges. In doing so, she has accepted responsibility for the offense and had shown remorse. As a first offender with a clean criminal records, Learned Counsel for 2nd accused begs for leniency when the Court is considering meeting sentence against her. He proposed that a suspended custodial sentence be imposed on her. It was his submission that the participation of the accused was minimal in respect of the charge against her in comparison to the other accused persons. She has given a written statement in regards to her involvement and in respect of that written statement she accepted her involvement. She was in a relationship with the 1st accused and they were residing at the same house at Roche Caiman when she came to stumbled onto a bag belonging to the 1st accused in his absence. Out of curiosity she went into the bag and searched it were upon she found the substance. Following that, the 1st accused had then approached her and requested that she assist him with the sale of some of the drugs. She had then proceeded to the 3rd accused and requested for her assistance with the sale of some of the drugs. According to him when the contact was made between the 1st and the 3rd accused, his client was not involved and she did not participate in the exchange of the drugs. In his submissions, all the drugs were retrieved and no other drugs was put on the market so there were no direct benefits to any of the accused person in this case.

[5] Counsel also invited the court to consider the Probation report that was provided in respect of his client by the Probation Services which is dated the 13th of May 2024. In this Probation report the personal circumstances of his client have been outlined. Wherein the Supervisor of the 2nd accused confirmed that the 2nd accused had been an exemplary Officer of the Defense Forces. She had a good working relationship with her Supervisors. Counsel also tendered a copy of the discharge from the hospital which confirmed that his client had miscarried, following a bout of depression. It is his view that an extensive period of time will have an adverse effect on her and her young family. He urged the court to consider the recommendation of the Probation Report and impose a minimal custodial sentence when disposing of this case against

the accused which might be a minimal custodial sentence of 2 to 3 years, which may be suspended.

- [6] Learned Counsel for the 3rd convict made the following plea in mitigation for her client; she is 32 years old and she lives at Roche Caiman and was found in possession of controlled drug of a total weight of 49.69 grams which contained only 28.34 grams of heroin diamorphine as per the particulars of offence. She is a mother of two and is also expecting. She is six months pregnant. Her current concern is the welfare and upbringing of her children and if the court was to impose a custodial sentence it would disrupt the stability and care as she provides for her children. She is a Carer by profession and she deeply regrets her actions and is committed to ensure a better future for herself and for her children. She acknowledges the gravity of the situation. She is deeply remorseful and fully recognizes the impact of her action and she is committed to making certain changes in her judgment and future choices. She is not part of any criminal group and her involvement in the commission of the offence, in terms of the choices that she made was a very bad one. According to her there is no degree of the commercial element of the drugs as it was only 28.34 grams of heroin. That as such there was no aggravating factors involved in her commission of the offence in terms of the content and as such, she urged the court to consider the Probation report and impose a non- custodial sentence.

Pre- Sentencing Reports

- [7] At the request of learned Counsels for the convicts Pre-Sentencing Reports were requested from the Probation Services. These Reports were received by the court and made available to counsels which greatly assisted their submissions. The court in this sentence has taken into consideration their contents including the recommended sentences.

Previous convictions

- [8] The court was informed that the convicts have no previous convictions and they would therefore be taken as 1st time offenders for the purpose of their sentences.

S47 and 48 of the MDA.

[9] In coming to its determination as to what should be the appropriate sentences in this case, the court has appraised itself with the provisions of the Misuse of Drugs Act hereinafter also referred to as “*the MDA*”, under which the convict has been charged. The relevant provision is found in Section 47 and 48 of the MDA, which provides as follows:

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

(a) the objectives of the Act;

(b) the degree of control to which the relevant controlled drug is subject;and

(c) the general objectives of transparency and proportionality in sentencing.

2. Where an aggravating or mitigating factor identified in section 48 or section 49 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence.

3. In sentencing a person who has been identified as a drug user or a drug dependent person, the Court shall follow the process set out in section 38 or section 39.

4. *In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all the circumstances.*
5. *In sentencing a person convicted of an offence under this Act in circumstances where the offence is aggravated in nature, the Court shall have due regard to the indicative minimum sentence for aggravated offence of that kind.*

48.(1) *Aggravating factors that support a more serious sentence for offences under the Act includes —*

- a. *the presence and degree of a commercial element in the offending, particularly where 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 commission of the offence;*
- d. *the use of violence or weapons by or on behalf of the offender;*
- e. *the fact that the offender holds public office or a high-profile position in the community, particularly if the offence is connected with the office or position in question;*
- f. *the targeting, involvement, use, or exploitation of children in connection with the offence;*
- g. *the fact that the offence was committed in a penal or educational institution, social service facility or in other places related to education, sports, or social activities, or in their immediate vicinity; and*

- h. *prior convictions (subject to the Rehabilitation of Offenders Act), particularly for similar offences, whether foreign or domestic, or prior formal cautions under this Act.*

(2) Where one or more of the aggravating factors identified in subsection (1) is present to a significant extent, the Court shall treat the offence as aggravated in nature.

49. Mitigating factors that support a reduction in sentence for offences under the Act includes--

- 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. *any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in the prevention, investigation, or prosecution of any other offence under this Act;*
- d. *the absence of any commercial element in the offence;*
- e. *the presence of an element of coercion, for example from a family member or employer;*
- f. *the absence of prior convictions or prior formal cautions under this Act; and*
- g. *the fact that no other person was involved in or directly harmed by the offence.*

Mitigating factors

[10] Having gone over the facts of this case it is clear that there are mitigating factors that can be identified in accordance to Section 47 (2) of the MDA and I give to each the weight that would mitigate for a lenient sentence. These are as follows;

- i. First, it is to be noted that the convicts have pleaded guilty at the very first opportunity and has accepted the harm or potential harm caused by their acts on society, they have accepted the facts upon which their conviction are based and have unequivocally pleaded guilty. This amounts to the offender's admitting the truth of the charges through guilty pleas, particularly an early guilty plea and the offender's acceptance of responsibility for the harm or potential harm associated with his or her offence.
- ii. The second mitigating factor is that the convicts are first time offenders.
- iii. The third is that all of the convicts are relatively young offenders with strong family ties and in seemingly stable employment.
- iv. A significant mitigating factor in favour of the 3rd convict is that she is pregnant and the fact that she had in her possession a relatively small amount of controlled drugs.

Aggravating factors

[11] However, on the other hand there is one aggravating circumstance, as described in section 48 of the MDA that is attached to the 1st and 2nd convicts. That is that the fact of the case shows that they held public offices at the time of their commissions of the offences in that they were officers of the Seychelles Coast Guards. In that law enforcement capacity they should have served and protect the people of Seychelles, and not abuse the trust put in them.

[12] Moreover, the facts of the case shows a commercial element, as the controlled drugs found in the possession of the 3rd convict, which was in 4 different small packets were allegedly given to her to sell by the 2nd convict.

Determination

[13] Whilst I bear the context of Section 47 and 48 of the MDA strongly in mind in imposing the sentences, I am also conscious of the need to apply settled sentencing principles to the facts of this case as was enunciated in the case of *ML & Ors, SC Cr 38/19*. I am further aware of the need to individualized the sentences and to render it proportionate so as to fit the circumstances of the case and those of each convicts and I apply this principle here. The three test enunciated in the case of *Ponnoo vs R (2011) SLR 424*, with regards to totality of sentencing principle have also been followed. The sentences imposed would therefore be proportionate to the crimes committed bearing in mind the individual circumstances of the convict.

[14] Having considered the pleas in mitigation made by learned Counsel for the convicts; the mitigatory circumstances; the contents and recommendations of the Pre-Sentencing Reports; the facts and circumstances of this case upon which the convictions were based; the sentencing pattern in cases of similar nature rendered by this court and the Seychelles Court of Appeal and the applicable sentencing principles I have come to the decision that the following sentence would be just and appropriate in this case.

(1) On count 1, I impose 4 years imprisonment on the 1st and 2nd convicts.

(2) On count 2, I impose 4 years' imprisonment on the 1st convict.

(3) On count 3, I impose 1 year imprisonment, suspended for 2 years on the 3rd convict.

(4) The custodial sentence under count 1 and 2, with respect of the 1st convict, shall run concurrently.

Time spent in remand to count towards sentence and all of the convicts and they all have a right of appeal against both conviction and sentence.

Signed, dated and delivered at Ile du Port on

June 2024

Govinden CJ