

Mohamad Arshad Abdur Rahman v Police

2023 FLQ 30

IN THE DISTRICT COURT OF FLACQ

PCN: 837/23

In the matter of –

MOHAMAD ARSHAD ABDUR RAHMAN

Applicant

v/s

POLICE

Respondent

RULING

1. The Applicant stands provisionally charged with conspiracy to pervert the course of justice. He has moved to be admitted to bail and was legally represented at the hearing.
2. The motion was objected to on three grounds, namely –
 - (a) risk of absconding;
 - (b) risk of reoffending; and
 - (c) risk of interfering with witnesses.
3. Inspector Sadasing, the Enquiring Officer, deponed on behalf of the Respondent to sustain the grounds of objection. Thereafter, the Applicant made a statement from the dock.
4. I have taken into account the constitutional right to liberty, as enshrined in section 5(3) of the Constitution, the Bail Act and the rationale of bail as explained in the cases of **Maloupe (2000 SCJ 223)**, **Hurnam (2004 PRV 53)**, **Labonne (2005 SCJ 38)**, **Deelchand (2005 SCJ 215)** and **Marthe (2013 SCJ 386)**.
5. I have considered all the evidence adduced during the hearing and carried out the required balancing exercise.
6. Without going into the merits of the matter, I have noted, insofar as the nature of the evidence against the Applicant is concerned, that the latter has confessed to having backdated a deed of sale but he has denied the allegation of conspiring to pervert the course of justice.

7. The Applicant has denied the charge proffered and, as such, the principle of presumption of innocence still operates in his favour.

8. In relation to the 1st ground of objection, the Enquiring Officer explained that the present matter has, as backdrop, a drug-related offence (even though he could not clarify the approximate value of the drugs involved) and that the Applicant is likely to be tried for a serious charge before a higher Court and amenable to a severe penalty upon conviction. As such, the Applicant may be tempted to abscond to evade justice.

9. The Enquiring Officer also relied on the fact that the Applicant resides in a coastal region, he deals in boats and his wife and son reside in Seychelles. If released, the Enquiring Officer fears that he may abscond via sea routes to neighbouring islands.

10. Under cross-examination, the Enquiring Officer confirmed that the Applicant voluntarily surrendered himself to the police, he is not a skipper himself, has not absconded in the past and has strong family ties in Mauritius.

11. True it is that the Applicant is being provisionally charged with a serious offence. Yet, the seriousness of a provisional charge is not enough, in itself, to sustain the ground of absconding. There must be present some attendant factors which, when considered altogether, would lead to the invariable inference that there is a risk that the Applicant may abscond, if released.

12. It was suggested by the Enquiring Officer that the Applicant has family ties abroad in the form of his wife and son. However, as conceded by the Enquiring Officer, under cross-examination, this is countenanced, however, by the fact that the Applicant also has strong family ties in Mauritius, in the form of his parents, with whom he lives.

13. It would also appear that the Applicant has a fixed place of abode even though, situated as it is in a coastal region, this is fueling the fears of the Enquiring Officer.

14. From the provisional charge lodged, it would appear that the Applicant is a businessman and he explained in Court, in his address from the dock, that he buys and sells boats. As such, it would appear that the Applicant also has professional ties in the country even though the nature of those ties (and the relationships the Applicant may have developed in connection therewith) is what is again adding to the fears of the Enquiring Officer.

15. No evidence was put forward by the Enquiring Officer to the effect that the Applicant tried to escape in the present case and, in the absence of such evidence, I am led to the inevitable conclusion that that was not the case.

16. In fact, I have before me a man who has voluntarily surrendered himself to the police apparently upon becoming aware of his involvement in a serious matter

and who has readily admitted to having backdated a deed of sale. This is clearly not consonant with someone who will evade justice out of fear of a potentially severe penalty.

17. It would, therefore, appear that whilst he was at large and prior to giving himself up to the police, the Applicant did not abscond. On the other hand, he surrendered himself over.

18. Surely, someone harbouring the slightest desire to abscond in a case of the magnitude as the Enquiring Officer would have me believe, would have done so at the earliest opportunity. An opportunity which was available to the Applicant while he was still a free man. Yet, the Applicant did not run away or attempt to run away. At least none that I have been made aware of.

19. Last but not least, I have noted that the Applicant has a previous conviction for an offence against property in the year 2014 for which he was conditionally discharged by the District Court of Flacq.

20. No evidence was provided by the Enquiring Officer as to whether the Applicant tried to abscond in that case and, in the absence of such evidence, I am led to the inescapable conclusion that that was not the case. In fact, it would appear that when required to do so previously, the Applicant has surrendered to the criminal justice system, underwent the trial process and served his sentence when convicted.

21. True it is that a charge of “aggravated larceny” is not comparable in gravity and proportion to one of “conspiracy to pervert the course of justice” (especially set as it is against the backdrop carefully explained by the Enquiring Officer).

22. Yet, surmising that a suspect would be likely to abscond based on the gravity of the offence with which he stands provisionally charged would be analogous to surmising that he would not be likely to do so as he did not abscond in the past when charged with another serious offence.

23. I have also factored in that there is in force against the Applicant a Prohibition Order which will continue to remain in force should he be released on bail.

24. In the light of the above, I am of the opinion that the 1st ground of objection is a mere apprehension of the police and, as such, it fails.

25. To buttress the 2nd ground of objection, the Enquiring Officer relied on the previous conviction of the Applicant and explained that drugs is a lucrative business and that, if released, the Applicant may reoffend.

26. As expatiated above, the sole previous of the Applicant was in relation to an offence against property. As per the particulars furnished in the document produced, it would appear that, in that instance, the Applicant stole, in the company of a confederate, a bottle of whisky from a supermarket. On the face of it

and without more, it would appear that that offence had nothing to do with the drugs business.

27. The Applicant in the present matter is also not being charged with a drug-related offence even though there is underlying, in the background, a drug-related activity, as pointed out by the Enquiring Officer. There is nothing to suggest any kind of propensity in the Applicant to commit such kind of offences which would, by ricochet, lead me to the irresistible inference that, if released, he is likely to reoffend.

28. At this stage of the proceedings I am not being asked to assess the degree of involvement of the Applicant in the drug-related activity nor will I venture to do so. Suffice it to say that the Enquiring Officer himself stated, whilst supporting the 1st ground of objection, that the mindset of the Applicant may have changed (from the time that he surrendered himself to police) now that he has taken cognizance of the gravity of the situation.

29. Altogether, there is nothing on record to suggest that, if released, there is a risk that the Applicant may reoffend. I am of the opinion that this 2nd ground of objection is also a mere apprehension of the police and I set it aside.

30. In relation to the 3rd ground of objection, the Enquiring Officer explained that several persons have already been arrested in Reunion Island and in Mauritius in the present matter. The mobile phones of the Applicant and that of another suspect have been secured and examined. When the reports become available, there is the possibility of further arrests being made. If released, the Applicant may interfere with those witnesses who are yet to be arrested.

31. The Enquiring Officer conceded, under cross-examination, that up to now there is no evidence linking the Applicant directly to any drug offence. Logically, the lesser the involvement of the Applicant in the broader scheme of the drug-related activity, the lesser prone will he be to interfere with witnesses.

32. The Enquiring Officer also admitted, quite honestly, that to determine the exact degree of participation of the Applicant in that scheme, he would need to wait for information to be communicated from the authorities in Reunion Island. Will that information be communicated? If so, when will that happen? The Enquiring Officer was not in a position to say.

33. No evidence was put forward by the Enquiring Officer to the effect that the Applicant tried to interfere with witnesses (or intimated he will do so) in the present case or any history of such interference or attempts thereof on behalf of the Applicant. In the absence of such evidence, I am led to the ineluctable conclusion that that was not the case here and has not been the case previously.

34. As pointed out above, the Applicant voluntarily surrendered himself to the police on 26 April 2023. Prior to his surrender, whilst he was still at large, a

window of opportunity presented itself to the Applicant to interfere with witnesses had it been his intention to do so.

35. Being given that the Applicant has not done so (at least none that I have been apprised of), there is little to suggest that he will do so in the future if released on bail.

36. Besides, it would appear that the Applicant has already admitted to having backdated the deed of sale for the boat sold to one of the other suspects arrested by the police. Bearing in mind his admission on record, the Applicant does not appear to gain much from interfering with witnesses should he be granted bail.

37. Here is a person who has readily surrendered himself to the police and who has voluntarily remitted his mobile phone to be examined upon being requested to do so by the investigating authorities. To all intents and purposes, this is a man who has been fully cooperating with the ongoing police enquiry even though the Enquiring Officer was a bit reticent to admit same. This, to me, does not sound like someone who will interfere with witnesses if released.

38. As such, I am of the opinion that this 3rd ground of objection is also a mere apprehension of the police and it fails.

39. After anxiously carrying a balancing exercise, I am of the opinion that the prejudice being caused to the Applicant outweighs the greater harm to society.

40. In the light of the above, I allow the motion and grant bail to the Applicant on the following conditions –

- (a) the Applicant is to furnish a surety in the sum of Rs 30,000;
- (b) the Applicant is to enter into a recognizance in the sum of Rs 100,000;
- (c) the Applicant is to report daily to the police station nearest to his residence, between 6 a.m. and 6 p.m.;
- (d) whilst so reporting, the Applicant is to provide to the police –
 - (i) an itinerary of his movements on the following day; and
 - (ii) a list of all the persons with whom he interacted on the previous day;
- (e) the Applicant shall not deviate from the itinerary so provided unless in exceptional circumstances and after having given prior notice to the police and received their consent to that effect;
- (f) the Applicant is to remain indoors at his place of residence every day between 9 p.m. and 5 a.m. unless in exceptional circumstances and

after having given prior notice to the police and received their consent to that effect;

- (g) the Applicant is to carry with him at all times a mobile phone so that he may be reached by the authorities;
- (h) the Applicant is to give to the police the mobile phone number where he may be so reached;
- (i) the Applicant is to ensure that the said mobile phone is at all times in good working condition and within network coverage; and
- (j) the Applicant shall not interfere, directly or indirectly, with other witnesses in the present matter.

41. The surety and recognizance requirements shall provide judicial supervision over the Applicant.

42. All the remaining requirements shall provide police supervision over the movements, activities and interactions of the Applicant.

H. H. A. Rohamally
Ag Senior District Magistrate

16 May 2023