

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Nagendran*, 2018 NSPC 38

Date: 2018-08-31

Docket: 8139503, 8139504,
8139505, 8139506

Registry: Halifax

Between:

HER MAJESTY THE QUEEN

v.

GEEVAN NAGENDRAN and MITHUSHA POOBALASINGAM

SENTENCING DECISION

Judge: The Honourable Judge Elizabeth A. Buckle

Heard: March 12, 13, 14, 15, 16, April 4, May 11, 31, August 29, 2018
in Halifax, Nova Scotia

Decision: August 31, 2018

Charges: Section 6(1) & 5(2) of the *Controlled Drugs and Substances Act*

Counsel: Angela Nimmo, for the Crown
Patrick MacEwen, for Mr. Nagendran
Brad Sarson, for Ms. Poobalasingam

Background

[1] On May 31, 2018, after trial, I found both Mr. Nagendran and Ms. Poobalasingam guilty of Possession for the Purpose of Trafficking of opium, a Schedule I substance, contrary to s. 5(2) of the CDSA. I also found Ms. Poobalasingam guilty of Importation of that same substance, contrary to s. 6(1) of the *CDSA*.

[2] Sentencing was adjourned to August 29, 2018 to allow for preparation of Pre-Sentence Reports. Submissions were heard on that date.

[3] The Federal Crown argued that Ms. Poobalasingam should be sentenced to five years in custody for the importing offence and a lesser period, to be served concurrently, for the offence of possession for the purpose of trafficking and that Mr. Nagendran should be sentenced to 4 years in custody for possession of trafficking

[4] Mr. Sarson, on behalf of Ms. Poobalasingam, acknowledged that due to the quantity of opium involved (approximately 5 kg) the mandatory minimum penalty of 2 years in custody provided for in s.6(3)(a.1) of the *CDSA* applies. He argued that she should be sentenced to between two and three years for that offence with a lesser sentence for the possession for the purpose of trafficking offence to be served concurrently.

[5] Mr. Nagendran was denied bail and, as of the date of sentencing, had served 431 days in custody which, when credit is given at time and a half, is the equivalent of 647 days. Mr. MacEwen, on his behalf, argued that his sentence should be between time served (647 days) and two years with credit for the time he has served which would be 83 days going forward.

[6] On August 31, 2018, I gave my decision with oral reasons. I sentenced Mr. Nagendran to two years in custody (730 days) less credit at time and a half for the time he has already spent in custody (647 days) for a go-forward sentence of 83 days for possession for the purpose of trafficking opium contrary to s. 5(2) of the *CDSA*. I sentenced Ms. Poobalasingam to three years in custody for importing opium contrary to s.6 of the *CDSA* and two years concurrent for

possession for the purpose of trafficking opium, contrary to s. 5(2) of the *CDSA*. I also granted the requested weapons prohibition and DNA Orders.

[7] At the time of my oral decision, I advised counsel I would be releasing written reasons which would be supplemented with case citations and excerpts from cases. These are my written reasons.

Circumstances of the Offence

[8] The facts are set out in detail in my trial decision. In summary, I found that Ms. Poobalasingam agreed to help an acquaintance of hers (“Rick”) import things from India. I concluded that she came to know the things she was helping him import were illegal and chose to remain ignorant about what they were. To assist in the importation she: used fake ID and multiple phones and SIM cards provided to her by “Rick”; agreed to receive the imported goods under an alias; agreed to receive two shipments which were sent to locations in Ontario (these shipments were aborted before she received them) and made calls to courier companies in relation to those shipments; made calls to a courier in Halifax to confirm that a package could be sent there for pick-up; flew to Halifax under an alias to pick up the packages containing opium; brought with her a suitcase packed with disposable items; picked up the packages from the courier with the intention of transporting them back to Ontario; and, was in the process of transferring the opium to the suitcase when she was arrested.

[9] The duration of her involvement in the offence is a relevant consideration. I cannot say precisely when she knew she was involved in a criminal act. She met “Rick” in August of 2016 and within a couple of months had agreed to help him import items. I accept that at the beginning she may not have known what she was getting into. It is clear that by early 2017, the fake name and SIM cards were in place and she had agreed to receive shipments destined for places in Ontario. I believe that by that point, Ms. Poobalasingam knew she was involved in illegal activity and between then and the date of her arrest, her involvement and knowledge grew. So, I would say that she has been proven to have been involved in criminal activity for

approximately 4 - 6 months and in a state of wilful blindness as to the precise illegal commodity she was importing for a shorter period of time.

[10] The essence of Mr. Nagendran's involvement is that he agreed to help his girlfriend pick up illegal goods in Halifax and transport them back to Toronto, while being purposefully ignorant as to what the illegal goods were. He agreed to have a fake ID made, to fly under an alias to Halifax and once here he assisted Ms. Poobalasingam in picking up the packages, transferring the opium to the suitcase she had brought with the intention of traveling with her and the opium back to Toronto where it would be transferred to Ms. Poobalasingam's acquaintance.

[11] His proven involvement in the criminal act was for a short duration.

[12] The total amount of opium is approximately 5 kg with a resale value in Toronto of between \$110,00 (if sold at the kg level) to as much as \$260,000 if sold at the gram level.

[13] I accept that the overall enterprise was a sophisticated commercial one involving a number of people in various positions both in Canada and abroad. I also accept that the opium was destined for Toronto where it would have been turned over to "Rick" and then distributed for profit. I am not convinced beyond a reasonable doubt that either Ms. Poobalasingam or Mr. Nagendran were partners in the overall commercial enterprise, were to share in any profits of it, would be involved in the subsequent distribution once it was turned over to "Rick" or were even paid for the trip to Halifax beyond the cost of the ticket and incidentals. The evidence before me which is not controverted is that Ms. Poobalasingam's "compensation" for the trip to Halifax was the opportunity for a day with Mr. Nagendran and he did it in order to help her. That motivation does not explain Ms. Poobalasingam's involvement prior to the trip to Halifax.

Circumstances of Mr. Nagendran and Ms. Poobalasingam

[14] Mr. Nagendran had been in custody since his arrest on June 5, 2017. Information about his background and current circumstances have been provided through a pre-sentence report and submissions of counsel.

[15] At the time of the offences, he was 36 years old.

[16] He was born in Sri Lanka and came to Canada with his family when he was 12. He is a permanent resident in Canada and has claimed refugee status.

[17] He describes his childhood as good and by all reports he did well in school with no behavioural issues until high school when he began to get into some fights.

[18] He completed high school and attended Seneca College where he graduated from an Auto mechanic engineering program. He has been consistently employed since then in various places. His most recent employment was as a limousine driver. His employer advised the author of the pre-sentence report that he was a good employee and can return to work upon his release from custody.

[19] He has been married for about 11 years and has two young children. He has been the sole financial support for his family as his wife is required to provide full time care for their children, one of whom has health issues.

[20] His wife was interviewed for the pre-sentence report. She is understandably upset at learning that her husband was having an affair through media reports. Despite that, she describes him as a good father and a religious man. She says she was shocked by this situation and, in essence, says that this offence is out of character for the man she thought she knew.

[21] Mr. Nagendran does not use non-prescription drugs and reported that drugs are considered a sin in his religion. He does acknowledge an addiction to alcohol but reports that he has not drunk since his son was born.

[22] Mr. Nagendran's actions, this charge and his subsequent incarceration have had a tremendous impact on him and his family. His wife advises that she is separated from him and his marriage may be over. She has had to sell the family home and is now on social assistance.

[23] Mr. Nagendran has a dated and unrelated criminal record with his last conviction being in 2005 for an alcohol related driving offence. He is currently subject to a deportation order which, due to his refugee status, is subject to future determination.

[24] Mr. Nagendran maintains his innocence which is his right. He advised the author of the pre-sentence report that he was manipulated by Ms. Poobalasingam. He is willing to abide by any order imposed by the Court.

[25] Ms. Poobalasingam was in custody for 22 days following her arrest and, since her release, had been in the community on a Recognizance which has included house arrest.

[26] At the time of the arrest she was 22 years old, resided in Toronto with her parents, attended Ryerson university and worked part time. Her goal, which continues, is to complete her degree, go on to do graduate studies and work in the field of social work.

[27] She was apparently a hard-working young person who did well in school, extracurricular programs and volunteer work. She is described as a soft-natured person and, as I said in my decision, I accept that she is naïve.

[28] She appears to have a history of being in unhealthy romantic relationships with men. Including her relationship with Mr. Nagendran, a married man.

[29] Her parents are very hard working and she has two siblings, both of whom are attending university. She has the benefit of a tremendously supportive family, various members of whom have travelled to Halifax to support her throughout the process and today.

[30] She does not appear to have any addiction or mental health issues except the anxiety and distress that would be expected from a young person facing a serious charge and the consequences of that charge.

[31] Ms. Poobalasingam has no previous criminal record.

[32] She does not fully admit her involvement in the offence and it is unclear whether she takes responsibility for her behaviour. In the pre-sentence report she expressed frustration when discussing the offence and said “she was not aware of the complications involved and was misled by a friend she met at a downtown club a few times. She claimed she only saw it as an opportunity to enjoy prepaid travel and have a good time with her partner”. In court she expressed what appeared to be genuine remorse and regret for what this has done to her family. That is to her credit. I also accept that the consequences of her actions have had a tremendous impact on her.

Sentencing Principles

General

[33] In sentencing Mr. Nagendran and Ms. Poobalasingam, I have to apply the sentencing provisions in 718, 718.1 and 718.2 of the *Criminal Code* and s. 10 of the *CDSA*. These contain the general principles and factors relevant to sentencing, including:

- The purposes of sentencing are protection of the public and to contribute to respect for the law and the maintenance of a safe society;
- This is to be done by imposing just sanctions that have, as their goal, one or more of the following: denunciation (which condemns the conduct); general and specific deterrence (ensuring the two people before me and others do not commit similar offences in the future); separation from society where necessary; rehabilitation of the offenders; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community;
- The fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender;

- I have to consider the aggravating and mitigating factors relating to the offence and the offender, the principle of parity (that similar offenders committing similar offences should to the extent possible receive similar sentences), proportionality, that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances, and that all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders; and,
- a sentence for a drug offence should encourage treatment of offenders in appropriate circumstances.

[34] The common law provides me with guidance on how these principles should be applied to the unique circumstances of a case.

Denunciation and Deterrence

[35] Our Court of Appeal has repeatedly stated that denunciation and general deterrence must be the primary considerations when sentencing traffickers in Schedule I drugs. (For example, see: *R. v. Steeves*, 2007 NSCA 130; *R. v. Butt*, 2010 NSCA 56; *R. v. Scott*, 2013 NSCA 28; *R. v Oickle*, 2015 NSCA 87). Emphasizing these objectives reflects society's condemnation for these offences and acknowledges the tremendous harm they do to communities.

[36] These comments were not made in the context of opium, but I accept that they have general application to schedule I substances such that denunciation and deterrence are the primary goals in sentencing Ms. Poobalasingam and Mr. Nagendran.

Rehabilitation

[37] Rehabilitation continues to be a relevant objective even in cases requiring that denunciation and deterrence be emphasized. (*R. v. LaCasse*, 2015 SCC 64 at para. 4).

[38] The rehabilitative objective of sentencing is even more important when dealing with youthful offenders. (*R. v. Bratzer* (2001 NSCA 166) and *R. v. Quesnel*, (1984), 14 C.C.C. (3d) 254). At 23, Ms. Poobalasingam continues to be a youthful offender.

Proportionality

[39] The principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender requires me to first consider the gravity of the offence which includes, amongst other considerations, an assessment of the relative harm caused by the offence and its prevalence in the community.

[40] An important aspect of the gravity of the offence is the harm it causes. In assessing the harm that comes from importing and trafficking opium I do not have the benefit of specific guidance from our Court of Appeal or assistance from expert evidence in this sentencing hearing. The Nova Scotia Court of Appeal has repeatedly commented on the evils of other Schedule I drugs, such as cocaine, but not opium. I do, however, have the benefit of guidance from courts in other provinces where expert testimony has been presented and relied on. As I will address in more detail in a moment, those courts which have specifically addressed the harm caused by opium have concluded that it is less harmful than cocaine or heroin.

[41] During this trial, Sgt. Gray was qualified to give expert testimony about opium trafficking. Some of his evidence is also helpful for sentencing. He testified that opium, in the form that was possessed by Mr. Nagendran and Ms. Poobalasingam, is produced from the liquid present in the opium poppy seed. The liquid is processed but not generally cut with anything and produces a paste. The paste is generally smoked in a pipe. In Canada, a casual user would smoke between 1 and 2 gr/day, a habitual user would smoke up to 6 gr/day and an addict would smoke 8 - 10 gr / day. Opium can be turned into heroin, but I have no evidence that this was the intended use of the opium in this case.

[42] Courts in Ontario and British Columbia, where opium use and trafficking are more common, have had the benefit of expert evidence concerning opium and have described it as follows:

According to the evidence of Staff-Sergeant Brown, who had been a drug enforcement officer with the R.C.M.P. for 20 years, opium is derived from opium poppy and is grown mainly in Southeast Asia and in some parts of the Middle East where it is a commonly consumed narcotic. He calculated the value of the opium found in the appellant's suitcase to be between approximately \$16,000 and \$40,000 in total. According to him, opium is not really a marketable commodity in Canada, except in certain ethnic groups.

Staff-Sergeant Brown testified that opium is a hard narcotic, which can be converted to a morphine base, which in turn can be converted to heroin. Opium, however, is only one-tenth of the strength of heroin. The Final Report of the Commission of Inquiry into the Non-Medical Use of Drugs (the LeDain Commission) notes, at p. 300, that the major active constituent of opium, namely morphine, was first isolated in 1803 and that raw opium is about ten percent morphine by weight. Opium is a physically addictive drug. According to the Addiction Research Foundation's publication *Drugs and Drug Abuse, A Reference Text* (1983), at p. 477, "opium has a dependence liability similar to that of morphine". The LeDain Commission notes at p. 301 that the modes of use of raw opium, such as smoking or ingestion, produce a "decidedly" lower dependence liability" than the injection of morphine or heroin. Nevertheless, it cannot be equated to hashish, even if the street value of opium is only slightly higher than hashish.

R. v. Abolmolouk (Ont. C.A.), [1987] O.J. No. 926

[43] It is clear from this and other cases, that opium is addictive. While priced similarly to hashish, it is a more serious drug. An opium user becomes high and then sleepy such as the body functions slow down and heart rate decreases. Addicts find it hard to work, socialize and look after themselves. (*R. v. Ayati-Ghaffari* 2013 ONSC 4999, at paras. 19 &20)

[44] Based on my review of the case law, it appears that use and trafficking of opium is rare in Nova Scotia but more common within certain ethnic communities in British Columbia and Toronto.

[45] Given the information available to me, I would say that opium is not the "creeping evil" that cocaine has been described as being. It is not as harmful to individuals and is not prevalent so is also not as harmful to communities. However, it is more serious than hashish or marihuana.

[46] Another aspect of proportionality is the degree of responsibility of the offender. Both offenders are solely responsible for their decisions to take part in these offences.

[47] Mr. Nagendran's degree of responsibility in the overall venture is very low. As I have said, he became involved near the end and for a limited purpose. In my view, his involvement was near the very lowest level that could have resulted in a conviction for possession for the purpose of trafficking.

[48] Ms. Poobalasingam's degree of responsibility is higher by virtue of her increased role in the offences. However, I accept that she was taken advantage of by "Rick" who used her youth and naivety to "groom" her over time.

[49] Sgt. Gray testified about the roles played by various participants in an importing scheme. He said that the people who are exposed to detection by law enforcement are those who have to physically handle the packages. These people are at the low end of the hierarchy. They are expendable and replaceable. This is where I would place both Mr. Nagendran and Ms. Poobalasingam. Both were at the low end of the hierarchy. There is no evidence that either were part of the management of the organization, would be part of the eventual distribution of the drugs or would share in the profit from it.

Aggravating and Mitigating Factors

[50] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender.

[51] The Crown has submitted that a finding of knowledge through willful blindness as opposed to actual knowledge is not a mitigating factor on sentence. I agree. As the Ontario Court of Appeal said in *R. v. Sidhu* (2009 ONCA 81), there is no meaningful distinction in moral blameworthiness between the importer who knows the substance they are importing and the importer who chooses to remain ignorant and, as a matter of principle and policy, it is not appropriate to send the message that offenders who choose to "wear blinders" will "receive a

lower sentence than if they actually learn the nature and quantity of the substance they are importing.” (*Sidhu*, at para. 17).

[52] The Crown argues that there are aggravating features in the actions taken by Ms. Poobalasingam to assist in the importing. It is important to distinguish between actions that are necessary to the finding of guilt for the offence and actions that can properly be characterized as aggravating. In order to convict Ms. Poobalasingam of the offence of importing, I had to be satisfied that she did things that aided/abetted the importation. If those things had not been proven, I would not have found her guilty of that offence. Those things that constitute the offence are not aggravating factors on sentence. If she had merely received a package knowing it came from outside the country and that package contained drugs, she would, in all likelihood, not have been convicted of importing. The fact that she agreed in advance to receive the packages and made calls to arrange for their delivery were necessary to my finding that she was involved in the importing. The receipt and use of the fake ID, SIM cards and alias were necessary to my conclusion that she had knowledge which was necessary to the conviction. These are not aggravating features of the offence. They are what is necessary for the offence.

[53] The aggravating and mitigating features I have considered are as follows:

Aggravating Factors

- Nature of the substance (opium - a schedule I substance);
- Quantity involved (5 kg);
- The relative sophistication of the trafficking - traveling by air under fake names, using false identification, and bringing a suitcase packed with disposable items;
- For Ms. Poobalasingam, the fact that she brought Mr. Nagendran into the scheme, that she was involved for a number of months, and undertook a number of actions to accomplish the importing each of which involved a choice to continue.

Mitigating factors:

- Both offenders were low in the hierarchy, there is no evidence that either shared in any profits or were paid for their involvement;

- Ms. Poobalasingam is a relatively youthful offender who was naive and taken advantage of;
- Ms. Poobalasingam has expressed remorse and regret, in a limited way;
- Ms. Poobalasingam has no criminal record;
- Ms. Poobalasingam has been in the community on strict conditions with no breaches and no new offences;
- Ms. Poobalasingam has tremendous family support;
- Ms. Poobalasingam has the ability and resolve to become a productive contributor to society;
- Mr. Nagendran's involvement was minimal and at the request of his girlfriend;
- Mr. Nagendran has no related record and a significant gap of 13 years since his last conviction;
- Mr. Nagendran has been consistently employed and provided for his family and has employment available upon his release from custody;
- Mr. Nagendran and his family have suffered tremendous consequences beyond what I will sentence him to.

None of the statutory aggravating factors are present and there is an absence of some aggravating factors that are sometimes seen such as possession or use of weapons.

Parity / Range of Sentences

[54] The mandatory minimum penalty set by parliament for this offence, given the quantity, is two years in custody. The principle of parity requires an examination of the range of sentences imposed for trafficking opium or other Schedule I substances. Sentencing ranges are important, they are intended to encourage greater consistency between sentences and respect for the principle of parity. However, "they are guidelines rather than hard and fast rules" (**R. v. Nasogaluak**, 2010 SCC 6 at para. 44).

[55] There is no range in Nova Scotia for offences of importing / possession for the purpose of trafficking of opium. The range in British Columbia and Ontario for non-addicted importers of opium in quantities similar to this case appears to be between three and seven years (See: **R. v. Aghabeigi**, 2004 BCCA 263, **R. v. Pirouz**, 2009 BCCA 51; and, **R. v. Rajaei-Mehrabadi** 2016

ONSC 3362). Where the quantities are lower or where the importers are addicts, the range includes sentences of two years or less (see for example: *R. v. Sajjadi*, [2008] O.J. No. 5910 (OSCJ)).

[56] I agree with defence counsel that I am not bound by those cases that set the range in other provinces. However, I find them to be highly persuasive for a number of reasons. First, they are thorough, well-reasoned decisions which relied on evidence concerning the nature and impact of opium. Second, they are from jurisdictions where opium is more common so courts have an opportunity to develop a body of sentencing case law and I am not being asked to rely on a “one off” that could be an outlier. Third, the drugs in this case were destined for Ontario so it seems sensible to give respect to how that province in particular views this drug. Finally, when I consider the nature of opium (as described in the caselaw) in comparison to other controlled substances to determine where it fits in the spectrum of controlled substances, it appears that it fits above hashish and marijuana but below heroin and cocaine. When viewed that way, the range of 3 - 7 years for importing opium appears reasonable and consistent with the well-established ranges for importing those substances.

[57] Of course, the range is a guide only and does not set minimums or maximums. As counsel rightly points out, the minimum is the one set by parliament. Assessment of the mitigating and aggravating factors will determine where in the range a particular offender is and could result in a sentence that is below or above the range

[58] I have reviewed all the cases provided by counsel and some that were not. Of course, each case has its own unique features. Some help set the boundaries of the range and some assist because they have similar features to the case before me:

- *R. v. Abolmolouk*, [1987] O.J. No. 926 (C.A.) is useful for the information it contains about opium which I have referenced above when assessing the gravity of the offence. It is less useful in establishing a range because it is now over 30 years old. Further, as was noted by Justice Dawson in *Rajaei-Mehrabadi* (2016 ONSC 3362, at para. 16), it was decided shortly after the 7-year mandatory minimum penalty for importing was struck down. In it, the Court of Appeal allowed an appeal from a sentence of seven years and reduced the sentence to four years. Mr. Abolmolouk had imported 805 grams

of opium. He was 40 years old and had no criminal record. Recent cases have imposed similar sentences for much larger quantities of opium;

- In ***R. v. Sarjoghian***, 2018 ONSC 3142, Mr. Sarjoghian was sentenced to 4 and ½ years for importing 4.6 kg of opium. He was a 47-year old businessman who purchased a compressor while in Iran. He shipped the compressor, containing the opium, back to Canada and received delivery of it here. He had no record.
- ***R. v. Salamat Ravandi*** 2015 BCSC 2167 - Mr. Salamat Ravandi was sentenced to 4 years for importing and possession for the purposes of trafficking of 17.95 kilograms of opium. He was 36 years old, was generally fully employed and supported his family, was married and had two children, had no prior record and no addictions. His wife could not work due to a medical condition. He had complied with judicial release for almost four years, expressed remorse, was prepared to pay his debt to society for his crimes and stated he would never reoffend. The court recognized the aggravating factors such as the large quantity of opium, the motivation of purely commercial profit, the planning and sophistication involved and a prior warning by the police against importation.
- ***R. v. Aghabeighi*** 2004 BCCA 263 - A sentence of three years was upheld for importing and possession for the purpose of trafficking of almost 10 kilograms of opium. Ms. Aghabeighi was 41 years old, a single mother, had no criminal record, complied with conditions of bail and suffered from health issues. The Court described the sentence as lenient.
- ***R. v. Rajaei-Mehrabadi*** 2016 ONSC 3362 - Mr. Rajaei-Mehrabadi was sentenced to just under 4 years and 5 months for importing 6.45 kilograms of opium. He brought the opium back with him from Iran. The sentencing judge concluded he was a paid courier. He was 35 years old, had two children, and had a consistent work record until anxiety and depression forced him to stop working. He had no criminal record and no addiction.
- ***R. v. Rashidi-Alavijie***, 2007 ONCA 712 - the Court upheld a sentence of 5 and ½ years for importing 5.9 kilograms of opium. The appellant was 36 years old, had no criminal record and was not a user of opium. He had made his own travel arrangements, purchased the suitcase he used to bring home the drugs from Europe and concealed the drugs in a sophisticated manner.
- ***R. v. Bayrami-Asl***, [2017 ONSC 2055 - Mr. Bayrami-Asl was sentenced to 5 years for importing 3.9 kilograms of opium. He was 43 years old, had no criminal record, had a supportive family and had been a productive member of the community. The sentencing judge found him to have been a principal organizer of the importing scheme

- **R. v. Gurm**, [2009] O.J. No. 5007 (S.C.J.) - Mr. Gurm was sentenced to 2 years less one day to be followed by a period of probation. The weight of the opium imported in that case is not stated but the street value is specified as being between \$10,000 and \$17,000. There were indications the accused was a user. The sentencing judge concluded that the quantity imported was suggestive of only small-scale distribution. There were also immigration considerations.
- **R. v. Hasankhani** 2018 ONSC 3669 - Mr. Hasankhani was sentenced to 4 years for importing 5 kilograms of opium. He brought the opium back with him from Iran, hidden in the lining of his suitcase. The sentencing judge found it had been imported for commercial profit. He was 39-years old, had no criminal record, had been employed as a plumber, had support in the community and complied with release conditions.

[59] In my view, the cases which most closely resemble the aggravating and mitigating factors in this case are: **Salamat Ravandi**; **Rajaei-Mehrabadi**; and, **Aghabeighi**. In **Salamat Ravandi**, a sentence of 4 years was imposed. The quantity of opium in that case was more than three times the amount here and, unlike in the present case, Mr. Salamat Ravandi was a mature adult who was motivated by commercial profit. In **Rajaei-Mehrabadi**, a sentence of almost 4 and ½ years was imposed for importing a similar quantity of opium. However, unlike Ms. Poobalasingam, Mr. **Rajaei-Mehrabadi** was a mature adult and had been paid for his courier services. In **Aghabeighi**, a sentence of 3 years was imposed for importing twice as much cocaine as in the present case. Unlike Ms. Poobalasingam, Ms. Aghabeighi had health concerns which the Court treated as mitigating but did not have the mitigation of youth.

[60] Counsel all acknowledge that there really isn't an identifiable range for possession for the purpose of trafficking opium in the absence of other offences such as importing. I have been provided with the decision of the Ontario Court of Appeal in **R. v. Shoghi-Baloo** (O.J. No. 325) where a 2 ½ year sentence was upheld for possession for the purpose of trafficking opium. The decision of the sentencing judge (**R. v. Shoghi-Baloo**, [1997] O.J. No. 5867) sets out the facts. Approximately 210 grams of opium was found in Mr. Shoghi-Baloo's apartment along with \$2,115 in cash which was acknowledged to be derived from trafficking. Mr. Shoghi-Baloo was 33 years old with an unrelated record. He had custody of his 10-year-old son and since 1993, he

had been largely supported by social assistance. He was not addicted to opium. He expressed no remorse.

[61] The quantity involved in that case is significantly lower than in the case before me. However, Mr. Shoghi-Baloo was actively involved in trafficking of opium. The drugs and money were in his apartment and he acknowledged the money was from the sale of drugs. In my view, the circumstances of Mr. Nagendran's involvement in the offence before me makes him less criminally culpable than Mr. Shoghi-Baloo.

[62] I have also reviewed the case of *R. v. Henareh*, 2015 BCSC 2455. Mr. Henareh had been co-accused with *Salamat Ravandi* (*Supra.*) of importing and possession for the purpose of trafficking. However, after severance and a failed application to exclude evidence, Mr. Henareh was found guilty only of possession for the purpose of trafficking of 14 kg of opium. The aggravating factors noted by the Court were the large quantity of drugs and the fact that the offence was profit motivated. He had no prior record. He was sentenced to 3 years in custody.

Reasonable Alternatives to Custody

[63] I am also required to consider whether there are reasonable alternatives to custody. In the circumstances, given the seriousness of the offences there are no reasonable alternatives to custody in this case

Specific Deterrence

[64] Based on the evidence before me, I am satisfied that there is limited, if any, need to further deter either of these two offenders. Both have suffered consequences from their behaviour. Ms. Poobalasingam has spent 22 days in custody at a correctional facility while waiting bail. She had never been incarcerated before and the experience has caused her to be reasonably worried about future incarceration. She was on house arrest for a year. The convictions for these offences will mean that she will probably never be permitted entry into certain countries, like the U.S., and that she will be prevented from volunteering or being employed in certain sectors.

[65] For Mr. Nagendran, his life has been significantly impacted and his immigration status further jeopardized.

[66] I am also satisfied that both are good candidates for rehabilitation.

Conclusion

[67] Opium is a Schedule I substance which is addictive and harmful, however, not as harmful as cocaine or heroin. As a result, the sentencing range for importing and possession for the purpose of trafficking opium is lower than for those drugs. I would put Ms. Poobalasingam at the bottom of the sentencing range for importing opium. I say that despite the amount of opium involved because of the following: her youth and naivete; she was not a principal or partner in the importing operation; her lack of prior criminal record; the absence of other criminal antecedents; her family support; and, her prospects for rehabilitation.

[68] Mr. Nagendran is a mature adult who assisted in the trafficking by transport of a significant quantity of opium. His involvement in the offence was minimal, he has been consistently employed and provided for his family, he and his family have suffered significant consequences as a result of his behaviour and he has no related record.

[69] Based on the circumstances in this case I conclude that the principles and purpose of sentencing, including denunciation and general deterrence can be satisfied through the following sentences:

[70] I am sentencing Mr. Nagendran to a term of 2 years in custody (730 days) less credit for the time he has already served at time and a half (647 days) for a total sentence going forward of 83 days. I also make the following orders:

- Mr. Nagendran is prohibited from possessing weapons, firearms, ammunition and explosive materials for a period of 10 years; and,
- He will provide a sample of his DNA for the DNA databank.

- I will sign a consent Forfeiture Order for various seized items when it is presented to me

[71] I am sentencing Ms. Poobalasingam to a term of 3 years in custody on the charge of importing opium and 2 years in custody, concurrent, on the charge of possession for the purpose of trafficking opium. I also make the following orders:

- Ms. Poobalasingam is prohibited from possessing weapons, firearms, ammunition and explosive materials for a period of 10 years; and,
- She will provide a sample of her DNA for the DNA databank.
- I will sign a consent Forfeiture Order for various seized items when it is presented to me

Elizabeth Buckle, JPC.