

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

1. RAYMOND KENNETH THOMAS
2. ROBERT ROLAND LAI LAM

Criminal Side No 14 of 2004

Mr. B. Hoareau for the Republic
Mr. A. Juliette for the 1st Accused
Mr. P. Pardiwalla for the 2nd Accused

RULING

B.Renaud J

The two accused persons were before Court for consideration of the order for remand initially made by this Court on 9th February, 2004 which has been extended thereafter. The accused persons stand charged with the offence of importing over 8 kgs of cannabis resin and they have pleaded not guilty to the charge. The case has been set for trial starting on 6th May, 2004.

Mr. P. Pardiwalla, Learned Counsel for the 2nd Accused once again submitted to the Court that his client ought to be released on bail pending trial. He repeated the submissions made on previous occasions and reiterated his contention that the accused is deemed to be innocent until proved guilty as Article 19(2)(a) of the Constitution provides. Further, he re-emphasised that it is incumbent on the Court to release the accused as called for in Article 18(7) of the Constitution, albeit, on stringent conditions. He conceded, however, that the Court may not grant bail and remand a person if the Court is satisfied that to do so would be proper in view of the circumstances which Article 18(7) (a) to (f) of the Constitution spells out as well as the provision of Section 101 of the Criminal Procedure Code.

Mr. Pardiwalla urged the Court not to equate the present offence with which the accused is charged as a serious offence, like that of murder or treason, where an accused is not released on bail.

Mr. Camille, Learned Counsel of the Republic, opposed the application of Mr. Pardiwalla on the ground that the accused is being remanded until the trial is over and that there has been no change in circumstances that would merit any variation of the order already made by the Court. He said that the offence with which the accused is charged is considered to be serious and warrants the necessity for remand.

In view of the determined arguments and emphatic submissions of Mr. Pardiwalla, particularly where it concerns the reason as to why a Court should release a person on bail rather than order a remand, I have taken time to carefully consider the points he raised in the light of the Constitutional provisions, although this has been done by the Court on other occasions, will regard to “*the right to liberty*”, to ensure that the accused persons are given fair hearing.

From a reading of Articles 18(2) and 18(7) of the Constitution, and Section 101(5) (b) of the Criminal Procedure Code Cap. 54, I have no doubt that this Court has the power to restrict a person’s constitutional right to liberty without violating such right, after having regards to any one of the circumstances set out Section 101(5) (b) of the Criminal Procedure Code Cap. 54 which is a reproduction of Article 18(7) (a) to (f) of the Constitution. Th Court can remand any person accused of the offence of murder, treason or any other serious offence notwithstanding Article 19(2) (a) of the Constitution deeming the person to be innocent until proven guilty.

The seriousness of the offence does not mean only offences that carry hefty fines and/or long term of imprisonment; or minimum mandatory sentence or fines; but must also be considered in a broader perspective, including the prevalence of the offence; the prevailing tendency of such crime, the necessity to root out or curb the vice the negative impact of the offence on society; whether the offence is the act of a sole individual or a possible conspiracy involving other parties who may be directly or indirectly, openly or secretly involved; amongst others.

The accused is charged with the offence of importing drugs that consist of over 8 kgs of cannabis resin. Importation of such an amount of cannabis resin in any country,

and more so, in a small country like Seychelles where every possible effort is being made to fight the use and abuse of drugs, when viewed in the light of the factors enumerated above, leads to no other conclusion that the offence with which the accused is charged cannot be considered less than a very serious offence indeed. For this reason this Court will maintain the order that the two accused be remanded until after the trial is completed. I therefore order that both accused be remanded for a further 14 days, that is up to 22nd April, 2004 at 9.00 a.m. when they will have to appear again before this Court.

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B.RENAUD

JUDGE

Dated this 8th day of April 2004