

IN THE BAIL AND REMAND COURT

Cause No: 157/2015

In the matter of:-

Navinchandra RAMGOOLAM

Applicant

v

The Police

Respondent

RULING

The applicant stands provisionally charged for the offence of conspiracy to commit a crime in breach of Section 109 (1) of the Criminal Code Supplementary Act as amended by Act 36/2008. The applicant through his Counsel has now moved to be admitted to bail.

The respondent has objected to the motion of the applicant on the following grounds:

- (i) Likelihood of absconding;
- (ii) Interference with witnesses and tampering with evidence; and
- (iii) Applicant's own security.



The nature and circumstances of the present matter is as follows:

On the 03/07/11, Mr D. Gooljaury reported a case at Riviere Du Rempart police station to the effect that on the same day at around 0130 hrs, while he was sleeping in a bungalow at Roche Noires, an unknown male person intruded and threatened him with a knife and stole sum of Rs 20,000. An enquiry has been initiated and several suspects were questioned and case file sent to the Office of the Director of Public Prosecutions for advice. Following certain new information, the police re-opened an enquiry to establish the veracity of the version of Mr

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Gooljaury. In this context, an enquiry was initiated and Mr Gooljaury retracted from his first version and he added that he conspired with the applicant and other people to make a false declaration to the police.

To substantiate the first ground of objection, the respondent has stated that according to the Passport and Immigration Office, the applicant is holder of a diplomatic and British passport. He also stated that the applicant is a British National. The police also believe that since applicant has substantial means, he can stay abroad over a long period of time. Therefore, if the applicant is given bail, he may abscond.

In relation to ground 2, the respondent stated that the police need to record a statement from material witness and a diary book of Brinks, which was kept at the gate of the said bungalow in which the police believes to contain material evidence in support of this case. The respondent also confirmed that the statement of the applicant has not yet been recorded but that the electronic evidence has been produced by the applicant.

The respondent stated in support of ground 3 that when the applicant was arrested yesterday, 06/02/15, there was a hostile crowd which was gathered and were shouting slogans against the applicant. Given the fact that the applicant is a renowned political figure, for his own security, he should be kept in continued detention.

Under cross-examination, it has been confirmed that the applicant being a former Prime Minister, has two police officers who ensures his safety for 24 hours. The respondent also confirmed that Mr Gooljory was never arrested and that the other two suspects were released when the applicant has not yet been arrested. It has also been confirmed that the evidence is in police custody.

The applicant deposed under oath and stated that he will remain available for the enquiry and will abide by any conditions imposed by the Court. He also confirmed that he is married and he



and his wife reside in Mauritius. He stated that he has other properties in Mauritius. He confirmed being the leader of the Labour Party and has certain obligations towards the party and its members. The applicant confirmed having been the Prime Minister of Mauritius after three general elections. The applicant stated that he has been invited by the National Democratic Institute based in New York to monitor the elections in Nigeria. Upon this invitation, he contacted the office of the Prime Minister and informed the Secretary to the Cabinet about his travelling plans.

Section 4(1) of the Bail Act states the grounds on which a Magistrate may refuse to release an applicant or detainee on bail. By virtue of section 4(2) of the Bail Act, the following considerations are relevant for the purpose of determining whether bail should be granted or not:

- (i) The nature of the offence and the penalty applicable thereto;
- (ii) The character and antecedents of the defendant or detainee;
- (iii) The nature of the evidence available with regard to the offence.

In the case of *Maloupe v DM of Grand Port*¹, it was held that "the rationale of the law of bail at pre-trial stage is, accordingly, that a person should normally be released on bail if the imposition of the conditions reduces the risk of absconding, risk to the administration of justice, the risk to society to such an extent that they become negligible having regard to the weight which the presumption of innocence should carry in the balance. When the imposition of the above conditions is considered not to be likely to make any of the above risks negligible, then bail is to be refused". However, if the evidence is, by its nature, unreliable, the presumption of innocence should weigh more heavily in the balance in favour of the applicant's release on bail.

¹ 2000 MR 264



Furthermore, in the judgment of *Hurnam v The State*², reference was made to the case of *Maloupe v DM of Grand Port* whereby it has been stated that under section 4(2)(c) of the Bail Act 1999, the Court should assess the nature of the available evidence but should not attempt to make a detailed evaluation of it. The presumption of innocence, as guaranteed under the Constitution, should operate in the applicant's favour.

The Court has also the duty to strike a proper balance between the constitutional right of the applicant to liberty, including the presumption of innocence and the interest of the community at large by ensuring that the applicant does not evade justice and that he does not also commit other offences if he be released on bail.

With regards to ground 1, I find that, having carefully considered the circumstances of the present application, finds that the respondent could not substantiate this ground. The Court is satisfied that the applicant holds strong ties with Mauritius and due to his international reputation will not do anything to affect same. The Court is also of the considered opinion that had the applicant wanted to escape justice, he had ample time to do so prior to his arrest.

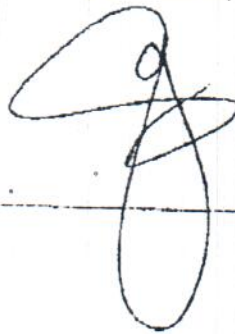
On ground 2, I find that the respondent has failed to satisfy this court that there is a serious risk of interference with a witness and tampering with evidence.

At this juncture, the Court deems it fit to make reference to the following:

In *Deelchand v/s the State*³, it was held under that ground of objection, "To satisfy the court that there is a serious risk of interference with a witness, satisfactory reasons, and appropriate evidence in connection thereof where appropriate, should be given to establish the probability of interference with that witness by the applicant. In his book "Bail in Criminal Proceedings" (1990), Neil Corre, writing from sound practical experience, points out that the risk that the

² PCA No. 53 of 2004

³ 2005 SCJ 215



applicant may "interfere with witnesses or otherwise obstruct the course of justice" is "an important exception to the right to bail because any system of justice must depend upon witnesses being free of fear of intimidation or bribery and upon evidence being properly obtained". He then goes on to point out:

"The exception's most common manifestations are in cases where:

- (a) the defendant has allegedly threatened witnesses;
- (b) the defendant has allegedly made admissions that he intends to do so;
- (c) the witnesses have a close relationship with the defendant, for example in cases of domestic violence or incest;
- (d) the witnesses are especially vulnerable, for example where they live near the defendant or are children or elderly people;
- (e) it is believed that the defendant knows the location of inculpatory documentary evidence which he may destroy, or has hidden stolen property or the proceeds of crime;
- (f) it is believed the defendant will intimidate or bribe jurors;
- (g) other suspects are still at large and may be warned by the defendant

The exception does not apply simply because there are further police enquiries or merely because there are suspects who have yet to be apprehended".



I have taken into consideration the fact that the evidence is in custody of the police and as such will be difficult if not impossible to tamper with same.

As regards ground 3, I read from *Deelchand (supra)* citing the case of *IA France [1998] ECHR 89* that the "protection of the defendant is capable of being relevant and sufficient reason for pre-trial detention, within the spirit of Article 5 of the Conventions with the following caveat: "however this can only be so in exceptional circumstances having to do with the nature of the offences concerned, the conditions in which they were committed and the context in which they took place". I have not been satisfied with the evidence of witness for the respondent that there is a risk to the security of the applicant which could materialise. In fact,

the police rely only on the fact that there has been hostility towards the applicant but gave no further details. Further, it has been confirmed that the applicant has 24 hour protection.

I am therefore not satisfied that there is a serious risk raised under ground 3.

I have considered the nature of the evidence as well as the surrounding circumstances in the present matter. The Court has a duty to ascertain whether the imposition of appropriate and reasonable conditions could eliminate the risks if he be released on bail. As per the case of *Deelchand v DPP*⁴, I find that effective conditions can be imposed that can render the above-mentioned risks negligible, that is, to an acceptable level.

I have also given due weight and consideration to the fact that the applicant has strong family ties and has been on three occasions the Prime Minister of the Republic of Mauritius.

In view of the above, I find that the grounds of objection raised by the police are not reasonable grounds on which this Court can safely act to refuse the applicant bail. The Court therefore exercises her discretion to grant the applicant bail in the present matter on the following conditions:

- (i) that he furnishes a surety of Rs 200,000
- (ii) he enters into a recognisance of Rs One Million.

Applicant is therefore released on parole today and to attend Riviere Du Rempart District Court on 9/02/15 to do the needful in relation to the surety and recognisance.

Ruling delivered by: Shefali N. Ganoo, Senior District Magistrate

Ruling delivered on: 07 February 2015

⁴ 2005 SCJ 21

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