

## SUPREME COURT OF SEYCHELLES

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**Reportable**

CR 02/2024

In the matter between

**THE REPUBLIC**

*(rep. by K. Marie)*

**Republic**

and

**MOHAMMAD CHIRAY**

*(rep by G. Ferley)*

**1<sup>st</sup> Accused**

**ABDUL WAHID RAESEE**

*(rep by G. Ferley)*

**2<sup>nd</sup> Accused**

**SIKANDAR BALOCH**

*(rep by G. Ferley)*

**3<sup>rd</sup> Accused**

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**Neutral Citation:** *The Republic v Chiray & Ors* (CR 02/2024) [2024] SCSC (29<sup>th</sup> May 2024)

**Before:** Govinden CJ

**Summary:** Sentence; Importation of a Controlled Drug; aggravated circumstances.

**Heard:** 25<sup>th</sup> April 2024; 3<sup>rd</sup> May 2024

**Delivered:** 29<sup>th</sup> May 2024

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### SENTENCE

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**GOVINDEN CJ**

[1] **The charges**

The convicts pleaded guilty to counts 1 to 8 of the Amended Formal Charge dated the 23<sup>rd</sup> of April 2024, in which they are jointly charged. These charges are as follows;

#### **Count 1**

#### **Statement of Offence**

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 and Second Schedule of the Misuse of Drugs Act, 2016.

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amounts to or involve the commission of an offence of conspiracy to import a controlled drug into Seychelles namely Cannabis Resin with a total net weight of 150.92 kilograms, by one or more of the parties to the agreement through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles, North Northeast of Denis Island, Seychelles.

**Count 2**

**Statement of Offence**

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 and Second Schedule of the Misuse of Drugs Act, 2016.

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amounts to or involve the commission of an offence of conspiracy to import a controlled drug into Seychelles namely Diamorphine (Heroin) with a total net weight of 22.15 kilograms, by one or more of the parties to the agreement through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles, North Northeast of Denis Island, Seychelles.

### Count 3

#### Statement of Offence

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 and Second Schedule of the Misuse of Drugs Act, 2016.

#### Particulars of Offence

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amounts to or involve the commission of an offence of conspiracy to import a controlled drug into Seychelles namely Cannabis with a total net weight of 12.30 kilograms, by one or more of the parties to the agreement through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles, North Northeast of Denis Island, Seychelles.

### Count 4

#### Statement of Offence

Agreeing with another person to commit the offence of importation of a controlled drug, contrary to Section 16 (a) & Section 5 of the Misuse of Drugs Act, 2016 and punishable under Section 5 and Second Schedule of the Misuse of Drugs Act, 2016.

#### Particulars of Offence

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 agreed with one another that a course of conduct shall be pursued which if pursued will necessarily amounts to or involve the commission of an offence of conspiracy to import a controlled drug into Seychelles namely Methamphetamine in the total net weight of 2.55 kilograms, by one or more of

the parties to the agreement through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles, North Northeast of Denis Island, Seychelles.

**Count 5**

**Statement of Offence**

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

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29th December 2023 imported a controlled drug into Seychelles namely Cannabis Resin with a total net weight of 150.92 kilograms, through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles North Northeast of Denis Island, Seychelles.

**Count 6**

**Statement of Offence**

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

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29th December 2023 imported a controlled drug into Seychelles namely Diamorphine (Heroin) with a total net weight of 22.15 kilograms, through a

flagless dhow named Abdullahi at approximately 181.8 Nautical Miles North Northeast of Denis Island, Seychelles.

**Count 7**

**Statement of Offence**

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

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 imported a controlled drug into Seychelles namely Cannabis with a total net weight of 12.30 kilograms through a flagless dhow named Abdullahi at approximately 181.8 Nautical Miles North Northeast of Denis Island, Seychelles.

**Count 8**

**Statement of Offence**

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

**Particulars of Offence**

**Mohammad Chiray a 42 years old, Captain from Iran, Abdul Wahid Raesee a 43 years old, fisherman from Iran, Sikandar Baloch a 25 years old, fisherman from Pakistan** on the 29<sup>th</sup> December 2023 imported a controlled drug into Seychelles namely Methamphetamine with a total net weight of 2.55 kilograms through a flagless

dhow named Abdullahi at approximately 181.8 Nautical Miles North Northeast of Denis Island, Seychelles.

- [2] The facts of the case as read out by the Prosecution and admitted by the convicted persons are as follows. On the 26<sup>th</sup> of December 2023, at approximately 15:45 hours, the Seychelles Coast Guard departed their base following information about a dhow located around 193 nautical miles north-east of Denis Island. On the 28<sup>th</sup> of December 2023, at approximately 03:55 hours, the Coast Guard vessel stopped approximately 10 nautical miles from the given position, remaining adrift. At around 10:18 hours, they received information indicating the target was 8 nautical miles away, moving at a speed of 3 to 4 knots from their current position. The dhow was spotted without a flag, and suspected packages were seen floating in its wake. At this moment, Coast Guard personnel fired a warning shot to signal the dhow to stop. At around 11:30 hours the dhow stopped in position, which was approximately about 181.8 nautical miles north-northeast of Ile Denis. A Zodiac was deployed for boarding, and the Coast Guard successfully boarded the dhow. The floating packages, suspected to contain controlled drugs, were retrieved and hauled on board by crane. These packages were placed in a cabin on the Coast Guard vessel, which was then locked with the key kept by the captain of the Coast Guard vessel.
- [3] On the 29<sup>th</sup> of December 2023, the police received a report from the Seychelles Coast Guard about the interception of a dhow in the EEZ of Seychelles, suspected of carrying controlled drugs. At approximately 15:45 hours, the Coast Guard vessel arrived at the Coast Guard jetty with the dhow named Abdullahi. Police officers boarded the dhow, met with the Coast Guard captain, and were shown the locked cabin containing the suspected drugs. The captain unlocked the cabin, and SSCRB officers photographed the suspected drugs. The packages were then removed by Coast Guard personnel and formally handed over to the police at the jetty. Once the police took possession of the exhibits, all the formalities were conducted.
- [4] The dhow had eight people on board, including the first, second, and third accused. Through a translator, a police officer informed them of their arrest for the offense of

importing controlled drugs, cautioned them, and informed them of their constitutional rights.

- [5] The seized exhibits were analysed, revealing 150.92 kg of Cannabis resin, 22.15 kg of Heroin Diamorphine, 12.30 kg of Cannabis herbal material, and 2.55 kg of methamphetamine. The three accused were formally charged on the 16th of January 2024. The charges were amended on the 4th of March 2024, and on the 23rd of April 2024, all three accused pleaded guilty to the amended charges.
- [6] The Court was informed that the convicted persons has no previous convictions in Seychelles and they would therefore be taken as 1<sup>st</sup> time offenders for the purpose of their sentences.
- [7] In mitigation submission Learned counsel for the convicted persons stated that all of them have pleaded guilty and have saved the precious time of the court and the court's resources. It was submitted that their plea of guilty reflect that they were and are remorseful of having committed an offence. Learned counsel submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> convicted persons are fishermen who were approached by the 1<sup>st</sup> convicted person to go on a fishing trip with a quite minimal reward for the trip, of approximate equivalent of SCR8,000. It was submitted that the 2<sup>nd</sup> and 3<sup>rd</sup> convicted persons were under the direction of the 1<sup>st</sup> convicted person who was a captain of the vessel. Learned counsel stated that 2<sup>nd</sup> and 3<sup>rd</sup> convicted persons have a history of drug addiction and were drug users at that time and were looking for an opportunity to get some money. With regards to 1<sup>st</sup> convicted person, the Learned counsel submitted that he was approached by persons that he had no contact with previously to do the trip to Seychelles with the reward being USD2,500. It is submitted that for the trip of this nature and distance the amount of reward shows desperation on the part of the 1<sup>st</sup> convict. Learned counsel asked the Court to exercise leniency bearing in mind personal circumstances of each of the convicted persons.
- [8] 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

(MODA), under which the convicts has been charged. The relevant provision is found in Sections 47, 48, and 49 of the MODA, 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 (factors that support a more serious sentence) for offences under this Act include —*
- (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 (factors that support a reduction in sentence) for offences under this Act include —*

*(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.*

[9] As to the mitigating factors under section 49, I identify the offenders' admission of the truth of the charge through a guilty plea; the offenders' acceptance of responsibility for the harm or potential harm associated with their offences; the absence of prior convictions or prior formal cautions under this Act; and the fact that no other person was involved in or directly physically harmed by the offence. I accept these facts are mitigatory that would go some way to reduced their respective sentences. I will give to these facts their due weight in coming to my determination on the sentence.

[10] However, I have also identified two aggravating factors under Section 48 of the Act in this case and they are as follows: first, the presence and degree of a commercial element in the offending, particularly where controlled drugs have been imported into Seychelles. The facts of the case clearly show that the convicted persons imported the

controlled drugs charged in this case into Seychelles. Secondly, the involvement in the offence of an organised criminal group to which the offenders belong. On the facts, it is clear to the Court that the convicted persons acted with common intention and in concert, together with the other members of their crew when they imported the controlled drugs into this country; hence, they acted as an organized criminal group. The very large amount of controlled drugs also prove the commercial element involved in this crime. The havoc that the drugs would have caused to the society, if they had not been intercepted, cannot be understated.

[11] 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 individualize 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 also. Further, the three test enunciated in the case of *Pomoo vs R* (2011) SLR 424 with regards to totality of sentencing principle have also been followed. The sentences imposed would be proportionate to the crimes committed bearing in mind the individual circumstances of the convicted persons.

[12] Having considered the pleas in mitigation made by learned Counsel for the convicts; the mitigatory circumstances; the aggravating factors; 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 following determination:

- i. On count 1, I impose 25 years imprisonment on all three convicts;
- ii. On count 2, I impose 25 years' imprisonment on all three convicts;
- iii. On count 3, I impose 25 years' imprisonment on all three convicts;
- iv. On count 4, I impose 25 years' imprisonment on all three convicts;
- v. On count 5, I impose 25 years' imprisonment on all three convicts;
- vi. On count 6, I impose 25 years' imprisonment on all three convicts;

vii. On count 7, I impose 25 years' imprisonment on all three convicts;

viii. On count 8, I impose 25 years' imprisonment on all three convicts.

[13] The sentence under count 1 to 8 shall run concurrently.

[14] Time spent in remand to count towards sentence of all of the convicts.

[15] The convicts are not entitled to remission due to the aggravated circumstances of the case.

Signed, dated and delivered at Ile du Port on 29<sup>th</sup> May 2024



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Govinden CJ