

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC ...

FH50/2021

In the matter between:

REPUBLIC

(rep. by Mr. Tachett)

PROSECUTION

and

MUKESH VALABHJI

(rep. by Mr. Basil Hoareau)

1ST SUSPECT

LAURA VALABHJI

(rep. by Mr. Basil Hoareau)

2ND SUSPECT

Neutral Citation: Republic vs MukeshValabhji and anor FH49/2021[2021] SCSC 9792

Before: Govinden CJ

Summary: Prima facie case for remand established; offences serious; substantial grounds to suspects that suspect may interfere with the evidence and or abscond.

Heard: 19 November 2021

Delivered: 19 November 2021

ORDER

Govinden CJ

[1] This is an application for further detention of suspects under Section 101 (1) of the Criminal Procedure Code. The Applicant is Detective Corporal David Simeon attached to the CID at Bois de Rose Police Station.

[2] The application is duly supported by the Applicant of Detective Corporal Davis Simeon himself. The two suspects are MukeshAbhaiyakumarValabhji and Laura Agnes Valabhji both of Morne Blanc, Mahe. They were both arrested on Thursday 18th November 2021

and has been brought before Court following the first 24 hours administrative detention by the Police.

[3] The suspects are suspected to have committed the offence of possession of firearms and ammunitions contrary to Section 89(1) of the Penal Code as amended in 2021 and the offence of purchasing, acquiring, or having possession of firearms and ammunitions without a firearms license contrary to Section 4 of the Firearms and Ammunitions Act.

[4] The general nature of evidence upon all the suspect were arrested can be summoned as follows;

A search was carried out by the Police in the company of the Officers of the Anti-Corruption Commission at the residence of both suspects on Wednesday the 18th of November 2021.

[5] As a result of the search the following firearms and or ammunitions were seized in the upstairs bedroom drawer of the two suspects.

[6] One Dragunov Russian Caliber 7.62.54R Sniper rifle bearing reg. number 00502169 with two empty magazine in a black casing.

[7] From the same bedroom the Police found 2 airtaser cartridges, one airtaser defence system, one pistol cross bow in a box; two steel stick with sheath, two self-defence pepper spray, one security plus 100,000 voltstaser, two ash batons and one PLMP 7B 2B94 grenade gas canister.

[8] During the same search in the wine cellar the Police seized one large brown empty ammunition box with number 6 engraved on it; three brown boxes containing amunitions with the following information engrave on it; one brown box with an empty amuntion containing 16kg of 7.62 X 54mm FM 7156 400 pieces; two 32kg each container containing 2560 pieces of 9X18mm bullets FMJSCon one of the 32kg the name "Leslie" is written on the box and the number 7 on the other.

[9] Later a black back pack in the downstairs office containing a sealed khaki FMJIIC of 1280 pieces of ammunitions 9X18mm were found. Downstairs in an office was also

seized a Makarov Pistol bearing No BE 393578 9X18m and a 9X18mm black barrel. In a drawer in the same office the Police seized a makarov magazine of 8 round of 9mm, an empty cartridge and a pen knife. Also seized later was a black flare gun with several empty cartridges in a room in addition to a black electric taser on the night stand.

[10] The Applicant avers that the Police Armorer was on the scene and conducted safety procedure with the firearm and ammunitions. His preliminary analysis has shown that both firearms and ammunitions seized are sevicable and that they do not come from the Seychelles Police Forces.

[11] Preliminary examination has also lead the Police to find out that both suspects had no licence to hold or acquire such ammunitions and firearms. The Police thereafter seized the firearms and ammunitions and kept them for the purpose of investigations. The Police have carried out a number of investigations concerning the suspected offences and they need to carry out further enquiries including questioning other suspects and they need to search and seize other possible ammunitions and firearms at large and, that came from the suspecte premises amongst other enquiries.

[12] As to reasons that the Police is asking the Court to consider detaining the suspects further the Applicant avers that the offences are very serious in that possession of firearms carried the maximum sentence of 15years and a fine not exceeding one Million Rupees.

[13] Secondly,they aver that the empty boxes of arms and ammunition gives the Police reasons to believe that the firearms and amunitions has been distributed by the suspects to other co-suspects who may be at large and the Police need to trace and seize them. The Police further suspects that these firearms and ammunitions whereabouts are well known by the 2 suspects and if enlarging them at this stage means that they will tamper with the evidence.

[14] Further it is averred that the suspects are engaged in a criminal network that is connected with the missing firearms and ammunition that they may jeopardise National Security and they need time to investigate. It is averred as to the aggravation of the offence that one of

the firearms being Dragonov rifle is a sniper rifle which if it had been distributed would have risk human lives.

[15] Given the seriousness of the offence the Police further avers that if released both suspects will abscond and obstruct the due course of justice or otherwise tamper with the evidence at this important stage of the investigation. For these reasons the Applicant moves that they both be remanded in custody.

[16] Mr. Hoareau the learned counsel for the suspects does not for the time being challenge the prima facie case adduced by the Applicant. Instead he raised a legal argument saying that the Applicant should have been brought by the Police Officer detaining the suspects and not by Mr. Simeon being only an investigating Officer. He founds his arguments on the plain reading of Section 101(1) of the Criminal Procedure Code says that “*a Police Officer or other person who is holding a person without a warrant may while the Police Officer or other person has reasonable ground for believing that the holding of the suspect beyond 24 hours necessary produce the suspect to Court*”. He argues that the suspects were under the detention of Officer Patrick Humphrey of the Anti-Corruption Commission it should have been that Officer who should have brought the Applicant and it would then have been then supported by the Police.

[17] Mr. Hoareau thereafter went on to attack and dispute each grounds put forward by the Applicant to justify the further holding of the two suspects. He argues that seriousness of the offence is not a ground per se to detain the suspects. In respect of each ground he avers that the averments adduced are not enough to convince this Court that there are substantial grounds to believe that the two suspects would either abscond or interfere with the evidence if released even on stringent condition. He thereafter conceded that this case is a fit case for the Court to release the suspects on stringent conditions.

[18] I have throughoutly scrutinized the facts and circumstances that arises before me out of the affidavit and the application of the Applicant and the submissions of both counsels in this case. As to the arguments of learned counsel for the Defence that Mr. Simeon had no locus standi to make the application I am of the view that learned Defence Counsel interpretation is too restrictive of Section 101(1) of the Criminal Procedure Code. When

I give a purposive interpretation to that provision I find and come to the following interpretation; a Police officer holding a suspect can produce that suspect to the Court provided that Police Officer is acquainted to the facts and circumstances of the case. This would include an Investigating Officer and this is commonly done in most of the 101 remand application before this Court and the lower Courts. One has to note that no one single Police Officer can hold a suspect, to use his argument. The suspect is held by the Police and the Police is under the command of the Commissioner of Police and the Police Officers under his command holds and arrest suspect as Police Officers. In that regards “holding” has to be given a liberal interpretation it would include any Police Officer directly concerned or involved in the case and not necessary that person actually holding that person in detention. The argument of counsel holds a fallacy that only a mere detaining Officer of a suspect has a capacity to come and produce him to Court whether or not he is acquainted with the facts of the case upon which the application is made. The argument referred by counsel for the Republic also stands good. Mr. Humphrey could not have been the Applicant in this application as he would had no locus standi; the offences suspected of in this case falls under the competence of the Seychelles Police only and not that of the Anti-Corruption Commission.

[19] As to the other arguments of counsel regarding the grounds adduced for further remand of the suspects, I reject his arguments in their entirety. As the facts of this case has convinced me that the Applicant have managed to prove all the grounds adduced from (i) to (x) and that the reasons for requesting further holding of the suspects is proven substantially, there are substantial grounds for this Court to believe that if the suspects are enlarged on bail at this stage they will either abscond or obstruct, interfere with the due course of justice given the magnitude of the consequences if they are convicted of the offences based on the facts prima facie adduced before this Court.

[20] The Court has found that the facts adduced so far by the Applicant shows that there was almost an arsenal of firearms and ammunitions at the private residence of the two suspects. The amounts of bullets cannot be explained in a private citizens house. Why they were there and under what circumstances and for what purpose it is still a matter for summarisation at this stage, which means that the Police needs time and opportunity to

investigate. This together with all the aforementioned reasons lead me to conclude that the Police has managed to convince me that there are substantial grounds to believe that if enlarged both suspects would either flee or obstruct the due course of justice by tampering the evidence relating to these very serious offences.

[21] Accordingly, I grant the application. The two suspects shall be remanded up to the 3rd December at 2pm when they shall be brought before the Court.

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

R. Govinden

Chief Justice