clo le Defi Group

BEFORE THE DISTRICT COURT OF PORT LOUIS (DIVISION III)

In the matter of:

PROVISONAL CN: 6262/2025

DEAL Lilram

APPLICANT

v/s

POLICE

RESPONDENT

RULING

1. Applicant, stands provisionally charged before The District Court of Port Louis (Division III), with the offence of money laundering, in breach of Sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti Money Laundering Act 2002, namely for having on or about the 28th of June 2022, at State Bank (Mauritius) Ltd, Port Louis, wilfully, unlawfully and criminally been in possession of property which, in whole or in part directly or indirectly represented, the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived in whole or in part, directly or indirectly from a crime.

2. The particulars are as follows: on or about the aforesaid date and place, Applicant was in possession of property, to wit: sum of Rs 4,587,000/- in his bank account no. 03710100025553, held jointly at the State Bank (Mauritius) Ltd with his wife one Ooma Devi Deal, which sum in whole or in part, directly or indirectly represented the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived in whole or in part, directly or indirectly from a crime.

3. Applicant has moved to be admitted to bail.

4. Respondent is resisting the motion. The ground of objection is risk of interference with witnesses and tampering with evidence and risk of absconding. Both parties were represented by Counsel.

5. Mr Seeruttun, Acting Head of Investigation at The Financial Crimes Commission (hereinafter referred to as the FCC), one of the main Enquiring Officers (EO), deponed on behalf of Respondent. Applicant elected to make a statement from the dock.

6. During examination in chief, Mr Seeruttun deponed as follows:

   6.1. Applicant was arrested on the 20th of June 2025,

   6.2. With respect to the brief **facts and circumstances of the case**:

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6.2.1. On 28th of May 2025, the FCC started an investigation following a referral from the Financial Crimes Intelligence Unit whereby they were informed that a bank raised Suspicious Transaction Reports (STRs) following deposits on Applicant's bank account and that of his family members which does not commensurate with his position as an officer of police. One of the transactions relates to the present provisional charge where a cheque of Rs 4,587,000 has been deposited on a joint bank account of Applicant and his wife.

6.2.2. Following an application for disclosure order, 2 bank statements were received, one is a joint bank account between Applicant and his wife and the second one is one on his personal name.

6.2.3. Upon requesting documents pertaining to this transaction of Rs 4,587,000, it was established that the cheque emanates from the then Commissioner of Police, Mr Dip and it was deposited on the 28th of June 2022. At that time, Applicant was the Acting Director of The Counter Terrorism Unit (hereinafter referred to as '*The CTU*') Mauritius. Following a money trail, it was found that on the 18th of August 2022, there was a bank transfer of Rs 4,187,000 transferred to the personal bank account of Applicant. Out of the said amount, Rs 2 million was used to acquire a car make Toyota Rav 4 on the 18th of November 2024 from Toyota Mauritius for Rs 2 million. The information that Applicant bought a car for Rs 2 million was received from the money trail conducted.

6.2.4. Regarding the deposit of Rs 4,587,000, the FCC obtained evidence that same emanates from the Commissioner of Police and was money obtained by Applicant following an application made to The Commissioner of Police for rewards to informers in respect to 8 cases which were reported at the Anti-Drug and Smuggling Unit (ADSU) and where mention was made regarding drug dealing cases. Further to investigation with ADSU, they found out that in fact 4 cases were in relation to drug cases and 4 other cases had the title of money laundering.

6.2.5. Investigation has revealed that only officers of the ADSU could claim reward for informers in ADSU cases. 4 police officers who were then at the ADSU or are still at the ADSU have given evidence that all information for all the 8 above mentioned cases emanate from their information and they did not claim any reward regarding these cases.

6.2.6. The Applicant has confessed having purchased the car from the money which was supposedly for informers.

6.2.7. Regarding properties acquired by Applicant, enquiry has revealed that based on his salary, the acquisition is not commensurate with his lawful income.

6.2.8. In addition to the present charge, investigation has established that application has received a total sum of Rs 30 million.

6.2.9. Applicant was working as Director of CTU and he was the Head of that unit. There are approximately 50 officers working there and they all work under his instructions.

6.2.10. At the time of the arrest, he was the Assistant Commissioner of Eastern Division. It was in November 2024 that he was transferred to that division.

6.3. With respect to the number of persons involved in the present case, Applicant has mentioned 2 very high-ranking police officers or ex police officer.

6.3.1. Applicant has also mentioned in his statement that out of the Rs 4,587,000, he gave Rs 500,000 to a high-ranking police officer. This person has not yet been interviewed as the statement was given on the 24th of June 2025, the eve (the first part of the bail hearing was heard on the 25th of June 2025) where Applicant has mentioned that he would later give details, date and place of remittance of the above and that officer in question has not yet been interviewed.

6.3.2. The above-mentioned officer will be called after verification of certain information about the date and place and this will be done within the days or weeks to come.

6.4. With respect to the money trail for the amount left from the Rs 4,587,000 and excluding the Rs 2 million, money trail has revealed that Applicant has acquired several properties on his name and, according to intelligence, on the name of other persons. There is strong suspicion that the remaining amount of Rs 2,587,000 has been used for the partly purchased properties or construction purposes.

7. With respect to the progress of enquiry, the Witness further deponed as follows:

7.1. With respect to statements already recorded:

7.1.1. 5 or 6 defence statements have been recorded from Applicant and statements have been recorded;

7.1.2. Statements have been recorded from 10 witnesses.

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7.2. With respect to statements yet to be recorded:

7.2.1. With respect to persons mentioned by Applicant, defence statements have to be recorded from at least 4 persons;

7.2.2. With respect to witnesses, more than 30 witnesses have to be interviewed, including foreigners whose names appear on documents secured during a search;

8. With respect to the ground of risk of interference with witnesses and suspects, the Witness further deponed as follows: the ground is substantiated in view of the following:

8.1. There are 2 high ranking ex-police officer or police officer who are involved and if released Applicant may interfere with them;

8.2. Out of the Rs 2, 587,000 remaining and which intelligence has revealed was used for the purchase of property and construction of properties, there are the tittle deeds, bank transfers,

payment vouchers. There are also prête-nom involved and some of them have been identified and some not yet. There is thus reason to believe that if Applicant is released, he will contact the alleged prête-nom, interfere with them and cause evidence to be destroyed.

9. With respect to the risk of tampering with evidence, the Witness further deponed as follows:

9.1. Several names have been mentioned by Applicant regarding documents pertaining to his bank statements for which the FCC has made request and these documents have not yet been obtained. In respect thereof, a list of these witnesses will be made following a request to the managers of the Banks.

10. With respect to the risk of absconding, ground is substantiated in view of the following:

10.1. Applicant has close family ties in Cananda

10.2. Further to search conducted at Applicant's place, there are documents showing that he has attempted to immigrate to Cannada in the past;

10.3. In the past 42 years, Applicant has travelled 42 times throughout the world,

10.4. There is intelligence that Applicant was or is still member of the associations related to Counter Terrorism Unit;

10.5. Applicant was in charge of The CTU, Mauritius, dealing in secrets and surveillance and he is a specialist in this nature of work;

11. With respect to the nature of the evidence, the Witness further deponed as follows: There is the confession of Applicant with respect to the car which money emanate from the said Rs 4,587,000.

12. With respect to the status of enquiry, the Witness further deponed as follows:

12.1. The investigation is still in progress and everyday 2 or 3 witnesses and Applicant as well are being interviewed;

12.2. Arrangements have been made to call additional witnesses in the days and weeks to come, including other suspects;

12.3. Certain documents have been requested from the bank and with which Applicant will be confronted.

13. The Witness was then cross-examined and the following was elicited:

13.1. The cheque referred to was a cheque from the Government of Mauritius, handed over by Mr Dip, the then ex-commissioner of Police;

13.2. The money in question with respect to the cheque) was requested by Applicant following an application as reward to informer and the money needed to be given to the officers as reward money;

13.3. The informers have not been paid because:

(a) Applicant had himself stated that he had used the money to buy a car;
(b) This is the case based on the OB numbers and the version of the ADSU officers which confirm that the informers have not been paid;

13.4. The informers in question are in relation to ADSU cases and Applicant's informers cannot be paid in relation to drug cases;

13.5. He is not aware of any CTU informers;

13.6. He does not know when The Suspicious Transaction Reports were raised;

13.7. A search was conducted at Applicant's place residence on the 20th of June 2025 early Friday morning; documents were seized, Applicant was taken to the FCC where a first statement was recorded from him and at that time Applicant elected not to be assisted by Counsel

13.8. He does not agree that Applicant had fully collaborated despite the following

(a) Applicant was arrested and brought to Court on the 20th of June 2025 and he was then taken to FCC where another statement was recorded from him and at that time he was not assisted by Counsel;

(b) On the following Saturday, defence statements were recorded from the Applicant's wife and it is for that reason that statements were not recorded from Applicant on that day; on the following Monday and Tuesday, further statements were recorded from Applicant;

(c) Applicant has not fully collaborated with the FCC and this is because he has objected to his telephone and laptop being examined by the Digital Laboratory of the FIU. One of the reasons for the refusal is because he is the head of The CTU; Although the mobile phones and laptop are in possession of the FIU, they are yet to be examined;

(d) Despite the fact that Applicant disclosed the name of 2 other persons, 2 high rank police officer and or ex police officer, including the one who had been given the Rs 500,000/-;

13.9. He maintains that Applicant **has not collaborated** with the FCC for the following reasons:

(a) He has refused to give the name of the relationship manager of his bank;

(b) With respect to the allegation made by him to the effect that he had given Rs 500,000 to a high rank police officer, he has not revealed the date and place;

(c) He did not answer some specific question as to what has been said by officers of ADSU and ex-officers of The CTU;

(d) In answer to a question in his statement recorded on the 23rd of June 2025, Applicant gave almost a '*2 pages answer*' and in the last part of the answer he quoted Section 3(2)(e) of The Official Secrets Act 1972, whereby more specifically he stated the following '*This is all that I have to say. I have nothing more to add to any questions and or statements to the FCC*'. Before this part, Applicant had also stated the following "*I have fully collaborated with the FCC and answer all questions that have been put to me. I wish to inform the FCC that I cannot reveal confidential information which may impact on the security of the State of Mauritius or reveal the identity of informers, including the modus operandi of payments to informers which have occurred in cases relating to the dismantling of major drug trafficking organisations and anti-terrorism operations. As Head of Counter Terrorism Unit, I have supervised and conducted many operations for the National Security of The Republic of Mauritius whereby I was the handler of strategic informers both within Mauritius and in neighbouring countries. In these strategic cases, I was responsible for payments made to these informers whose safety will be at risk if their identities and methods of payment to them are divulged, revealed or disclosed. I specifically wish to highlight the attention of the FCC to S 3 (2) (e) (f) of The Official Secrets Act 1972...*"

(e) And from that point, in response to all questions put to him, he referred to his answer 3 of his statement dated 23rd of June 2025 and which Answer 3 mentions Section 3(2) (e) (f) of The 1972 Act.

(f) He agrees that if Applicant answers any questions put by the FCC on (1) identity of informers, (2) how he has paid these informers and (3) the amount which has been paid to these informers, he would commit an offence under Section 3 (2)(e)(f) of The Official Secrets Act and it is for this reason that after his statement, the question pertaining to breach of Section 3 (2) (e) (f) of The 1972 Act were not put to him.

(g) Applicant himself on the 24th of June 2025 and after having invoked possible breach of The 1972 Act, has himself given another statement disclosing information as to what has been said to him and actions taken by him in the performance of his duty as Acting Director of CTU.

13.10. He denied having confronted Applicant with number of documents which touches directly on the National Security of the State of Mauritius;

14. The witness was thereafter cross-examined on the risk of interference with Witnesses and the following was elicited:

14.1. Witnesses who have been identified are those who have cashed cheques and remitted same to Applicant, including for a sum of Rs 30 million. There is a real risk that Applicant with the status of an Assistant Commissioner of Police and his influence on the Witnesses identified as they are mainly ex-subordinate and also there is evidence that the payment voucher of the Rs 4,587,000 has been signed at the request and instruction of Applicant;

14.2. He denies that FCC has a mere apprehension of interference with witnesses;

14.3. As per reliable information received, Applicant is involved in various doubtful transactions;

14.4. He disagrees that simply because Applicant has informed FCC of the name of police officers and witnesses, it means that he does not have intention to interfere with Witnesses. Rather, there are names of other police officer whom the FCC has identified, have never been mentioned by Applicant;

15. The witness was then duly cross-examined on the risk of tampering with evidence and the following was elicited:

15.1. He agrees that the documents pertaining to title deeds and payment from the Government of Mauritius, cannot be tampered with as they are in possession of the banks, Registrar of Companies and the Government of Mauritius;

15.2. However, with respect to title deeds and other contract agreements, based on intelligence, these documents are in possession of other Witnesses and suspects who are prête-noms of Applicant; he may dispose of the documents in possession of the alleged prête-noms;

15.3. Search has been conducted at Applicant's place and several but not all documents have been secured;

16. The witness was also duly cross-examined on the risk of absconding and the following was elicited:

16.1. There is a prohibition order against Applicant, his passport is restricted and in possession of the authorities. Accordingly, he cannot leave the jurisdiction officially;

16.2. Applicant is an Assistant Commissioner of Police and was the Director of The CTU and now the Second In Charge of the Eastern Division of Mauritius;

16.3. He has a fixed place of abode with a residential address a Triolet and one at D'Epinay;

16.4. He maintains there is a risk of absconding

17. The witness was then duly cross-examined on the personal circumstances of the Applicant and the following was elicited:

17.1. Applicant is married and has a 14-year-old child who resides with him;
17.2. EO is not aware whether he takes care of his elderly mother who also resides with him;
17.3. Applicant owns certain properties in Mauritius;
17.4. Applicant has strong family and community ties in both Mauritius and Canada;
17.5. Applicant is of clean record;

18. The Witness was then re-examined and the following was elicited:

18.1. With respect to his earlier answer of "*Applicant including for a sum of Rs 30 million*", refers to Rs 30 million received by Applicant for informers and for use by CTU and was cashed by officers of CTU and remitted to Applicant;

19. Respondent then closed its case.

20. Applicant elected to make a statement from the dock and stated the following:

20.1. He has fully collaborated with the FCC, answered all the questions put to him except for those relating to The Official Secrets Act 1972 by which he is bound, especially concerning the modus operandi and payment of informers;

20.2. As an Assistant Commissioner of Police, he is fully aware of the consequences of tampering with evidence and interference with Witnesses as well as of absconding;

20.3. He undertakes not to tamper with any evidence, interfere with Witnesses and abscond;

20.4. He has been Honoured with the Chevalier de L'Ordre National du Mérite by the Republic of France;

20.5. He wishes to '*defend his honour*' and that of his family.

21. No other evidence was adduced on behalf of Applicant and case was closed for Applicant.

22. Both counsel duly submitted.

23. I have duly considered all the evidence on record and submission of Counsel.

24. In the determining a bail application, the Court has to strike a balance between the Applicant's right to liberty (Section 5(3) of The Constitution; Section 3 of The Bail Act 1999) and the risks which might materialise should Applicant be granted bail (Section 4 (1) The Bail Act). I remind myself of the principles authoritatively laid down in **MALOUPE M.G. v THE DISTRICT MAGISTRATE OF GRAND PORT [2000 SCJ 223]** and **LABONNE J V v DIRECTOR OF PUBLIC PROSECUTIONS & ANOR [2005 SCJ 38]**

25. The following extract from **MALOUPE** is relevant,

> "*The rationale of the law of bail at pre-trial stage is, accordingly,* ***that a person should normally be released on bail if the imposition of the conditions reduces the risks*** *referred to above – i.e. 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.* ***When the imposition of the above conditions is considered to be unlikely to make any of the above risks negligible, then bail is to be refused."*** [emphasis is mine]

26. In **LABONNE,** the Court held as follows:

*"A proper reading of Maloupe (supra) thus makes it clear that the **two conflicting interests** which the law of bail seeks to reconcile are, on the **one hand, the need to safeguard the necessary respect for the liberty of the citizen** viewed in the context of the presumption of innocence, and, on the **other hand, the need to ensure that society and the administration of justice are reasonably protected against serious risks which might materialise** in the event that the detainee is really the criminal which he is suspected to be."* [emphasis is mine]

27. In carrying out the balancing exercise, the Court has to first assess the identified risk and decide whether the ground of objection has been substantiated. Secondly, should the Court find that the risk has been substantiated, it should determine the extent and magnitude of the risk. Thirdly, once the extent and magnitude of the risk has been assessed, the Court should consider whether the risk, in light of the extent and magnitude, can be rendered negligible by imposition of bail conditions. If the imposition of conditions can render the risks negligible, bail should be granted. If the imposition of the conditions is considered to be unlikely to render the risks negligible, bail should be refused.

28. Throughout this balancing exercise, the Court has to take into account and attach due weight to, on one hand, the factors in favour of release of the Applicant (which tend to reduce the likelihood of the relevant risk materialising) and on the other hand the factors in favour of refusal of bail (which tend to increase the likelihood of the relevant risk materialising), as explained in **DEELCHAND V THE DPP [2005 SCJ 215]** and **DIRECTOR OF PUBLIC PROSECUTIONS v PRUDENCE J L [2023 SCJ 303].**

29. Section 4 (2) provides that one of the relevant factors when assessing the grounds of objection is the nature of evidence. What amounts to '*nature of evidence*' and the extent of appreciation of this element has been analysed and explained in **MALOUPE M.G. v THE DISTRICT MAGISTRATE OF GRAND PORT [2000 SCJ 223]** and I find the following extract relevant

"Now, did the legislator, when specifically referring to the "nature of the evidence", intend to bring under scrutiny, in bail applications, the precise evidence in the police file and to require the Magistrate or Judge hearing a bail application to assess how strong or how weak the evidence is?

.....

*There is yet one **further consideration which our courts have been prepared to weigh in the balance: if the evidence is, by its nature, unreliable, the presumption of innocence should weigh more heavily in the balance in favour of the applicant's release on** bail. Thus, in Omarsaib v D.P.P. [1994 SCJ 132], the court, in deciding to release on bail an applicant who was suspected of having acquiesced in the selling of one gram of heroin to one Choomka, **took into account the "quality" of the evidence available to the prosecution, which consisted solely of the eventual testimony that could be given** by Choomka, a self-confessed drug addict and*

accomplice, who had retracted his allegations against the applicant in a further statement to the police, and who had subsequently stated in court that he was forced to implicate the applicant.

We are accordingly of the view that ***situations like those in 0marsaib (supra) are the ones contemplated by the legislator in the Bail Act 1999 when referring to the "nature of the evidence available with regard to the offence" as a relevant consideration. What may be examined at the stage of an application for bail is the "nature" of the evidence, but this should not be a doorway for looking in detail at the evidence itself as opposed to the surrounding circumstances which have a bearing upon its quality.*** *It is* ***not appropriate, in our view, for a magistrate, whilst considering an application for bail, to examine the precise evidence available*** *to the police and to conclude as to* ***whether it amounts to a prima facie case****. This practice would unduly result in protracted hearings of bail applications and would be too convenient a device, for suspects to compel the police to reveal, even at a stage where the police have not completed their investigation, what is to be found in the police file. Witnesses in the course of the hearing of an application for bail* ***should only be allowed to depone as to the "nature" i.e. the kind of evidence available (including external circumstances which have a bearing on its quality)*** *and* ***not as to the actual precise evidence of the police****. Thus, in one case, for example, the police officer or counsel representing the interests of the police may wish to elicit from a police enquiring officer testimony to the effect that a* ***confession has been recorded from the accused or that eyewitness evidence is available****, whilst in another case, counsel for the applicant may, by cross-examination, elicit testimony as to the existence of evidence showing that there is only one witness and that he would fall within the category of "accomplices", whose evidence normally has to be viewed with caution.* ***But, whilst surrounding facts relevant to the assessment of the "nature" of the evidence may be properly canvassed, it would be improper, for a court, on the occasion of a bail application, to receive testimony as to the details of the evidence available to the prosecution and to make an assessment of its sufficiency or weight.***"

30. Prior to assessing the grounds of objection, I shall thus analyse the nature of the evidence. The EO has struck me as a formal and credible Witness who has withstood the test of cross-examination and on whose testimony I may act. As per his testimony, I note that in support of the current provisional charge of money laundering, namely the wilful, unlawful and criminal possession of property which, in whole or in part directly or indirectly represented, the proceeds of a crime, where he had reasonable grounds for suspecting that the property was derived in whole or in part, directly or indirectly from a crime, the following is on record:

30.1 There were deposits on Applicant's bank account and that of his family members which does not commensurate with his position as an officer of police;

30.2 With respect to the transaction of Rs 4,587,000, there was a cheque from the Government of Mauritius, handed over by and emanating from Mr Dip, the then ex-commissioner of Police and it was deposited on the 28th of June 2022, at a time when Applicant was the Acting Director of The Counter Terrorism Unit (hereinafter referred to as '*The CTU*') Mauritius.

30.3 The Rs 4,587,000 was money obtained by Applicant following an application made to The Commissioner of Police for rewards to informers in respect to 8 cases which were reported at the Anti-Drug and Smuggling Unit (ADSU) and where mention was made regarding drug dealing cases.

30.4 Investigation has revealed that only officers of the ADSU can claim reward for informers in ADSU cases. 4 police officers who were then at the ADSU or are still at the ADSU have given evidence that all information for all the 8 above mentioned cases emanate from their information and they did not claim any reward regarding these cases.

30.5 The money in question (with respect to the cheque) was requested by Applicant following an application as reward to informer and the money needed to be given to the officers as reward money;

30.6 The informers have not been paid because Applicant had himself stated that he had used the money to buy a car and he also bases himself on the OB numbers and the version of the ADSU officers which confirms that the informers have not been paid; the informers in question are in relation to ADSU cases and Applicant's informers cannot be paid in relation to drug cases;

30.7 On the 18th of August 2022, there was a bank transfer of Rs 4,187,000 transferred to the personal bank account of Applicant. Out of the said amount, Rs 2 million was used to acquire a car make Toyota Rav 4 on the 18th of November 2024 from Toyota Mauritius for Rs 2 million and Applicant has confessed to having purchased the car from the money which was supposedly for informers;

30.8 There is evidence that the payment voucher of the Rs 4,587,000 has been signed at the request and instruction of Applicant

30.9 I however note that the Court has been left into the dark as to whether Applicant has admitted or denied the charge;

30.10 On the other hand, when appreciating the nature of the evidence in light of the current provisional charge as it stands, I find it irrelevant to consider the alleged Rs 30 million.

30.11 In light of the above, I find that, all the whilst bearing in mind that we are still at a relatively stage of enquiry, the nature of the evidence is strong.

31. The first ground of objection is risk of absconding, that is Applicant may fail to surrender to custody or to appear before a Court as and when required. Of relevance is the following extract from **DEELCHAND** (supra),

"The risk of absconding

5.2 *The risk of absconding has to be assessed with regard to several relevant factors. Although, as stated in the last passage quoted, the seriousness of the offence may, by itself or in conjunction with some other factor such as the defendant's criminal record, give a basis for believing that the*

defendant will fail to surrender through fear of a custodial sentence, this factor must be viewed in conjunction with other factors which may well indicate that the defendant is unlikely to abscond.

5.3 *In Neumeister v Austria (1968) 1 ECHR 91 (27 June 1968) at para 10, the European Court of Human Rights ruled that the severity of the sentence which the defendant would be likely to incur, if convicted, does not in itself justify the inference that he or she would attempt to evade trial if released from detention:*

"The danger of flight cannot … be evaluated solely on the basis of such consideration. Other factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted may either confirm the existence of a danger of flight or make it appear so small that it cannot justify detention pending trial."

5.4 *Considerations relevant to the risk of absconding will include the strength, weakness or absence of family, community, professional or occupational ties and financial commitments as such ties, if strong, might be strong incentives not to abscond and, if weak might increase the risk of absconding. The strength of the evidence may also be relevant because if it is likely that the charge will not be proved, the defendant may be less likely to abscond. The court must ask itself: what would be likely to motivate the applicant to abscond and what would be likely to make him refrain from absconding? Is the risk too great to be taken or is the level of risk acceptable, such that it can be taken having regard to the presumption of innocence? Can the risk at least be reduced to an acceptable level by the imposition of conditions?*
In Wemhoff v Germany [1968] ECHR 2 at para. 15, The European Court of Human Rights emphasised that – 1 8

"When the only (…) reason for continued detention is the fear that the accused will abscond and thereby subsequently avoid appearing for trial, his release pending trial must be ordered if it is possible to obtain from him guarantees that will ensure such appearance.""
[emphasis is mine]

32. When assessing the risk of absconding, on one hand I take into account the following factors which tend to increase the risk of absconding:

33.1 The strong nature of the evidence as assessed above;

33.2 The seriousness of the offence as defined under Section 2 of The Bail Act and the range of sentence as provided for under Section 8 of The Financial Intelligence and Anti Money Laundering Act 2002, being a fine not exceeding Rs 10 million and penal servitude for a term not exceeding 20 years;

33.3 The status of enquiry;

33.4 Applicant has close family ties in another jurisdiction, Canada and there is documentary evidence that Applicant has tried to immigrate to Canada in the past;

33.5 Applicant has international contacts and is a frequent flyer. However, this factor, I treat with caution as it is in relation to contacts obtained through his membership in associations related to Counter Terrorism Unit. He has those contacts very specifically for his professional purposes and where and when he acts as an official representative of the state. Furthermore, his being a frequent

flyer in absence of information of the purpose of the travel should also be treated with caution. Accordingly, not much weight may be attached to this factor;

33.6 Applicant owns properties in Mauritius, although details thereof have not provided and as such of means;

33. On the other hand, when assessing the risk of absconding, I also take into account the following factors which tend to decrease the risk of absconding:

34.1 Applicant is of clean record;

34.2 Applicant's undertaking from the dock that he shall not abscond;

34.3 Applicant has a fixed place of abode in Mauritius;

34.4 Applicant has strong professional and occupational ties in Mauritius;

34.5 Applicant own properties in Mauritius and as such has a tie with Country;

34.6 Applicant has strong family ties in Mauritius, he is married and has a son in Mauritius. However, with respect to his elderly mother, I note that Witness for the Respondent could not confirm this, nor did Applicant clarify this when deponing from the dock;

34.7 Applicant has collaborated with the authorities. This was a made live issue during the hearing, whereby the question arose as to whether the reliance of Applicant on Section 3(2)(e) and (f) of The Official Secrets Act 1972 can amount to him not collaborating with the authorities. Upon an overall appreciation of all the evidence on record and bearing in mind the relevance of the element of collaboration being only with respect to the grounds of objection, I find that Applicant has collaborated with the authorities. Furthermore, given the purpose of the present hearing, being to decide on the bail motion, I shall refrain from making any pronouncement on the reliance on the 1972 Act, a matter not relevant for the present purposes;

34.8 There is a prohibition order against Applicant and his passport is restricted and in possession of the authorities;

34. After analysing all the above, I find that the factors which are likely to motivate Applicant to abscond outweigh those which are likely to make Applicant refrain from absconding and I accordingly find that there is a risk of absconding which is real, plausible and substantiated.

35. With respect to the magnitude of the risk, I find that in light of all the above factors, it is a high risk.

36. With respect to the risk of interference with witnesses and tampering with evidence, I refer to the following extract from **DEELCHAND** (supra)

"*The risk of interference with witnesses*

5.12 It would be preposterous to hold the view that in each and every application for bail, it would suffice that an enquiring officer should express his fear that the applicant would interfere with one or more witnesses for the accused to be denied bail on that ground. ***To satisfy the court that there is a serious risk of interference with a witness, satisfactory reasons, and appropriate evidence in connection thereof where appropriate, should be given to establish the probability of interference with that witness by the applicant. In*** *his book "Bail in Criminal Proceedings" (1990), Neil Corre, writing from sound practical experience, points out that the risk that the applicant may "interfere with witnesses or otherwise obstruct the course of justice" is "an important exception to the right to bail because any system of justice must depend upon witnesses being free of fear of intimidation or bribery and upon evidence being properly obtained". He then goes on to point out:*

"The exception's most common manifestations are in cases where:

(a) the defendant has allegedly threatened witnesses;
(b) the defendant has allegedly made admissions that he intends to do so;
(c) the witnesses have a close relationship with the defendant, for example in cases of domestic violence or incest;
(d) the witnesses are especially vulnerable, for example where they live near the defendant or are children or elderly people;
(e) it is believed that the defendant knows the location of inculpatory documentary evidence which he may destroy, or has hidden stolen property or the proceeds of crime;
(f) it is believed the defendant will intimidate or bribe jurors;
(g) other suspects are still at large and may be warned by the defendant

The exception does not apply simply ***because there are further police enquiries or merely because there are suspects who have yet to be apprehended*** **(emphasis is mine).**

37. I further remind myself of the case of **NEEYAMUTHKHAN V DPP [1999 SCJ 284A],** where the Court held that *a "generalised risk"* as to the interference with any witness or tampering with evidence is not sufficient but rather the risk must be "identifiable" and material evidence in support thereof ought to be adduced to the Court.

38. When dealing with the present ground of objection, I shall analyse the limb of interference with witnesses and tampering with evidence separately.

39. When assessing the risk of interference with Witnesses, on one hand I take into account the following factors which tend to increase the risk:

39.1. Familiarity and relationship with the witnesses and capacity to influence witnesses:

(a) There are 2 very high-ranking police officers or ex police officer in the present case and it is Applicant himself who had given their names to the FCC and their statements have not yet been recorded. The statements of these persons will be recorded after verification of certain particulars and needful will be done in the days or weeks to come;

(b) There are also identified Witnesses namely those persons who have cashed cheques and remitted same to Applicant. This has to be appreciated with the fact that there is evidence that the payment voucher of the Rs 4,587,000 has been signed at the request and instruction of Applicant,

(c) There are alleged '*prête-nom*' of the Applicant involved and some of them have already been identified;

(d) The above witnesses appear to be material witnesses in light of the nature of the charge and many of them have already been identified;

39.2. Capacity to influence and vulnerability of identified witnesses:

(a) Applicant is an Assistant Commissioner of Police and there are among the Witnesses identified, his ex-subordinate. I further note that Applicant is still currently in the force as he is, as per the EO, currently the Second In Charge of the Eastern Division of Mauritius;
(b) In a system of Justice, witnesses should be able to give evidence where they are free of intimidation as explained in **Deelchand** (above);
(c) Witnesses should be able to give statements freely without any fear or influence;

39.3. Enquiry is still ongoing, progress has been made in terms of recording of statements but there remains, inter alia, the recording statement of the above mention witnesses;

39.4. The strong nature of the evidence as assessed above;

39.5. The seriousness of the charge;

40. On the other hand, when assessing the risk of interference with witnesses, I also take into account the following factors which tend to decrease the risk:

40.1. Applicant's undertaking from the dock that he shall not interfere with any witnesses;

40.2. Applicant has collaborated with the authorities and I reiterate my findings as analysed above;
40.3. Applicant is of clean record.

41. After analysing all the above, I find that the factors which are likely to motivate Applicant to interfere with witnesses outweigh those which are likely to make Applicant refrain from so doing. I accordingly find that there is an identified risk of interference with witnesses, as opposed to a general one, and which is real and substantiated.

42. Furthermore, I find that the magnitude of the risk of interference with Witnesses, for all the reasons given above, is very high in the present matter, especially at this stage of the enquiry.

43. I shall now assess the second limb, the risk of tampering with evidence.

44. When assessing the risk of tampering with evidence, on one hand, I take into account the following factors which tend to increase the risk:

44.1. Familiar with and ease of access to the evidence: There are title deeds and other contract agreements which are in possession of other Witnesses and suspects who are alleged '*prête-nom*' and he may dispose of the documents in possession of the alleged prête-noms. Importantly,

I note that given they are alleged '*prête-nom*', Applicant has a certain degree of familiarity and capacity to influence them;

44.2. Ease with which evidence can be destroyed or concealed given that we are here dealing with documentary evidence;

44.3. Enquiry is still ongoing and the statements are yet to be recorded;

44.4. The strong nature of the evidence;

44.5. The seriousness of the offence;

45. When assessing the risk of tampering with evidence, on the other hand I take into account the following factors which tend to decrease the risk:

3.1 With respect to the title deeds and payment from the Government of Mauritius, given that these documents are already in possession of the authorities, I fail to see how can Applicant tamper with them;

3.2 Search has already been conducted at Applicant's place and several but not all documents have been secured and there is no explanation as to why same has not been done yet. I pause here to note with much concern why this has not been yet done bearing in mind that we are here dealing with a case where Applicant's right to bail is being objected on the ground of risk of tampering with evidence, pertaining to evidence not yet secured by the authorities in absence of valid justifications;

3.3 Applicant has collaborated with the authorities during enquiry.

46. Based on the above analysis, I find that the factors which are likely to motivate Applicant to tamper with evidence outweigh those which are likely to make Applicant refrain from so doing. I accordingly find that there is an identified risk of tampering with evidence, as opposed to a general one, and which is real, plausible and substantiated.

47. Furthermore, bearing in mind the status and stage of enquiry, at this stage, I find that the magnitude of the risk is very high.

48. Having found that the above grounds of objection substantiated I shall now consider, whether the risk can be reduced to an acceptable level by the imposition of conditions. In carrying out the exercise, I shall also have regard to the presumption of innocence and the risk of prejudice to Applicant and his next kin if bail is not granted, namely that an innocent person would have been unjustly detained.

49. With respect to the risk of absconding, I find that although the risk is high, same can be reduced by imposition of conditions, namely:

49.1 Imposing a sureties and recognisance in a reasonable amount will ensure judicial supervision on the Applicant and act as an incentive for Applicant to appear for trial;

49.2 Staying at a fixed place of abode with a curfew order and daily reporting to a police station, including providing details of his daily movements, will ensure and allow police to monitor his movements;

49.3 Keeping a mobile phone in good working order at all times and with a phone number which he is always reachable will further allow police to monitor his movements.

50. Importantly, at this stage, I find that '*par rapport a'* the magnitude and extent of the risk of absconding in the present matter, the above conditions will be effective in reducing the risk of absconding.

51. In light of the above, I find that the risk of absconding can be rendered negligible by imposition of bail conditions.

52. I shall now consider whether the risk of interference with witnesses and tampering with evidence can be reduced.

53. With respect to the first limb of the risk, namely risk of interference with Witnesses, I have considered the conditions of surety, recognizance, residing at a fixed place of abode, reporting to nearest police station, informing police of his whereabouts, keeping a mobile phone on a 24 hours basis is on which he can be contacted at any time, a curfew order, limiting access of Applicant to the identified witnesses. However, I find that these conditions will not provide effective supervision over the movement of Applicant on a constant basis and on his communication.

54. In support thereof, I also find the following extract from **Bail in Criminal Proceedings, Neil Corre and David Wolchover , 3rd edition "*3.3.1. Reporting to a police station***

3.3.1.1 Securing attendance and cue for good behaviour….

3.3.1.2 Argument against the efficacy of securing attendance

The obvious arguments against reporting as a means of securing attendance is that it is possible to report at, say, 6 o'clock, reach an airport by 6.30 and be on an aircraft to the other side of the world at 8 o'clock. Even with a requirement to report again at 6 o'clock the following day the defendant would be well beyond the reach of the police by the time it was realised that there had been a failure to report. ….

3.3.3 Condition of residence …The efficacy of the condition is limited in practice by the fact that police resources are inadequate to keep a constant check on compliance.

……

3.3.6 Not to contact or interfere with witnesses

It has been argued that a condition prohibiting the bailed person from contacting or interfering with witnesses is unsound both in law and in practice …. If the condition is not to interfere with witnesses, then it is difficult to argue that it meets the criterion of being 'necessary' since any interference will itself amount to an offence of perverting the course of justice, for which a consecutive sentence will usually be appropriate……

In any event, defendants who interfere with witnesses …….. If the order is expressed in the form 'not to contact any witnesses', it is arguably wrong in law since it is feared that mere contact will lead to interference then we are beyond 'real risk' and in the realm of 'substantial grounds' warranting refusal to bail. "[**emphasis is mine**]

55. Furthermore, I remind myself that at this stage no modern monitoring mechanism for tracking exists in Mauritius and note that '*there are no facilities yet available in Mauritius such as an electronic monitoring device or electronic bracelet to allow for the tracking by GPS of the applicant's movements*', as explained in **AUBERT F. v THE STATE [2022 SCJ 405]**

56. After having considered the above, I find that they all these will not be effective enough and to such an extent as to be capable of rendering the risk of interference with witnesses to a negligible level, especially in view of its high magnitude.

57. With respect to the second limb of the risk, namely risk of tampering with evidence, I have considered the conditions highlighted above with respect to the risk of interference with witnesses and I reiterate my observations on their effectiveness.

58. After having considered all those conditions and their sufficiency to reduce the risk of tampering with evidence, I find that they will not be effective enough and to such an extent as to be capable of rendering the risk of tampering with evidence to a negligible level, especially in view of its magnitude.

59. Finally, I carry out the balancing exercise, I on one hand take into account the presumption of innocence of the Applicant, his constitutional rights to liberty, his undertaking from the dock not to abscond, not to interfere with witnesses and tamper with witness and collaboration with the authorities. On the other hand, I also bear in mind the interests of justice and administration of justice bearing in mind the seriousness of the charge, the strong nature of the evidence and initial stage of enquiry. After having carried put the balancing exercise, I find that the balance tilts in favour of the detention of Respondent, especially having found that at this stage, there are no conditions which can effectively reduce the risk of interference with witnesses and tampering with evidence to a negligible level especially in view of the fact that risk has been found to be real, plausible and of high magnitude. Importantly, this is despite my finding that the risk of absconding can be reduced by imposition of certain bail conditions.

60. I note that Applicant has been in custody since the 20th of June 2025 for a 2022 offence. Although I note the case is a complex one, I urge the authorities to act diligently to complete the enquiry without undue delay, bearing in mind Applicant's constitutional rights.

61. For all the reasons given above, the motion is therefore set aside.

Ms. N Sakauloo
District Magistrate
This 1st of July 2025