

SUPREME COURT OF SEYCHELLES

Reportable

CR 64/2024

In the matter between:

THE REPUBLIC

(Represented by Mr Alvine Marie)

Prosecution

and

MIKE VITAL

Of

Port Glaud

Mahe

(Represented by Mr Joshua Revera)

Accused/Convict

Neutral Citation: *The Republic vs Mike Vital* (CO 64/2024) (26 February 2026)

Before: Adeline J

Summary: Sentencing on conviction – Accused pleaded guilty and convicted for 1 Count of Trafficking in a Controlled Drug by means of being Found in Unlawful Possession of a Control Drug with Intent to Traffic.

Heard: By submissions in plea in mitigation by Defence counsel.

Delivered: 16th February 2026

SENTENCE

Adeline, J

FACTUAL AND PROCEDURAL BACKGROUND

- [1] An indictment was filed into court on the 24th of day of October 2024 pertaining to CB 83/10/24 of the Central Police Station, against one Mike Jean Vital, the accused now a convict, in which the said Mike Vital was indicted of 1 count of Trafficking in a Controlled Drug by means of being Found in Unlawful Possession of a Control Drug with Intent to Traffic contrary to Section 9 (1) of the Misuse of Drugs Act, 2016 read with Section 19 (1)

(c) of the said Act and punishable under the Section 7 (1) and the Second Schedule of the said Act.

[2] The particulars of the Offence in the indictment reads as follows;

“Mike Jean Vital, a 48 year old Scania Operator at Land Marine, of Port Glaud, Mahe being a citizen of Seychelles, on the 9th of October 2024, was found trafficking in a controlled drug namely cocaine, by virtue of having been found in unlawful possession of a net weight of 239.30 grams, which give rise to a rebuttable presumption of having possessed the said controlled drug with intent to traffic”.

[3] On the 12th December 2024, the accused/convict pleaded not guilty to the indictment, and after entering a not guilty plea on record, the court proceeded to fix trial dates which trial were aborted few times for reasons that the accused/convict was contemplating a possible plea bargaining.

[4] On the 27th January 2026, a date fixed for trial, the court was put on notice that there was a change in circumstances, in that, the accused/convict had decided to plea afresh and change his not guilty plea to a guilty plea.

[5] The indictment was read afresh to the accused/convict who pleaded guilty to 1 count of Trafficking in a Controlled Drug by means of being Found in Unlawful Possession of a Controlled Drug with Intent to Traffic.

[6] Upon admission of the facts pertaining to the offence of Trafficking in a Controlled Drug by means of being Found in Unlawful Possession of a Controlled Drug with Intent to Traffic as narrated by the prosecution, the accused/convict was convicted.

[7] The facts pertaining to the offence of Trafficking in a Controlled Drug by means of being Found in Unlawful Possession of a Controlled Drug with Intent to Traffic as narrated by the prosecution, are that;

(1) On the 9th October 2024, whilst Police Officers were patrolling in the vicinity of Sans Souci, they came across a silver pick up truck, make Toyota bearing registration number S9148 heading towards Copolia. The officers stopped the vehicle and informed

the driver, Mr Vital, that a search would be carried out in the vehicle. Whilst conducting the search, under the driver's seat, officers found a biodegradable bag. The bag was removed and opened in the presence of Mr Vital. Inside the bag, officers found a black pouch with glitters on it. The pouch was opened and a large sum of Seychelles currencies in different denominations was found. The convict was told that the green biodegradable bag and its content was being seized. The police put the same in an evidence bag and sealed it.

(2) Mr Vital was then informed that, a search in the house where he lives at Port Glaud would be carried out. They proceeded there accompanied by Mr Vital. Arriving there, a search inside the house was conducted. Nothing illegal was found. Mr Vital was then taken to the Port Glaud Police station to undergo certain formalities. At the police station, the police cut opened the sealed evidence bag and removed the green biodegradable bag containing the black pouch inside to count the cash money. They found, underneath the money, a clear plastic zipper bag containing four packets made of clear plastic each containing a white substance suspected to be controlled drug, cocaine. They also found a small black digital scale, a yellow-handled penknife and one green lighter. The convict was arrested suspected of trafficking in a controlled drug. The evidence envelop containing the plastic bag with the white substance suspected to be controlled drug was sent to the forensic laboratory for analysis. It was confirmed that, the white substance was cocaine having a total net weight of 239.30 grams. The total sum of money seized in the custody of the police as exhibits was Seychelles rupees 181,450.00.

SUBMISSIONS OF COUNSEL IN PLEA IN MITIGATION

[8] In plea in mitigation, learned defence counsel submitted, that the convict has pleaded guilty at the earliest opportunity, and that in doing so, he has avoided wasting the court's time. He added, that, the convict has already been severely punished given that his pickup, a Toyota Rocco valued at SCR 700,000.00 has already been seized by the authorities. It was submitted by learned counsel, that to earn his living, the convict is a Scania driver who takes containers around, and that he is also a fisherman. It was the submission of learned

counsel, that the sum of SCR 181,450.00 seized from him at the time of the commission of the offence, were money generated from his fishing business and that the money was to be used to pay his workers. Learned counsel stated, that his client is not asking for the return of the money to him.

THE APPLICABLE LAW AND SENTENCING UNDER THE MISUSE OF DRUGS ACT, 2016 (MODA)

- [9] The court's approach to sentencing a person convicted of a drug offence under MODA is guided by the various statutory provisions under MODA and the sentencing pattern for similar offences. The offence of which the accused/convict has been convicted is in contravention of Section 9 (1) read with Section 19 (1) (c) of MODA. For ease of reference, Section 9 (1) of MODA is couched in the following terms;

“9 (1). A person who possesses a controlled drug whether lawfully or not, with intent to traffic in contravention of this Act, commits an offence of trafficking and is liable on conviction to the penalty specified for an offence under Section 7 (1)”.

- [10] Section 19 (1) of MODA is couched in the following terms;

“19 (1). A person who is proved to presumed to have had in his possession or custody or under his or her control (c) 2 grams or more of diamorphine (heroin) or cocaine shall be presumed, until the person proves the contrary, to have had the controlled drug in his possession with intent to traffic in contravention of Section 9 of this Act”.

- [11] As a matter of construction, therefore, under Section 19 (1) of MODA, there is a rebuttable presumption available to an accused, in that, the accused may adduce evidence to rebut the presumption that the 2 grams or more of controlled drug in his possession was not intended to traffic.

- [12] Also applicable for the purpose of sentencing a convict for an offence under MODA is Section 7 (1) of MODA which is couched in the following terms;

“ 7 (1) A person who traffic in any quantity of controlled drug whether on his or her own behalf, or on behalf of another person, whether the other person is in Seychelles or not, in

contravention of this Act, commits an offence of trafficking and is liable on conviction to the penalty specified in the Second Schedule of MODA”.

[13] The penalty specified in the Second Schedule of MODA applicable to Section 7 (1) and 9 (1) of MODA for a Class A drug prescribed under the Second Schedule is life imprisonment and or a maximum fine of SCR 750,000.00.

[14] At this juncture, I take cognizance of Section 26 of the Penal Code that reads;

“Imprisonment

26 (1). A person liable to imprisonment for life or any period may be sentenced for a shorter term.

(2) A person liable for imprisonment may be sentenced to pay a fine in addition to or instead of imprisonment”.

[15] In meting out the sentence that would be appropriate based on the facts and circumstances of this case, I have had regard to Section 47 (1) under Part VI of MODA. Section 47 (1) reads as follows;

“ 47 (1) In sentencing a person convicted of an offence under Part II of this Act, whether upon a guilty plea or following a trial, the court shall have regard to;

(a) The objectives of the Act.

(b) The degree of control to which the relevant controlled drug is subject.

(c) The general objective of Transparency and Proportionality in sentencing”

[16] I have also had regard to Section 48 (1) of the MODA to establish whether there are aggravating factors that must be taken into account to support a more severe sentence. Section 48 (1) reads;

“48 (1) Aggravating factors (factors that support a more serious sentence) for offences under this Act includes;

- (a) *The presence and degree of commercial element in the offending, particularly, where controlled drugs have been imported into Seychelles.*
- (b) *The involvement in the offence of an organised criminal group to which the offender belongs.*
- (c) *The involvement of the offender in other offences facilitated by or related to Commission of the offence.*
- (d) *The use of violence or weapons by or on behalf of the offender.*
- (e) *The fact that the offender holds office or high profile position in the community, particularly if the offence is connected with the office or position in question.*
- (f) *The targeting, involvement, use or exploitation of children in connection with the offence.*
- (g) *The fact that the offence was committed in a penal or educational institution, Social service facility or in other places related to education, sports or social activities or in their immediate vicinity, and*
- (h) *Prior convictions (subject to the Rehabilitation of Offenders Act) particularly for similar offenses, whether foreign or domestic, or prior formal cautions under this Act.*

[17] In the light of those aggravating factors, Section 7 (4) of MODA must be put in the equation. It reads as follows;

“Where a person is convicted of an offence of trafficking in more than 1.5 kilograms of cannabis or cannabis resin or more than 250 grams of any controlled drug, the court shall treat the offence as aggravated”.

[18] In addition, I have also had regard to Section 49 of MODA that reads as follows;

“49. Mitigating factors (factors that support a reduction in sentence) for offences under this Act include;

- (a) *The offender's admission of the truth of the charge through a guilty plea, particularly an early guilty plea.*
- (b) *The offender's acceptance of responsibility for the harm or potential harm associated with his or her offence.*
- (c) *Any substantial assistance given by the offender to law enforcement authorities, as an informer or otherwise, in the prevention, investigation or prosecution of any other offence under this Act.*
- (d) *The absence of any commercial element in the open.*
- (e) *The presence of any element of coercion or, for example, from a family member or employer.*
- (f) *The absence of prior convictions or prior formal cautions under this Act.*
- (g) *The fact that no other person was involved in or directly harmed by the offence”.*

[19] Having spelt out the aggravating and mitigating factors prescribed under Section 48 and 49 of MODA respectively, I am bound to give effect to Section 47 (2) of Part II of MODA, that reads as follows;

“47 (2) Where an aggravating or mitigating factor identified in Section 48 or 49 applies to the circumstances of the offence, the court shall expressly identify that factor and give weight to it in considering the appropriate sentence”.

[20] In that regard, having gone through the whole facts and circumstances that the offence was committed, as well as the list of aggravated factors under Section 48 (1) of MODA, I am unable to find any aggravating factors. I am tempted to perhaps consider (a) *the presence and degree of a commercial element in the offending, particularly, where the controlled drugs have been imported into Seychelles.*

[21] It is the finding of this court that, the controlled drug have been imported. But I cannot put a degree of commercial element into it given that the purity of the 239.30 grams net weight is unknown.

[22] Therefore, pursuant to Section 48 (2) of MODA none of the aggravated factors under Section 48 (1) can be identified, let alone in a significant extent, and as such, I cannot treat the offence as aggravated in nature. Section 48 (2) reads;

“48 (2) Where one or more of the aggravated factors identified in Sub Section (1) is present to a significant extent, the court shall treat the offence as aggravated”.

[23] I note that, the amount of drugs involved is 239.30 grams of cocaine net weight. I am therefore reminded that, this is below the 250 grams required under Section 7 (4) of MODA to be treated as aggravated.

[24] As regards to Section 49 of MODA, the mitigating factors identified are;

- (1) The offender's admissions of the truth of the charge through a guilty plea, particularly and early guilty plea (although in the instant case the guilty plea was not early).
- (2) The offender's acceptance of responsibility for the harm or potential harm associated with his offence.
- (3) The absence of commercial elements in the offence.
- (4) The absence of prior conviction.

[25] In the final analysis, within the background of the discussions of the law and the facts and circumstances of this case, and in consideration of learned defence counsel's plea in mitigation, I therefore sentence the accused/convict as follows;

- (1) I sentence Mike Jean Vital of Port Glaud, Mahe, Seychelles to serve a term of imprisonment of two years for the offence of Trafficking in the Controlled Drug by means of being Found in Unlawful Possession of Control Drug with Intent to Traffic

contrary to Section 9 (1) of the Misuse of Drugs Act, 2016 and punishable under Section 7 (1) read with the Second Schedule of the said Act.

Pursuant to Section 282 (1) and (2) of the Criminal Procedure Code, the 2 years prison sentence is suspended for three years on condition that during the three years he is not charged with any drugs related offence.

(2) I also fine the convict to pay a sum of SCR 181,450.00, which sum must be fully paid within a period of 2 months as of today, failing which the accused/convict shall serve a term of imprisonment of 1 year as a default sentence.

(3) The accused/convict has 30 working days as of today to appeal against this sentence.

Signed, dated and delivered at Ile du Port 16th February 2026.

