

COURT OF APPEAL OF SEYCHELLES

Reportable

[2023] SCCA 1 (10 February 2023)

SCA CR 08/2022

(Arising in CR04/22)

In the matter between

Laura Valabhji

(rep. by James Lewis QC

Mirenda Ching)

Appellant

And

The Republic

(rep. by Steven Powles and

George Tachett)

Respondent

Neutral Citation: *Valabhji v The Republic* (SCA CR 08/2022) [2023] SCCA 1 (Arising in CR04/2022) (10 February 2023)

Before: Robinson, Tibatemwa-Ekirikubinza JJA, Esparon J

Summary: Courts — Court of Appeal — Constitution of Republic of Seychelles — The Seychelles Court of Appeal Rules — Bail appeal pending trial — Jurisdiction — Articles 48, 120, 18 & 19 of Constitution — Power of re-hearing under Rule 31 of The Seychelles Court of Appeal Rules — Bail principles — Appeal dismissed

Heard: 8 August 2022

Delivered: 10 February 2023

ORDER

The appeal is dismissed in its entirety

JUDGMENT

Judgment delivered by Robinson, JA

The Background

1. This is an appeal by the Appellant, the Second Accused in case reference CO 04/2022 in the Supreme Court, who appeared before the learned Chief Justice on an application for bail, which was denied in a ruling dated the 25 March 2022, hereinafter referred to as the "*Ruling*".
2. At paragraph [15] of the Ruling, the learned Chief Justice regarded the Appellant's personal history and good character as relevant considerations to be weighed in the balance. He found at paragraph [16] of the Ruling that the Appellant's personal history was of limited "*relevance*" to the question of her being admitted to bail as she had never been charged with such serious offences before. He explained at paragraph [16] of the Ruling that — "*[t]hese new sets of circumstances may create a greater likelihood of her tampering with the evidence or absconding the jurisdiction, irrespective of her alleged past good conduct*". He came to this finding "*bearing in mind the economic and social influences that she [the Appellant] holds*." Accordingly, he found that the personal history of the Appellant was not a ground justifying her being admitted to bail (*at paragraph [16] of the Ruling*).
3. He opined that the likelihood of the Appellant absconding or interfering with the evidence cannot be assessed only based on the seriousness of the offence and the severity of the sentence she would be likely to incur. Such considerations should be weighed in the balance in conjunction with other relevant considerations (*at paragraphs [17] and [18] of the Ruling*). Hence, he accepted the contention of the Appellant that — "*the seriousness of the offence cannot per se be a ground to remand the 2nd accused as serious as the offences in this case may be*" (*at paragraph [18] of the Ruling*).
4. The learned Chief Justice opined that the Appellant should be admitted to bail if the imposition of conditions reduces the likelihood of the Appellant absconding and tampering with the evidence. Basing himself on the "*entirety of the evidence so far*", the learned Chief Justice held that there "*exist reasonable grounds to believe that the grant of bail may lead to the 2nd accused absconding or tampering with evidence of the*

prosecution witnesses and that this cannot be effectively eliminated by the imposition of reasonable conditions of bail." For his conclusion, the learned Chief Justice relied on the test laid down at paragraph [15] of the judgment of the Board of the Privy Council in *Hurnam v The State (Mauritius) [2005] UKPC 49*¹, which is stated at paragraph [50] hereof.

5. The learned Chief Justice considered whether or not there is *prima facie* evidence of the charges as one of the considerations relevant to the Supreme Court's determination. Having considered the evidence by affidavit of the Appellant and of Detective Corporal Police Davis Simeon on behalf of the Respondent laid before him when considering the bail application, the learned Chief Justice concluded that — "[24] [...] *the prosecution has satisfied it by establishing that there exists a prima facie case against the accused which merits a determination to be made beyond a reasonable doubt.*"
6. The Appellant's Notice of Appeal was filed in the Registry of the Court of Appeal on the 10 May 2022. The Appellant has challenged the Ruling on four grounds of appeal as follows —

- "1. *The Supreme Court's approach to the grant of bail was wrong in principle, in that it:*
 - a. *wrongly approached and/or failed to give sufficient weight to the Appellant's personal history; good character and community ties. The Appellant did not have to justify being released on bail.*
 - b. *failed to carry out a proper assessment of the strength of the prosecution case and relied on mere assertions in the prosecution affidavit.*
 - c. *wrongly assumed against the Appellant that matters may change at trial rather than assessing the strength of the existing evidence.*
 - d. *Failed to apply the constitutional right to bail properly.*
 - e. *Failed to take into account the length the Appellant is likely to spend in custody and that the trial cannot be completed in a reasonable time".*

¹ (delivered on the 15 December 2005) — hereinafter referred to as "*Hurnam*" for ease of reference

2. *The assessment of all the circumstances are such that there are no substantial grounds to believe the Appellant would fail to attend her trials, interfere with evidence or commit further offences.*
 3. *There are no compelling reasons existing in law and on the facts which justify the denial of bail.*
 4. *Any risks identified by the Prosecution can be adequately met by the conditions to bail offered."*
7. By way of relief, the Appellant has inter alia prayed the Court of Appeal to admit her to bail on conditions it deems fit to impose.
 8. James Lewis QC and Mirenda Ching filed skeleton heads of argument on behalf of the Appellant on the 25 July 2022. They also filed written submissions on behalf of the Appellant on the 2 August 2022 on further directions of the Court of Appeal at a hearing on the 29 July 2022. Counsel for the Appellant also provided the Court of Appeal with "*Speaking Notes*" before the hearing of the appeal.
 9. Steven Powles filed written submissions on the 5 August 2022 in response to the Appellant's written submissions. Steven Powles filed written submissions on the 8 August 2022, which he claimed were intended to correct inaccuracies in the "*Speaking Notes*" of Counsel for the Appellant. Suffice it to state that we did not consider those written submissions filed after the hearing of the appeal. Georges Tachette stood in on behalf of the Respondent at the hearing of the appeal.

Whether the Court of Appeal has jurisdiction to hear an appeal against the refusal of bail pending trial before the Supreme Court

10. The Court of Appeal at a hearing indicated that it wanted to address whether or not it has jurisdiction to hear an appeal against the refusal of bail pending trial before the Supreme Court, hereinafter referred to as the "*Jurisdiction Issue*".

11. At the hearing of the appeal, Georges Tachette informed the Court of Appeal that the prosecution had indicated to both Counsel for the Appellant that it would not be offering any submissions on the Jurisdiction Issue.
12. At a hearing of the Court of Appeal, this Court invited Stefan Knights, State Counsel to take up an *amicus curiae* role and make submissions on the Jurisdiction Issue. We have considered the stance advanced by Stefan Knights, appointed as *amicus* in light of the submissions made by Counsel for the Appellant. Counsel for the Appellant contended that his stance presents as arguing a position rather than setting out and addressing both sides of the argument and clarifying which side of the argument may be the correct position in law.
13. In his submissions, Stefan Knights referred to section 342 of the Criminal Procedure Code in addressing the Jurisdiction Issue. He quoted this extract from the dissenting judgment of Fernando, the then JA, that — "*the Court of Appeal in view of the provisions of sections 342 (1) and (6) does not have the jurisdiction to entertain an appeal from an order of the Supreme Court refusing to enlarge an accused on bail pending trial before it and who has not yet been convicted by the Supreme Court*" (at paragraph 21). In the final analysis, he took the position that — "*there is neither an inherent nor a statutory jurisdiction*", which allows an appeal to the Court of Appeal against a refusal of bail.
14. Unfortunately, Mr Knights' position fell short of addressing the other side of the argument, as contended by Counsel for the Appellant. As also complained by Counsel for the Appellant, we observe that Stefan Knights' position *inter alia* addressed whether or not the Appellant's right to liberty arose under this appeal. We agree with Counsel for the Appellant that the Court of Appeal did not frame the aforesaid issue.
15. Hence, we conclude that Stefan Knights, appointed as *amicus*, who did not take on the role of *amicus*, is not a friend of the Court. It follows, therefore, that we did not consider his submissions.

16. The Court of Appeal has dealt with the Jurisdiction Issue in *Beeharry v The Republic criminal Appeal S.C.A. No. 11/2009*², *Esparon and Others SCA No. 2 and 3 of 2014*³ and *Ernesta and Others v The Republic Criminal Appeal S.C.A. No. 7/2017*⁴.
17. **Esparon and Others** is the judgment of the then President of the Court of Appeal and four Justices of Appeal. Fernando, the then JA, delivered the minority judgment in **Esparon and Others**. The majority judgment in **Esparon and Others** concluded that the Court of Appeal has the jurisdiction to hear an appeal against the refusal of bail pending trial before the Supreme Court.
18. The judgments dealing with the Jurisdiction Issue examined *inter alia* Article 120 (1) and (2) of the Constitution of the Republic of Seychelles, section 342 (1) and (2) of the Criminal Procedure Code and *Treffle Finesse v The Republic Criminal Appeal No. 1 of 1995*⁵. The majority judgment emphasised that bail is a free standing constitutional right and not part of a criminal trial. Hence, according to the majority judgment, section 342 of the Criminal Procedure Code does not apply. The minority judgment of Fernando, the then JA, in **Esparon and others** (at paragraph 25) opined that — “[...] *the drafters of the Constitution have decided to give a free hand to the Legislature in whom the legislative power of Seychelles is vested to exclude without qualification, any "decisions" or "orders" of the Supreme Court from the purview of appealable orders.* In the final analysis, the minority judgments of Fernando, the then JA, held the view that — *"the Court of Appeal in view of the provisions of sections 342 (1) and (6) does not have the jurisdiction to entertain an appeal from an order of the Supreme Court refusing to enlarge an accused on bail pending trial before it and who has not yet been convicted by the Supreme Court"*
19. We also hold the view that the Court of Appeal has the jurisdiction to hear an appeal against the refusal of bail pending trial before the Supreme Court. We state the reasons for our view.

² (delivered on the 8 May 2009) — hereinafter referred to as "*Beeharry*" for ease of reference

³ (delivered on the 12 August 2014) — hereinafter referred to as "*Esparon and others*"

⁴ (delivered on the 11 August 2017) — hereinafter referred to as "*Ernesta and others*"

⁵ (delivered on the 19 October 1995) — hereinafter referred to as "*Treffle Finesse*".

20. In dealing with the Jurisdiction Issue, we have examined *inter alia* Article 120 (1) and (2) of the Constitution of the Republic of Seychelles, section 342 of the Criminal Procedure Code holistically and the judgment of **Treffle Finesse**.
21. The majority judgment in **Esparon and Others** (at paragraph 14) stated that the Jurisdiction Issue could only be determined after the "up-front issue of what is the nature of an application and a determination of bail before the courts". Fernando, the then JA, in his minority judgment in **Ernesta and Others**, stated that — "the issue we have to grapple with [...] is not whether an accused pending trial before the Supreme Court has a fundamental right as guaranteed in the Constitution to be enlarged on bail but whether or not the Court of Appeal has the jurisdiction to entertain an appeal from an order of the Supreme Court refusing to enlarge an accused on bail pending trial before it, and who has not been convicted". We do not endorse the statement made by the majority judgment in **Esparon and Others** (at paragraph 14). We endorse that of Fernando, the then JA, in **Ernesta and Others**.
22. Article 120 (1) and (2) of the Constitution of the Republic of Seychelles stipulates —

"PART II - COURT OF APPEAL

Establishment and jurisdiction of Court of Appeal

120. (1) There shall be a Court of Appeal which shall, subject to this Constitution, have jurisdiction to hear and determine appeals from a judgement, direction, decision, declaration, decree, writ or order of the Supreme Court and such other appellate jurisdiction as may be conferred upon the Court of Appeal by this Constitution and by or under an Act.

(2) Except as this Constitution or an Act otherwise provides, there shall be a right of appeal to the Court of Appeal from a judgment, direction, decision, declaration, decree, writ or order of the Supreme Court."

23. Section 342 of the Criminal Procedure Code stipulates —

"342. Appeal from Supreme Court to the court of Appeal

(1) Any person convicted on a trial held by the Supreme Court may appeal to the Court of Appeal—

(a) against his conviction, other than on a conviction based on the person's own plea of guilty—

(i) on any ground of appeal whenever the penalty awarded shall exceed six months' imprisonment or one thousand rupees;

(ii) on any ground of appeal which involves a question of law alone;

(iii) with the leave of such Court of Appeal or upon a certificate of the Judge who tried him that it is a fit case for appeal on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact or on any other ground which appears to the Court to be a sufficient ground of appeal;

(b) against the sentence passed on his conviction with the leave of such Court of Appeal, unless the sentence is one fixed by law.

(2) Any person who has been dealt with by the Supreme Court under section 7 may appeal to the Court of Appeal as set out in paragraphs (a) and (b) of subsection (1) as if he had been both convicted and sentenced by the Supreme Court, whether the Supreme Court used its powers of revision or not.

(3) Irrespective of any appeal and whether a case be appealable or not, the Judge may reserve for the consideration of the Court of Appeal any question of law decided by him in the course of any trial. The question or questions so reserved shall be stated in the form of a case prepared and signed by the Judge himself; and such case shall be transmitted by him at the earliest convenient opportunity to such Court of Appeal:

Provided that nothing herein contained shall exempt the Judge from giving his own judgement on any such questions.

(4) The Judge may in his discretion, in any case in which an appeal to the Court of Appeal is filed or in any case in which a question of law has been reserved for the decision of such Court of Appeal, grant bail pending the hearing of such appeal or the decision of the case reserved.

(5) An application for bail under this section shall be by motion, supported by affidavit, served on the Attorney General, and may be heard in Chambers.

(6) Except as it is otherwise provided in this section an appeal shall not lie against an acquittal, conviction, decision, declaration, decree, direction, order, writ or sentence passed by the Supreme Court.

(6) Except as it is otherwise provided in this section an appeal shall not lie against an acquittal, conviction, decision, declaration, decree, direction, order, writ or sentence passed by the Supreme Court."

24. We endorse the following excerpts from the minority judgment of Fernando, the then JA in **Ernesta and others** (at paragraph 11), which explain why the history behind the insertion of subsection (6) in section 342 of the Criminal Procedure Code becomes relevant —

"11. The history behind the insertion of subsection (6) in section 342 is very relevant to understanding the issue of whether the Court of Appeal has the jurisdiction to entertain an appeal against an interim order made by the Supreme Court, dismissing an application for release on bail of an accused pending trial before the Supreme Court. In the case of Treffle Finesse VS The Republic CR Appeal No. 1 of 1995 the Court of Appeal by its judgment dated 19th of October 1995 considered whether the Appellant in that case, Treffle Finesse, had a right of appeal against an interlocutory order of the Supreme Court before the trial in the Supreme Court was concluded, namely against the ruling of the Supreme Court in submission of no case to answer. The Court held —

"The general right of appeal conferred by Article 120(2) of the Constitution and the general jurisdiction of this Court to hear appeals from the Supreme Court conferred by Article 120(1) can only be restricted by the Constitution itself or by an Act which provides that there shall be no such jurisdiction or no such right. Counsel on behalf of the Republic contended that section 342 (1) of the Criminal Procedure Code restricts the general right of appeal conferred by the Constitution

It is evident that while section 342(1) of the Code provides for appeal from a decision of the Supreme Court either as of right or by leave, its provisions are not at all exclusionary. The words "Except as this Constitution or an Act otherwise provides" envisage provisions which are expressly exclusionary and which exclude a right of appeal. Where the Constitution confers a right such right can only be taken away, where the Constitution so permits, by statutory provisions which are expressly and manifestly exclusionary. Section 342(2) [sic, should be (1)] of the Code which provides for a right of appeal cannot be interpreted as a provision which excludes a right of appeal where the Constitution has conferred such right. [...].

12. I am constrained to think that it is in view of this suggestion by the Court of Appeal that sub-section (6) was inserted to section 342 of the Criminal Procedure Code by the Criminal Procedure Code (Amendment) Act No. 14 of 1998. The wording in section 342 (6) "Except as is otherwise provided in this section, an appeal shall not lie against an acquittal, conviction, decision, declaration, decree, direction, order, writ or sentence passed by the Supreme Court."

25. **Treffle Finesse** was concerned with an appeal against a ruling on a case to answer in the criminal trial. In other words, the ruling sought to be appealed against arose in the issue between the Republic and the accused/appellant formulated by the Formal Charge. We state in passing that the appeal would have led to a delay in the trial.
26. Whereas an appeal against an order made by the Supreme Court dismissing an application for release on bail of an accused pending trial, although a matter arising in a criminal case, is not a matter arising in the issue between the Republic and an accused formulated by the Formal Charge. We state in passing that an appeal would not delay the accused's trial.
27. By enacting section 342 (6) of the Criminal Procedure Code, we do not think the legislature intended to deny an accused the right to appeal against an order made by the Supreme Court dismissing his application for release on bail pending trial. The legislature had in mind orders sought to be appealed against arising in the issue between the Republic and the accused formulated by a Formal Charge. Counsel for the Appellant referred us to **Esparon and Others**, in which Msoffe JA, in his concurring opinion, distinguishes bail applications from other interim applications such as no case to answer, admissibility of evidence and so forth, which Msoffe JA stated was the focus of the amendment.
28. Having considered the submissions of Counsel for the Appellant with care, we agree that the *"most logical construction"* of section 342 (6) is that it clarifies subsections (1) and (2), which stipulate that — *"a person who has been either convicted, or committed for sentence, "may" appeal in the particular circumstances set out"*. As submitted by Counsel for the Appellant — *"clear exclusionary words would be needed to restrict the generality of Article 120 (1) and/or 120 (2)"*.
29. Hence, we do not endorse the observation of Fernando, the then JA, in **Esparon and others** (at paragraph 25) that — *"[...] the drafters of the Constitution has decided to give a free hand to the Legislature in whom the legislative power of Seychelles is vested to*

exclude without qualification, any "decisions" or "orders" of the Supreme Court from the purview of appealable orders.

The merits of the appeal

30. The Appellant is the Second Accused in case reference CO 04/2022. The Appellant's husband is the First Accused. The Appellant and the First Accused were arrested on the 18 November 2021 and have been in custody since that date, pursuant to consecutive remand orders made by the Supreme Court.
31. The Appellant has been formally charged with the First Accused and others on the 11 February 2022 in a Formal Charge containing 29 counts. We have reproduced counts 1 to 21 containing the offences with which the Appellant has been charged with others —

"Count 1 Statement of offence

Conspiracy to possess terrorist property contrary to Section 7 (b) of the Prevention of Terrorism Act read with Section 20 (c) of the same Act, and punishable under Section 7 (b) of the same said Act.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc, Laura Agnes Valabhji of Morne Blanc, Leslie Andre Benoiton of La Louise, from 1 December 2004 to 18 November 2021, agreed together and with persons unknown to possess terrorist property namely 94 firearms and 38,490 rounds of ammunition recovered from the home of Mukesh Valabhji and Laura Valabhji at Morne Blanc, the home and workplaces of Leslie Benoiton and the SPDF armory between 18 November and 29 January 2022. Such weapons, firearms and ammunition being likely to be used to commit a terrorist act, namely to cause the death or harm to a person, to intimidate the public or a section of the public in the Republic of Seychelles, or to remove from power the legitimate Government of the Republic.

Count 2 Statement of offence

Conspiracy to possess firearms and ammunition contrary to section 84 (1) of the Penal Code, read with section 381 of the same Code and punishable under Section 84 (1) of the same Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc, Laura Agnes Valabhji of Morne Blanc, Leslie Andre Benoiton of La Louise, Felix Antoine Leopold Payet of Bel Eau, and Frank Gaiten Marie of Hermitage, Mont Fleuri, from 1 March 2004 to 18 November 2021 to 18 November 2021, agreed together and with persons unknown, without lawful authority or reasonable excuse to have in their possession or under their control 94 firearms and 38,490 rounds of ammunition recovered from the home of Mukesh Valabhji and Luara Valabhji and Morne Blanc, the home and workplaces of Leslie Benoiton and the SPDF armory between 18 November 2021 and 29 January 2022, with the reasonable presumption that such firearms and ammunition were intended to be used in a manner or for a purpose prejudicial to public order.

Count 3

Statement of offence

Possession of terrorist property contrary to section 7 (b) of Prevention of Terrorism Act, and punishable under Section 7 (b) of the same said Act.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession terrorist property namely 57 firearms and over 37,000 rounds of ammunition. Such firearms and ammunition being likely to be used to commit a terrorist act, namely to cause the death or harm to a person, to intimidate the public or a section of the public in the Republic of Seychelles, or to remove from power the legitimate Government of Seychelles.

Count 4

[...]

Count 5

Statement of offence

Possession of firearms and ammunition contrary to section 84(1) of the Penal Code, and punishable under the same said section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, without lawful authority or reasonable excuse had in their possession or under their control firearms and ammunition, namely 57 firearms and over 37,000 rounds of ammunition at their home at Morne Blanc, with the reasonable presumption that such firearms and ammunition were intended to be used in a manner or for a purpose prejudicial to public order.

Count 6

[...]

Count 7

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black Faler Gun Webley-Schermuly at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 8

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black Makarov pistol (serial BE39 3578) in a Black Holster at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 9

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Draganov Sniper Rifle (Serial Number 00502169) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 10
Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black Viking Pistol (Serial No. MP-4660244601082 at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 11
Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black and brown Taurus Pistol (Serial Number DTH29398) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 12
Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black and Brown AK74U Assulat Rifle (Serial Number 9234) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 13

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black AK74M with Grenade Launcher (Serial Number 6568-42NH2267) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 14

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black Makarov Pistol (Serial Number BE39 4037) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 15

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely an AK74M Rifle (Serial Number NK447423)) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 16

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of

Morne Blanc, on 18 November 2021, had in their possession a firearm, namely an AK74 Arsenal Assault Rifle with Grenade Launcher (Serial Number 305169-42P3227)) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 17

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Dragonov Sniper Rifle (Serial Number 01507012) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 18

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a VOG25 Grenade Launcher (Serial Number GP25-VOG25 07) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 19

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black Makarov Pistol (Serial Number BD37 0476) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 20

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a firearm, namely a Black Makarov Pistol (Serial Number BE39 2063) at their home in Morne Blanc, without holding a firearms licence in force at the time.

Count 21

Statement of offence

Possession of firearms and ammunition contrary to section 4(1) of the Penal Code, and punishable under the same section of the said Code.

Particulars of offence

Mukesh Abhayakumar Valabhji of Morne Blanc and Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession a firearm, namely a Black and Brown Flare Gun (Serial Number M12061) at their home in Morne Blanc, without holding a firearms licence in force at the time.

[...]."

The merits of the appeal: Evidence by affidavit of Appellant and of Detective Corporal Police Simeon on behalf of Respondent

32. The Appellant and the Respondent relied only on evidence by affidavit in these proceedings. The Appellant made an application to be admitted to bail by way of notice of motion dated 3 March 2022, supported by an affidavit. We reproduce the evidence by affidavit of the Appellant, which was laid before the learned Chief Justice so far as relevant for present purposes —

"AFFIDAVIT IN SUPPORT

I, Laura Valabhji of Morne Blanc, Mahe, Seychelles, and presently at Montagne Posee Prison, Victoria, Mahe, Seychelles, a Muslim hereby make oath and state as follows:-

2. *I am the deponent above-named and the accused in the case of The Republic v Laura Valabhji and others SPC-00-CR-FH-0004-2002.*

PROCEDURAL HISTORY

3. *I was arrested on the 18th November 2021 and taken to Perseverance Police Station.*
4. *On 19th November 2021 Detective Corporal Davis Simeon applied to the Court pursuant to section 101 of the Criminal Procedure Code that I be held on remand based on the following offences:-*
 1. *Possession of firearms and ammunition contrary to section 84 (1) of the Penal Code amended as per section 84 of act 2021; and*
 2. *Purchasing, acquiring or having possession of firearms and ammunition without a firearms licence contrary to section 4 of the Firearms and Ammunition Act.*
5. *Also on 19th November 2021 Patrick Humphery of the ACCS applied to the Court pursuant to section 101 of the Criminal Procedure Code that I be held on remand based on the offence of money laundering contrary to section 3 (1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021.*
6. *The Court remanded me in custody at Perseverance police station. On the 30th November 2021 I was transferred to the Central Police Station.*
7. *On the 3rd December 2021 application was made by the Detective Corporal Davis Simeon to hold me in custody pursuant to section 23 (7) of the Prevention of Terrorism Act read with section 101 (1) of the Criminal Procedure Code. [...].*
8. *On the 3rd December 2021, the Court remanded me in custody until 2pm on the 30th December 2021.*
9. *On the 16th January 2022, I was transferred back to the Perseverance Police Station.*
10. *On the 17th December 2021, I was charged by the ACCS, with: (1) conspiracy to commit money laundering, (2) money laundering, and (3) concealment of property.*
11. *On the 30th December 2021, further application was served to hold me in custody in relation to allegations that I possessed unauthorised firearms*

and ammunition at my home. The Court remanded me in custody until 9 am on 7th January 2021.

12. *On the 14th January 2022, Corporal Police Davis Simeon filed an affidavit objecting to my bail. The affidavit stated that my former position at the Attorney-General's office gives me "insight into the criminal justice process", reinforcing motivation to flee", and that my mother-in-law is based in the U.S. In relation to the firearms and ammunition charges, the affidavit noted that it is not in any way clear that the said weapons were in fact "lawfully" imported into the Seychelles", and that "it must be clearly claimed such authority was given, by who, and on what basis."*
13. *On the 20th January 2022, the police conducted another search of my home and alleged that they have found additional firearms and ammunition.*
14. *On the same day, I was interviewed by the police in relation to the above-mentioned additional firearms and ammunition and other items, allegedly found in a safe, hidden in the cellar. I provided a statement, that "1) a number of foreign exchange receipts were shown to me. None of those documents shows any connection to me; 2) items of keys and small amounts of cash currency were shown to me. I don't understand how these items are alleged to be connected to firearms or terrorism; 3) I have no knowledge of the 11 Makarov handguns, empty magazines or ammunition shown in the pictures shown to me".*
15. *On the 21st of January 2022, I was transferred to the Montagne Posee prison.*
16. *On the 28th of January 2022, Frank Elizabeth withdrew from my case.*
17. *On the 11th February 2022, I was summoned by the Court on the charges of (1) possession of terrorist property, (2) conspiracy to possess terrorist property, (3) possession of firearms and ammunition, and (4) conspiracy to possess firearms and ammunition.*

Personal history

17. *I am a person of good character and was until the 21st January 2022, a licenced lawyer practicing in Seychelles. I graduated from high-school in the Seychelles, and completed my National Youth Service. For Higher-education, I attended Keele University in the United Kingdom and completed a Law Degree and Business Management Degree and a Post Graduate Diploma in Legal Practice from London Law College. I have a Post Graduate Diploma in Legislative Drafting.*

18. *After my studies, in 1996, I joined the public service and worked at the Attorney-General's Office. During my period of service, I held a number of roles, from State Counsel, Principal Legal Drafter and Official Notary. I finished working for the Attorney-General in 2006.*
19. *Furthermore, during the period of approximately 2000 to 2010, I sat on the Family Tribunal, as Vice-Chair and later as Chairperson. I also chaired the Employment Advisory Board for about five years.*
20. *I used to practice law in Seychelles but was removed from the register of legal practitioners on 21 January 2022 upon being charged in this case. Whilst I am personally very much opposed to this decision, the issues raised by the ACCS (in the affidavit of Mr Humphrey on 18 January 2022) no longer apply for the purpose of this bail application.*
21. *All of my family (apart from one of my two sisters) live in Seychelles. I have three brothers, two sisters, three nephews and two nieces. My niece, Jasmine, has lived with us since she was a teenager. She is currently studying abroad but due to return this year. I have caring responsibility for my mother, who is 84 years old, and is of ill health. I am also responsible for looking after my uncle, 68 years old, who has mobility issues. I have one daughter, Larissa, who is currently a student abroad.*
22. *These ties make it impossible for me to leave the Seychelles, and living in the Seychelles, which I love, is my whole life. It is unthinkable that I could become a fugitive. In any event I am aware that I would be liable to extradition back to the Seychelles if I were to leave, which I will not.*
23. *Moreover, it is inconceivable that I would let down the sureties that have vouched for my attendance in Court when my case is called.*

Firearm and related offences

24. *I have been charged with these offences on 11th February 2022. Since the 20th November 2021 extensive searches purportedly were carried out at my residence. The residence has since then remained sealed off by the police.*
25. *I am completely innocent of all these charges.*
26. *It is clear from the affidavit of Detective Corporal Davis Simeon dated the 30th December 2021 at paragraph 3(y) that any firearms in question were lawfully imported into the Seychelles via valid and lawful end user certificates signed by the then Chief of the Defence forces in the SPDF and authorised by the President of the Seychelles. Detective Corporal Davis Simeon states that the consignments of the firearms were imported*

into the Seychelles by the SPDF. Moreover at paragraph 3(ee) Detective Corporal Davis Simeon avers that the firearms seized from my premises are from the consignment lawfully imported into the Seychelles by the President and the Chief of the Defence forces of the SPDF. (Please note, that in his later affidavit on 14 January 2022, Corporal Simeon stated that "it is not clear whether the firearms in question were lawfully imported".)

27. *I am informed by Counsel that section 44 of the Firearms and Ammunitions Act the President can exempt any person from needing to hold a license for firearms or ammunition. The only available inference is that the then- President authorised the storage of the weapons described by Detective Corporal Davis Simeon in the premises. It follows that there was lawful authority to store these firearms and ammunition, and, if and until that lawful authority is revoked, no firearms licence is required. The change of person in office itself cannot be a matter of law automatically revoke an authority given by the then incumbent office holder.*
28. *I am informed by Counsel that the Prosecution must demonstrate that this lawful authority was revoked. It follows I have a good defence to any of these charges and have no reason to flee or avoid a trial. On the contrary I wish these matters to be dealt with in Court to clear my name. I will not break my promise to this Court and will not let my sureties down. This Prosecution is politically motivated.*
29. *Insofar as the Prosecution allege some terrorist plot or international conspiracy, this is political fantasy unsupported by any evidence. Lawfully held firearms cannot, in the absence of contrary cogent and compelling evidence, found a suspicion let alone a legal interference, then there is a present terrorist motive.*
30. *Moreover, there is no evidence of these charges with which to tamper, and the mere assertion that the Prosecution have credible information that the firearms will be used to commit criminal acts, or that I know the whereabouts of other firearms being stored, is not supported by evidence. If the Prosecution wish this Court to remand me on such assertions they need to be properly substantiated by evidence, otherwise my rights to know the case against me and who are my accusers are fundamentally displaced. A mere unfounded assertion should never be allowed to rob anyone of liberty.*
31. *To allege that there is now evidence with which I could tamper is illogical and absurd.*
32. *Accordingly, the decision to arrest, without applying to the Court for a warrant, was both unreasonable and unnecessary.*

33. *The position of the Prosecution is that there is an inference that I "must have known". Not only is it impossible to make such an irresistible inference to the criminal standard but it is also unfair and wrong, particularly as it is being used to keep me in custody and deny me my constitutional right to freedom and liberty.*
34. *Moreover, this Prosecution violates my rights under the Seychelles Constitution and under international human rights conventions.*

Conditions of bail

35. *I am willing to abide by any conditions of bail this Court may impose. In particular:*
- i. *I will surrender to the Court my passport and any other travel documentation in my possession and promise not to apply for any other travel documents;*
 - ii. *I will remain on Mahé Island at all times and not leave the jurisdiction of Seychelles;*
 - iii. *I will sleep and live at Capital City Apartment, Independence Avenue, Victoria, Mahé, Seychelles;*
 - iv. *I will provide two sureties in the sum of SCR500,000.00 each;*
 - v. *I will abide by any other and further condition or conditions the Court deems fit and necessary taking into account all the circumstances of the case.*
36. *I aver that on the basis of matters aforesaid, it is urgent, necessary, just and fair that my application be heard and disposed of as a matter of extreme urgency." Verbatim*

33. In an affidavit in reply sworn to by Detective Corporal Police Simeon on behalf of the Respondent, the prosecution objected to the application. We repeat the evidence by affidavit of Detective Corporal Police Simeon, which was laid before the learned Chief Justice, so far as relevant for present purposes —

"AFFIDAVIT IN REPLY

I, Detective Corporal Police Davis Simeon, presently attached to the Criminal Investigation Division Headquarters at Bois de Rose, submit this Affidavit in

Reply to the Affidavit of Laura Valabhji dated 3rd March 2022 in support of an Application for Bail.

I, being a Christian, maketh oath and saith as follows:

- 1. That I am the deponent in this matter and the Investigating Officer in C.B. 104/11/21 of Anse Boileau PS and duly authorised to swear this affidavit. The facts stated hereunder, unless stated otherwise, are in my personal knowledge and information, revealed through the investigation in this case.*
- 2. That I have previously submitted an affidavit, dated 11th February 2022, in support of an application for the further holding of Laura Valabhji made under section 179 of the Criminal Procedure Code read with Article 18(7) of the Constitution.*
- 3. I respectfully adopt and standby the averments made in my affidavit of 11th February 2022. This affidavit in reply is intended to supplement my previous affidavit and respond to the specific points raised by Laura Valabhji of 3rd March 2022.*
- 4. For all the reasons set out in my affidavit of 11th February 2022, and for the additional reasons set out below, I maintain my humble request that Laura Valabhji be remanded to custody under section 179 of the Criminal Procedure Code, as read with Article 18(7) of the Constitution.*
- 5. Points in Reply:*
 - (i) No comment is made in reply to the Procedural History as set out by Laura Valabhji at paragraphs 2 to 16 of her affidavit.*
 - (ii) At paragraphs 17 to 23 of her affidavit Laura Valabhji sets out her personal history. I make following observations:*
 - At paragraph 18 Laura Valabhji states that she worked in the Attorney-General's office from 1996 to 2006. It is respectfully observed that this experience would have provided Laura Valabhji with invaluable insight into the criminal justice process with the result that she will now be well aware of the both the severity and strength of the case against her. Thus reinforcing her motivation to flee the jurisdiction to escape justice.*
 - At paragraph 21 Laura Valabhji states "all of [her] family (apart from one of [her] sisters) live Seychelles". It is also clear, however, that Laura Valabhji has a number of close family members who do live abroad, these include her daughter, a sister*

and it is understood that her mother-in-law is currently in the United States of America with members of Mukesh Valabhji's family. It is right to also bring to the attention of the Court that it is understood that Laura Valabhji, and her husband Mukesh Valabhji, have considerable interests and assets abroad that give her both links outside of Seychelles and a motivation to flee the jurisdiction.

- *It is also said at paragraph 21 that Laura Valabhji has caring responsibilities for her mother and uncle. But there is no explanation as to why any one of her three brothers, sister or nieces and nephews are unable to and will not care for them.*
- *It is claimed by Laura Valabhji at paragraph 22 that her ties to Seychelles make it "impossible" for her to leave Seychelles, but that if she does, she would be "liable to extradition back to Seychelles if she [were] to leave". Her family ties abroad, and her means to leave the jurisdiction mean that it is far from "impossible" for Laura Valabhji to leave Seychelles. Moreover, I understand that there are numerous jurisdictions with which the Seychelles does not have a viable extradition arrangement.*
- *Laura Valabhji claims at paragraph 23 that it is "inconceivable" that she would let down any sureties that vouch for her attendance. In reply I respectfully bring to the attention of the Court the significant wealth and resources that Laura Valabhji and her husband have both in Seychelles and abroad. Moreover, there was a significant amount of cash concealed in a safe in the wine cellar at her home at Morne Blanc (as set out at paragraph 43 of my affidavit of 11th February 2022).*

(iii) *At paragraphs 24 to 34 Laura Valabhji sets out her comments in relation to the terrorism and firearms offences with which she was charged on 11th February 2022.*

- *At paragraph 25 Laura Valabhji claims that she is "completely innocent of all these charges". This is not accepted.*
- *At paragraph 26 Laura Valabhji claims that it is clear from paragraph 3(y) of my affidavit of 30th December 2021 that "any firearms in question were lawfully imported to the Seychelles via valid and lawful end user certificates signed by the then Chief of the Defence forces in the SPDF and authorised by the President of the Seychelles". Moreover, it is said that at paragraph 3(ee) of my affidavit of 30th December 2021 that I averred that "the firearms seized from [Laura Valabhji's] premises are from the*

consignment lawfully imported into Seychelles by the President and the Chief of Defence forces of the SPDF". These are incorrect characterisations of what I stated. For ease of reference both paragraphs referred to by Laura Valabhji are set out below in full:

At paragraph 3(y) of my affidavit of 30th December 2021 (in support of the Application for Further Holding of Suspects) I stated:

Preliminary analysis of the files shows a paper trail detailing consignments of firearms and ammunition entering Seychelles from Bulgaria, South Africa and Switzerland dated back to 2004, 2006, 2012 and 2013. The said documents gave clear details of the consignments, including correspondence between Suspect Leopold Payet who at that time was the Chief of Staff (from 1998 to 2007) and the Chief of Defence Forces (from 2007 to 2018) in the SPDF to the aforesaid countries regarding the importation of firearms and ammunition into Seychelles; the amounts of firearms and ammunition being imported into Seychelles; the amounts of firearms and ammunition being imported into Seychelles; the financial transactions (such as methods of payments) for the purchasing of the firearms and ammunition; how the firearms and ammunitions would enter Seychelles; who was responsible for taking over the firearms and ammunition, in addition, to the serial number of the firearms and ammunition in the consignments. Moreover the said documents showed the end user certificates (a document certifying the buyer as the final recipient of the firearms and ammunition) and these documents were signed by Suspect Leopold Payet as the Chief of Staff and the Chief of Defence Forces in the SPDF.

At paragraph 3(ee) I stated:

According to the SPF, the said seized firearms and ammunition were retrieved from the private residence of the ex-President France Albert Rene and that these firearms and ammunition were being used by the ex-President France Albert Rene's personal bodyguards in charged by Suspect Frank Marie. After the death of ex-President France Albert Rene, on 27th February 2019, the SPDF learned of the said seized firearms and ammunitions and thus retrieved from ex-President France Albert Rene private resident and stored the said seized firearms and

ammunitions in their armory at SPDF. SPDF further states that they had no knowledge of the consignments of firearms and ammunition nor how it entered Seychelles. The firearms and ammunition were not marked by the SPDF as per RECSA convention. Therefore suggesting, that the firearms and ammunitions seized from Suspect No. 1 (Mukesh Valabhji) and Suspect No. 2 (Laura Valabhji) and the firearms seized and ammunitions retrieved from the ex-President France Albert Rene's private residence are from the same consignments of firearms and ammunitions imported into Seychelles through the SPDF through suspects Leopold Payet and Frank Marie and aided by suspect No. 3 (Leslie Benoiton as indicated by documents seized by the ACCS at Suspect No. 1 (Mukesh Valabhji) and Suspect No. 2 (Laura Valabhji) 's residence at Morne Blanc.

- *It will be seen from the above that I do not aver, as claimed by Laura Valabhji, that the firearms were "lawfully imported into Seychelles." Moreover, in my Affidavit in Reply dated 14th January 2022, I clearly stated: "At this stage the investigation indicates that the importation of the weapons into Seychelles were unlawful" (at page 4).*
- *At paragraph 27 Laura Valabhji states that she is "informed by counsel that section 44 of the Firearms and Ammunitions Act the President can exempt any person from needing to hold a licence for firearms or ammunition". Laura Valabhji further claims that the only available inference is that "the then President authorised the storage of the weapons". However, Laura Valabhji does not state which President purportedly gave her such authorisation or details of the form or manner in which such authorisation was given to her. There is no evidence that Laura Valabhji was given authorisation to store weapons.*
- *Laura Valabhji further claims at paragraph 27 that, unless and until "lawful authority is revoked, no firearms licence is required". First, Laura Valabhji fails to state that such authority was given to her, by whom, and on what basis. Moreover, as the Court will be aware, on the 11th August 2021, the present Government issued an amnesty for the surrender of all firearms, ammunition and weapons. It is therefore clear that no authority was extended by the current Government for the ongoing possession of such weapons.*

- *At paragraph 28 Laura Valabhji claims that she has a "good defence to any of these charges". This is not the case. No defence has been advanced, much less a "good" one.*
- *At paragraph 29 Laura Vajabhji claims that the allegation of "some terrorist plot or international conspiracy, this is political fantasy unsupported by any evidence" The quantity of weapons seized, the manner in which the majority were concealed in Mukesh and Laura Valabhji's home, and the time of the importation of the weapons shows that the firearms and ammunition were likely to be used to cause death or harm to a person, to intimidate the public, or a section of the public, or to remove from power the legitimate Government of the Republic of Seychelles. It is noted that, to date, Laura Valabhji has provided no explanation as to any legitimate reason as to why such a large cache of weapons was being kept at her home.*
- *At paragraph 30 Laura Valabhji claims that there is no evidence that the Prosecution have credible information that the firearms will be used to commit criminal acts. It is respectfully observed that the possession of the firearms and ammunition itself is a clear criminal act. Further she states that the Prosecution has no credible information that she knows the whereabouts of other firearms and ammunition being stored. It is apparent from documents recovered that more weapons were imported into Seychelles than have yet been recovered by Police. As explained at paragraph 36 of my Affidavit of 11th February 2022, the outstanding weapons that are still unaccounted for include 350 high explosive fragmentations.*
- *At paragraph 31 Laura Valabhji claims that it is "illogical and absurd" to suggest that there is evidence that she might tamper with. This is not accepted.*
- *At paragraph 32 Laura Valabhji claims that it was both unreasonable and unnecessary to arrest her without a warrant. This is not accepted.*
- *At paragraph 33 Laura Valabhji claims that "the position of the prosecution is that there is an inference that [she] "must have known". Not only is it impossible to make such an irresistible inference to the criminal standard but it is also unfair and wrong ..." With respect, it is unclear to what Laura Valabhji is referring when it is averred that the prosecution claim, "she must have known".*

- *At paragraph 34 Laura Valabhji claims that the Prosecution violates her rights under the Seychelles Constitution and under international human rights convention". Laura Valabhji fails to specify or substantiate what rights she claims any prosecution might violate.*
- (iv) *At paragraph 35 to 40 Laura Valabhji sets out her proposals for conditions of bail. It is respectfully submitted that no conditions will be sufficient to satisfy the Court that Laura Valabhji will surrender for trial, not interfere with witness and the course of justice or commit further offences. Further, to the extent that Laura Valabhji prays in aid the fact that Mr. Lousteau-Lalanne, Ms. Sarah René and Mr. Frank Marie have been granted bail, it respectfully observed that each case must be considered on its own facts.*
6. *For all the above reasons, it is respectfully submitted that bail should not be granted to this case. [...]" Verbatim*

Appeal proceedings: applicable law

34. We now consider the grounds of appeal.
35. We are thankful for the coherent and comprehensive written and oral submissions offered by both parties. We have considered with care all the materials on file. We have considered the parties' submissions at the point where we have determined the issues raised by the grounds of appeal.
36. Counsel for the Appellant submitted that this bail appeal takes place by way of a re-hearing on the merits under Rule 31 of The Seychelles Court of Appeal Rules. In his counter submissions, Counsel for the Respondent suggested that bail decisions are open to challenge by way of judicial review. For his submissions, he relied on the majority judgment in the case of **Esparon and others**, in which it is stated that "*bail decisions [...] are open to challenge by way of judicial review*".
37. We have considered the case of *Pillay and another v The Republic Criminal Appeal SCA09/2019*⁶, in which Twomey JA delivering the judgment of the Court of Appeal, stated, at paragraph [13] — "*an appeal from a refusal to grant bail by the trial judge has*

⁶ (delivered on the 10 May 2019) — hereinafter referred to as "*Pillay and another*" for ease of reference

to be considered by this court as all other appeals. An appellate court's task is to determine whether there was sufficient evidence to support the determination made by the trial court and whether the law was applied correctly."

38. With respect to the question of whether or not the Court of Appeal has supervisory powers over the Supreme Court, *Attorney-General v Tan Boon Pou Case No SCA1/2005*⁷, at paragraph [25], held the view that — "*[...] this Court has no original review jurisdiction over the Supreme Court decisions*". We endorse this pronouncement in **Attorney-General v Tan Boon Pou** (at paragraph [25]) and **Pillay and another** (at paragraph [13]). In this respect, we accept the submission of Counsel for the Appellant and, accordingly, proceed to hear this bail appeal by way of a re-hearing.
39. We set out the applicable law relating to bail so far as applicable for present purposes. The Court of Appeal of Seychelles has considered the question of bail in several cases, namely **Beeharry, Esparon and Others** and **Ernesta and Others**. We have set out some principles from **Beeharry**.
40. Also, we have considered the decision of the Board of the Privy Council in the case of **Hurnam** from the Supreme Court of Mauritius, in which the Board considered the principles which should guide the courts of Mauritius in exercising their discretion to grant or withhold bail and decisions from the Supreme Court of Mauritius concerning the interpretation of the relevant provisions of the Constitution of the Republic of Mauritius and the Bail Act, 1999 of Mauritius.
41. Our law on bail is laid down in the Constitution of the Republic of Seychelles. Chapter III of the Constitution of the Republic of Seychelles is interpreted in accordance with Article 48 as follows —

"Consistency with international obligations of Seychelles

48. This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human

⁷ (delivered on the 25 November 2005) — hereinafter referred to "*Attorney-General v Tan Boon Pou*" for ease of reference

rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of—

- (a) the international instrument containing these obligations;*
- (b) the reports and expression of views of bodies administering or enforcing these instruments;*
- (c) the reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;*
- (d) the Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions.*

42. The Constitution of the Republic of Seychelles is the Supreme law of Seychelles. Chapter III, Part I is titled the Seychellois Charter of fundamental human rights and freedoms. Article 19 (2)⁸ of Chapter III, Part I, affords every person charged with a criminal offence the presumption of innocence until he or she is found guilty or pleads to his or her guilt.

43. The guarantee of the right to personal liberty and the circumstances in which a person may be deprived of his or her liberty pursuant to fair procedures established by law are contained in Chapter III, Part I, Article 18 of the Constitution of the Republic of Seychelles. Article 18 (so far as relevant for present purposes) stipulates —

"18(1) Every person has a right to liberty and security of the person.

18(2) The restriction, in accordance with fair procedures established by law, of the right under clause (1) in the following cases shall not be treated as an infringement of clause (1)-

- (a) the arrest or detention in the execution of a sentence or other lawful order of a court;*
- (b) the arrest or detention on reasonable suspicion of having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of the offence and of producing, if necessary, the offender before a competent court;*

⁸ Article 19 (2) stipulates that every person who is charged with an offence is innocent until the person is proved or has pleaded guilty.

(4) A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3).

(5) A person who is arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention or, having regard to the distance from the place of arrest or detention to the nearest court or the non-availability of a judge or magistrate, or force majeure, as soon as is reasonably practicable after the arrest or detention.

(6) A person charged with an offence has a right to be tried within a reasonable time.

(7) A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise-

- (a) where the court is a magistrates' court, the offence is one of treason or murder;*
- (b) the seriousness of the offence;*
- (c) there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;*
- (d) there is a necessity to keep the suspect in custody for the suspect's protection or where the suspect is a minor, for the minor's own welfare;*
- (e) the suspect is serving a custodial sentence;*
- (f) the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence. "*

44. We recite the terms of the relevant provisions of the Constitution of the Republic of Mauritius, which are closely similar to the relevant provisions of Articles 18 and 19 of the Constitution of the Republic of Seychelles.

45. The relevant provisions of the Constitution of the Republic of Mauritius were considered in **Hurnam** (paragraphs 2 and 3) —

- " 2. The 1968 Constitution is, by virtue of section 2, the supreme law of Mauritius. Section 3, in Chapter II ("Protection of Fundamental Rights and Freedoms of the Individual"), provides (so far as relevant for present purposes):

"It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –

- (a) *the right of the individual to ... liberty, security of the person and the protection of the law; ...*

and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

3. Section 5, in the same chapter, is directed to protection of the right to personal liberty. So far as relevant for present purposes, it provides:

"(1) No person shall be deprived of his personal liberty save as may be authorised by law –

...

- (d) *for the purpose of bringing him before a court in execution of the order of a court;*

- (e) *upon reasonable suspicion of his having committed, or being about to commit, a criminal offence ...*

(3) Any person who is arrested or detained –

- (a) *for the purpose of bringing him before a court in execution of the order of a court;*

- (b) *upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or*

- (c) *upon reasonable suspicion of his being likely to commit breaches of the peace,*

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including, in particular, such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (c) is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour, then, without prejudice to any further proceedings that may be brought against him, he shall be released unconditionally."[...].

Section 10(2)(a) of the Constitution gives effect to the presumption of innocence."

Hurnam (at paragraph 4) stated that sections 5 (1) and (3), and 10 (2) (a) bear a close resemblance to articles 5 (1) and (3) and 6 (2) of the European Convention of Human Rights.

46. We are concerned with the Bail Act 1999 [Act No. 32 of 1999], which came into force on the 14 February 2000, which **Hurnam** (at paragraph 8) stated was a complete departure from the Bail Act 1989 to make liberty the rule.
47. Section 3 of the Bail Act 1999 stipulates that every defendant or detainee shall be entitled to be released on bail. Section 4 (1) of the Bail Act 1999 lists six circumstances [(a) to (f)] where a Judge or Magistrate may release a defendant or detainee on bail as follows

"4. Refusal to release on bail

- (1) *A Judge or Magistrate may refuse to release a defendant or a detainee on bail where –*
- (a) *he is satisfied that there is reasonable ground for believing that defendant or detainee, if released, is likely to-*
- (i) *fail to surrender to custody or to appear before a Court as and when required;*

- (ii) *commit an offence, other than an offence punishable only by a fine not exceeding 1000 rupees;*
 - (iii) *interfere with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to him or to any other person;*
 - (b) *he is satisfied that the defendant or detainee should be kept in custody –*
 - (i) *for his own protection; or*
 - (ii) *in the case of a minor, for his own welfare;*
 - (c) *the defendant or detainee, having been released on bail, has –*
 - (i) *committed an act referred to in paragraph (a); or*
 - (ii) *breached any other condition imposed on him for his release;*
 - (d) *the defendant or detainee is charged or is likely to be charged with a serious offence;*
 - (e) *there is reasonable ground for believing that the defendant or detainee has –*
 - (i) *given false or misleading information regarding his names or address; or*
 - (ii) *no fixed place of abode;*
 - (f) *a detainee has failed to comply with section 12(2).*
- (2) *In making a determination under subsection (1), the Judge or Magistrate shall have regard to such considerations as appear to the Judge or Magistrate to be relevant, including*
- (a) *the nature of the offence and the penalty applicable thereto;*
 - (b) *the character and antecedents of the defendant or detainee;*
 - (c) *the nature of the evidence available with regard to the offence."*

48. In *Deelchand v The Director of Public Prosecutions and others* 2005 SCJ 215⁹, referred to us by Counsel for the Appellant, Ballancy J interpreted and applied section 4 of the Bail Act 1999. We observe that the circumstances listed at 4 (1) (a) (i), (ii) and (iii) and (d) of the Bail Act 1999 bear a close similarity to the circumstances listed at (b) and (c) of Article 18 (7) of the Constitution of the Republic of Seychelles.

49. In **Deelchand** (at paragraphs 4.6 to 4.14), the Supreme Court of Mauritius was concerned with what it described as the most important category — section 4 (1) (a) of the Bail Act, 1999. The Supreme Court interpreted the said provisions as follows —

"4.6 *The word "may" in the above section indicates that there is still a discretion to grant bail even where the Judge is satisfied that one of the risks in (i) (ii) or (iii) above is likely to materialise, but common sense indicates that except where the imposition of conditions is likely to reduce those risks to an acceptable level, the circumstances at (i) and (ii) above will certainly provide adequate grounds for refusing bail; and that a similar analysis will apply in relation to (ii) above where an offence involving serious harm to one or more persons or to society in general, is concerned.*

4.7 *By contrast, the fourth circumstance equally listed as one where a Judge or Magistrate "may" refuse to release a defendant or detainee on bail - "the defendant or detainee is charged or is likely to be charged with a serious offence" - is not one which will by itself provide adequate ground for refusing bail, but it is one of the considerations to be taken into account, as the Court held and fully explained in Labonne v The D.P.P and the District Magistrate of Black River (supra, at para 2.2).*

4.8 *Our Bail Act indicates, further, in sect. 4(2) that the relevant considerations to be taken into account will also include "the character and antecedents of the defendant or detainee". However, our Bail Act falls short of making clear the guiding principle in granting bail.*

[...]

4.11 ***It stands to reason that the decision-making process in relation to bail will call for a balancing exercise where all relevant facts have to be given due weight in the balance either in favour of release on bail (where they tend to decrease the likelihood of one of the relevant risks***

⁹ hereinafter referred to as "*Deelchand*" for ease of reference

materialising or in favour of refusal of bail where they tend to increase the likelihood of one of the relevant risks materialising.

[...]

4.14 *It is interesting to note that the jurisprudence of the European Court of Human Rights reflects a similar approach to that adopted in Maloupe (supra, para 2.2) and Labonne (supra, para 2.2). It is appropriate for me to point out that, as –*

(1) Chapter II of our Constitution entitled "Protection of Fundamental rights and freedoms of the individual substantially reflects the values enshrined in the European Convention on Human Rights; and

(2) As highlighted in Neeyamuthkhan v The Director of Public Prosecutions and anor [1999 S.C.J. 284A] there is a striking similarity between section 5(3) of our Constitution and Article 5 (3) of the European Convention on Human Rights which both provide for compulsory release, albeit on conditions, where trial does not take place within a reasonable time,

appropriate guidance can be sought from the decisions of the European Court of Human Rights in relation to pre-trial detention in countries with legislation comparable with ours. (The references in this judgment relate to the Internet Site <http://www.worldlii.org/eu/cases/ECHR> which contains the judgments of that Court from 1960 to 2004 [...]." Emphasis supplied

50. **Hurman** endorsed the reasoning of Ballancy J in **Deelchand** and highlighted at paragraph [15] —

"15. *It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail. [...]. The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of*

this paragraph, provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.

16. *The reasoning of the Supreme Court in Noordally, Maloupe (save for the penultimate sentence), Labonne and Deelchand, all cited above, is consistent with the jurisprudence on the European Convention., which recognises that the right to personal liberty, although not absolute (X v United Kingdom (Application No 8097/77, unreported, E Comm H.R.)), is nonetheless a right that is at the heart of all political systems that purport to abide by the rule of law and protects the individual against arbitrary detention (Winterwerp v Netherlands [1979] ECHR 4; (1979) 2 EHRR 387, para 37; Engel v Netherlands (No 1) [1976] ECHR 3; (1976) 1 EHRR 647, para 58; Bozano v France [1986] ECHR 16; (1986) 9 EHRR 297, para 54). **The European Court has clearly recognised five grounds for refusing bail (the risk of the defendant absconding; the risk of the defendant interfering with the course of justice; preventing crime; preserving public order; and the necessity of detention to protect the defendant):** see Clayton and Tomlinson, *The Law of Human Rights* (2000), p 501, para 10.138; Law Commission of England and Wales, *Report on Bail and the Human Rights Act 1998* (Law Com No 269, 2001), para 2.29. But it has insisted that a person must be released unless the state can show that there are "relevant and sufficient reasons" to justify his continued detention: *Wemhoff v Federal Republic of Germany* (1968) 1 EHRR 55. As put by the Law Commission in its Report just cited para 2.28, "Detention will be found to be justified only if it was necessary in pursuit of a legitimate purpose (or ground)". The European Court has, realistically, recognised that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see, for example, *Ilijkov v Bulgaria* (Application no 33977/96, 26 July 2001, unreported)), para 80, but has consistently insisted that the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight: *Neumeister v Austria* (No. 1) [1968] ECHR 1; (1968) 1 EHRR 91, para 10; *Yagci and Sargin v Turkey Series A No 319* [1995] ECHR 20; (1995) 20 EHRR 505, para 52; *Muller v France Reports of Judgments and Decisions 1997 – II*, 374, para 43; *I.A. v France Reports of Judgments and Decisions 1998 – VII*, 2951, paras 105, 107. In *Ilijkov v Bulgaria*, above, para 81, the Court repeated "that the gravity of the charges cannot by itself serve to justify long periods of detention on remand." Emphasis supplied*

51. **Beeharry**, which endorsed the reasoning in **Hurnam**, provides some guidance to our courts on the interpretation of Article 18 (7) (b) and (c) of the Constitution of the Republic of Seychelles. **Beeharry** endorsed the reasoning in **Hurnam** that the seriousness of the offence is not of itself a ground for refusing to admit a person to bail
-

"[13] *On the matter of bail and ground for its denial, it is worth stating that the trend in jurisdictions of what may be termed liberal democracies is that the seriousness of the offence constitutes one factor but not the sole factor for the determination of bail. The recent Privy Council pronouncement in the case of Hurnam v. The State Privy Council Appeal 53 of 2004 has succinctly summed up the position of the other comparable jurisdictions in the matter.*

[14] *The obvious controversy in our jurisdiction has been provoked by the particular fact that the law relating to bail in Seychelles is found not in any Act of Parliament as in Mauritius or elsewhere but in the Constitution itself, where the seriousness of the offence is a stand-alone provision. Since the supreme source of law in a constitutional democracy is the Constitution itself, the manner in which it should be interpreted assumes great importance [...].*

[15] [...]. *With respect to the seriousness of the offence, Lord Bingham - with Lord Scott, Lord Carswell, Lord Brown and Lord Mance agreed - stated as follows:*

"It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases."

[16] *With respect to the impact of such factors on the issue of bail, the reasoning goes:*

"Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail." [Emphasis is ours]

52. Based on the reasoning in **Hurnam**, **Beeharry** held the view that the seriousness of the offence and the severity of the sentence which an applicant would be likely to incur are

not of themselves grounds for refusing bail, but are factors relevant to the judgment, in all circumstances, if it is necessary to deprive the applicant of his liberty. **Beeharry** (at paragraph 19) went on to state — "[t]hat position in law is not limited to Mauritian jurisprudence only where there is a Bail Act and where the fundamental protections and liberties are enshrined in the Constitution in Chapter 2 to the same extent as they are in the Constitution of Seychelles in its Chapter III, Part 1."

53. **Beeharry** (at paragraphs [21] and [22]), referring to the five grounds on which bail may be declined recognised by the European Court of Human Rights, observed that the "rule in all those jurisdictions is not far different than it is in the Constitution of the Republic of Seychelles that a person must be released unless the state can show that there are relevant and sufficient reasons to justify his continued detention": see *Wemhoff v Federal Republic of Germany* (1968) 1 EHRR 55.

54. Applying the principles laid down in **Hurman**, **Beeharry** (at paragraphs 32 and 34) explained the prime purpose of a bail application as follows —

"[32] [...] once a Court is properly seized with a case, the presence of the accused needs must be secured in a democratic system where prevails the fundamental principle of presumption of innocence in favour of the defendant until he is found to be guilty by an independent and impartial adjudication. "

[34] [...], the overall purpose being to secure the presence of the accused to the Court for his trial. Under the doctrine of Separation of Powers, further enhanced by the Latimer House Guidelines, specifically enshrined in the Constitution of Seychelles in section 18(1), Parliament may not by legislation, directly or indirectly, take away that power from the judiciary: see *Noordally v A-G and Anor* [1986 MR 204], *Maloupe v R* [2000 MR 264], *Labonne v R* [1992 SCJ 373]; *Koyratty* [2004] P.R.V. 59], *Deelchand v D.P.P.* [2005 SCJ 215] and *Khoyratty* [Privy Council judgment delivered on 22 March 2006]. In this proposition of law as well as the principles involved in the exercise of judicial power to grant or not to grant bail to any citizen charged with an offence [...], the administration of the law of bail may not differ from what obtains in jurisdictions purporting to be democratic more specifically, the Strasbourg jurisprudence on the European Convention, basically entrenched the same Bill of Rights."

55. We are in agreement that in all countries where human rights are respected, the function of the law of bail is likely to be the same, being to reconcile, as stated in **Labonne** (at page 22), "on the one hand, the need to safeguard the necessary respect for the liberty of the citizen viewed in the context of the presumption of innocence and, on the other hand, the need to ensure that society and the administration of justice are reasonably protected against serious risks which might materialise in the event that the detainee is really the criminal which he is suspected to be."

56. Based on the above principles, it follows that a person should be released on bail if the imposition of conditions reduces the likelihood that the person will fail to appear for his trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release under Article 18 (7) (c) to such an extent that they become negligible, having regard to the weight that the presumption of innocence should carry in the balance. When the imposition of conditions is considered to be improbable to make any of the risks stated in Article 18 (7) (c) negligible, then the person should not be admitted to bail.

Appeal proceedings: Analysis of the contentions of Appellant and Respondent

57. Based on the above, we examine the findings at the bail proceedings before the learned Chief Justice on the issues raised at the appeal.

Ground 1 of the grounds of appeal

58. Regarding ground 1, the skeleton heads of argument presented on behalf of the Appellant contended that the Supreme Court's approach to evidential sufficiency was wrong in principle.

59. Based on this contention, Counsel for the Appellant has advanced a two-fold submission. First, the skeleton heads of argument stated that the learned Chief Justice—

"5 [...]:

- 5.1. *failed to give adequate weight to the arguments advanced on the Appellant's behalf regarding the weaknesses in the prosecution's case (as to which, see further Ground 2 below);*
- 5.2. *failed to give due regard to the prosecution's evidence served to date, which in material respects does not support the assertions set out in the prosecution affidavits opposing bail;*
- 5.3. *wrongly assumed that the Appellant's arguments as to evidential insufficiency were dependent upon prosecution witnesses not attending trial or not giving evidence in accordance with their statements; and*
- 5.4. *wrongly concluded that the prosecution had established a prima facie case against the Appellant.*

60. Secondly, Counsel for the Appellant submitted that the *"Supreme Court further erred in its assessment of the relevance and weight to be given to the Appellant's personal history, good character and community ties."*

61. We consider the first contention raised on behalf of the Appellant. Counsel submitted that in considering whether or not the strength and nature of the allegations against the Appellant established a clear reason for her to flee the jurisdiction and/or interfere with witnesses or commit further offences, the Court of Appeal is urged to have due regard to the evidence which is presently available and will be called at the trial and the affidavits filed by Detective Corporal Police Simeon on behalf of the Respondent, which he claimed are in material respects, wrong or misleading. In this respect, Counsel for the Appellant submitted that on a proper analysis of the statements and exhibits served by the Respondent to date, its case against the Appellant on all counts is so flawed evidentially and legally. Hence, according to Counsel for the Appellant, the Appellant has no incentive to flee or seek to interfere with the investigative process if released on bail.

62. In furtherance of their submissions, Counsel for the Appellant submitted that the entire case against the Appellant rests on the seizure in the house of the Appellant and the First Accused of a hidden cache of arms and ammunition lawfully imported by the President

and Chief of Staff of the Seychelles People's Defence Force in 2004 and 3 pistols lawfully imported again by the Seychelles People's Defence Force in 2006. Counsel submitted that the evidence conclusively proves these weapons were lawfully imported with end user certificates by the Seychelles government and paid for by the Seychelles government at the time.

63. Counsel for the Respondent, in his counter submissions, essentially submitted that the learned Chief Justice was entitled to conclude that there was *prima facie* evidence of the charges.
64. We state that the contention of the Appellant raised at 5.3 of the skeleton heads of argument (*at paragraph [59] hereof*) is devoid of merit. As indicated by Counsel for the Respondent, it isn't easy to understand what contention is being raised by Counsel for the Appellant. It appears that the contention of both Counsel for the Appellant is premised on their claim that the learned Chief Justice should have given due regard to the prosecution evidence served to date. There is no question of the Supreme Court assessing the nature and strength of the "*prosecution evidence served to date*" as the prosecution does not serve a copy of the "*prosecution evidence*" on the Supreme Court under Seychelles law. A similar analysis is applied concerning the contention raised at 5.2 of the skeleton heads of argument (*at paragraph [59] hereof*).
65. It would be inappropriate for the Court of Appeal to assess the sufficiency and nature of evidence not laid before the learned Chief Justice when considering the bail application. At this appeal, we have considered only the evidence by affidavits laid before the learned Chief Justice when considering the bail application. The Seychelles Court of Appeal Rules provide the procedures for this Court to receive further evidence by affidavit. Also, we agree with the submission of Counsel for the Respondent that if the Appellant wanted to highlight deficiencies in the evidence served to date, it was incumbent upon the Appellant to make that case before the learned Chief Justice.

66. Counsel for the Appellant has provided the Court of Appeal with a supplemental bundle containing the following documents, which, for the reasons stated above, we have not considered at this appeal —

- *"Investigator Stephen Richard Sadler statements"*
- *"Sub Inspector Emile Fred's Police statement "*
- *"Inspector Remie Desire Boniface Statement"*
- *"Police Constable Carlos Malbrook Police Statement"*
- *"C.P.L. Jean Philippe Lucas Exhibit Chart"*
- *"Letter from Mr George Thachett dated 25 July 2022"*
- *"Letter to Attorney-General of Seychelles dated 11 July 2022"*
- *"Letter from Mr George Thachett dated 25 July 2022"*
- *"An undated letter seized from the Appellant whilst in custody"*
- *"Chain of correspondence between the Registrar General to Myra Melanie between 17 February 2022 to 12 April 2022"*
- *"Translated statement of Nelson Flores"*
- *"Affidavit of Mukesh Valabhji dated the 8 August 2022"*
- *"Exhibit chart CB 104/11/21 Anse Boileau Police Station Exhibit Officer: CPL Jean Philippe Lucas"*
- Sitting of the Supreme Court of Seychelles on Monday, 18 July 2022, at 9 am before the Honourable Chief Justice.

67. Similarly, it is inappropriate for Counsel for the Respondent to seek leave in his written submissions for the Respondent to rely upon further affidavits in support of remand before the Supreme Court. As mentioned above, The Seychelles Court of Appeal Rules provide the procedures for this Court to receive further evidence by affidavit. Hence, we did not consider evidence by affidavit laid before the learned Chief Justice by Detective Corporal Police Simeon on behalf of the Respondent on the 18 July 2022 and 1 August 2022.

68. We now consider the contention raised on behalf of the Appellant that the learned Chief Justice erred in concluding that there was *prima facie* evidence of the charges. Counsel

for the Appellant submitted that on an analysis of the elements required to be proved for each of the charges preferred against the Appellant, it is apparent that the prosecution's case is evidentially weak.

69. We conclude that the learned Chief Justice's *prima facie* assessment of the sufficiency of the evidence was not wrong in principle. The learned Chief Justice stated in the Ruling that *"the assessment is accordingly done summarily, and it ultimately comes to a determination as to whether the prosecution has proved a prima facie case."* We give reasons for our conclusion.
70. It is undisputed by the Appellant and the prosecution for the purposes of the bail application that a large cache of weapons was found in the house the Appellant shares with her husband¹⁰.
71. The affidavit of the Appellant, on the one hand, and of Detective Corporal Police Simeon on behalf of the Respondent, on the other hand, contained contradictory versions concerning whether or not the firearms in question were lawfully imported. We repeat the following evidence by affidavit of Detective Corporal Police Simeon to emphasise the point we are making —

"5 (iii) At paragraphs 24 to 34 Laura Valabhji sets out her comments in relation to the terrorism and firearms offences with which she was charged on 11th February 2022.

- *At paragraph 25 Laura Valabhji claims that she is "completely innocent of all the charges." This is not accepted.*
- *At paragraph 26 Laura Valabhji claims that it is clear from paragraph 3(y) of my affidavit of 30th December 2021 that "any firearms in question were lawfully imported to the Seychelles via valid and lawful end user certificates signed by the then Chief of the Defence forces in the SPDF and authorised by the President of the Seychelles". Moreover, it is said that at paragraph 3(ee) of my affidavit of 30th December 2021 that I averred that "the firearms seized from [Laura Valabhji's] premises are from the consignment lawfully imported into Seychelles by the President*

¹⁰ "Speaking Notes" on behalf of the Appellant, Court of Appeal at page 28

and the Chief of Defence forces of the SPDF". These are incorrect characterisations of what I stated. For ease of reference both paragraphs referred to by Laura Valabhji are set out below in full:

At paragraph 3(y) of my affidavit of 30th December 2021 (in support of the Application for Further Holding of Suspects), I stated:

*Preliminary analysis of the files shows a paper trail detailing consignments of firearms and ammunition entering Seychelles from Bulgaria, South Africa and Switzerland dated back to 2004, 2006, 2012 and 2013. The said documents gave clear details of the consignments, including correspondence between Suspect Leopold Payet who at that time was the Chief of Staff (from 1998 to 2007) and the Chief of Defence Forces (from 2007 to 2018) in the SPDF to the aforesaid countries regarding the importation of firearms and ammunition into Seychelles; the amounts of firearms and ammunition being imported into Seychelles; the financial transactions (such as methods of payments) for the purchasing of the firearms and ammunition; how the firearms and ammunitions would enter Seychelles; who was responsible for taking over the firearms and ammunition, in addition, to the serial number of the firearms and ammunition in the consignments. **Moreover, the said documents showed the end user certificates (a document certifying the buyer as the final recipient of the firearms and ammunition) and these documents were signed by Suspect Leopold Payet as the Chief of Staff and the Chief of Defence Forces in the SPDF.***

At paragraph 3(ee) I stated:

*According to the SPF,(sic) the said seized firearms and ammunition were retrieved from the private residence of the ex-President France Albert Rene and that these firearms and ammunition were being used by the ex-President France Albert Rene's personal bodyguards in charge by Suspect Frank Marie. After the death of ex-President France Albert Rene, on 27th February 2019, the SPDF learned of the said seized firearms and ammunitions and thus retrieved from ex-President France Albert Rene private residence and stored the said seized firearms and ammunition in their armory at SPDF. **SPDF further aver that they had no knowledge of the consignments of firearms and ammunition nor how it entered Seychelles. The firearms and ammunition were not marked by the SPDF as per RECSA convention. Therefore suggesting that the firearms and ammunition seized from Suspect No. 1 (Mukesh Valabhji) and Suspect No. 2 (Laura Valabhji) and the firearms seized and ammunitions retrieved from the ex-President France Albert Rene's private residence are from the same consignments of firearms and ammunitions imported into Seychelles through the SPDF through suspects Leopold Payet and***

Frank Marie and aided by suspect No. 3 (Leslie Benoiton as indicated by documents seized by the ACCS at Suspect No. 1 (Mukesh Valabhji) and Suspect No. 2 (Laura Valabhji) 's residence at Morne Blanc.

- ***It will be seen from the above that I do not aver, as claimed by Laura Valabhji, that the firearms were "lawfully imported into Seychelles." Moreover, in my Affidavit in Reply dated 14th January 2022, I clearly stated: "At this stage the investigation indicates that the importation of the weapons into Seychelles were unlawful" (at page 4)." [Emphasis is ours]***

72. In deciding if there is *prima facie* evidence of the charges, it would have been improper for the learned Chief Justice to concern himself as to whether or not the evidence conclusively proves those weapons were lawfully imported with end user certificates issued by the Seychelles government and paid for by the Seychelles government at the time, as submitted by Counsel for the Appellant.
73. The written submissions offered on behalf of the Appellant and the Respondent stated that the vast majority of the weapons were hidden. The evidence by affidavit of Detective Corporal Police Simeon stated that — "*the firearms ammunition and explosives sniffer dog and the dog handler*" drew attention to the hidden weapons. According to the evidence by affidavit of Detective Corporal Police Simeon, weapons were hidden in "*an area which is located in the wall located under the steps leading to the wine cellar*"¹¹, in "*an area located in the wall of the wine tasting room of the wine cellar*"¹², in "*another area located in the wall of the wine tasting room of the wine cellar*"¹³. The evidence by affidavit of Detective Corporal Police Simeon is to the effect that the wall had to be demolished.
74. Learned Counsel for the Appellant stated that the circumstances in which the items were found rebut any possible inference that the Appellant knew of them; still less the level of control required to establish her complicity in them. He relied on the cases of *Sullivan v Earl of Caithness* [1976] QB 966; cf *Hall v Cotton* [1987] QB 504. We state that the

¹¹ At paragraph [15] of the evidence of Detective Corporal Police Simeon dated 11 February 2022

¹² Ibid. at paragraph [18]

¹³ Ibid. at paragraph [23]

learned Chief Justice is only concerned with whether or not there is sufficient evidence at the stage of deciding whether or not there is *prima facie* evidence of the charges,

75. Also, the evidence by affidavit of Detective Corporal Police Simeon of 11 February 2022, at paragraph [16], is to the effect that some of the hidden weapons were wrapped in a black and white plastic with a Nescafe logo. According to his evidence by affidavit, this bag matched a plastic bag used to wrap weapons that were seized from Mr Leslie Benotion's safe at the National Information Sharing and Coordination Centre.
76. Also, the evidence by affidavit of Detective Corporal Police Simeon indicated that various documents in a file were seized at the home of the Appellant and the First Accused relating to large quantities of firearms and ammunition and that analysis of the file indicated that some of the firearms and ammunition were imported in 2004, 2006, 2008 and 2012/2013. The affidavit of Detective Corporal Police Simeon stated — *"6. Documents recovered from the property of the 1st and 2nd Respondents show the involvement of the 4th and 5th Respondents in importing a significant amount of weapons to the Republic of Seychelles during the years 2004, 2006, 2008 and 2012/13. The process by which the weapons were imported into the Republic meant that they were not formally recorded or identified in the usual way."* Counsel for the Respondent submitted that the Respondent appeared *"to suggest that there was some correspondence between the dates of elections and transfers of powers [C21, §47(xii)] [evidence by affidavit of Detective Corporal Police Simeon dated 11 February 2022].*
77. Counsel submitted that — *"even if correct (which is not accepted particularly given the prosecution's changing position as to which of the recovered firearms are attributable to which importations), that does not come close to proof of a terrorist purpose"*. Counsel submitted that — *"it would be equally consistent with – for the sake of argument – a legitimate fear of a post–election coup against the duly elected Government and therefore not a terrorist purpose"*.
78. The submission went on to state that — *"even if the Respondent were in a position to prove a terrorist purpose underpinning the alleged conspiracy, it would additionally have*

to prove that the Appellant knew of the purpose. Again there is no evidence capable of discharging that burden." We cannot consider these submissions as they also rely on evidence not laid before the learned Chief Justice when considering the Appellant's bail application. In any event, we state that the learned Chief Justice is only concerned with whether or not there is sufficient evidence at the stage of deciding whether or not there is *prima facie* evidence of the charges.

79. The version of the Appellant is that — "*the then President authorised the storage of the weapons described by Detective Corporal Police Simeon in the premises. It follows that there was lawful authority to store these firearms and ammunition", and, if and until that lawful authority is revoked, no firearms licence is required.*" The version of Detective Corporal Police Simeon, on the other hand, averred that neither the Appellant nor the First Accused had the relevant licence. In dealing with the Appellant's bail application, it would have been improper for the learned Chief Justice to assess the version of the Appellant and that of Detective Corporal Police Simeon in determining whether or not there is *prima facie* evidence of the charges. We state that the learned Chief Justice is only concerned with whether or not there is sufficient evidence at the stage of deciding whether or not there is *prima facie* evidence of the charges.
80. The evidence by affidavit of Detective Corporal Police Simeon stated that — "*the total amount of firearms and ammunition so far amounts to 94 firearms and 45,000 bullets including Dragunov Sniper Rifle, Makarov Pistols, AK47 Korean Style Rifles, AK74 rifles (with grenade launcher) and AK74 rifles (without grenade launcher), telescopic rifle, grenade launchers*¹⁴".
81. Our finding that the learned Chief Justice's *prima facie* assessment of the sufficiency of the evidence was not wrong in principle should not be interpreted to mean that the evidence by affidavit laid before him for the purposes of the bail application would satisfy the standard of proof in the criminal trial, *i.e.*, proof beyond a reasonable doubt. In the end, the case must be proved beyond a reasonable doubt.

¹⁴ Ibid. at paragraph [46]

82. Secondly, the Appellant complained about the learned Chief Justice's assessment of the relevance and weight attached to the Appellant's good character and personal history.
83. Counsel for the Appellant submitted that the Appellant's good character, standing and personal history, far from being of "*limited*" relevance to the question of bail, go directly to the likelihood of the Appellant complying with the orders of the Court and the improbability of her committing further offences. Learned Counsel submitted that it was wrong in principle to hold that these factors were of "*limited*" relevance because she had never previously been charged with serious offences and was, therefore, unable to show a history of bail compliance.
84. Counsel for the Respondent contended that the learned Chief Justice at paragraph 16 of the Ruling was, as he is entitled, highlighting that the Appellant's social standing and influence is such that: (a) she has more reason to abscond; and (b) that she has the means to do so.
85. The learned Chief Justice considered the Appellant's personal history and good character, which he stated was a relevant consideration with respect to the likelihood of the Appellant absconding or tampering with the evidence. He attached limited relevance and weight to the personal history of the Appellant as she had never been charged "*with all these serious offences before*".
86. We accept the submission offered on behalf of the Appellant that the learned Chief Justice was wrong to attach limited relevance and weight to the Appellant's personal history because she had never been charged with such serious offences before. The fact that the Appellant had never been charged "*with all these serious offences before*" is not a relevant consideration to be weighed in the balance. We agree with Counsel for the Appellant that the Appellant's good character is a relevant consideration in the examination of the seriousness of the likelihood that the Appellant will commit an offence while on release. We state that the Appellant's good character is also a relevant consideration in examining the seriousness of the likelihood that the Appellant will abscond.

87. The likelihood of flight has to be examined having regard to several relevant considerations. The case of **Deelchand** (at paragraph 5.2) stated that even though the seriousness of the offence may, by itself or in combination with some other consideration, give a basis for believing that the person will fail to surrender through fear of a custodial sentence, this consideration must be looked at in combination with other factors which may well indicate that the person is unlikely to abscond. Also, the relevant law set out above indicates that the severity of the sentence that the person would be likely to incur if convicted does not in itself justify the inference that he or she would abscond if admitted to bail. In *Neumeister v Austria* (1968) 1 ECHR 91 (27 June 1968), the European Court of Human Rights held that the risk of absconding cannot be evaluated solely on the basis of such considerations.
88. The court has to take into account *"other factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted may either confirm the existence of a danger of flight or make it appear so small that it cannot justify detention pending trial."*: **Neumeister** (supra).
89. **Deelchand** (at paragraph 5.4) stated —
- "Considerations relevant to the risk of absconding will include the strength, weakness or absence of family, community, professional or occupational ties and financial commitments as such ties, if strong, might be strong incentives not to abscond and, if weak might increase the risk of absconding. The strength of the evidence may also be relevant because it is likely that the charge will not be proved, the defendant may be less likely to abscond. The court must ask itself: what would be likely to motivate the applicant to abscond and what would be likely to make him refrain from absconding? Is the risk too great to be taken or is the level of risk acceptable, such that it can be taken having regard to the presumption of innocence? Can the risk at least be reduced to an acceptable level by the imposition of conditions."*
90. On examining the Ruling, we find that there is nothing to indicate that the learned Chief Justice had addressed his mind to the issue of whether or not there are substantial grounds

for believing that the accused will interfere with witnesses or otherwise obstruct the course of justice. With respect to the likelihood that a person may interfere with witnesses or otherwise obstruct the course of justice, Neil Corre, writing in his book *"Bail in Criminal Proceedings"* states that the likelihood that a person 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"*. Neil Corre goes on to point out —

"The exception's most common manifestations are 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". See **Maloupe** (supra, at paragraph 5.2)*

91. Though we had concluded that the approach of the learned Chief Justice was wrong when he attached limited relevance and weight to the personal character of the Appellant based on the fact that she had not committed such serious offences before, we shall not proceed at this juncture to state a conclusion concerning this ground of appeal. It is our considered view that this ground of appeal raised on behalf of the Appellant falls short of considering the Ruling holistically.

92. Careful consideration of the Ruling indicated that the learned Chief Justice considered the severity of the sentence that may be inflicted on the Appellant as an essential consideration in weighing the likelihood of absconding. He explained that the seriousness of the offence and the severity of the sentence do not by themselves justify that the Appellant would not appear for her trial.
93. We observe that the learned Chief Justice considered the financial means of the Appellant, which he stated was a factor in the likelihood of the Appellant absconding. Counsel for the Appellant stated in their skeleton heads of argument with respect to ground 3 of the grounds of appeal that the financial means of the Appellant should not be a compelling reason to withhold bail, as multiple orders obtained by the "ACCS" remain in place. We state that no such evidence has been laid before the Court of Appeal under The Seychelles Court of Appeal Rules concerning those orders.
94. The Ruling considered the possibility of the imposition of conditions to reduce the likelihood of absconding to an acceptable level (*at paragraph [20]*), which is an indispensable element of proper decision-making in relation to bail. At paragraph [20] of the Ruling, the learned Chief Justice stated — "**[20] Having gone through the entirety of the evidence tendered so far, this court is of the view that there exist reasonable grounds to believe that the grant of bail may lead to the 2nd accused absconding or tampering with the evidence of the prosecution witnesses and that this cannot be effectively eliminated by the imposition of reasonable conditions of bail.**" (Emphasis is ours)
95. For the reasons stated above, we see no reason to interfere with the exercise of discretion by the learning Chief Justice in refusing to admit the Appellant to bail pending trial.
96. For the reasons stated above, ground 1 of the grounds of appeal is dismissed.

Grounds 2 and 3 of the grounds of appeal

97. Given our reasoning and conclusion concerning ground 1, we conclude that grounds 2 and 3 of the grounds of appeal do not arise for consideration and are, accordingly, dismissed.

Ground 4 of the grounds of appeal

98. Ground 4 is vague and cannot be entertained as it amounted to no ground of appeal under Rule 18(3) and (7) of the Seychelles Court of Appeal Rules, 2005, as amended (S. I. 13 of 2005). Rule 18 (3) of the Seychelles Court of Appeal Rules, 2005, as amended, stipulates —

"(3) [...] grounds of appeal shall set forth in separate numbered paragraphs the findings of fact and conclusions of law to which the Appellant is objecting and shall also state the particular respect in which the variation of the judgment or order is sought.

[...].

(7) No ground of appeal which is vague or general in terms shall be entertained, save the general ground that the verdict is unsafe or that the decision is unreasonable or cannot be supported by evidence."

99. The Court of Appeal has held that the word "shall" in rule 18(3) is mandatory; see, for example, *Petit v Bonte* [2000]SCCA 1 (SCA45/1999) [2000]SCCS 13 (14 April 2000); *Chetty v Esther* (SCCA 1 (SCA 44/2020) (appeal from MA No. 156/2020 and MC No. 69/2020; *Elmasry and anor v Hua Sun* (SCCA66) 17 December 2021) SCA 28/2019 (Arising in CC13/2014) SCSC451. In **Petit** [supra], the Court of Appeal stated —

"It is important to note that Rules of Court are made in order to be complied with. Without complying with and should the Court allow that to happen, then it is both sending wrong signals and establishing precedent, which may eventually lead to flouting and abuse of the whole court process. That should not be allowed to happen [...]".

100. For the reason stated above, we are duty bound to strike out ground 4 of the grounds of appeal.

Decision

101. We note that learned Counsel for the Appellant raised the point pertaining to delay in conducting the trial. At this stage of the proceedings, we leave it to the Appellant to present this issue to the learned Chief Justice for his consideration or before the Constitutional Court.
102. For the reasons stated above, the appeal stands dismissed in its entirety.

F. Robinson, JA

I concur

Dr. L. Tibatemwa-Ekirikubinza, JA

I concur

D. Esparon, J

Signed, dated and delivered at Ile du Port on 10 February 2023

DR. L. TIBATEMWA-EKIRIKUBINZA JA

Summary: Appeal against the Ruling of the Supreme Court (Govinden C.J) for declining to enlarge bail.

Heard: 8 August 2022.

Delivered: 10 February 2023.

ORDER

Bail is declined and the application is hereby dismissed.

RULING (in support)

DR. LILLIAN TIBATEMWA-EKIRIKUBINZA, JA.

103. I have read in draft the decision of my learned sister Fiona Robinson, JA first sent to me on 3rd February 2023. The final draft was availed to me on 10th February 2023 and again I had opportunity to read the draft.

104. First, I agree that the Court of Appeal has jurisdiction in the matter.

105. Secondly, I agree with the learned Justice's analysis and conclusion that the appeal should be dismissed.

106. However, I have found it prudent to throw more light on ground 1 (d) presented by the appellant because one may even consider it to be the crux of the appeal.

107. Ground 1 (d) states as follows:

“The Supreme Court’s approach to the grant of bail was wrong in principle, in that it: (d) failed to apply the constitutional right to bail properly.”

108. My understanding of that ground is that in considering the application for bail, the Supreme Court was not mindful that Bail is a constitutional right.

109. A Court charged with the duty of determining a bail application must be guided by several provisions of the Constitution to wit Article 18 (1), (2), (7) and Article 19 (2) of the Constitution.

110. An application for bail or remand, gives rise to the very fundamental question as to when the right to liberty guaranteed by Article 18(1) of the Constitution can be restricted. According to the Article, every person has a right to liberty.

111. However, Article 18 (2) recognizes that circumstances may warrant the restriction of the Right to Liberty. It provides:

The restriction, in accordance with fair procedures established by law, of the right under clause (1) in the following cases shall not be treated as an infringement of clause (1)—

(a)the arrest or detention in execution of a sentence or other lawful order of a court; (My emphasis)

112. In my view, where a person is subjected to fair procedures established by law and is detained while awaiting trial, such restriction of their liberty would not be a violation of the Constitution. On the contrary, the person would be in custody following a lawful order of the court.

113. A reading of the first part of Article 18 (7) may lead to a proposition that bail is an absolute right because the first part of the provision is couched in mandatory terms. The Article states as follows:

A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial ... (My emphasis).

114. Nevertheless, it must be noted that the said provision also envisages that circumstances pertaining to a particular case or accused person may necessitate a court to make an order that the person be detained while awaiting trial. The ending part of Article 18 (7) provides **exceptions** to the rule thus:

... except where the court, having regard to the following circumstances, determines otherwise—

(a).....

(b)the seriousness of the offence;

(c)there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;

(d) there is a necessity to keep the suspect in custody for the suspect's protection or where the suspect is a minor, for the minor's own welfare;

(e) the suspect is serving a custodial sentence;

(f) the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.

115. It follows therefore that the right to liberty is not absolute. A person may be detained while awaiting trial if the court is of the view that the circumstances fall either under paragraph (b) or (c) of Clause 7 (supra). What is important is that the decision to detain an individual is a result of fair procedures established by law, that the decision by court is not arbitrary. The Constitution has provided guidance to courts as they consider applications for bail.

116. It must however be emphasized that, the court must always be mindful that an accused person, by virtue of Article 19(2) (a) of the Constitution, is innocent until proven guilty. That has to be the premise when adjudicating or ruling on applications for bail.

117. It follows that bail may only be denied after the court has **properly ascertained** that compelling reasons exist in law, and on the facts (for example as guided by Article 18 (7)

(b) and (c)), which justify denial. A court considering an application for release on bail must balance the constitutional rights of an accused, with public interest considerations. Continued detention can be justified in a given case if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the respect to individual liberty.

118. In resolving the aforementioned ground, the question to be answered is: *whether in coming to the decision that the appellant would be detained while awaiting trial, the Trial Court acted arbitrarily?*
119. In all cases, it must be evident on record that a Trial Court seized with a bail application addressed its mind to what was presented by the applicant as justification for release on bail on the one hand and the factors presented by the Prosecution objecting the release on the other hand.
120. A reading of the Ruling appealed against in the matter before us clearly reveals that the Learned Chief Justice addressed his mind to the factors presented by the appellant in support of her case that she be released on bail and even made reference to them in his analysis. In summary, the factors presented by the appellant were her personal history, community ties, good character and being a first time offender.
121. In regard to the said factors, the Judge stated that:
“the personal history of the 2nd accused is of little relevance to the court in this case when it comes to deciding whether to release her on reasonable bail conditions. The accused has never been charged with all these serious offences before. These new sets of circumstances may create a greater likelihood of her tampering with the evidence or absconding the jurisdiction irrespective of her alleged past good conducts. I say this bearing in mind the economic and social influences that she holds as averred by the prosecution. Accordingly, I find that this is not a ground that justifies her being released on bail in this case.”

122. On the other hand, the factors presented by the Prosecution were that the appellant was charged with serious offences, poised a risk of absconding from court's jurisdiction and tampering with the Prosecution's evidence. In assessing these factors, the Supreme Court Judge stated that:

“where there are reasonable grounds to infer that the grant of bail may lead to absconding which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail ... this court is of the view that there exist reasonable grounds to believe that the grant of bail may lead to the 2nd accused absconding or tampering with evidence of the prosecution witnesses and this cannot be effectively eliminated by the imposition of reasonable conditions of bail.”

123. Having considered the factors presented by the appellant and juxtaposing them with the reasons given by the Prosecution, the Learned Chief Justice came to the conclusion that in the circumstances of the particular case, the reasons presented by the Prosecution outweighed the appellant's case and indeed the factors in her favour receded to the background.

124. It is my conclusion therefore that the Learned Chief Justice did not use an arbitrary approach in declining to grant bail. The Judge assessed the circumstances of the case and exercised his discretion judiciously. Indeed, he balanced the constitutional rights of the accused such as presumption of innocence and the right to liberty, with public interest considerations.

125. I find no reason to depart from the reasoning of the Supreme Court.

Conclusion

126. Arising from the above discussion, it is my considered view that bail be declined and the application be dismissed.

127. Nevertheless, in the interest of justice, the matter should proceed for trial at the earliest possible instance since the appellant has been on remand since 30th November 2021.

Dr. Lillian Tibatemwa-Ekirikubinza, JA.

Signed, dated and delivered at Ile du Port on 10 February 2023.