

**IN THE DISTRICT COURT OF PAMPLEMOUSSES**

**CN: 1438/23**

In the matter of –

**Avishay Ramdhony**

**Applicant**

v/s

**Police**

**Respondent**

**RULING**

1. The applicant stands charged with having between year 2021 upto June 2023 whilst being a person on wages willfully and fraudulently abstracted a sum of Rs 2,523,377.98. He was represented by counsel who moved for applicant to be admitted to bail.
2. The motion was objected to on the ground that, if released, there is a likelihood that the Applicant will abscond, interfere with witness and tamper with evidence.
3. PS Jodhooa, the Enquiring Officer, deponed on behalf of the Respondent to sustain the grounds of objection.

**Facts and circumstances**

4. PS Jodooa deposed that declarant made a declaration from year 2021 an amount of Rs 2,523,377.98 is missing. He stated that an enquiry was made by the declarant and he found that applicant was 2 copies of receipts. Declarant also informed the police that the sum that were missing were in relation to receipts signed by applicant.

### Grounds of objection

5. The Respondent has raised the ground of objection that there is a risk that the Applicant will tamper with evidence since the sum has not yet been recovered. With regard to absconding he informed the court that since accused maybe charged with serious offence and therefore he can abscond.

### Case for the Applicant

6. The Applicant stated from that he will comply with all conditions that court will impose. Counsel submitted that applicant has surrendered himself to the police and that the grounds have not been substantiated.

### Analysis by the Court

7. I have duly considered all the evidence adduced on record.

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)*. The general principle is that every detainee is entitled to bail and the latter should normally be released on bail if the imposition of conditions would reduce the risks, related to the grounds of objection, to an acceptable level. Bail is the rule rather than the exception.

In *Maloupe v The District Magistrate of Grand Port [2000] SCJ 223*, it was held that "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." I will now proceed to assess whether the grounds of objection have been substantiated by the Respondent.

### Grounds of objection

8. It is trite law, that the risk under the ground of objection must be a real one and there must be adequate reasons to explain its existence. Apart from the mere sayings of the enquiring officer that there is belief that Applicant may abscond and tamper with evidence, I am of the view that no reasons has been put forward to explain the

reality and plausibility of that risk. I therefore find that the grounds of objection have not been substantiated by the prosecution.

**The balancing exercise and the imposition of conditions**

9. Taking into consideration the above, the Applicant is to be released on bail on the following conditions –

- (a) the Applicant furnishes a surety of Rs 70,000 in cash;
- (b) the Applicant is to enter into a recognizance in the amount of Rs 300,000; and
- (c) Applicant is to report twice daily to the police station nearest to his residence between 5 a.m. and 10 a.m in the morning and from 4 pm to 8 pm in the afternoon;
- (d) applicant to have in his possession a mobile phone at all times and to communicate number to the police so that he is accessible at all times;
- (e) Applicant not to contact any witness directly or indirectly.

*N. Ramdewor*  
H. H. N. Ramdewor Naugah  
Ag Senior District Magistrate

11 August 2023