

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 1080
CM 97/2022

In the matter between:

THE COMMISSIONER OF POLICE
(rep. by *Georges Thachett*)

Applicant

and

MUKESH VALABHJI
(rep. by *France Bonte*)

1st Respondent

LAURA VALABHJI
(rep. by *Samantha Aglae*)

2nd Respondent

Neutral Citation: *Commissioner of Police v Valabhji & Anor* (CM 97/2022) [2022] SCSC 1080
(02nd December 2022)

Before: Burhan J

Summary: Section 26(5) of the Prevention of Terrorism Act. Extension of detention
Order for a further period of 60 days.

Heard: 02 December 2022

Delivered: 09 December 2022

ORDER

This court is satisfied that reasonable grounds exist for the detention order to be extended for a further period of 60 days with effect from the 09th of November 2022. The application to extend the detention for the said period is granted.

RULING

BURHAN J

- [1] On the 13 of September 2022 a detention order was issued by this Court valid for a period of 60 days in respect of property at Morne Blanc Title Number B39 under section 26 (4) of the Prevention of Terrorism Act (PTA) after hearing all parties to the application made by the Commissioner of Police (Applicant).
- [2] Thereafter on the 09th of November 2022, the Applicant made a further application supported by Assistant Principal State counsel Mr Thatchet under Section 26 (5) of the PTA for the renewal of the detention order for a further period of 60 days. The application was supported by the affidavit of Detective Sergeant David Simeon. The application was mainly based on the grounds set out in the earlier application on the basis that there were still reasonable grounds to suspect that the property has been used to commit an offence under the PTA.
- [3] On the 09th of November when the matter was taken up in the presence of all parties Mr. Bonte on behalf of the Respondents informed the Court that they would need time to respond to the application. The Court thereafter made the following order:
- "Giving due consideration to the facts set out in Sergeants Simons affidavit dated 09th November 2022, I extend the detention order for a period of sixty days, subject to the determination of the objections to be filed by the respondents"*
- [4] Thereafter learned Counsel Mr. Bonte moved for two weeks to file objections and the matter was fixed for the 25th of November 2022.
- [5] It is clear the Respondents were not denied their opportunity of expressing their views in respect of the extension of the detention order and further it is clear from the proceedings that as learned Counsel for the Applicant brought it to the notice of Court that the earlier given detention order was due to expire on the 12th of November 2022, to ensure the continuity of the detention order, the aforementioned detention order was made as the Respondents moved for time to file their objections. It cannot be said that the Respondents were not given an opportunity of being heard as it was the Respondents who moved for

time to be heard and the order given by this Court extends the period of detention subject to the determination of the objections of the Respondent. This clearly indicates that the Court is not precluded from changing its order extending the detention after hearing the objections of the Respondent. The said Order given by this Court does not only give the Respondents an opportunity of being heard, it gives them time to prepare for same, whilst at the same time ensuring the continuity of the detention order.

- [6] This Court is satisfied that the order and steps taken on the 09th November 2022 were correct and fair by all parties.
- [7] The main objections of the Respondents as borne out by the submissions of Mrs Aglae that despite the order of Court that the detention order refers only to parcel B39, the police are still on parcel B218 and they are controlling this property as well. She alleges that they are stealing and vandalising the said property and when asked to vacate the property B218 they are not doing so. Mrs Aglae stated that, “[T]hey are furthermore doing stealing and vandalising of the property and they refuse to vacate B218 even if there was an agreement between the parties”. She also complained of there being personal items of the Respondents’ child which still have not been released. Mrs Aglae further complained of the deplorable state of the premises and that the Applicant has done nothing about it. She also submitted that there are medications and medical reports that are required and they should be permitted to remove the food for the pets, the freezer the fridge. Mrs Aglae also referred to two vehicles being on the property B218 which need to be serviced. She requested that they be permitted to take the property which are not exhibits in this case. Mr Bonte too on behalf of the 1st Respondent reiterated the same facts before court.
- [8] Firstly, parties are informed that this detention order is in respect of parcel B39. This Court can only make orders in respect of B39 and matters in relation to B39. This Court cannot make orders in respect of properties situate on parcel B218. Therefore, all submissions made in respect of B218 and B217 are out of the purview of this Court. The Respondents may take the necessary legal action against the Applicant on the advice of their Counsel in respect of their allegations contained in paragraph [7] herein.

- [9] The 2nd Respondent also complains that she and the 1st Respondent have not been granted access to the property. It is to be borne in mind that the application before this court is only an ancillary application connected to the main case before the Trial Judge. This Court has made orders in respect of the detention of property and not made any orders in respect of the detention of the Respondents. Therefore, if any matter arises in respect of the movement of the Respondents to remove their personal belongings or security issues whilst in detention, application should be made to the learned Trial Judge hearing the case in whose custody they are in. An opportunity was given for the parties to amicably agree on certain issues but it seems to have failed.
- [10] In respect of the application for contempt of court application for failure to furnish court with a report as required in the order given on 13th September 2022, it appears from the explanation furnished by Detective Sergeant in his affidavit dated 1st December 2022 is that the police are awaiting a formal complaint to be made by the Respondents in respect of the items they allege in cross examination in court were stolen by the police. It also appears that the Respondents have also complained to the Trial Court in respect of a lost CCTV decoder. Meanwhile it is mentioned that the police themselves have initiated an inquiry and an investigation is ongoing in respect of items which they believe have gone missing from the house and would alert court the moment any arrests are made. I observe from the record that on the day an extension of detention order application was made another Counsel handled this matter as Mr. Powles was overseas. Therefore, I will accept this explanation at present.
- [11] It would be pertinent at this stage to refer to Section 26 (5) of the PTA which states: *"Subject to subsection (6), every detention order made under subsection (4) shall be valid for a period of 60 days and may, on application, be renewed by a judge of the Supreme Court for a further period of 60 days until such a time as the property referred to in the order is, where applicable, produced in Court in proceedings for an offence under this Act in respect of that property"*.
- [12] It is the view of this Court that since already a 60 day period of detention has been given to the Applicant, the Applicant should now decide whether the said property relevant to

this application and this order is to be produced in court in proceedings before the Trial Judge. Learned Counsel Mr. Powles should decide this issue and take the necessary steps by the next date for extension. Failure to do so and unnecessary delay on the part of the Applicant in doing so will imperil further applications for extension.

[13] This Court has already taken into consideration most of the other objections raised to the extension of the detention order in its initial order of detention dated 13th September 2022. There is no necessity to revisit these issues. The burden of establishing reasonable grounds that the property has been or is being used to commit an offence always rest on the Applicant. This does not in any way violate the presumption of innocence of the accused or effect the burden on the prosecution to prove the case against the accused beyond reasonable doubt.

[14] For all the aforementioned reasons and for the reasons set out in the Court order dated 13th September 2022 this court is satisfied that reasonable grounds exist for the detention order to be extended for a further period of 60 days with effect from the 09th of November 2022. The application to extend the detention for the said period is granted.

Signed, dated and delivered at Ile du Port on 09th December 2022.



M Burhan J