

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
IN THE HIGH COURT OF TANZANIA
CORRUPTION AND ECONOMIC CRIMES DIVISION
AT DAR ES SALAAM

MISC. ECONOMIC CAUSE NO. 24 OF 2018

(Originating from Economic Crime Case 68/2017 of Kisutu RM'S Court)

OMARI SAID MTANGI APPLICANTS

VERSUS

REPUBLIC..... RESPONDENT

Date of Last order: - 04/06/2018

Date of Ruling: - 04/06/2018

R U L I N G

W.B. KOROSSO, J.

Before the Court is an application for bail filed pursuant to S. 29(4) (d) and 36(1) of the Economic and Organized Crime Control Act, Cap 200 RE 2002. The application is supported by an affidavit affirmed by Omari Said Mtangi, the applicant.

The applicant is charged with trafficking Narcotic Drugs Contrary to section 15(1) (b) of the Drug Control Act, No. 5 of 2015. This is expounded

in paragraph 2 of the affidavit supporting the application and as can be discerned from the charge sheet presented as part of the affidavit and referred to in paragraph 2.

On the date fixed for hearing, the learned State Attorney informed the Court that they do not intend to counter the affidavit filed by the applicant since the issue for consideration, was the fact that the offence for which the applicant is charged, is not bailable for by virtue of the law. They thus sought the Court to dismiss the application for want of merit.

When given an opportunity to respond, the applicant who was unrepresented and appeared ^{Submitted} submitted in person ^{still} submit that since what he faces are ~~still~~ charges which have not been proved, he has a right to bail and the Court should proceed to grant him bail as prayed.

After hearing and considering the submissions before the Court, it is not disputed that, this Court has jurisdiction to hear and determine the application, by virtue of the fact that S. 29(4) (d) and 36(1) of EOCCA cited to move the court are proper, and they empower this Court to hear and determine the application.

It is also not disputed that the applicant with 12 others are charged with three counts of trafficking in Narcotic Drug, contrary to Section 15(1) (b) of the Drug Control and Enforcement Act, No. 5 of 2015 read together with paragraph 23 of the first schedule to the Economic and Organized Crime Control Act, Cap 200 RE 2002. The particulars of the offence are that, the applicant and 12 others on the 25th October 2017 at Indian Ocean area, within Tanzania water, trafficked in Narcotic Drugs to wit, heroin weighing

111.02 Kilograms; cannabis resin weighing 235.78 grams; and a mixture of cannabis and kuber weighing 3.34 kilograms.

The charges are before the Resident Magistrates Court of Dar es Salaam at Kisutu in Economic Crime Case No. 68 of 2017 S. 29 (1) of the Drugs Control and Enforcement Act which states, that *"a Police Officer in charge of a Police Station an Offer of the Authority or a Court before which an accused in brought or appears shall not admit the accused person to bail if:-*

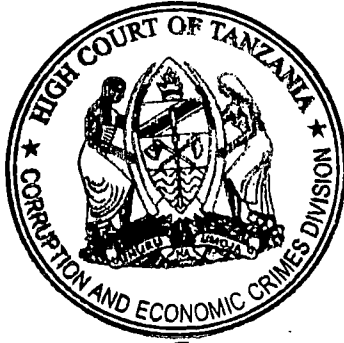
- (a) That accused is charged of an official involving trafficking of AM pet amine type stimutad (ATS), heroin, cocaine and any other manufactured drug weighing two hundred grams or more.*
- (b) That accused is charged of an offence involving officially of canalis, khat and any other prohibited plant weighing one hundred kilogram or more."*

This being the position of the law, having in mind the fact that the applicant is charged with trafficking narcotic drugs, type of heroin, weighing 111.02 kilograms, which is way above the specified two hundred grams, there is no doubt that this falls within the offences where bail is prohibited. It should be borne in mind that the imported provisions address where the accused is charged of an offence, and it does not require that the charges be proved, for an accused not to be admitted to bail.

Therefore, this Court finds its hands are tied by the above provisions, in view of the charges facing the applicant and the particulars there to as specified herein.

The bail application is therefore dismissed for reason that the offence charged is not bail-able as specified by S. 29 (1) (b) of the Drugs Control and ^{Enforcement} ~~Enforcement~~ Act, No. 5 of 2015.

It is so ordered.



Sgd: W.B. Korosso

JUDGE

04/06/2018