

**IN THE HIGH COURT OF TANZANIA
(DODOMA DISTRICT REGISTRY)
AT DODOMA**

MISC. CRIMINAL APPLICATION NO. 61 OF 2018

In the matter of an application for
BAIL PENDING TRIAL

And

In the matter of PI Criminal Case No. 23 of 2018

In the District Court of DODOMA District at DODOMA

THADEI HAMISI MTANDIKA.....APPLICANT

VERSUS

THE REPUBLICRESPONDENT

RULING

25/01/2019 & 28/01/2019

KITUSI, J.

This is an application for bail by Thadei Hamis Mtandika who is being charged with being in an unlawful possession of Narcotic Drugs contrary to section 15(1) (a) and (2) and section 29 (1) (a) of the Drugs Control and Enforcement Act No. 5 of 2015, before the District Court of Dodoma. It is alleged that the applicant Thadei Hamis Mtandika was on 14th January 2017 found in possession of 2227 rolls of Norcotic Drugs known as 'Cannabis' weighing 3130 grams.

The application has been supported by an affidavit of Nkumuke Simon Yongolo, an advocate, who also argued it in court. For the respondent Republic Ms Kezilahabi learned State Attorney stood to oppose the application, adapting a counter affidavit that had earlier been filed by Morice Cyprian Sarara, also a State Attorney.

According to Mr Yongolo, both in his affidavit and oral submissions at the hearing, the offence with which the applicant stands charged is bailable and he argued the court to admit the applicant to bail because he is a person of good standing who can meet the conditions thereof. When Ms Kezilahabi took the floor she submitted that the offence with which the applicant is charged is not bailable.

In reaction to the learned State Attorney's submissions, Mr Yongolo submitted that what is not bailable is "*trafficking*" in drugs as opposed to "*possession*" with which the applicant stands charged. No reference to any laws was made by either.

In addition to the foregoing submissions Mr Yongolo referred to and submitted on the series of arrests that have been dogging the applicant whenever he is admitted to bail or discharged by the court. He was of the view that these arrests and continued incarceration of the applicant violates Article 13(6) (d) of the Constitution of the United Republic of Tanzania, 1977 that provides for presumption of innocence of a culprit.

In pronouncing myself on this matter I will begin by observing that the learned advocate's complaint that the police have been arresting the applicant every time he is released on court bail or discharged, by it, seems

to be confirmed by the particulars of the charge a copy of which has been annexed to the affidavit. The offence alleged in the charge allegedly took place on 14 January 2017, two years ago, a fact that renders the complaint as to serial arrests highly probable.

Now back to the legal basis for the application. The law relating to bail in drug cases does not pose any challenge because it is clear. Under section 29 (1) there is a list of unbailable offences, and "*possession*" of drugs with which the applicant has been charged is not one of them. Therefore Mr Yongolo is correct in his submitting that the learned State Attorney misconceived the law when she submitted that the offence of possession of drugs is not bailable.

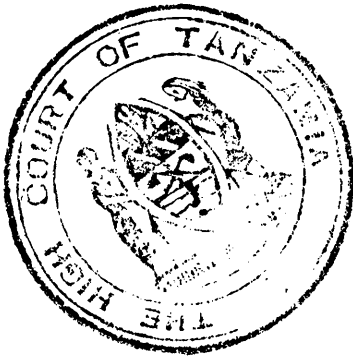
Thus the application, being legally justified, is granted. Sub section (3) of section 29 of the Drugs control and Enforcement Act, No. 5 provides as follows:-

"The conditions on granting bail specified in section 148 of the Criminal Procedure Act shall mutatis mutandis apply to all bailable offences under this Act".

Thus the application is granted on the following conditions;

- (i) *Two sureties each to sign a bond of Shs ten million.*
- (ii) *Applicant to surrender his travel document to the Regional Crimes Officer.*

- (iii) *Applicant not to travel outside Dodoma Region without prior permission of the court.*
- (iv) *Sureties to be approved by the Deputy Registrar.*




I.P. KITUSI

JUDGE

28/01/2019