

IN THE HIGH COURT OF ZANZIBAR

HELD AT TUNGUU

CRIMINAL CASE NO. 8 OF 2024

DIRECTOR OF PUBLIC PROSECUTIONS

V.

1. NASSOR SULEIMAN KHALFAN

2. ABUBAKAR ABDALLAH ALI

3. ALI SHIBU HASSAN

RULING

Dated: 11th September, 2024

S. HASSAN (J)

The accused persons, **NASSOR SULEIMAN KHALFAN, ABUBAKAR ABDALLAH ALI** and **ALI SHIBU HASSAN**, were brought into court and arraigned on the **6th February, 2024** for 3 counts of unlawful possession of drugs contrary to **section 21 (1) (d) of the Act No. 21 of 2022.**

On the **13th August, 2024**, the Prosecution amended the Information and accused were arraigned on **4 counts**, **1st** count for both accused persons and **2nd to 4th** counts for the accused person **NASSOR SULEIMAN KHALFAN** alone. The accused were arraigned for unlawful possession of drugs contrary to **section 21 (1) (d) of the Act No. 21 of 2022.**

After the arraignment the advocates for the accused persons learned friends Mr. Hassan Kijogoo, Miss Mwanaidi Abdalla and Mr Emanuel Asama invited this court to invoke

section 152 (1)(2) of the Criminal Procedure Act No. 7 of 2018 and grant bail to the accused person due to the fact that 6 months has lapsed since the accused persons were arrested and arraigned, with that they ask this court to grant bail for failure of the prosecutions to start hearing of this criminal case within the period of 6 months.

On the other side, SSA Mr. Shamsi Saad, opposed the prayer for bail and invited this court to invoke its discretionary powers under the same **section 152 (1) (2) of CPA No. 7 of 2018** and deny bail for the reason that the delay is not at all inordinate and that, the section is both mandatory and discretionary.

In their brief rejoinder Mr. Kijogoo admitted that, section **152 (1) (2)** is indeed both mandatory and discretionary but the discretion of the court must be exercised judiciously, he went on to invite this court to invoke its mandatory powers granted under **section 152 (2) of CPA No. 7/2018** and grant bail. Miss Mwanaidi and Mr Asama both emphasized on granting bail.

Having heard the submission of both parties herein, let me at the earliest state that, I have not narrated the whole submissions of the parties for the reasons that the gist of this matter is surrounded under the provision of **section 152 (1) (2) of the CPA No. 7/2018** which reads as follows:

“152 (1) The hearing of a case in which a person is charged with non-bailable offence must commence within six months from the date when a person so charged was arrested”.

(2) if the hearing does not commence within the said period of six months, the accused shall be admitted to bail unless the Court for the reasons to be recorded in writing, direct otherwise”.

The word **Bail** as defined by the Court of Appeal of Tanzania in the case of **DPP v. Bashiri Waziri & Mugesu Antony, Criminal Appeal No. 168 of 2012** means:

" A mechanism designed to ensure that a person who is subject to the strictures of the law stays out of confinement while the process of inquiry into his/her liability in criminal process is being investigated, or if he has been charged in a court of law, his/her personal freedom is guaranteed before the end of the trial through him/her furnishing security as part of the undertaking to turn up whenever called up"

From the outset, let me start by appreciating the fact that, both sides have made a correct interpretation of **section 152 (2) of the CPA No. 7/2018**. The section is indeed both *mandatory* and *discretionary*, as a result of their submissions, this court finds itself at cross roads, whereby for the interest of justice it has to decide which is the safe cross to turn based on the circumstance surrounding the present criminal case in hand.

Therefore, in making up the mind of this court on either to invoke its *mandatory* or *discretionary powers* availed to the court under the provision of **section 152 (2) of CPA No. 7/2018**, we remain alive and sober to the notion of presumption of innocence until proven guilty as enshrined under **section 12 (6) (b) of the Constitution of Zanzibar, 1984**. The court is also aware to the fact that, the accused persons are charged with a non bailable offence as per the provision of **section 37 (1) (d) of the Act No. 8 of 2021**.

Furthermore, this court is also mindful with the fact that, the accused persons are charged with a serious offence which attracts the maximum sentence of life imprisonment, if the prosecutions will manage to prove the offence beyond reasonable doubt.

It is also crucial at this stage to note that, in the interest of justice, this court has a duty to strike a balance between the right of the accused persons as individuals with wider society rights and interest. Therefore, as a court, we have taken a keen consideration on the gravity and complexity nature of this case in the preparation of this ruling.

Henceforth, this court has gone through the Charge Sheet and, as alleged in the particulars of offence on both 4 counts, the total kilograms of the unlawful drugs alleged to be found in unlawful possession of the accused persons either individually or jointly is about **99.554kg**.

Having considered all those factors, this court is of the view that, for the interest of justice, it must invoke its discretionary powers granted under the provision of **section 152 (2) of the CPA No. 7/2018** and deny bail to the accused persons. The offence facing the accused persons is serious and the total kilograms of drugs alleged to be found with accused persons is very high and of a large quantity, which necessitate the detention of the accused persons pending trial.

For avoidance of doubt, let it be understood that, the accused persons being held in detention shall not be construed to amount to treating them like a convicted persons, but only to ensure their availability, safety and to prevent any outside interference during the whole period of the trial, furthermore, it will ensure order to the community, whose rights and interests are also fundamental and must be protected.

Based on the above given reasons, the application for bail is hereby denied.


S. HASSAN (J)



Ordered accordingly.

Dated: 11th September, 2024.