

IN THE DISTRICT COURT OF RIVIERE DU REMPART

In the matter of:-

Provisional CN: 2693/23

Suriadev CALLEECHURN

APPLICANT

V

Police

RESPONDENT

**RULING**

1. The applicant stands provisionally charged with the offence of '*Larceny armed with offensive weapon whilst being masked*' in breach of sections 301 (1) and 301 A and 305 (a) of the Criminal Code. It is averred in the provisional information that on or about the 4th of December 2023, at Royal Road, Grand Bay the applicant wilfully and fraudulently, abstracted a sum of Rs 700 000 in different bank notes and that he was at all material times masked and armed with an offensive weapon.
2. The applicant moved to be admitted to bail and was represented by counsel.
3. The Enquiring Officer (EO), PS 6331 Sohun deposed under oath to resist the bail motion.

**The Respondent's case**

**Facts and circumstances:**

4. The EO stated under oath that the applicant was arrested after a case of larceny was reported on 04.12.23 at Grand Bay police station to the effect that two unknown persons, masked and armed with sabres, had threatened the declarant and her colleagues at their place of work, a money changer business along Royal Road, Grand Bay, and a sum of money of about Rs 938 000 in foreign currency had been abstracted from the safe by these protagonists. Only a sum of Rs 433 280 had been recovered. The applicant was found in possession of a sum of Rs 2250 which is believed by the police to form part of the loot. The applicant was positively identified by a co-accused and the applicant thereafter confessed to the charge in his unsworn statements to the police. The EO further stated that the motorcycle used in the commission of the offence is owned by the applicant.

5. The applicant was not on bail at the time of arrest. He is borne on record for '*assault causing incapacity for more than 20 days*' for which he was conditionally discharged in 2018.

### **Grounds of Objection**

6. The EO invoked the risk of the applicant tampering with evidence and the risk of applicant interfering with witnesses.
7. To substantiate the ground objection raised as the Risk of tampering with evidence, the EO stated that only part of the exhibit has been recovered and a sum of Rs 504 720 is still missing, such that the police holds the apprehension that the applicant will dispose of same if he is released on bail.
8. To substantiate the second ground of objection raised as the Risk of interfering with witnesses, the EO invoked police information received that the applicant has handed over the remaining sum of money to other persons, police is still working to trace out the identity of those persons whom the police believes applicant will interfere with if he is released on bail.

### **Nature of the evidence**

9. As per the Enquiring Officer, Applicant has confessed to the charge after he was positively identified by a co-accused. As such the nature of evidence against the applicant is strong.

### **Status of the enquiry**

10. The Enquiring Officer stated that the enquiry would be completed in about 3 weeks.

### **The case for the Applicant**

11. The applicant elected to make a statement from the dock to the effect that he works as a food hawker, is the sole breadwinner for his family, has a medical condition and will abide by all bail conditions imposed if he is released on bail.

### **The Law**

12. The Constitutional right to liberty of the applicant is enshrined in section 5(3) of the Constitution and sections 3 and 4(1) of the Bail Act. The aim of releasing the suspect on bail subject to certain conditions is to ensure that the suspect appears for his trial in the event he is prosecuted, he does not harm society whilst being at large and he does not in any way interfere with witnesses or tamper with evidence.

13. The Court in assessing whether bail should be withheld or not, should carry out a balancing exercise on the basis of the evidence in record, between (a) the need to safeguard the right to liberty of a suspect when viewed in the context of the presumption of innocence, and (b) on the other hand, the need to ensure that society as well as the administration of justice are protected against serious risks which may materialize if the detainee is released. *[Re: Labonne v DPP 2005 SCJ 38]*
14. The rationale as to bail was clearly set out in the authority of *Maloupe v The District Magistrate of Grand Port 2000 SCJ 233* where it was held that a person should not normally be released on bail if the imposition of conditions reduces the risks to such an extent that they become negligible, due weight being given to the presumption of innocence when carrying out this balancing exercise.
15. In *Deelchand v The Director of Public Prosecutions & Ors [2005 SCJ 215]* the following was held on the Risk of interference with witnesses:

*"To satisfy the court that there is a serious risk of interference with a witness, satisfactory reasons, and appropriate evidence in connection thereof where appropriate, should be given to establish the probability of interference with that witness by the applicant. In his book "Bail in Criminal Proceedings" (1990). Neil Corre, writing from sound practical experience, points out that the risk that the applicant may "interfere with witnesses or otherwise obstruct the course of justice is "an important exception to the right to bail because any system of justice must depend upon witnesses being free of fear of intimidation or bribery and upon evidence being properly obtained". He then goes on to point out:*

16. The exception's most common manifestations are in cases where:

- a. the defendant has allegedly threatened witnesses;
- b. the defendant has allegedly made admissions that he intends to do so;
- c. the witnesses have a close relationship with the defendant, for example in cases of domestic violence or incest;
- d. the witnesses are especially vulnerable, for example where they live near the defendant or are children or elderly people;
- e. it is believed that the defendant knows the location of inculpatory documentary evidence which he may destroy, or has hidden stolen property or the proceeds of crime;
- f. it is believed the defendant will intimidate or bribe jurors; and
- g. other suspects are still at large and may be warned by the defendant

*The exception does not apply simply because there are further police enquiries or merely because there are suspects who have yet to be apprehended."*

17. In *DPP v Lam Po Tang (2011 SCJ 56)* it was held that an applicant interfering with a suspect whose identity is still unknown can under no circumstances be a ground for the continued detention of the applicant.

## Assessment of the evidence

18. The Court notes that as per the EO's version under oath, the information available to the police is that the applicant has already handed over the remaining sum of money to persons whose identity is still unknown, such that the sum of money which has yet to be recovered is no longer in physical possession of the applicant but lies with other persons. However, other than stating that there is police information about this alleged handing over of the tainted proceeds and that police is still working to trace out the identity of these persons, there is no evidence on record as to what steps the police have taken to ascertain the possibility of recovering the remaining exhibits and the leads connecting the applicant to the exhibits still not recovered at this stage. Bearing this in mind, the Court notes that the enquiry is still at a relatively early stage, a large amount of money has not yet been recovered yet and the accused has confessed to the charge which shows that the nature of the evidence against him is strong. In the circumstances, there is a likelihood that he has knowledge about the location of the unrecovered exhibits and may have the incentive to tamper with same to make the most of the loot whilst he is on bail. As such, the Court finds that the Risk of tampering with evidence has been substantiated.
19. With respect to the risk of interfering with witnesses, the Court notes that as per the evidence of the EO, the applicant has confessed to the charge such that the incentive to interfere with witnesses is less likely to manifest itself. Moreover, there is no evidence of any attempt made by the applicant to interfere with or threaten any witness. Nor is there any indication at this stage of any link or communication between the applicant and any third party suspected to be in possession of the unrecovered exhibit. There is no evidence that the applicant has attempted to interfere with any witness or even tried to contact any witness or suspects in relation to unrecovered exhibits and these have, so far, remained unknown to the police.
20. The Court therefore finds that although the police has an apprehension that the applicant will interfere with witnesses, no satisfactory reason with appropriate evidence was adduced in this case in support of the risk invoked, in order to establish the probability of interference with witnesses by the applicant. As such, the Court finds that the Ground of objection - risk of interference with witnesses raised by the Respondent has not been substantiated.

### **Balancing Exercise**

21. In making the balancing exercise to determine whether conditions can be imposed to reduce the risk identified and found plausible, the Court has addressed its mind to, a number of conditions such as the imposition of a surety and recognizance, reporting conditions, curfew order, informing police of his whereabouts, etc.
22. Having considered the evidence in this case, the stage of the enquiry, the nature of the evidence against the accused, his previous conviction for a non-cognate offence and the value of the stolen property involved, the particular facts of the case as follows:
- The Applicant has one previous conviction for a non-cognate offence, but he was not on bail at the time of arrest

- The Applicant has confessed to the offence, and the nature of the evidence against him is strong but he still enjoys the presumption of innocence until found guilty;
- There is no evidence of the possibility of the remaining exhibits being recovered and of the steps taken by the police so far to recover the exhibits, these are with unknown third parties as per police information, there is no indication of any lead for the applicant's contact and relationship with any of the alleged recipients of the proceeds of the larceny
- The Applicant is a family man, he has a fixed place of abode
- The time spent on remand already for this case, viewed in the context of the complexity revealed in the enquiry

25. The Court finds that the need for the applicant to be in continued detention does not outweigh his right to liberty and that stringent and reasonable conditions, may be imposed to bring the risks identified to an acceptable level.

26. I therefore order that the Applicant be admitted to bail on the following conditions:

- a. The applicant shall furnish a surety by bank cheque in the sum of Rs 50 000;
- b. The applicant shall enter into a recognisance in the sum of Rs 200 000 in his own name;
- c. The applicant shall reside at a fixed address which shall be communicated to the police and shall remain available for enquiry. He shall inform the police immediately of any change of address prior to moving;
- d. The applicant shall report to the police station nearest to his place of residence once daily between 6 AM and 6 PM;
- e. The applicant shall inform the police of his daily activities and whereabouts every time that he reports at the police station;
- f. The Applicant shall remain indoors at his residential address provided to the police between 19 00 hrs and 05hr 00;



**R. Segobin**  
**Ag. District Magistrate**  
**District Court of Rivière du Rempart**  
**This 28th of December 2023**