REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A042/2021

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED.

23/11/2021.
.....
Date

.....
NEMAVHIDI AJ

In the matter between:

RAYANE, DE NAZARE TRINDADE DE SOUZA **APPELLANT**

And

THE STATE **RESPONDENT**

Delivered:

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 23 November 2021.

JUDGMENT

NEMAVHIDI AJ

[1] The appellant Rayane, De Nazare Trindate De Souza a 21-year-old female, was charged and convicted of contravening the provisions of section 5(b) of Act 140 of 1992 viz. (Dealing in dangerous dependence producing drugs).

[2] She pleaded guilty and was sentenced to imprisonment for a period of 15 years of which 05 years' imprisonment was conditionally suspended.

[3] The effective sentence is therefore 10 years' imprisonment.

[4] The appeal is against the sentence only.

[5] Condonation is granted.

[6] She is a Brazilian national who flew to South Africa through Oliver Tambo International Airport on 25 October 2019. She was in possession of 1504,57

grams of cocaine, a derivative of cocoa leaves, which is described in the Drugs and Drug Trafficking Act 140 of 1992.

[7] She told the court a quo that at the time she agreed to travel to South Africa she was frustrated because her boyfriend abandoned her after she fell pregnant. When she was seven months pregnant she met a man who promised her E10 000.00 (ten thousand euros) if she delivered the cocaine in South Africa.

[8] Upon arrival in OR Tambo International she was searched and arrested after cocaine was found in her bag.

[9] In *S v Rabie* 1975 (4) SA 855A – the Court stated the following:

> *"In any appeal against sentence, whether imposed by a magistrate or a Judge, the court hearing the appeal should be guided by the principles that punishment is pre-eminently a matter for the discretion of the trial court and (b) should be careful not to erode such discretion: hence the further principle that the sentence should duly be altered if the discretion has not been judicially and properly exercised. The test under (b) is whether the sentence is initiated by irregularly or misdirection or disturbingly inappropriate."*

[10] It follows that this court may only interfere with a sentence where it is satisfied that the trial court's sentencing discretion was not judicially or properly exercised.

[11] In *S v Anderson* 1964 (3) SA 494 AD the Court stated as follows:

"Over the years our courts of appeal have attempted to set out various principles by which they seek to be guided when they are asked to alter a sentence imposed by the trial court. These include the following: The sentence will not be altered unless it is held that no reasonable man ought to have imposed such a sentence, or that the sentence is out of all proportion to the gravity or magnitude of the offence, or that the sentence induces a sense of shock or outrage, or that the sentence is grossly inappropriate or inadequate, or that there was an improper exercise of his discretion by the trial Judge, or that the interest of justice require it".

[12] In *S v Moswathupa* 2012 (1) SACR 259 SCA, it was held that the appeal court cannot alter the determination arrived at by the exercise of a discretion differently except where there exists a striking or startling or disturbing difference between the trial court sentence, and that which the appeal court would have imposed. See also *S v Sadler* 2000 (4) SACR 331 SCA.

[13] In *S v Brown* 2015 (1) SACR 211 SCA, the trial court convicted the respondent and sentenced him to a fine or suspended sentence of 18 (eighteen) months imprisonment. The Court on appeal held that the sentence handed down by the trial court tended towards bringing the administration of justice into disrepute and then set aside the sentence and imposed the prescribed minimum sentences on each of the two counts which were then ordered to run concurrently.

[14] The provisions of the s17(e) of the Drug and Drug Trafficking Act 40 1992 provides that anyone convicted of contravening the provisions s5(b) of the Act

shall be liable to imprisonment for a period not exceeding 25 years or to both such imprisonment and a fine as the court may deem fit to impose.

[15] In the present case the appellant well knew that she would likely be arrested and sentenced when she agreed to be a drug courier.

[16] There is no doubt that being pregnant made her a good target, for drug cartels to take advantage of her predicament as a single mother without support, to deliver drugs to this country.

[17] The appellant may have believed that she would escape undetected alternately that she would be able to use her child born in prison 'to escape serving a long term of imprisonment.

[18] Even though the financial value of the drugs couriered by the appellant was not determined by the trial court, it is evident from the amount she would be paid E10 000,00 (ten thousand euros) for successfully delivering the drugs, that the drugs were of significantly high value.

[19] In *S v Keyser* 2012(2) SACR 437 (SCA), the Court imposed a sentence of 20 years' imprisonment for dealing drugs. The Court acknowledged that the sentence was 'undoubtedly- a heavy one', but stated that the sentence was warranted in the light of the quantity of the drugs carried by the applicant, which had a street value of well over R2 000 000.00 (two million Rand). The court held that the quantity of drugs directly corresponded with the number of

lives potentially affected by the drug, and that consideration alone far outweighed any of his personal circumstances and justified a long period of incarceration.

[20] In *S v Mandlozi* 2015 (2) SACR 258 (FB), the appellant, a 46-year-old woman, was convicted in the Magistrates Court of dealing in 25,8 kg of methamphetamine in contravention of s 5(b) of the Drugs and Drug Trafficking Act 140 of 1992. The evidence revealed that she had agreed to courier the drugs from Johannesburg to Cape town on a bus. On appeal, the High Court highlighted the relevance of the quantity of the drugs possessed by the accused, to sentencing.

Rampai AJP stated the following-at paragraph [12]:

> *"The quantity of the drug found in the appellant possession was almost 26kg. A quantity of the drugs found in an accused person's possession must invariably be considered as a barometer for the moral blameworthiness of the individual concerned. It follows that, therefore, the larger the quantity of the drugs an offender deals with or possesses, the heavier the sentence would be. This is of cardinal importance. Unless such a logical norm is consistently observed and applied, there can be no satisfactory uniformity in the sentences passed by the courts. It would be absurd to have a person convicted of a huge quantity of drugs sentenced the same as someone who has been convicted for far less quantity"* – *S v Nkombini* 1990 (2) SACR 465 (TK).

In *S v Karg* 1961 (1) SA 231 (A) the Court stated that as one considers the interests of society:

> *"It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentence that the courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands."*

[21] The quantity of the drugs found in the appellant's possession was almost 1,361 kg and the trial court took this into consideration in sentencing her to serve a period of 10 years imprisonment. I am unable to find that the trial court exercised its discretion improperly or that the sentence was inappropriate in any way.

[22] In the result, I propose an order as follows:

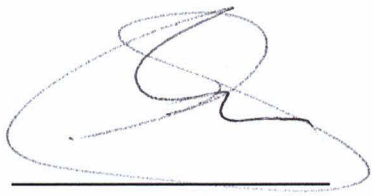
a) The appeal be dismissed.

NEMAVHIDI AJ

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

I agree and it is so ordered.



MIA J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION

Date of Hearing: 26 August 2021

Date of Judgment: 23/11/2021

For the Appellant: Adv. E Guaneri

Instructed by: Legal Aid

For the first Respondent: Adv. Marasela

Instructed by: National Prosecution Authority