

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

MISC. ECONOMIC CRIME APPLICATION NO. 198 OF 2020

(From Economic Crimes Case No. 142 of 2019 pending at the Resident Magistrates' Court of Dar es Salaam at Kisutu)

MOHAMED SALEHE HOZA..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

27th November 2020 & 12th February 2021

Rwizile, J

This application has been filed under certificate of urgency. The applicant herein and two others were arraigned on 31st December, 2019 for the offence of trafficking in psychotropic substance contrary to section 15(1)(a) of the Drugs Control and Enforcement Act [Cap 95 of 2015] to be referred herein as the Act. The case is pending before the Resident Magistrate court of Dar es Salaam at Kisutu. As he is still in custody pending completion of investigation. He brought this application by way of chamber summons supported by an affidavit sworn by Deo Ukani Ngusaru made under section 29(1)(c) of the Act seeking for the following orders;

- 1. That the honourable Court may be pleased to grant Bail to the Applicant pending trial of the Economic Crime Case No. 142 of 2019.*

2. Any other relief(s) and order(s) this honourable court may deem just and fit to grant.

It was averred in the affidavit sworn by Deo Ukani Ngusaru advocate for the applicant that, the offence that the applicant is charged with is bailable under the Economic and Organised Crime Control Act, [Cap 200 R.E 2002] and the Act. He averred more that applicant resides in the territorial jurisdiction of this court, hence will be able to comply with the terms and conditions of bail. These facts were disputed in counter affidavit sworn by Elia Kalonge Athanas, State Attorney who averred that, the applicant stands charged with the offence of Trafficking in Psychotropic substance, the offence he said is unbailable. He averred further that the consent and certificate to confer jurisdiction are yet to be lodged before the applicant at the Resident Magistrate court of Dar es Salaam.

At the hearing the applicant was represented by Mr. Ngusaru learned advocate while for the respondent was Mr. Elia, State Attorney. When submitting in support of the application, Mr. Ngusaru learned counsel argued that, under section 29(1)(c) of the Act which this application is based, allows bail on the offence which the applicant is charged with. He added that, since drugs found with the applicant was in solid form and was below 30kg the offence is bailable. He said when the drugs are weighing 30kg or more the law denies bail as per section 15 of the Act.

He argued further that, the drugs alleged found with the accused are psychotropic substance, which according to him falls on the first schedule to the Act. He said, the applicant is charged under section 15 (1)(a) read together with 15(3) of the Act. He asserted that the applicant was alleged

found with 169.9 gm, which he said is below 200gm specified by the law. According to him the applicant is subject to bail.

He added that bail is a right not a privilege. To support his argument, he cited the case of **Tito Douglas vs R** [1979] LR 55 and Section 148 of Criminal Procedure Act, [Cap 20 RE 2019] and Article 15 of the Constitution of United Republic of Tanzania, 1977. He therefore prayed for bail to be granted on bearable conditions.

Opposing the application Mr Elia, State attorney argued that the applicant is charged under section 15(1)(a) of Drugs Control and Enforcement Act. He said, the offence is on trafficking methamphetamine weighing 169.69gm. He asserted that, for purposes of bail it falls under Section 29(1)(a) of the Act. He added, the amount involved exceed 20gm. He firmly stated that, the applicant is not subject of bail. He therefore prayed, this application to be dismissed.

When re-joining learned advocate argued that, the applicant has not committed the offence. He said, the drug alleged found with him was not more than 169.69gm. He went on submitting that, the applicant was charged under section 15(1) of the Act. He claimed that, he should not be denied bail.

After a keen consideration of the submission by the parties, I have to state that, when a person traffics in narcotic drugs or psychotropic substance commits an offence as per Section 15(1)(a) of the Act. It is now settled that offences of trafficking in narcotic drugs or psychotropic substance are subject to bail depending on the amount (weight) of drugs or substance allegedly found. The law is very clear under section 29(1)(a), that an accused person could not be admitted to bail if he/she is charged with

trafficking narcotic or any other manufactured drugs weighing 20 gm or more. For clarity it states thus;

29.-(1) A police officer in charge of a police station or an officer of the Authority or a court before which an accused is brought or appear shall not admit the accused person to bail if-

*(a) that accused is charged of an offence involving trafficking of Amphetamine Type Stimulant (ATS), heroin, cocaine, mandrax, morphine, ecstasy, cannabis resin, prepared opium and any other manufactured drug **weighing twenty grammes or more.** (emphasis added)*

It has been submitted by all parties that the applicant is charged with psychotropic substance weighing 169.69 gm. So, it is crystal clear, that the substance that was alleged found exceed 20gm as per section above, hence the applicant is not subject to bail. I therefore agree with the Attorney for the respondent that the applicant is not allowed by the law to be admitted for bail.

Before I dismiss this application, I must comment on section 15(3)(i) of the Drugs Control and Enforcement Act, the advocate for the applicant was of the submission that because the applicant was charged under section 15(3)(i) and the amount of drugs alleged found do not exceed 200gm, then the applicant is should not be denied bail. I think this is a misconception. For better understanding of the same, the section states that;

15.(3) For purposes of this section, a person commits an offence under subsection (1) if such person traffics-

(i) narcotic drugs, psychotropic substances weighing more than two hundred grammes;

It is essential to note from the above that the law creates different offence under different sections. This means section 15 only creates the offence of trafficking. In order one to be charged under this section therefore he should have been or alleged to have been found trafficking of narcotic drugs or such substances weighing more than 200gm. This is important because, crafting of this law differentiates the intensity of the offence to be charged subject of the weight or volume of the amount of drugs found trafficked or otherwise dealt with. This also is important for establishment of jurisdiction of the court where to charge the suspect as clearly stated under section 2 of the Act, on what amounts to a "court".

Therefore, sections that create offence and for or intents and purposes not dealing with bail. Bail, in its sense is governed by section 29 of the Act. It is therefore section 29, which establishes which type of offence under the act isailable or otherwise. Section 2 defines the court to which the established offences are charged. Having said, what I have said, I dismissed this application for want of merit.

A.K. Rwizile

JUDGE

12.02.2021

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