

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
FH49/2021

In the matter between :

THE ANTI-CORRUPTION COMMISSION
(*rep. by Mr A. Juliette*)

and

Mukesh Valabhji
(*rep. by Mr B. Houareau*)

1st Suspect

Laura Valabhji
(*rep. by Mr B Houareau*)

2nd Suspect

Neutral Citation: The Anti-Corruption Commission v N Mukesh Valabhji and Wife
(FH49/2021 [2021] SCSC (19 November 2021

Before: Govinden CJ,

Summary: Bail denied; prima facie case for remand established; offences serious;
substantial ground to suspect that suspect interfere with the evidence and
abscond

Heard: 19 November 2021

Delivered: 19 November 2021

ORDER

The Anti-Corruption Commission has proven that there is a *prima facie* case to detain all of suspects in custody in pursuant to Section 101(1) of the Criminal procedure Code, herein after also referred to as “*the Code*”, read with Article 18(7) (b) and (c) of the Constitution.

GOVINDEN CJ

- [1] The Anti- Corruption Commission (the ACCS) having the right to prosecute their own cases under Section 64 as read with Article 76(4) (b) and (C) of the Constitution has commenced a prosecution against the 1st and 2ND Suspects .Prosecution is the institution and conducting of legal proceedings against someone in respect of a criminal charge. These proceedings as they sometimes do, will include, as in this case, applications for detention of suspects under Section 101(1) of the Code. This is what the ACCS is doing by filing two separate applications for further holding against each suspects under the said provisions.
- [2] At the outset I wish to point out that one application would have sufficed there is no prejudice shown by the filing two separate applications under Section 101(1) in the same criminal proceedings. This is especially so given that when I read the relevant section it talks of a person who has arrested shall be produced before the court and the person who is holding him or her shall apply in writing for the further holding of the suspect. Apparently therefore it makes sense to have two separate applications on the same proceedings. What should matter should be that both are duly supported and on a prima facie basis manages to prove to the court that they satisfy Section 101 and Article 18(7) of the Constitution
- [3] The application with regards to Mr Mukesh Valabhji avers that he was arrested on the 18th November 2021 .
- [4] The nature of the offences that he is suspected of is Official Corruption, contrary to the provisions of the Anti-Money Laundering Act; Official Corruption, contrary to Chapter X, section 91 of the Penal Code 1955; Money Laundering, contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021.
- [5] As to the general nature of the offences it is averred that the anti-corruption investigation is concerned with an initial theft of \$50million arising from a loan/grant from Abu Dhabi state in 2002. Government records show that the funds were misappropriated and never

included in the accounts of the Republic of Seychelles and as such were never available for their intended purpose which was to assist in the national balance of payment deficit.

- [6] The funds were deliberately misdirected to private company accounts and subsequently, we believe, used to purchase government assets in the form of the COSPROH hotels, privatised over the course of 2002-2005. Preliminary enquiries further show that the funds used to purchase the hotels were again then misappropriated and removed from government accounts.
- [7] Over the course of the intervening 19 years there have been numerous transactions involving the misappropriated funds and the assets associated with them which, in accordance with the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021, are likely money laundering offences.
- [8] In relation to this offence, the aforesaid Mukesh Valabhji was engaged as the Chief Executive Officer to the Seychelles Marketing Board (SMB) and as such had control of the operating bank accounts. He was a named signatory.
- [9] He was a principal architect in the acquisition of a loan made by the Abu Dhabi State to assist in government balance of payments in 2002. The monies associated were received and held in an SMB account before onward transmission to a variety of worldwide accounts with no ostensible connection to the business of the SMB. The loan is not detailed or recorded in any government account or gazette.
- [10] The onward transmission of the funds amounts to the laundering of the proceeds of this initial crime but in fact the funds were apparently returned to the Seychelles to pay for hotels sold in the privatisation of the COSPROH holdings. The sums involved form a large portion of the misappropriated assets and led to the hotels moving to private hands under the control of Valabhji and other involved persons.
- [11] The funds used to pay for the hotels were then diverted again from the COSPROH recipient account by way of "Director's Dividends". At the time, there were only two directors to the COSPROH entity of which Valabhji was one. Moreover, COSPROH was heavily in debt to the Government of Seychelles at the time and should not have allowed

for any dividend on that basis. Valabhji was appointed to oversee the hotel privatisation at the time.

- [12] The Applicant avers that the following are the enquiries that has been undertaken so far; the suspect has been arrested; Some witnesses have been interviewed; the suspect has been interviewed and; exhibits have been seized; In addition to material sought in relation to the offence, weapons and ammunition have been discovered; high value assets such as jewellery and an extensive and expensive wine cellar have been found during the execution of search warrants
- [13] The Applicant however avers that the following subsequent enquiries still need to be carried out by the ACCS:- Other witnesses to be interviewed; further search warrants to be executed; further arrests and interviews of additional suspects; analysis of computer and digital records; international requests for assistance; Production Orders on international financial institutions; evaluation of seized mobile phones; Evaluation and analysis of material seized under 3 search warrants already executed.
- [14] The reasons for further holding being put forth fir the detention of the suspects are that; the alleged offences of Official Corruption, contrary to Chapter X, section 91 of the Penal Code 1955 and Money Laundering, contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021 are serious in nature and carry maximum sentences of 7 years and 15 years respectively.
- [15] There are substantial grounds for believing that if the suspect is released on bail he will interfere with witnesses and otherwise obstruct the course of justice due to the wealth and influence he holds.
- [16] That the weapons and ammunition found on the premises highlight an ability to further threaten and intimidate witnesses again in obstruction of justice.
- [17] That in light of the suspect's considerable assets both home and abroad, such are the terms of imprisonment if convicted, that the suspect presents a likely flight risk if granted bail.

- [18] Such is the subject's recognised wealth there can be no amount of security, surety or condition to his bail that would alleviate the risk of flight.
- [19] The complainant in this matter is the Republic and People of the Seychelles and in the interest of society in general and the defendant in particular, were he to be granted bail it would present as a serious threat to public order and the safety of the defendant.
- [20] And finally that he suspect has wealth and influence sufficient to hinder the investigation of other parties and to obstruct justice in relation to the furtherance of the investigation.
- [21] The application is supported by the Affidavit of Patrick Humphery, an officer and investigator based at the Anti-Corruption Commission of Seychelles, Providence, Mahe. This affidavit substantially aver to; attest replicate the substance of the Application.
- [22] The Application with regards to Mr Laura Valabhji avers that she was arrested on the 18th of November 2021.
- [23] The offence that she is suspected of is Money Laundering contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021.
- [24] As to the general nature of the offences it is averred that the anti-corruption on investigation is concerned with an initial theft of \$50million arising from a loan/grant from Abu Dhabi state in 2002. Government records show that the funds were misappropriated and never included in the accounts of the Republic of Seychelles and as such were never available for their intended purpose which was to assist in the national balance of payment deficit.
- [25] The funds were deliberately misdirected to private company accounts and subsequently, we believe, used to purchase government assets in the form of the COSPROH hotels, privatised over the course of 2002-2005. Preliminary enquiries further show that the funds used to purchase the hotels were again then misappropriated and removed from government accounts.

- [26] Over the course of the intervening 19 years there have been numerous transactions involving the misappropriated funds and the assets associated with them which, in accordance with the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021, are likely money laundering offences.
- [27] In relation to this offence, Mukesh Valabhji was engaged as the Chief Executive Officer to the Seychelles Marketing Board (SMB) and as such had control of the operating bank accounts. He was a named signatory.
- [28] He was a principal architect in the acquisition of a loan made by the Abu Dhabi State to assist in government balance of payments in 2002. The monies associated were received and held in an SMB account before onward transmission to a variety of worldwide accounts with no ostensible connection to the business of the SMB. The loan is not detailed or recorded in any government account or gazette.
- [29] The onward transmission of the funds amounts to the laundering of the proceeds of this initial crime but in fact the funds were apparently returned to the Seychelles to pay for hotels sold in the privatisation of the COSPROH holdings. The sums involved form a large portion of the misappropriated assets and led to the hotels moving to private hands under the control of Valabhji and other involved persons.
- [30] The funds used to pay for the hotels were then diverted again from the COSPROH recipient account by way of "Director's Dividends". At the time, there were only two directors to the COSPROH entity of which Valabhji was one. Moreover, COSPROH was heavily in debt to the Government of Seychelles at the time and should not have allowed for any dividend on that basis. Valabhji was appointed to oversee the hotel privatisation at the time.
- [31] Significant assets have accrued over the time elapsed since the original theft and there have been numerous companies, both in Seychelles and offshore, used to create the appearance of varied ownership or to hide the origination of the associated funds. Laura Valabhji occupies a key role in the management of these assets through companies

formed under her guidance and control from offices in the 3rd floor suites to Capital City Building and at home.

- [32] Over the past 19 years the assets of the Valabhji family have grown substantially and as a member of that family, Laura Valabhji has enjoyed the trappings of that wealth. It is inconceivable that she was unaware of the origin of the wealth as it was coincident with crucial events and equally required her assistance in both growing and hiding the assets over this period. Her training and career experience as a lawyer leaves it doubly certain that her knowledge and complicity are a given in this matter.
- [33] As to enquiries that the ACCS has carried out so far; it is averred the following; the suspect has been arrested; some witnesses have been interviewed; suspect has been interviewed and; some exhibits have been seized; in addition to material sought in relation to the offence, weapons and ammunition have been discovered and high value assets such as jewellery and an extensive and expensive wine cellar have been found during the execution of search warrants
- [34] The Applicant put forward the following reasons further enquiries which it needs to do in this case; Other witnesses to be interviewed; further search warrants to be executed; further arrests and interviews of additional suspects; analysis of computer and digital records; International requests for assistance; production Orders on international financial institutions; evaluation of seized mobile phones and Evaluation and analysis of material seized under 3 search warrants already executed.
- [35] Reasons why the Applicant wants to further hold Ms Valabhji are as following;) That the alleged offence of Money Laundering, contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021 are serious in nature and carry maximum sentences of 7 years and 15 years respectively.
- [36] There are substantial grounds for believing that if the suspect is released on bail she will interfere with witnesses and otherwise obstruct the course of justice due to the wealth and influence she holds.

- [37] That the weapons and ammunition found on the premises highlight an ability to further threaten and intimidate witnesses again in obstruction of justice.
- [38] That in light of the suspect's access to considerable assets both home and abroad, such is the term of imprisonment if convicted, that the suspect presents a likely flight risk if granted bail.
- [39] Such is the subject's recognised wealth there can be no amount of security, surety or condition to her bail that would alleviate the risk of flight.
- [40] The complainant in this matter is the Republic and People of the Seychelles and in the interest of society in general and the defendant in particular, were she to be granted bail it would present as a serious threat to public order and the safety of the defendant.
- [41] The suspect has access to wealth and influence sufficient to hinder the investigation of other parties and to obstruct justice in relation to the furtherance of the investigation.
- [42] The application is supported by the Affidavit of Patrick Humphery, an officer and investigator based at the Anti-Corruption Commission of Seychelles, Providence, Mahe. This affidavit substantially aver to; attest replicate the substance of the Application.
- [43] Learned counsel for both suspects strenuously resisted the two remand applications, with regards to his 1st client he submitted that above everything else an applicant in these kinds of applications must show on the facts that there is a prima facie case in respect of the suspects on the facts before it proceeds to adduce the grounds for further detention. In that regards, he argued that the only factual averments against his client are found in the last two paragraphs of page two of the application and that those two paragraphs only gave vague statements of the alleged riles of the 2nd suspect in the commission of the suspected offences, with no real and actual evidence with regards of being involved in companies as means to hide the proceeds of the alleged misappropriation in this case. He submitted no prima facie case having been established with regards to even her awareness as to the so called illicit origin of the wealth of the Valabhj's. Accordingly, he submitted that the matter should end there and the court should not go on to look into whether there are provable grounds for detention.

[44] As to the grounds for further detention being adduced by the Applicant, Learned counsel submits that serious offence is not stand alone ground and unless there are additional grounds the court cannot rely upon this to remand his client.

[45] As to the other grounds adduced by the Applicant, counsel argued that the Applicant has to adduced that there are substantial grounds to suspect on the facts adduced that the two the two suspects will abscond. However, he went on to argue that beside alluding to this may happened because of the wealth that they hold there has been no fact adduced to show any connection between the potential to abscond and the facts adduced. Learned counsel raises the same objections to all the grounds for further holding put forth by the Applicant and submits that the Applicant has not adduced enough facts that would be enough to convince this court that there are substantial grounds to suspect that they would abscond or interfere with witnesses. As a result he argues that the application should be dismissed as not proven

[46] Having thoroughly analysed and scrutinized the facts and circumstances of this application a contained in the Applications and affidavit and having heard the submissions of counsel of both the Applicant and the suspects, this court makes the following determinations;

[47] Firstly, the offences suspected against the two suspects are extremely serious the Offences of Official Corruption carries with it a maximum penalty of 7 years and that of Money Laundering suspected carries with it the maximum sentence of 15 years imprisonment.

[48] The nature and facts of the offences is also serious both suspects are being suspected to misappropriated either alone or together with others the sum of 50 million US dollars being a grant from the Abu Dhabi state in 2002. Without going to through a rehearsal of the facts of record I am satisfied that the Applicant has established a prima facie case that both suspects have been involved in and are suspected to have committed the sad misappropriation , through different strategies and subterfuges. These funds should have ended in the coffers of the Government of Seychelles and assist in our national development , it did not . This aggravates the seriousness of the suspected offences as it's

a huge sum of money; its alleged misappropriation affected the general well being of the society and was allegedly done by the 1st suspect someone in authority and having the trust of the nation in connivance with the 2nd suspect.

[49] I satisfied that the facts shows that a prima facie case is proven with respect of the offences with regards to both suspects. As far as the 1st suspect is concerned it is averred that there have been numerous companies, both in Seychelles and offshore, used to create the appearance of varied ownership or to hide the origination of the associated funds. Laura Valabhji occupies a key role in the management of these assets through companies formed under her guidance and control from offices in the 3rd floor suites to Capital City Building and at home. To me that consist of prima facie evidence at the stage of the investigation. As to what are those companies and how and when they were uses to launder wealth that is neither here nor there at this stage of the proceedings. Suffice to say that it compels this court ti find that there is a need maybe for the Applicant to dig further.

[50] As a result of the extremely serious nature of these offences it is clear that there exist substantial grounds to suspect that both suspects, who appear to be high net worth and have the means to leave the jurisdiction at will, would abscond and therefore will defeat the due course of justice in this case. In the same vein I find as established that there also exist substantial ground for this court to believe that if enlarged both suspects will attempt to interfere with the investigation, which is still in the very early stage and as a result also defeat the due course of justice in this case.

[51] Moreover, I find also that there are still vital and sensitive investigation that needs to be under taken by the ACCS that are still outstanding and if released both suspects may interfere and attempt to jeopardise these investigation. These are witnesses to be interviewed; further search warrants to be executed; further arrests and interviews of additional suspects; analysis of computer and digital records; international requests for assistance; Production Orders on international financial institutions; evaluation of seized mobile phones; Evaluation and analysis of material seized under 3 search warrants already executed. The offences allegedly started over 19 years ago and took place over a

number of years, through a number of activities and using apparently different means , it will take time energy and resources to investigate.

[52] As a result of these reasons, I will grant the application and remand both suspects in custody for 14 days, they would be brought to court on the 3rd of December at 2pm

[53] I want to emphasis that any determination of facts in this Ruling is done only for the purposes of this application form on a prima facie basis and that the do not consist of any determination of facts beyond a reasonable doubt, that can only be made at the trial stage.

Signed, dated and delivered at Ile du Port on 19 November 2021

Govinden

Chief Justice