

IN THE SUPREME COURT OF SEYCHELLES

Reportable

CR44 /2024

In the matter between

THE REPUBLIC

(rep. by Lansinglu Rongmei)

Prosecution

and

MOHAMMAD RAFIEI PANGAND

(rep. by Darrel Uranie)

1st Accused

MALIK MOHAMMAD ZAI

(rep. by Darrel Uranie)

2nd Accused

Neutral Citation *The Republic v Mohammad Rafiei Pangand & Anor* (CR44/2024)
delivered on 28th February 2025

Before: Vidot J
Summary importation of a controlled drug contrary to section 5 of the Misuse of
Drugs Act 2016 read with section 22(a) of the Penal Code and punishable
under section 5 and the Second Schedule of the said Act

Heard: 07th and 14th February 2025

Delivered: 28th February 2025

ORDER

Accused are sentenced as follows;

- i. Count 1 – to a term of 20 years imprisonment
- ii. Count 2 – to a term of 6 years imprisonment
- iii. Count 3 – to a term of 4 years imprisonment

- iv. Count 4 – to a term of 5 years imprisonment.

SENTENCE

VIDOT J

[2] The Accused are charged with and pleaded guilty to the following offences;

Count 1

Statement of Offence

Importation of a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 as read with section 22(a) of the Penal Code and punishable under section 5 and the Second Schedule of the Misuse of Drugs Act 2016

Particulars of Offence

Mohammad Rafiei Pangand, aged 48 years old and Malik Mohammad Zai, aged 54 years old, respectively Captain of and crew onboard the Iranian dhow, namely Al Ramani, on 04th June 2024, imported into Seychelles a controlled drug, namely cannabis resin (hashish) with a total net weight of 908.33 kg on board the Iranian dhow namely Al Ramani which was not displaying any flag, having entered and found in the territorial waters of the Seychelles, in contravention of the Misuse of Drugs Act 2016.

Count 2

Statement of Offence

Importation of a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 as read with section 22(a) of the Penal Code and punishable under section 5 and the Second Schedule of the Misuse of Drugs Act 2016

Particulars of Offence

Mohammad Rafiei Pangand, aged 48 years old and Malik Mohammad Zai, aged 54 years old, respectively Captain of and crew on board the Iranian dhow, namely Al Ramani, on 04th June 2024, imported into Seychelles a controlled drug, namely heroin (diamorphine) with a total net weight of 7.30kgs on board the Iranian dhow namely Al Ramani which was not displaying any flag, having entered and found in the territorial waters of the Seychelles, in contravention of the Misuse of Drugs Act 2016.

Count 3

Statement of Offence

Importation of a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 as read with section 22(a) of the Penal Code and punishable under section 5 and the Second Schedule of the Misuse of Drugs Act 2016

Particulars of Offence

Mohammad Rafiei Pangand, aged 48 years old and Malik Mohammad Zai, aged 54 years old, respectively Captain of and crew on board the Iranian dhow, namely Al Ramani, on 04th June 2024, imported into Seychelles a controlled drug, namely cannabis (herbal material) with a total net weight of 9.65 kgs on board the Iranian dhow namely Al Ramani which was not displaying any flag, having entered and found in the territorial waters of the Seychelles, in contravention of the Misuse of Drugs Act 2016.

Count 4

Statement of Offence

Importation of a controlled drug contrary to section 5 of the Misuse of Drugs Act 2016 as read with section 22(a) of the Penal Code and punishable under section 5 and the Second Schedule of the Misuse of Drugs Act 2016

Particulars of Offence

Mohammad Rafiei Pangand, aged 48 years old and Malik Mohammad Zai, aged 54 years old, respectively Captain of and crew on board the Iranian dhow, namely Al Ramani, on 04th June 2024, imported into Seychelles a controlled drug, namely methamphetamine with a total net weight of 3.25 kgs on board the Iranian dhow namely Al Ramani which was not displaying any flag, having entered and found in the territorial waters of the Seychelles, in contravention of the Misuse of Drugs Act 2016.

- [3] After the pleas were recorded, the Prosecution read out the facts to Court which were admitted by the Accused. Therefore, the Court proceeded to convict the Accused as charged.
- [4] On the 14th February 2025, Counsel for the Accused proceeded to make submission in mitigation. Counsel pleaded to Court to show leniency to his clients who at the earliest opportunity have pleaded guilty, therefore saving the Court's precious time. It has always been a principle of sentencing that a guilty plea earns an accused person credit, meaning that in such a case the accused will get a lesser sentence than if the accused had been convicted following trial. **Blackstone's Criminal Practice (2012), paragraph E.12 p2148** provides that a guilty earns an accused a reduction in sentence as it saves time of the court and reduces considerable cost and in the case of an early plea, saves inconvenience of witness to give evidence before court, and therefore that "*reduction should be a proportion to the total sentence imposed calculated by references in which the guilty plea was indicated, especially at what stage of the proceeding.*" I note that section 49 of the Misuse of Drugs Act provides "*admission of the charge through a guilty*" plea and the fact that "*no person was directly harmed by the offence*" as mitigating factors in support of a reduction in sentence.

- [5] Counsel for the Accused submitted that the life circumstances and in particular poverty led them to commit the offences they have been charged with. He explained that life in Iran is hard. The Accused have families to maintain. The first Accused who is 48 years old is a father of 5 children who are all minors. He also has two wives who are dependent on him. The second Accused is 54 years old and father to 3 children two of whom are still minors. He has one wife. Counsel submitted that due to their dire situation, the Accused agreed to import drugs into Seychelles. However, not all the drugs found on the Al Ramani was destined to Seychelles. He adds that half of the consignment was destined for Yemen. However, they encountered delays at sea because they were intercepted by the British Royal Navy and therefore could not make delivery in Yemen.
- [6] In support of his submission for leniency, Counsel for the referred to several cases to where sentences were delivered following a guilty plea. These include **Republic v Bashiru Chande CO20/2024**. In that case, the accused had imported into Seychelles 4953.20 grams of heroin and received a 9 year sentence. In **Republic v Holder**, Twomey CJ sentenced the Accused to a term of 5 years imprisonment for importation of 9.864 grams of heroin with a purity of 404 grams. In **Republic v Wahid Balochizi & Anor (CO31/2023) [2023] SCSC 817 (06 November 2023)** Govinden CJ imposed a sentence of 25 years imprisonment on both counts to run concurrently on counts of importation of 622.60 grams of heroin and 388.65 grams of methamphetamine.
- [7] In contrast, this Court has imposed more severe sentences on foreigners who import drugs into Seychelles. These sentence commensurate with the gravity of such offences. Such cases include; **R v Peter Nwachukuwa CR 64 of 2021** where the accused imported 1114 grams of cocaine with a cocaine content of 746 grams and received a sentence of 11 years imprisonment. In **R v Nellie Kawinga CR80 of 2023**, the accused imported 874.33 grams of cocaine and the court imposed a sentence of 15 years imprisonment. In **R v Noeline Namatovu CR86 of 2021** the accused imported 500.50 grams of cocaine and this Court imposed a sentence of 10 years imprisonment whilst in **R v Prince Amari CR45 of 2022** this Court imposed a sentence of 14 years for importation of 1892.27 grams of controlled drugs with a cocaine content of 1342.85 grams.

- [8] I find that in line with section 49 of MODA, mitigating factors exist that will assist in appeasing the severity of sentence to be imposed. The admission of the charge through a guilty plea is a mitigating factor. Other mitigating factors include the Accused's acceptance of responsibility for the harm or potential harm associated with such offence, the absence of prior convictions or prior formal cautions under MODA and the fact that no other person was directly harmed by the offence. An early guilty plea shows that the Accused is remorseful for the offences committed. All such mitigating factors would indeed earn the Accused credit as far as sentence is concerned.
- [9] To be involved in criminality is never an option. If that is the course that one adopts he has to be ready to face the consequences. Nonetheless, the Court has to consider the mitigating factors affecting the offence. If the drug, which has a considerable commercial value as provided under section 48(1)(a) of the MODA, had reached the market, a sizable portion of the population particularly the youth would have been affected. This is because use of drugs is pervasive amongst our small population. The destruction it causes is alarming. The fight against drugs remains a challenge of mammoth proportion in the Seychelles. We are losing part of a generation due to this insidious cancer. Many of the social ills witnessed today are due to drugs. It is also alarming that foreigners use our country as a playground to benefit from their poisonous trade. It needs to stop. Any sentence imposed should send a clear message to others that this jurisdiction will never allow itself to be violated in that manner. Much needed resources, be it human or monetary are being washed down the drains just to contain the drug problem.
- [10] In meting out sentence I have taken into consideration all mitigating factors and in particular the fact that the Accused have young children and wives who are dependent on them and will definitely be affected by the sentence to be imposed. I note that in respect of Count 2, though not stated in the Charge Sheet, as per analysis report, the heroin's purity content of 7.30kg seized was about 50 per cent.
- [11] In meeting out sentence, I bear in mind that the classic principles of sentencing is deterrence, prevention, rehabilitation, reformation and retribution; see **Lawrence v**

Republic [1990] SLR 47. I shall also take into consideration the principle of proportionality and totality of sentence.

[12] When I consider the principal of proportionality of sentence, I note that it operates to guard the imposition of unduly lenient or unduly harsh sentence. In **R v Scott [2005] NSWCCA 152**, the Court in Australia stated

“There in a fundamental and immutable principle of sentencing, that the sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed and the circumstances of the crime committed. The principle arose under the common law: R v Geddes [1939] SR (NSW) 554 and R v Dodd [1991] 57 A Crim. R 349 one of the purposes of punishment is “to ensure that an offender is adequately punished””

[13] After, considering all mitigation factors, I sentenced the Accused as follows;

- i. Count 1 – to a term of 20 years imprisonment
- ii. Count 2 – to a term of 6 years imprisonment
- iii. Count 3 – to a term of 4 years imprisonment
- iv. Count 4 – to a term of 5 years imprisonment.

All sentences are to run concurrently. Time spent on remand shall be deducted against sentence.

[14] The offence is aggravated in view of its commercial element, therefore the Accused shall not be entitled to remission.

[15] If unsatisfied with this sentence, the Accused may appeal against the same within 30 working days from today.

Signed, dated and delivered at Ile du Port on 28 February 2025

M Vidot J