

## Pce v R Dhalliah

2024 PL2 54

IN THE DISTRICT COURT OF PORT LOUIS (DIVISION II)

Cause No.: 4914/23

Police

v/s

Rajanah Dhalliah

### **RULING**

1. The applicant stands provisionally charged with the offence of “Traffic d’influence” in breach of section 10(5) and 83 of the Prevention of Corruption Act 2022.
2. Me R. Rutnah, learned Counsel for the applicant has moved for the provisional charge to be struck out on the following grounds:
  - (i) There is no reasonable suspicion under which the provisional charge can be reasonably maintained;
  - (ii) The provisional charge is a direct consequence of allegation made by a person of tainted character; and
  - (iii) The delay that is prevailing to complete the enquiry within a reasonable time is causing unnecessary and extreme prejudice to Mr. Dhalliah’s social and political life.
3. The motion was objected by the FCC and CI Mooneesawmy, the officer in charge of the enquiry, was deputed to sustain the objection. The respondent’s case was conducted by Mr T. Naga together Mr F Arzamkhan

### **The Respondent’s case**

4. CI Mooneesawmy deponed to the effect that:

#### **With regards to “reasonable suspicion”**

- i. On 3<sup>rd</sup> March 2023, the defunct ICAC met with one Shaan Kumar Choolun with regards to a drug related money laundering offence involving one Hubert Celerin, alias Franklin, who was suspected to be conducting illegal activities in a State Forest Land at Grand Bassin. The latter stated that the State Forest Land was leased to the Eco Deer Park Association.

- ii. On 15<sup>th</sup> March 2023, Mr Ajay Kumar Jeetoo called at the ICAC, informing that he is concerned with the lease of the State Forest Land. He admitted that he had given bribes in connection to the lease.
- iii. As per the version of Mr Jeetoo, he stated that he was the company secretary of the RKS Deer Ranch Limited, which was the lessee of the said State Forest Land since 2007. After 3 years, due to financial difficulties, the Etwaroo family invested in the company and acquired 30% shares. In 2016, the police uprooted Gandia plants on the property and the lease with RKS Deer Ranch Limited was cancelled. The Etwaroo family, still being interested in the lease of the land, entered a court case, which was later withdrawn.
- iv. Mr Jeetoo, being aware of the issue, met with one Hurryduth Ramnarain during a family gathering. Mr Ramnarain as a senior Officer of the Registrar of Association, proposed his help to get the lease back and the strategy was to get a new group of people to get the lease. That is how Eco Deer Park Association was born. The members of the new association were mostly family members of the previous company's shareholders and directors as well as the son in law of the applicant. It is Mr Dhalliah himself who allegedly proposed his son in law to be a member of the association.
- v. Mr Dhalliah was at the material time an elected member of the National Assembly and was appointed as PPS by the Government. His Office was at 10<sup>th</sup> Floor Citadel Mall, Port Louis and he was entrusted with the responsibilities regarding Constituencies number 7 and 9. He was also working in close collaboration with the elected members of both constituencies, the NDU and the CAB.
- vi. It is with regards to the lease of the State Forest Land to Eco Deer Park Association that Mr Jeetoo accompanied Mr Ramnarain to the office of the applicant, Mr R Dhalliah, on or around August 2020. At this stage, applicant being already aware of the issues regarding the lease, solicited the sum of Rs 4 million to get back the lease through the setting up of the new association.
- vii. The Rs 4 million was to be given by the Etwaroo family but Mr Dhalliah stated he shall only deal with Mr Ramnarain and not directly with the Etwaroo. Mr Dhalliah's role was to help in the setting up of the Eco Deer Park Association and to make all necessary arrangements with the Ministry of Agriculture and Food Security.
- viii. As part of the investigation following the statement of Mr Jeetoo, the ICAC secured the mobile phone of the latter and the forensic analysis

revealed that there were numerous communications through calls, SMS and WhatsApp messages corroborating the statements of Mr Jeetoo.

- ix. On 12<sup>th</sup> September 2020, a meeting was held at the State Forest Land involving numerous persons, but Mr Dhalliah refused to answer any questions with regards to the said meeting.

*With regards to the delay in completing the enquiry*

- x. The investigation is serious, sensitive and complex. The seriousness of the investigation is based on the fact that it is a corruption offence which carries a heavy penalty under the Prevention of Corruption Act 2002 and it involves a significant amount of Rs 4 million. The sensitive nature of the investigation is due to the fact that there are public officials, PEPs and politicians involved. The complexity of the matter is due to the fact that the allegations are against public officials and there are other potential suspects.
- xi. Since the offence has financial aspects, financial analysis, money trail and net worth analysis is to be carried out, four Disclosure Orders have already been applied for and a huge amount of data has already been received and needs further analysis. The application for Disclosure and the communication of documents from numerous entities (including several financial institutions and Ministries) take time and the analysis of the data already communicated will also take time. Moreover, as the data are analysed, further interviews will have to be carried out to explain the different stages of how the lease was granted.
- xii. At the time that the arguments were heard, the ICAC had already recorded 27 statements from 25 witnesses and 23 Defence statements from 4 suspects.
- xiii. The laptop of an employee of Mr Jeetoo was recently handed over for analysis and the report is awaited.
- xiv. 3 different reconstruction exercises at 8 different locations have already been done.
- xv. Application regarding itemised bill of about 6 persons have been done and a large amount of data has been received, which requires several months to examine them.

*With regards to the prejudice of the applicant due to the delay*

- xvi. The applicant is already on bail and the conditions attached to his bail give him reasonable freedom.

- xvii. Moreover, applicant did apply for the Prohibition Order to be waived but same had been withdrawn.

*With regards to “allegation made by a person of tainted character”*

- xviii. The allegation was made by one Mr Ajay Kumar Jeetoo who is a senior Manager at a firm and when the case was recorded, the latter was of clean record and still working for the firm.

5. In cross- examination, CI Mooneesawmy stated that:

- i. Despite being an accountant at a prominent firm, Mr Jeetoo sought advice about the setting up of the Eco Deer Park Association,
- ii. Mr Jeetoo must have trusted the Etwaroo family for him to give them 50% shares in the RKS Deer Ranch Limited. The Etwaroo family, especially Mr Keagan Etwaroo, has made contributions in the running of the hunting grounds. However, CI Mooneesawmy cannot confirm whether the Etwaroo family was involved in any illicit activities.
- iii. It was Mr Ramnarain and not Mr Jeetoo who proposed to create a new structure/association. From then, Mr Ramnarain and Mr Jeetoo often met to discuss the strategy to get a new lease. On this front, the Etwaroo family was not involved and the communication was only between the Mr Jeetoo and Mr Ramnarain.
- iv. With regards to the version of Mr Etwaroo, he stated that the money was to be given by him. He might have been aware of what was happening but he was not directly involved. Mr Etwaroo supported the version of Mr Jeetoo during the enquiry and has thus corroborated the evidence of Mr Jeetoo.
- v. He is not aware on the previous convictions of Mr Etwaroo and cannot confirm, based on his enquiry, that the latter is of tainted character;
- vi. The applicant has admitted that he knows Mr Ramnarain as he lived in constituency No 7 and he has met him at religious gatherings
- vii. The applicant has stated that save and except that he has seen the pictures of Mr Jeetoo on social media and local press, he does not know the latter. He also does not recall if he met Mr Jeetoo personally and stated that all visits to his office are recorded at the reception desk, including the visits of his family members or friends.
- viii. During the investigation, the applicant stated that he never met with Mr Ramnarain at his office but he cannot confirm same. As for Mr Jeetoo, applicant confirmed during enquiry that he never met him.

- ix. On a question as to whether the CCTV camera at the office of Applicant was verified, it was found that the footage is kept for only 1 month and is thereafter overwritten. With regards to the record book, a statement from the receptionist was recorded which revealed that at the time that the meetings allegedly happened, the visitor's books were not being updated properly and it was only after the Covid Period that same started to be updated regularly. The visitor's book itself was proof that there was no record prior to the time of the alleged meeting and this was supported by the version of the receptionist. The deputy permanent secretary also gave a statement to the same effect. Moreover, in his capacity as PPS, the applicant was meeting people outside of his Port Louis Office.
  - x. At this stage, no statements had yet been recorded from the confidential secretary of the applicant and the reason given was because the records were kept with the receptionist who already provided the FCC with the record book and there were other more pressing need to attend to regarding the investigation.
  - xi. Regarding the appointment of the applicant's son-in-law as vice president of Eco Deer Park Association, the applicant explained that his son-in-law resides in Estonia, as shown by his Estonian marriage certificate, and only visits Mauritius occasionally. This is why no investigation has been conducted concerning the son-in-law. Additionally, the applicant mentioned that he does not interfere in the son-in-law's personal or professional matters.
  - xii. Mr Ramnarain has on his side kept his right of silence all along the investigation.
  - xiii. On the issue of delay, since it is a complex matter and it takes time to obtain Judges' orders, there cannot be a certainty as to when the enquiry will be completed but the FCC is doing everything it can to resolve the case as quickly as possible.
  - xiv. Although the Grand Bassin State Land is not within the constituency of the applicant, the applicant was to facilitate the granting of the lease. However, the EO could not confirm whether the applicant has the power to do so or not.
6. On re-examination, it was confirmed that Mr. Etwaroo was not the one who made the allegation and that is why no investigation was done with regards to his previous convictions.

### **The Applicant's Case**

7. The applicant elected not to adduce any evidence.

### **Considerations**

8. In order for this court to assess whether or not the provisional charge should be struck out, it is incumbent to carry out a balancing exercise between the *raison d'être* of the provisional charge and the prejudice being caused to the Applicant by maintaining him under it. The *raison d'être* of the provisional charge will depend on whether there is reasonable suspicion at the time of arrest and at the moment when the arguments is being heard, as well as the delay in the enquiry. Indeed, as stated in the case of **Alain Gordon Gentil v State 1995 MR 38**, *“The court acts as an arbiter between the executive and the citizen and in such cases, may control the regularity of arrest if the need arises.”*
9. However, before proceeding on the balancing exercise, I will first address the second ground raised by the applicant for the striking out of the provisional charge.

### **The provisional charge is a direct consequence of allegation made by a person of tainted character**

10. It is cardinal to highlight that counsel for the applicant appeared to be confused as to who was the complainant in the matter. At the outset, when a question was asked by counsel for the FCC as to whom this ground refers to, Me Rutnah stated that it was one Mr Etwaroo. Thereafter, during cross-examination and upon clarification from the court, Me Rutnah again mentioned Mr Etwaroo with regards to his second ground. However, as per the evidence of the EO, it is clear that the allegation was made by Mr Jeetoo. The version of Mr Etwaroo was only in support and to corroborate the version of Mr Jeetoo.<sup>1</sup>
11. There is no evidence before this court to enlighten the court about the alleged tainted character of Mr Etwaroo. The EO has stated that he is not aware of the previous convictions of Mr Etwaroo and he is unable to confirm any information which is allegedly in the public domain<sup>2</sup>. Moreover, the EO confirmed that the allegations were made by Mr Jeetoo and not by Mr Etwaroo. The EO has deponed that Mr Jeetoo *“was a Senior Manager at a prominent firm when the case was recorded. So, he has a clean record, he has no offence committed because a prominent firm will not retain any person having a character problem.”*<sup>3</sup>
12. Be it as it may, the motion before this court is with regards to the striking out of the provisional charge and the real issue is therefore the legality of arrest of the applicant and whether such arrest is still justified, given the passage of time and on the basis of reasonable suspicion. At this stage, it is not within the

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<sup>1</sup> Page 9 of 31 of transcript Reg No 993, CN 4914/2023

<sup>2</sup> Page 11 of 31 of transcript Reg No 993, CN 4914/2023

<sup>3</sup> Page 8 of 12 of transcript of proceeding with ref 916, CN 4914/2023

jurisdiction of the court to determine whether the evidence presented by the police are or will be admissible or not. Reference here is being made to the case of **Hussein v Chong Fook Kam [1970] AC 942** as quoted in the case of **Manraj (supra)** where the court stated that:

*"The protection of the public is safeguarded by the requirement, alike of the common law and, so far as I know, of all statutes, that the constable shall before arresting satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called upon before acting to have anything like a prima facie case for conviction; ..."*

*There is another distinction between reasonable suspicion and prima facie proof. Prima facie proof consists of admissible evidence. Suspicion can take into account matters that could not be put in evidence at all." (Underlining is mine)*

13. This court is not the proper forum to decide on the merits and the demerits of the charge, as it was held in the case of **Ramgoolam v The State of Mauritius & Ors 2024 SCJ 113**:

*"Of course, the detainee may make a motion to be released on bail or to have the provisional charge struck out. Should there be any objection to the motion, the police will then adduce some evidence. The Court's role at that stage is not to assess the merits or demerits of the charge but to assess the nature of the evidence in order to determine whether the detainee should be released on bail or the provisional charge should be struck out, as the case may be. The discretion of the Court to grant bail or strike out the provisional charge will depend largely on the evidence adduced at that stage by the police and/or the defence." (Emphasis is mine)*

14. This court finds that the second ground for striking out the provisional charge cannot be considered as a ground independently. The court can only assess the evidence presented, particularly concerning any alleged tainted character of Mr. Etwaroo or Mr. Jeetoo, to determine whether there is a reasonable suspicion to justify the applicant's arrest and whether the provisional charge should be maintained.

**There is no reasonable suspicion under which the provisional charge can be reasonably maintained.**

15. I have considered all the evidence on record and the submissions made by both counsels. The issue that this court is required to determine is not whether the police had at the material time of arrest reasonable suspicion but rather whether at the time of hearing the present arguments, with the passage of time, the reasonable suspicion has tilted towards certainty or towards no suspicion.

16. The purpose of a provisional information has been explained in **P K Jugnauth v The Secretary to The Cabinet and Head of The Civil Service Affairs & Ors [2013] SCJ 132** as follows:

*“When a provisional charge is lodged against an accused party at the stage of the investigation, this does not mean that he is brought to trial on that charge. The provisional charge is merely a preliminary stage when the prosecution is still carrying its investigation and has not made any decision whether to lodge a criminal charge or not. The provisional charge does not lead to a determination of issues of guilt or otherwise and an accused party does not run any risk of being convicted or of being sentenced at this stage. A provisional charge may culminate into a criminal charge or it may be purely and simply struck out without any further charge.”*

17. The prosecuting authorities are therefore required to bring a person arrested upon reasonable suspicion for having committed a serious criminal offence before a Magistrate within the least possible delay. The court has iterated this principle in the case of **Ah Sue v The State of Mauritius [2015 SCJ No. 110]** as follows, *“whether the police had at the material time reasonable grounds to suspect that the plaintiff had committed any such offence is a condition precedent for the exercise of the power to arrest and this is a question of fact to be determined by the Court after consideration of all circumstances”*.

18. Furthermore, it is explicit from the following paragraph from **Blackstone at page 1190** that the reasonable suspicion must be based on some facts or evidence even though not enough to constitute a prima facie case –

*“D1.4 It has been held that reasonable suspicion requires both that the constable carrying out the arrest actually suspects (a subjective test) and that a reasonable person in possession of the same facts as the constable would also suspect (an objective test). In addition, the arrest must be Wednesbury reasonable (Castorina v Chief Constable of Surrey (1988) 138 NLJ 180). ..... Whether the constable had reasonable suspicion must be determined according to what he knew and perceived at the time; reasonableness is to be evaluated without reference to hindsight (Redmond-Bate v DPP (1999) 163 JP 789). Information required to form a reasonable suspicion is of a lower standard than that required to establish a prima facie case. Prima facie proof must be based on admissible evidence whereas reasonable suspicion may take into account matters which are not admissible in evidence or matters which, while admissible, could not form part of a prima facie case (Hussein v Chong Fook Kam [1970] AC 942) ...”*

*(Vide Dr Navinchandra Ramgoolam GCSK FRCP V The State of Mauritius & Ors 2024 SCJ 113)*



19. With regards to reasonable suspicion, the case of **Manraj D D & Ors v ICAC [2003 SCJ 75]** is interesting to refer to as the supreme court stated, following a review of English case laws, that:

*“Reasonable suspicion, in contrast to mere suspicion, must be founded on fact. There must be some concrete basis for the officer’s belief, related to the individual person concerned, which can be considered and evaluated by an objective third person.*

...

*“Reasonable suspicion” is no instinct, allows no guess, no sixth sense. It is scientific. It has to find support on facts, not equivocal facts but facts consistent with guilt. ...*

...

*Facts may point unequivocally to the view taken by the police or equivocally to that view. Where they point unequivocally, the suspicion is reasonable. Where they are equivocal, no coercive action may be taken by the Police until the facts become unequivocal ...”*

20. The Court went on to summarise the principles which should apply to determine whether there is reasonable suspicion which may justify an arrest:

*“... First, the suspicion should be reasonable: King v Gardner (1979) 71 Cr.App. R. 13; Prince [1981] Crim. L. R. 638. Second reasonability should be gauged not from the personal point of view of an officer or his subjective standard. It should be appreciated from the objective standard, the point of view of a dispassionate bystander: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, the suspicion should be based on facts: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). The facts relied on should be such as are consistent with the implication of the suspect in the crime: Pedro v Diss [1981] 2 All ER 59, D.C.; [1981] Crim. L.R. 236. It should not be equivocal with his implication and his non-implication. ...”*

21. I have also considered the case of **Sheriff v District Magistrate of Port Louis 1989 MR 260**, as submitted by counsel for the accused to the effect that, *“...whatever suspicion the police may harbour against the suspect should be weighed against any factors which tell in favour of the suspect. A total neglect of the explanations that the suspect may have to offer may well lead to the conclusion that the suspicion is not reasonable.”*

22. With the aforementioned principles in mind, I shall proceed to consider not only the nature of the evidence on record (without going into the merits of the case) but also assess the facts adduced before this court in order to determine whether the threshold of “reasonable suspicion” from “an objective point of view of a dispassionate bystander” has been met. The version of the accused would also be factored in. It should however be reminded that the test to be adopted in deciding the issue of reasonable suspicion is one which is of a lesser

standard than that required to establish a prima facie case against a suspect (vide **State of Mauritius v Utchanah** [\[2023 SCJ 172\]](#)).

23. In order to determine whether the threshold for reasonable suspicion has been met, one has to look at the elements of the offence of “Traffic d’influence”, which as per section 10(5) of the POCA are as follows:

- (i) A public official;
- (ii) solicited, accepted or obtained a gratification from another person;
- (iii) the gratification was for himself or any other person,
- (iv) by making use of his real or fictitious influence and
- (v) to obtain a benefit from a public body.

24. The salient facts that are before this court are as follows:

(i) Applicant being a public official;

It is on record that the applicant is a member of the legislative Assembly and at the material time, held the office of Private Parliamentary Secretary and is therefore a public official.

(ii) With regards to “soliciting, accepting or obtaining gratification for himself or for any other person

It is on record that the new members of the Eco Deer Park association were “mostly family members of the previous company”<sup>4</sup>, namely RKS Deer Ranch Ltd. There is no evidence to show that the son-in law was related to the RKS Ltd association prior to the Eco Deer Park association being created. Later, when the Eco Deer Park Association was created, the son-in law of the applicant, despite residing in Estonia<sup>5</sup>, became a member of the Eco Deer Park Association. As per the evidence on record, the EO has stated that it was on the proposition of the applicant that the latter was made a member of the association by Mr Ramnarain<sup>6</sup>.

With regards to the evidence of gratification for himself, there is the allegation of Mr Jeetoo with regards to the fact that applicant sought a bribe of 4 million rupees<sup>7</sup>. Furthermore, the statement of Mr Jeetoo also makes mention of the fact that there was modality for the payment of bribes, which the applicant told Mr Jeetoo.<sup>8</sup> Following the statement of Mr Jeetoo, the EO confirmed that the mobile phone of Mr Jeetoo was secured and the forensic analysis of the phone revealed many communications such as phone calls, SMS messages and WhatsApp messages<sup>9</sup> which support the statement of Mr Jeetoo. This fact was put to Mr Etwaroo during the enquiry who stated

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<sup>4</sup> Page 5 of 12, Transcript Ref 916

<sup>5</sup> Page 19 of Transcript Reg No 993

<sup>6</sup> Page 10 of 12, Transcript Ref 916

<sup>7</sup> Page 4 and 5 of 12, Transcript Ref 916

<sup>8</sup> Page 6 of 12, Transcript Ref 916

<sup>9</sup> Page 6 of 12 of the Transcript Ref 916

that he was aware that the money was to be given by him but there is no mention for which reasons.<sup>10</sup>

As per the EO, the applicant has denied any solicitation of bribes and directed the EO to enquire with his confidential secretary and the receptionist with regards to any visits by Mr Jeetoo to his office. The EO reported that the visitor's book was not consistently updated during the relevant period, and thus could not verify the accused's version. Statements were also taken from the receptionist, who corroborated this information.

Counsel for the accused additionally submitted that Mr Ramnarain never implicated the accused for any solicitation of bribes. However, the EO stated that Mr Ramnarain kept his right of silence throughout the investigation<sup>11</sup>, thereby rendering any claims regarding his implications by the latter or lack thereof irrelevant.

(iii) With regards to "make use of his real or fictitious influence"

It is on record that the applicant, at the time when the alleged offence occurred was an elected member and was thus a member of the parliament. He was in charge of Constituencies No 7 and 9 and had to work in close collaboration with the other elected members of both constituencies.

The fact that the applicant can have no influence on the lease of State Forest Land by the regulating authorities, namely the Ministry of Agriculture, is neither here nor there, since Section 10(5) of the Act speaks of influence that is real or fictitious.

(iv) With regards to "to obtain any work, employment, contract or other benefits from a public body"

As it has already been elaborated above, the EO has confirmed firstly that the son in law of the applicant was appointed as a member of the Eco Deer Park Association and secondly, there is the statement of Mr Jeetoo, supported by Mr Etwaroo with regards to the applicant facilitating the set up of Eco Deer Park Association and then to make all the "demarches" with the Ministry of Agriculture, who is responsible for the issue of lease.<sup>12</sup> As per the EO, this is supported by the forensic analysis of the phone of Mr Jeetoo and the statement of Mr Etwaroo.

25. In light of the testimony of the EO, this Court is satisfied that the facts and circumstances, elicited before it, are such that they would lead an objective observer to conclude that the applicant had committed the offence with which he is provisionally charged. With the progress of the enquiry and further evidence coming to light over the 10 months following the provisional charge

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<sup>10</sup> Page 8 of Transcript Reg No 993

<sup>11</sup> Page 25 of Transcript Reg No. 993

<sup>12</sup> Page 6 of 12, Transcript Ref 916

being lodged, any reasonable suspicion that there was at the moment of arrest have been tilted towards the certainty of the view taken by the police. Consequently, the police were fully entitled to arrest and lodge the provisional information against the applicant which is founded on reasonable suspicion and have satisfies the court that, at this stage, this provisional charge should be maintained against the applicant.

26. Having established that there is reasonable suspicion against the applicant, I will now assess the alleged prejudice experienced by the applicant to determine whether the provisional charge should be struck out.

*The delay that is prevailing to complete the enquiry within a reasonable time is causing unnecessary and extreme prejudice to Mr. Dhalliah's social and political life.*

27. It is clear that under section 10(1) of the Constitution, an accused is guaranteed the right to a fair hearing within a reasonable time by an independent and impartial court established by law. As stated in the case of **Bissoon Mungroo v The Queen (Privy Council) 1990 PRV 22** “*The right to a trial “within a reasonable time” secures, first, that the accused is not prejudiced in his defence by delay and secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum.*”

28. This reasonable time requirement starts from the time an accused is arrested and brought to the court under a provisional charge. Therefore, delay does not only concern the period where the accused is facing trial but also relates to the pre-trial stage of proceedings. Although no formal charge has yet been lodged against the applicant, any undue delay between the lodging of the provisional charge and the completion of the enquiry represents a breach of the applicant's constitutional rights, as it prevents a timely trial.

29. When determining whether there is any undue delay, guidance can be sought from the authority of **State v Bissessur [2001 SCJ 50]**, citing **R v. Morin [1992] 1 SCR 771** at 788

*“The general approach to a determination as to whether the right has been denied is not by the application of a mathematical or administrative formula but rather by a judicial determination balancing the interests which the section is designed to protect against factors which either inevitably lead to delay or are otherwise the cause of delay. As I noted in R v. Smith [1989] 2 SCR 1120 at 1131, (1989) 52 CCC (3d) 97 at 105, “it is axiomatic that some delay is inevitable. The question is, at what point does the delay become unreasonable?” While the court has at times indicated otherwise, it is now accepted that the factors to be considered in analysing how long is too long may be listed as follows: 1. The length of the delay; 2. Waiver of time periods; 3. The reasons for the delay, including (a) inherent time requirements of the case (b) actions of the accused, (c) actions of the Crown, (d) limits on*

*institutional resources, and (e) other reasons for delay; and 4. prejudice to the accused."*

30. As per the case of **State vs Bissessur & Ors (supra)**, there is no mathematical calculation for how long is too long and it will depend on a case-to-case basis. In assessing the issue of delay, the elements to be considered are as follows:

- (a) the length of the delay;
- (b) the reasons given by the prosecution to justify the delay;
- (c) the responsibility of the accused for asserting his right; and
- (d) the prejudice caused to the accused.

31. Moreover, in the case of **Boolell v The State [2005 PRV 39]**, the court, relying on the case of **Dyer v Watson [2002] UKPC D1, [2004] 1 AC 379**, identified three issues for consideration when there is a complaint as to delay, namely:

- (a) the complexity of the case;
- (b) the conduct of the defendant; and
- (c) the manner in which the case has been dealt with by the administrative and judicial authorities.

*The length of the delay and the manner in which the case has been dealt with by the administrative and judicial authorities*

32. The chronology for the present case is as follows:

<b>Dates</b>	<b>Incident</b>
30 August 2023	Applicant was interviewed
31 August 2023	Applicant was interviewed and then arrested Provisional charge lodged Applicant released on Bail Applicant objected to Prohibition order (PO) against accused
05 September 2023	Applicant's counsel withdraws the objection against the PO
11 September 2023	Applicant moved for PO to be varied
18 September 2023	Applicant was allowed to travel / the PO was varied
09 May 2024	Counsel for applicant moved for striking out of provisional charge
14 May 2024	Stand of FCC not ready- Case postponed
28 May 2024	FCC objected to the motion to strike out Provisional Charge
06 June 2024 12 June 2024 03 July 2024	Arguments were heard

33. As at now, around 13 months have elapsed since the lodging of the provisional charge. At this juncture, I find it pertinent to quote the conclusion of Lord Bingham of Churchill in **Dyer v Watson and another (2004) 1 AC 379** which referred to **Darmalingum v The State (2000) 1 WLR**:

*“53. The court has identified three areas as calling for particular inquiry. The first of these is the complexity of the case. It is recognized, realistically enough, that the more complex a case, the greater the number of witnesses, the heavier the burden of documentation, the longer the time which must necessarily be taken to prepare it adequately for trial and for any appellate hearing. But with any case, however complex there comes a time when the passage of time becomes excessive and unacceptable.” (Underlining is mine)*

Reasons given by FCC to justify delay and the complexity of the case

34. When examined as to the delay prevailing to complete the enquiry, CI Moonesawmy has laid emphasis on 3 aspects of the present case, namely its serious, complex and sensitive nature. He stated that numerous Judge’s Orders have been applied for, as a result of which there is an extensive number of documents that needs to be analysed and interpreted and there are documents which are yet to be communicated. Since there are several institutions involved, documents had to be secured from them and all person concerned with the processing of files have to be interviewed. The EO has further stated that 27 statements from 25 witnesses and 23 defence statements from around 4 suspects have already been recorded and 3 reconstruction exercises at 8 different locations have already been carried out.

35. Therefore, based on the evidence before this court, it is undeniable that this case is complex. The investigation, involving numerous witnesses and suspects as well as extensive documentation and long processes of Judge’s Orders, is clearly time-consuming and demanding. The delay of around 13 months, in these circumstances therefore does not appear to be inordinate, the more so because as per the evidence of the EO, the enquiry of the FCC has not remained idle and a voluminous amount of work has been done.

36. Counsel for the applicant submitted that the EO was unable to state when the enquiry will be completed and this shows that the prosecution is contemplating holding the provisional charge against the applicant for an indefinite period of time. However, as per the evidence on record, the EO has provided an explanation for the delay in the inquiry and that needful is being done for the enquiry to be completed as soon as possible.

37. Counsel for the applicant also questioned the status of the enquiry and arrest concerning other politicians involved. However, the EO has confirmed that the enquiry is ongoing and that the investigation team is still investigating other suspects. The EO further clarified that the process is protracted due to the

substantial volume of data being analysed, which accounts for the extended duration of the enquiry or potential arrests.

The responsibility of the applicant to assert his rights

38. On the face of the court record, it is clear that the applicant, through his counsel, has taken the appropriate steps to protect his rights and to ensure that the prosecuting authorities act diligently, and minimize any prejudice against him.

The prejudice caused to the applicant.

39. On the issue of prejudice, it is relevant to refer to the case of Boolell (supra) which stated that:

*“If a criminal case is not heard and completed within a reasonable time, that will of itself constitute a breach of section 10(1) of the Constitution, whether or not the defendant has been prejudiced by the delay.”*

40. It is clear that any applicant person facing a criminal case will experience some form of prejudice, and this prejudice increases with the length of the delay. However, it is the applicant's responsibility to demonstrate that they would suffer specific trial-related prejudice. Although this principle pertains to formal charges, it is relevant here, as established in **Gheenah v State 1998 SCJ 427**, which states:

*“There should be no stay unless the accused can show on the balance of probabilities that owing to the delay, he has suffered serious prejudice to the extent that no fair trial can be held.”*

41. In the present matter, the applicant has elected to remain silent and there is no evidence of trial-related prejudice by the applicant before this court. The court however takes note that there is a Prohibition Order against the applicant which directly affects his right to freedom of movement. However, the evidence before this court shows that applicant had made a motion to waive this PO against him, but the motion was later withdrawn. Later, when applicant made a motion to vary his PO to travel to India, the stand was communicated without undue delay and there was no objection for him to travel.

42. With regards to alleged prejudice to Applicant's political life, Counsel of the applicant has submitted that following applicant's arrest, the latter was not forced to resign but had voluntarily stepped down from his post as PPS. He however did not resign from Parliament. Applicant's counsel has also submitted that that the applicant is not likely to be re-instated in his post as PPS, is not likely to obtain another chance to contest the next general elections and is subject to reputational damage. However, the court notes that these are future and potential prejudice which are not supported by any concrete evidence before this court.

43. Having found that the delay has been properly substantiated by the EO and in the absence of any evidence with regards to the prejudice suffered by the

applicant in the present case, I find that the applicant has failed to prove any trial-related prejudice suffered by him.

### **Conclusion**

44. In light of the above and having carried out a balancing exercise, I therefore find that the attainment of justice lies in maintaining the provisional charge against the accused at this stage.
  
45. Although the prosecution has justified the pre-trial delay, the enquiry will have to be concluded at some point in time. I therefore re-iterate what the court stated in the case of Boolell (Supra) as stated above<sup>13</sup> and urges the prosecution to complete the investigation concerning the applicant and, if applicable, lodge the formal charges against the applicant without further delay.

B.W Galamali (Ms)

District Magistrate

Dated this 17<sup>th</sup> September 2024

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<sup>13</sup> Paragraph 39 of the present Ruling