



Criminal Court

Onor. Madame Justice. Dr. Edwina Grima LL.D.

Admission Nr: 12/2014

The Republic of Malta

Vs

Mubarak Bawa

Today the 13th July, 2016,

The Court,

Having seen the charges brought against the accused Mubarak Bawa, holder of identity card number 44045A accused with having:

In the Maltese Islands and/or outside the Maltese Islands and/or outside on the 13th of February, 2013 and in the preceding six (6) months prior to this date:-

1. Conspired with another one or more persons on these Islands or outside Malta for the purpose of selling or dealing on these Islands the dangerous drug (heroin/cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta or promoted, constituted, organised or financed such conspiracy for the importation of the dangerous drug (heroin/cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta.
2. Supplied or distributed or offered to supply or distribute the drug (heroin), specified in the first schedule of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, to person/s or for the use of other person/s, without being licenced by the President of Malta, without being fully authorised by the

Internal Control of the Dangerous Drugs Regulation (G.N. 292/1939), or by the authority given by the President of Malta, to supply this drug, and without being in possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed or otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed to distribute the mentioned drug, in pursuance of the provisions of the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

3. Had in his possession the drug (heroin) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorised to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession of the mentioned drugs, and failed to prove that the mentioned drugs were supplied to him for his personal use, according to medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta which drug was found under circumstances denoting that it was not for his personal use.
4. Had in his possession a passport issued to another person and this in violation of Article 3 of Chapter 61 of the Laws of Malta.
5. Forged, altered or tampered with any passport or used or had in his possession any passport which he knew to have been forged altered or tampered with in violation of article 5 of Chapter 61 Laws of Malta.

6. Committed any other kind of forgery, or knowingly made use of any other forged document, and this in violation of Article 183, 184 and 189 of Chapter 9 of the Laws of Malta.
7. Driven a motor vehicle model Rover 214 bearing registration number GAO 926 without a circulation licence renewed for the current year in violation of regulation 13 of SL 368.02 Laws of Malta.

The Court is requested to attach in the hands of third parties in general all monies and other movable properties due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property in terms of article 22 (3A) of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, of article 5 (1)(a)(b) of the Prevention of Money Laundering Act Chap 373 Laws of Malta as well as to issue orders as provided in articles 5(1) and 5(2) of the same Act and of article 23A of the Criminal Code Chapter 9 of the Laws of Malta.

The Court is also requested to apply section 533(1) of Chapter 9 of the Laws of Malta, as regards to the expenses incurred by the Court appointed Experts.

Having seen the minutes of the proceedings of the 2nd September 2014 as drafted by the Court of Magistrates, whereby the accused Mubarak Bawa reaffirmed the guilty plea filed by him on the 14th February, 2013 in his examination in terms of article 390(1) and 392 of the Criminal Code even after the Court explained to him the consequences of this guilty plea.

Having seen the Attorney General's note presented together with the acts of these proceedings in the registry of this Court on the 29th September, 2014, whereby the Attorney General declared that in terms of the proviso of article 392B(2) of Chapter IX of the Laws of Malta, the charges proffered against the said Mubarak Bawa before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, to which the accused has registered the aforementioned guilty plea, should be considered as a Bill of Indictment for all the purposes and effects of Law.

Having seen the acts of the proceedings.

Having seen the updated conduct sheet of Mubrak Bawa.

Having heard submissions by the parties with regards to the punishment to be inflicted.

Considers,

In this respect, that in view of the guilty plea filed by Mubarak Bawa in front of the Court of Magistrates (Malta) on the 14 the Februry 2013, which plea was duly confirmed on the 2nd September 2014, the Court cannot but declare Mubarak Bawa guilty of having:

In the Maltese Islands and/or outside the Maltese Islands and/or outside on the 13th of February, 2013 and in the preceeding six (6) months prior to this date:-

1. Conspired with another one or more persons on these Islands or ouside Malta for the purpose of selling or dealing on these Islands the dangerous drug (heroin/cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta or promoted, constituted, organised or financed such conspiracy for the importation of the dangerous drug (heroin/cocaine) in breach of the Dangerous Drugs Ordinance Chap. 101 of the Laws of Malta.
2. Supplied or distributed or offered to supply or distribute the drug (heroin), specified in the first schedule of the Dangerous Drugs Ordinance Chapter 101 of the Laws of Malta, to person/s or fro the use of other person/s, without being licenced by the President of Malta, without being fully autorised by the Internal Control of the Dangerous Drugs Regulation (G.N. 292/1939), or by the authority given by the President of Malta, to supply this drug, and without bein gin possession of an import and export authorisation issued by the Chief Government Medical Officer in pursuance of the otherwise authorised to manufacture or supply the mentioned drug, when he was not duly licensed or otherwise authorised to manufacutre or supply the mentioned drug, when he was not duly licenced to distribute the mentioned drug, in pursuance of the provisions of the Internal Control of Dangerous

Drugs Regulations (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

3. Had in his possession the drug (heroin) specified in the First Schedule of the Dangerous Drug Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorisation issued by the Chief Government Medical Officer in pursuance of the provisions of paragraphs 4 and 6 of the Ordinance, and when he was not licenced or otherwise authorised to manufacture or supply the mentioned durgs, and was not otherwisid licensed by the President of Malta or authorised byt the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939) to be in possession fo the mentioned drugs, and failed to prove tha the mentioned drugs were supplied to him for his personal use, according to medical prescription as provided in the said regulations, and this in breach of the 1939 Regulations, of the Internal Control of Dangerous Drugs (G.N. 292/1939) as subsequently amended by the Dangerous Drugs Ordinance Chapter 101, of the Laws of Malta which drug was found under circumstances denoting that it was not for his personal use.
4. Had in his possession a passport issued to another persona and this in violation of Article 3 of Chapter 61 of the Laws of Malta.
5. Forged, altered or tampered with any passport or used or had in his possession any passport which he knew to have been forged altered or tempered with in violation of article 5 of Chapter 61 Laws of Malta.
6. Committed any other kind of forgery, or knowingly made use of any other forged document, and this in violation of Article 183, 184 and 189 of Chapter 9 of the Laws of Malta.
7. Driven a motor vehicle model Rover 214 bearing registration number GAO 926 without a circulation licence renewed for the current year in violation of regulation 13 of SL 368.02 Laws of Malta.

Considers,

Although the punishment with regards to the crimes the accused has admitted to having committed, is of life imprisonment, however article 492(1) of the Criminal Code provides that if at any stage of the proceedings, before the constitution of the jury, the accused admits to the charges brought against him and for the fact admitted by the accused there is established the punishment of imprisonment for life, the court may, instead of the said punishment, impose the punishment of imprisonment for a term from eighteen to thirty years. Also according to the proviso to article 22(2)(a)(i)(aa) of Chapter 101 of the Laws of Malta, where the court is of the opinion that, when it takes into account the age of the offender, the previous conduct of the offender, the quantity of the drug and the nature and quantity of the equipment or materials, if any, involved in the offence and all other circumstances of the offence, the punishment of imprisonment for life would not be appropriate then the Court may sentence the person convicted to the punishment of imprisonment for a term of not less than four years but not exceeding thirty years and to a fine (multa) of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37) but not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (116,468.67).

That in considering the punishment to be inflicted, therefore, in this case, the Court will take into consideration first and foremost the guilty plea filed by accused at the outset of the proceedings, the Court having been incapable at law to proceed to sentencing due to procedural stumbling blocks which were removed by recent amendments to the law of procedure.

The Court, however, cannot ignore the fact that the accused had formed the intention to traffic drugs in Malta and this for personal profit. He therefore conspired with third parties in order to import and traffic not only the drug heroin but also cocaine. Thus his participation was not a minimal one having also agreed to assist in a second importation of drugs being this second time cocaine. Also accused was found in possession of 71 capsules of which 371.66 grammes were heroin having a level of purity of 22% and 330.72 grammes consisted of paracetamol and caffeine

which are considered to be cutting agents to be mixed with heroin. The retail price of the heroin according to court-appointed expert Godwin Sammut was of €27131.18.

Furthermore accused is being found guilty of forging and making use of a forged passport and driving a vehicle without a circulation license.

The accused, however, collaborated fully with the police in the investigations carried out in connection with this drug-trafficking chain and consequently a mitigation in the punishment to be inflicted will be affected, after taking note of the declaration made by the Prosecution that the accused is to benefit from the application of Section 29 of Chapter 101 of the Laws of Malta by one degree.

Having considered local and foreign case law regarding a reduction in the punishment when the accused registers an early guilty plea, thereby avoiding useless work and expenses for the administration of justice (Vide “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, Criminal Court, [24.2.1997] ; “Il-Pulizija vs. Emmanuel Testa”, Court of Criminal Appeal, [7.7.2002] and BLACKSTONE’S CRIMINAL PRACTICE, (Blackstone Press Limited – 2001 edit.); As was held by the Court of Criminal Appeal in its judgement in the case “Ir-Repubblika ta’ Malta vs. Mario Camilleri” [5.7.2002], an early guilty plea does not always necessarily and as of right entitle the offender to a reduction in the punishment.

The general rules which should guide the Courts in cases of early guilty pleas were outlined by the Court of Criminal Appeal in its preliminary judgement in the case : “Ir-Repubblika ta’ Malta vs. Nicholas Azzopardi”, [24.2.1997]; and by the Court of Criminal Appeal in its judgement “Il-Pulizija vs. Emmanuel Testa”, [17.7.2002]. In the latter judgement that Court had quoted from Informal Copy of Judgement Page 14 of 17 Courts of Justice BLACKSTONE’S CRIMINAL PRACTICE , (Blackstone Press Limited – 2001 edit. ecc.) :-

“Although this principle [that the length of a prison sentence is normally reduced in the light of a plea of guilty] is very well established , the extent of the appropriate “discount” has never been fixed. In Buffery ([1992] 14 Cr. App. R. (S) 511) Lord Taylor CJ indicated that “something in the order of one-third would very often be an appropriate discount”, but much

depends on the facts of the case and the timeliness of the plea. In determining the extent of the discount the court may have regard to the strength of the case against the offender . An offender who voluntarily surrenders himself to the police and admits a crime which could not otherwise be proved may be entitled to more than the usual discount. (Hoult (1990) 12 Cr. App. R. (S) 180; Claydon (1993) 15 Cr. App. R. (S) 526) and so may an offender who , as well as pleading guilty himself , has given evidence against a co-accused (Wood [1997] 1 Cr. App. R. (S) 347) and/or given significant help to the authorities (Guy [1992] 2 Cr. App. R. (S) 24). Where an offender has been caught red handed and a guilty plea is inevitable , any discount may be reduced or lost (Morris [1998] 10 Cr. App. R. (S) 216; Landy [1995] 16 Cr. App. R. (S) 908) . Occasionally the discount may be refused or reduced for other reasons , such as where the accused has delayed his plea in an attempt to secure a tactical advantage (Hollington [1985] 85 Cr. App. R. 281; Okee [1998] 2 Cr. App. R. (S) 199.) Similarly , some or all of the discount may be lost where the offender pleads guilty but adduces a version of the facts at odds with that put forward by the prosecution , requiring the court to conduct an inquiry into the facts (Williams [1990] 12 Cr. App. R. (S) 415.) The leading case in this area is Costen [1989] 11 Cr. App. R. (S) 182 , where the Court of Appeal confirmed that the discount may be lost in any of the following circumstances : (i) where the protection of the public made it necessary that a long sentence , possibly the maximum sentence, be passed; (ii) cases of 'tactical plea' , where the offender delayed his plea until the final moment in a case where he could not hope to put up much of a defence , and (iii) where the offender has been caught red-handed and a plea of guilty was practically certain"

Consequently in view of the above-made considerations and after having seen articles 9, 10(1), 12, 14, 15(A), 20, 22(1)(a)(f)(1A)(1B), 22(1A)(1B)(2)(a)(i)(3A)(a)(b)(c)(d), 26 and 29 of Chapter 101 of the Laws of Malta and regulations 4 and 9 of Subsidiary Legislation 101.2, articles 183, 184, 189 and articles 17(b)(h), 23, 31 and 533 of the Criminal Code, Articles 3 and 5 of Chapter 61 of the Laws of Malta and Regulation 13 of Subsidiary Legislation 368.02 condemns the said Mubarak Bawa to a term of imprisonment of seven and a half years and the imposition of a fine of twenty three thousand euros (€23000), which fine (multa) shall be converted into a further term of imprisonment of one year according to Law, in default of payment;

Furthermore condemns him to pay the sum of €4058.52 (Four thousand, fifty-eight Euros and fifty-two cents) being the sum total of the expenses incurred in the appointment of court experts in this case in terms of Section 533 of Chapter 9 of the Laws of Malta;

Moreover, orders the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he has been found guilty and other moveable and immovable property belonging to the said Mubarak Bawa.

Finally, orders the destruction of all the objects exhibited in Court, consisting of the dangerous drugs or objects related to the abuse of drugs, which destruction shall be carried out by the Assistant Registrar of the Criminal Court, under the direct supervision of the Deputy Registrar of this Court who shall be bound to report in writing to this Court when such destruction has been completed, unless the Attorney General files a note within fifteen days declaring that said drugs are required in evidence against third parties.

Edwina Grima

Judge