

SUPREME COURT OF SEYCHELLES

Reportable

[2021] SCSC 883

FH 55/2021

In the matter between

THE ANTI-CORRUPTION COMMISSION

(rep. by Mr A Juliette)

Sarah Zarqani Rene

(rep. by Mr J Camille)

Suspect

Neutral Citation: *The Anti-Corruption Commission v Sarah Zarqani Rene*(FH 55/2021)

[2021] SCSC 883 (10th December 2021)

Before: Govinden CJ

Summary: Bail granted on reasonable conditions.

Heard: 10th December 2021

Delivered: 10th December 2021

ORDER

The suspect to be released on reasonable conditions .

GOVINDEN CJ

[1] This is an application made under Section 101(7) of the Code as read with Article 18 (7) of the Constitution. The Applicant is Peter Humphery an Officer of the Anti-Corruption Commission, Herein after also referred to as the ACCS . The Application is duly supported by the Affidavit of the Applicant . This is the second application of its kind in a row against the suspect. The first one was an application for detention

under Section 101(1) which detention order finishes today. In this application the Applicant is applying to detain the suspect for a further seven days , up to the 17th of Dember 2021.

[2] The Applicant avers that the nature of the offences that the suspect is suspected of committing are Money Laundering, contrary to Section 3(1) of the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2021. (*“the AMLCFTC Act”*)

[3] The general nature of the offence put forth in support of this application can be summarised as follows;the anti-corruption investigation isconcerned with an initial theft of US dollars fifty million 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 thereafter misdirected to private accounts. Then used to buy COSPROH hotels and then again diverted out of COSPROH. Over the course of the years following this there has been numerous suspected offences under the AMLCFTC Act regarding the funds. It is alleged that the ex President, Albert Rene, the husband of the suspect, was a key and willing participant in these offences and that this has given to him and his family wealth that are now assets held by the suspect. The Applicant specifically relates to four transactions received by the suspects’s Australian Bank account between January 2007 to November 2010 from accounts wholly owned by another principlal suspect, Mr Mukesh Valabhji. The four transactions total in excess of 700,00 US dollras and one refers to “ follow up investment in Australia” indicating other transactions and movements of the proceeds arising from the original theft. According to the Applicant the suspect original interview failed to provide a viable account for the incoming funds and additional information received from other jurisdictions shows that there are more transactions of this nature that shows such kind of business link with other suspects , including with that of another suspect, Mr Leslie Benoiton. The Applicant relates to the result of a search that was executed at the premises of the suspect , which according to him demonstrate the involvement of Mr

Rene with the Abu Dhabi fund. It is averred that the information retrieved shows that the suspect has been instrumental in the creation of the companies and financial vehicles used to launder funds arising from the original theft and that her business association with Mukesh Valbhji is very clear and shown in the documents which is attached in the supporting affidavit. The Applicant has attached a number of items to the application that it alleges shows business connections between the suspect and Valabhji.

- [4] The Applicant has in his application deponed as to the investigation that the ACCS have undertaken so far .
- [5] The Applicant avers however that the following are investigation that still needs to be done, namely, that there are other suspects to be interviewed ; further search warrants have to be executed;further arrest and interviews of additional suspects needs to be done;there is a need to analyse comput and digital records; there is a need to issue production orders on international financial institutions; there is a need to evaluate seized mobile phones and there arises a need to evalauate and analyse material seized from executions of Search Warrants.
- [6] As a result the Applicant avers that the following are reasons that justifies the further detention of the suspect in this case;
- [7] The suspected offences are very serious in nature and carries a maximum sentence of 15 years.
- [8] There are substantial grounds to believe that if released on bail the suspect will interfere with witnesses and otherwise obstruct the course of justice or would be a flight risk due to the wealth and influence she holds. According to the Applicant by her own calculation her wealth was 50 million US dollars in 2018.
- [9] The Applicant also avers , as a reason for further holding , that the complainant in this matter is the Republic and people of Seychelles and in the interest of society in general and the suspect in particular, were she to be granted bail it would present as a serious threat to public order and her safety.

- [10] The Learned counsel for the suspect has filed a Notice of Motion .In it he applies for the following orders; that his client, whilst in detention, be given sufficient time in the sun; that she be given free access with attorneys, at all times; that she be allowed to be given home cooked meal given her prevailing medical conditions and that she be allowed to receive and sign documents whilst in custody. In her affidavit in support the suspect said that she has been denied sun time whilst in custody. She avers further that since she has cancer, she needs a special diet. She further avers that she is prevented from seeing her Attorney after 6pm and that she is given restricted access to documents whilst in cell and is not allowed to sign any documents and that this hinders the payments of her expenses .
- [11] In a responding affidavit the Applicant contends the suspect's affidavit . Regarding her detention conditions, he avers that the ACCS has no competence in that regard as this falls within the parameters of the police. He further avers that he is unaware of the medical conditions of the suspect , but that if she had this condition , it should have been raised in the bail hearing of the 29th of November and it was not so raised. Regarding access to documents , the Applicant avers that he has given strict instructions to the police not to allow the suspect access to cheque books which could allow her to dissipate assets under her control whilst in custody. The Applicant avers further that given the nature of the offences being investigated he is ready to allow the suspect access to documentations on an item by item basis in order to allow her to manage her day to day affairs and that in that regard he is willing to work with a person holding a bank mandate or Power of Attorney on behalf of the suspect in order to ensure that the assets are not dispersed.
- [12] Learned counsel for the suspect objects to the application for further detention , to him the applicant has failed miserably to satisfy this court that the grant of an extension is justified. Learned counsel strenuously dispute the fact that there is any link established between the embezzled funds and his client . According to him there is nothing new in the affidavit in support of the Applicant to justify a further detention. He suggested that there are ways and means that the court can resort to which would have the same effect as detention applied for, such as the imposition of stringent conditions.

[13] I have thoroughly read the Application and its supporting affidavit in the light of the whole circumstances of the case and the Motion filed by the Respondent and its affidavit in support. Due consideration has also been given to the Applicant's affidavit in response. I have also considered the submissions made by counsel for both parties. I take note that in the alternative to his unconditional release of his client, in his submissions, Learned counsel for the Respondent does not object to his client be released on stringent conditions instead of being remanded.

[14] Having given those considerations I am of the view that imposing bail conditions on the suspect will be just and reasonable bearing in mind the totality of the circumstances of the case.

[15] However, the bail conditions to be imposed in this case must reflect the gravity of the suspected offences. To that extent this court must consider the following factors when it imposes any reasonable bail conditions in this case; first, that the Respondent is alleged to be a principal suspect in the Applicant's investigation; secondly, that the suspected offences are extremely serious; thirdly that the Respondent is a high net worth individual with considerable influence both in Seychelles and abroad; fourthly, that the total amount of the sum suspected to have been embezzled and laundered with the participation of the Respondent is in United States Dollars and comes to the amount of USD 50 million; fifthly, that there are other suspects both at large and in custody and finally that the ACCS is still investigating this case and requires more time to do so and the presence of the suspect in this country is essential in this investigation

[16] For these reasons I will release the suspect on the following bail conditions;

1. The suspect should not leave the jurisdiction of Seychelles without an order of this Court.
2. The suspect should not interfere with the witnesses; tamper with evidence; interfere with the course of justice in this case in any way or get involved in any criminal activity.

3. The suspect should surrender her passport or any travelling documents in her possession to the Registrar of the Supreme Court before the release order is signed.
4. The suspect should report to the nearest police station being the Anse Boileau Police Station every day at 9:00 am.
5. The suspect should deposit a cash bail deposit of United States Dollars Two Millions (USD 2,000,000), with the Registry of the Supreme Court.
6. She should also provide two substantial sureties who are citizens of Seychelles to be approved by the Court. Each will sign a bail bond in Seychelles Ruppees in the sum of Five hundred thousand each (SCR 500, 000/- (NOT CASH).
6. If any of these conditions aren't fulfilled or are broken the suspect shall remain in or shall be remanded in custody, respectively.

[17] If the suspect is to remain in detention as a result of failure to fulfill these her conditions I direct the police to ensure that she be provided enough sunlight and exercise.

[18] With regards to the alleged serious medical conditions of the suspect, I am of the view that her conditions has not been established to necessitate being kept at a hospital for the time being . At any rate the document shown to the court in support of this fact shows that it is dated after the last court order and so far no proof of a pre-existing condition has been established to the satisfaction of the court. Accordingly, the issue of provision of home cooked meal does not arise for the time being.

[19] With regards to access by counsel to her client , as I have said before, this is a constitutional right. The suspect has a right to counsel and a right to be given sufficient time and opportunities to prepare her defence . This must be safeguarded at all cost . On the other hand this right is not about being given time and opportunity to use others to defeat the due course course of justice by destroying or tampering with evidence of to dissipate items which forms the subject matter of the investigation. Accordingly, a balance approach has to be taken. In that balance approach the police can limit the time of the day that access to counsel can be given and the conditions of such an access;

including ensuring that contrabands are not allow ingrees into or exit the detention cells.

[20] It is in the same breath that i accept the Applicant's position with regards to a controlled access by the suspect to her cheque books. The court bears in mind that she needs to manage her financial affairs as she is not a convicted person. However, this needs to be done in a controlled environment so that opportunity is not given for the suspect to carry out transactions that can defeat the due course of justice in this case. Accordingly, I order that the suspect be allowed to do financial transactions only in order to manage her day to day expenses and this should done subject to and under the strict supervisison of the ACCS.

[21] The Registrar is to convey this order to the Director of Immigration and the Commissioner of Police.

[22] The case shall be mention before this court on the 17thof December at 9 am.

Signed, dated and delivered at Ile du Port on 10th day of December2021

Govinden CJ