

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA  
MOSHI DISTRICT REGISTRY**

**AT MOSHI**

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

(C/F ORG. ECO. No. 6 of 2019 District Court of Moshi at Moshi)

**HARUNA S/O RAJABU ALLY..... 1<sup>st</sup> APPLICANT**

**HADIJA D/O OMARY SAID ..... 2<sup>nd</sup> APPLICANT**

***VERSUS***

**THE REPUBLIC ..... RESPONDENT**

*23<sup>rd</sup> & 30<sup>th</sup> April, 2021*

**RULING**

**MKAPA, J.**

This is a bail application in respect of Haruna S/o Rajabu Ally (1<sup>st</sup> applicant) and Hadija D/o Omary Said (2<sup>nd</sup> applicant) respectively, hereinafter referred to as the applicants. They are seeking for bail in an Economic case No. 6 of 2019 which is pending before the District Court of Moshi at Moshi. The application by way of Chamber Summons is supported by applicants' joint sworn affidavit pursuant to section **29 (1) (b) and (3) of the Drug Control and Enforcement Act No. 5 of 2015** (DCEA) and Section 148 (1) (2) of the Criminal Procedure Act Cap 20 (CPA) [R.E.2002].



The charge sheet which is part of supporting affidavit reveals the particulars of the offence with two counts to the effect that, on the first count on 23<sup>rd</sup> February 2017 at Majengo area within the District of Moshi in Kilimanjaro Region, the applicants were found trafficking 14.33 grams of Narcotic Drugs namely Heroin Hydrochloride. The second count reveals that, on the same day place and time the applicants were found trafficking 250 grams of Narcotic Drugs namely Khat (Cathaedulis) commonly known as Mirungi.

At the hearing, the Applicants appeared in person while the learned State Attorney, Mr. Kassim Nassir appeared for the Respondent Republic. Submitting jointly, the 1<sup>st</sup> applicant prayed for bail pending trial and determination of the main case before the District Court of Moshi. He averred that they believe this Court has jurisdiction and they will abide with bail conditions. On the other hand the learned State Attorney supported the application. He informed the Court that the offence under which the applicants are charged is bailable considering the weight involved and that bail is applicant's constitutional right. No rejoinder was preferred.

Having carefully considered the submissions by the parties and the above provisions of the law the question for consideration is whether the offence the applicants are stand charged is bailable.

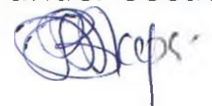
Section 29 (1) (a) & (b) of the Drug Control and Enforcement Act (DCEA) [R.E 2019] provides;

*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**;*

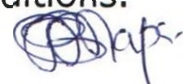
*(b) that accused is charged of an offence involving trafficking of cannabis, khat and any other prohibited plant **weighing twenty kilogram or more**; (Emphasis added)*

In the instant application the first count involves trafficking of 14.33 grams of Heroin Hydrochloride which is below 20 grams hence bailable under section 29 (1) (a) cited above. As to the second count the applicants are charged with trafficking 250 grams equivalent to  $\frac{1}{4}$  a kilogram of Khat (Catha edulis) commonly known as Mirungi which is below 20 kilograms also bailable under section 29 (1) (b) cited above.



In the circumstance, the applicants are hereby admitted to bail under the following conditions;

1. The applicants shall each deposit a Title deed of an immovable property equivalent to shillings. 30,000,000/=
2. The Tittle Deed shall be accompanied with a valuation report from a Government Valuer.
3. Each Applicant shall have two reliable sureties.
4. Each surety shall sign a bond of shillings 10,000,000/=.
5. One of the surety shall be a Government employee who shall produce an introduction letter from the employer. The other surety may not be a Government employee but s/he shall tender an introduction letter from the Village Executive Officer, or a Ward executive officer as the case may be.
6. The Applicants shall report to the District Magistrate Court at Moshi at 8.00 am every first Monday of the month
7. The applicants shall surrender to the trial court their travelling documents including passports.
8. The applicants shall not travel outside Kilimanjaro Region without written permission from the District Magistrate In –Charge of Moshi.
9. The Deputy Registrar to approve all bail conditions.



It so ordered.

Dated and Delivered at Moshi this 30<sup>th</sup> day of April 2021



  
**S.B. Mkapa**  
**JUDGE**  
**30/04/2021**