

THE UNITED REPUBLIC OF TANZANIA

JUDICIARY

IN THE HIGH COURT OF TANZANIA

(MTWARA DISTRICT REGISTRY)

AT MTWARA

MISC. CRIMINAL APPLICATION NO.20 OF 2022

*(Originating from District Court of Masasi at Masasi in Economic Case
No.1 of 2022)*

AHMAD SWEDY ALALI..... APPLICANT

VERSUS

THE REPUBLIC.....RESPONDENT

RULING

Date of Last Order: 20/7/2022

Date of Ruling: 17/8/2022

LALTAIKA, J.:

The applicant herein **AHMAD SWEDY ALALI** is seeking bail pending trial of Economic Case No.1 of 2022 before the District Court of Masasi at Masasi. The application is brought under article 13(6)(b) and 15 of the Constitution of the United (as amended from time to time), section 148(3) and (5)(a)(ii) and (iii) of the Criminal Procedure Act [Cap. 20 R.E. 2019] and any enabling provisions of the law. The application is supported by the affirmed affidavit of **AHMAD SWEDY ALALI**, the applicant. The

respondent, on the other hand, has filed a counter affidavit sworn on her behalf by Mr. Wilbroad Ndunguru, learned Senior State Attorney.

When this application came on for hearing on 20/7/2022 the applicant appeared in person, unrepresented while the respondent was represented by Mr. Enosh Kigoryo, learned State Attorney. Submitting for the application the applicant argued that that is here to apply for bail since was told in the District Court that the High Court is empowered to grant bail because of the gravity of the offence.

Furthermore, the applicant submitted on the reasons for this application. **One**, he argued that bail is his right as an accused to be admitted to bail pending trial. **Two**, the applicant contended that he has family which depends on him for their daily needs. He stressed that he has two secondary school going children, one of them is a daughter of his late brother. However, the applicant submitted that both are schooling at Lupaso Secondary School in Masasi District. **Three**, the applicant argued that his wife is paralysed since 2014. **Four**, the applicant submitted that has two wives and has told that his second wife has recently given birth.

To this end, the applicant prayed to be granted bail because it will take long for his case to be investigated upon and determined. The applicant stressed that if admitted to bail he will attend his case from home.

In response, Mr. Kigoryo prayed this court to adopt a counter affidavit to be part of his submission. However, the learned State Attorney objected the grant of bail because the offence with which he is charged is unbailable. Mr. Kigoryo submitted that the appellant is charged with unlawful possession of Narcotic Drugs contrary to section 15(1)(a) and (c) of the Drugs Control and Enforcement Act [Cap. 95 R.E. 2019] read in

tandem with section 57(1) and paragraph 23 of the First Schedule to the Economic and Organized Crimes Control Act [Cap. 200 R.E. 2019]. The learned State Attorney contended that it is alleged that the appellant was found in possession of 68 kilograms of narcotic drugs in the form of bhang (cannabis sativa). To this end, Mr. Kigoryo argued that according to section 29(1)(b) of the Drugs Control and Enforcement Act provides that anyone accused of trafficking in narcotic drugs weighing 20 kilograms or more should not be admitted to bail.

Also, the learned State Attorney argued that the word trafficking as used in the law includes also possession. To this end, he averred that the applicant does not meet the requirement for admission to bail because is accused of possessing more than 20 kilograms of the said narcotic drugs.

Apart from that Mr. Kigoryo submitted that there is no law that empowered the appellant to move this court without applying section 29 of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2019]. At last, the learned State Attorney stressed that the application should be dismissed and applicant be advised to wait for determination of the case on merit.

In a short rejoinder, the applicant submitted that he heard about the new amendments of the law which allows the District Court to admit bail to suspects who are arrested possessing more than twenty (20) kilograms of narcotic drugs.

Having gone through the submissions of both parties. Now, I am required to settle the application of the applicant in merits or demerits depending to the facts and applicable law in place now.

I think, I should start deliberating on the last issue pinpointed by the learned State Attorney. It is very true that the applicant's application has improperly moved this court by not including the provisions of the Economic and Organized Crime Control Act [Cap. 200 R.E. 2019] which covers bail.

Even if, the applicant has improperly moved this court but still I am not being precluded to proceed with the determination of the same. I will determine the merits or demerits of the application because I am alive that the Constitution of the United Republic of Tanzania of 1977(supra) under article 107A(2)(e) provides that courts will dispense justice without being tied up with technicalities provisions which may obstruct dispensation of justice.

Therefore, as far as the particulars of the offence are concern, the applicant was arrested while found in unlawful possession of narcotic drugs to wit 68 kilograms of cannabis sativa or bhanghi. Based on the given particulars from the charge annexed in the affirmed affidavit of the applicant the amount of 68 kilograms of cannabis sativa or bhanghi found in her possession is notailable. The provision of the law under section 29(1)(b) of the Drugs Control and Enforcement Act is well settled that admission to bail to the accused persons brought in court is subjective to the weight of drugs being trafficked. For easy reference, it is crucial to quote the provision of section 29 (1)(b) of DCEA which reads: -

*"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. As alluded earlier, the applicant's application must fail.

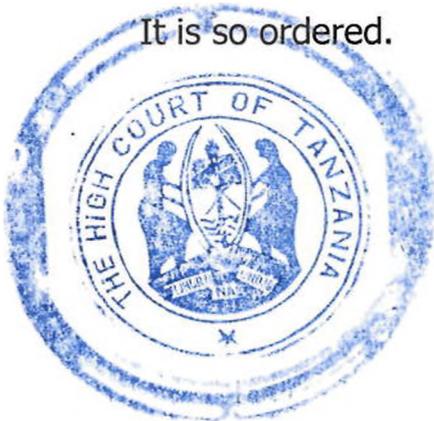
At this juncture, I am enjoined to accede to what the learned State Attorney that the word trafficking in law especially under the Drugs Control and Enforcement Act (supra) has been interpreted to mean even possession of narcotic drugs or psychotropic substance. See, section 2 of the Drugs Control and Enforcement Act (supra) to that effect. Therefore, application of section 29(1)(b) of the Drugs Control and Enforcement Act (supra) where the applicant was arrested on unlawful possession of the narcotic drugs of cannabis sativa or bhanghi is proper as to the present case.

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 clear that

the applicant is not entitled to be admitted to bail because the offence is facing in the trial court is unbailable. Unbailability has been caused by the weight of cannabis sativa being found unlawfully in his possession which is more than twenty kilograms (i.e., 68 kgs of cannabis sativa/bhangi).

Being said and done, 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.1 of 2022 before the District Court of Masasi at Masasi.

It is so ordered.



E.I. LALTAIKA

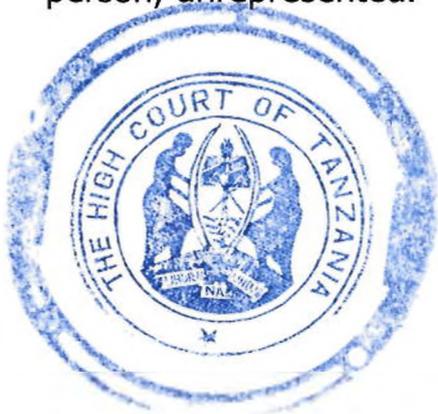
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JUDGE

17.8.2022

Court:

This ruling is delivered under my hand and the seal of this Court on this 3rd day of August, 2022 in the presence of the Mr. Wilbroad Ndunguru, learned Senior State Attorney and the applicant who has appeared in person, unrepresented.



E.I. LALTAIKA

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

JUDGE

17.8.2022