Original District Court CN: 563/2024 and 477/24 (Pamplemousses)
BRC CN: 1550/24 and 1536/24

IN THE BAIL AND REMAND COURT

In the matter of:-

Roopnaraln Lootooa

Applicant

v/s

Police

Respondent

RULING

1. As per provisional charge bearing cause number 563/24, the Applicant stands provisionally charged with the offence of 'Drug dealing (possession of cannabis seeds for the purpose of cultivating cannabis plants' in breach of sections 30(1)(f)(i) and 47(5)(a) of the Dangerous Drugs Act.

2. As per provisional charge bearing cause number 477/24, the Applicant stands provisionally charged with the following offences:
   (a) 'Drug dealing (Possession of cannabis for the purpose of selling)' in breach of sections 30(1)(f)(ii) and 47(5)(a) of the Dangerous Drugs Act;
   (b) 'Possession of cannabis seeds' in breach of sections 34(1)(b) and 47(5)(a) of the Dangerous Drugs Act;
   (c) 'Possession of apparatus (scale) used for the purpose of drug dealing' in breach of sections 34(1)(c) and 47(5)(a) of the Dangerous Drugs Act (41/2000) as amended by section 5 of Act 29/2003; and
   (d) 'Money Laundering' in breach of section 39(1) of the Dangerous Drugs Act.

3. The Applicant moved to be admitted to bail. The Applicant was represented by Counsel. Prosecuting Counsel, assisted by the police prosecutor, conducted the case for the Respondent. Both Counsel for the Applicant and Prosecuting Counsel agreed and had no objection that one single bail hearing be heard for both cases and one single ruling be delivered.

Case for the Respondent

4. The Enquiring Officer (the 'EO') in the present matter, on behalf of the Respondent, deponed under oath to the effect that:
   (a) the present bail application is being resisted on the grounds of risk of absconding, risk of reoffending and risk of interference with witnesses:

   (b) the facts and circumstances are as follows:
      (i) on 27/02/2024, police officers proceeded to the Applicant's place where the Applicant and two other persons, one Nirvan Boyrangee and one Casimir, were found sitting in a garage;

      (ii) police identity was revealed to them as well as the search warrant and the police found, on the table in the garage, a transparent plastic sachet which contained a certain quantity of dry leaves suspected to be cannabis and two electronic scale;

(iii) on the spot, the three persons were informed of their constitutional rights, the evidence obtained and were cautioned, to which the Applicant replied: *"Gandia sa missié. Sa 2 missié la in vin kot moi pou acheter."*;

(iv) the 2 other persons confirmed the above;

(v) the said Mr Nirvan Boyrangee was searched, the sum of Rs 2,000 was found in his right pocket and, on being duly cautioned and informed of his constitutional rights, he admitted that the sum of money found on him was meant to be used to buy *'gandia'*;

(vi) a search was also carried out on the said Mr Casimir, the sum of Rs 1,300 was found in his pocket and he also stated the following: *"Monsieur, mo ti pou acheter gandia avek sa."*;

(vii) several spots at the Applicant's place were also searched and, at six spots, the police secured dry leaves suspected to be cannabis, the total weight of which is 1,180 grams, as well as 106 seeds suspected to be cannabis seeds;

(viii) the total estimated value of the drugs secured, including the cannabis seeds, is Rs 1,410,600 and the total value of the cannabis seeds is Rs 10,600;

(ix) the police also secured the sum of Rs 21,075 from the Applicant's cupboard and the police strongly believe that same is the proceeds of the sale of drugs; and

(x) the provisional charge bearing cause number 563/24 is about the seeds for cultivation purposes that were secured, the provisional charge bearing cause number 477/24 is with regards to the 'possession' of the cannabis seeds (count II) in addition to the other charges as per the information and the facts and circumstances are the same for both provisional charges;

(c) the Applicant has denied all the charges against him in both provisional charges bearing cause number 563/24 and 477/24 respectively;

(d) all the drugs were secured at the Applicant's place, in his presence and the two other persons who were also arrested at the Applicant's place have confessed having been at the Applicant's place to buy cannabis;

(e) the risk of absconding is based on the following:

(a) due to the seriousness of the present charges and the evidence that the police have, the Applicant is likely to be tried before the Assizes and, if found guilty, he potentially faces a long term of imprisonment, thereby giving him a motive to abscond;

(b) the Applicant has been working as Chief Fire Officer at Chantier Naval de l'Océan Indien which is located at the harbour, the Applicant knows several persons who are owners of boats and who may help him to leave the country by sea; and

(c) in light of the above, the police strongly believe that the Applicant has knowledge of the sea route which will help him to evade and leave the country, although he has no skipper's licence;

(f) the risk of reoffending is based on the fact that the Applicant is on bail for a cognate offence and the drug business is lucrative in nature;

(g) the risk of interference with witnesses is based on the following:

(i) there are two other persons who are involved in the present matter and they have implicated the Applicant; and

(ii) the police, hence, strongly believe that the Applicant will likely to interfere with those two persons, if granted bail, so that they do not give evidence against him and this will cause prejudice to the enquiry;

(h) statements have already been taken from the Applicant and from the other two persons;

(i) the enquiry is short of the Forensic Science Laboratory (FSL) report, plans as well as photos and the exhibits have not yet been examined; and

(j) the Applicant was arrested on 27/02/2024.

5. The EO produced documentary evidence that the Applicant was on bail at the material time. Counsel for the Applicant did not object to same being produced in court and the document was marked as **Doc PPU**.

6. The EO was cross-examined by Counsel for the Applicant, during which cross-examination, the following salient points emanated:

(a) the EO confirmed that the Applicant has given his defence statement;

(b) the EO explained that the Applicant's garage is in the Applicant's yard which has walls and gates and the garage is not easily accessible to anyone;

(c) when asked by Counsel to confirm whether, when the police proceeded to arrest the Applicant, the latter was dressed in a mechanical overall which is his work attire, as he has explained in his defence statement, the EO replied that he cannot say as he was not present on the day of arrest;

(d) when asked by Counsel to confirm whether the Applicant has also explained in his defence statement that the two other co-accused parties had come for reparation works on the Applicant's vehicle, the EO strongly maintained that the two other persons who were present on the material day have denied having been at the Applicant's place to repair the latter's vehicle, they have confirmed that they had come to buy drugs from the Applicant and the money found on them were meant to be used to buy drugs from the Applicant;

(e) the EO confirmed that the two other persons who were present at the Applicant's place have been released on bail;

(f) the EO conceded that the Applicant did not bolt away when the police entered the premises;

(g) the EO also explained that part of the drugs was found in the garage which is annexed to the Applicant's house and part of them were found in a concrete store, well-secured and locked, which is also annexed to the Applicant's house and the Applicant has the key of the store;

(h) the EO conceded that the Applicant has cooperated with the police, has no previous conviction for breach of condition of release, is married, has children, one of whom is married and two of whom are minors who are students, his wife is employed at the Ministry of Finance, he has a fixed place of abode and, as per his defence statement, he does odd jobs, including selling vegetables, and no longer works as a fire officer since August 2022;

(i) the EO could not tell when will the FSL report be ready nor when will the main case be lodged;

(j) the EO explained that further statements were recorded from the Applicant when the latter's mobile phone was examined by the IT unit and no statement was recorded from the Applicant on the day of his arrest as he sought the services of the barrister;

(k) the EO could not confirm whether the Applicant was brought to the police station together with his elder daughter on the day of his arrest;

(l) when asked by Counsel that the Applicant has given to the police the names of the persons to whom he sells vegetables to explain the source of the sum of Rs 21,075, the EO replied that the police has checked all the alibis given by the Applicant and all of them were negative;

(m) the EO admitted that the Applicant is presumed innocent as he has denied the charges against him;

(n) when asked by Counsel as to whether there are any other equipment that were found to cultivate the cannabis seeds, other than the electronic scale, the EO replied that there were also forks and spades at the Applicant's place and no other equipment;

(o) when asked by Counsel whether there has been any statement from the Applicant or the other two persons that the Applicant intends or has threatened any witnesses in the present matter, the EO replied in the negative but maintained that the risk exists; and

(p) the EO admitted that he has no evidence to substantiate the risk of interference with witnesses.

Case for the Applicant

7. The Applicant made a statement from the dock to the effect that he will respect all bail conditions if granted bail. He further stated that he has a son who is doing his A-level, his wife is having depression, his son needs moral support and he begs to be granted bail.

8. Prosecuting Counsel offered submissions that were duly taken into consideration by the court. Counsel for the Applicant also filed case authorities that were duly taken into consideration by the court.

Analysis

The law and established legal principles

9. I have taken into consideration sections 3 and 4 of the Bail Act, section 5(3) of the Constitution of Mauritius as well as the landmark cases of ***Maloupe v District Magistrate of Grand Port [2000 SCJ 223]***, ***Labonne v The D.P.P.& Anor [2005 SCJ 38***], ***Hurnam v The State [2004 PRV 53]*** and ***Deelchand v Director of Public Prosecutions [2005 SCJ 215]***.

Nature of evidence

10. At the outset, the court has analysed the nature and quality of the evidence against the Applicant without embarking on a detailed examination of the precise evidence available to the police or make an evaluation of such evidence. As it was held in the case of ***Maloupe (supra)***,

"What may be examined at the stage of an application for bail is the "nature" of the evidence, but this should not be a doorway for looking in detail at the evidence itself as opposed to the surrounding circumstances which have a bearing upon its quality.

It is not appropriate, in our view, for a magistrate, whilst considering an application for bail, to examine the precise evidence available to the police and to conclude as to whether it amounts to a prima facie case."

11. In the present matter, the court takes note of the facts and circumstances that led to the arrest of the Applicant as explained by the EO under oath. True it is that the Applicant has denied the charges against him in both cases and, as such, enjoys presumption of innocence.

12. However, the EO confirmed that the drugs were found and secured at the Applicant's place. He also strongly maintained that part of the drugs was found in the garage which is annexed to the Applicant's house and part of them were found in a concrete store, well-secured and locked, which is also annexed to the Applicant's house and the Applicant has the key of the store. The Applicant's reply on being cautioned and questioned is also noteworthy in as much as he admitted that the drug found at his place is cannabis and that the two other persons had come at his place to buy same. The respective replies of the two other persons are also noteworthy in as much as they have incriminated the Applicant and admitted that they were present at the Applicant's place to buy drug.

13. At this stage, I find it apt to quote the following extract from the case of ***Director of Public Prosecutions v Louis Jimmy Marthe [2013 SCJ 386a]***:
"The fact that the evidence against an applicant for bail comes from a self-confessed accomplice does not necessarily mean that it is weak or unreliable. It cannot be overlooked that in drug transactions involving more than one person, some of the best evidence against traffickers can and does come from accomplices. The fact remains that Magistrates and Judges have very often convicted accused parties based on the sole evidence of an accomplice after having given themselves the appropriate warning that accomplice evidence is to be treated with care.

Where the evidence of an accomplice is fraught with difficulties inasmuch as it appears to be unreliable or spiteful or that the accomplice has an interest of his own to serve, a Magistrate considering bail may be justified in treating the prosecution's case against an applicant for bail as being weak.

It is therefore incumbent on a Magistrate to consider the nature of the evidence available against the respondent. In that respect, if the evidence is that of an accomplice, relevant factors to be considered will be the consistency of the evidence and any other supportive evidence adding to its weight. "

14. It was further held in ***Marthe(supra)*** that:
"Indeed, if an accused has denied the charges pending against him, the Magistrate may take that into consideration. But, the denial of a charge has to be assessed in the light of the strength of the evidence available against the accused by the prosecution. If the evidence of the prosecution is strong, the denial is neither here nor there. If the evidence of the prosecution is so weak as to be almost incapable of sustaining the charge against the accused at the subsequent trial, then the Magistrate may weigh the denial of the accused in the balance before deciding to reject the objection taken by the police."

15. There is no evidence before this court to show that the evidence of the two other persons who have incriminated the Applicant is fraught with difficulties, is spiteful or unreliable. It is also apposite to note that it will be for the trial court to assess the credibility of the two other persons who have allegedly incriminated the Applicant, as expounded in the cases of ***S Dookhit v The District Magistrate of Pamplemousses, District Court, Pamplemousses [2011 SCJ 101]***.

16. In light of all the above, without embarking on a detailed examination of the precise evidence available to the police or make an evaluation of such evidence, I find the nature of the evidence against the Applicant to be strong.

Risk of absconding

17. The court notes that the EO has confirmed during cross-examination that the Applicant has no previous conviction for breach of condition of release, is married, has children, two of whom are minors who are students, his wife is employed at the Ministry of Finance, he has a fixed place of abode and, as per his defence statement, he does odd jobs, including selling vegetables, and no longer works as a fire officer since August 2022.

18. However, the above should be viewed in conjunction with and weighed against other factors as explained in the case of ***Deelchand (supra)***. The Supreme Court, in the case of ***Deelchand (supra)***, provided guidance for the assessment of the risk of absconding in the following terms:

«5.2 The risk of absconding has to be assessed with regard to several relevant factors. Although, as stated in the last passage quoted, the seriousness of the offence may, by itself or in conjunction with some other factor such as the defendant's criminal record, give a basis for believing that the defendant will fail to surrender through fear of a custodial sentence, this factor must be viewed in conjunction with other factors which may well indicate that the defendant is unlikely to abscond.

5.3 In Neumeister v Austria (1968) 1 ECHR 91 (27 June 1968) at para10, the European Court of Human Rights ruled that the severity of the sentence which the defendant would be likely to incur, if convicted, does not in itself justify the inference that he or she would attempt to evade trial if released from detention:
"The danger of flight cannot... be evaluated solely on the basis of such consideration.. Other factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted may either confirm the existence of a danger of flight or make it appear so small that it cannot justify detention pending trial."

5.4 Considerations relevant to the risk of absconding will include the strength, weakness or absence of family, community, professional or occupational ties and financial commitments as such ties, if strong, might be strong incentives not to abscond and, if weak might increase the risk of absconding. The strength of the evidence may also be relevant because if it is likely that the charge will not be proved, the defendant maybe less likely to abscond. The court must ask itself: what would be likely to motivate the applicant to abscond and what would be likely to make him refrain from absconding?...»

19. In light of the above, the court firstly cannot ignore the strong nature of the evidence against the Applicant, the extremely high value of the drugs seized in the present matter as well as the seriousness of the offence and, in view thereof, the Applicant is likely to face a heavy penalty if convicted. The following extract from the case of in ***Director of Public Prosecutions v Nurkoo [2020 SCJ 186]*** is pertinent in showing that the value of the seized drugs, the seriousness of the offence as well as the strong nature of the evidence against the Applicant are material factors to be taken into consideration: *"Furthermore, whilst the Magistrate took into account that the respondent was not on bail for any other offence and that he had family ties and a fixed place of abode, he failed to give due consideration to the seriousness of the offence, the strong nature of the evidence, the number of drugs secured*

and its estimated value, the respondent's own reply upon being apprehended by the Police, as well as the public interest in the continued detention of such a self-confessed drug dealer pending trial".

20. With regards to the seriousness of the present offence and the severe penalty that the Applicant potentially faces if convicted, the court finds it apt to quote the following extract from the case of ***Hurnam v State [2004 PRV 53]***:
"It is obvious that a person charged with a serious offence, facing severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him [...]"

21. True it is that the EO has conceded during cross-examination that the Applicant did not bolt away when the police entered the premises. However, the following extract from ***DPP V Louis Jimmy Marthe [2013 SCJ 386a]*** is pertinent in relation to the way an accused's conduct and mindset may change following developments in the circumstances surrounding his case and as the latter take a more concrete shape:
"This ground which is often raised to object to bail is more complex than it may appear at first sight. It certainly requires the Magistrate to look at the past conduct of a person applying for bail based on the reasoning that such conduct is indicative of what he may be capable of doing. But, it also requires the Magistrate to make a reasonable projection of what that person may do or may be tempted to do in the future bearing in mind the more recent developments in the circumstances surrounding his case".

22. Moreover, it should be pointed out that one does not need to leave Mauritius to abscond.

23. Furthermore, the court is alive to the EO's statement under oath that the Applicant has been working as Chief Fire Officer at Chantier Naval de l'Océan Indien which is located at the harbour, the Applicant knows several persons who are owners of boats and who may help him to leave the country by sea and, hence, the police strongly believe that the Applicant has knowledge of the sea route which will help him to evade and leave the country, although he has no skipper's licence. Hence, the fact that the Applicant may be acquainted with the sea routes, have contacts in that sector and the risk that he may escape by the sea cannot be completely ignored (***Wang Min Yung V The State [2016 SCJ 32]***).

24. At this stage, the court also finds it apt to quote the following passage from the case of ***DPP v Marthe (supra)***:
"At the end of the day, we have to bear in mind that Mauritius is a small island having other islands as close neighbours. This is something which is very specific to our country. It is very difficult, if not impossible, for the authorities to keep the whole of the shores of Mauritius under constant surveillance. This Court can take judicial notice of the fact that, in the recent past, there have been cases where accused parties awaiting trial and persons convicted of drugs offences have simply left the country by hiring a powerful boat following which there has been a great public outcry in the country. There is therefore an increased responsibility on the courts, whilst bearing in mind the general principle that liberty is the rule and detention the exception, to see to it that justice is not baffled"

25. In light of all the above, viewed altogether, the court finds that the risk of absconding is real and plausible in both cases.

Risk of reoffending

26. In assessing the risk of re-offending in the present matter, the following paragraphs from the case of ***Deelchand v The Director of Public Prosecutions & Ors [2005] SCJ 215*** are pertinent:

"5.6 It goes without saying that the risk of offending must be a real one, and that there must be adequate reasons to explain its existence. In Clooth v Belgium [1991] ECHR 71 (12 December 1991), at para 40, the Court said that the "danger" of a serious offence being committed by the applicant whilst on bail should be "a plausible one".

5.7 Several factors may be relevant in the assessment of the seriousness of the risk and the propriety of detention to avert the danger. The criminal record of the applicant is an important consideration. So, too, the nature of the offence or offences which the applicant is suspected to have committed as some offences are more likely to be repeated than others...

5.11 The character of the applicant, notably a clean or criminal record, is also a relevant consideration in considering the risk of offending (as it may indicate an inclination which increases that risk). So too the nature of the evidence against him: if he happens to be a criminal, then -if the evidence against him appears strong, he is more likely to think he has nothing to lose by re-offending; if the evidence appears weak to him, he will be less likely to take the risk of detection upon re-offending."

27. The following extract from paragraph 5.8 in the case of ***Deelchand (supra)*** is also pertinent:
"The extent to which the offences which the applicant is suspected to have committed are lucrative should also be considered as the temptation, in case the applicant is guilty, that he may wish to make as much money as possible whilst on bail, is likely to be greater."

28. It is equally apposite to quote the following relevant extract from the case of ***Korimbaccus M. S. V. The District Magistrate Of Port Louis, IIND DIVISION [1988 SCJ 476]***:
"But we are here dealing with a special type of serious offence. One would not expect someone who has killed X for a particular reason to go and kill Y and Z the moment he is released. But if someone is suspected of having procured heroin once to a gang of presumed traffickers, it is reasonable to fear that he will do so again."

29. In addition to the above, the court also takes note of the following:
    (a) the nature of the evidence against the Applicant is strong and the Applicant is more likely to think that he has nothing to lose by re-offending (***Deelchand v Director of Public Prosecutions [2005 SCJ 215]***);
    (b) the seriousness of the charge against the Applicant; and
    (c) the lucrative nature and particular characteristics of drug offences (***paragraph 5.8, Deelchand (supra)*** and ***Korimbaccus (supra)***).

30. Furthermore, as per **Doc PPU**, the Applicant is on bail for a cognate offence. True it is that, with regards to the latter cognate offence for which the Applicant is on bail, he is still presumed innocent. However, whilst respecting the principle of presumption of innocence quoad the Applicant in that case for which he is on bail, the latter provisional charge coupled with the facts and circumstances in the present matter, when considered altogether, do seem to point towards the fact that the Applicant may have developed a propensity towards the commission of drug offences. I also bear in mind that, despite having been released on bail for a drug dealing offence, the Applicant has again been arrested in respect of another drug dealing offence. The following passage from the case of ***Director of Public Prosecutions v Louis Jimmy Marthe [2013 SCJ 386a]*** is pertinent:
"It must be pointed out that the real issue here is the respect or non-respect that an accused party has shown for the conditions of his release on bail. One of those conditions is that he will not commit other offences or get involved in any activity that smacks of illegality from a penal point of view. We are, of

course, dealing with a situation that comes prior to a conviction which can only take place after due process before a trial court."

31. Also, although true it is that the Applicant has a clean record, the fact that one has a clean record does not necessarily mean that that person could not have previously been involved in illegal activities and everything will depend on the facts of that particular case (***Director of Public Prosecutions V Poonye S. [2018 SCJ 182]***).

32. For all of the above reasons, I find that the risk of reoffending is real and plausible in both cases.

Risk of interfering with witnesses and tampering with evidence

33. In assessing the risk of interference with witnesses, I shall refer to the case of ***Deelchand v The Director of Public Prosecutions and Others [2005 SCJ 215]***, where reference was made to Neil Corre quoting an extract of his book "Bail in Criminal Proceedings" (1990), to express the most common manifestations where there is a risk of interference with witnesses, namely:
    (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.

34. However, the court in ***Deelchand (supra)*** also emphasized that:
"The exception does not apply simply because there are further police enquiries or merely because there are suspects who have yet to be apprehended"

35. The following extract from the case of ***Deelchand (supra)*** is also pertinent:
"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 that 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."

36. As regards the risk of interference with witnesses, the EO explained that there are two other persons who are involved in the present matter and they have implicated the Applicant. The police, hence, strongly believe that the Applicant will likely to interfere with those two persons, if granted bail, so that they do not give evidence against him and this will cause prejudice to the enquiry.

37. However, the court firstly observes that the EO admitted during cross-examination that there is no evidence before this court that the Applicant did interfere with or allegedly threatened the other two persons in the present matter nor is there any evidence before this court that the Applicant has allegedly made admissions that he intends to do so.

38. The EO also admitted that statements have already been taken from the Applicant and the two other persons. He has not explained how will the enquiry thus be prejudiced. He also admitted that he has no evidence to substantiate the risk of interference with witnesses.

39. I find it apt to refer to the case of ***Neeyamuthkhan v DPP [1999 SCJ 284a]***, where it was highlighted that a "generalised risk" as to the interference with any witness is not sufficient but rather the risk must be "identifiable" and material evidence in support thereof ought to be adduced to the Court.

40. In light of all the above, the court finds that no satisfactory reasons and appropriate evidence have been provided to substantiate this risk in both cases.

The balancing exercise

41. Having found that the risk of absconding and the risk of reoffending are real and plausible in both cases, the Court needs to look at whether the imposition of conditions can reduce those risks to such an extent that they become negligible in accordance with the established legal principles set out below.

42. It is trite law that, in deciding whether to grant bail to the Applicant, a balance must be struck between *"on the one hand the need to safeguard the necessary respect for the liberty of the citizen viewed in the context of the presumption of innocence and, on the other hand the need to ensure that society and the administration of justice are reasonably protected against serious risks which might materialise in the event that the detainee is really the criminal which he is suspected to be"* [***Labonne v. D P P & Anor 2005 SCJ 38***].

43. In the case of ***Maloupe v The District Magistrate of Grand Port [2000 SCJ 223]***, the court held that:
"The wording of section 4(1) of the Bail Act 1999 makes it clear that release on bail at pre-trial stage is the release upon conditions designed to ensure that the suspect –

(1) appears for his trial, if he is eventually prosecuted;
(2) in case he happens to be the author of the offence of which is he suspected, does no further harm to society whilst being at large; and
(3) does not interfere with the course of justice, should he be so minded.

The rationale of the 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 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. When the imposition of the above conditions is considered to be unlikely to make any of the above risks negligible, then bail is to be refused."

44. In the more recent case of ***Director of Public Prosecutions V Prudence J L [2023 SCJ 303]***, it was held that:
"a balancing exercise is a two step exercise: firstly it necessarily entails an assessment of each risk which the Court has found to be "substantiated" so as to determine the extent and magnitude of those risks; and secondly an assessment of all the relevant factors on record which must be weighed in the balance to determine whether the imposition of conditions can be envisaged which would bring those risks to a negligible level."

45. This Court is also alive to the fact that the protection of the public and the preservation of public order are matters of public interest which must be taken into consideration by the court in deciding whether to admit a detainee to bail (***Rangasamy v The Director of Public Prosecutions, Record No. 90845, unreported 7 November 2005***).

46. It transpired during the EO's cross-examination that the two other persons who were present on the material day at the Applicant's place have been granted bail. However, it is apposite to note that this court is not aware of the previous records and personal circumstances of those other two persons. Their degree of participation as well may not be the same. Each bail application has to be assessed on the basis of its own merits.

47. In the present cases, I have addressed my mind to all the conditions commonly imposed by the Courts to curb the identified risks such as security, furnishing of one or more sureties, reporting conditions, specific conditions in relation to residence, curfew orders, not to enter into a particular building or to go to a specified place or to go within a specified distance of a particular address and not to contact directly or indirectly, the victim or any witness.

48. However, conditions must address the risks identified and be capable of being respected and enforced. In light of the particular facts and circumstances of the present matter, the seriousness of the charges in both cases, the extremely high value of the drugs secured, the severe penalty that the Applicant potentially faces if convicted, the fact that it is very difficult, if not impossible, for the authorities to keep the whole of the shores of Mauritius under constant surveillance (***DPP v Marthe (supra)***) and the fact that the Applicant has been working as Chief Fire Officer at Chantier Naval de l'Océan Indien which is located at the harbour, viewed altogether, the court finds that conditions will be inadequate in both cases in reducing the identified risks to an acceptable level given the specific circumstances of both cases.

49. As it was held in the case of ***Islam v Senior District Magistrate, Grand Port District Court [2006 SCJ 282]***, once somebody who is admitted to bail and who has been able to purchase his freedom by some monetary condition, walks out of the court-room, he is free from any type of effective control over his movements or his activities other than reporting to the nearest police station twice or even thrice a day. In between there is no effective control as to where he goes, under whose influence he falls nor with whom he associates .There are also no facilities yet available in Mauritius such as an electronic monitoring device or electronic bracelet to allow for the tracking by GPS of the Applicant's movements (***Aubert F. v The State [2022 SCJ 405***]).

50. In the more recent case of ***Celerine J. H. V Her Honour the Senior District Magistrate, District Court Of Black River [2023 SCJ 495]***, the court held that:
"It is not denied that in some recent judgments, the court has ordered the use of other tracking systems on the suspect's mobile phone or other device. However, we are not convinced that this is indeed an effective means to monitor a suspect in all cases. We do not think that this condition would have been appropriate in the light of the circumstances of the present case."

51. Indeed, an accused can simply leave his phone behind somewhere.

52. With regards to curfew orders, during the hours of a curfew, there cannot be any effective supervision over who comes to meet the Applicant and in what activities they indulge in those meetings.

53. At this stage, I also find it apt to quote the following extract from the case of ***Hossen v District Magistrate of Port Louis 1993 MR 9***:
"It seems to us, in addition, that insufficient attention is sometimes paid to the point made in the section concerning the protection of the public and that, in this connection, the prevailing situation in the country, or in any particular area, assumes all its importance. Everyone knows that the consumption of certain drugs, like any other vice one may think of, is never likely to disappear completely from the face of the planet and that, at times, it may not be reasonable to insist on the detention of suspects of a certain type. But when, on the contrary, we are faced with a proliferation of drug consumption, or a resurgence of this scourge which can only result in the corruption and degradation of the country's youth in particular, then the Courts have the duty and the responsibility to protect the public against every person who is involved in any activity that is likely to facilitate or encourage the drug trade."

54. True it is that the Applicant has been arrested since 27/02/2024 and has been on remand since then. However, I find it apt to quote the following extract from the case of ***Michael Chung Shian Lin Chung Fat King v Commissioner of Police and Ors [2022 SCJ 58]*** where the court held that time spent to date on remand alone is not sufficient to have the applicant released on bail:
"We find, as a reviewing court, that the ruling of the respondent no.3 cannot be faulted on this ground alone and we do not consider that the time spent to date on remand alone to be sufficient to have the applicant released on bail immediately when the provisional charge under count 1 is serious indeed and is visited with a heavy penalty."

55. For all of the above reasons, I am of the opinion that there is a genuine public interest in not granting bail to the Applicant and his continued detention is, at this stage, still warranted. At this stage, I therefore set aside the bail application in both cases.

Delay

56. However, the court cannot also ignore the principle that an applicant should be brought to trial without undue delay. Concerning the responsibility of the Magistrate sitting at the Bail and Remand Court whenever an accused party is brought before her/him on a provisional charge, it is apposite to refer to the following passage in ***Mamode A. S. v The District Court of Port Louis II ND Division [1988 SCJ 216]***:
"Where the police objects to bail and the Court is minded to refuse bail, it becomes the magistrate's duty to see to it that the accused is formally charged and brought to stand his trial within a reasonable delay [...]
Magistrates should bear in mind that when an accused party is brought before them, whether on a provisional charge or not, and that they intend to remand him, the responsibility for not depriving that accused party of his liberty for an unreasonable time rests on their shoulders. Where they consider that the prosecution is, in the circumstances of any particular case, not moving fast enough they should envisage releasing the accused."

57. The court notes that the present offences in relation to both provisional charges were allegedly committed on 27/02/2024. By the time the EO came to depone in court for the bail hearing, he confirmed under oath that the enquiry is short of the FSL report, plans as well as photos and the exhibits have not yet been examined. He has not given any indication to the court as to when can the formal charge, if any, be lodged against the Applicant. I find it apt to quote the following extract from ***Desire J M v Her Honour Mrs Soobagrah-Pillay. C, Senior District Magistrate of the Bail and Remand Court and the Director of Public Prosecutions [2023 SCJ 210]***:

"We view with much concern the inability of learned Counsel for the respondent to identify a precise timeline for the completion of the enquiry, short of 'querries',and the lodging of any formal charge against the applicant. The investigating and prosecuting authorities would be well advised to ensure that the investigation in the present case is completed and the main case lodged against the applicant at the earliest."

58. In light of the above, and also bearing in mind section 5(3) of the Constitution of Mauritius and the stage of enquiry, I am of the view that by 21/11/2024, the formal charge against the Applicant should be lodged failing which, and in the absence of any reasonable justification, the Applicant shall be admitted to bail in both cases on the following conditions:

Provisional charge bearing cause number 563/24

(a) he furnishes a surety in the sum of Rs. 10,000 by bank cheque;
(b) he enters into a recognizance in his own name in the sum of Rs. 30,000;
(c) he reports to the police station nearest to his place of residence twice daily, that is, once between 6am and 8am and once between 6pm and 8pm;
(d) he informs the police of his daily movements, activities and whereabouts every time that he reports at the police station;
(e) he resides at a fixed address, which address is to be provided to the police;
(f) he shall submit a mobile phone to the relevant police department for either (a) the GPS system to be activated or (b) a tracking tool/ app/ device to be installed on the said mobile phone by the police. The said mobile phone is to physically remain with the Applicant at all times and the relevant mobile number is to be provided to the police and should remain switched on for the Applicant to be reachable at all time;
(g) daily curfew order on the Applicant from 9pm to 5am. The Applicant should remain indoors at his residential address as provided to the police between 9pm and 5am. The Applicant must come to his doorstep if the police come to check on his whereabouts during the hours of curfew. In the event that the Applicant has to venture outside during these hours due to an emergency, he has to inform the police of same prior to leaving his house;
(h) he surrenders his passport to the Passport and Immigration Office if same has not been done;
(i) he undertakes not to leave Mauritius without the authorisation of the Court;
(j) he is not allowed in any circumstances whatsoever to venture in any lagoon or sea all across Mauritius and he undertakes not to leave the main Island of Mauritius without the authorisation of the Court;
(k) he shall not communicate with any person, other than the authorities, in connection with the present matter either in person or by means of any technology such as phone, email or any social media platform; and
(l) the Applicant should not contact any witnesses, suspects or potential suspects in the present matter, be it directly or indirectly, be it through any means of telecommunication or any third party, pending completion of the main case.

Provisional charge bearing cause number 477/24

(a) he furnishes two sureties in the sum of Rs. 200,000 each by bank cheque;
(b) he enters into a recognizance in his own name in the sum of Rs. 2,000,000;
(c) he reports to the police station nearest to his place of residence twice daily, that is, once between 6am and 8am and once between 6pm and 8pm;
(d) he informs the police of his daily movements, activities and whereabouts every time that he reports at the police station;

(e) he resides at a fixed address, which address is to be provided to the police;

(f) he shall submit a mobile phone to the relevant police department for either (a) the GPS system to be activated or (b) a tracking tool/ app/ device to be installed on the said mobile phone by the police. The said mobile phone is to physically remain with the Applicant at all times and the relevant mobile number is to be provided to the police and should remain switched on for the Applicant to be reachable at all time;

(g) daily curfew order on the Applicant from 9pm to 5am. The Applicant should remain indoors at his residential address as provided to the police between 9pm and 5am. The Applicant must come to his doorstep if the police come to check on his whereabouts during the hours of curfew. In the event that the Applicant has to venture outside during these hours due to an emergency, he has to inform the police of same prior to leaving his house;

(h) he surrenders his passport to the Passport and Immigration Office if same has not been done;

(i) he undertakes not to leave Mauritius without the authorisation of the Court;

(j) he is not allowed in any circumstances whatsoever to venture in any lagoon or sea all across Mauritius and he undertakes not to leave the main Island of Mauritius without the authorisation of the Court;

(k) he shall not communicate with any person, other than the authorities, in connection with the present matter either in person or by means of any technology such as phone, email or any social media platform; and

(l) the Applicant should not contact any witnesses, suspects or potential suspects in the present matter, be it directly or indirectly, be it through any means of telecommunication or any third party, pending completion of the main case.

59. I, therefore, put the case for proforma on 21/11/2024 for the Respondent to inform this court as to whether the main case, if any, has been lodged against the Applicant.

Ms A. Nuckchady
District Magistrate
Delivered on 06 August 2024