

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VERSUS

MAXWELL DUVAL

ACCUSEDCriminal Side No 49 of 2007

Mr. Esparon for the Republic

Mr. B. Hoareau for the Accused

RULING**Gaswaga J**

The accused stands charged with the offence of trafficking in a controlled drug contrary to Section 5 of the Misuse Drugs Act read with Section 26(1) of the same and punishable under Section 29(1) of the said Act after allegedly being found in possession of 39.7 grams of cannabis on the 24th August 2007 at Bel-ombre. His previous bail applications were unsuccessful. On the scheduled date for trial (6/2/2008) the case did not take off for reasons not attributable to him. Thus, the presiding Judge and defence Counsel were involved in a murder trial which takes precedence over all the other cases in this jurisdiction.

Mr Hoareau now applies for the accused's release given that the next haring date is going to be fixed far away in the year yet the said accused has been in custody since August 2007. It was held in ***Duval Vs District Magistrate of Flacq and DPP (1989) MLR 166*** that "our law like that of England (and of course Seychelles) does not set as a general rule any time limit for a criminal prosecution to be started" and, further

in the case of **R vs Cliff Emmanuel and Richard Freminot Cr. No. 85 of 2003** that “once charged, mere delay would not be a relevant factor to grant bail”. Of course the Court is mindful of the Constitutional provisions requiring accused persons to be tried within a reasonable time.

Indeed I agree with Mr Hoareau that the amount of drugs in this case is less than that involved in the **R. v. Randy Bradburn Cr. Side No. 54 of 2006 and R. v. Nitin Redeker Cr. Side No. 21 of 2007** cases where the accused persons were enlarged on bail yet they faced similar charges to those in the present case. Although it is well known that each case should be decided on its merits it is also a well settled principle that like cases, with similar facts or circumstances should be adjudged alike.

One common thread however runs through all these cases – the quantity of drugs is well above the prescribed threshold of 25 grams and therefore attract the rebuttable presumption of trafficking in that drug. One could go further and distinguish the cases. Unlike in the present case, in the **Bradburn** case the Prosecution did not object to the enlargement of the accused on bail but insisted on imposition of a cash bail of Sr.50,000 which, for reasons stated on the record, the Court reduced to Sr.20,000.

I stated in the case of **R. v. Ricky Chang-Ty-Sing Criminal. Side No.53 of 2007.** that-

“Bail could also be refused according to the status of the offence and the stage in the proceedings. 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 claim that he or she may fail to surrender for trial.

Bearing in mind that an accused is innocent until proved or pleads guilty I find paragraphs 2 and 3 of the supporting affidavit to the motion for further remand to be relevant and same will be reproduced *in extenso*.

2. *“On the 24th day of August 2007 at Bel Ombre, Mahe during a routine patrol being conducted by the Police the Respondent was found to be carrying a red plastic bag.*

3. *“As a result of a search conducted by the Police Officers in the red plastic bag 39.7 grams of cannabis resin was found in the possession of the accused”.*

The allegation in this affidavit is that the drugs were found on the accused.

There is no doubt that offences of this nature are on the increase yet there effects cause untold suffering to the human health, families and our Society as whole. They also involve a number of people acting together as well as prior detailed planning before commission. Therefore drug trafficking cases are not like accident cases which usually occur suddenly without pre-meditation. I think it is for this reason that the legislature has set a high minimum mandatory sentence for whoever is convicted of drug trafficking. It's a reflection of the gravity of the offence.

All these factors put together point to the high degree of seriousness of the offence with which the accused is charged. This accused will definitely be treated in the same way as all the other accused persons faced with similar charges are being dealt with in this present situation which has greatly and speedily evolved. I therefore see no change in circumstances to warrant the accused's release on bail. It cannot even be said that the seriousness of the offence herein diminishes with the effluxion of time.

For these reasons I refuse the application for bail. The accused is further remanded until 11/-4/2008 under Section 179 of the Criminal Procedure Code, Cap, 54.

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D. GASWAGA

JUDGE

Dated this 31st day of March 2008