



**COURT OF MAGISTRATES (MALTA)
AS A COURT OF CRIMINAL JUDICATURE
MAGISTRATE DR ELAINE MERCIECA LL.D**

**POLICE
(Police Inspector Justine Grech)**

against

SHAIBU ABDUL SALAM

Case No.: 139/2021

Today, 2nd February 2022

The Court,

After having seen the charges brought against the accused, **Shaibu Abdul Salam**, of 25 years, son of Salam and Salama, born on the 20th May 1996 in Kumasi, Ghana, with no fixed address in Malta and holder of Ghanaian Passport Number H2773130, charged for having on the 31st August 2021 and during the previous months in these islands:

1. Produced, sold or otherwise dealt with the whole or any portion of the plant Cannabis in terms of Section 8(e) of Chapter 101 of the Laws of Malta;
2. 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 Chapter 101 of the Laws of Malta, which drug was found under circumstances denoting that it was not intended for his personal use;
3. Had in his possession (otherwise than in the course of transit through Malta or the territorial waters thereof) the whole or any portion of the plant Cannabis in terms of Section 8(d) of Chapter 101 of the Laws of Malta;
4. Disobeyed the lawful orders of any authority or of any person entrusted with a public service, namely PC1397 Ludvig Farrugia; PC297 Christian Farrugia; PC1110 Dione Fenech, and PC2004 Cherise Camilleri or hindered or obstructed such persons in the exercise of their duties, or otherwise unduly interfered with the exercise of such duties, either by preventing them from doing what they are lawfully enjoined or allowed to do, or frustrating or undoing what has been lawfully done by other persons;
5. Attempted to use force against PC1397 Ludvig Farrugia; PC297 Christian Farrugia, PC1110 Dione Fenech and PC2004 Cherise Camilleri with intent to insult, annoy or hurt such person or others;
6. Committed these offences in or within 100 metres of the perimeter of a school, youth club or centre, or such other place where young people habitually meet in breach of article 22(2) of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was requested that in case of guilt, apart from inflicting the punishment as prescribed by law, order also the confiscation of all objects exhibited.

The Court was 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 that on the 2nd of September 2021 (*a fol. 8*) the Attorney General ordered that in terms of sub article (2) of Article 22 of the Dangerous Drugs Ordinance (Chapter 101), the accused be arraigned before the Court of Magistrates (Malta) as a Court of Criminal Judicature.

Having seen the process verbal presented on the sitting of the 17th November 2021 marked as Doc. “CF” remitted by Magistrate Dr. Natasha Galea Sciberras.

Having seen all documents presented in this case.

After having heard all witnesses brought forward by both parties.

Having heard the Prosecuting Officer and the defence declare on the sitting of the 10th of January 2022, that they have no more witnesses to bring forward and they rested their case.

After having heard final submissions of both parties in the sitting of the 10th of January 2022.

Considers:

Whereas the prosecution brought forward the following evidence to substantiate the charges proffered against the accused:

Inspector Justine Grech testified that on 31st August 2021 she was informed of an inspection in Triq Dicembru Tlettax, Marsa wherein the assistance of the Rapid Intervention Unit (RIU) was requested. PC1397 Farrugia and PC2004 Camilleri informed her also they had noticed the present accused acting suspiciously whilst making contact with several persons. She was also informed that whilst they attempted to arrest him he tried to flee the area and also tried to grab the firearm of one of the RIU personnel (PC1110 & PC297). Inspector Grech testified that she was also informed that in the same location where they had seen him sitting on a wall, the police seized a crusher and one sachet of alleged cannabis grass. Additionally, whilst he was being arrested a bag containing various sachets of alleged cannabis grass fell from his shirt. Another sachet was later found when searched at the GHQ lockup. Upon his arrest Salam was found to be in possession of Eur. 485¹. She also explained that for the arrest to be properly conducted a taser gun had to be used. A search was also done in his residence located at 23, Triq San Girgor, Pieta and there they seized another mobile phone and a further Eur. 2340 in cash. Following his arrest and after being given his rights in terms of law (including that of legal assistance) the accused released a statement. In his statement he stated that he works part-time in Malta with Liquigas earning approximately Eur. 45 per day. He also stated that he comes and goes between Malta and Italy approximately every three months. He also stated that he had been living in his apartment with another person for three months now and that they pay the rent of Eur. 450 per month (water and electricity is included in this amount). With regards to the cash found, the accused stated that not all of the cash is his given that his friend trusts him a lot and he asked him to keep some money for him. He also stated that the drugs were not his and

¹ Including the amount of money (€130) found during the strip search.

he basically denied that the black plastic bag containing the cannabis grass fell from his shirt. He also denied trying to grab the firearm from one of the police officers during his arrest. He also admitted to consuming cannabis for personal use. During statement reference was also made to a number of texts found on his mobile phone and he justified those texts by saying that people know that he consumes cannabis and hence they ask him from where they can buy. During his statement he persistently denied selling cannabis and stated that the mobile (Nokia phone) found at the residence was not his.

PC1397 Ludwig Farrugia; PC2004 Sherice Camilleri; PC1110 Dion Mario Fenech and PC297 Christian Farrugia in brief testified that on 31st August 2021 at about 7pm whilst patrolling in Triq Dicembru Tlettax, Marsa, they noticed the accused acting suspiciously in the sense that he was making contact with several people. When the accused noticed the police's presence he started to run but they managed to apprehend him with the assistance of the RIU officers. PC Farrugia also explained that the accused did not cooperate with the police at all during his arrest so much so that he tried to grasp the firearm of PC297. He confirmed that a black bag containing sealable bags with green substances suspected to be cannabis grass fell on the floor whilst they were effecting the arrest. A search on his person was conducted where they found money, empty resealable bags, mobile phones and a set of keys. A search was also conducted where the accused was noticed sitting in the park. There a crusher and a sachet with green substance was found. Another search was conducted in his residence at 23, Triq San Girgor, Pieta. From this residence, particularly from a wardrobe, further money (Eur. 2340) and another mobile were found. From there the accused was escorted to the General Police Headquarters. PC1397 also confirmed that they did not find any personal documents appertaining to the accused however they found a photo thereof on his mobile phone. PC2004 also explained that during the strip search at the GHQ they found another Eur. 130 cash. PC297

Christian Farrugia, who was one of the RIU officers called to the site for assistance, explained that there were four other persons sitting where the accused was sitting in Triq Dicembru Tlettax, Marsa. PC297 also explained in greater detail that the accused tried to grab his firearm so much so that the accused started shaking his holster to the extent that the magazine fell out.

PS2317 Elishia Sammut and PS891 Oscar Baldacchino confirmed that they were present for the audiovisual statement of the accused. They confirmed that he was given the caution and the right to legal assistance. They confirmed that before the interrogation the accused talked to legal aid lawyer Dr. Mario Caruana. They also confirmed that prior to his statement the accused was given the right of disclosure that the statement was taken voluntarily without any threats or promises.

Keith Cutajar who was nominated as a court expert by the Inquiring Magistrate submitted his report a fol. 44 of the acts of proceedings and this after having analysed two mobile phones seized from the accused. **Prof. Emanuel Sinagra** analysed the substance seized from the accused and concluded:

“The buds found in documents listed above as well as the traces of green grass contained the substance Tetrahydrocannabinol. The total weight of this substance was found to be 21.9 g and the purity of ca. 12%. This substance originates from the Cannabis plant and is a controlled substance under Part III of Section 8 Chapter 10 of the Laws of Malta.”

Dr. Marisa Cassar presented her initial report specifying the genetic profiles of the DNA sample taken from the black plastic bag (S1) and also a second report after she was asked to compare the genetic profiles taken from the DNA sample on S1 with the genetic profile of the accused. The conclusion was:

“Mill-kampjun S1 hareg profil genetiku mhallat (x’aktarx 4 kontributuri).

Meta wiehed jikkonsidra l-ipotezi (H1 u H2), il-likelihood ration (LR) ta' 2.44×10^{13} jikkorrobora l-ipotezi li l-profil genetiku li hareg mill-kampjun, seta' hareg jekk Abdul Salam Shaibu u 3 persuni ohra huma kontributuri."

Matthew Azzopardi exhibited his report with a number of photographs of the items seized from the accused upon his arrest. **PS813 Clinton Vella** presented his report by virtue of which he declared that he lifted two fingerprints from two transparent zip-lock plastic bags. **Joseph Mallia**, who was nominated by this Court to compare the fingerprints lifted from the transparent zip-lock plastic bags by PS813 with the fingerprints of the accused, concluded:

"The two (2) developed papillary marks documents 21 BPB-C-BY 1 and 21 BPB-C-BY 2 lack in the sufficient number of ridge characteristic co-ordinated with one another which lead to identification or otherwise, hence these marks could not be compared with the fingerprints from document SA1 and the palm prints form document SA2 of Salam Abdul Shaibu."

The defence produced no evidence.

Considers further:

1. Trafficking of whole or any portion of the plant Cannabis:

Whereas in their testimony the police officers stated that they had noticed the accused acting suspiciously and also making contact with several persons, none of them stated that the accused was noticed trying to pass something to another person.

From the evidence produced it results that the mobile phones seized from the accused contain various messages which are indicative of drug trafficking. Particular reference here is made to the second report submitted by Court Expert

Keith Cutajar². From this report it results that on 31st August 2021 the accused received a message: “*Hi bro 5g*” to which he replied ‘OK’. The person sending the first text replied again: “*But goos ones..*”; “*Good*”, to which the accused replied “*No problem my friend*”. The person initiating the conversation replied again: “*Ok im going cu soon bro*”. To this message the accused replied: “*ok bro am around*” to which the former replied again: “*Cool*”. This was on 31st August 2021 at precisely 16.08hrs. The accused was arrested that same evening at 19hrs. Although this Court believes that these texts are indicative of drug trafficking whereby an unknown person is asking the accused to provide him with 5 grams with the accused indicating that he “is around” to supply the same, they cannot on their own be taken as conclusive evidence that the accused effectively supplied the said unknown person with the illegal substance. The Court has no evidence which shows that prior to his arrest the accused actually supplied or at least tempted to supply the unknown sender with the requested ‘5g’. The Court has also no evidence which shows what those ‘5g’ actually were. If they were Cannabis or another substance. It is true that when the accused was arrested he was found to be in possession of Cannabis grass however this does not mean that in the hours preceding his arrest he did not have other substances (legal or otherwise) in his possession. Hence given this lack of evidence, this Court is of the view that the prosecution did not manage to prove beyond reasonable doubt the first charge proffered against the accused namely that of trafficking Cannabis.

2. Possession of Cannabis plant or part thereof with intent to supply

In their testimonies PC1397 Ludwig Farrugia; PC2004 Sherice Camilleri; PC1110 Dion Mario Fenech and PC297 Christian Farrugia were categorical and consistent in their versions of what happened when they arrested the present accused. They all explain how the accused was noticed acting suspiciously. They explain what made them think he was acting suspiciously and this was because

² Dok. KC

he was making contacts with several people. They explained also his reaction when the accused noticed them approaching him and how he tried to avoid and resist arrest.

Upon his arrest, the police officers describe how a black plastic bag fell from his T-Shirt, wherein there were several sealable bags containing green substance. In his statement to the police, the accused insisted that the said bag did not fall from his shirt and that it was not his. He explained that there were various people with him and that it was thrown to the ground by someone when the police approached.

From a forensic aspect, in his testimony PS813 Clinton Vella lifted two fingerprints which were subsequently compared to those of the accused by the Court appointed expert Joseph Mallia. Mr. Mallia concluded that the prints that were lifted lacked a sufficient number of ridge characteristics co-ordinated with one another. Hence these could not be compared for identification purposes. Hence the fingerprints were not conclusive in this regard. However, from the acts of the magisterial inquiry concluded by Magistrate Dr. Natasha Galea Sciberras it transpires that Dr. Marisa Cassar was tasked by the Magistrate to take DNA samples from this black plastic bag and its contents. Subsequently this Court extended Dr. Cassar's task to compare the genetic profile that emerged from the DNA sample taken from the sealable bags found in the black plastic bag (referred to as 'S1' by Dr. Cassar in her report) with the genetic profile of the present accused. Dr. Cassar presented her findings by means of Dok. MC³ wherein she concluded that the present accused was one of the four persons who contributed to the genetic profile found on 'S1'. Hence forensically, from a DNA aspect it was established that the present accused definitely was one of the persons (as there were three other contributors) who came in contact with the sealable bags found in the black plastic bag. This forensic evidence collaborates the version given by the police officers and contradicts the version of events given by the

³ On 28th October 2021

accused in his statement to the police. In light of this, the Court is of the view that the accused was in possession of the said black bag containing a substantial number of sealable bags with greenish substance and that the said bag fell from his shirt whilst he was resisting arrest.

The greenish substance found in the sealable bags in the black plastic bag was analysed by the expert appointed by the Inquiring Magistrate, Profs. Emmanuel Sinagra, who concluded that:

“The buds found in documents listed above as well as the traces of green grass contained the substance Tetrahydrocannabinol. The total weight of this substance was found to be 21.9 g and the purity of ca. 12%. This substance originates from the Cannabis plant and is a controlled substance under Part III of Section 8, Chapter 101 of the Laws of Malta.”

The said substance was distributed in a substantial amount of small sealable bags. In fact from Profs. Sinagra’s report it is clear that he analysed 48 plastic sachets together with another sachet which was later found during the accused’s search at the General Police Headquarters. According to Profs. Sinagra each plastic sachet contained the amount of ca. 0.46grams.

Hence in view of the aforementioned evidence it clearly results that the accused was found in possession of cannabis grass which was distributed in 49 small packets each containing more or less the same amount ca. 0.46grams. How the 21.9 grams of the illegal drug was distributed in a substantial amount of packets (49) each packet containing more or less the same amount indicates that the said dangerous drug was not intended exclusively for his personal consumption.

This is also strengthened by a number of other circumstances that result from the evidence brought forward in this case: namely, the circumstances in which the accused was apprehended with 21.9grms of Cannabis Grass, how the said amount

of Cannabis Grass was divided in a substantial amount sealable bags of more or less equal weight; the fact that he was apprehended by the police with the said substance outdoors (this Court does not believe that it is plausible for a person to consume all that amount of drugs in one evening whilst out in the presence of others) and this after having been observed by the police making contact with several people; the fact that the police also found a crusher were he was noticed sitting down accompanied by the fact that he was also found to be in possession of empty sealable sachets. This indicates that in the very same place that he was arrested he was further dividing the drugs not to immediately consume but to put in these empty sachets found in his possession. It is also worth noting that upon his arrest cash was found on his person. The amount of cash although not substantial is not considered to be an amount which one usually carries along with him. In connection with this the Court took also notice of one of the photos taken by Matthew Azzopardi bearing reference number 211068/21BPB110 which shows a picture of the money found in his possession. From this photo it is very clear that most of the Euro notes were individually folded. This is indicative that the accused had just received those money separately from different persons. Another factor which is indicative that the accused's possession of the drugs in question was not for personal consumption are the aforementioned text messages found on his mobile phone. That exchange of texts indicates that on that same afternoon of his arrest he had drugs which he intended to supply to other persons. In his statement the accused denied of ever intending to traffic drugs. He contends that the drugs in the black plastic bag were not his. However, this Court does not find the version given by the accused in his statement to be credible given that as explained above it is contradicted by both forensic evidence and the testimony of the police officers themselves.

In light of all of the above this Court believes that the prosecution has managed to prove beyond reasonable doubt that the accused was knowingly (as even

evidenced by the fact that he tried to escape as soon as he noticed the police presence) in possession of cannabis grass and that such possession was not intended solely for his personal consumption.

3. Simple possession of Cannabis grass:

In his interrogation, after being given his rights in terms of law, the accused admits that he consumes Cannabis grass.

“Inspector J. Grech: So, on your person they also found two empty sachets with traces do you smoke Cannabis?

Shaibu Abdul Salam: Yes I smoke⁴

Insp. J. Grech: How much do you smoke cannabis in a day?

Shaibu Abdul Salam: It depends.

Insp. J. Grech: How long have you been smoking cannabis?

Shaibu Abdul Salam: Cannabis a long time since my country.”⁵

Hence in light of the above, this Court believes that this third charge has also been sufficiently proven.

4. Non-observance of legitimate orders given by the police

PC1397 Ludwig Farrugia; PC2004 Sherice Camilleri; PC1110 Dion Mario Fenech and PC297 Christian Farrugia testified that the accused tried to run away as soon as he noticed their presence. They also recount how the accused resisted arrest. However, none of them explained what were the orders given which the accused did not follow. Hence the Court does not believe that this charge has been sufficiently proven in terms of law.

5. Attack or resistance of police officers

⁴ Emphasis by this Court

⁵ Reference is made to Fol. 84 of the acts of the proceedings.

This Court is of the view that this charge has also been sufficiently proven given that the police officers in their testimony recount how the accused resisted the arrest, so much so that he even tried to grab forcefully the firearm of PC297 Farrugia. Because of the force exercised by the accused the magazine fell on the ground.

6. Committed these offences within 100 metres for a place where young people habitually meet

The last charge proffered against the accused relates only to the second charge, namely that of possession of Cannabis Grass with intent to supply, given what has been declared in this judgement with regards to the first charges namely that of trafficking in Cannabis Grass. This last charge relates to the fact that the possession of Cannabis Grass with intent was within the 100 metres of perimeter of a school, youth club or centre or such other place where young people habitually meet. During the *iter* of these proceedings the defence exempted the prosecution from bringing forward evidence with regards to this aggravating circumstance⁶. However, irrespective of this exemption, from the evidence brought forward by the prosecution it clearly results that the accused was arrested very close to a garden which is habitually frequented by young people. In view of the above this Court is satisfied that this aggravation linked to the second charge of possession with intent to supply is also sufficiently proven.

⁶ Reference is made to fol. 14 of the acts of proceedings.

That for the purpose of punishment to be inflicted, this Court is taking into account the serious nature and circumstances of the offences he is going to be found guilty of, the clean conviction sheet, and the amount and nature of the drug involved in this case,

Decide:

For these reasons the Court, after having seen articles 8(e), 8(d), 22(1)(a), 22(2)(b)(i) and (ii)⁷ of the Dangerous Drugs Ordinance, Cap. 101 of the Laws of Malta, and articles 96 and 338(ee) of the Criminal Code acquits the accused Shaibu Abdul Salam of the first and fourth charges brought against him whilst it finds him guilty of the second, third, fifth and sixth charges brought against him and following the application of article 17(b) of the Criminal Code condemns him to **fifteen months effective imprisonment** (from which period one must deduct the period of time, prior to this judgement, during which the person sentenced has been held in preventive custody in connection with this case) **and to the payment of a fine (multa) of one thousand eight hundred euros (Eur. 1,800).**

Additionally, in terms of article 533 of Chapter 9 of the Laws of Malta, the Court is ordering the accused to pay the Registrar of this Court the sum of four thousand five hundred and six Euros and forty euro cents (Eur. 4,506.40) representing expenses incurred in the employment of experts in relation to the charges for which he was found guilty. The Court is also confiscating documents exhibited during the present acts of proceedings.

⁷ Including particularly the second proviso of article 22(2)(b) of the Dangerous Drugs Ordinance.

Furthermore, the Court is ordering the destruction of the illegal substances exhibited in the present acts of proceedings, once this judgement becomes final and definitive, under the supervision of the Court Registrar, who shall draw up a process-verbal documenting the destruction procedure. The said proces-verbal shall be inserted in the records of these proceedings not later than fifteen days from said destruction.

MAGISTRATE DR. ELAINE MERCIECA BA. LL.D.

Christine Farrugia

Deputy Registrar