

CN: 1157/2016

IN THE INTERMEDIATE COURT OF MAURITIUS

Independent Commission Against Corruption

v

Jean Jimmy Alexis

Ruling:

Applicant stands charged with the offence of money laundering under count 3 as per the information. Following an application for a variation of the prohibition order, the ICAC has objected to a variation of such order. The case was fixed for arguments.

The main ground of objection is the risk of absconding.

The enquiring officer gave evidence that an accused party in a connected case has been sentenced to a long term of imprisonment. He stated that the applicant has been convicted and sentenced for drug dealing in the past. He added that the sentence envisaged for the current offence is imprisonment, that the applicant has only one passport and that he intends to travel with his family. In cross-examination, he could not say whether the applicant has breached any condition of release and stated that a fine is also contemplated under by section 3 (1) of FIAMLA.

I have examined the evidence on record. Section 16 of the Bail Act provides that *the Court may vary an order if satisfied that it is necessary to avoid prejudice to the applicant, to avoid loss to the property of the applicant, for the health of the applicant or that of his next to kin and in such other cases as the Court may think fit.*

A balancing exercise has to be carried out in the present case. The prosecution attempted to substantiate the objection by referring to another case. The enquiring officer has however failed to explain which manner the present case is connected to the other case where an Accused has been sentenced to jail. Suffice it to highlight that each case is to be assessed on its own merits and the sentence that has been meted out to an accused party in another case cannot be relied upon to sustain the ground of objection. Although

the offence is indeed of a serious nature, the court notes that there is no evidence that applicant has committed any breach of condition of release and that the law provides for a fine and imprisonment. It is also significant that the prohibition order was varied in respect of a co-accused who stand charged of a similar offence. As for the case of Peerthum v/s The District Magistrate of Riviere du Rempart [2009] SCJ 283 which was referred to by Counsel for the prosecution, it is noted that the applicant in that case faced two substantive charges as opposed to the present applicant who is facing one substantive charge.

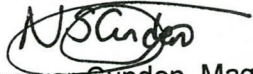
Considering that there is insufficient evidence to substantiate the ground of objection, the applicant's fundamental right to movement under section 15 of the Constitution and the fact that conditions may be imposed to bring the risk of absconding to a minimum level, I am of the view that the balance weighs heavily in the favour of the applicant. For the above reasons, the objection of the police is overruled and the prohibition order is varied on the following conditions:

That the applicant furnishes a security in cash in the sum of Rs 300,000.

That applicant travels on a restricted passport

That applicant provides a contact address and contact number for his period of travel abroad

That the applicant appears in court on a date which has been fixed by the court.


[Delivered by N Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered this 19th of December 2022]

INTERMEDIATE COURT

Cause No. V/0 66/2020 Page 3

Arguments: 16
12/12/2022.

Accuse.

④

16/12/22 App present

Mr Bandhu for pro present

Mr Nuday for App present:

ASP Tegmeh P

CA Seenthan SAH

The ~~pro~~ objecting

to the verdict of the court

Grand is risk of absconding

The present case involves money

lending where co-Accused in other

related case have been convicted.

Applicant has allegedly received

money emanating from drug dealing

and sent to build a house

App stands charged under count 3.

only. ~~Eng~~ Several witnesses have

deposed. There are only 4 witnesses

left to depose.

INTERMEDIATE COURT

Cause No. N/o. 66/20 Page..... 5

Sentence envisaged for offence
is imprisonment.

App was arrested & convicted
for drug dealing.

I cannot say whether he has
breached any condition of
release

He has only 1 passport

He is travelling with his
family

App is travelling for leisure

Purposes.

No condition can be imposed to
minimise travel.

Case:

Q: App has breached any condition

ANo

Q: He has been acquitted recently
by 2C

At 2C. 1/5/59

INTERMEDIATE COURT

Cause No. 4/0 66/20 Page 7

Q: App has not breached
any condition of release

A Zennitsey

Q: During all the time
of inquiry, he has not
tried to abscond

A Zennitsey

It should have been.

App's

INTERMEDIATE COURT

Cause No. v/o 66/20 Page..... 9

Q. AFRIB also

contemplated under 53(17)

ORFIAMLA:

A Yes

Q App is subemployed

A Yes, 2 million.

Q App has cooperated

A ~~Yes~~ I can't say

No condition can minimize
risk.

Re-examination

At 2 Mrs Montague Montre was
Q

allowed to travel for which ~~case~~ ^{reason}

A I can't say.

App states from Duke that
he will return & will abide by all

conditions. & files are Hel/Ceb

D. J. [unclear]

INTERMEDIATE COURT

Cause No. v/o 66/20 Page.....11.....

Submission by Mr. Budhoo

Peethum v ~~BM~~ or Rudo Nepal

Test: a balancing exercise

has to be carried out

Serious offence.

Penalty: fine or imprisonment

There must be an absolute
necessity

INTERMEDIATE COURT

Cause No. v/o 66/2020 Page (13)

19/12/2022 App present
2nd Guseeown Pres.
Ruling is read out at the id.
Application granted

(S)

later Applicant present
states he will travel from
19/12/22 until 27/12/2022.

Prohibition order is varied as

per ruling on conditions
imposed as per ruling to

allow him to travel

until 27/12/22.

Copy of flight reservation files

App is dispensed from reporting
of Abernethie Polirestation ~~on~~

~~on~~ on 21/12/2022, 23/12/2022 &
26/12/2022.

PF: 28/12/2022

1000cm

App is wanted to appear on 28/12/22.

