

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC 86
CO114/2021

In the matter between

THE REPUBLIC
(*rep. by Mr A. Juliette*)

and

MUKESH VALABHJI (<i>rep. by Mr Bonte</i>)	1st Accused
LAURA VALABHJI (<i>rep. herself</i>)	2nd Accused
LESLIE BENOITON (<i>rep. Mr Hoareau</i>)	3rd Accused
SARAH RENE (<i>rep. by Mr Cesar</i>)	4th Accused
MAURICE LOUSTAU LALANNE (<i>rep. by Mr Hoareau</i>)	5th Accused
LEKHA NAIR (<i>rep. by Mr Hoareau</i>)	6th Accused

Neutral Citation: *The Republic v Valabhji & ors* (CO114/2021) [2022] SCSC 86

Before: Govinden CJ
Summary: Ruling
Heard: 4th February 2022
Delivered: 4th February 2022

ORDER

Govinden CJ

1. Today is the end of the remand period of the 1st to 4th Accused in this case and a mention date for the 5th and 6th accused. Learned counsel for the Anti-Corruption Commission

informs the court that 2 pendrives containing about six thousand documents including some in audio format has been disclosed on the learned defence counsels in this case and the 2nd accused. This being the first batch of disclosure materials. He undertakes that he would make similar disclosures by the next date when this case is taken up before the court within 14 days time and thereafter do a similar disclosure on the next 14 days so that after 30 days from today the accused would have been disclosed the documents that the ACCS intends to rely in the trial and they would be in a position to take their pleas.

2. However, learned counsel also informs the court that this undertaking is not cast in stone and is subject to contingencies. However, he said that this is firm undertaking as he is aware of the need for documents to be made available on the defence as part of their rights to fair hearing. Nonetheless he submitted that the volumes of documents and their stretched resources made disclosure especially hard and forms a big challenge for them.
3. Mr Bonte learned counsel for the 1st accused confirmed that he had received the pendrives and documents in electronic format. However, he insisted that he needs to be permitted to view these documents on a computer in the presence of his clients for the purpose of the defence preparation.
4. Moreover Mr Bonte submitted that the 1st and 2nd accused who are husband and wife has a joint defence in this case and that at some point in time they would need to be together to prepare their defences.
5. Mr Juliette whilst not taking a position in respect of this application informs the court that fair trial means that the accused must be given the opportunities to go over the evidence with their lawyers. He also informs the court that he is aware that both the Montagne Posee prison, where the 2nd accused is being detained and the Takamaka police station, where the 1st accused is being detained has rooms and facilities that would allow the accused to speak to their counsel.
6. In respect of the provision of a laptop he submitted that he would not have any objections provided the laptops are verified prior by the technician of the ACCS, it is a new laptop and all WIFI facilities are removed.

7. Learned counsel for the 3rd, 5th, and 6th accused confirm having received the pendrives also. However, he insisted that the applicant lives up to its undertaking so that in one month's time his clients would be in a position to take their pleas.
8. He also submitted that he however expect the ACCS to make available properly paginated copies of documents.
9. The 2nd accused, who for these proceedings is representing herself, admitted to have received the disclosed pendrives. However, she also seek to be provided with a laptop without WIFI so that she can access the disclosed materials. She also informs the court that a printer has also to be made available to her just in case she needs to print out a document. She further reiterated the submission of learned counsel for the 1st accused in that at some point in time the 1st accused and herself should meet so that they can jointly view the documents disclosed and discuss their joint defences. She also insist that hard copies be made available at some point.
10. Learned counsel for the 4th accused, on the other hand, confirm receipts of the pendrives and he is hopeful that his client can take her plea on the 4th March. He has not made any specific applications and he informs the court that he will come to court and make applications if there is a need. He however join in the motions of all the other parties in this case.
11. I have carefully listened to the applications of all counsels and that of the 2nd accused on the issue of disclosure of prosecution materials. I have also given careful consideration to the submissions of learned counsel for the ACCS. The court note that as the accused persons are charged with an offence under article 19(2)(c) of the Constitution they have a right to be given adequate time and facilities to prepare a defence to the charge. What should be adequate facilities to prepare a defence has to be adjudicated based on the facts and circumstances of each case.
12. In this case as the documents are being disclosed in electronic format it would be reasonable to expect that facilities be made available to the detained accused so that these documents be viewed in an electronic format as they do not have access to such equipment

and facilities whilst in detention. Those have to be made available by the detaining authorities or the Applicant bearing in mind the need to ensure that the due course of justice is not affected by the provisions of those facilities and equipments.

13. Another aspect of fair trial that has arisen in this case is the issue of defences preparation. It speaks for itself that as the disclosed document can only be viewed and heard through the use of electronic equipments the lawyers for the detained accused would need to be present while the accused are reviewing the disclosed materials on their respective computers. This is the only way that they would be able to give proper instructions to their counsels.
14. Further, defence preparation also arises in another angle when it comes to the 1st and 2nd accused. They say that they have a joint defence. If that be the case adequate facilities have to be made available for them to prepare this joint defence. That would necessitate that they be present physically together at some point in time so that they can discuss their defences whether in the presence or outside the presence of their respective counsels.
15. On the other hand the court should exercise reasonableness whilst addressing the issue of adequate time and facilities to prepare a defence and that cause for balance approach. In that regards it is clear that the nature of this case is such that there is huge of volume of documents to be disclosed. The offence is alleged to have taken place over a number of years and there are cross jurisdictional issues and they involved a number of accused. It would not be reasonable to expect the applicant to disclose all documents in physical format at one go. In that regards the court note the effort of the ACCS to make the documents available in a timely manner and the understanding of the defence in this respect.
16. Having come to these findings the court makes the following orders
 - (1) That a new laptop be made available to the 1st, 2nd, 3rd and 4th accused in this case. That all WIFI equipments and applications on these laptops have to be rendered inoperative. The said laptops have to be verified by the technician or technical officers of the Applicant before it is given to the Accused. And this has to be done as and when

it is required. These laptops have to be used only for the purpose of preparation of their respective defences of the accused and as such should contain only applications that would go towards viewing of the disclosed materials and printing of them. No other applications are warranted. Printing facilities have to be made available on an adhoc basis.

- (2) That the 1st and 2nd accused should be allowed to meet in the presence of their counsels, if they so want for the purpose of preparation of their defences. This has to be done subject to the security arrangement and detention protocol of the police. The place and time is left at the discretion of the Commissioner of Police and Commissioner of Prison. However, time has to be adequate.

In respect of physical disclosures for the purpose of taking the plea of the accused and defence preparation, it is clear that electronic disclosures would be sufficient provided that the disclosed documents are the only documents that is to be produced in the trial and that they are produced without alterations. However, the court take into consideration the undertaking of the Applicant's counsel and based on that calls upon the Applicant to disclose in physical format the maximum possible documents. These are the orders of the Court.

Signed, dated and delivered at Ile du Port on 4th February 2022



Govinden CJ