

IN THE SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC
CO114/2021

In the matter between:

THE ANTI –CORRUPTION COMMISSION
(rep. by Mr. Anthony Juliette)

PROSECUTION

and

MUKESH VALABHJI
(rep. by Mr. France Bonte)

1ST ACCUSED

LAURA VALABHJI
(In person)

2ND ACCUSED

ANDRE LESLIE BENOITON
(rep. by Mr. Mr. Basil Hoareau)

3RD ACCUSED

SARAH ZAQUARNI RENE
(rep. by Mr. Daniel Cesar and Mr. Joel Camille)

4TH ACCUSED

MAURICE JEAN LEONARD LOUSTEAU LALANNE
(rep. by Mr. Mr. Basil Hoareau)

5TH ACCUSED

LEKHA NAIR
(rep. by Mr. Basil Hoareau)

6TH ACCUSED

Neutral Citation: *Rep. vs Mukesh Valabhji & ors (CO114/2021) [2022] SCSC*
(CO114/2021)

Summary Bail application dismissed
Before: Govinden CJ
Heard: 25 March 2022
Delivered: 25 March 2022

RULING

Govinden, CJ

[1] The 2nd Accused in this matter stands charged with the following serious offences in this case;

Count 2

Statement of Offence

Conspiracy to commit Money Laundering contrary to sections 3(1)(c) and 3(3) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, and punishable under section 3(4) of the said Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020.

Particulars of Offence

Mukesh Valabhji of Morne Blanc, Mahe Seychelles, Laura Valabhji of Morne Blanc, Mahe Seychelles, Andrew Leslie Benoiton of La Louise, Mahe Seychelles and Sarah Zarqani Rene of Alsarello Lodge, Petit Barbarons, Mahe Seychelles during the period 1st March 2002 to 17 December 2021, at a place unknown in the Republic on Mahe, Seychelles, knowing or believing that the property, namely, \$50,000,000 (U.S. dollars) was or represented the benefit of criminal conduct, namely, official corruption and money laundering, agreed with one another to possess and acquire such money.

Count 11

Statement of Offence

Money Laundering contrary to section 3(1)(c) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020, and punishable under section 3(4) of the said Anti-Money Laundering and Countering the Financing of Terrorism Act, 2020.

Particulars of Offence

Laura Valabhji of Morne Blanc, Mahe Seychelles between 4 th October 2002 and 17 December 2021, in the Republic of Seychelles, was in possession of \$50,000,000 or part thereof, knowing or believing that such property, was or represented the benefit of criminal conduct, namely official corruption and money laundering, or being reckless as to whether the said property was or represented the benefit of such conduct

Count 22

Statement of Offence

Concealment of Property contrary to section 37(c) of the Anti-Corruption Act, 2016, and punishable under the same section of the said Anti-Corruption Act.

Particulars of Offence

Laura Agnes Valabhji of Morne Blanc, Mahe Seychelles was on 17 December 2021, in the Republic of Seychelles, in possession of \$50,000,000 or part thereof, with knowledge at the time of receipt of such property, that it was from the proceeds of corruption or

[2] Mr. Patrick Humphrey, an officer and investigator based at the Anti-Corruption Commission the ACCS, had filed affidavits in support of an application for the remand of the 2nd accused under Section 179 of the Criminal Procedure Code as read with Article 18 (7) of the Constitution following her indictment. In it he, amongst other things, avers as follows;

That the Respondent in this instance is Laura Agnes Valabhji, date of birth 30/11/1970 and resident at Morne Blanc, Mahe Seychelles.

That I have been concerned with the investigation in to an initial theft of \$50million arising from a loan or grant from Abu Dhabi state in 2002 to the Republic of Seychelles. I have been so engaged since September 2021. I have conducted certain enquiries with in particular UK financial and law enforcement institutions before this date, but due to the

possibility that these enquiries would become known to the parties involved, those enquiries have been limited in nature.

That the Seychelles Marketing Board was used as a conduit for the initial theft of the \$50million, the dispersal and subsequent laundering of the money to hide its true origin.

That government records and witness statements show that a high-level delegation attended the UAE in March 2002. It was headed by the then President, France Albert Rene and signed documents show that he authorised Mukesh Valabhji to receive and manage the funds resulting from this delegation.

That the stolen \$50 million was 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.

That 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 money laundering offences. 8. That Laura Agnes Valabhji is the wife/partner of Mukesh Valabhji since 1999 and he was engaged as the General Manager to the Seychelles Marketing Board (SMB) and as such had control of the operating bank accounts, he was a named signatory.

That Mukesh Valabhji was a principal architect in the acquisition of the \$50 million loan/grant 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.

That 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.

That Laura Agnes Valabhji occupies a key role in the management of these assets through companies formed under her guidance and control from her law offices in the 3rd floor suites to Capital City Building and at home.

That since the initial theft in 2002 the wealth and lifestyle of Laura Agnes Valabhji and Mukesh Valabhji has increased exponentially which I assert is due to them being beneficiaries of a major part of the stolen \$50million and its subsequent varied investments to conceal it being the proceeds of crime and support the luxury lifestyle of the Valabhji family.

That following receipt of information arising from UK sources, Government of Seychelles records and witness statements arising, a decision was made within the Anti-Corruption Commission, Seychelles that there existed sufficient grounds to suspect that Laura Agnes Valabhji was involved in money laundering offences and that to facilitate the investigation there were grounds and reasons to arrest the aforesaid individual.

That consequently Laura Agnes Valabhji was arrested on Thursday 18th November 2021 at 12:20 hours at the, Immigration Detention Centre, Seychelles International Airport, Pointe Larue, Mahe. She was subsequently taken into custody and her property and business addresses searched in accordance with search warrants relating to the given premises.

That she was advised of her constitutional rights and duly cautioned.

That on the 18th November 2021 at Central Police Station she was interviewed under caution in the presence of her legal advisor Priscille Chetty and stated the following:

- Her name was Laura Valabhji and resided at Morne Blanc*
- That her husband was Mukesh Valabhji and that they have been together since 1999*

- *That she was an attorney at law*
- *That she had received training in relation to anti money laundering due diligence procedures and provided the FIU of Seychelles with information as to the due diligence procedures she undertakes in her capacity as an attorney at law.*
- *That she exercised her right to silence in relation to questions concerning her own and her husband Mukesh Valabhji's business interests, property portfolios, income, source of wealth, ownership or directorship in any companies or banking information.*
- *That she exercised her right to silence in relation to property, safes and strong room's found during the search of her home at Morne Blanc.*
- *That she exercised her right to silence when questioned in relation to acting for her husband Mukesh Valabhji's in a legal capacity.*

That during the interview under caution Laura Agnes Valabhji gave no account nor denied the money laundering offences alleged against her.

That during searches conducted over a number of days at Morne Blanc large quantities of documentary material relating to the circumstances surrounding the original theft and the subsequent onward transmission of the funds and their incorporation into a variety of assets was discovered.

That, in addition to the material and evidence sought in relation to the investigation of the original theft and subsequent money laundering, a sizeable cache of firearms, ammunition and other prohibited items were discovered at the home address of Laura Agnes Valabhji. These were found in sophisticated and well concealed hides with the search for further concealments still underway. This is not the subject of proposed charges related to this affidavit.

That, in further addition to the material and evidence sought at the outset, a very large wine cellar of valuable wines was discovered, along with large numbers of valuable pens, watches ladies' jewellery and a large quantity of cash.

That within documents uplifted at her home address were the minutes to a Zeal Investments Board meeting held on 27th April 2016. This company controls the management of the villas and hotel on the island of Felicite. Laura Agnes Valabhji is recorded as the lawyer.

That notes within the minutes demonstrate that whilst she has a legal contribution to make to the company functions she also provides input on matters beyond that of a legal nature and she is fully informed of the company business.

That a search was carried out at Laura Agnes Valabhji's legal practice office's 3rd Floor, Capital City Building, Seychelles. A large quantity of material has been seized but as yet not viewed or sifted due to concern over any legal privilege material being found.

That independent legal counsel is being sought to carry out a sift and review of the material seized at Laura Agnes Valabhji's legal practice. To identify material that is subject to Legal Professional Privilege (LPP) and ensure that it is returned without the investigating team having had access to or viewed the (LPP) material.

That on the 30th November 2021 Seychelles Police Force discovered a number of items within the holding cell of Laura Agnes Valabhji which appear to have been smuggled in without the knowledge of the Police officers on duty.

That these items found included 16 blank cheques and two partially completed cheques. The cheques related to a joint bank account of Laura Valabhji and Mukesh Valabhji, a sole account of Laura Agnes Valabhji and a business account Bluewater Holdings (Seychelles).

That no request was made by Laura Agnes Valabhji or her representing legal team to the ACCS or Seychelles Police Force for her have access to cheques or undertake banking transfers or cheque payments.

That this conduct is therefore more likely to be in furtherance of money laundering activities rather than carrying out legitimate business activities.

That a hand written letter was also found within Laura Agnes Valabhji's holding cell addressed to her husband Mukesh Valabhji. Within the letter are comments which suggest Laura Agnes Valabhji's guilty knowledge of items to support the money laundering allegations against her and knowledge of the firearms and ammunition found at her home at Morne Blanc. I quote "I know they may try to force you to go to the house, but remember even if this house is in your name that all. You don't know anything about what is there or not. You don't know where half of the things are. If they want to know anything about the house they need to talk to me. They need me to show them things. So if they genuinely want to know things, they come to me." In addition a A5 pink exercise book was found in the suspect's cell and it contains the initials or acronyms of 13 people linked with the investigation.

That Laura Agnes Valabhji has used her position as an attorney at law to represent her husband by aiding, abetting, assisting, counselling and/or conspiring with her husband to launder the criminal proceeds of the initial \$50 million stolen.

That since the original theft in 2002 Laura Agnes Valabhji, attorney at law has failed to carry out due diligence as required by the money laundering act 2020. In particular, in relation to her legal work carried out on behalf of her husband knowing or believing that property is or represents the benefit of criminal conduct or is reckless as to whether the property represents such benefit. 32. That Laura Valabhji is now charged with the offences of;

- Money Laundering and Conspiracy to commit Money Laundering*
- Concealment of Property 33. That Section 3(1) c of the acts from 2006 hold that a person is guilty of money laundering if she acquires, possesses or uses the property.*

Accordingly, money laundering is a continuing offence and not limited by the time at which the offence might be subject to the initial statute. It continues from the immediate

acquisition of the crime proceeds through disposal to the purchase of the next asset and so on.

That far-reaching international enquiries are underway in relation to the other recipients of the initially dispersed \$50million and in relation to the large number of companies involving Laura Agnes Valabhji and others involved in the criminal conspiracy to steal the funds, to conceal their origins and subsequently to present as legitimate sources of wealth and income.

That the 19 years elapsed since the theft and the 17 years since the second removal of funds relating to the COSPROH sales mean that this enquiry will involve significant time and resources.

That I understand that criminal trials of such offences are hitherto unknown in Seychelles and jurisprudence regarding such is very limited. It is with this in mind that I as Officer in Charge of the investigation have taken the view that only those individuals who have ostensibly played key and beneficial roles in the criminal conspiracies should be considered for remand in custody.

That Laura Agnes Valabhji is one such individual and I therefore request that he is committed to prison pending hearing of this case, on the following grounds, namely;

- That the offences charged of Money Laundering and Conspiracy to commit Money Laundering, are serious offences punishable with a maximum sentence of 15 years each. • The offence of Concealment of Property subject to S37c of the Anti-Corruption Act 2016 carries a maximum of 10 years imprisonment if convicted.*

- 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.*

- *That the weapons and ammunition found on the premises highlight an ability to threaten and intimidate witnesses in an effort to obstruct the administration of justice.*
- *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.*
- *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.*
- *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.*
- *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.*
- *The finding of cheques and other business-related material in her cell would suggest that further money laundering offences are likely to be committed were she to be given bail and have easy access to accounts, documents and associates.*

The statements made throughout this affidavit are true to the best of my knowledge, information and belief.

- [3] The 2nd accused, in the exercise of her constitutional right, is contesting this remand application and has now formally filed an application to be released upon reasonable conditions in an application supported by her affidavit. The conditions that she is requesting to be released on are listed in her Notice of Motion.

- [4] In her Application she gave a personal history to the court which includes her educational background and professional career, based on which she says creates ties that makes her impossible to abscond or breach her surety, if released on bail.
- [5] In reference to the merits of the charges with which she stands prosecutes the 2nd accused avers that their substances have already been the subject matter of an Interim Report of a Commission of Inquiry. And the fact that she had remained in Seychelles throughout the course of the inquiry proves that this case brought against her has not created any incentive for to flee.
- [6] Though she admits that the likely punishment in this case are severe in cases of convictions, she avers that this should not be a consideration at this stage given that her prospect of convictions are minimal as she is of the view that the charges levelled against her are constitutionally and legally defective.
- [7] In an attempt to dispute the veracity of the charges the accused has made an almost forensic analysis of the evidence produced and the content of the said Interim Report of the Commission of Inquiry and concluded that it showed a lack of reliable evidence, be it documentary or testimonial.
- [8] The accused also contest the content of the affidavit of the deponent of the affidavit in support of the remand application. Which according to her shows gaps and shortcomings in the investigation in the case.
- [9] She also avers that the Anti-Corruption Commission had ample time and opportunity to seize materials from her residence and her office and therefore the allegations that she would tamper with evidence is unfounded and illogical and that this is especially so given that the report of the commission has revealed that the witnesses lacks clear recollections of events relating to the case.
- [10] She further disputes all averments made against her with regards to her attempting to subvert the due course of justice. She avers that all documentations found in her possession or taken from her possession whilst she was in detention were given to her by

the police and that any written documents made by her were made with no ill or criminal intent

[11] I have carefully read both the application for remand and that for bail, including their respective affidavits. I have also given thorough consideration to the submissions of both parties, whilst at the same time giving careful attention to the applicable law and legal principles involved in this application.

[12] With regards to the relevance of the personal and professional status and history of the 2nd accused the same case and arguments are presented by the applicant in the application as was presented in CR04/22 and in this case I do not find reasons why I should not come to the same determination. Accordingly, I will maintain the same position that I did in that case, namely that the personal history of the 2nd accused is of little relevance to the court in this case when it comes to the deciding whether to release her on reasonable bail conditions. The accused has never been charged with all these serious offences before. In fact, it does not appear that she has ever been prosecuted. Accordingly, these new sets of circumstances created by the prosecution has created a substantial likelihood of her tampering with the evidence or abscond the jurisdiction irrespective of her alleged past good conducts. I say this bearing in mind the economic and social influences that she holds as averred by the prosecution. Accordingly, I find that this is not a ground that justifies her being released on bail in this case.

[13] The strength of the prosecution case has a direct bearing on whether an application for remand is justified. A weak prosecution case may be relevant to show that detention for a lengthy period of time is not justified on the basis the accused may not be convicted.

[14] Further, the assessment of the strength of the Republic's case is an impressionistic one and at this stage is limited by both the material available to this court and the fact that the trial is far off. The assessment is accordingly done summarily and it ultimately comes to a determination as to whether the prosecution has proved a prima facie case. Ultimately, prosecution witnesses may not give evidence at trial, and if they do, they may not give evidence in accordance with their statements; a different picture may emerge during

cross-examination; and a jury, judge or magistrate, may take an adverse view of the demeanour or credibility of a witness during the trial, not contemplated at this stage.

[15] Furthermore, I bear in mind that it is not the role of this court at this stage of the proceedings to predict, much less definitively determine, how the various issues arising from witnesses and reliability of evidence will be resolved. It is with this in mind that I look at the arguments presented by the 2nd accused with regards to the alleged weaknesses of the case for the prosecution.

[16] The accused has at this stage attempted to present defences to the charges levelled against her. Her defence consists mainly to show the case against her is evidentially weak. She does that by making direct references to the findings and content of the report of the Commission of Inquiry and alleged evidential limitations shown in the said report. She also does so by making references to the affidavit of the prosecution which allegedly reveals gaps in the investigation of the case. These are defences based on the facts of the case. Obviously she has done that in an effort to show that the prosecution case is weak and the likelihood of a conviction is accordingly lessened, whilst at the same time attempting to show that no prima facie case has been shown to exist by the prosecution. These being determining factors in a court's consideration in matters of bail. However, issues of fact can only be decided at the end of the trial or at least at the end of the prosecution case on a no case to answer submission. Evidence needs to be tested in a trial by the test of relevancy; admissibility and cross-examination. At this stage of the trial I cannot make such assessment as I would be clearly prejudging making judgment on the evidence that has not been properly led or admitted. I am conscious of the fact that when it comes to this ground, the court must take a cautious approach if it is not to be seen as prejudging the matter and impugning on its duty to make a factual determination on the evidential aspect of the case at the end of the case. Hence, without making any pronouncement on the merits of the case, this court is of the opinion that the prosecution has satisfied the fact that there exists a prima facie case against the accused which merits a determination to be made beyond a reasonable doubt.

[17] As regards, the presence of substantial likelihood of there being the possibility of the 2nd accused absconding or otherwise interfering with the evidence whilst on bail. I have gone over the entire facts and circumstances of the case and having done so I am of the view that there exists a real possibility of this happening and that this likelihood is substantial in view of the socio economic influence and means of the 2nd accused, who is charged with very serious offences. Accordingly, I will dismiss the application on this basis also.

Signed, dated and delivered at Ile du Port, on 25th day of March 2022

R. Govinden
Chief Justice