

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC**

**VS.**

**JUSTIN JEAN- BAPTISTE AGLAE (Accused)**

Criminal Side No. 9 of 2007

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Mr. Chetty for the Republic

Mrs. Antao for the Accused

**RULING**

***Gaswaga, J***

On the 26<sup>th</sup> day of February, 2007 Mr. Justin Aglae was charged with the offence of trafficking in a controlled drug contrary to Section 5 read with Section 14 (d) and 26(1) of the Misuse of Drugs Act as amended by Act 14 of 1994 and punishable under Section 29 and the second schedule referred thereto in the Misuse of Drugs Act Cap 133. He was subsequently placed in prison at Mt Posee where he remains on remand till now. The particulars leading to his arraignment are that on the 22<sup>nd</sup> February, 2007 at Port Launay he was in possession of a controlled drug namely 79.1 grams of cannabis (herbal material), which gives rise to the rebuttable presumption of having possessed the said controlled drug for the purpose of trafficking.

This morning Mrs. Antao objected to the application by the state counsel Mr. Chetty for the accused to be remanded in custody after the said accused had taken his plea. She stated that the trial date was likely to be next year given that the Court diary was congested and full. Citing a number of authorities, but not giving

reasons, where accused persons charged with similar or related offences have been released on bail, Mrs. Antao stated that this accused ought to be enlarged on bail given that he has already spent six months in prison.

But most important in her application she invited the Court to look into and consider the circumstances of the accused's family situation. To this end a report by the Probation Services Department dated 31<sup>st</sup> May, 2007 was filed. The report gave the accused's family background as a man who lives at Port Launay and has been in cohabitation with one Tessy Bonne aged 39 years for the last nineteen years. The two have been blessed with five children aged 17, 15, 12, 7 and 3½ and they still attend school. Tessy also has a 20 year old daughter who is unemployed and expecting a baby and still living with them in the same household. Regarding their family economic status the report stated that Tessy is a secretary and earns a salary of SR 2, 500/- and that after servicing a house loan, catering for school needs of all the children but before buying food she remains with SR 202/- every month. Mrs. Jacqueline Pierre, Director of the Social Security Fund appeared and confirmed to this Court that in a letter dated 19<sup>th</sup> March, 2007 Mrs. Bonne was referred to their office by Attorney-At-Law, Mrs. Antao. Her application was considered and a temporary sum of SR 550/- was approved and paid for the months of April and May, 2007 (See letter from Social Security Funds dated 30<sup>th</sup> April, 2007). Ms. Bonne also confirmed the above facts and further stated that it was practically hard and now almost becoming impossible for her to continue looking after all their children and paying the necessary bills. It was her testimony that the accused, who is a farmer by profession, used to generate daily income by doing masonry work and as such was able to look after the family and their needs.

Armed with these facts Mrs. Antao submits, and rightly so, that the accused should be given an opportunity to go and look after his family members who are innocently suffering as a result of the accused's incarceration. But Mr. Chetty still

contends that the offence herein is serious for the accused to be enlarged on bail. Whereas the Court also views offences of this nature as being serious given their prevalence and the corresponding severe sentences in case of a conviction, I am prepared to distinguish the circumstances of the present accused from those of other accused persons in similar or related cases. The accused's family situation is indeed peculiar and already his period of incarceration has caused untold suffering not only to the children who are currently in dire need but also on their mother. The state coffers too are being burdened and stretched beyond the limit that is normally planned for a single family. But the Court however will be quick to warn, of course bearing in mind that an accused person is not guilty until proved as such or pleads guilty (Article 19(2)), that one ought to have considered their personal and family situation before engaging in activities that would bring one within police notice.

Basing on the above humanitarian reasons I do not find it prudent to continue keeping the accused on remand. This is a unique case whose circumstances would dictate that the accused be admitted to bail but on stringent conditions to wit;

1. The accused should enter a bail bond in the sum of Rs. 20, 000/- with two sureties to be approved by the Court.
2. The accused should not leave the jurisdiction of Seychelles without an order of this Court.
3. The accused should not interfere with the witnesses or the course of justice in this case in any way or get involved in any criminal activity.
4. The accused should surrender his passport or any travel document issued to him to the Registrar of the Supreme Court before the release order is signed.

5. The accused should report to the nearest police station being the Port Glad Police Station every Monday and Friday before midday.
6. If any of these conditions are breached this order for bail will be revoked and the accused will be remanded in custody.

The Registrar is to convey this order to the Director of Immigration and the Commissioner of Police.

**D. GASWAGA**

**JUDGE**

Dated this 1<sup>st</sup> day of June, 2007.