

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.21 OF 2022

(Originating from the District Court of Masasi at Masasi in Economic

Case No.16 of 2021)

JUMA RAJABU HASHIMU..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 20/7/2022

Date of Ruling: 1/8/2022

LALTAIKA, J.:

The applicant **JUMA RAJABU HASHIMU**, is charged before the District Court of Masasi with the offence of Trafficking in Narcotic Drugs in Economic contrary to section 15(1)(b) and (2) of the Drugs Control and Enforcement [Cap. 95 R.E. 2019] as amended by the Written Laws (Miscellaneous Amendments) read together with section 57(1) and paragraph 23 of the first schedule of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2019].

The applicant has moved this court to admit him to bail pending determination of the main case. His application is predicated on Article 13(6)(b) and 15 of the Constitution of the United Republic of Tanzania (as amended from time to time), section 148(3)(5)(a)(ii) and (iii) of the

Criminal Procedure Act [Cap. 20 R.E. 2019] and any other enabling provisions of the law. The application is also supported by his affirmed affidavit. The respondent Republic, likewise, filed her counter affidavit sworn by Mr. Wilbroad Ndunguru, learned Senior State Attorney.

When this matter was called on for hearing, the applicant appeared in person, unrepresented. The respondent, on the other hand was represented by Mr. Enosh Kigoryo, learned State Attorney. On the part of the applicant, he submitted that he is applying for bail pending trial because his family depends on him. The applicant stated that another reason for his application is due to his sickness. He stressed that he was involved in an accident and has a piece of metal that has been inserted in his leg. The applicant stated that his brother is also sick.

It is the applicant's submission further that he is from a single mother because he never knew his father. The applicant averred that he was charged with possession of *bhangi* which was weighed and they told him that there was 20 or 27 kilograms. He further maintained that bail is his constitutional right.

In response, Mr. Kigoryo at the outset objected the application. He went on and prayed the counter affidavit alluded to above, be adopted and form part of his submission. The learned State Attorney argued that the statement of the offence is to the effect that the applicant was arrested while trafficking in narcotic drugs "bhangi" weighed at 27 kilograms.

The learned State Attorney stressed that according to section 29(1)(b) of the Drugs Control and Enforcement Act [Cap 95 R.E. 2019] the offence is unbailable. Mr. Kigoryo went further and submitted that the applicant was caught being trafficking in drugs weighing more than 20

kilograms. To this end, the learned State Attorney argued that the application be dismissed. Mr Kigoryo advised that the applicant waits for his case while under custody in prison remand.

In a very brief rejoinder, the applicant insisted that this court admits him to bail because the same is his right. He went on and argued that if admitted to bail, he would be able to engage in nation building activities.

Having gone through the submissions for and against the application, I am positioned to decide the merits or demerits of the same. At the very outset, bail is a constitutional right to every citizen and non-citizens in our country. This is due to the fact that every person is entitled to presumption of innocence and freedom of movement as provided for under Articles 13(6) (b) and 14 of the Constitution of the United Republic of Tanzania.

However, bail pending trial is subjective since it depends on the kind of the offence a person is charge with. In our jurisdiction bail pending trial falls into two categories. The first category are those offences which are bailable as per the laws of the land. The second category are those offences provided by the laws that they are unbailable due to nature and weight of the offence.

In the present case, the applicant is charged with the offence of drugs trafficking contrary to section 15(1)(b) and (2) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2019] as amended by the Written Laws (Miscellaneous Amendments) read together with section 57(1) and paragraph 23 of the first schedule of the Economic and Organised Crime Control Act [Cap. 200 R.E. 2019]. It should be noted that bailability or otherwise of Drugs Trafficking offences depends on the amount impounded.

In the case at hand, the particulars of the offence provides that the applicant was caught being trafficking in twenty-seven (27) kilograms of *cannabis sativa* commonly known as bhanghi.

It is section 29(1)(b) of the Drugs Control and Enforcement Act as cited by Mr. Kigoryo which regulates admission of bail to the accused persons brought in court. For ease of reference and understanding it is imperative to paraphrase the section 29(1)(b) of the DCEA as follows: -

"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) N/A

*(b) that accused is charged of an offence involving trafficking of **cannabis**, khat and any other prohibited plant **weighing twenty kilogram or more;**"* (Bold for my emphasis)

As the above excerpt of the provision of the law provides, it is clear that the bail pending trial for an accused who has been charged with the offence of drugs trafficking weighing twenty kilograms or more cannot be admitted to bail. The applicant's affidavit has appended a copy of the charge sheet which reads: -

*"...did traffick Narcotic Drugs in the Motorcycle make Sanlg Registration number MC 695 BWT, to wit 27 kilograms of *cannabis sativa* commonly known as "Bhanghi"."*

Being guided by section 29(1)(b) of DCEA and particulars of the offence of the appended charge sheet in the applicant's affidavit, it is apparent that the applicant has not qualified to be admitted to bail because the offence he is facing in the trial court is unbailable because the weight of *cannabis sativa* allegedly trafficked is more than twenty kilograms.

From the foregoing reasons, I find the application is incompetent before this court. Hence, I strike it out and the applicant shall remain in remand custody pending determination of Economic Case No.16 of 2021 before the District Court of Masasi at Masasi.

It is so ordered.

E.I. LALTAIKA



A handwritten signature in blue ink, which appears to read "E.I. Laltaika".

JUDGE
1.8.2022