

SUPREME COURT OF SEYCHELLES

Reportable
[2023] SCSC
CM 97/2022

In the matter between:

COMMISSIONER OF POLICE
(rep. by George Thachett)

Petitioner

and

MUKESH VALABHJI
(rep. by France Bonte)

1st Respondent

LAURA VALABHJI
(self-represented)

2nd Respondent

Neutral Citation: *Commissioner of Police v Valabhji & Anor* (CM 97/2022) [2023] SCSC 163
(06 March 2023)

Before: Burhan J

Summary: Detention order under the PTA; referral of the matter to the Trial Judge

Heard: 27 and 28 February 2023

Delivered: 06 March 2023

ORDER

This Court makes an order that this matter be referred to and called before the Trial Judge on the 08th of March 2023. The detention Order is extended till the 08th of March 2023 for this purpose.

RULING

BURHAN J

- [1] This is an application under Section 26 of the Prevention of Terrorism Act (PTA) seeking a further renewal of the detention orders issued by this Court on the 13th of September 2022, 9th of November 2022 and 9th December 2022 in respect of the property Morne Blanc Title Number B 39 belonging to the 1st Respondent.
- [2] In the said application at paragraph 7 it is stated that, *“Moreover, it is noted that, in his order of 13 September 2022, Mr Justice Burhan indicated that it was the view of the 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 by Section 26 (5) of the PTA”.*
- [3] It is further set out at paragraph 8: *“[T]o this end, and as confirmed by DS Simeon in his affidavit, steps have been taken to formally produce the property in the Court proceedings. First, the prosecution has served on all accused in Cr No. 4 of 2022 the title documents of B39, showing ownership of the property. The prosecution intends to adduce these documents at trial when it takes place. Moreover, the prosecution has served on all accused in Cr No. 4 of 2022 photographs of the property, showing both the property and the weapons that were found within it. Finally, the prosecution has also served a plan of the basement of the property showing where weapons were hidden in the property. All of this evidence will be “formally produced at trial in due course”.*
- [4] Further at paragraph 9 it is stated that, *“Plainly, as envisaged by Section 26 (5) of PTA, it is not possible to exhibit the actual house. Thus, Section 26(5) PTA only requires that property be adduced in proceedings “where applicable”. In some cases, as here, it is not possible to adduce the actual property. Thus, the prosecution has taken steps to be able to adduce the title of the property and photographs and plans of the relevant parts of the property.*
- [5] These facts are further confirmed in the affidavit of Mr. Simeon who states in paragraph 6 of his affidavit dated 27th December 2022: *“Furthermore, I can confirm that steps have been taken to formally produce the property in the Court proceedings. First, the prosecution has served on all accused in Cr No. 4 of 2022 the title documents of B39, showing ownership of the property. The prosecution intends to adduce these documents*

at trial when it takes place. Moreover, the prosecution has served on all accused in Cr No. 4 of 2022 photographs of the property, showing both the property and the weapons that were found within it. Finally, the prosecution has also served a plan of the basement of the property showing where weapons were hidden in the property. All of this evidence will be “formally produced at trial in due course”.

[6] At the request of the 2nd Respondent, an opportunity was given for the 2nd Respondent to cross-examine the maker of the affidavit Sergeant Simeon. During cross-examination Mr. Simeon admitted that the said property was being detained for the purposes of preserving the integrity of the crime scene and that the necessary steps had been taken under Section 26(5) of the PTA to have the property produced in Court in proceedings concerning offences under the PTA. He further admitted that there had been a deterioration in the state of said property and that an Investigating Board had been set up to investigate the missing items from the premises. He also admitted there had been tampering of the seals placed and further stated no more searches were being conducted on the said premises for weapons.

[7] It would be pertinent at this stage to refer to Section 26(5) of the Prevention of Terrorism Act which reads as follows:

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.

[8] Further Section 98(1) of the Criminal Procedure Code CAP reads as follows:

When any such thing is seized and brought before a Court, it may be detained until the conclusion of the case or the investigation, reasonable care being taken for its preservation.

(2)

(3).....

[9] Giving due consideration to all the facts before the Court and the law, this Court is satisfied that the Applicant has finally decided to take the necessary steps under Section

26 (5) of the PTA and therefore this matter may now be referred to the Trial Judge hearing the offences against the Respondents, in order to make any further orders in respect of the said property as envisaged under Section 98 of the Criminal Procedure Code, read together with the provisions of the PTA. This Court is also of the view that all matters raised by the 2nd Respondent pertaining to the weapons being in the building or buildings or on parcel B39, would be better dealt with by the Trial Judge who is dealing with the facts of the said case.

[10] Accordingly, this Court makes order that this matter be referred to and called before the Trial Judge on the 08th of March 2023. The detention Order is extended till the 08th of March 2023 for this purpose.

Signed, dated and delivered at Ile du Port on 06th March 2023

Burhan J