I Valaven v Police

2024 BRC 747

IN THE BAIL AND REMAND COURT

BRC CN: -/-
Original District Court (PAMP) CN: 1713/24

In the matter of:-

Indiren Valaven

Applicant

v.

Police

Respondent

RULING

Applicant stands provisionally charged with the offence of **swindling** in breach of **section 330(1) of the Criminal Code**.

Applicant applied for bail and was assisted by Counsel, Mr Bandhu. The case for Respondent was conducted by State Counsel, Mr Jeerasoo, in the presence of Sergeant Appadoo. Proceedings were held in Creole.

The enquiry officer, Sergeant Doorbejan, objected to the bail application on the grounds that Applicant may abscond and reoffend if released on bail.

Section 4(1)(a)(ii) 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 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 case at hand, it transpires from the testimony of the enquiry officer that Applicant confessed having committed the offence. As observed in the case of **Deelchand (*supra*),** the nature of the evidence is to be related to the risk of reoffending where, having regard to its type and to factors affecting its quality, it is

either so patently strong or weak as to have a bearing on that risk. Here, without probing into the merits of the case, the nature of the evidence against Applicant, consisting of direct evidence, is strong.

In addition, the enquiry officer produced a PF 15, a PF 14 and a certificate from the Mauritius Police Force to show that Applicant is borne on record. Same were marked as Doc X, Doc X1 and Doc PPU. The Court notes from documentary evidence that Applicant was convicted in 2001, 2012, 2013 and 2018 for offences against property and is provisionally charged with cognate offences. As such, the risk of offending is plausible.

As regards the risk of absconding, **section 4(1)(a)(i) Bail Act** is of relevance. It 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 Court notes that Applicant has a fixed place of abode and he has family ties. But the Court cannot disregard the testimony of the enquiry officer that Applicant failed to report to the police station in the past. The Court notes from Doc X1 that Applicant was fined in 2017 for the offence of breach of condition of release. As such, the risk of absconding cannot be totally disregarded.

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 the present circumstances, the Court is of the view that the identified 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 the obligations to have a fixed place of abode and to report to the nearest police station would be an incentive for Applicant not to offend whilst on bail.

Besides, the Court notes that Applicant is held in custody since 06.09.2024, there is no indication when exactly his main case will be lodged, he is 50 years old, and he is the sole breadwinner of the family.

On the basis of the above, 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.15,000/-;
ii. to enter into a recognisance in the sum of Rs.150,000/-;
iii. to reside at a fixed place of residence indicated by him to the police; and

iv. to report to the police station nearest his place of residence twice daily, 7 days a week, once between 6 am and 10 am and once between 4 pm and 8 pm.

Z Cassamally (Dr)
District Magistrate
29.10.2024