

IN THE SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 791

FH 51/2021

ANTI CORRUPTION COMMISSION

(Rep. by Mr. A. Juliette)

versus

ANDRE LESLIE BENOITON

(Rep. by Mr. B. Hoareau)

Neutral Citation: *Anti-Corruption Commission vs Andre Leslie Benoiton (FH 51/2021) [2021] SCSC 791 (22nd November 2021).*

Before: Govinden CJ

Summary: Application under Section 101 (1) of the Criminal Procedure Code as read Section 18(7) of the Constitution

Heard: 22nd November 2021

Delivered: 22nd November 2021

RULING

R. GOVINDEN CJ

- 1) This is an application filed under Section 101 (1) of the Criminal Code as read under Article 18(7) of the Constitution for the further holding of a suspect. The Applicant avers that the suspect was arrested on the suspicion of committing the offence of money laundering contrary to 3 (1) of the Anti-Money Laundering and Countering of Terrorism Act 2021 at this residence at La Louise, Mahe on Sunday the 21st of November 2021 at 11.22 hours.

- 2) The application is brought by Patrick Humphrey, an officer of the Anti-Corruption Commission of Seychelles.

- 3) The general nature of the offence and facts of the case against the suspect is averred as follows:-

This anti-corruption investigation is concerned with an initial theft of \$50million arising from a loan/grant from Abu Dhabi state in 2002. Government records show that the funds were misappropriated and never included in the accounts of the Republic of Seychelles and as such were never available for their intended purpose which was to assist in the national balance of payment deficit.

The funds were deliberately misdirected to private company accounts and subsequently, we believe, used to purchase government assets in the form of the COSPROH hotels, privatised over the course of 2002-2005. Preliminary enquiries further show that the funds used to purchase the hotels were again then misappropriated and removed from government accounts.

Over the course of the intervening 19 years there have been numerous transactions involving the misappropriated funds and the assets associated with them which, in accordance with the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021, are likely money laundering offences.

In relation to this offence, the aforesaid Andre Leslie Benoiton was a recipient of \$100,000 in September 2004 from the account used to divert and launder the funds.

He was at the time and still is a serving officer within the Seychelles Peoples Defence Forces.

During the course of searches undertaken at the home address belonging to Mukesh and Laura Valabhji, extensive caches of weapons and ammunition were discovered. Searches remain ongoing due to the sophistication of the construction work designed to provide secret compartments.

The weapons include a Dragunov sniper rifle, Makarov and Glock 9mm handguns and at least 9 AK47 Automatic assault rifles some that are suppressed and some with underslung grenade launchers.

The military materiel has no explanation or even use in a civilian setting and was not licenced or permitted.

The weapons were secreted in cleverly constructed hides in some instances, but a very substantial quantity of ammunition was found bearing the title "Leslie".

Enquiries are at an early stage, but we believe that the \$100,000 payment made by Valabhji to Benoiton in September 2004 is linked to the arms discovered at the Valabhji's home address.

Furthermore, our enquiries have revealed that Andre Leslie Benoiton is a shareholder and director to Zeal Investments, the primary stakeholder in the luxury island resort of Felicite controlled by Valabhji.

We anticipate that additional enquiries will reveal that the \$100,000 payment in 2004 was part of a much larger sum paid in shares and other considerations relating to a large weapons cache.

A large quantity of signed End User certificates which would allow for the importation of a limitless supply of military hardware was also found.

It is suspected that the financial connection between Valabhji and Benoiton is evidence of an ongoing relationship between the two in which the serving military officer received pecuniary reward for his services in importing the weapons.

At a subsequent search at the offices occupied by Colonel Benoiton, 2 civilian passports and one government passport issued by the Seychelles. In addition, an Indian passport was discovered. All were issued in the suspect's name.

Enquiries have revealed that the suspect has at least 3 properties on Mahe of substantial value which, for the moment, are inconsistent with a government salary although the suspect has not advanced an explanation for his wealth and property.

4) The Applicant avers that the following are enquiries that the Anti-Corruption Commission (the ACCS) has carried out so far.

5) They have arrested the suspect; interviewed some witnesses; the suspect has been interviewed; some exhibits have been seized; an excessive of weapons and ammunitions have been discovered at one of his close associate. And that enquiries. have revealed the financial and the company links between the so far identified parties in the conspiracy.

6) Further enquiries which the ACCS needs to conduct are stated as follows:-

other witnesses are to be interviewed; further search warrants are to be executed; there's a need for further arrest and interviews of additional suspects. There's a need to analyse computer and digital records. There's pending international requests for assistance; there's a need for evaluation of seized mobile phones and the ACCS had to evaluate and analyse materials seized under the warrants already executed.

7) The reasons put forth for the further holding of the suspect are as follows:-

The Applicant has supported the application with his Affidavit upon which he attests to all the facts raised in his application.

8) In his reply learned counsel for the suspect attacked both the legality and the facts upon which this application is made.

9) In relation to the unlawfulness of the application, learned counsel submitted that the alleged offence in this case allegedly took place in 2004, whilst the offence of money laundering was introduced only in 2006 by the Anti-Money Laundering Act and therefore in his submissions there was no offence before that. Accordingly, he submitted that this amounts to a breach of Article 19(4) of the Constitution that prohibits the retroactive application of penal laws, except the crime of Genocide and Crimes against Humanity.

- 10) Given this apparent unlawfulness he submitted that the application should be dismissed without the Court considering the factual merits of the case. Learned counsel thereafter went on to dispute each factual grounds in the application. According to him, first of all it's misleading for the Anti-Corruption Commission to aver that the suspect was interviewed and that he chose to remain silent, for according to him his client was interviewed in his presence and he gave a statement to the Anti-Corruption Commission. Moreover, he submitted that the interview was only done by way of questions and answers which effectively denied his client the opportunity of responding and presenting a defence to some of the averments in the application. Learned defence counsel then went on to attack each and every grounds upon which the further holding is being sought.
- 11) Generally it is his submission that the application appears to be but a duplicate of a similar application made before this Court upon which the allege accomplices of the suspect before the Court was ordered to be further detained in custody last week.
- 12) In respect of the ground that there are substantial ground for believing that if suspect is released on bail he would interfere with witnesses or otherwise obstruct the due course of justice, given his wealth and the influence that he holds, Learned counsel submitted that these are unsubstantiated and it is too vague.
- 13) In respect of the averment that weapons and emanations found on the premises highlight an ability to further threaten witnesses, counsel argues that the weapons were not found at the premises of the suspect and therefore had no means of control and could not possess them.
- 14) As to the averments of the fact that the suspect has assets both in this country and abroad and further that suspect needs to be detained for his own safety, he argues again that these are but mere allegations and they are insufficiently particularised.
- 15) Finally learned counsel submitted that flight risk, if ever is present in this case, can be cured and can be curtailed by the imposition of strict bail conditions and that remand is not the only remedy in this case. Finally he submitted that the ground regarding interest of the society is not a ground upon which a suspect can be detained under Section 101 of

the Criminal Procedure Code and the Constitution. As a result Learned counsel pray to this Court that his client be released at least on stringent bail conditions.

- 16) I have given due considerations to the facts and circumstances averred in the application and its affidavit. I have also given close consideration to the submission of both learned counsel representing the ACCS and that of the defence. Having done, so I have come to the following determinations;
- 17) The first Anti-Money Laundering Act promulgated in Seychelles was first done by way of Act 8 of 1996. This Act was then repealed by Act 5 of 2006, which was in turn repealed and replaced by the Anti-Money Laundering and Countering the Financing of Terrorism Act 2021. Accordingly, I find that learned defence counsel is wrong when he submitted that in 2004 when the allege offence of money laundering occurred in this case of which the suspect is being investigated, in 2004, there was no law. There was a law, it was the law that was promulgated in 1998.
- 18) Before I proceed to make a determination on the grounds for further holding of the suspect I need to be satisfied that there is a prima facie case established by the Applicant, ex facie the application. Before doing so I will say that I am satisfied that the suspect did not exercise his right to remain silent and did give an explanation to the ACCS in the presence of his lawyer. I therefore find that it's totally unproven that this was not the case.
- 19) That being the case after careful analysis of the facts of this case, I find the following proven on a prima facie basis.
- 20) Last Friday this Court remanded 2 Suspects in case FH 49/2021. They were remanded on the suspicion if being involved in the laundering USD 50 million donated by the government of Abu Dhabi to Seychelles in 2002. It is from the same fund that the suspect in this case is suspected to have benefited in the form of USD 100,000 in 2004.
- 21) Last Friday this Court also ordered the further detention in custody of the same two suspects in another case being FH 50/2021. They were remanded to have been in possession of several firearms and ammunitions, and the Court is informed that following

this Court ordered detention other firearms and emanations have been found at their premises in a secret compartments. This include several AK 47 which may have Grenade Launchers.

- 22) Mr Benoiton, the suspect in this case is a very close acquaintance with the Valabhji's, both business wise, financial wise, and personal wise.
- 23) If the transfer of USD 100,000 had happened, possibly, from accounts used by the Valabhji's to the suspect in this case in 2006, this could have by itself remain somewhat innocent and would have merit an investigation without the need for a further detention order in this case. However the facts proven in a prima facie basis before me goes further.
- 24) There was weapons and ammunitions found at the associates of the suspect of military grades. Apparently they had no license to have them in their possession.
- 25) The suspect in this case is a very high ranking Defence Forces Officer having the rank of Colonel with access to military grade weapons, directly or indirectly.
- 26) In the weapon cache of the suspect in case FH 49/2021 and FH 50/2021 there was a very substantial quantity of ammunitions which carry and bear the name of "Leslie". Leslie is one of the forenames of the suspect.
- 27) Further it also appears that a large quantity of signed end use certificates which would allow for the importation of limitless firearms were found at the suspect's premises. As far as this Court is concerned, the suspect is not a firearm dealer, or importer, licensed to import firearms.
- 28) These to my mind clearly reveal a possible connection between the transfer that took place in 2006 between the suspect in this case and those in FH 49/2021 and FH 50/2021. And this give ground to suspect that Mr Benoiton may possibly be connected in the other offences also which needs time and effort to investigate.
- 29) Given the need for further investigation, would enlargement of the suspect harm the investigation? Having assess the overall circumstances before me, the answer to my mind should be in the positive.

- 30) The facts and circumstances are very serious. As far as I see, if he is released on bail right now, he would either attempt to abscond otherwise interfere with the due course of investigation and defeat the due course of justice whether in this case or in the other two cases I have mentioned above which came before this very court.
- 31) I am of the view therefore that for the time being no amount or forms of conditions of bail would alleviate the flight risk or risk of interferences in this case.
- 32) I accordingly remand the suspect in custody up to the 3rd of December 2021 at 2 pm in the afternoon on which date and time he will be brought to the Court.

Signed, dated and delivered at Ile du Port on 22 November 2021.

R. Govinden

Chief Justice