

**IN THE HIGH COURT OF TANZANIA**  
**(DAR ES SALAAM DISTRICT REGISTRY)**  
**AT DAR ES SALAAM**

**MISC. CRIMINAL APPLICATION NO. 20 OF 2020**

*(Originating from High Court Criminal Session Case No. 116 of 2015 High Court  
of Tanzania Dar es salaam Registry)*

**JUMA ADAM ALASIRI** ..... **APPLICANT**

*VERSUS*

**THE REPUBLIC (DPP)** ..... **RESPONDENT**

**RULING**

*Date of last Order: 14<sup>th</sup> September, 2020.*

*Date of Ruling: 30<sup>th</sup> October, 2020.*

**E. E. Kakolaki, J**

This is an application for bail by the applicant pending hearing of Criminal Session Case No. 116 of 2015 which is pending in this Court. It is preferred under sections 148(1) and 148(5)(a)(iii) of the Criminal Procedure Act, [Cap. 20 R.E 2002] and any other enabling provision of the law supported by applicant's affidavit. The same is contested by the respondent who also filed a counter affidavit challenging its merits.

Briefly, before this Court the applicant is charged with an offence of Trafficking in Narcotic Drugs; Contrary to section 16(1)(b) of the Drugs and Prevention of Illicit Trafficking in Drugs Act,[Cap. 95 R.E 2002] as amended by Written Laws (Miscellaneous Amendments) (No.2) Act No. 6 of 2012 in Criminal Session case No. 116 of 2015. It is alleged by the respondent in the information laid against him that the applicant on the 18<sup>th</sup> day of June, 2013, at Visiga area within Kibaha District in Coast Region trafficked Narcotic Drugs namely Cannabis Sativa, commonly known as "*bhang*" weighing 71.50 kilograms valued at Tshs. 7,150,000/= (Seven Million One Hundred and Fifty Thousand) which was loaded in the motor vehicle with Registration No. T 659 AVC make Toyota Corrolla. When the applicant was called to enter his plea to the charge facing him he registered a plea of not guilty as a result the case was adjourned to another date of the session to be fixed by the Court. It is since then the applicant decided to bring this application seeking bail pending hearing of his case.

When the application was called for hearing the applicant who appeared unrepresented from prison through the aid of video conference facility prayed the court to proceed arguing his application by way of written submission the prayer which was granted by the court after being supported by Mr. Adolf Kisima, learned State Attorney who represented the respondent. Filing schedule orders for submissions were entered by the court and complied with.

Submitting in support of his application the applicant prayed for leave of the Court and adopted all grounds contained in his affidavit to form part of his submission. He said he is alive to the fact that the offence of Trafficking in

Narcotic Drugs under section 16(1)(b) of the Drugs and Prevention of Illicit Trafficking in Drugs Act,[Cap. 95 R.E 2002] as amended by Written Laws (Miscellaneous Amendments) (No.2) Act No. 6 of 2012, is not bailable. However, he added that there are exceptions under which bail can be granted to this offence expressly provided by sections 148(5)(a)(iii) of the Criminal Procedure Act, herein referred to as CPA, one of which is when the accused is charged of possession of narcotic drugs. In the alternative he argued, one can be granted bail where the value of the substance of narcotic drugs he is being charged with is certified by the Commissioner for Drug Control Commission not to exceed Ten Million Tanzanian Shillings as per section 148(5)(a)(iii) of the CPA. To him since the value of the substance he is accused to have trafficked is Tshs. 7,150,000/= which is far below ten million provided by the law then bail should be granted to him as it is also a constitutional right guaranteed under article 13(6)(b) and 15(1) of the Constitution of the United Republic of Tanzania. The applicant invited this court to ignore the application of section 148(5)(a)(ii) of the CPA charging that the same is inapplicable in the instant application. For the foregoing reasons he implored the court to grant the application by bailing him out.

On his part the respondent, Mr. Kisima vehemently challenged the applicant's stance by submitting that, under section 148(5)(a)(ii) of the CPA once the offence facing the applicant/accused is Trafficking in Narcotic Drugs then ceases to be bailable offence. He referred the Court to the case of **DPP Vs. Bashiri Waziri**, Criminal Appeal No. 168 of 2012 (CAT-unreported) to fortify his stance where the Court of Appeal happened to categorically state that, where the charge is illicit traffic in drugs then doors of bail are closed.

The position is different where the applicant is faced with the charge of possession of drugs not meant for conveyance or commercial purposes, Mr. Kisima charged. He said, in this case the charge facing the applicant is Trafficking in Narcotic Drugs, therefore the law under section 148(5)(a)(ii) of the CPA supported by the case of **Bashiri Waziri** (supra) is applicable and restricts grant of bail to him. He therefore invited the court to dismiss the application for want of merit.

In his rejoinder submission the applicant apart from stressing that this court has mandate to grant him bail considering the grounds raised during his submission in chief, reiterated what he had stated earlier in his submission in-chief and pleaded the court to grant the application.

I have carefully paid due consideration to the competing submissions by both parties and noted that, there is no dispute that, the law restricts grant of bail to the applicant who is charged with the offence of Trafficking in Narcotic Drugs under section 16(1)(b) of the Drugs and Prevention of Illicit Trafficking in Drugs Act,[Cap. 95 R.E 2002] as amended by Written Laws (Miscellaneous Amendments) (No.2) Act No. 6 of 2012. What is put forward by the applicant is that there are express exceptions to that restriction as provided under section 148(5)(iii) of the CPA, the position which is challenged by the respondent submitting that the applicable section to the applicant is section 148(5)(ii) of the CPA. For the purpose of clear determination of these rival submissions it is imperative that I quote the said section 148(5)(ii) and (iii) of the CPA. It reads:

*(5) A police officer in charge of a police station or a court before whom an accused person is brought or appears, shall not admit that person to bail if— (a) that person is charged with—*

*(i) ... N/A.*

*(ii) **illicit trafficking in drugs against the Drugs and Prevention of Illicit Traffic in Drugs Act**, but does not include a person charged for an offence of being in possession of drugs which taking into account all circumstances in which the offence was committed, was not meant for conveyance or commercial purpose;*

*(iii) **an offence involving heroin, cocaine, prepared opium, opium poppy (papaver setigerum), poppy straw, coca plant, coca leaves, cannabis sativa or cannabis resin (Indian hemp), methaqualone (mandrax), catha edulis (khat) or any other narcotic drug or psychotropic substance specified in the Schedule to this Act which has an established value certified by the Commissioner for National Co-ordination of Drugs Control Commission, as exceeding ten million shillings; (emphasis supplied).***

What is discerned from subsection 5(iii) of the above cited is that the provision offers exception by allowing grant of bail to an accused person facing charge of any narcotic drug whose value does not exceed ten million shilling as established by the Commissioner for Drug Control Commission. The applicant argues that he befits in that provision as the of value of the

substance (Cannabis Sativa-bhangi) in which he is being charged with is Tshs. 7,150,000/= only, thus does not exceed ten million. In this distance myself from appellant's submission and champion the respondent's stand by holding that the applicant is not covered with the exception provided under subsection 5(iii) of section 148 of the CPA. The reason is very simple to draw as before this court he stands charged with the offence of Trafficking in Narcotic Drugs in which grant of bail is restricted as provided under section 148(5)(ii) of the CPA, the provision of the law which out of misconception the applicant submitted that it does not apply to matter at hand. As alluded earlier once the applicant is booked with the charge of Trafficking in Narcotic or Illicit Drug doors for bail are closed. This position of the law was adumbrated without ambiguity in the case of **Bashiri Waziri** (supra) when the Court of appeal stated:

*"There is exception to Section 148(5) (a) (ii) in that where the charge is not of illicit traffic, but it is possession of drugs which is not meant for conveyance or commercial use, the absolute prohibition on bail does not apply. **A plain and ordinary meaning of this provision is that where the charge is illicit traffic in drugs the doors of bail are closed, but where the charge is being in possession of drugs not meant for conveyance or commercial use the doors to bail are open.**"*  
*(emphasis is supplied).*

The Court went on to interpret the provision of section 148(5)(ii) of the CPA stating that:

*“What this means is that for a charge of trafficking in drugs such as the present one, the doors to bail are automatically closed, but for a non-trafficking charge involving the drugs listed in the Schedule to the Act bail is restricted only if the value of the drugs is certified to be over ten million shillings. We are satisfied that the order of the High Court misinterpreted the relevant provisions to come up with the holdings it made. As the situation stands offences involving trafficking in drugs are not bailable under the provisions of law we have cited.”*


With that binding authority the applicant’s submission that bail can be granted to the accused charged with the offence Trafficking in Narcotic Drugs with exceptions, I would hold has no legal legs to stand on.

For the foregoing reasons, it is the finding of this Court that this application is devoid of merit. Consequently the same is hereby dismissed.

It is so ordered.

DATED at DAR ES SALAAM this 30<sup>th</sup> day of September, 2020.



  
E. E. KAKOLAKI

**JUDGE**

30/09/2020

Delivered at Dar es Salaam this 30<sup>th</sup> day of September, 2020 in the presence of the Appellant appearing from the prison through video conference, Mr. Christine Joas, State Attorney the respondent and Ms. Monica Msuya, court clerk.

Right of appeal is explained.



A handwritten signature in blue ink, appearing to be "E. E. Kakolaki".

E. E. Kakolaki

**JUDGE**

**30/09/2020**