Hitier v Police

2023 BRC 143

IN THE BAIL AND REMAND COURT

BRC CN: -
Original District Court (UPW) CN: 2073/2020

In the matter of:-

Rajkumar Hitier

Applicant

v.

Police

Respondent

RULING

Applicant stands provisionally charged with the offence of **murder** in breach of **sections 216 and 222(1) of the Criminal Code coupled with section 22(2)(a) of the Criminal Procedure Act**.

At the bail hearing, Applicant was assisted by Counsel, and the case for Respondent was conducted by State Counsel in the presence of Police Prosecutor. Proceedings were held in Creole.

Respondent sustained that Applicant should not be admitted to bail because he may abscond, reoffend and interfere with witnesses if released.

Section 4(1)(a)(iii) of the Bail Act 1999 (Act 32/1999) ["the Bail Act"] provides that a Court may refuse to release a defendant or a detainee on bail where it is satisfied that there is reasonable ground for believing that the defendant or detainee, if released, is likely to interfere

with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to him or to any other person.

In **Deelchand v The Director of Public Prosecutions and others** [2005 SCJ 215], it was observed that to satisfy the Court that there is a serious risk of interference with a witness, satisfactory reasons, and evidence in connection thereof where appropriate, should be given to establish the probability of interference with that witness by applicant.

In the case at hand, the enquiry officer, PS 8463 Hookoom, explained that the police discovered the dead body of one Berty Mayeputh on 27.10.2020 lying in the middle of a river, known as Bassin Deux Lizié, at Floréal, the deceased bore various injuries and his death was due to an acute pulmonary oedema as per the conclusion of the autopsy carried out by Dr Chamane. He further explained that one Brian Kursley Aroonamendun, also known as Mayeven, stated that Applicant procured the means to him and to one Seeven Goinden to assault the deceased who was a police informer. The enquiry officer pointed out that one Jason La Perle mentioned in his statement that Applicant explained how to kill the deceased, and one Ludovic Christopher Falloo gave a statement about how he lured the deceased to Bassin Deux Lizié for Applicant to execute his plan. He went on to say that the deceased during his lifetime was informing the police about the illegal activities of Applicant, the latter was subsequently arrested, and when released on bail, he called the deceased. He added that Applicant will interfere with these witnesses in the same way to prevent them from giving evidence against him. Nevertheless, it transpires from the testimony of the enquiry officer that these witnesses, who are also suspects, have already recorded their statements. He admitted that the said Seeven passed away, the said Mayeven is held in police custody, and the said Falloo, who is provisionally charged with the offence of conspiracy to commit murder, was granted bail. He also replied in the negative when questioned by Counsel about whether Applicant threatened any witness. Hence, the Court is of the view that the risk of interference with the witnesses is weak.

As regards the risk of absconding, **section 4(1)(a)(i) of the Bail Act** provides that the Court may refuse to release a defendant or a detainee on bail where it is satisfied that there is reasonable ground for believing that the defendant or detainee, if released, is likely to fail to surrender to custody or to appear before a Court as and when required.

Here, the enquiry officer explained in his testimony that there is a risk that Applicant may abscond having regards his antecedents. He produced a PF 14. Same was marked as Doc X1. It is mentioned therein that Applicant was fined twice for breach of conditions of release. It is apposite to note that these convictions are dated 2016 and 2017, and since then, no such incident was reported. During cross-examination, Counsel questioned the enquiry officer on the fact that the police arrested Applicant in relation to the present matter when he went to report at Eau Coulée police station, and he replied that he is not aware of this. He also stated that he is not

aware if Applicant was going to surrender himself to Curepipe police station prior to his arrest. He conceded that Applicant has a fixed place of abode and family ties, and there is a prohibition order against him. In the circumstances, the Court is of the view that the risk of absconding is weak.

Moreover, Prosecution objected to the release of Applicant on bail because he may reoffend. In that respect **section 4(1)(a)(ii) of the Bail Act** provides that a Court may refuse to release a defendant or a detainee on bail where it is satisfied that there is reasonable ground for believing that the defendant or detainee, if released, is likely to commit an offence, other than an offence punishable only by a fine.

The Supreme Court in **Deelchand v The Director of Public Prosecutions and others** [2005 SCJ 215] underlined that the risk of offending must be a real one and there must be adequate reasons to explain its existence. The Supreme Court also cited with approval the case of **Clooth v Belgium [1991] ECHR 71 (12 December 1991)** where it was said that the danger of a serious offence being committed by an applicant whilst on bail should be a plausible one.

In the present matter, the enquiring officer stated that Applicant is borne on record. He produced a PF 14, a PF 15 and a certificate from the Mauritius Police Force. Same were marked as Doc X1, Doc X and Doc PPU respectively. The Court notes from Doc X and Doc X1 that Applicant was convicted on various occasions for offences other than those punishable only by fine, and most of these convictions are dated more than 10 years. Doc PPU further shows that he is provisionally charged in relation to drugs cases. As such, the risk of reoffending is plausible, though it is not of such a magnitude that the imposition of conditions could not be envisaged to curb its occurrence.

The rationale of the law of bail at pre-trial stage as explained in **Maloupe v District Magistrate of Grand Port i.p.o. Director of Public Prosecutions** [2000 SCJ 223] is of relevance. The Supreme Court observed that a person should normally be released on bail if the imposition of the conditions reduces the risk of absconding, risk to the 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; and when the imposition of the conditions is considered to be unlikely to make any of the risks negligible, then bail is to be refused. In **Deelchand** (*supra*), the Supreme Court pointed out that security appears applicable to all the risks as it may be an incentive to an applicant to appear for trial, to behave whilst on bail and to refrain from interfering with witnesses or tampering with evidence.

In the current circumstances, the Court is of view that the abovementioned risks can be reduced by the imposition of stringent conditions such that they become negligible having regard to the weight which the presumption of innocence would carry in the balance. The imposition of a

surety, a recognisance and a curfew order would be an incentive for Applicant not to offend. The obligation for him not to engage in any communication, in connection with the present matter, with any person other than the investigatory authorities or the Court would deter him from interfering with the witnesses. In addition, the obligation for him to have a fixed place of residence, to report to the nearest police station twice on a daily basis and to be permanently equipped with a mobile phone would allow the police to monitor his whereabouts, and as such, abate the risk of absconding.

Besides, the Court notes from the testimony of the enquiry officer that there is no indication when Applicant will stand trial, and it transpires from the provisional charge that he is held in custody for nearly 2 years and 10 months.

Consequently, the Court orders that Applicant be released on bail subject to the fulfilment of the following conditions by him:

i. to provide a surety in the sum of Rs.200,000/- by bank cheque;
ii. to enter into a recognisance in the sum of Rs.1,000,000/-;
iii. to be permanently equipped with a mobile phone, the number of which be communicated in advance to one or more police officers nominated for that purpose, and to ensure that the mobile phone is in good working condition and open for communication at all times;
iv. to reside at a fixed place of residence indicated by him to the police;
v. to remain at his place of residence daily from 9p.m to 6a.m, by virtue of a curfew order hereby imposed upon him, and in case of emergency, to inform the police of same before leaving his place of residence during the said curfew hours;
vi. to report to the police station nearest his place of residence twice daily, 7 days a week, once between 7 am and 10 am and once between 3 pm and 6 pm
vii. to surrender his passport to the Passport and Immigration Office (if he had not already done so);
viii. not to leave the country without the Court's permission;
ix. not to engage in any communication with any person, other than the investigatory authorities or the Court, in connection with the case, either in person or by means of any technology or mobile or desktop device or social media platform; and
x. to remain accessible and/or promptly available, should the police request and/or require to see him at any given time for the purposes of the enquiry.

Dr Z Cassamally
Ag. District Magistrate
31.08.2023

For Applicant **:** Mr Saulick together with Mr Bandhu
For Respondent **:** Miss Sayed Hossen, State Counsel