

## SUPREME COURT OF SEYCHELLES

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**Reportable**

CM 102/2023

(Arising out of: CR 51/2022)

In the matter between:

**THE REPUBLIC**

*(Represented by Mr Hemanth Kumar)*

**Applicant**

and

**KHAN MOHAMMAD, a 42 year old Iranian National  
Captain of the Iranian Dhow, Basadi**

*(Represented by Mr Clifford Andre)*

**Respondent**

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**Neutral Citation:** *Rep vs Mohammad* (CM 102/2023) [2023] (6<sup>th</sup> December 2023)

**Before:** Adeline J

**Summary:** Forfeiture of Iranian Dhow with all its gears and equipment/section 153 of the Criminal Procedure Code.

**Heard:** 3<sup>rd</sup> November 2023

**Delivered:** 6<sup>th</sup> December 2023

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### ORDER ON MOTION

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**Adeline, J**

- [1] This is an application by the Republic, made by way of notice of motion supported by affidavit evidence duly sworn by one sub inspector (SI) Johnny Malvina, an officer of the Seychelles Police Force presently attached to the Organised Crime Unit of the Seychelles Police Force.
- [2] The Republic (hereinafter referred to as “the Applicant”) makes this application pursuant to Section 153 of the Criminal Procedure Code, by which application, it seeks for an order of this court in the following terms;

*“an order of forfeiture to the Republic in respect of the Iranian Dhow connected to this case namely Basadi with all its gears and equipment, of which the Respondent is a captain and in charge of the said dhow which was used to commit the offence of importation of controlled drugs into Seychelles, for which the Respondent herein was convicted along with the other seven crew of the said dhow by this court”.*

[3] In the affidavit in support of the application SI Malvina makes the following averments;

*“1. That I am the above named, a deponent herein and I, being the investigating officer of this case, well known with the facts and evidence involved in Cr.No: 51 of 2022 (CB 302/10/2022 of Central Police Station). The facts and information stated hereunder are within my personal knowledge as disclosed through the investigation, documents involved and as informed by the counsel for the prosecution connected to this case.*

*2. That the officers of Seychelles Coast Guard restrained the Respondent herein namely Mr Khan Mohammad aged 42 years old, Iranian National Captain of the Iranian Dhow namely Basadi along with the seven other crew of the said Iranian Dhow when they were found in the said Dhow without flag at sea in the Exclusive Economic Zone of Seychelles Maritime Zone on the 7<sup>th</sup> October 2022 which committing the acts of Importation of Controlled Drugs.*

*3. That the investigations revealed that the Respondent herein has been a Captain and in charge of the said dhow, bringing the controlled drugs namely heroin and opium into Seychelles by using this dhow on the 07<sup>th</sup> October 2022. During the course of investigations, the said dhow was seized by the Police and is being kept at Providence, Mahe under Police custody.*

*4. That the photo album contains the photographs of the said Iranian Dhow without flag and other items connected to this case is now shown to me and produced herewith, as Exhibit A1 of this Affidavit.*

5. That the Respondent herein along with the seven crew of the said dhow connected to this case were charged and prosecuted in Cr.No: 51 of 2022 in Supreme Court by the amended charge dated 25<sup>th</sup> July 2023 for the offences of Conspiracy and Importation of controlled drugs namely heroin & opium. It was on 02<sup>nd</sup> August 2023, the Respondent herein and the seven other crew of the Iranian Dhow namely Basadi who are the accused persons connected to this case were convicted by this court based on their own guilty plea in respect of the said charges and the facts of the case connected to them.

6. That I was informed by the counsel for the prosecution, which I verily believe to be true that the Iranian Dhow namely Basadi, which was used by the Respondent herein along with seven other accused persons of this case to commit the offences in Seychelles Jurisdiction as alleged in the indictment dated 25<sup>th</sup> July 2023, is liable to be forfeited to the Republic according to law.

7. Hence I pray this Hon'ble court to issue an order of forfeiture to the Republic in respect of the Iranian Dhow connected to this case namely Basadi with all its gears and equipment, which is kept at the Providence, Mahe under police custody”.

[4] The Respondent who was represented by counsel and had initially indicated that it would contest the application, was given ample time and opportunity to file an answer to the application but it did not. This, coupled with the fact that learned counsel for the Respondent had on two consecutive mention dates failed to put appearance in court, prompted learned counsel for the Applicant to move this court for the order being sought for.

[5] The provision of Section 153 of the Criminal Procedure Code under which this application is made is couched in the following terms;

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“153. In addition to any forfeiture especially provided for by this code or any other law, the corpus delicti when it is the property of the offender and all the things produced by the

*offence or which may have been used or were intended to be used for committing an offence, shall on the conviction of the offender become forfeited to the Republic”.*

- [6] On the 2<sup>nd</sup> August 2023, before this court, after admitting the facts as narrated by the prosecution in CB NO: 302/10/2022, the Respondent as the 1<sup>st</sup> Accused and the other accused persons were all convicted on their guilty plea for the following drugs offences, namely;

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Count 1

- (1) Conspiracy to commit the offence of Importation of a Controlled Drug, namely, Heroin (Diamorphine).

Count 2

- (2) Importation of a Controlled Drug, namely, Heroin (Diamorphine)

Count 3

- (3) Conspiracy to Commit the Offence of Importation of a Controlled Drug, namely, Opium, and,

Count 4

- (4) Importation of a Controlled Drug, namely Opium.

- [7] All the convicts were sentenced to serve a term of imprisonment of 20 years for the offences they were convicted of.

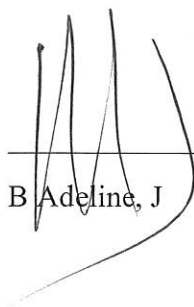
- [8] The facts of the case as narrated by the prosecution and admitted by all the eight convicts clearly shows, that the vessel, (the Iranian Dhow) Basadi and all its gears and equipment

were used by the convicts in the commission of the offences of which they have all been convicted.

[9] Based on the facts as transpired from the admitted particulars of the offence by the convicts, the Iranian dhow, Basadi, is not the corpus delicti of the offence perse. However, as it was used to commit the offences of which the Respondent and others have been convicted the provisions of section 153 of the Criminal Procedure Code still applies, given that the dhow, it's gears and equipment were used by the convicts for the commission of the offences of which they have been convicted.

[10] Therefore, in accordance with Section 153 of the Criminal Procedure Code, I make an order of forfeiture in favour of the Republic of Seychelles to forfeit the Iranian Dhow, Basadi, as well as all its gears and equipment used to commit the offences of which the Respondent, and others have been convicted.

Signed, dated and delivered at Ile du Port 6 December 2023.



B Adeline, J