

**IN THE SUPREME COURT OF SEYCHELLES**

**THE REPUBLIC  
VS.  
CHE DORASAMY**

Criminal Side No. 35 of 2009

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Mr. Durup for the Republic  
Mr. Hoareau for the Accused

**ORDER**

***Burhan, J***

I have considered the application for bail made by learned counsel for the accused and the objections of learned counsel for the prosecution in respect of same.

It is clear that the right of the accused to bail at the time he was produced in court, has already been considered by court and the accused remanded under the permitted derogations contained in Article 18 (7) of the Constitution of the Republic of Seychelles. Learned counsel has sought to state that no “proper application” for bail had been made. However court at the time the accused was produced has already considered an application for bail and refused it after giving reasons for same.

Furthermore learned counsel has sought to rely on the grounds that it is not possible for court to conclude this case within a reasonable period of time. However to state so at this stage when the case is at its infancy stage is to say least a pessimistic approach to litigation. The case relied upon by learned counsel namely Republic v Eulentine and others 16/09 is a perfect example where this court took the case up for trial and during the early stages of trial, the prosecution moved to withdraw the charge against all four accused

under section 65 (a) of the Criminal Procedure Code and all four accused were discharged and released immediately from remand within 3 months of the institution of the case. One need not always wait till the end of the case to determine its outcome. Furthermore as the case proceeds the strength of the case against the accused becomes apparent and nothing precludes court from releasing the accused on bail during the pendency of the case, when the evidence against the accused is apparently weak though the charge may be of a serious nature. Hence learned counsel's contention that the case will not be concluded within a reasonable time and therefore the accused should be released immediately on bail cannot be accepted at this stage.

With regard to the submissions made by learned counsel on the seriousness of the offence and that it is not a "stand alone provision", based on the Court of Appeal judgment in the *Roy Beehary v The Republic SCA No 11/09*, it is to be noted, that paragraph 39 of the said judgment specifically refers to "The Special Case of Trafficking in Drugs". It is therefore apparent that by categorising the offence of trafficking in controlled drug as a "special case" at paragraph 39 of the said ruling, a different approach to bail was envisaged to that mentioned in the preceding paragraphs of the said judgment. His Lordships, the Honourable Justices of the Court of Appeal, deemed it fit to deal with the offence of trafficking in drugs, due to its seriousness, as a "special case as many of the "germane factors" mentioned in the preceding paragraph 38 of the judgment could be inferred due, to the seriousness of the offence itself which if convicted of, attracts a minimum mandatory term of 10 years imprisonment.

The drug concerned in this instant case is a class A drug heroin, the quantity attracts the rebuttable presumption of trafficking. There has been no

unreasonable delay in the hearing of this case. Considering all the  
aforementioned relevant circumstances of the case the application for bail is  
declined.

**M.N. BURHAN**

**JUDGE**

Dated this 14<sup>th</sup> day of October, 2009