

SUPREME COURT OF SEYCHELLES

Reportable

[2023] SCSC
CO 04/2022

746

In the matter between:

THE REPUBLIC
(rep. by Steven Powles)

Republic

and

MUKESH VALABHJI
(rep. by J Lewis and ors)

1st Accused

LAURA VALABHJI
(re. by R Scott and ors)

2nd Accused

LESLIE BENOITON
(rep. by B Hoareau)

3rd Accused

LEOPOLD PAYET
(rep. by J Camille)

4th Accused

FRANK MARIE
(rep. by J Camille)

5th Accused

Neutral Citation: *The Republic v Valabhji & Ors* (CO 04/2022) [2023] SCSC (3 October 2023).

Summary: Bail Application denied; seriousness of the offence; substantial grounds to suspect that the Applicant will abscond or interfere with evidence.

Before: Govinden CJ

Heard:

Delivered: 3 October 2023

RULING

GOVINDEN CJ

[1] This is an Application for the release of the 2nd Accused on reasonable bail conditions under Section 101(4) and (8) of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The Applicant together with the 1st, 3rd and 4th Accused have been on remand in custody by a decision of this Court made in accordance with Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The order for their detention was made on a Prosecution's application filed on the 11th of February 2022 following their indictment in this case. This is the second Application of this nature filed by the Accused, the first one was subject to a determination of this Court on the 25th of March last year, reference of which had extensively been made in the hearing.

[2] In her application Mrs Valabhji moved the Court to be remanded on bail on the following conditions:

- (a) She reports to the Central Police station twice a week between the hours of 08.00 to 10.00 a.m.;
- (b) that she surrenders her passport or any travelling documents that she may have to the Registrar of the Supreme Court;
- (c) that she signs a bail bond in the sum of SCR500,000;
- (d) that she shall not interfere with any witnesses or otherwise interfere with the due course of justice;
- (e) that she shall not commit any offence whilst on bail;
- (f) that she shall reside at the Caiman Apartment situated at Providence, Mahe, Seychelles at all material time except if she is to come to court, report to the Police Station as aforementioned and visit medical practitioners or meet with her Counsel; and
- (g) that she shall keep a phone available with her at all material times so that she may be contacted at any time should the need to ascertain her whereabouts arises.

[3] The application is supported by the Applicant's Affidavit, which contains the following material averments:

"2. That I was arrested on the 18th of November 2021.

3. That on the 19th of November 2021 Detective Sergeant Davis Simeon applied to the Court pursuant to section 101 of the Criminal Procedure Code that I be held on remand based on the offences as per the said application.

4. That the Court has remanded me in custody since the 19th November 2021 until to date at various places namely at the Perseverance Police Station, then to Central Police Station, back to Perseverance Police Station, and since the 21st January 2022 I am being remanded at the Montagne Posée Prison.

5. That on 11th February 2022 I was charged with the offences as per the charges which charges have subsequently been amended on two occasions. The final amended charges sheet is produced and marked as **Exhibit LVI**.

6. That on the 3 and 10 July 2023 I took the plea in respect of the final amended charges against me.

7. That trial of the Case has commenced since 3rd July 2023 and is expected to last until at least end of October 2023.

8. That I retained James Lewis KC as Lead Counsel with two further counsel from his chambers, Zaiwalla Solicitors & Co (**Foreign Counsel**) and Samantha Aglaé as local supporting Counsel for my trial in the Case.

9. That my Foreign Counsel was unable to represent me from the start of the trial of the Case for the reasons explained to the Court by Mr. Zaiwalla on 4 July 2023.

10. That on the 4th August 2023, issues relating to payment of legal fees for my Foreign Counsel were resolved and they were instructed as trial counsel. On the 6th August 2023 they were able to travel to the Seychelles to begin taking instructions and preparing the Case.

11. That in view of my continued incarceration I am facing great difficulties which are hindering my ability to meet with my counsel and give them the instructions and information necessary for the preparation of my defence, thereby impeding my right to a fair trial, for the following reasons:

- a. Having only recently been instructed for the conduct of the trial, my Foreign Counsel require significant assistance from me to access and making sense of the voluminous evidence and information in the Case. This is made very much worse by the chaotic presentation of the evidence by the prosecution, with no composite bundle of papers, no complete index, missing documents, witness statements disclosed in no logical order and no useable pagination.
- b. The process of providing my Foreign Counsel with instructions on the Case against me, and preparing my defence more generally, demands a great deal of work on my part in order to ensure that, notwithstanding the limited time available with the trial ongoing, they are able to fully understand the complex evidential issues and have all the information they need to represent me effectively.

- c. *My cell is 2.5 m x 3 m with two unmoveable concrete beds in it and I have to prepare my food, work, eat and sleep in that small space and half of my cell is taken up by my files and documents. There is no proper shelving for the proper filing and storage of my files and documents and having access to my files and documents is a monumental task as I have to move piles of files from one place to my bed each time I need to retrieve a file or document.*
- d. *I do not have a desk or chair to work from and I have to work from my bed which is causing my spinal injury to worsen in view of the poor posture that I have to maintain for hours.*
- e. *Due to space constraints, I have to store some of the files on my bed and I am left with only about 50 centimetres width of the bed to sleep on and this prevents me from having proper rest and further aggravates my spinal condition.*
- f. *On days when the Court is sitting I am only able to spend one hour per day with my counsel during the lunch adjournment, once travel to and from the remand centre is taken into account. The fact that the trial has now started means that my incarceration will have a much more detriment impact on the preparation of my defence than during the pre-trial period.*
- g. *The lack of transport and escort staff of the prison, the distance that the prison is from Court and the way the prison administration works means that 3 to 4 hours each day is spent in commuting to and from prison, which time I could have used for defence preparation and/or resting.*
- h. *The conditions of my detention are changeable with no notice, at the whim of the Commissioner of Prisons. I produce as **Exhibit LV2** a copy of an email consequence chain in regard to the Commissioner's decisions (1) that the Remand Centre Facilities at Bois De Rose, where I was having meetings with the 1st Accused and our local supporting Counsel for joint defence preparation and adhoc legal assistance, and to prepare all our miscellaneous applications linked to this Case as well as have lunch during trial, would as from 24th July 2023 be unavailable; (2) that all our meetings would instead be at Montagne Posée Prison; and (3) that no visit would take place during lunchtime. These decisions removed my entire access to lawyers and the 1st Accused. After I raised a complaint about this decision with the Court, the situation was resolved, but I produce this correspondence in order to illustrate that as long as I remain incarcerated my ability to meet with my lawyers and prepare my defence is in jeopardy due to the arbitrary and capricious changes of rules to governing my detention.*
- i. *The Prison authority has also taken the stance that any USBs sent to me have to first be checked by them, even if they contain information related to my defence. This causes delay and hinders my trial preparation, and is in breach of my fair trial rights as it allows the prison (and possibly the Respondent) access to material which is covered by legal professional privilege.*

12. That I suffer from the following medical conditions:

- a. *I have a mitral valve prolapse with regurgitation (prolapsed heart valve);*
- b. *I have a spinal injury;*
- c. *I suffer from allergies, which I had been managing for the last 20 years without recourse to medication by controlling my environment, but since ~~that is impossible to achieve in a prison context I now require constant~~ medication;*
- d. *I suffer from gastritis and I am currently being treated for a gastro-intestinal bacterial infection which I did not have prior to being incarcerated;*
- e. *That I was previously myopic (short sighted) but due to the Respondent and the Prison Authority failing to abide by the Court Order for me to be taken to an optician for the past 14 months, my eyesight has worsened to the extent that I now require reading glasses as well.*

13. That the condition in which I am incarcerated are having an adverse impact on my health:

- a. *My cell is dusty and not ventilated at all and there is a continuous trickling of termite droppings from the ceiling everywhere in my cell which causes me to have allergy flare-ups, resulting in me having to be constantly on antihistamine and steroids, and this affects not just my health but also my clarity of mind as some of these medications causes drowsiness.*
- b. *The constant changing of prison operation rules from one day to the next is a continuous stress on me as from one day to the next I end up with having no access to food or drinking water, etc.*
- c. *Most of the inmates are smokers of tobacco and other unknown substances and again this aggravates my health conditions, and on many occasions has resulted in me having to be put on a nebuliser.*
- d. *The food in prison is neither halal nor hygienic and for either or both reasons I am frequently compelled to refuse food or eat food which aggravates my gastritis.*
- e. *Restriction on access to immediate and proper medical care and medication when needed due to the convoluted prison processes and lack of manpower and transport results in escalation of minor ailments to more serious conditions thereby resulting in further delay to the trial.*
- f. *For example, in the early hours of Monday 17th July 2023, I had to be taken to the Anse Boileau clinic with severe and acute stomach pains and prolonged continuous vomiting for over 5 hours, where I was administered paracetamol and ranitidine intravenously which was a futile exercise as it did not in any way improved my condition. With no other available remedy or solution I was taken back to my cell where I continued suffering and vomiting until around 6 a.m. and at around 8 a.m., the prison doctor, Dr. Mills referred me to the Physician at the Seychelles Hospital, but due to lack of staff it took a while for a staff member to be identified to escort me to the hospital. I had dehydrated to such extent that my veins broke each time the medical staff tried to insert a cannula, to take a blood sample and for administration of a drip and omeprazole intravenously. It was on the 4th*

time that they finally managed to successfully get the cannula in. However, due to severe dehydration my blood sample molassed before getting to the lab and a 2nd sample was extracted after I had been on the drip for a while. I was discharged the same day and place on 1000mg Amoxicillin and Clarithromycin per day for 14 days, on the assumption that I had a gastroenteritis bacterial infection, and was given an appointment for a gastroenterologist in a month's time. I was also prescribed 40mg omeprazole per day for 14 days. The physician informed me that she was not able to authorise any medical leave from the trial, despite the condition that I was in but eventually came back to give two days' medical leave, thereby delaying the progress of the proceedings. I continued to be in pain for 4-5 days and suffered from bad headaches, a bitter taste in my mouth and diarrhea.

- g. Despite the Court making an Order that I be allowed to see a gastroenterologist as soon as possible and my local supporting counsel securing an appointment for 25th July 2023, the Prison Authorities did not authorise my visit to the said specialist until the following day, upon the Court making another Order.*

14. That I have proven to the Court time and again that I am not a flight risk, since I have on several occasions had to remind the Court and the Respondent to remand us when he Respondent forgot to do so, and as per the incident during the proceedings of the 10th November 2022. Even when Court had already adjourned and the Respondent failed to make the application for my remand, instead of leaving Court as the free person that I then was, I together with the 1st and 3rd Accused approached the Respondent's Counsel Mr. Thatchett and informed him of his omission and asked that he notified the Court. Even when Mr. Thatchett ignored us and left and went back to his office, I stayed back with the other 2 accused and asked the clerk of the Chief Justice to notify the Chief Justice of the Respondent's omission. I remained in Court throughout the process for more than 30 minutes until the Chief Justice recalled the case and made the order for remand.

15. That I have no other citizenship nor residencies in any other country and therefore no possibility of residing abroad.

16. That I have no possibility from operating any bank accounts anywhere other than Seychelles and I am unable to transfer any funds from Seychelles to any other country and therefore have no means of support or livelihood abroad.

17. That I have an impeccable record with no previous convictions nor any issues with law enforcement whatsoever, and have been a model law abiding and respected citizens, and an officer of the Court until the suspension of my Legal Practitioner's licence in view of this Case. In Valabhji v The Republic (SCA CR 8 of 20223) [2023] SCCA 1 (10 February 2023), the Court of Appeal held that my good character is a relevant consideration with regards to the "seriousness of the likelihood" that I would abscond or commit further offences if granted bail

18. That the Court has now had an opportunity to see first-hand my commitment to contesting the charges falsely laid against me and my commitment to and respect for the trial process and for all Orders of the Court.

19. That there have been six major changes in circumstances since my last bail application and since my initial remand in custody namely:

- a. The investigation has now concluded, to the point that even whilst incarcerated I am permitted to return on occasion to Morne Blanc, with all exhibits now removed from the property. There is accordingly no reason to believe I would interfere with witnesses or evidence;
- b. The trial has now started, which for the reasons I have explained means the intensity and demands of my defence preparation have significantly increased and so my incarceration poses a much greater hindrance to my fair rights than during the pre-trial period;
- c. The trial was due to conclude by the end of September, whereas it is now unlikely to conclude before the end of October or later into the autumn;
- d. My physical and mental health have worsened during my incarceration and continues to do so, as a result of my medical conditions being aggravated by the physical surroundings in which I am held and the lack of food suitable for both my medical needs and my religious belief;
- e. The passage of time, taken together with the incident of the 10th November 2022 has provided the Court with evidence that I am not a flight risk;
- f. The passage of time has provided the Court with the opportunity to assess my behaviour as an accused person and my dedication to the pursuit of the trial proceedings.

20. That all averments contained in paragraph 1 to 19 above are true to best of my knowledge, information and beliefs.

21. That the stringent condition for bail that I am proposing are:

- f. I shall report to the Central Police station twice a week between the hours of 08:00 to 10:00 a.m.;
- g. I shall surrender my passport or any travelling documents that I may have to the Registrar of the Supreme Court;
- h. I shall sign a bail bond in the sum of SCR500,000;
- i. I shall not interfere with any witnesses or otherwise interfere with the due course of justice;
- j. I shall not commit any offence whilst on bail;
- k. I shall reside at the Caiman Apartments situated at Providence, Mahé, Seychelles at all material time except if I am to come to Court, report to the Police Station as aforementioned, visit medical practitioners or meet with my Counsel.
- l. I shall keep a phone available with me at all material times so that I may be contactable at any time should the need to ascertain my whereabouts arises.

- [4] Learned Counsel for the Republic strenuously opposes the Application to be remanded on bail in his response to the application. In his response Mr Powles avers as follows:

“1. The Applicant seeks remand on bail on the basis of a various conditions.

2. While the Respondent does not accept that the matters set out in the Applicant’s affidavit (para. 19) amount to a sufficient change of circumstances to warrant reconsideration of bail. In any event, even if held that a change of circumstances exists, at this advanced stage of the proceedings nothing in the Applicant’s application supports release on bail.

3. For the reasons set out below, it is respectfully submitted that there remain substantial grounds for believing that the Applicant will fail to appear for trial, interfere with witnesses/otherwise obstruct the course of justice, or commit offences on release. Moreover, there are no conditions that can be imposed to allay these concerns.

4. The Applicant’s main grounds for seeking bail appear to be:

- (i) She is experiencing difficulty in giving instructions to her lawyers as a result of her remand in custody [Affidavit para. 11]*
- (ii) She suffers from various medical conditions [Affidavit para. 12], exacerbated by remand in custody [Affidavit para. 13]*
- (iii) She has demonstrated that she is a flight risk but not availing herself of a purported opportunity to flee [Affidavit para. 14]*
- (iv) As the trial has now commenced, the Court has had an opportunity to see her commitment to the trial process and to contesting the charges [Affidavit para. 17]*
- (v) The trial will conclude in October (or thereafter) rather than September 2023.*

5. Each will be considered briefly in turn:

(i) Ability to give instructions to lawyers

6. The Court will be well aware of the efforts made to ensure that the Applicant has sufficient time and facilities to meet with her legal representatives as the trial process continues and that the issues set out at para. 11(h) of the Applicant’s affidavit have now been resolved (as the Applicant herself in her Affidavit accepts).

7. Moreover, as set out when the 1st and 2nd Defendants sought to adjourn the trial on 4 July 2023, the delay in instruction of lawyers for the 1st and 2nd Defendants arises from their tardy application to seek variation of the Restraint Order.

8. The Restraint Order was imposed in March 2023, no application to seek variation to release funds to instruct lawyers for trial was made until 16 June 2023. If such application to vary restraint had been made sooner, matters could have

been resolved sooner and lawyers could have been instructed in good time. The current situation is one of the Applicant's own making. It will behoves the Applicant to pray in aid a situation that she is responsible for as a basis to seek release on bail.

9. In any event, again, the Applicant's is in no different position to any other accused in custody facing legal proceedings. If anything, the Applicant has been afforded even greater opportunities than most to meet with her legal team (with extensive opportunity to meet counsel during lunch adjournments and at all other reasonable times).

10. With regards to the specific complaint made by the Applicant, i.e. that she can only spend 1 hour per day with counsel during the lunch adjournment (para. 11 (f) and that she spends 3-4 hours per day commuting to and from prison [para. 1 (g)] it is respectfully submitted that one solution could be to find a secure and suitable room within the Court complex to allow for the 1st and 2nd Defendants to meet with their legal representatives. This would significantly reduce commuting time and thereby afford her greater time to meet with her lawyers each day.

(ii) Medical conditions

11. It is respectfully submitted that the Applicant's medical complaints can and are being adequately managed in prison and do not warrant release on bail. The Applicant's own affidavit bears out that she is receiving medical attention while in custody: receiving medication (para. 12(c), treated for gastral infection (para. 12(d), treated for acute stomach pain (para. 13(f), and receiving care from specialist gastroenterologist (para. 13(g). The prison authorities have, and plainly will, continue to ensure that the Applicant receives medical assistance as and when required.

(iii) Flight Risk

12. The Applicant remains a flight risk. The facts of the incident referred at para. 14 of the Applicant's Affidavit are out with the knowledge of the Respondent. However, it is unlikely that the Applicant was left unsupervised by security staff and had an opportunity to abscond.

13. In any event, an 'in the moment' opportunity to abscond is distinct from the risks posed by the Applicant's means and ability to plan flight from the jurisdiction if granted bail.

(iv) Commitment to Trial Process/Contesting Charges

14. The Applicant's engagement with the trial process, both herself and through her lawyers, is no more than what would normally be expected of any defendant during trial. The Applicant can, and no doubt will, continue to contest the charges and ultimately the Court will decide upon the case against her. That she contests the case, in the normal way, during the course of trial, is not a ground to grant bail.

(v) Length of trial

15. *The conclusion of the trial in October, or even later in the year, rather than September is not a proper basis to grant bail. First, responsibility for protraction of the proceedings due to late instruction of lawyers is, as set out above, the fault of the 1st and 2nd Defendants. Moreover, the increased trial length arises predominantly as a result of efforts taken by the Court to accommodate availability of Defence counsel.*

16. *In any event, the minimal extension of trial timetable does not justify or warrant release on bail.*

17. *There remain substantial grounds for believing that the Applicant will fail to appear for trial, interfere with witnesses or otherwise obstruct the course of justice. It is therefore respectfully that she should not be granted bail."*

- [5] The Counsel's reply is also supported by the Affidavit of the Investigating Officer, Detective Sergeant Simeon who avers as follows:

"3. The Applicant seeks bail pending determination of the criminal charges laid against her in CR No. 4 of 2022 by the Honourable Supreme Court.

4. The Applicant's main grounds for seeking bail at this stage of the proceedings appear to be that:

- (i) She is experiencing difficulty in giving instructions to her lawyers as a result of her remand in custody [Affidavit para. 11]*
- (ii) She suffers from various medical conditions [Affidavit para. 12], made worse by remand in custody [Affidavit para. 13]*
- (iii) She has demonstrated that she is not a flight risk but not availing herself of a purported opportunity to flee [Affidavit para. 14]*
- (iv) As the trial has now commenced, the Court has had an opportunity to see her commitment to the trial process and to contesting the charges [Affidavit para. 17]*
- (v) The trial will conclude in October (or thereafter) rather than September 2023.*

5. It is doubtful whether such matters amount to a sufficient change of circumstances to justify reconsideration of bail at this stage of proceedings.

6. The difficulties that the Applicant claims to have had with regards to meeting her lawyers and preparing her defence have been resolved. She and her lawyers are now able to meet without difficulty on a daily basis. Any complaints regarding her cell can be addressed to the Prison Service and dealt with accordingly. This does not amount to change of circumstances justifying reconsideration of bail.

7. *The Applicant's medical complaints have been, and can continue to be, addressed while on Remand. This does not amount to change of circumstances.*

8. *There is no evidence that the Applicant did, in fact, have an opportunity to realistically leave Court as a free person as she claims on 10 November 2022. There remain concerns that she is a flight risk.*

9. *The commencement of trial and the Court having an opportunity to see her and her lawyers contesting the case is what is normally expected of a defendant and their legal representative in any criminal trial. It does not amount to a change of circumstance.*

10. *Finally, that the trial will last slightly longer than originally anticipated does not, of itself, amount to a sufficient change of circumstance justifying reconsideration of bail.*

11. *Even if held that there has been a change of circumstances, the grounds set out in the Applicant's affidavit do not justify release on bail.*

12. *She is now able to meet with her lawyers on a daily basis and instruct them accordingly. Her medical conditions are being addressed while on Remand. Not attempting to leave Court on 10 November 2022 is distinct from having the ability and significant opportunity to plan flight from the jurisdiction if on bail.*

13. *Finally, that the trial will conclude a short time after the end of September 2023 is not justification for bail, particularly when the additional time needed to conclude the trial is as a result of the Court taking steps to accommodate counsel for the Defence.*

14. *Remand should continue on the grounds that there remain substantial grounds to believe that the Applicant will:*

- i Fail to appear for trial,*
- ii Will interfere with witnesses,*
- iii Otherwise obstruct the course of justice, or*
- iv Will commit an offence on release.*

15. *That there are no conditions that can be imposed by this Court to alleviate the above grounds of belief."*

[6] Mr Raymond St. Ange, Commissioner of Prisons, also provides an Affidavit in support of the Respondent's case in which he states that:

"2. The Applicant asserts in her affidavit that she faces difficulty with meeting her counsel as a result of her continued incarceration. Every prisoner on remand is provided with facilities with which to meet their counsel. Laura Valabhji and Mukesh Valabhji have, if anything, been provided with even greater opportunity to

meet with their legal representatives. A designated space is made available to them each day at the Remand Centre at Bois de Rose. Arrangements are also made to bring them from Court to the Remand Centre so that they can conduct such meetings. Needless to say, this places great strain on the Prison Service but it is something we have undertaken to do in order to ensure the smooth running of the trial. With regards the correspondence marked as Exhibit LV2 to the affidavit, the correspondence dates back to 21 July 2023 and this matter has now been resolved. Both Laura and Mukesh Valabhji are brought to the Remand Centre to meet with their lawyers on a daily basis. It should be noted that, due to operational and security concerns the Prison Services does, on occasion, have to adapt at short notice to challenges presented. Such decisions are not 'arbitrary and capricious' as claimed by Mrs Valabhji.

3. Mrs Valabhji also complains about the size and nature of her cell. Again, the cell is no different from the cell of any other prisoner on remand. If Mrs Valabhji is experiencing difficulty with the storage in her cell of documents needed for her case arrangements can be made to provide additional storage space. Additionally, arrangements can be made for a small desk and chair to be provided to her for the duration of the trial.

4. Mrs Valabhji further asserts that USB's sent to her are first checked by the prison authorities. It is right that USB's are routinely checked when provided to detainee's by non-legal representatives. This is to ensure that they do not contain any illicit material, such as pornography etc. This applies to all convicted detainees. However, a different regime exists for legal materials provided to a detainee by their legal representative. If a certified legal representative wishes to pass material to a detainee the procedure is as follows: the USB is to be provided to Chief Inspector Ernesta with a covering letter setting out the type of USB and any identifying features (preferably marked) with confirmation that it contains legally privileged material pertaining to the detainee's case. The USB in question can then be provided to the detainee without delay or intervention.

5. The Prison Service is able to provide medical assistance to all detainees and, where necessary, facilitate their treatment by outside and medical experts. Mrs Valabhji's medical issues have always been addressed by the Prison Services and arrangements have been made for her to receive outside private care where appropriate. It is important, however, for the date and time of private consultations to be discussed with the PMO prior to fixing the appointment. For obvious security and logistical reasons, the Prison Service cannot simply take a detainee to an appointment that they have arranged without any prior notification to the Prison Service. If required Chief Inspector Ernesta can provide details of meeting dates and times where the Prison Services has facilitated such treatment."

Submissions

- [7] The Learned Counsel for the 2nd Accused began her submissions with a Ruling on bail given in the case of *R v Cooposamy & Ors* (CO 40/2023) SCSC 465 (23rd June 2023) and an ongoing case before the Supreme Court in relation to a crypto currency fraud that were to the value of SCR3.3million. The 2nd Accused invited the Court's attention to the decision as she said it is useful because it encapsulates considerations of similar issues as arising in this case. She invited the Court to such parts where the court had held that pre-trial incarceration should not be used to punish an accused person; seriousness of the offence should be calculated through the balancing of a number of factors; that an accused is innocent until he is proven or has pleaded guilty, a principle enshrined in Article 19(2)(a); the need for the Republic to substantiate grounds which they advance in support of the remand application; that the court has to evaluate such grounds that the prosecution has advanced in fact to establish the likelihood that the accused would abscond if release on bail; the burden of proof in such applications and that a judge is not entitled to refuse bail if there were no substantial grounds for believing that an accused would fail to turn up or commit other offences and the onus of course is on the prosecution to establish those exceptions. With respect to the means of an accused and the likelihood of flight, she submitted that in the *Cooposamy* case it was submitted that there was such a likelihood due to accused benefitting from large sums of money, however, the judge found that as the benefits had been seized this would prevent the respondents from absconding and as such bail was granted in that very serious case.
- [8] It was submitted that the Republic's objections to bail asserted in the Response of the Affidavit of Sergeant Simeon is lacking in that no attempt has been made to justify how those supposed concerns raised are made out as at today's date when this Court is approaching the question of bail afresh; and that, at any rate, each of the asserted ground is utterly unfounded and inadequate to justify continuing to deny the 2nd Accused's right to liberty under the Constitution.
- [9] It was submitted further on behalf of the Applicant that she is a professional of unblemished character with every incentive to continue contesting these proceedings as she has been

doing for nearly two years now. Conversely she has no incentive to flee and she submitted that the Republic's case on the risk of her doing so in the circumstances as they have pointed today is unsustainable.

- [10] As for the supposed interference with witnesses and the commission of further offences it was submitted that there is nothing in the Republic's reply that comes close to making out a risk that will allow this Court to withhold bail.
- [11] Before the 2nd Accused made a direct response to the Republic's submissions she reminded this Court how the Republic's case stood when this Court was last invited to decide bail and that it is important to be reminded of this because it seems that the Republic continues to rely on its previous grounds of objection, which are not presently relevant for this Court's considerations.
- [12] To that end the Applicant's counsel submitted that the Court heard the motion last year on the 8th March. The Republic relied on Detective Sergeant then Detective Corporal Simeon's Affidavits. Two Affidavits were filed. One is supporting the remand application under section 179, that was the 11th February 2022; and the second one – an Affidavit by way of reply submission on the morning of the hearing on the 8th March.
- [13] According to the Counsel, the objections to bail advanced last year were failure to surrender and flight risk. That was based on the seriousness of the charges on the strength of the evidence as it existed then. The Learned Counsel addressed the Court with regards to the present state of seriousness of the offence by referring to the evidence of Detective Sergeant Davis. During the search a series of offensive weapons, firearms and ammunitions were found and seized. He sets out a list of the weapons which forms part of the prosecution case and the first item cited is the Dragunov Rifle. It is submitted that this is a key point of the Republic's case against Mrs Valabhji because it was supposedly found in the master bedroom and it is presumably the Republic's case that she must have known about any weapons in the bedroom that she used. The initial suggestion was that it had been found under the bed and then it was averred that it was found in an upstairs bedroom drawer and seized by Sergeant Emile Fred.

- [14] According to Ms Scott, it is clear now that this is no longer the case even on the Prosecution's own evidence because what Prosecution is saying now is that the Dragunov Rifle was in fact allegedly in a locked armoire and the Court had seen photos (defence exhibit D7);~~being a photograph depicting the bolt of the armoire in its extended position~~ after the door had been forced open. Something that she submitted proves that the said armoire was locked before it was forced open. A piece of furniture as known from the evidence heard in the trial to date, that contained only men's clothes. Accordingly, it was submitted that there is no evidence linking Mrs Valabhji to the use of that armoire.
- [15] Ms Scott further submitted that even with the few witnesses who had given evidence so far, the Prosecution's case on the Dragunov Rifle is collapsing. The Court has heard evidence now about the role of the foreign soldiers in the search on the 18th November 2021. This was not mentioned by the ACCS or police officers until they were forced to accept it in cross-examination. The Counsel termed this as unaccountable, unidentified shadowy figures playing a central role in the search operation. It was further submitted that the Court has also seen the photograph of the Dragunov Rifle lying on the rug by the bed. This being a photograph sent by one of the foreign soldiers sent to Captain Luke Fonseca. It is a photograph, she submitted which does not fit anywhere in the sequence of what the Prosecution's witnesses say happened to the weapon after it was taken out of the armoire.
- [16] On the evidence in the trial to date, the Counsel stated, that a picture was clearly emerging of the general chaos of the search. Items were found by people who made no notes. They were taken away from the locations where they were found to be photographed elsewhere. They were seized by officers who were not the ones who have found them. They were then exhibited by different individuals and so it is becoming apparent that the chain of custody for the weapons supposedly found in the living quarters of the house which are crucial to the Prosecution's case against Laura Valabhji is in pieces.
- [17] The Learned Counsel also referred to the last statement of the police officer Emile Fred, which contradicted the Affidavit of the Investigation Officer to the effect that it was Mario Pragassen who had found the Dragunov Rifle when in fact it was practically ACCS Officers who had discovered almost all of the firearms referred to in the Investigating

Officer's Affidavit and not officer Fred. It was submitted that as paragraph 9 of Sergeant Simeon's Affidavit from last year listing all of the weapons said to be found in the house by Sergeant Emile Fred was relied upon to establish a case against Laura Valabhji at that time, the case now falls away. With regards to the other findings of firearms and ammunitions the Learned Counsel submitted that evidence so far revealed that the 2nd Accused had no connections with the study or any other places where any firearms could have been found.

- [18] The Counsel further submitted that another important change in circumstances since the court last considered bail is that, firstly, the ACCS after accepting to grant Mrs Valabhji bail, shortly thereafter dropped the case against her. Thus, according to the Counsel, a further crucial factor in the absconding risk analysis, as it stood last year, has also fallen away.
- [19] Ms Scott thereafter addressed the risk of tampering with evidence. She submitted that the second objection to bail then relied upon by the Prosecution was the risk of tampering with evidence, obstructing justice and committing further offences and which presented evidentially. Ms Scott submitted that there were repeated references in Detective Sergeant Simeon's Affidavit of February 2022 to weapons being unaccounted for and the associated risks that this entailed. According to the Counsel, it was averred that, notwithstanding the decision to charge the Respondents, there was still a considerable amount of firearms and ammunitions that were missing and unaccounted for that were imported into the Seychelles and that the police have reasons to believe that the five suspects (including the 2nd Accused) know the whereabouts of the rest of the firearms and ammunitions and that it follows that if they were to be released on bail there was real risk they would dispose of and tamper with or hide the remaining weapons, preventing the police from seizing and securing these firearms. The same points were made that there was a strong likelihood that more firearms and ammunitions would be discovered at the residence of the 1st and 2nd Respondents at Morne Blanc. Further, it was averred that documents seized at the residence indicated that 350 high explosives fragmentations were also imported in the Seychelles has yet to be accounted for. Finally, it was averred that this posed a threat to national security and public order and for the safety of the country and for peace; and that police were of the firm view

that the Respondents should be remanded. It is submitted that great importance was placed on that particular assertion of missing firearms or ammunitions. However, the Counsel submitted that such assertion has been quietly dropped in the 18 months that has since passed and it had not featured in the Republic's opening speech. Accordingly, the Counsel submitted that this ground was now baseless and should be disregarded.

[20] According to Ms Scott another crucial change in the circumstances before the Court today is that the investigation has now finished. The police are no longer searching for missing weapons. All the searches of the relevant locations have been concluded. All exhibits have now been seized and taken away. Further, it has been ordered that Mukesh and Laura Valabhji were free to take their belongings from Morne Blanc as required, albeit the Commissioner of Police continuing to refuse to give effect to that order. Notwithstanding this the Counsel submitted that since now that the investigation has finished there can be no question whatsoever of any interference with the evidence.

[21] In her further submission the supposed interference had no merit last year and has no merit now. Withholding bail to prevent interference with witness might be justified in a cases with a lot of civilian witnesses or for example involving a vulnerable victim known to the accused. In the present case, however, crucial witnesses are almost without exception professional investigators and so the Court is entitled to assume they are not vulnerable to risk of interference. It is Counsel's submission that it is nonsensical to suggest that the ACCS and police officer witnesses might somehow be kept away from the trial proceedings when it forms part of their professional duty to attend and tell the truth.

[22] With regards to the present circumstances of the case, it was submitted that her client is presumed innocent according to Article 19(2)(a) of the Constitution. She is a person of good character and that the Court of Appeal in its ruling of the 10th February of this year held that this was relevant in two ways. Firstly, it is relevant to the likelihood whether she would commit further offences on bail. According to her, the 2nd Accused's unblemished history strongly indicates that she will not. Secondly, it is relevant to the likelihood that she would abscond because it would be totally out of character for her to do so. She was an officer of the court and was stripped of her licence as a result of the charges against her

and the ACCS proceedings. It was submitted that this weighs heavily in her favour when this Court is considering how likely it is that she would disobey the orders for the Court for her attendance at trial. She stated that now, unlike in March 2022 when the question of bail was last dealt with in this Court, this Court has had the benefit of seeing first-hand Mrs Valabhji's clear commitment to and respect for these proceedings. The Court had previously ruled that Mrs Valabhji's impeccable character meant the Courts have had no earlier opportunity to judge how she engaged in the criminal process. However, this is far from the case now, because during the weeks when she was representing herself this Court was able to see that she was thoroughly professional and diligent in her preparation and conduct of her own defence. According to the Counsel, this is a first-hand demonstration of Laura Valabhji's personal determination to see this case through and to defeat these unfounded charges. Secondly, during the 18 months, which have passed since her last bail application, she has on a number of occasions been in a position of voluntarily submitting to a remand because the Republic has forgotten to make an application. It was submitted that on the 10th November 2022 over an extended period during which Mrs Valabhji was at Court she waited to be remanded and effectively prosecuting her own detention application. Thirdly, it is submitted that the Republic's argument that she is a flight risk places emphasis on her standing and means and that this is curtailed by the restraint order freezing all of Mukesh and Laura Valabhji's assets and the seizure of all the cash found at Morne Blanc.

- [23] The Learned Counsel for the Applicant then relied on what she submitted were Mrs Valabhji's difficult detention conditions and their effect on her physical and mental health. It was submitted that, contrary to the Republic's position, the personal circumstances of the accused will always be weighed in the balance and that consideration of the effect of incarceration of the Accused on her ability to prepare her defence is equally relevant. The Counsel submitted regarding circumstances of the 2nd Accused's Counsel having to return overseas during this adjournment period and arrangements for remote meetings. Reference was also made to an alleged prison's unilateral position to restrict Mrs Valabhji's meetings with lawyers. This decision was reversed after the court's intervention. Due to this it was submitted that the capacity of the 2nd Accused to be defended and accept legal advice was liable to change at any time. That appears to be conceded by the Commissioner of Prisons

in the Affidavit filed in reply. Ms Scott denied the Republic's submissions that the state of Mrs Valabhji's legal representation was as result of the 2nd Accused latches to apply for a variation of the restraint order on her accounts. She further submitted that, to the contrary, ~~everything possible was done in order to ensure that the variation to the restraint order was~~ in place in time for Mrs Valabhji to be prepared for the start of the trial. The Counsel submitted that bail should be granted because the Prosecution has failed to discharge its burden of establishing that Laura Valabhji is at risk of absconding, interfering with witnesses, obstructing justice or committing further offences and it is not for her to make out a case for bail.

[24] Finally, the Learned Counsel for the Applicant submitted on what she proposed to be stringent conditions to bail upon which her client can be released, which would remove any residual risk of Laura Valabhji absconding. The proposals set out in those conditions effectively amounts to home arrest. Mrs Valabhji would have to remain at the given address for 24 hours a day except to come to court or to report to the police station. It is proposed that she reports to the police station twice every week but it could be on any day the Court is not sitting or in the event of medical emergency. It is further proposed that Mrs Valabhji would also be obliged to keep with her a mobile phone at all times and to answer any call and to show her surroundings to the police caller via the camera on request at any time. The Learned Counsel also proposed the surrender of Mrs Valabhji's passport, which is currently in the possession of the ACCS, and a bail security in the sum of SCR500,000; and any additional conditions the Court may wish to impose.

[25] Mr Powles, the Learned Counsel for the Republic, on the other hand, submitted that there remain substantial grounds to believe that the Applicant will fail to appear, interfere with witnesses, and otherwise obstruct the course of justice or commit offences, if released. He submitted that there was nothing in Laura Valabhji's affidavit of the 18th of August of this year that amounted to a change of circumstances to warrant reconsideration of bail at these advanced stage of proceedings. He further stated that there was nothing to reassure the Court that Mrs Valabhji can be safely released on bail and overcome the substantial grounds advanced on behalf of the Prosecution to remand her.

- [26] With regards to the complaint of reduced ability to meet counsel and to give them instructions and information, it was averred on behalf of the Applicant that counsel has only recently been instructed to conduct trial; and, according to the Applicant, foreign counsels requires significant assistance from her to assess and make sense of the voluminous evidence. Mr Powles submitted that no attempts were made to vary the restraint order for the purpose of releasing funds to instruct them in the trial until the 16th of June of this year. If variation had been sought sooner, counsel could have been instructed sooner, and the current situation or any difficulty in instructing counsel would not have arisen. The Counsel for the Republic submitted, therefore, that it is a situation that is entirely of the Applicant's own making.
- [27] Mr Powles further submitted that notwithstanding the late instruction of counsel, Applicant's lawyers are able to meet with her regularly on a daily basis and, as averred in the Affidavit of Commissioner St. Ange, any issue regarding meeting with counsel has now well and truly been resolved. The Prison Services are going above and beyond to ensure that both the Applicant and the 1st Defendant are able to meet at the remand centre every day. The Counsel further stated that as Commissioner St. Ange makes clear, the Applicant and the 1st Defendant are given even greater opportunity than other remandees to meet each day with their counsel. With respect to the 3 to 4 hours per day commuting back and forth from the remand centre, the Learned Counsel submitted that one way of reducing the need of spending so long commuting would be to find a suitable and secure room in the Court complex to allow them to meet without the need to go back and forth at the lunch time adjournment. This will increase the amount of time they can meet with their Counsel at lunch time. In any event, it was submitted that now with the adjournment of proceedings until the beginning of October there is a significant period of time in which the Defendants can instruct their Counsel at their liberty.
- [28] With regards to the difficulty of storage of document, which the Applicant raises in her Affidavit, the Counsel for the Republic submitted that again Commissioner St. Ange has addressed this issue and stated that storage facilities can be provided to assist the Applicant with preparing her defence and instructions in her cell.

- [29] With respect to the medical complaints made it is submitted that no medical evidence was provided to substantiate the Applicant's medical conditions. However, it is clear even from the Applicants own affidavit that all her medical conditions are being well managed within the prison environment. She is receiving medication as set out in paragraph 12 (c) of her affidavit, her gastral infection is being treated as set out in paragraph 12 (b), she is being treated for acute stomach pain that is set out in paragraph 13 (f) and she is receiving care from a specialist gastroenterologist and that is paragraph 13 (g). The Counsel submitted that, as confirmed by Commissioner St. Ange, the Prison Services have diligently ensured that the Applicant receives any medical assistance that she requires and it will continue to do so.
- [30] With respect to the alleged incident on the 10th November 2022, the Counsel submitted two points. First, he stated that during any such period Mrs Valabhji would have been guarded and very unlikely have an opportunity to simply leave the court complex. Secondly, even if Mrs Valabhji could have left court complex but did not, this would have been a one off in the moment of opportunity. Therefore, the Counsel submitted that this is entirely different from being on bail and having time, resources and a significant opportunity to escape.
- [31] With regards to the Court having had an opportunity to see Applicant's commitment, contesting the charges and her respect for the trial process it was submitted that all defendants do that and all defendants who go to trial contest the charges at the trial. This Applicant is no different to any Defendant contesting a criminal charges they face and no doubt the Applicant will continue to do so through her lawyers now; and ultimately the court would determine the case having heard all the evidence from both prosecution and the defence. It is, therefore, submitted by Mr Powles that the fact that the Defendant is challenging the case when first representing herself and thereafter through her expert counsel is not a change of circumstances, much less a ground for bail.
- [32] With regards to the length of trial and it being a fact to be taken into consideration in granting bail the Learned Counsel submitted that one of the significant reasons why this

trial will now take additional time is due to the Court taking steps to accommodate Counsel of the Defendant's choice to be available for trial.

[33] Moving to the substantial grounds, the Counsel submitted that the Applicant remains a flight risk, will interfere with witnesses and justice and commit further offences. Reference was made to Detective Sergeant Simeon's Affidavit in support of remand dated the 18th July 2022. In that Affidavit it is submitted that the Detective Sergeant Simeon made clear that the Applicant has significant financial and socio-economic influence. The Valabhji couple is estimated to have a wealth in the region of US\$900 million and it is submitted that the Applicant has the means to flee and to use those extensive means and resources to engage an expert support to flee. According to Detective Sergeant Simeon, there has always been and there still is concern that the Valabhji couple has untraced assets at their disposal and it had already come out in evidence during proceedings that there were large sums of cash hidden in safes in the house along with keys. That is not to mention hidden bank accounts and resources. The Counsel further submitted that the Applicant is a lawyer and a business woman and has the ability to trace and access those assets. The Counsel attempted to distinguish the case of *Cooposamy* and submitted that there are untraced assets that can really be used by the Applicant to flee if she so chooses.

[34] Mr Powles further denies that the Prosecution's case is in pieces. According to him, it is far from it as the evidence has started to emerge which paints a compelling picture of a large quantity of weapons being held and stored at the Valabhji's residence. Sufficient quantity of these weapons could cause serious damage and harm to the people of Seychelles. With respect to the Dragunov sniper rifle that was found in the bedroom of Mr and Mrs Valabhji the Counsel submitted that the Prosecution's case is only half way through the trial as we stand and that there is no evidence that has emerged at this stage supporting the Defendants' suggestion that any weapons were planted in the house. With respect to the fact that Officer Emile Fred went back on his former statement with regards to the seizures of the firearms and ammunitions, the Learned Counsel, whilst admitting that it is the case, argued that the findings were made by others also including Sergeant Marianna Eulentin. At any rate it was submitted that these are matters for the Court to

consider and determine in due course after hearing all the evidence and not merely at submissions and speculation on the part of parties at this stage.

[35] ~~The Counsel further submitted that the trial has started and witnesses has started to come~~ to court to give evidence and that we are at a crucial time when witness interference can take place. According to the Counsel, the manner in which the trial has been conducted demonstrates that the Applicant has much if not more knowledge than her husband as to the items in the house. Reference was made to a letter she wrote to her husband from prison after their arrest and after weapons had been discovered in which the Applicant caution her husband to the following effect: *“I know they may force you to go to the house, you do not know anything about what is there or not, if they want to know anything they need to talk to me”*.

[36] Additionally, with regards to the credibility of the Applicant, the Learned Counsel submitted that in the Affidavit of Detective Sergeant Simeon of the 18th of July 2022 it was averred that the Applicant had notarized documents in her cell which reportedly said that they were notarized in her presence with the person who had submitted them on the 14th January 2022 and they were then sent to the Registrar General. However, on the date in question there is no record of the parties relating to the notarized documents having visited the Applicant in her cell. Therefore, it demonstrates that she cannot be relied upon to abide by conditions availed and orders set by the Court as she was prepared to mislead in the nature and truthfulness of documents that she submitted and reported to have notarized in the presence of witnesses who were not there.

[37] As to the missing weapons and ammunitions Mr Powles submitted that the Republic does maintain that there are still missing weapons and that the packing list and documents related to weapons in this case demonstrate that more weapons were ordered and imported than have been discovered. According to him, the discovery of some of the missing grenades at the end of last year have been disclosed to the defence but that still leaves 10 grenades that are missing. Further, Mr Powles submitted that indeed there are still further fire arms that are missing and it only takes one weapon and one bullet to cause serious harm and serious damage and loss of life. Mr Powles emphasised on the fact that in 2019

one weapon with a silencer was found hidden on the property of Valabhji's relative, Shurekan Valabhji. It was found in an area directly overlooking the home of the opposition leader at that time, now the President, Mr Ramkalawan.

- [38] According to Mr Powles, vast quantity of weapons that were found in the Valabhji residence do support the very serious terrorism charges, for which there is a 20 year maximum sentence being imposable and the sheer quantity of weapons found along with a hundred and sixty grenades and the letter that Mrs Valabhji send to her husband demonstrate that she must have known of the weapons found in their house. According to the Counsel, these are extremely serious charges and for that reason there is an incentive to flee.
- [39] In relation to the absence of any reference to Mrs Valabhji's name on any document, Mr Powles submitted that they have not yet been able to access the digital devices belonging to Mrs Valabhji. Mr Joseph Athanasius was instructed to conduct a review of potentially, legally professionally privileged material to thereafter allow the Republic to interrogate and investigate Laura Valabhji's digital devices. However, the Counsel submitted that he has failed manifestly to provide any report and thereby restricted the Republic's ability to properly investigate these devices. Even without that, Mr Powles submitted that he maintains that the case against Mrs Valabhji is compelling, she has the means to flee and there is a real substantial grounds of believing that she will flee. Further, it was submitted that Mrs Valabhji has the means and the motive to interfere with witnesses especially now that the trial has commenced and she has seen the evidence emerged and the sheer quantity of weapons that were found in their home, and that the case against her husband is serious and real; and moreover they have the means to commit further offences.
- [40] Ms Scott replied to certain submissions raised by the Republic. According to her, it is simply not correct to say that no attempt was made to vary the restraint order until the 16th of June this year. According to her, there was an ongoing discussion between the Counsel of the Valabhji and the ACCS for negotiated variance of the restraint order, which has caused the delay in the application. Secondly, in countering the Republic's argument with respect of the 10th November 2022 incident, Ms Scott submitted that to the contrary of Mr

Powles' submissions, the guards have no power to detain someone in the absence of a Court Order.

[41] The Learned Counsel objected to the existence of untraced assets as unsubstantiated. As to the notarization of documents without the presence of the necessary party whilst the Applicant was in cell, Ms Scott submitted that the documents in question were notarized by Mrs Valabhji before her incarceration, but they were wrongly dated by her secretary. It was submitted that this matter has been investigated by the ACCS and dropped with no further action taken; and the Director of the bank confirmed that he signed the document in Mrs Valabhji's presence before her.

[42] As to the missing weapons, Ms Scott submitted that the Republic has chosen in its reply to this Motion not to substantiate any of its grounds for objecting to bail on this basis and had instead made fresh allegations in oral submissions which could and should have been before the Court in writing.

[43] Ms Scott further submitted that two of the five Accused are now on bail and therefore if the submission, as it was made last year, was that releasing anyone on bail would give access to the alleged co-conspirators to those weapons, this would have had already happened.

[44] With respect to the review of the digital devices, the Counsel responded by submitting that the ACCS conducted that process and there was a discussion over the appointment of a suitable lawyer. Mrs Valabhji proposed the President of the Court of Appeal, the ACCS proposed someone different and she accepted that proposal, so there is no question that she has been capable of any kind of obstruction or delay; and in fact today is the first time that she has heard of the outcome of that process.

Analysis and Determination

[45] I have carefully listened to the submissions made before the Court and I have given close and meticulous attention to the Application, its supporting affidavit and attached documents. The same consideration has been given to the Reply, its affidavit in support and attached documentation. Having done so I have come to the following determination.

- [46] First, I note that there is no contention with regards to the Applicable legal principles and law between the parties in this Application. The submission on the law by the Learned Counsel for the Applicant has well set out and states the approach that our courts has taken on the subject. In the appeal made by the Applicant before the Seychelles Court of Appeal, SCA CR 08/22, the Court of Appeal set out the applicable law to bail at paragraphs [39]-[56] and this Court embraces those finding in its entirety, especially when it comes to its confirmation of the principles as set out in the case law. Accordingly, I am of the view that all the following submissions is trite law in this matter; are highly regarded and has been carefully applied in this decision. These principles are the following: pre-trial incarceration should not be used to punish an accused person; seriousness of the offence should be calculated through the balancing of a number of factors including that an accused is innocent until he is proven or has pleaded guilty, a principle enshrined in the Article 19(2)(a); the need for the Republic to substantiate grounds which they advance in support of the remand application; that the court has to evaluate such grounds advanced by the prosecution to established the likelihood that the accused would abscond if released on bail; the burden of proof in such applications and that a judge is not entitled to refuse bail if there were no substantial grounds for believing that an accused would fail to turn up or commit other offences and the onus of course is on the prosecution to establish those exception are trite law.
- [47] The Learned Counsel for the Applicant in order to show changes of circumstances that would merit the enlargement of her client on bail first took a historical approach in her submissions aiming to show to the Court that the circumstances since this Court made its remand in detention Order has changed drastically in favour of the Applicant, which merits reconsideration of the said decision and her enlargement of bail, albeit on stringent conditions.
- [48] According to the Counsel, from the evidence before the Court the objections to bail advanced last year were, firstly, related to failure to surrender and flight risk, which was in turned based on the seriousness of the charges and on the strength of the evidence. The Learned Counsel then addressed the Court with regards to the present state of seriousness of the offence. She referred to the evidence and testimony of Detective Sergeant Davis in

relation to seized firearms and ammunitions, with reference being made to the Dragunov Rifle, which the Counsel states now is doubtful with respect of whether it was in possession of the 1st and 2nd Accused. The Counsel also submitted that the Court has heard evidence now about the role of the foreign soldiers in the search on the 18th November, something that was previously opaque. She also made references to what she termed as the picture of the general chaos of the search in how the search was done and items being found by people who made no notes. Finally, the Counsel claimed reduction in the strength of the Prosecution's case also in the last statement of police officer Emile Fred, which contradicted the Affidavit of the Investigation Officer to the effect that he was the principal finder of the arms and ammunitions.

[49] In the previous decision of the Court on this subject I have stated what should be the consideration of the court when assessing the issue of seriousness of the offence and the strength of the prosecution case when considering a bail application.

[50] This was couched as follows:

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.

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 demeanor or credibility of a witness during the trial, not contemplated at this stage.

However, 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 it by establishing that there exists a prima facie case against the accused which merits a determination to be made beyond a reasonable doubt.

- [51] It is with this cautious approach that I consider the issue of seriousness and the strength of the case anew. I find in doing so that the offences charged against the Applicant are substantially the same as was before the Court in March last year and they carry serious penalties and all have serious impact on the public safety, order and national security of this country. Moreover, whilst last year the trial had not started, now witnesses for the Prosecution has started to testify in the trial, which is well under way and the defence had the chance to weigh and assess witnesses evidence. This being the case, this Court will not venture into the different testimonies of the Prosecution witnesses and test their veracities; inter or intra contradictions of witnesses evidence; evidential irregularities and consideration whether reasonable doubts exist in the Prosecution's case as that would clearly be premature and can only be done, at the earliest, at the close of the Prosecution's case.
- [52] It is clear that the true and full picture of the Prosecution's case has not emerged yet and would be subject to the push and pull of the trial until this case is over. Hence, as enticing as the Learned Counsel's submission may be, the Court would not make a pronouncement on the weight or credibility of the Prosecution evidence. So far it is safe to say that the Court is still of the view that the Republic has and is still showing that a prima facie case exists against the Applicant in this case.
- [53] The Counsel further submitted that another important change in circumstances since the court last considered bail is that the ACCS has dropped its case against Mrs Valabhji since I last considered the issue of seriousness of the offence. I find that this submission to be misguided given that this Court has always considered the issue of seriousness of the offence in the context of this case only and not with that of the facts of the case in CR 114 of 2021. Accordingly, for the purpose of this Ruling the fact that the charges has been dropped in that case cannot be considered as a change of circumstances.
- [54] The Counsel further stated that another crucial change in the circumstances before this Court today is that the investigation has now finished. Again, I do not find this as a change as at the time of the filing of the indictment in this case it was clear to this Court that the bulk of the investigation was completed. Whatever further investigation was left to be done

after the charges were done ad hoc and were understandable given the unprecedented and complex nature of the case before the Court. In other words, the seriousness of the case has little consideration to the fact that some investigation such as the searches of weapons were still being carried out at the time of charging of the Applicant. Though, it might be relevant to another material consideration in this case, which is the possibility of tampering with evidence or committing offences if released on bail. This is supported by material averments in the Application.

[55] Ms Scott submitted that the risk of tampering with evidence, which was one of the grounds for the Court to remand the Applicant in custody has fallen through when it comes to her possibility of tampering with alleged arms and ammunitions still at large and being the subject matter of searches by the police. According to her, this constitutes a very material change since this Court's last decision. She submitted that such assertion of further arms being searched for has been quietly dropped in the 18 months, which has since passed, and it had not featured in the Republic's opening speech. Accordingly, Ms Scott submitted that this ground is now baseless and should be disregarded. She also submitted on the fact that the crucial witnesses are almost without exception professional investigators and that the Court is entitled to assume they are not vulnerable to risk of interference. This is supported by material averments of the Applicant. On the other hand, the Republic maintains that there is the possibility that there might be arms and ammunitions at large given the alleged discrepancies between arms imported and discovered.

[56] Having carefully examined the facts and circumstances relating to this issue I am of the view that, though, there might be the possibility of the Applicant dealing or tampering with firearms and ammunitions still at large if released, this possibility has diminished as a result of the passage of time, especially after the police has executed related search warrants in many places, including the residence of the Applicant, as shown by the facts of this case. This, therefore, constitutes a material change of circumstances only to the extent that the possibility is reduced to what it was 18 months ago. It, however, does not remove entirely the possibilities as there might still be weapons and ammunitions at large.

[57] With regards to the present circumstances of the Applicant that merits a reconsideration of this Court of its position as to her release on bail, it was submitted that she is a person of good character and that the Seychelles Court of Appeal in its ruling of the 10th February of this year held that this was relevant in two ways. First it is relevant to the likelihood whether she would commit further offences on bail and her unblemished history strongly indicates that she will not. Secondly, that it is relevant to the likelihood that she would abscond because it would be totally out of character for her to do so. I accept the Court of Appeal's legal consideration of this aspect of the case, especially the two factors in relation to the good character being proposed in this proceedings.

[58] The court had previously ruled that her good character meant that the Courts have had no earlier opportunity to judge how she engaged in the criminal process. On this issue I had also previously held that, though, the Accused may be of good character my main concern was that the Accused has never before been charged with all these serious offences and that these new circumstances may create a greater likelihood of her tampering with the evidence or absconding the jurisdiction irrespective of her alleged past good conduct. I am still of this view given that the nature of the case has not changed. When I came to that determination I want to point out that I was not at all diminishing the weight and relevance of the Applicant's character and personal history on the issue before. To the contrary, I found that it was and I am still of the opinion that it is an important consideration. However, taking into account the unprecedented serious nature of the charges and the possible serious consequences for the Applicant, coupled with the means and the Applicant's possible capacity to influence others through those means, I am of the view that her good character and personal history does not tip the balance in favour of her being released on bail conditions. The Court's opinion might have been different had the charges been less serious in nature and the potential capacity for the Applicant to influence witnesses for the prosecution; tamper with evidence and abscond had not been what it is .

[59] This leads me to the next issue, that is of the flight risk, which is imposed due to the standing and means of the Applicant. It is not disputed that the Applicant and her husband are high net worth individuals, however, her Counsel submitted that her capacity to flee is curtailed by the restraint order freezing all of their assets and the seizure of all the cash

found at Morne Blanc. To that extent she compares this case to that of *Cooposamy*. This court will not agree with this submission as the financial means of the Applicant far exceeds that of the Accused in *Cooposamy* case and the facts of the two cases can be distinguished. Notwithstanding the said freezing order, the Court is of the view that the Republic has shown that the Applicant still possess the financial capacity; influence and aptitude, which may cause her not to appear for the continuation of trial if she is enlarged on bail.

[60] With regards to the 10th of November incident, the defence seemingly paints a picture of self-restraint by the Applicant given the particular circumstances in which it arose, where a motion of remand extension through inadvertence was not prayed for in time by the prosecution. I agree with the Republic submission that the situation would be totally different if the Applicant is enlarged, being outside the premises of the court, with no apprehension of a pending motion for her detention. This being said, the Court commends the Applicant for her conduct on that day and generally great respect she had for the proceedings as an officer of this court.

[61] The Learned Counsel for the Applicant relied on what she submitted are Applicant's difficult detention conditions and their effect on her physical and mental health; and the effect of incarceration of the Accused to prepare her defence. With respect to this issue I note that the detention would be unfair and inhumane if its impact would cause the Applicant undue physical and mental suffering as opposed to certain distresses and discomforts, which comes with all court ordered detention, such as in this case. The proceedings of this case will show that the court has been attentive and sensitive to the health condition of the Applicant and how it is being impacted by her incarceration and has been very accommodative to the Applicant by allowing her to receive the necessary medical attention as and when she requires and this is borne out by the records. Her health conditions cannot be said to have been adversely affected by her detention and any medical conditions that she has suffered or may suffer in the future will be given the same attention.

[62] As far as the prison authorities concerned, they have substantially abided by the said court orders. As to the present and future compliances the Commissioner of Prison has deponed that the Prison Services are able to provide medical assistance to all detainees and, where

necessary, facilitate their treatment by outside medical experts. Mrs Valabhji's medical issues have always been addressed by the Prison Services and arrangements have been made for her to receive outside private care where appropriate. He stated that it is important, however, for the date and time of private consultations to be discussed with the PMO prior to fixing the appointments. For security and logistical reasons, the Prison Services has to be notified of medical appointments that has been arranged by the applicant. I am hence satisfied that the facilities and opportunities available to the Applicant to address any of her medical conditions are satisfactory to the acceptable standards and her conditions do not necessitate her release on bail.

[63] The Applicant's other ground put forth in favour of her release on bail is in respect of the alleged challenges that she has with respect to meeting with and giving instructions to her counsels, especially foreign counsels, given her detention and state of incarceration. An argument which has arisen with respect of this issue is with regards to the historical cause of the tardiness of this trial. In its earlier Ruling, this Court had already given its opinion why it believes we are undergoing trial at this moment in time during period of pre-trial detention of the Applicant, when it fixed the trial dates in this case earlier. I share the views of the Learned Counsel for the Republic that if the Applicant had been more diligent with respect of her Application to waive the ACCS's restrictions on Mr Valabhji's and her accounts, this trial would have begun much earlier. Nothing have been adduced in this Application to convince me otherwise.

[64] With respect to Applicant's present detention conditions and access to counsel, the Court have made some extraordinary orders in this case in order to accommodate the Applicant, given the specific circumstances of the case. Such orders are rarely made in criminal trial before the Supreme Court. I have ordered that counsels meet the Applicant during the afternoon breaks on all days of the trial, at the Remand Centre. I have further ordered that the Applicant meets her counsels at the same place on days even when the trial is not proceedings. I have also ordered that they visit the residence of the Applicant together with the Applicant and her husband. Further, I have adjourned the trial in order to allow one of the Applicant's counsel, albeit the leading counsel, to attend to other professional commitments. Numerous such other similar orders have been made in this case in order to

accommodate the Applicants right to counsel of her choice. Hence, the Applicant cannot complaint that this Court has not been accommodative enough. As for the future access, having read the Affidavit of the Commissioner of Prisons, I am convinced that he would comply with this Court's orders and with the Applicant's right to legal representation.

[65] It is to be noted that only the leading counsel have been given leave to proceed out of the jurisdiction and any of the Applicant's other counsels, local or international had been free to be physically present and seek instructions of the Applicant whilst she is under detention. The alternative could have been and prospectively can be b doing it online and if there any impediments with the exercise of this right she can motion the Court and the Court will make the necessary orders. Accordingly, this Court does not see the length and the conditions of detention of the Applicant as an impediment to her right to legal representation and a justifiable ground for her to be released on bail.

[66] For these reasons the Court determines that the Republic has again managed to prove beyond a reasonable doubt that there are substantial grounds to suspect that the Applicant will flee the due course of justice or otherwise interfere with the Prosecution evidence at this crucial stage of the proceedings if she is enlarged on bail conditions. The conditional grounds for release being put forth by the Applicant as an alternative to her remand in custody have been individually and collectively reviewed by this Court. Having done so the Court is of the view that such conditions do not remove or diminish the abovementioned grounds for suspicion. Accordingly, the Application is dismissed and the remand of the Applicant is extended for not more than 15 days.

Signed, dated and delivered at Ile du Port on the 2nd of October 2023



Govinden CJ