



CRIMINAL COURT

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

Bill of Indictment No: 5/2023

THE REPUBLIC OF MALTA

VS

FUNSEN OSVALDO PINAS

Today, 12th November 2024

The Court,

Having seen the bill of indictment against **Funsen Osvaldo PINAS**, son of Herman and Walda, born in district Sipaliwini on the 19th of January of the year 1987, holder of Dutch passport bearing number NR975FR54, in terms of which he is being accused by the Attorney General, in the name of the Republic of Malta:

THE FIRST (I) COUNT

The Facts of the case:

That on the thirtieth (30th) day of April of the year two thousand and twenty-two (2022) and during the previous days, **Funsen Osvaldo Pinas** decided to import the dangerous drug cocaine illegally into the Maltese Islands.

In fact, in the early morning of the above-mentioned date, during a routine check conducted by the Drug Squad Police Officers assisted by Customs officials at the Malta International Airport, on the passengers arriving from Brussels, on Air-Malta flight FR2956, **Funsen Osvaldo Pinas**, herein onwards referred to as the accused, was stopped and interviewed on his stay here in Malta. The accused was given his rights as the police decided to conduct a strip search on him whereby, following further analysis and questioning, he confirmed that he was carrying something inside his body. The accused consented further to be examined at Mater Dei hospital and it transpired from the scan performed on his abdomen region that he was carrying a considerable number of capsules. The accused was kept under observation with police surveillance, whereby by next morning he extracted a total of one hundred and thirty (130) capsules containing white substance.

From the analysis carried out by the Court nominated expert, namely forensic scientist Gilbert Mercieca, it was established that the one hundred and thirty (130) capsules contained an average of 9.74 grams of white substance per capsule, which substance was identified as cocaine, with a total weight of 1264.29 grams and circa 41% purity.

That the drug cocaine is included under Schedule I of the Dangerous Drugs Ordinance.

The Consequences:

By committing the above-mentioned acts with criminal intent, the accused **Funsen Osvaldo Pinas** rendered himself guilty of importing, or caused to be imported, any dangerous drug (Cocaine) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Funsen Osvaldo Pinas** of being guilty of having, on the thirtieth (30th) day of April of the year two thousand and twenty-two (2022) and during the previous days, with criminal intent, imported, or caused to be imported any dangerous drug (cocaine) into

Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta.

The Punishment Demanded:

And demands that the accused **Funsen Osvaldo Pinas** be proceeded against according to law, and that he be sentenced to the punishment of life imprisonment and to a fine 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) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property in which the offence took place as described in the bill of indictment, as is stipulated and laid down in Articles 2, 9, 10(1), 12, 14(1), 15A, 22(1)(a)(1B)(2)(a)(i)(3A)(d)(7), 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Articles 23 and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilt of the accused.

THE SECOND (2) COUNT

That during the period of time mentioned in the preceding count of this bill of indictment, and within the same circumstantial context, that is to say on the thirtieth (30th) day of April of the year two thousand and twenty-two (2022), **Funsen Osvaldo Pinas** was knowingly in possession of 1264.29 grams of cocaine in the Maltese Islands and thus, the amount itself and the circumstances in which it was found, denoted that it was not intended for his exclusive personal use. Moreover, he was not authorized to be in possession of such drugs in terms of Law.

The Consequences:

Consequently by committing the above-mentioned acts with criminal intent, **Funsen Osvaldo Pinas** rendered himself guilty of being in possession of the dangerous drug cocaine as specified under Part IV of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta when he was not in possession of an import or an export authorization 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 authorized to manufacture or supply the mentioned drug, and was not otherwise licensed by the President of Malta or authorized 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, and which drug was found under circumstances denoting that it was not intended for his exclusive personal use.

The Accusation:

Wherefore, the Attorney General, in the name of the Republic of Malta, on the basis of the facts and circumstances narrated above, accuses **Funsen Osvaldo Pinas** of being guilty of having, on the thirtieth (30th) day of April of the year two thousand and twenty-two (2022), been in possession of the dangerous drug cocaine with criminal intent, as specified in the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorization 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 authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized 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 drugs were 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 on 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, and which drug was found under circumstances denoting that it was not intended for his exclusive personal use.

The Punishment Demanded:

And demands that the accused be proceeded against according to law, and that **Funsen Osvaldo Pinas** be sentenced to the punishment of life imprisonment and to a fine 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) and the forfeiture in favour of the Government of Malta of the entire immovable and movable property, in which the offence took place as described in the bill of indictment, as is stipulated and laid down in Articles 2, 9, 10(1), 12, 20, 22(1)(a)(2)(a)(i)(3A)(d)(7), 24A and 26 of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta and of Regulations 9 and 16 of the 1939 Regulations on the Internal Control of Dangerous Drugs (G.N. 292/1939) and of Articles 17, 23, 23A, 23B, 23C and 533 of the Criminal Code or to any other punishment applicable according to law to the declaration of guilt of the accused **Funsen Osvaldo Pinas**.

Having seen the records of the case, including the records of the inquiry;

Having seen the joint application of the Attorney General and the accused **Funsen Osvaldo PINAS**, filed in the Registry of this Court on 23rd October 2024, whereby the applicants, whilst declaring that they have reached an agreement in terms of Article 453A of the Criminal Code, requested this Court that the punishment to be applied by this same Court, shall be that of a term of **seven (7) years imprisonment and a fine (multa) of twenty-five thousand euro (€25,000)**, and this together with other sanctions 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 immovable property belonging or owed to the accused in accordance to law.

That for all intents and purposes, the applicants declared that in considering the above-mentioned punishment agreed upon, they also took into consideration the provisions of Article 29 of Chapter 101 of the Laws of Malta **by one degree**.

Having heard the parties during the hearing held on 4th November 2024, make oral submissions about the punishment indicated in their joint application;

Having seen that during the said hearing held on 4th November 2024, the accused **Funsen Osvaldo PINAS**, duly assisted by his legal counsel, entered a guilty plea to the accusations proffered against him in the bill of indictment above-cited;

Having seen that after the Court, in the most solemn manner, warned him of the legal consequences of such plea, ensured that he understood the consequences thereof, including the content and the consequences of the joint application referred to above, and allowed him sufficient time to reconsider it and to retract it, including by postponing the case for such purpose, the accused confirmed the said plea, and this in terms of Article 453(1) of the Criminal Code;

Thus, the Court finds **Funsen Osvaldo PINAS** guilty of the accusations proffered against him in the bill of indictment, namely, of having on the thirtieth (30th) day of April of the year two thousand and twenty-two (2022) and during the previous days:

1. With criminal intent, imported, or caused to be imported any dangerous drug (cocaine) into Malta in breach of the provisions of the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta; and
2. Been in possession of the dangerous drug cocaine with criminal intent, as specified in the Dangerous Drugs Ordinance, Chapter 101 of the Laws of Malta, when he was not in possession of an import or an export authorization issued by the Chief Government Medical Officer in pursuance of the provisions of Parts 4 and 6 of the Ordinance, and when he was not licensed or otherwise authorized to manufacture or supply the mentioned drugs, and was not otherwise licensed by the President of Malta or authorized 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 drugs were 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 on 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 exclusive personal use.

Considered that:

The accused having declared himself guilty before the constitution of the jury, albeit after the bill of indictment was issued against him, the Court took into

consideration the jurisprudence of the Maltese Courts in circumstances where the accused registered an early guilty plea in criminal proceedings, *inter alia* **Ir-Repubblika ta' Malta vs Nicholas Azzopardi**, decided by the Criminal Court on 24th February 1997, **Ir-Repubblika ta' Malta vs Mario Camilleri**, decided by the Court of Criminal Appeal (Superior jurisdiction) on 5th July 2002, **Il-Pulizija vs Emmanuel Testa**, decided by the Court of Criminal Appeal (Inferior jurisdiction) on 17th July 2002 and **Ir-Repubblika ta' Malta vs Dominic Bonnici**, decided by the Criminal Court on 19th May 2004.

The Court also took into consideration the circumstances of the case, including the nature of the drug concerned. Indeed, it results that on 30th April 2022, the accused imported into Malta 130 capsules containing an average of 9.74 grams of cocaine per capsule, and a total weight of 1264.29 grams of cocaine, with a percentage of purity of 41% and an estimated value of eighty thousand, nine hundred and fifteen euro (€80,915).

The Court further considered 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 one (1) degree.

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, in view of the guilty plea registered by the accused, the Court deems that it should adhere to the punishment requested by the parties in their joint application above referred to, and thus the sentence to be awarded, is being so awarded at the request of the parties.

Thus, the Court after having seen Parts IV and VI, Articles 2, 9, 10(1), 12, 14, 15, 15A, 16, 20, 22(1)(a), 22(1B), 22(2)(a)(i)(aa), 22(3A)(a)(b)(c)(d)(7)(9), 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, 23A, 31 and 533 of the

Criminal Code, condemns the accused **Funsen Osvaldo PINAS** to the punishment of seven (7) years imprisonment, from which term one must deduct the period of time during which the person sentenced was kept in preventive custody in connection with these proceedings, and a fine (multa) of twenty-five thousand euro (€25,000), which fine, in default of payment, shall be converted into a term of imprisonment in accordance with Article 11 of the Criminal Code.

Further condemns **Funsen Osvaldo PINAS** to pay, to the Registrar, the costs incurred in connection with the employment in the proceedings of any expert or referee, including such experts as have been appointed in the examination of the proces verbal of the inquiry, namely, the costs incurred in connection with the appointment of expert Dr. Mario Scerri, amounting to the sum of three hundred and forty-five euro and thirty cents (€345.30)¹, the costs incurred in connection with the appointment of expert Scientist Gilbert Mercieca, amounting to the sum of one thousand, seven hundred and seventy euro (€1,770)², the costs incurred in connection with the appointment of Dr. Steven Farrugia Sacco, amounting to the sum of one thousand, one hundred, sixty-six euro and sixty-seven cents (€1,166.67)³, and the costs incurred in connection with the appointment of PC 2424 Abigail Grech and Civilian Officer Alexia Pace, amounting to the sum of one hundred and ninety-three euro and ten cents (€193.10)⁴. The total costs payable by **Funsen Osvaldo PINAS** amount therefore to the sum of three thousand, four hundred and seventy-five euro and seven cents (€3,475.07), which costs shall be payable within three (3) months, in default of which they shall be converted into a term of imprisonment according to law.

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

¹ A fol. 71 of the records of the proceedings.

² A fol. 165 of the records of the proceedings.

³ A fol. 172 of the records of the proceedings.

⁴ A fol. 191 of the records of the proceedings.

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