

COMMONWEALTH OF THE BAHAMAS

2025/PUB/CON/FP/00001

IN THE SUPREME COURT

Criminal Division

BETWEEN

OPEE COOPER

Applicant

AND

THE COMMISSIONER OF POLICE

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondents

Hearing date: 22nd April 2025

Before: Honourable Mr. Justice Andrew Forbes

Appearances: Mr. K. Brian Hanna on behalf of the Applicant

Mr. Sean Norville Smith c/o the Respondents

DECISION

FORBES, J

BACKGROUND

1. The Applicant was arrested and charged on the 31st December 2024 with Conspiracy to Possess Dangerous Drugs with intent to Supply contrary to section 22(2) (b) of the Dangerous Drugs Act Chapter 228, Conspiracy to Export Dangerous Drugs contrary to section 30(1) & 14(7) and punishable under section 22(1)(b) of the Dangerous Drugs Act and Taking preparatory steps to export Dangerous Drugs contrary to section 14(7) and punishable under section 22(1) (b) of the Dangerous Drugs Act. The Applicant is charged along with Mr. Shanaad Altrivo Forbes, and the matter was adjourned before the Magistrate for commencement of the Trial to the 15th July 2025. Each Defendant was granted bail of \$20,000, with two sureties.
2. As a consequence of the arrest, the applicant's vehicle was seized and is currently being detained by the Commissioner of Police as part of the investigation. Applicants' Counsel filed an Originating Summons on 19th March 2025, according to Article 27(1) of the Constitution, and filed a supporting Affidavit on the same date. The Affidavit states that the Applicant owns the vehicle bearing VIN 1HSHWSHN4CJ114022, an International Tractor head. The Applicant exhibited the Certificate of Title and the Certificate of Insurance as evidence of ownership. The Applicant further spoke to his arrest and the specific charges. He avers that he is self-employed as the owner of H2O Trucking, a business he has operated for the past four years. He conducts business at the Container Port daily.
3. He further avers that he was unaware of the container's contents, which are the subject of the allegations before the Magistrates Court. He asserts that his reputation has been tarnished due to his arrest and detention, and that his business has suffered as a result. He regularly transports two to three containers daily for customers, and the vehicle is a means of earning income; he requests that the Court release the car to him.
4. The Crown filed an Affidavit in Response on the 15th April 2025, sworn by Police Corporal 3913 Harris Cash, who avers that he is employed with the Royal Bahamas Police Force, Freeport, Grand Bahama, and Northern District, and is attached to the Court Liaison Section of the Director of Public Prosecutions. That this Affidavit is sworn in opposition to the Applicant's Application. He asserts that the matter relates and forms part of a list of exhibits in a case before Stipendiary and Circuit Magistrate Laquay Laing at Court No. 3, Freeport, and Grand Bahama. He asserts that the application is premature and should not be made now, as the matter was not concluded before the Magistrate. As it would be inappropriate to order the exhibit returned. He asserts that the Order would preempt the Prosecution's right to make an Application concerning the Property according to section 33 of the Dangerous Drugs Act. He further avers that, according to the evidence, the vehicle was alleged to contain

approximately One Thousand Two Hundred and Seventy-Seven pounds (1,277lbs) of cocaine with an estimated street value of Nine Million, Nine Hundred and Sixty Dollars (\$9,960,000.00). He asserts that a probable application for forfeiture may be made after the case if the Applicant is convicted. As such, no Order should be made until the Magistrate has determined that matter.

5. Neither the Applicant's Counsel nor Counsel for the Crown laid over any Skelton arguments and invited the Court to decide the matter on the filed documents.

LAW

6. The Applicant's Originating Summons referenced Article 27(1), which reads as follows: "27. (1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say —"
7. For these purposes, the Court need not concern itself with the relevance of the criminal charges for which the Applicant appears before the Magistrates Court; however, given that the argument advanced is that the vehicle may be subject to forfeiture, the Court will review section 33 of the Dangerous Drugs Act, (DDA) which reads as follows: "33. (1) A court shall order to be forfeited to the Crown in addition to any other penalty provided by this Act — (a) any personal property which has been used in the commission of or in connection with an offence under this Act; or (b) any personal property received or possessed by any person as a result or product of an offence under this Act, whether or not any person has been convicted of such offence. (2) A court shall order to be forfeited to the Crown in addition to any other penalty provided by this Act — (a) any real property which has been used in the commission of or in connection with an offence under this Act; or (b) any real property received or possessed by any person as a result or product of an offence under this Act, where any person has been convicted of an offence under this Act. (3) An order made by a court for the forfeiture of any real or personal property may include a term permitting a specified person to redeem such property on such conditions, including conditions as to the payment of the value or a proportion of the value thereof to the Crown, as the court may think fit. (4) The court may require that notice of an application for forfeiture under subsection (1) shall be given in such manner as it thinks fit. (5) The Minister of Finance may, in his discretion, and after any proceedings under this Act are concluded, entertain and give effect to any moral claim to, or in respect to any real or personal property which has been forfeited to the Crown....."

ANALYSIS AND DISCUSSION

8. The Applicant's Counsel's reliance on Article 27 (1) is unclear, as it is not fully explored; however, a review of the case of **The Attorney General v. Financial Clearing Corporation** BS 2002 CA 15, where then Justice of Appeal Churaman cited Madam Justice Anita Allen (as she then was) said as follows: "*The learned trial judge was clearly right in coming to the conclusion that the generality of Article 27(1), that is to say, protection from deprivation of 6 property, was not an absolute or enduring protection for all times and in all circumstances.*"

Article 27(2) is clear. It says, "Nothing in this Article shall be construed as affecting the making or operation of any law so far as it provides for the taking 5 10 15 20 of possession or acquisition of property . . . (j) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry" (Emphasis mine) It is so clear as to be unarguable that the framers of the Constitution recognized the need in the interest of public morality, and public order and safety, that Parliament be specifically entrusted with the authority to legislate that property of any description, which of course includes money and money kept in a bank account, to be compulsorily taken possession of "for so long only as may be necessary . . . for any examination investigation etc." The only limitation imposed by the Constitution upon Parliament is that the law should be "for as long only as may be necessary."

9. Certainly, the question is not whether a Court has the authority to seize items during investigations and inquiries; the Court of Appeal has said as much in the case of **Emerson Bethel v. The Commissioner of Police**, MCCrApp No.12 of 2008, where JA Osdabay said as follows: "In addition to the above-mentioned powers of the court, other statutes such as the Dangerous Drugs Act, Chap. 228, contains its own 14 forfeiture provisions. e.g. sec. Section 33 of the Dangerous Drugs Act, Chap. 228. Section 270 of the Criminal Procedure Code is of general application where statutes do not contain their forfeiture provisions..."
10. The question to be determined is whether this Court ought to intercede in a matter presently before the Magistrates Court for determination.
11. It is this Court's view that although it is a Constitutional Court, the Magistrates Court is a Statutory Court, and as a Court of First Instance, it would have the Constitutional authority to hear the matter; that is not the issue. The real question is whether this Court ought to intervene in the Magistrates Court's matter, which has not yet been concluded, nor has any application been made for forfeiture. The Court views this Application as premature, specifically, if an application is made for forfeiture, whether under Section 33 of the DDA, where the Party may petition the Minister of Finance, who may exercise his discretion after the proceeding to return the items seized, as per Section 33(5) of the DDA. Or where an application is made under section 33 of the Proceeds of Crime Act 2018 (PCA) and section 46, should a confiscation be made, the Applicant can appeal the decision to the Court of Appeal.

DISPOSITION

12. The Court will dismiss the Application. And make no order as to Cost.
13. Any party aggrieved by this decision may file an Appeal.

Dated the 20th June, 2025



Andrew Forbes
Justice of the Supreme Court