

**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE**

MAGISTRATE DR. RACHEL MONTEBELLO LL.D.

Drugs No: 89/20

**The Police
(Inspector Stacy Attard)**

-vs-

SUMAIL ISSA

Today, 30th September 2020

The Court,

Having seen the charges brought against **SUMAIL ISSA** holder of Passport Number H2750290, whereby he was accused of having on 28th September 2020 at around 17:30hrs in Belvedere Garden, in 13th December Street, Marsa, and/or on these Islands:-

1. Had in his possession (otherwise than in the course of transit through Malta of the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8 (d) of the Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use

The Court was requested that, in case of conviction, the person convicted is sentenced to the payment of costs incurred in the employment of experts as per Art. 533 of Chapter 9 of the Laws of Malta.

Having ordered that the proceedings are conducted in the English language in accordance with Article 3 of the Judicial Proceedings (Use of English Language) Act after having heard the accused declare that he does not understand the Maltese language but he does speak and understand the English language;

Having seen the order given by the Attorney General on the 30th September 2020 in terms of Article 22(2) of the Dangerous Drugs Ordinance (Chapter 22 of the Laws of Malta), that the accused is arraigned before this Court as the Court of Magistrates (Malta) as a Court of Criminal Judicature to answer for the charges brought against him for the breach of the provisions of that Ordinance;

Having seen the record of the proceedings;

Having heard the accused plead guilty to the charge brought against him during his arraignment;

Having seen that the provisions of Article 392A(1) of Chapter 9 of the Laws of Malta were duly observed when the accused was warned in the most solemn manner about the legal consequences of his guilty plea;

Having heard the accused confirm his guilty plea even after he was afforded ample time to reconsider his admission of guilt and to consult with his legal counsel, and after the hearing was factually suspended for this purpose;

Having heard the accused declare that he does not require more time to consult with his legal counsel;

Having heard the accused reconfirm his admission of guilt even after the Court explained to him in simple language, the gravity of the offence with which he was charged and the punishment contemplated by law in the event of a finding of guilt for that offence and also after the Court was satisfied that the accused understood the legal consequence of his admission of guilt.

Consequently, in view of this voluntary and unconditional admission of guilt, in the presence of his legal counsel, the Court has no alternative but to find the accused guilty of all the charges brought against him and to proceed, as a Court of Criminal Judicature, to proceed to pass on the accused such sentence as would according to law be passed on an accused convicted of the offence.

Having heard the final submissions made by the Prosecution and the Defence Counsel in relation to the applicable punishment.

For the purposes of inflicting punishment, the Court considered that the charge brought against the accused, that is the possession of the whole or a part of the plant cannabis as contemplated in Article 8(d) of Chapter 101 of the Laws of Malta, in circumstances denoting that it was not for his personal use, is of the commission of a serious criminal offence that, in the Court's view, merits a punishment of effective imprisonment. Although the accused claimed in the statement that he released while under interrogation, to have purchased the packets containing cannabis drug for his own personal use and that he smokes two packets of the drug each day, the Court observes that the accused admitted in his statement to having had in his possession nine sachets containing cannabis which were found by the Police during a search on his person and although he explained during his interrogation that the extra packets were purchased in order that he would have enough supply to serve him for the next couple of days, the accused also admitted to having thrown other sachets on the ground when he saw

the Police approaching him. He also acknowledged that had a friend asked him for some of the drug, he would have complied with that request.

The Court cannot ignore these facts and neither can it ignore the fact that the sum of two hundred and seventy-five Euro (€275) in cash was found on the person of the accused during the search conducted by the Police upon his arrest. In addition and above all, the accused pleaded guilty to the breach of Article 8(d) of Chapter 101 of the Laws of Malta as well as the aggravating circumstance of being in possession of the drug in circumstances denoting that the use of the drug was not for his exclusive use. This offence carries a punishment of imprisonment for a term of not less than six months and not more than ten years, in accordance with Article 22(2)(b)(i) of Chapter 101, together with a fine multa as specified in the said legal provision.

However in the circumstances, where the accused co-operated fully with the Police during their investigations into the crime and registered an admission to the charge at the earliest opportunity, and where the accused has a completely clean criminal conduct, the Court deems fit that it should use its wide-ranging discretion in terms of Article 22(2)(b)(i) of Chapter 101 in order to mete out a very moderate punishment.

As for the submission of defence counsel that the accused should be conditionally discharged, in view of the fact that this same Court, differently presided, awarded such a punishment in an “identical” case decided today upon the same charge, the Court notes that apart from the fact that each case is to be judged on its own particular merits and circumstances, Article 22 of Chapter 446 of the Laws of Malta stipulates that in order for the Court to apply this provision and make an order conditionally discharging the offender, **it must be of the opinion that, having regard to the circumstances of the case, including the nature of the offence and the character of the offender, it is inexpedient to inflict punishment.** The Court observes that in the present case, it was not made

aware of any circumstances which have shown that it would not be expedient to inflict any punishment on the accused.

Moreover, it must be pointed out that Article 22 provides that in order to issue an order for conditional discharge, the offence for which the person is convicted must not be an offence which apart from an increase of punishment in view of continuity or previous convictions, is punishable with imprisonment for a term exceeding seven years. However, the charge which the accused in the present case has admitted to, refers to an offence that, as already pointed out, is punishable with imprisonment for a terms that exceeds seven years since according to the provisions of Article 22(2)(b)(i) of Chapter 101, this Court can inflict a punishment of imprisonment of up to ten years.

Moreover, although by virtue of Article 22(1) of Chapter 446, the provisions of the proviso to Article 7(2) of said Chapter 446, shall *mutatis mutandis* apply to an order of conditional discharge, meaning that the Court may make an order of conditional discharge even when the offence for which the offender is convicted is punishable with imprisonment for a term exceeding seven years but not ten years, it is evident that this sub-article applies only provided that the Court is of the opinion that in the particular case there exist circumstances “*which are to be clearly stated in the order, ... that merit the placing of the offender*”¹ under an order of conditional discharge. **Again, in the present case the Court is not of the opinion, and no circumstances were shown, which merit an order conditionally discharging the accused.**

Decide

For these reasons and after having seen Articles 8(d), 22(1)(a) and 22(2)(b)(i) of Chapter 101 of the Laws of Malta, the Court finds the accused SUMAIL ISSA guilty upon his own admission, of the charge brought against him and

¹ Article 7(2) Cap. 446.

condemns him to an effective punishment of imprisonment for a term of six (6) months and to a fine (*multa*) of five hundred Euro (€500).

In view of the fact that it does not result that any experts or referees were appointed during the course or for the purposes of these proceedings, including in the examination of the *proces-verbal* of the inquiry, the Court abstains from taking cognisance of the request made by the Prosecution for the payment of costs in terms of Article 533 of the Criminal Code.

For the purposes of Article 22(2) of Chapter 101 of the Laws of Malta and of Article 23 of the Criminal Code, the *corpus delicti*, the instruments used or intended to be used in the commission of the crime and all articles in respect of which the crime was committed, that is all the articles forming part of exhibits marked as Dok. SA10 are being forfeited to the Government and, with the exception of the sum of €275 Euro in cash forming part of said exhibit Dok. SA10, all such forfeited articles are to be destroyed immediately upon this judgement becoming final and definitive, under the supervision of the Registrar (Criminal Courts and Tribunals) who shall also draw up a *proces-verbal* documenting the process of such destruction as he may deem fit. This *proces-verbal* shall be inserted into the acts of the proceedings not later than fifteen (15) days from the date of destruction.

For the purposes of Article 392A(2) of Chapter 9 of the Laws of Malta, the Court orders that the record of the proceedings, together with a copy of this judgment, be transmitted to the Attorney General within six (6) working days.

DR. RACHEL MONTEBELLO
MAGISTRATE