

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

(SONGEA DISTRICT REGISTRY)

AT SONGEA

MISC. CRIMINAL APPLICATION NO. 33 OF 2021

(Originating from Economic Case No. 1 of 2019 at Tunduru District Court)

NYENJE HALIFA NGOLECHE..... APPLICANT

VERSUS

THE REPUBLIC..... RESPONDENT

RULING

16th, June 2022.

U. E. Madeha, J.

The Applicant is charged with the offence of trafficking narcotic drugs in the District Court of Tunduru in Ruvuma Region which is contrary to Section 15 (a) of the Drugs Control and Enforcement Act No. 5 of 2015 as amended by Section 8 (1) of the Drugs Control and Enforcement (Amendment) Act No. 15 of 2017 read together with Section 57 (1) and 60 (2) of the Economic and Organized Crime Control Act Cap 200 (R.E. 2019) and paragraph 23 of the first schedule of the Economic and Organized Crime Control as amended by Section 16 of the Written Laws (Miscellaneous Amendment) Act No. 3 of 2016.

It was alleged that Nyenje Halifa @ Ngoleche on 24th May 2018 at Mpaji Village within Tunduru District in Ruvuma Region was found trafficking narcotic drugs and in possession of narcotic drugs together with one hundred and forty (140) kilograms of Cannabis commonly known as "Bhangi".

As a matter of fact, the Applicant filed the application for bail pending trial or committal proceedings by way of chamber summons made under Section 29 (4) and Section 36 (1) of the Economic and Organized Crime Control Act (Supra) and Article 13 (6) of the Constitution of the United Republic of Tanzania (1997) as amended time to time whereby the Applicant prayed to be granted bail.

The application is supported by the affidavit sworn by the Applicant. Moreover, before hearing of the application the Respondent/Republic filed one (01) point of the Preliminary Objection that is: - the Applicant's application is incompetent before this Court since the offence he is charged with is not bailable in other words cannot be granted bail.

At the hearing of the Preliminary Objection raised the Applicant was not represented by anyone, in other words, he appeared in personal

whereas, the Respondent was represented by none other than the learned State Attorney Ms. Generoza Montana.

Ms. Generoza Montana representing the Republic/Respondent during the hearing of the Preliminary Objection stated that; the case which the accused is being charged with at Tunduru District Court has no bail in accordance with the law.

She made reference to *Section 29 (1) (a) of the Drugs Control Enforcement Act* (Supra) which shows that if the accused is charged with trafficking narcotic drugs starting from twenty (20) kilograms then he is not supposed to be granted bail. She prayed that this application to be dismissed for want of merit.

In response the Applicant while submitting, questioned the value of the subject matter. He further argued that he was supposed to be granted bail because the value of the subject matter accommodates him. The value of Bhangi does not exceed the estimated amount of three million (3,000,000) Tanzanian shillings. Therefore, he prayed that this application for bail be granted.

In rejoinder submission, Ms. Generoza Montana argued that the Applicant said that the value of the subject matter does not exceed an amount of three million (3,000,000) Tanzanian shillings, and thus, therefore, he was supposed to be granted bail. Surprisingly, the Applicant did not mention the specific law in order to support his arguments.

In view of this application, the issue for determination is whether the Applicant is entitled to bail. I have considered the submissions of both parties and noted that the Applicant was trafficking cannabis known as Bhangi which exceeds the maximum amount to be granted bail. In order to be granted bail the amount of trafficking, should not exceed twenty (20) kilograms. Thus, with that particular amount of one hundred and forty (140) kilograms of trafficking narcotic drugs, he should eventually not be legally granted bail.

To add to it, the Applicant in his submission prayed that this Court to grants him bail because the value of the subject matter does not exceed three million (3,000,000) Tanzanian shillings and that he has got a family to take care which depends on him.

This Court made consideration to the submissions above on both sides and by looking at Section 29 of DECA (Supra) which I hereby quote:

"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;"

This Court is therefore restricted by the law in granting bail as explained in the above Section quoted it limits the jurisdiction of granting bail to the offence if the accused is charged of trafficking twenty (20) or more Kilograms can not be granted bail.

In a nutshell, legally the Applicant was supposed to be granted bail if only he was in a possession of less than twenty (20) kilograms of this cannabis popularly known as Bhangi.

Last but not least, in the circumstances of this case, the Preliminary Objection has merit and is hereby allowed.

Conclusively, the Applicant's application for bail is hereby dismissed.

DATED and **DELIVERED** at **SONGEA** this 16th day of **June** 2022.



A handwritten signature in blue ink, appearing to read "U. E. Madeha", is written over a horizontal dotted line.

U. E. MADEHA,
Judge.
16th, June 2022.