

SUPREME COURT OF SEYCHELLES

Reportable
[2022] SCSC ...
CM 97/2022

In the matter between:

COMMISSIONER OF POLICE
(herein represented by the Attorney General)
(rep. by Mr Powles together with Mrs. Thompson)

Applicant

and

MUKESH VALABHJI
(rep. by Mr. Bonte)

1st Respondent

LAURA VALABHJI
(rep. by Mrs. Aglae)

2nd Respondent

Neutral Citation: *Commissioner of Police v Valabhji & Anor* (CM 97/2022) [2022] SCSC
(13 September 2022)

Before: Burhan J

Summary: Application for detention Order under Section 26 (4) of the Prevention of
Terrorism Act

Heard: 25 July 2022

Delivered: 13 September 2022

ORDER

Detention Order granted in respect of the said property for a period of sixty days.

ORDER

BURHAN J

[1] On the 28th of June 2022, the Applicant represented by the Attorney General filed an ex-parte motion moving the Court for an order for detention of the property Morne Blanc,

Title Number B39 (hereinafter “the said property”) for a period of sixty days pursuant to section 26 (4) of the Prevention of Terrorism Act (“PTA”) and that Detective Sergeant Davis Simeon be appointed to take control and manage the said property for the reasons set out in the attached affidavit.

[2] Section 26 of the PTA in its entirety reads as follows:

- (1) Where the Commissioner of Police has reasonable grounds for suspecting that any property has been, or is being, used to commit an offence under this Act, the Commissioner may seize the property.*
- (2) The Commissioner of Police may exercise powers under subsection (1), whether or not any proceedings have been instituted for an offence under this Act in respect of that property.*
- (3) The Commissioner of Police shall as soon as practicable after seizing any property under subsection (1) make an application, ex-parte and supported by an affidavit, to a judge of the Supreme Court for a detention order in respect of that property.*
- (4) A judge to whom an application is made under subsection (3) shall not make a detention order in respect of the property referred to in the application unless the judge -*
 - (a) has given every person appearing to have an interest in the property a reasonable opportunity of being heard;*
 - (b) has reasonable grounds to believe that the property has been, or is being, used to commit an offence under this Act.*
- (5) 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 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.*
- (6) A judge of that Supreme Court may release any property referred to in a detention order made under subsection (4) if –*
 - (a) the judge no longer has reasonable grounds to suspect that the property has been or is being used to commit an offence under this Act; or*
 - (b) no proceedings are instituted in the Supreme Court for an offence under this Act in respect of that property within 6 months of the date of the detention order.*
- (7) A seizure of any property by the Commissioner of Police under subsection (1) shall be deemed not to be a contravention of section (8),*

(8) No civil or criminal proceedings shall lie against the Commissioner of Police for a seizure of property made in good faith under subsection (1).

- [3] Section 26 (4) of the PTA provides that a property detention order can only be made if:
- (a) Every person appearing to have an interest in the property is given a reasonable opportunity to be heard; and
 - (b) There are reasonable grounds to believe that the property has been, or is being, used to commit an offence under the PTA.
- [4] Accordingly, the Respondents mentioned herein were given an opportunity of being heard. The 1st Respondent according to the application is the owner of the land parcel B29 situated at Morne Blanc whilst the 2nd Respondent is the wife of the 1st Respondent who resides with him on the said premises. Thereafter by order dated 10th August 2022, this Court on the application of learned Counsel for the Respondents, permitted their daughter Ms Larissa Valabhji to be given an ‘opportunity of being heard’. An affidavit with annexures was filed on her behalf which this Court will also take into consideration in determining this issue before Court. In addition, in furtherance to an order from this Court, a copy of the seizure order and a copy of this application for detention was affixed at a conspicuous place on the said premises and the report filed in court on the 15th August 2022. This Court is therefore satisfied that necessary steps have been taken to give all interested parties an opportunity of being heard.
- [5] Pursuant to Section 26 (4) (b) this Court will now proceed to determine whether there are reasonable grounds to believe that the said property has been, or is being, used to commit an offence under the PTA. In order to do so, it would be necessary to consider the facts set out in the affidavit and evidence given by Sergeant Simeon and the affidavits and the submissions filed by all parties.
- [6] In his affidavit dated 28th June 2022, Sergeant Simeon states that the said property is owned by Mukesh Valabhji (1st Respondent) who lives on the property with his wife, Laura Valabhji (2nd Respondent) also affirmed by title document attached at Annex A and not denied by either Respondents or their daughter.

- [7] Sergeant Simeon further avers that the 1st and 2nd Respondents were arrested by Officers of the Anti-Corruption Commission Seychelles on 18th November 2021, which is admitted by the Respondents. The said property at Morne Blanc according to the affidavit of Sergeant Simeon was searched. During the search, a large amount of weapons and ammunition was found in the property. Over 50 firearms and over 35,000 rounds of ammunition have been found to date at Morne Blanc. The Commissioner of Police has had custody of the property since, on the basis that it is a crime scene. The search of the property is on-going.
- [8] He further states that a specialist team of international experts are assisting the Seychelles Police with the search that will likely be completed by the end of June 2022. He admits in his affidavit that it appears that the search of the property is nearing completion and the property's status as a crime scene potentially coming to an end. He further states notwithstanding the ongoing necessity to preserve the integrity of the crime scene, it was decided to formally seize and detain the property pursuant to section 26 of the PTA. On 24 June 2022, the Commissioner of Police formally seized Morne Blanc pursuant to section 26 (1) of the PTA (see Notice attached to Annex B).
- [9] Sergeant Simeon further states that on the 11th February 2022, the 1st and 2nd Respondents, along with Leslie Andre Benoiton, were charged with conspiracy to possess terrorist property contrary to section 7(b) of the PTA, read with Section 20 of the PTA (Count 1). The particulars of the offence are as follows:

Mukesh Abhayakumar Valabhji of Morne Blanc, Laura Agnes Valabhji of Morne Blanc, Leslie Andre Benoiton of La Louise, from 1 December 2004 to 18 November 2021, agreed together and with persons unknown to possess terrorist property namely 94 firearms and 38,490 rounds of ammunition recovered from the home of Mukesh and Laura Valabhji at Morne Blanc, the home and workplaces of Leslie Benoiton and the SPDF armory between 18 November (sic) and 29 January 2022. Such weapons, firearms and ammunition being likely to be used to commit a terrorist act, namely to cause death or harm to a person, to intimidate the public or a section of the public in

Seychelles, or to remove from power the legitimate Government of the Republic of Seychelles.

[10] He further avers that both Respondents were together charged with possession of terrorist property contrary to section 7(b) of the PTA (Count 3). The particulars of the offence being as follows:

Mukesh Abhayakumar Valabhji of Morne Blanc, Laura Agnes Valabhji of Morne Blanc, on 18 November 2021, had in their possession terrorist property namely 57 firearms and over 37,000 rounds of ammunition. Such firearms and ammunition likely to be used to commit a terrorist act, namely to cause death or harm to a person, to intimidate the public or a section of the public in the Republic of Seychelles, or to remove from power the legitimate Government of the Republic of Seychelles.

[11] In his affidavit Sergeant Simeon further explains that the firearms and ammunition in question were found in the downstairs study and bedroom of the dwelling house of the 1st and 2nd Respondents at Morne Blanc with the vast majority found in secret compartments in the basement of the said dwelling house behind the wine-cellar (emphasis mine).

[12] He further describes the weapons found in the said premises which included Draganov Rifles, which are high powered sniper rifles; assault rifles, including some fitted with under-barrel grenade launchers; and handguns and pistols, capable of being concealed on the person. It is also of significance that the weapons were discovered with a significant quantity of ammunition, demonstrating that the weapons were capable of being used. Such ammunition also included 160 high explosive grenades capable of killing and maiming (emphasis mine). The weapons and ammunition have been determined by the SPDF and Police Force to be serviceable and deadly.

[13] He further states in his affidavit that the nature and quantity of weapons found is such that, if deployed, they are capable of causing serious harm and widespread death and destruction and the weapons found to date are undoubtedly sufficient to pose a serious threat to the SPDF and Police Force of Seychelles. The nature and quantity of weapons is

such that, if deployed, those in their control would have posed a serious and significant risk to the lawfully elected government of the Republic of Seychelles.

- [14] It is apparent from his affidavit that in addition a quantity of computers, hard drives and phones have been seized from the Respondents and others. That the seized items are undergoing a comprehensive digital review for material of evidential importance. An initial screening of the digital forensic material seized has shown that an external hard drive belonging to the 1st Respondent contained versions of ‘The Anarchist Cookbook’ which is a document that is known to contain material that could be of use to someone planning to commit a terrorist offence. It is the contention of the Applicant that the possession of this document, in combination with possession of such a large quantity of weapons, further supports the view that the weapons were intended to be used for terrorist purposes.
- [15] In his affidavit Sergeant Simeon further states that the police force have been actively searching for further weapons since the discovery of the weapons and there is a well-founded concern that not all the weapons appear to have been discovered (emphasis mine). It is suspected that further weapons may still be recovered from the property of the 1st and 2nd Respondents at Morne Blanc as there are reasonable grounds to believe that the Respondent’s property, Morne Blanc (Title Number B39), was being used to commit offences under the PTA, namely as a storage place for weapons and ammunition likely to be used to commit a terrorist act.
- [16] He further states that the trial of the 1st and 2nd Respondents in relation to offences under the PTA is scheduled to commence in December 2022. In event of conviction of any offence under the PTA, the Court will be moved to order forfeiture of the property pursuant to section 29 (1) of the PTA on the basis that the property had been used for, or in connection with, the commission of that offence.
- [17] Sergeant Simeon further moves that if a detention order is made, it will be of assistance for the Court to further order his appointment as a person responsible for taking control of, and managing or otherwise dealing with the property for the duration of the detention

order. Based on all the aforementioned reasons moves that a property detention order in respect of Morne Blanc (Title Number B39) pursuant to section 26 (4) be granted and that he be appointed to take control and manage the property for the duration for the detention order.

Objections to the Application

[18] I will now proceed to discuss the aforementioned grounds in relation to the objections filed by the Respondents to the said application.

[19] It is the contention of the Respondents that in his affidavit, Sergeant Simeon admits that the searches on the premises have come to an end and since the end of June 2022 the premises are no longer a crime scene. It is the contention of the Respondents that on reasonable suspicion there was a search of the premises and that subsequently on the alleged finding of weapons charges were filed under the PTA. Therefore the Respondent contends that there is now no longer a reasonable suspicion but rather a firm belief by the Applicant and prosecution that offences have been committed under the PTA. It is further submitted that between the period 18th November 2021 and 11 February 2022 there has been no application for seizure of the weapons and ammunitions nor for seizure of the premises. Learned Counsel for the Respondents further submit that the application could be made only at the time of investigation and now as the charges have been filed as there is now a firm belief rather than a reasonable suspicion, the application for continued detention cannot be made.

[20] I am inclined to disagree with learned Counsel on this issue. When one considers the law on this matter in usual circumstances during investigations of a crime, Section 95 of the Criminal Procedure Code (“CPC”) grants the police powers to search and seize anything upon, by or in respect of which an offence has been committed. Section 98 of the CPC grants power for a Court to order the detention of the said seized property once it is brought before the Court until the conclusion of the case or until the investigation is complete. This is strictly at the discretion of Court. It is in this context that the words seized and detained must be interpreted.

[21] In this instant application the Commissioner of Police has proceeded to seize the property on the basis that there are reasonable grounds for suspecting the property has been used to commit an offence under the PTA. The reasons for him coming to such a conclusion have been set out in the affidavit of Sergeant Simeon. Section 26 (4) of the PTA provides the manner in which such seized property should be detained and empowers courts as in section 98 of the CPC to issue such detention orders valid for 60 days subject to the conditions laid out in section 26 (4) (a) and (b) of the PTA. Whilst section 98 of the CPC gives powers to the Courts to detain the property till the end of investigations or till the conclusion of the case, Section 26 (5) of the PTA gives powers to Court to detain the seized property for time periods of 60 days which may be renewed until such time the property is produced in court in proceedings for an offence under this act (all emphasis mine).

[22] Therefore the Respondents contention that as there is now no longer a reasonable suspicion but rather a firm belief by the applicant that offences have been committed under the PTA and therefore the prosecution cannot seek for a detention order in respect of property seized in connection with the property is not acceptable. The PTA under section 26 empowers the Court to give the detention order subsequent to a seizure by the police, after due consideration of the grounds set out in 26 (4) (a) and (b) until such time the property is produced in court (section 26 (5)). Property as defined in section 2 of the PTA, includes both movable and immovable property. Therefore this Court if satisfied that the said seized property relevant to this case could be subject to a detention order by court for 60 days provided that the conditions in section 26 (4) (a) and (b) is satisfied. Further Court is empowered to extend the detention order for further periods of 60 days until the property is formally produced in court in the main case. Being an immovable property quite obviously, it cannot be produced physically but it is the duty of the prosecution to take the formal steps to produce the said property in the main case at the trial to be dealt with by the Trial Judge.

[23] Section 26 (6) gives instances where a Judge of the Supreme Court may release any such property under detention, if the Judge no longer feels that there are reasonable grounds to

believe that the property has been or is being used to commit an offence under the PTA and if no proceedings are instituted in the Supreme Court for an offence under the PTA within 6 months of the date of the detention order. These are matters to be taken into consideration in extending the detention order for further periods of 60 days.

[24] For these reasons I cannot agree with the contention of learned Counsel for the Respondents that seizure and detention of property is limited only to investigations and cannot thereafter be seized or detained. It is the view of this Court that while the detention order is in force steps should be taken by the prosecution to formally produce the property in court in proceedings for the offence under the Act as envisaged under section 26 (5) of the PTA.

[25] I will now proceed to consider whether there are reasonable grounds to believe that the said property has been, or is being, used to commit an offence under the PTA. On consideration of the facts set out in the affidavit filed by Mr Simeon, especially considering the large quantity of arms and ammunition, being serviceable and deadly and capable of being used, being found in secret compartments in the basement behind the wine-cellar of the said dwelling house on the said property, there are in my view, reasonable grounds to believe that the said secret compartments built in the dwelling house has been used to store this large quantity of weapons and ammunition.

[26] It is also apparent from his affidavit that, in addition, a quantity of computers, hard drives and phones have been seized from the Respondents and others. Investigations are ongoing and initial screening of the digital forensic material seized has shown that an external hard drive belonging to the 1st Respondent contained versions of 'The Anarchist Cookbook' which is a document that is known to contain material that could be of use to someone planning to commit a terrorist offence.

[27] Giving due consideration to all the aforementioned factors, specifically when one considers the large quantity and description of the serviceable weapons and ammunition stored in hidden compartments in the said premises and the obvious threat these weapons

would be in the hands of the wrong individuals, together with the literature found, this Court is of the view that there are reasonable grounds to believe that there would be a very serious threat to the public in the Seychelles and the disciplinary forces and the institutions empowered to maintain the rule of law in a State, resulting in instability to a democratically elected government.

[28] Considering all the aforementioned facts in its entirety, this Court is satisfied that reasonable grounds exist in the affidavits and evidence of Sergeant Simeon to believe that the property has been and was being used at the time of the arrest of the suspects to commit an offence under the PTA. It is obvious that since the police have seized the premises, it cannot now be alleged that at present it “is being used” for terrorist activity.

[29] Learned Counsel Mr. Powles has intimated the intention of the prosecution to move for forfeiture of the property under section 29 (1) of the PTA which could be done by the Trial Court hearing the case after conviction. This would be a matter to be dealt with after the trial is concluded. It is to be observed that a forfeiture order could also be made under section 37 of the PTA by the Attorney General but these forfeiture orders do not concern this Court at present. What this Court is dealing with at present is the detention order and it is the considered view of this Court, for reasons set out herein that reasonable grounds exist to issue the said detention order.

[30] The next contention of the Respondents is that the seizure and application for a detention order should be filed under section 36 of the PTA and not section 26. I am inclined to disagree with learned Counsel on this issue, as section 36 refers to property in any building or any vessel and not the building itself.

[31] The Respondents have further complained of the delay in the investigations. Understandable, considering the large quantity of weaponry and ammunition found and the dangers involved in the handling of such ammunition and explosives, it requires the expertise of international experts to ensure safety in the handling of such items. Further, the mere fact that charges have been filed does not mean that investigations must stop.

The investigations into the finding of more weapons and explosives still continues as borne out by the affidavit of Mr Simeon. In my view it is best that the said premises be subject to further search with due process, in the need to rid the premises of such dangerous materials for the safety of all parties.

[32] For the aforementioned reasons, I am inclined to disagree with the contention of the Respondents that the application is devoid of merit and unlawful in nature. This Court is satisfied that all interested parties have been given an opportunity of being heard. This Court has determined and is satisfied that there are reasonable grounds to believe that the said property has been and was being used to commit an offence under the PTA and therefore proceed to issue the detention order under section 26 (4) of the PTA for a period of 60 days commencing from the 13th of September 2022.

[33] The Applicant further made application that Detective Sergeant Davis Simeon be appointed to take control of, and manage the property for the reasons set out in the affidavit. The Applicant further submits that while section 26 of the PTA does not expressly provide for the appointment of someone to manage a property, it is plainly a sensible way to proceed. The Applicant further moves that any costs associated with the maintenance, should be borne by the Respondents as current owners of the said property.

[34] In my view, appointing a person to help better manage the said property is reasonable. However, section 26 of the PTA as rightly submitted by the Applicant does not provide for such appointment and does not provide for the Respondents to be liable for maintenance costs whilst the property is in detention by the police. This Court observes that under section 98 of the CPC regarding general detention of property seized, when the property is detained by the police, reasonable care shall be taken for its preservation. Since section 26 of the PTA is silent with regard to management and care of the property, this Court takes a similar approach as set out under the general provision of the CPC. Therefore, in respect of the application for DS Simeon to be appointed to manage and control the property and the Respondents bearing any costs associated with the maintenance, as the said property has been seized and detained by the Applicant, the

Commissioner of the Police, it is his duty through his agents to take reasonable care of the preservation of the said property. Therefore, in my view under section 26 of the PTA, the need for further appointment does not arise and the application for an order for the appointment of a specific person to manage the property and that the Respondents pay for the maintenance whilst the said property is in detention under this order is declined.

[35] The Applicant is not precluded from filing an application under section 36 (1) of the PTA and if necessary could move under section 36 (2) for the appointment of a person to take control of, or otherwise manage the whole or a part of any property found “in any building or vessel” that maybe be subject to forfeiture.

[36] It is further noted that there have been allegations by the Respondents of items getting lost. The Applicant should investigate all such complaints diligently and file a concise report by the end of the first 60 day detention period i.e. by the next date.

[37] I have also noted the compassionate plea in the affidavit of the daughter of the Respondents based on her attachment and affiliation to the said property and her medical issues. However these are matters to be considered in the event of an application for forfeiture and not now. Meanwhile the pets, dogs and tortoises may be moved to another location with the consent of the Applicant, if the Respondents so desire, after the necessary arrangements have been made by the Respondents in consultation with the Applicant.

[38] I am also satisfied that as all parties have been given an opportunity of being heard and as the application has been correctly based on prescribed law, the PTA, I see no necessity for the matter to be referred to the Constitutional Court. The application to do so is frivolous and vexatious.

[39] For all the aforementioned reasons, this Court grants the application of the Applicant for a detention order in respect of the said property which is issued for a period of 60 days commencing 13 September 2022.

Signed, dated and delivered at Ile du Port on this 13 day of September 2022.

M. Burhan J