



CRIMINAL COURT

HON. MADAME JUSTICE NATASHA GALEA SCIBERRAS B.A., LL.D

**Admission of guilt in
terms of Article 392B
of the Criminal Code
518/2022**

THE REPUBLIC OF MALTA

VS

Melvin Roberto NUNES

Today, 2nd July 2024

The Court,

Having seen the charges brought against the accused **Melvin Roberto NUNES**, aged 36 years, born in Suriname on 19th March 1986, with no fixed residence in Malta, and bearer of Dutch passport NWHJ4PHH4, charged with having:

On 6th September 2022, and/or in the previous months, in these Maltese Islands:

1. Together with another one or more persons in Malta or outside Malta, conspired, promoted, constituted, organised or financed the conspiracy with other person/s to import, sell or deal in drugs (cocaine), in these Islands, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;

2. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cocaine) into Malta in breach of Section 15A of Chapter 101 of the Laws of Malta;
3. Supplied or distributed, or offered to supply or distribute the drug (cocaine), 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 licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other 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 provisions of paragraph 6 of the Ordinance and 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 Regulation 4 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;
4. Had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drugs 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 drug, 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 drug, and failed to prove that the mentioned drug was supplied to him for his personal use, according to a 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 intended for his personal use;

5. Imported, or caused to be imported, or took any steps preparatory to import any dangerous drug (cannabis grass) into Malta, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Court was requested to attach in the hands of third parties in general, all monies and other moveable property due or pertaining or belonging to the accused, and further to prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any moveable or immovable property in terms of Article 22A of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Article 23A of the Criminal Code, Chapter 9 of the Laws of Malta, and Article 36 of Chapter 621 of the Laws of Malta.

The Court was also requested to apply Article 533(1) of Chapter 9 of the Laws of Malta with regards to the expenses incurred by the Court appointed experts.

Having seen the minutes of the hearing held before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on 9th May 2024, during which the accused **Melvin Roberto NUNES**, whilst duly assisted by the legal counsel of his choice, pleaded guilty to the charges brought against him, which guilty plea he confirmed after the Court explained to him the legal consequences thereof, including the maximum applicable punishment prescribed by law, and gave him sufficient time to reconsider the said plea and to retract it, whilst consulting again with his legal counsel;

Having seen the note of the Attorney General filed in the Registry of this Court on 13th May 2024, by means of which in the name of the Republic of Malta, the said Attorney General declared that:

1. She received a scanned copy of the record of the inquiry in the names of *The Police (Inspector Marshal Mallia) vs Melvin Roberto Nunes* on the tenth (10) day of May of the year two thousand and twenty four (2024), and this after the Court of Magistrates (Malta) as a Court of Criminal Inquiry ordered that the record of the said inquiry be sent to the Attorney General in terms of Article 392B(1)(a) of Chapter 9 of the Laws of Malta, and this in view of the fact that the person charged, namely **Melvin Roberto Nunes**, in the sitting held on the ninth (9) day of May of the year two thousand and twenty four (2024), **confirmed his guilty plea** with regards to the charges

brought against him, which offences are liable to a punishment exceeding twelve (12) years imprisonment;

2. In terms of Article 392B(2) of Chapter 9 of the Laws of Malta, the charges proffered against the said **Melvin Roberto Nunes** before the Court of Magistrates (Malta) as a Court of Criminal Inquiry, to which the accused registered the aforementioned guilty plea, should be considered as a Bill of Indictment for all purposes and effects at law.

Having further seen the joint application of the Attorney General and the accused **Melvin Roberto NUNES**, filed on 29th May 2024, by means of which, whilst referring to the guilty plea registered by the said accused to all the charges proffered against him before the Court of Magistrates on the ninth (9) of May of the year two thousand and twenty-four (2024), to the note filed by the Attorney General on the thirteenth (13) of May of the year two thousand and twenty-four (2024) and to the provisions of Article 392B(5)(a) of Chapter 9 of the Laws of Malta, jointly declared that they are agreeing and consequently are requesting this Court to apply on the accused **Melvin Roberto Nunes** a punishment of four (4) years effective imprisonment together with a fine (*multa*) of seven thousand euro (€7,000), and this together with other sanctions, expenses and consequences that are mandatorily prescribed by law upon conviction in terms of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, as well as the Criminal Code, Chapter 9 of the Laws of Malta, *inter alia* the confiscation of any monies and other moveable and immoveable property belonging or owed to the accused according to law.

For all intents and purposes, the parties declared that in their considerations regarding punishment as above agreed, the provisions of Article 29 of Chapter 101 of the Laws of Malta were applied by two (2) degrees.

Having heard the parties' submissions during the hearing held before this Court on 26th June 2024;

Having seen the records of the proceedings.

Considers that:

In view of the guilty plea registered and subsequently confirmed by the accused before the Court of Magistrates (Malta) as a Court of Criminal Inquiry on 9th May 2024, this Court declares the accused **Melvin Roberto NUNES** guilty of all the accusations proffered against him and thus, guilty of having:

On 6th September 2022, and/or in the previous months, in these Maltese Islands:

1. Together with another one or more persons in Malta or outside Malta, conspired for the purposes of importing, selling or dealing in drugs (cocaine), in these Islands, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, or promoted, constituted, organised or financed the conspiracy;
2. Imported, or caused to be imported, or took any steps preparatory to importing any dangerous drug (cocaine) into Malta in breach of Article 15A of Chapter 101 of the Laws of Malta;
3. Supplied or distributed, or offered to supply or distribute the drug (cocaine), 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 licensed by the President of Malta, without being fully authorised by the Internal Control of Dangerous Drugs Regulations (G.N. 292/1939), or by other 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 provisions of paragraph 6 of the Ordinance and 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 Regulation 4 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;
4. Had in his possession the drug (cocaine) specified in the First Schedule of the Dangerous Drugs 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 drug, 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 drug, and failed to prove that the mentioned drug was supplied to him for his personal use, according to a 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 intended for his personal use;

5. Imported, or caused to be imported, or took any steps preparatory to importing any dangerous drug (cannabis grass) into Malta, against the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

In respect of the punishment to be inflicted, the Court is taking into consideration the fact that although the accused did not register a guilty plea during the earliest stages of these proceedings, and that indeed the Prosecution had rested its case when the said plea was registered, nonetheless he pleaded guilty before the bill of indictment was issued against him. The Court is also taking into consideration all the circumstances of the case, including the fact that on 6th September 2022, the accused imported into Malta 198.6 grams of cocaine, with an average percentage of purity of 35% and an estimated street value of twelve thousand, seven hundred and ten euro (€12,710) and 0.23 grams of cannabis. Furthermore, the Court also considers that from the statement released by the accused on 6th September 2022, it transpires that he was a drug mule and that this was not the first time that he imported cocaine into Malta. Indeed in the previous months, he twice imported the same substance in the same weight, according to him, of 200 grams, with the same *modus operandi*.

The Court further considers that the accused cooperated with the Police, to the extent that, as declared in the joint application of the Attorney General and the accused, in their considerations about the punishment to be inflicted, the

provisions of Article 29 of Chapter 101 of the Laws of Malta were applied and the punishment was reduced by two (2) degrees. Furthermore, the Court has taken into consideration relevant jurisprudence on the matter, and that whilst such jurisprudence may serve as a guideline in such cases, ultimately the punishment imposed must reflect the particular circumstances of the case.

Taking the above into consideration, and that the punishment requested is within the parameters of the law, the Court deems that it should adhere to the punishment requested by the parties in terms of Article 392B(5)(b) of the Criminal Code, and thus the sentence to be awarded, is being so awarded at the request of the parties.

Thus, after having seen Parts IV and VI, Articles 2, 7, 9, 10(1), 12, 14, 15, 15A, 16, 20, 22(1)(a), 22(1)(f), 22(1A), 22(1B), 22(2)(a)(i)(aa)(ii), 22(3A)(a)(b)(c)(d)(7), 24A, 26 and 29 of Chapter 101 of the Laws of Malta, Regulations 2, 4, 9 and 16 of Subsidiary Legislation 101.02, and Articles 17, 23, 31, 392B and 533 of the Criminal Code, condemns the accused **Melvin Roberto NUNES** to the punishment of four (4) years effective imprisonment and a fine (multa) of seven thousand euro (€7,000), which fine, in default of payment, shall be converted into a term of imprisonment in accordance with Article 11 of the Criminal Code.

Furthermore, after having seen Article 533 of the Criminal Code, condemns **Melvin Roberto NUNES** to the payment, to the Registrar, of the costs incurred in connection with the employment in the proceedings of experts, including such experts as have been appointed in the examination of the process verbal of the inquiry, namely, the costs incurred in connection with the appointment of expert Scientist Gilbert Mercieca amounting to the sum of seven hundred, seventy-eight euro and eighty cents (€778.80)¹, the costs incurred in connection with the appointment of Scene of Crime Officer PS 2293 Michelle Camilleri amounting to the sum of sixty-nine euro and twenty-five cents (€69.25)² and the costs incurred in connection with the appointment of Dr. Martin Bajada amounting to the sum of five thousand and twenty-six euro and eighty cents (€5,026.80)³. The said costs amount to the total sum of five thousand, eight hundred, seventy-four euro and eighty-five cents (€5,874.85), which costs shall be payable within one (1) month,

¹ *Vide* a fol. 149 of the records.

² A fol. 126 of the records.

³ A fol. 210 of the records.

in default of which they shall be converted into a term of imprisonment according to law.⁴

Furthermore, in terms of Article 392C of the Criminal Code, the Court condemns **Melvin Roberto NUNES** to the payment, to the Registrar, of the costs incurred in connection with the appointment of expert Dr. Marisa Cassar⁵, which costs shall be determined by the Registrar.

Orders further the forfeiture to the Government of Malta, of all the articles in respect of which the offences were committed, and the forfeiture to the Government of Malta, of all monies, moveable and immoveable property of the person convicted.

Unless the Attorney General indicates, by means of a note, to be filed within fifteen days from the date of this judgement, that the drugs exhibited in these proceedings are required in connection with other criminal proceedings against third parties, orders the destruction of the drugs exhibited in the records of these proceedings, as soon as this judgement becomes final and definitive. Such destruction shall take place under the supervision of the Registrar, who shall draw up a process verbal documenting the destruction procedure, which document shall be inserted in the records of these proceedings not later than fifteen days from the said destruction.

Natasha Galea Sciberras
Judge

⁴ The Court is not condemning the person sentenced to the payment of the costs incurred in connection with the appointment of Dr. Mario Scerri and PS 844 Carl Micallef, since their examination and analysis resulted in the negative.

⁵ *Vide* the expert's report a fol. 167 *et seq* of the records.