

SUPREME COURT OF SEYCHELLES

Reportable

CO12/2025

In the matter between:

THE REPUBLIC

(rep by Ms Anissa Hermitte)

Prosecution

And

JEAN-PAUL BANANE

(rep by Mrs Alexia Amesbury)

1st Convict

VANESSA PAYET

(rep by Mrs Alexia Amesbury)

2nd Convict

Neutral Citation: *Republic vs Jean-Paul Banane & Or* CO12/2025 (11 July 2025)

Summary: Sentence

Before: D. Esparon, J

Heard: 26th May 2025

Delivered: 11 July 2025

SENTENCE

D. Esparon J.

Introduction:

1. The Accused Jean-Paul Banane and Vanessa Payet have been charged with the Following offences: In Count 1 the accused persons have been charged with the offence of Trafficking of a controlled drug by means of being found in unlawful possession of a controlled 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 section 22(a) of the Penal Code,

punishable under section 7(1) read with section 48(1)(a) and second schedule of the Misuse of Drugs Act 2016. The Particulars of the offence reads as follows;

‘ Jean-Paul Banane 34 years old casual worker of Anse Boileau and Vanessa Payet 32 years old self-employed of Baie Lazare on the 26th June 2024 were Trafficking in a controlled drug, by virtue of having been found in unlawful possession of a net weight of 46.40 grams of controlled drug namely heroin (Diamorphine) which was found in a clear container located on the counter near the kitchen of a house they are renting at Anse La Mouche , which gives rise to the rebuttable presumption of having possessed the said controlled drug with intent to traffic’.

2. In count 2, the accused persons have been charged with the offence of possession of a controlled drug contrary to section 8 of the Misuse of drugs Act 2016 read with section 20(1)(a) and (c) of the said Act and section 22(a) of the Penal Code and Punishable under the second Schedule of the Misuse of Drugs Act 2016. The particulars of offence read as follows;

‘Jean-Paul Banane 34 years of Anse Boileau and Vanessa Payet 32 years self- employed of Baie Lazare on the 26th June 2024 was found in unlawful possession of a net weight of 7.80 grams of controlled drugs namely cannabis found in a piece of Khaki paper bearing green imprints (Tea and Coffee Box 634’ which was located on the counter near the kitchen of the house they were renting at Anse la Mouche’.

3. The accused persons have been charged in the 3rd count with the offence of possession of utensils intended to facilitate the use of a controlled drug contrary to section 8(2) of the Misuse of Drug Act 2016 read with section 22(a) of the Penal Code and punishable under the Second Schedule of the Misuse of Drug Act 2016. The particulars of the offence read as follows;

‘Jean-Paul Banane 34 years old of Anse Boileau and Vanessa Payet 32 years self-employed of Baie Lazare on the on the 26th June 2024 was found in possession of one small silver digital scale bearing the traces of a controlled drug namely hashish (cannabis resin) which was located on the counter near the kitchen of the house they were renting at Anse La Mouche’.

4. Both accused pleaded guilty to count 1,2 and 3 and were convicted on their own guilty plea after admitting the facts of the prosecution case. It appears from the facts of the prosecution case that both controlled drugs namely the 46.40 grams of heroin (diamorphine), the 7.80 grams of cannabis and the small silver scale bearing traces of cannabis raisin where all found on a counter near the kitchen upon the police searching the house that both accused person were renting.

Mitigation

5. In mitigation, counsel for the accused persons put forth before the Court that the accused persons have pleaded guilty by not wasting the time of the Court. That they are first offenders and that they have 3 minor children namely one 14 years old, one 7-year-old and a 3-year-old child. According to counsel, in this matter no purity for the percentage of heroin content has been done and this has been confirmed by the prosecution of whom has used the actual words that the purity in the present matter was not achievable of which this Court is unable to ascertain as to whether the appropriate test for purity was done but could not determine the purity or as to whether the appropriate test was not done. Furthermore, upon perusing the charge sheet, it is evident that the purity has not been mentioned in the particulars as to count 1.

The law

6. At this stage, the Court has to draw its attention to section 47 of MODA which makes provision for the following;
 - (1) “in sentencing a person convicted of an offence under part 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 control drug is subject; and
 - (c) the general objectives of transparency or proportionality in sentencing.
 - (2) Where an aggravating or mitigating factor identified in section 48 or section 39 applies to the circumstances of an offence, the Court shall expressly identify that factor and give weight to it in considering the appropriate sentence...”
7. Section 49 of the Misuse of Drugs Act reads as follows;

‘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 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 prevention, investigation or prosecution of any other offence under this Act;
 - (d) The absence of commercial element in the offence;
 - (e) The presence of element of coercion, for example from a family member or Employer
 - (f) The absence of prior convictions or prior formal cautions under this Act; and
 - (g) The fact that no other person was involved in or directly harmed by the offence'.
8. This Court also draws its attention to section 47(4) of the Misuse of Drugs Act which states as follows;
- 'In sentencing a person convicted of an offence under section 8 of this Act, the Court shall not impose a sentence of imprisonment unless satisfied that a non-custodial sentence is inappropriate in all circumstances'.*
9. From the outset, this Court would like to expound on the principle of sentencing as laid down in decided cases. In the case of *Ponoo V/S Attorney General* (2011) SLR, the Court of Appeal held that;
- 'Sentencing is an intrinsic judicial power which involves the human deliberation of the appropriate conviction to be given to the particular offender in the circumstances of the case. It is not a mere administration of a common formula standard or remedy'.*
10. In the case of *Savy v/s R* (1976) SLR 54, the Court held that;
- 'In sentencing, the Court should consider the necessity of punishing crime, the deterrent effect on others of the appropriate punishment, and the need to protect the public from offences especially in at the hands of those entrusted with the enforcement of the law,*

the previous good character of the accused, the motive for the offence and the loss of usefulness to the state by a prison sentence’.

11. In the case of **R V/S Aden (2011) SLR 41** the Court held that;

‘In sentencing, one relevant factor is the seriousness of the offence.’

12. In The case of *Njue v R (2016) SCCA 12, (at para 14)* set out the principles a Court should consider when sentencing which includes public interest; the nature of the offence and the circumstances it was committed. The Court at the same time must consider whether there is a possibility of the offender to be reformed; the gravity of the offence; the prevalence of the offence; the damage caused; any mitigating factors; the age and previous records of the accused; the period spent in custody; and the accused’s cooperation with law enforcement.

13. It is trite law that sentencing is a discretion of the trial Court. In the case of **Suki V/S R SCA 10 of 2019**, prof Tibatemwa- Ekirikubinza JA, stated the following at paragraph 25 of the Judgment;

14. ‘In exercising discretion to arrive at a sentence, the Judge should balance the mitigating factors with the aggravating factors and then consider the cumulative effect thereof. It may be that in the opinion of the Judge, the aggravating factors outweigh the mitigating factors even to the extent that the-would be mitigating factors have little or no effect on the sentence. In such circumstances, the factors cited in mitigation will necessarily recede into the background. It is only if the mitigating factors carry sufficient weight to tip the scale in favour of the accused that a lenient sentence would be given’.

Analysis and Determination

15. This Court will now consider whether there are any aggravating factors as regards to the 1st accused and the 2nd accused in respect to the commission of the offence. Section 7(4) of the Misuse of Drugs Act, 2016 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 other controlled drug, the Court shall treat the offence as aggravated’.

16. This Court notes that the amount of controlled drugs mentioned in Count 1 in the charge sheet that the accused had pleaded guilty to and convicted refers to a net weight of 46.40 grams of heroin (diamorphine) of which the purity has not been stated in the said Count, a fact admitted by the prosecution when she stated that 'the purity as to the said controlled drug has not been achieved'. In the case of **the Republic V/S Germain Dixon and Ricky Suzette (CO 50/2022, SCSC 208)**, Judge Burhan noted that further the analysis is unable to state the purity of that controlled drug due to the controlled drug being mixed with other substances. The Court in the present case imposed a sentence of 5 years' imprisonment for a case of importation of a controlled drug namely cocaine with a net weight of 4164.50 grams without such purity being stated in the charge sheet. Hence this Court is of the view that section 7(4) is not applicable in the present case in view that the purity has not been stated in the charge sheet. As a result, I find that there are no aggravating circumstances in the case.
17. Further, as a result that no purity was done or achieved and stated in the charge sheet and that the amount of controlled drug is only 46.40 grams of heroin (diamorphine), I find that this is strong mitigating factor in favour of the accused person in view that for such an amount the Court cannot ascertain the heroin content in the said substance but only the net weight of 46.40 grams. In saying that I bear in mind the previous deciding cases decided by the Court in Seychelles namely the case of **Republic V/S Dahlin Joubert and Ors CR70/2021** whereby the 1st accused was convicted and sentenced for the offence of trafficking in a controlled drug namely with a net weight of 40.5 grams of cocaine with a cocaine content of 26.16 gram to a term of 1 year and 6 months' imprisonment and to a term of 2 weeks' imprisonment for the offence of possession of a controlled drug. Hence I shall distinguish the case of Dahlin Joubert (supra) to the present matter since in the case of Dahlin Joubert the purity for the controlled drugs was done and it was found that there was 26.16 grams present contrary to the present case where no purity was done or in the words of the prosecution 'was not achieved' as to the said controlled drug of which in addition I find that there is no commercial element present in this matter.
18. In the case of Republic V/S Denis Madeleine the accused was sentenced to a term of one-year imprisonment suspended for three years and a fine of Seychelles Rupees Thirty Thousand (SCR30,000) to be paid within 6 months of today failing which he shall be committed to imprisonment for 6 months of which the accused was charged with the offence of possession with intent to traffic in a controlled drug namely in 62.97 grams of cocaine. In this case the accused was suffering from chronic hypertension and diabetes for which he was on medication.

19. In this matter, I have considered as mitigating factors in favor of both accused persons namely the fact that the accused persons have pleaded guilty and not wasting the time of the Court. That they are first offenders and that they have 3 minor children namely one 14 years old, one 7 year old and a 3 year old child of which no doubt these minor children are solely dependent on both accused person. I have also considered that in the words of the prosecution in her statement of facts put before the Court when she stated that purity was not achievable in the present matter which I find to be a strong mitigating factor considering the net weigh of the substance being only 46.40 grams, hence with no aggravating factors nor commercial element being present.
20. In applying the test as laid down in the case of **Suki V/S R SCA 10 of 2019**, where prof Tibatemwa- Ekirikubinza JA, stated the following at paragraph 25 of the Judgment;
- ‘In exercising discretion to arrive at a sentence, the Judge should balance the mitigating factors with the aggravating factors and then consider the cumulative effect thereof. It may be that in the opinion of the Judge, the aggravating factors outweigh the mitigating factors even to the extent that the-would be mitigating factors have little or no effect on the sentence. In such circumstances, the factors cited in mitigation will necessarily recede into the background. It is only if the mitigating factors carry sufficient weight to tip the scale in favour of the accused that a lenient sentence would be given’.
21. In the present matter, although both accused have been convicted with the offence of possession with intent to traffic in a controlled which I find to be serious, I do not find that this is a case where the aggravating factors outweigh the mitigating factors even to the extent that the-would be mitigating factors have little or no effect on the sentence. On the Contrary, I find that the mitigating factors carry sufficient weight to tip the scale in favour of the accused persons that a lenient sentence would be given of which I’m of the view that it should be a lesser sentence than that which was given by the Court in the case **Republic V/S Dahlin Joubert and Ors CR70/2021** in view that purity was not achieved in this matter and the specific other mitigating factors which are present

in this matter as highlighted at paragraph 19 of this sentence of which I find that together they amount to strong mitigating factors in favour of the accused persons. As a result, I further find that a non- custodial sentence is most appropriate against both accused persons in the circumstances of this case.

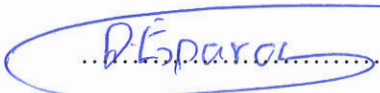
22. As a result of the above, I accordingly impose a sentence of 2 years' imprisonment suspended for 3 years against the 1st accused Jean-Paul Banane. In addition, I impose a fine of SCR 40,000 against the 1st Accused to be paid within a period of 1 years from the date of the sentence. In default of the payment of the said fine the accused shall serve a term of 2 years' imprisonment.
23. As regards to count 2 for the offence of possession of a controlled drug against the 1st accused Jean-Paul Banane namely in 7.80 grams of cannabis, I accordingly impose a fine of SCR 2500 against the first accused of which the said fine should be paid within a period of 2 months from the date of this sentence. In default of the payment of the said fine, the said accused shall serve a period of 1-month imprisonment.
24. As regards to count 3 namely for the offence of possession for utensils intended to facilitate the use of a controlled drug against the 1st accused Jean-Paul Banane namely a small silver digital scale bearing traces of cannabis resin, I impose a fine of SCR 2500 of which the said fine shall be paid by the said accused within a period of 3 months from the date of this sentence. In default the accused shall serve a term of 1-month imprisonment.
25. As regards to the 2nd accused Vanessa Payet, I accordingly impose a sentence of 2 years' imprisonment suspended for 3 years against the said accused. In addition, I impose a fine of SCR 40,000 against the 2nd Accused Vanessa Payet to be paid within a period of 1 year from the date of this sentence. In default of the payment of the said fine, the accused shall serve a term of 2 years' imprisonment.
26. As regards to count 2, for the offence of possession of a controlled drug against the 2nd accused namely in 7.80 grams of cannabis, I accordingly impose a fine of SCR 2500 against the 2nd accused Vanessa Payet of which the said fine should be paid within a period of 2 months for the date of this sentence. In default of the payment of the said fine, the said accused shall serve a period of 1-month imprisonment.
27. As regards to count 3 namely for the offence of possession for utensils intended to facilitate the use of a controlled drug against the 2nd accused Vanessa Payet namely a small silver digital scale bearing traces of cannabis resin, I impose a fine of SCR 2500

of which the said fine shall be paid by the said accused within a period of 3 months from the date of this sentence. In default the accused shall serve a term of 1-month imprisonment.

28. All fines in respect of all 3 counts imposed against the 1st accused and the 2nd accused shall run consecutively to each other.

29. Both accused has a right of Appeal within 30 days from the date of this sentence.

Signed, dated and delivered at Ile du Port on the 11th July 2025.

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D. Esparon J.

