

**IN THE DISTRICT COURT OF LOWER PLAINES WILHEMS**

Provisional cause number: 2555/23

In the matter of:

DINESS CHOOLUN

Applicant

V  
POLICE

Respondent

**RULING**

The applicant stands provisionally charged for the offence of making use of a forged document in breach of sections 112 and 121 of the Criminal Code Act.

The applicant has moved to be released on bail and was represented by Defence Counsel Mr Bandhu.

**Case for the respondent**

The enquiring officer Inspector Poinen has been deputed by the Commissioner of Police to resist the bail application on the ground of risk of interfering with witnesses. He stated that the complainant Mr D K Nyckcheddy reported to the police that a site plan with a falsified stamp bearing his name, has been used to make an online application to the Ministry of Housing and Lands to obtain a pin certificate for a private land situated at Midlands. The police enquiry led to the arrest of Mr Sydney Pokhun who implicated the applicant. The police is still looking for another co-accused who is at large. The applicant has a clean record and is not on bail. The applicant confessed to the charge.

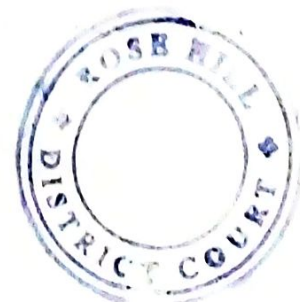
**Interfering with witnesses**

Inspector Poinen testified that there is a risk that the applicant may interfere with another co-accused who is at large if he is released on bail.

Under cross-examination, he admitted that the applicant has fixed place of abode. The applicant is married and has a child. He confirmed that the applicant cooperated with the police and has not threatened witnesses. The police only has a strong apprehension that the applicant will interfere with witnesses. He agreed that there is no evidence to demonstrate that the applicant will interfere with witnesses.

**Case for the applicant**

The applicant stated from the dock that he will abide with all the conditions that the Court may impose if he is released on bail.



### Submissions of Defence Counsel

The gist of the submissions of Defence Counsel is that the applicant may be released on bail in as much as the latter has a clean record. He also stressed that the enquiring officer has confirmed that the applicant has neither threatened nor intimidated witnesses.

### Findings

I have duly considered the evidence on record and the submissions of Defence Counsel. It is apposite to refer to **section 4 of the Bail Act 1999** which provides as follows:

#### 4. Refusal to release on bail

(1) A Court may refuse to release a defendant or a detainee on bail where –

(a) it is satisfied that there is reasonable ground for believing that the defendant or detainee, if released, is likely to –

(i) fail to surrender to custody or to appear before a Court as and when required;

(ii) commit an offence, other than an offence punishable only by a fine;

(iii) interfere with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to him or to any other person;

(b) it is satisfied that the defendant or detainee should be kept in custody –

(i) for his own protection;

(ii) in the case of a minor, for his own welfare;

or (iii) for the preservation of public order;

(c) the defendant or detainee, having been released on bail, has –

(i) committed an act referred to in paragraph (a); or

(ii) breached any other condition imposed on him for his release;

(d) the defendant or detainee is charged or is likely to be charged with a serious offence;

(e) there is reasonable ground for believing that the defendant or detainee has –

(i) given false or misleading information regarding his names or address; or

(ii) no fixed place of abode;

(2) In considering whether or not to refuse bail on any ground mentioned in subsection (1), the Court shall decide the matter by weighing the interests of society against the right of the defendant or detainee to his liberty and the prejudice he is likely to suffer if he is detained in custody, taking into account every consideration which, in its opinion, is relevant, including –

(i) the period for which the defendant or detainee has already been in custody since his arrest;



Handwritten signature or initials.



(b) the nature and gravity of the offence with which the defendant or detainee is or is likely to be charged and the nature and gravity of the penalty which may be imposed on him;

(c) the character, association, means, community ties and antecedents of the defendant or detainee, including any non-compliance with any condition imposed for his release on bail with respect to any other offence; and

(d) the nature of the evidence available with regard to the offence with which the defendant is charged.

The rationale governing the release on bail has been enunciated in the case of **Maloupe MG v The District Magistrate of Grandport [2000 SCJ 223]**, where the Court held that:

*"The rationale of law of bail at pre-trial stage is accordingly that a person should normally be released on bail if the imposition of the conditions reduces the risks referred to above – i.e risk of absconding, risk to administration of justice, risk to society – to such an extent that they become negligible having regard to the weight which the presumption of innocence should carry in the balance. When the imposition of the above conditions is considered to be unlikely to make any of the above risks negligible, then the bail is to be refused."*

Furthermore, in the case of **Deelchand v The Director of Public Prosecutions and Ors [2005 SCJ 215]**, the Court held that:

*"It would be preposterous to hold the view that in each and every application for bail, it would suffice that an enquiring officer should express his fear that the applicant would interfere with one or more witnesses for the accused to be denied bail on this ground. 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:

*"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;*





(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." (Underlining is mine)

I shall now analyze the ground of objection raised by the respondent to object to the release of the applicant on bail.

### **Interfering with witnesses**

I find that the risk that applicant may interfere with witnesses is not plausible and I say so for the following reasons:

- (i) Inspector Poinen agreed under cross-examination, that there is no evidence to show that the applicant will interfere with witnesses.
- (ii) Moreover, it is also pertinent to note that Inspector Poinen conceded under cross-examination that the ground of objection is only based on a strong apprehension by the police. On that score, I am of the view that there is no material evidence which has been adduced by the respondent to show that the applicant has intimidated or threatened witnesses.

After having considered the status of the enquiry and the ground of objection invoked by the respondent, I find that stringent conditions can be imposed for the applicant to be released on bail.

The Court therefore orders that the applicant be admitted to bail subject to the following conditions:

1. The applicant shall furnish a surety of Rs 10,000;
2. The applicant shall enter into recognisance of Rs 50,000 in his own name;
3. The applicant shall provide a mobile phone number to the police and shall ensure that the mobile number remains available at all times, for the police to contact him, if necessary.

  
**D.J Vellien**  
**District Magistrate**  
**7<sup>th</sup> December 2023**

