

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

ROY BEEHARRY (Accused)

Criminal Side No. 44 of 2008

Mr. Govinden for the Republic

Mr. Pardiwalla for the Accused

RULING

(REASONS)

Gaswaga, J

Herein bellow follows the Court's reasons for its ruling of 30th May, 2008:

The accused herein was charged with trafficking in a controlled drug contrary to section 5 as read with section 14(c) and 26(1) of the Misuse of Drugs Act, Cap 133 and punishable under section 29 of the Second Schedule. The particulars of the offence allege that Mr. Roy Beeharry on the 25th March, 2008 at La Louise, Mahe was found in possession of a controlled drug namely 201.6gs of cannabis resin which gives rise to the rebuttable presumption of having possessed the same for the purpose of trafficking.

He came on his own to the court to answer to the charged and was remanded in prison hence this bail application. According to Article 18(7) of the Constitution any person prosecuted before a court of law charged with an offence shall be

enlarged on bail unless his situation falls within the limitations set out in the same provision. It is the contention of Mr. Pardiwalla that the accused should be released on bail with of course the necessary guarantees of stringent conditions to ensure his return for the trial.

Bail applications are not a one-man-affair, affecting only the rights of the individual accused whose liberty is in jeopardy or at stake. The interest of the accused, which is crucial, is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. No doubt, any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. But the victim of the offence (where applicable) and the community as a whole has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the accused or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit or get involved in further offences. In all this, the Judge must judiciously and generally deal with the tensions that may exist between the rights of the individual, viewed in isolation, and the wider interests of the relevant community as a whole.

Today, offences under the 'Misuse of Drugs Act' are considered to be of a serious nature not only in our jurisdiction but also elsewhere in the world. These offences are normally committed by groups of people and one is engaged either directly or indirectly or remotely. They are hard to detect and or eradicate as they involve a lot of people, coordination and detailed planning before execution. The grave effects of drugs on the society, extending to even unborn children carried by victim pregnant women, should not just be swept under the carpet. I believe it is in the same vein that the National Assembly, in its wisdom, decided to prescribe long

imprisonment periods with set minimum mandatory sentences for drugs related offences to reflect the seriousness of these offences.

I am mindful of the fact that the accused before the court now is innocent until proved or pleads guilty. I stated in R vs. Gemmel Cr. No. 11 of 2007 that;

“.....The extent to which evidence pointing to proof of guilt or innocence of the applicant would seem to be one of degree in the circumstances of a particular case. There is no rule that such evidence cannot be placed before the Court. An investigating officer giving evidence of arrest often to connect the applicant sufficiently with the offence, as such as to claim that he or she may fail to surrender for trial.....”

Police officer Samuel Camille, in his affidavit dated 20th May, 2008 filed and deponed that the accused was arrested and consequently arraigned upon being found in possession of 201.6gs of cannabis resin which, according to our law is eight times more than the amount that would give rise to the presumption of trafficking in a controlled drug.

The Court has also taken into account the sentence prescribed for this offence in case of a conviction, the harmful social, economic and health effects of consuming illicit drugs on our society, the increase in number of new cases being filed in the registry and the likelihood of suspects continuing to offend even when enlarged on bail. All these factors point to the seriousness of the offence herein. **See R vs. Gerard Kate Criminal Side No. 50 of 2004.**

Given the nature and seriousness of this offence I am convinced that if convicted the accused is likely to receive a severe sentence (since the minimum is set at 8 years imprisonment) and therefore will be tempted to abscond (or jump bail) rather than run the risk of such a sentence. In such circumstances he will be treated in the same way as those accused person (in similar situations) facing similar charges. Accordingly, I reject the arguments advanced by Mr. Pardiwalla and the bail application hereby fails. The accused is to be remanded in custody.

D. GASWAGA
JUDGE

Dated this 9th day of October, 2008.