



Public Prosecutor

AND

Abdul Ghani Bin Mohamad

**(High Court of Brunei Darussalam)
(Criminal Trial No. 26 of 2012)**

**Steven Chong, J.
10 November 2014**

Criminal law – Possession of 39.811 grams of methylamphetamine and 92.1064 grams of nimetazepam – Guilty plea – appropriate sentence.

DPP Suriana Bte Hj Radin for the Public Prosecutor.
Mr Daud Ismail (M/S Daud Ismail & Company) for the Defendant.

Steven Chong, J.:

The defendant claimed trial to two charges under the Misuse of Drugs Act, namely, that he together with one Adi Chiniago bin Mustapha who is still at large did import into Brunei Darussalam 39.811 grams of methylamphetamine (1st Charge) and 92.1064 grams of Nimetazepam (2nd Charge) in contravention of section 5.

At the commencement of the trial the Deputy Public Prosecutor preferred two alternative charges of possession of the same drugs contrary to section 6(a) of the Misuse of Drugs Act (1st and 2nd Alternative Charges).

The defendant immediately pleaded guilty to the two alternative charges and admitted to the following Statement of Facts:

- “1. The defendant is a Malaysian citizen and holds a Malaysian Passport bearing the number K20481854. The defendant resides at Miri, Sarawak.*



2. *On 12th September 2012 at about 2015 hours, the defendant together with a person by the name of Adi Chiniagio bin Mustapha entered Brunei Darussalam from Miri through the Sungai Tujoh Control Post using the defendant's car, a Proton Pesona bearing the registration number QML 7033.*
3. *The said car was driven by the defendant whereas the person by the name of Adi Chiniagio was seated at the front passenger seat of the said car.*
4. *As they entered the Sungai Tujoh Control Post, the said Proton Pesona car was detained by a team of Narcotics Control Bureau during a routine check.*
5. *The defendant was asked to park the said Proton Pesona car at the car park area at the A3 Customs Control Post.*
6. *The defendant got out of the said car to attend to the filling of the car form.*
7. *A search was carried out on in the said Proton Persona car by Narcotics Control Bureau officers where they discovered a white bag labelled "KFC" at the foot of the front passenger seat.*
8. *As the NCB officer was examining the said white plastic bag, the front passenger of the car managed to escape.*
9. *Subsequently, the white plastic bag, Exhibit E1 was inspected where it was found to contain as follows:*
 - a) *One empty mineral plastic bottle labelled "DEREK"*
 - b) *One black plastic inside containing:*
 - i) *10 red sheets labelled "Erimin 5" in which one sheet contained 10 pills;*
 - ii) *10 red sheets labelled "Erimin 5" in which one sheet contained 10 pills;*
 - iii) *10 red sheets labelled "Erimin 5" in which one sheet contained 10 pills;*



- iv) 10 red sheets labelled "Erimin 5" in which one sheet contained 10 pills;
 - v) 10 red sheets labelled "Erimin 5" in which one sheet contained 10 pills;
 - vi) One clear plastic packet sealed containing crystalline substances believed to be drugs.
10. The defendant was then subsequently detained by the Narcotics Control Bureau officers.
11. A further search was conducted in the car but nothing in relation to the drugs was found.
12. After the search ended, the defendant was brought to the Narcotics Control Bureau office for further investigation.
13. The crystalline substances was analysed where it was found to contain 39.811 grams of Methylamphetamine and the pills was found to be weighed 92.1064 grams of Nimetazepam (refer to Analyst's certificate as attached).
14. The defendant admits he was in possession of 39.811 grams of Methylamphetamine, a Class A controlled drug and 92.1064 grams of Nimetazepam.
15. On record, the defendant has no previous convictions."

This case involves the possession of substantial quantities of methylamphetamine and nimetazepam. It is noteworthy that under section 15 of the Misuse of Drugs Act the possession of more than 20 grams of methylamphetamine by any person triggers the presumption of trafficking or possession for the purpose of trafficking in the drug. Of course the defendant has not been convicted of trafficking the drugs but of possession and must be sentenced accordingly. The quantity of drugs found in the defendant's possession is relevant to the sentence to be imposed. The greater the amount of drugs, the more serious the offence and the more severe the sentence.

The defendant is 40 years old and worked as an assistant enforcement officer in the Miri Municipal Council before his arrest. His wife is employed as a clerk and their two young daughters are still at school.



Any custodial sentence will cause hardship on the defendant's family. But there is no alternative to a custodial sentence and it must be of sufficient severity because of the need for deterrence in the public interest.

The offences are punishable upon conviction with a maximum of 10 years' imprisonment or \$20,000 fine or both.

Credit is given to the defendant for his clear record and co-operation given to the Narcotics Control Bureau but considering the large amount of drugs involved I think a starting point of 9 years' imprisonment on each charge is appropriate. This is reduced to 5 years on each charge having regard to the defendant's guilty plea and the long period he has spent in custody awaiting trial.

I order one year of the sentence on the 2nd Alternative Charge to run consecutively to the 5 years of the sentence on 1st Alternative Charge resulting in a total sentence of 6 years bearing in mind the principle of totality.

The sentence is backdated to the date of remand.

DATO PADUKA STEVEN CHONG

Judge, High Court