



- [1] This is an application made under Section 101(1) of the Code as read with Article 18 (7) of the Constitution. The Applicant is Patrick Humphrey an Officer of the Anti-Corruption Commission, herein after also referred to as the ACCS. The Application is duly supported by the Affidavit of the Applicant.
- [2] The suspected offences are Money Laundering, contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021.
- [3] The general nature of the offences put forth in support of this application can be summarised as follows; the anti-corruption investigation is on investigating with an initial theft of \$50million arising from a loan/grant from Abu Dhabi state in 2002. Government records shows 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.
- [4] The Applicant avers that the funds were deliberately misdirected to private company accounts and subsequently, it is believed, was used to purchase government assets in the form of the COSPROH hotels, privatised over the course of 2002-2005. According to the ACCS preliminary enquiries further show that the funds used to purchase the hotels were again then misappropriated and removed from government accounts.
- [5] 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 suspected to be money laundering offences.
- [6] It is averred that in relation to the suspected offences Mr 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. He is the prime suspect in the ongoing investigation.
- [7] It is averred that at the time of the initial theft the suspect in this case occupied the senior post of Director General at the Ministry of Finance. It is averred further that following receipts of the Abu Dhabi funds to the Federal Reserve account in New York she

received a call from Mukesh Valabhji, the prime suspect, instructing her to transfer the funds to an SMB account held at the Bank of Baroda in London. This was followed by a Memo, on the same day from an SMB member detailing the recipient account at Baroda.

- [8] The account involved was a new account set up by Valabhji for the specific purpose of diverting the funds and it appears that the suspect made no attempt to verify the account details or the genuineness or the nature of the transaction despite this being a different account to the one commonly in use by the SMB.
- [9] It is the case of the Applicant that following the receipt of the funds and the transfer to the diverting account it would be expected that the Director General would file a record of the loan and disposal within government annual financial accounts for 202 held at the National Library. This did not take place. Accordingly, no receipt of the funds existed and that her conduct assisted the theft architect in hiding the origination and disposal of the funds for many years.
- [10] Due to time constraint it is averred that the Applicant has not been able to assess the suspect explanations given by way of a written statement with the entirety of the facts of the case.
- [11] The reasons for further holding being put forward includes the seriousness of the offences, which carries with it the maximum of 15 years; that the suspect might use her wealth and influence and abscond, if released on bail; that the weapons and ammunitions found at the premises of an associate highlight an organized enterprise that has the ability to threaten witnesses; that the suspect has access to the co-conspirators huge financial backing and no amount of surety would alleviate the flight risk and that the suspect if released would pose a threat to public order.
- [12] Learned counsel for the suspect strenuously resist the remand application. He argued that no prima facie case has been established in relation to his client given that she sought approval from the then Minister of Finance, through the Principal Secretary of this Ministry and further that she relied on a written instruction from the Financial Controller before giving instructions to transfer the funds from the government account to the SMB

account. Moreover, he submitted that in her written explanations the suspect clearly stated that at the time Mukesh Valabhji was the Economic Advisor to the President and she had no option but to comply. It is also submitted that the reasons why the loan was not subject to disclosure was that unusually the grant was not the subject matter of a Note Verbal and at any rate it is the duty if the PS for Finance to disclose and not that of the suspect.

[13] Learned counsel also raised a legal objection to the legality of the suspected offences in this case in that there is no averments that the offences were an ongoing offences with regards to the suspect in order for it to be caught under the definition of money laundering under the 2020 Anti-Money Laundering and Countering of Terrorism Act.

[14] Learned Defence counsel also further raised a legal objection to the legality of the affidavit in support of the application in that the jurat of the affidavit is not on the same page of the affidavit or at least is not included with part of the substantive affidavit. He relied on a number of authorities of this court in support of his argument.

[15] Thereafter, he raised objections to each grounds tendered in support of the grounds for further detention, his argument was mainly that they are unsupported and unsubstantiated.

[16] Having thoroughly analysed and scrutinized that facts and circumstances of this application as contained in the Application and affidavit and having heard the submissions of counsel of both the Applicant and the suspect this court makes the following determinations ;

[17] The jurat of an affidavit has to contain also part of the body of the affidavit. This makes good sense. It is there to prevent frauds and unauthorized additions to a legal document. In this case I am satisfied that the necessary precaution was taken and the supporting affidavit was not altered. The deponent who was in court supported this. Accordingly, I find no merits in this argument. As to the objections to the legality of the Application based on the fact that there is insufficient particulars in the Application to show the offences suspected of shows ongoing offences, being committed since 2002. I am

satisfied that the Application and the affidavit in support taken as whole attest to this. It shows the continuity of the conduct of the parties that could bring it within the extensive definition of the offence of money laundering under the 2020 Act. At any rate I am satisfied that at the time that the offence was committed to date the offence was known to law.

- [18] As to whether there is a prima facie case against the suspect on this case, the facts adduced by the Applicant reveals that the Suspect, was the Director General at the Ministry of Finance, Seychelles, at the time of the suspected initial theft of the Abu Dhabi funds. Following the receipts of the funds into the Government of Seychelles funds in New York she got a call from the prime suspect in this Case, Mukesh Valabhji, who instructed her to transfer it to Seychelles Marketing Board (SMB) account held at the Bank of Baroda in London. The prime suspect at that time was the head of the SMB. This was followed by a memo, on the same day, from an SMB member detailing the recipient account at the Baroda Bank. It is averred by the Applicant that this account was a new account set up by Valabhji for the specific purpose of diverting the funds. Following the receipts of the funds in that account, the Applicant avers that it was dispersed into other accounts controlled by the prime suspect.
- [19] The suspect as a public servant is blamed by the Applicant to have made no attempt to verify the account details or the genuine nature of the transactions despite this being a different account to the one used by the SMB . It is averred further that no records of the funds existed and the conduct assisted the theft architect in hiding the origination and disposal of the funds for many years.
- [20] Moreover, she is also taken to task for not filing a record of the loan and disposal within government financial accounts for 2002 held at the National Assembly.
- [21] However, produced in evidence in this case show an uncontroverted document that reveals that she did seek the consent of the then Minister for Finance , through the office of the PS, before she gave instructions for the transfer.

[22] In that respect I find that the offences that this suspect is suspected of, all carries with them mental elements. They are not of strict liability and as far as the facts of the case shows there is no mens rea established against this suspect on a prima facie basis. It appears that she might have carried out the instructions of someone who wanted to misappropriated the funds, however this is not enough to satisfies the court, intention to participate in the suspected offences has to be evident, at least to some extent at this stage. Further no averments are made as to any material benefit gained by the suspect from the proceeds of the alleged acts. I am therefore not satisfied, on a prima facie basis, so far, that she participated in the offences. To the most the facts shows that she breached financial regulations of the Ministry of Finance or should have been more diligent in her office.

[23] Accordingly, I will not proceed to look at the different grounds put forth for the further detention of the suspect and I will not accede to the request for further detention made by the Applicant. However, I am satisfied that the suspect still remains a person of interest and that her material participation in the facts of the case is important to the investigation of the ACCS and that further investigation may shows her greater involvement in the offences. Therefore, I will release the Mrs Lekha Nair on the following bail conditions under Section 101 (4) of the Code;

[24] She must surrender her passport and or travelling conditions with the Registry of this court.

- (i) She would sign a bail bond in the sum of SCR 50,000
- (ii) She would report to the Beau Vallon Police Station Every week on Mondays at 5pm in the evening.
- (iii) She must not interfere with the complainant or the ongoing investigation in this case.
- (iii) Her case will be mention on the 3<sup>rd</sup> of December 2021 at 2pm.

[25] I want to emphasis that any determination of facts in this Ruling is done only for the purpose of this application is form on a prima facie basis and that they 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 24<sup>th</sup> November 2021

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R Govinden  
Chief Justice