CELERINE J. H. v HER HONOUR THE SENIOR DISTRICT MAGISTRATE, DISTRICT COURT OF BLACK RIVER

2023 SCJ 495

Record No. 124625

THE SUPREME COURT OF MAURITIUS

In the matter of: -

Jean Hubert Celerine

Applicant

v

Her Honour The Senior District Magistrate, District Court of Black River

Respondent

In the presence of:

1. **The Commissioner of Police**
2. **The Independent Commission Against Corruption**
3. **The Director of Public Prosecutions**

Co-Respondents

JUDGMENT

This is an application for a review of the ruling of the learned Magistrate of the District Court of Black River refusing to grant the applicant bail. The co-respondents are resisting the application while the respondent is abiding by the decision of this court.

The applicant was arrested when he voluntarily surrendered himself to the co-respondent No. 2 on 7th February 2023. A provisional charge of money laundering in breach of Sections 3(1)(b), 6 and 8 of The Financial Intelligence and Anti-Money Laundering Act 2002 (hereinafter referred to as 'FIAMLA') was lodged against him.

He was remanded and a prohibition order was issued against him. His application for bail was resisted on the following grounds:

(a) risk of interfering with witnesses;

(b) risk of tampering with evidence; and

(c) risk of absconding.

In a ruling dated 9th May 2023, the respondent set aside the bail motion and held, in a nutshell, that the need for him to be in continued detention outweighed his right to remain at large in the present circumstances. She also held that no condition could be imposed which would minimise the risks of absconding, tampering with evidence and interfering with witnesses.

The application for review is essentially based on the reasons invoked below, which are, to say the least, prolix and convoluted:

> *"(a) Because the Learned Senior Magistrate erred to hold that the need for me to be in continued detention in the present circumstances outweighs my right to remain at large in light of the fact that no conditions can be imposed which would minimize the risk of absconding, tampering with evidence and interfering with witnesses to a negligible level, in the teeth of the presumption of innocence.*
>
> *(b) Because the Learned Magistrate's failed to give due weight to my constitutional right to liberty and to the presumption of innocence considering that, at the time of delivering her ruling, I had already spent more than three months in police cell and that, even if I was to be found guilty in a main case to be potentially lodged against me, the sentencing trend shows that I would be, in the worst case, sentenced to a relatively short term of imprisonment. Indeed, the Learned Magistrate misdirected herself when considering the maximum sentence provided by section 8 of the Financial and Anti Money Laundering Act in abstract of the sentencing trend adopted by our Courts.*
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> *(c) The Learned Senior District Magistrate failed to give due weight to my constitutional right to be confronted to the charges against me and to be tried within a reasonable delay considering ICAC's protraction of recording my defence statements which is apparent from the court record, notably the minutes of 28.02.2023 where the enquiring officer had stated that the recording of the defence statements would require only two weeks and the undisputed fact that the recording sessions did not last more than two hours each.*
>
> *(d) Because the Learned Senior District Magistrate was wrong to find that the risk of absconding was substantiated inasmuch as:*
>
> *(i) The Learned Senior District Magistrate misdirected herself by considering the maximum sentence provided by section 8 of the Financial and Anti Money Laundering Act in abstract of the sentencing trend adopted by our Courts,*

which essentially consists of the imposition of fines and relatively short terms of imprisonment..

(ii) The Learned Senior District Magistrate was wrong to give any weight to the ipse dixit statement of the ICAC that the "ICAC has information that he has contacts in Madagascar who are willing to provide assistance to him" while the existence of said alleged contacts was not howsoever substantiated in court. Indeed, no reference to their names, their addresses, their occupations, the nature of my alleged relationship with them were made by the enquiring officer.

(iii) The Learned Senior District Magistrate was wrong to find that I "may still have assets concealed under prête-noms which he may dispose of to finance his flight from Mauritius", while no evidence was adduce to this effect in Court and that I benefit from the presumption of innocence. This is the more so that, as at date and as per the provisional information, I am officially suspected of having only one prête-nom in relation to only one property.

(iv) The Learned Senior District Magistrate was wrong to find that "if he was ever in Reunion Island, it would have been by sea route. It would also either demonstrate his ability to navigate the high seas and/or his connections with people who know how to. It also casts serious aspersions about his claims of suffering from sea-sicknes." while the only evidence that I have ever travelled to Reunion Island is an ipse dixit statement of the Enquiring Officer who merely testified to the effect that the ICAC suspects that I illegally went there . and while I denied, under oath, ever going there. This is the more so that the enquiring officer could not say when, with whom, for how long and for what purpose I allegedly went to Reunion Island. The Learned Senior District Magistrate was further wrong to find against my credibility on such an unsubstantiated statement.

(e) Because the Learned Senior District Magistrate was wrong to find that the risk of interference with witnesses was substantiated inasmuch as:

*(i) The Learned Senior District Magistrate was wrong to depart from **DPP v Lam Po Tang G [2011] SCJ 56**, which she quoted. Indeed, the Learned Senior District Magistrate was wrong to find the said ground to be substantiated white the enquiring officer failed to give any evidence as to the identity of the witnesses with whom I could allegedly interfere or as to anything allegedly done by me which could indicate my intention or capacity to make such interference.*

(ii) The Learned Senior District Magistrate wrongly found that the present matter is so complex that the inability of ICAC to put its case promptly to me in my defence statement is

justified because the said matter is not particularly complex. Indeed, as per the provisional information, the present matter only concerns one alleged prête-nom and only one property. The more so that, it is not disputed that, although the provisional information refers to Rs.25 million, after three months of enquiry, only a value of Rs.3 million was put to me in my defence statement.

(iii) The Learned Senior District Magistrate was wrong to find that witnesses officially expressed fear to come forward while, in cross examination, the enquiring officer conceded that the said alleged witnesses have never made formal entries or complaints with any authority.

(f) Because the Learned Senior District Magistrate was wrong to find that the risk of tampering with evidence was substantiated inasmuch as:

(i) The Learned Senior District Magistrate wrongly considered the said risk in relation to evidence which, after three months of enquiry, was not yet secured but allegedly identified. The enquiring Officer did not give any indication whatsoever regarding the said alleged identified but unsecured evidence.

(ii) The Learned Senior District Magistrate was wrong to give weight whatsoever to the statement of the enquiring officer that I allegedly stated, in the course of the recording of a defence statement that "sa documents capave disparaite sa". Indeed, although the enquiring officer stated that she had recorded the alleged incident in a report book, she failed to produce a copy of same, she stated that she could not remember when was the said statement allegedly made and she conceded that same was not recorded in my defence statement when the said document was put to me, which should normally have been the case.

(g) The Learned Senior Magistrate failed to consider conditions which could render the risks to a negligible, if ever said risk were to exist, namely she failed to consider the appropriateness of GPS tracking systems.

(h) Because the Learned Senior District Magistrate misdirected herself on the facts and on the law, viz-

(i) depriving me of my statutory right to bail;

(ii) failing to carry out a proper balancing exercise after having considered all relevant facts and circumstances of the case;

(iii) failing to take into consideration relevant factors such as my fixed place of abode and family ties;

(iv) any risk absconding could reasonably be curtailed by the imposition of conditions albeit stringent ones. I did make a

statement before the District Court of Black River to the effect that I will abide by all bail conditions that may be imposed by the Court, in the event bail is granted. I further stated under oath that I have strong links with Mauritius and that t shall not abscond;

(v) *I have a fixed place of abode situate at No 23, Les Salines, Riviere Noire and I have strong family ties. My businesses of car rental and fast food have closed down following my arrest. However, my retail shop, New York Boutique, is still operational;*

(vi) *I also stated under oath that I have five children, two from one partner and three from others. I am the one who provides them with the basic necessities of life. The children are very attached to me and I live in a close-knit family.*" (sic)

We gather from the applicant's affidavits that as far as his trial is concerned, there is no indication as to when a main case will be lodged against him. Only one defence statement has been recorded from him since his bail application was set aside and as at 23rd October 2023, he has not been confronted with the names of his alleged '*prête-noms*' or with those of his contacts abroad, namely, in Madagascar, and with any evidence to the effect that the present matter has international ramifications. The provisional information, which makes mention of one Mr R. Sumboo as his alleged '*prête-nom*' is currently on bail. Searches have been effected at both his places of residence and of business and no money has been secured. He is not under any investigation for drug dealing activities. He has never breached any bail condition.

At the very outset, we wish to place on record that we are alive to the constitutional provision that a suspect needs to be brought to trial within a reasonable time; to the principle that the liberty of a suspect should be curtailed only for compelling reasons and to the fact that if the grounds are found to be substantiated, the court still has to carry out a balancing exercise to decide whether those risks can be minimised by the imposition of adequate conditions.

Having said so, we shall now consider the findings of the learned Magistrate under the different grounds of objection before her and the written and oral submissions of learned Counsel in this respect.

(I) <u>Risk of absconding</u>

When considering this ground of objection, the respondent gave due weight to the evidence on the matter before her. She considered the fact that the enquiry has revealed that the applicant is well acquainted with skippers and may have the possibility to use boats. In any case, the enquiry has brought to light that he has acquired boats in the names of third parties. She seems to have been alive to the fact that the applicant ought to have sufficient means being given that there is evidence that he holds assets through other persons, one of whom is Mr. R. Sumboo. Although the valuation report in respect of the property mentioned in the provisional information was not available, the information nevertheless stated an amount of Rs.25 million, a sum which is far from being negligible and, therefore, the applicant may readily obtain cash and illegally leave the country. We do not agree with the submissions of learned Counsel for the applicant that the version of the enquiring officer to support this ground is mere *ipse dixit* and is not based on any evidence. It is not denied that the applicant has a car rental business and is in the restauration business.

We are of the view that, at this stage, the co-respondent No. 2 need not divulge all the evidence in its possession. It needs only satisfy the court that there is *prima facie* evidence against the applicant. We do not believe that there was a need for names and addresses of persons, such as, the skippers or the boat owners to be given by the enquiring officer, being given that one of the grounds of objection was the risk of tampering with witnesses.

The learned Magistrate also bore in mind the fact that the applicant is facing extradition proceedings in relation to a conviction in Reunion Island only to support her views that this may prompt him to abscond if he is released on bail. We do not agree with learned Counsel for the applicant that the learned Magistrate gave undue weight to this extradition case. It is immaterial, for the present review, that the co-respondent No. 2 may be relying on that conviction as regards the predicate offence. However, we agree with learned Counsel for the applicant that the learned Magistrate extrapolated when she wrote that he must have been to Reunion Island illegally by sea. We find that this does not change anything in the circumstances of the present matter.

The learned Magistrate also took into account the version of the co-respondent No. 2 that the applicant has contacts in Madagascar, although their names were not given to her. It is not denied, however, that the applicant has travelled several times to Madagascar in the past. We believe that, at this stage, the identity and addresses of these persons in Madagascar are immaterial.

The fact that the applicant has a family in Mauritius and has children was considered by the learned Magistrate. She inferred from the evidence before her, namely, that of his sister, that the family ties were not as strong as the applicant wanted the court to believe. The fact that it was his sister who had to get groceries for two of the children conveyed the impression that the applicant did not really care. This explains why the learned Magistrate did not give much credence to the version of the applicant that he has strong ties with his children. She rightly found it surprising that his sister and witness, who must surely be very close to him, did not know that the applicant had five children. We cannot but agree with her that it is quite a disturbing fact.

The learned Magistrate considered the version of the applicant that he will not abscond because a conviction for an offence under Section 3 of FIAMLA usually carries a heavy fine and rarely imprisonment. She rightly stated that each case has to be decided on its own merits and that the applicant cannot surmise on the sentence that may be meted out to him if he were found guilty.

It is important to bear in mind that the penalty provided for an offence under Section 3 of FIAMLA is a fine not exceeding Rs.10 million and to penal servitude for a term not exceeding 20 years. Therefore, it is not in the realm of the impossible that the applicant may eventually be sentenced to a term of imprisonment for such a serious offence if he is found guilty by the trial court. We agree with learned Counsel for the co-respondent No. 2 that this argument is devoid of merits in the present context.

We are satisfied that it was not preposterous for the learned Magistrate, in the light of the above, to conclude that the risk of absconding was a serious and real one. The applicant is a person of means living near the seashore and he has access to boats and skippers. He is a frequent traveller to Madagascar and the version of the co-respondent No. 2 that he has contacts in that country is plausible. He may well leave Mauritius by sea to this destination because it is undeniable that the sentence provided by law for an offence under Section 3 of FIAMLA can be a very heavy one.

It is pertinent to keep in mind the following words of the learned Judges in **Director of Public Prosecutions v Louis Jimmy Marthe** [2013 SCJ 386a]:

> "*…..Mauritius is a small island having other islands as close neighbours. This is something which is very specific to our country. It is*

very difficult, if not impossible, for the authorities to keep the whole of the shores of Mauritius under constant surveillance…."

Last, but not the least, his contention of alleged strong family ties is doubtful and it is not unreasonable to believe that he may well leave everything behind to save himself.

(II) <u>Risk of tampering with evidence</u>

In relation to the risk of tampering with evidence, the learned Magistrate relied on the evidence of the enquiring officer, Mrs. Papain, to the effect that during the investigation, the applicant alluded to her that documents in the case file may disappear or, in other words, may be tampered with. This statement consists of a serious accusation which the learned Magistrate chose not to treat lightly. We cannot but comment that in such cases, it would be desirable to produce the entry made to that effect, but failure to do so cannot be fatal. The learned Magistrate cannot be taxed for having believed the words of Mrs Papain on this issue.

However, we place on record that we do not take into account the averment of the co-respondent No. 2 in its affidavit resisting the present application for bail review, that it has documentary evidence to that effect.

In addition, the learned Magistrate was apprised of information received in relation to suspicious barrels found on a plot of land occupied by the applicant for the rearing of animals and guarded by his relatives. A raid was done and the officers of the co-respondent No. 2 found that the soil had been freshly dug. They secured only empty barrels which were buried underground. Those barrels have nevertheless been sent to the Forensic Science Laboratory for examination for the presence of drugs, but the report was not available at the time of the bail hearing.

It is in this context that the learned Magistrate found that there is a real risk, and not a far-fetched one, that the applicant may tamper with evidence.

It is important to point out that according to the enquiring officer, the investigation is essentially in relation to assets belonging, on the one hand, to the applicant, and on the other hand, to his '*prête-noms*'. The investigation is still ongoing and there is a risk that the applicant, being the one aware of the identity of those '*prête-noms*', may tamper with those assets and destroy the relevant evidence.

Here again, we do not agree with learned Counsel for the applicant that it was not enough for the co-respondent No. 2 to inform the learned Magistrate of a generalised risk. Suffice it to say, at this stage, that there was only a need to satisfy the learned Magistrate that there was *prima facie* evidence of such a risk.

We find that the learned Magistrate was justified to rule that, in these circumstances, there was a strong likelihood that the applicant may tamper with the evidence. The concealed barrels on a plot of land occupied by the applicant coupled with the fact that the land had been freshly dug when the officers of the co-respondent No. 2 raided the locus, are relevant matters in determining whether there was a substantial risk of interference with the evidence.

(III) Risk of interfering with witnesses

The learned Magistrate, on the evidence available before her, accepted that several witnesses live in the same locality as the applicant and that some witnesses had officially expressed fears of retaliation by the applicant. In these circumstances, she found that there was a genuine risk of interference with those witnesses, although the identity of those persons was not placed before her.

We note that Mrs Papain stated in court that the applicant was engaged in the "protection" and "security" business and as such, he has access to "*gros bras*". This seems to have comforted the learned Magistrate about the fears expressed by the potential witnesses and to have supported the fears of the co-respondent No. 2 that there is a genuine risk that the applicant will interfere with them.

We do not agree with learned Counsel for the applicant that since the identity of those witnesses has not been disclosed in court, the risk of interference raised is mere *ipse dixit*. He put much reliance on the case of **DPP v Lam Po Tang G [2011 SCJ 56]**.

As stated in **Lam Po Tang (supra)**, the investigating authority "…*should not be compelled to reveal sensitive details which might cause prejudice to their enquiry...*"

We need to stress that the facts of the present case are very different from those in **Lam Po Tang (supra)**. The present provisional charge is one of money laundering. The investigators have reason to believe that the applicant has other concealed assets and they need to interview those persons who are linked to the applicant without the risk of

interference by the latter. We need to distinguish the present case from **Lam Po Tang (supra)** in the sense that the fear of the co-respondent No. 2 is not based on mere speculation.

In the case of **Deelchand V v The Director of Public Prosecutions and Others [2005 SCJ 215]**, the Supreme Court quoted Neil Corre on 'Bail in Criminal Proceedings'(1990), on how the risk of interfering with witnesses must be assessed. Neil Corre stated that this "*…. 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.*"

In the present matter, the evidence has revealed that witnesses who need to be interviewed by the co-respondent No. 2 live in the same locality as the applicant; the applicant has links with some of those witnesses; some of the potential witnesses have expressed fear of retaliation and the applicant is said to have links with 'bouncers'.

In these circumstances, we find that the risk of interfering with witnesses is very much in line with the principles of Neil Corre as stated in **Deelchand (supra)** so much so that we do not consider the finding of the learned Magistrate to the effect that there was a serious danger of interfering with witnesses, to be unreasonable.

For these reasons, we hold that there was sufficient evidence to substantiate the grounds of objections raised before the District Court. The learned Magistrate carried out a proper balancing exercise and her finding that the continued detention of the applicant was justified in the circumstances cannot be impeached.

We are equally of the view that no condition would have reduced the risks mentioned above to such an extent that they become negligible.

Learned Counsel for the applicant submitted that the learned Magistrate failed to consider the appropriateness of GPS tracking systems and in failing to do so, she has flouted the constitutional right to liberty of the applicant. Suffice it to say that in **Aubert F. v The State [2022 SCJ 405]**, the Supreme Court held that "*…there are no facilities yet available in Mauritius such as an electronic monitoring device or electronic bracelet to allow for the tracking by GPS of the applicant's movements.*"

It is not denied that in some recent judgments, the court has ordered the use of other tracking systems on the suspect's mobile phone or other device. However, we are not convinced that this is indeed an effective means to monitor a suspect in all cases. We do not think that this condition would have been appropriate in the light of the circumstances of the present case.

For all the reasons given, we set aside the present application with costs.

On a final note, although we understand that the present investigation may be a complex one involving cross-border issues, we urge the co-respondent No. 2 to complete its enquiry and to forward the case file to the co-respondent No. 3 within a reasonable time frame.

M.I. Maghooa
Judge

S.B.A. Hamuth-Laulloo
Judge

24 November 2023

Judgment delivered by Hon. S.B.A. Hamuth-Laulloo, Judge.

For Applicant:	**Mr M. Soobhug, Attorney-at-Law**
	Mr Y. Varma, of Counsel together with Mr A. Leblanc, of Counsel
Respondent will abide.	
For Co-Respondent Nos 1 & 3:	**Mrs D. Dabeesing-Ramlugan, Principal State Attorney**
	Ms P.V. Veerabudren, Acting Senior Assistant Director of Public Prosecutions together with Mrs N. Senevrayar-Cunden, Acting Assistant Director of Public Prosecutions

For Co-Respondent No. 2:	**Mrs D. Nawjee, Attorney-at-Law**
	Mr D. Gunesh, of Counsel together with Mr T. Naga, of Counsel