

IN THE DISTRICT COURT OF PAMPLEMOUSSES

Prov. CN: 79/26

In the matter of:-

Jean Lino Albert

Applicant

v

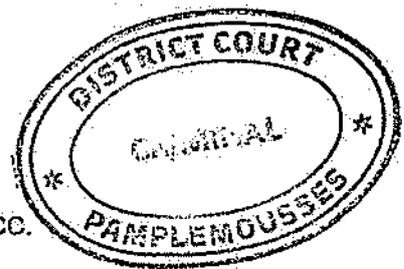
Police

Respondent

RULING

A. Introduction

1. The Applicant is provisionally charged with two counts of Money Laundering.
2. The Applicant, through his counsel, has moved to be admitted bail.
3. Chief Investigator Doss of the FCC, the enquiring officer, (the "EO") was deputed to object to the bail application on the following grounds:
 - 3.1. Risk of absconding;
 - 3.2. Risk of interfering with witnesses; and
 - 3.3. Risk of tampering with evidence.
4. The case for the Respondent was conducted by counsel for the FCC.

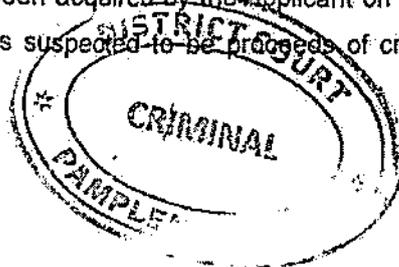


B. The case for the Respondent

5. The EO confirmed that the provisional charge against the Accused was lodged on 15.01.25 following his arrest on 14.01.26.

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6. The EO explained that following an ongoing investigation led by the FCC in the case involving one Wendip Appaya, and following information that the Applicant was living far beyond his financial means, coupled with certain information from a competent authority in Madagascar, it came to light that the Applicant was involved in money laundering in Mauritius and Madagascar.
7. On the date of the Applicant's arrest, i.e., 14.01.26, an operation was mounted by the FCC and searches were carried out at his residence at No.8 NHDC Tombeau Bay, and at his office at Foot Five Fund Limited at Corner Caranbine and Dorade Streets Tombeau Bay respectively. When the FCC raided the NHDC complex, the Applicant was not present. The EO stated having personally contacted the Applicant on his mobile phone but he did not answer. Upon the EO's request, the Applicant's wife contacted the Applicant but the latter did not turn up. Subsequently, the search was carried out in the presence of the Applicant's wife during the course of which the FCC officers secured one laptop, one mobile phone, digital devices, betting receipts and bank documents. The FCC also secured a 4x4 van make Ford Ranger registration number LA16. A search carried out in the said motor vehicle resulted into the seizure of a gold chain bracelet belonging to the Applicant. The motor vehicle and the gold chain bracelet were suspected to be proceeds of crime. The ASSAY has evaluated the commercial value of the gold to be Rs.807,468. The motor vehicle is on leasing at Spice Finance Ltd with JL Albert Construction Limited having as sole director the Applicant who is also the lessee of the motor vehicle. The value of the motor vehicle is estimated at Rs.2,050,000. The Applicant has averred that one million rupees was financed through leasing and the remaining sum was financed by him. The latter is under enquiry as the FCC suspects that the financing emanate from tainted money.
8. On the same date, at 08:30hrs, as the Applicant still did not turn up at his place, the search was extended to his office in presence of his wife. Thereat, the FCC officers secured 3 mobile phones belonging to the Applicant and a car make BMW registration number LA29. The car was secured as it was suspected to derive from proceeds of crime. The car is registered in the name of the Applicant's wife, Anne Sara Jane Albert, and it was been acquired by the Applicant for a sum of Rs.450,000 which the Applicant paid in cash.
9. The plot of land where the office of Foot Five Fund Limited is situated, which is to an extent of 791m², has been acquired by the Applicant on 02.10.20, for a sum of Rs.1,800,000, which property is suspected to be proceeds of crime. The Applicant explained having

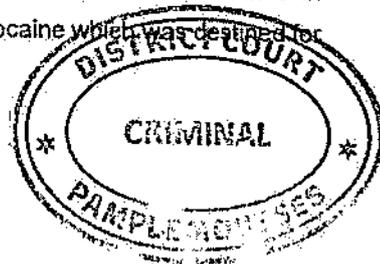
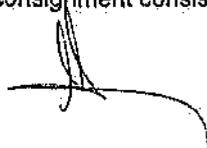


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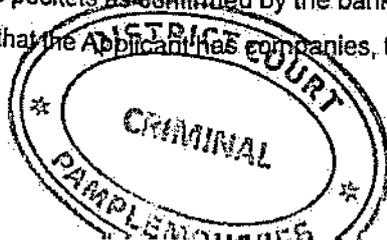
financed the said acquisition of land through gains obtained through football and horse race betting.

10. After the search of both places, the Applicant's wife was brought for enquiry at FCC Moka, and thereafter the Applicant called to the FCC accompanied by his counsel. He was made aware of the evidence against him, and also of his arrest, and he was interviewed the first time in presence of his counsel. As regards his explanation of the football and horse betting, the computation of his gains as per the receipts over the years 2019-2020 do not commensurate with the price of the plot of land.
11. To sustain the risk of re-offending, the EO stated that the FCC is contemplating lodging the charges of money laundering under the FIAMLA against the Accused. These offences are tried before the FCD Division of the Intermediate Court and are visited with heavy penalties which the Applicant was made aware of. As such, the FCC has reasonable grounds to believe that this may be sufficient grounds for the Applicant to abscond and hence failing to appear to court as and when required. The FCC also took note of the Applicant's reluctance to come for the search despite being requested and summoned. This is a strong indication that the Applicant might not appear to court if ever bail is granted.
12. As regards the risk of absconding, the Applicant explained that he has family ties in Reunion Island and he visited Reunion Island nine times between 2018-2023. Out of the nine times, he was accompanied with his family members on three occasions and the other six times, he was alone. The Applicant has also travelled to other countries, namely, Madagascar, Thailand, and Malaysia. On 25.01.25, the Applicant went to Madagascar in company of Wendip Appaya who has been an accused arrested by the FCC and provisionally charged for the offences. The Applicant explained that he proceeded to Madagascar with Wendip Appaya for the purpose of looking for foreign workers to be brought to Mauritius to work for their companies. According to their travel tickets, the trip was planned for a week but both of them returned to Mauritius only after two days, i.e., on 27.01.25. The FCC was informed by the office of the CP that the Applicant is subject to an Interpol Red Notice as an international warrant of arrest has been issued against him in Madagascar since he is wanted for prosecutions into cases of Possession and trafficking of dangerous drugs, money laundering and engaging in criminal organised crimes. The FCC was also informed that nine accused parties have been arrested in Madagascar including three Mauritian nationals. One of them has incriminated the Applicant as being the person to whom, on 27.01.25, he delivered, at Novotel Hotel in Antananarivo in Madagascar, a drug consignment consisting of 16.45kg of cocaine which was destined for



Mauritius. The approximate value of the drugs is estimated at Rs.300 million. This is why the Applicant shortened his visit from one week to two days.

13. The Applicant has been informed of the international warrant of arrest against him as well as the incriminating version of the Mauritian national in Madagascar. Based on all this information against him, the Applicant might be prompted to abscond from Mauritius to escape extradition to Madagascar for criminal proceedings. The authorities thereat have been informed of the Applicant's arrest and a request from Mutual Assistance is in the pipeline from Madagascar to extradite the Applicant to face justice there.
14. On the basis of the FCC Intelligence, and based on the lifestyle of the Applicant, the FCC believes that the Applicant has the financial means to escape the shores of Mauritius by sea.
15. To sustain the risk of tampering and risk of interference with witnesses, the EO explained that the investigation in the present matter has progressed and will now require probing into certain avenues to gather additional documentary and physical evidence whose location are best known to the Applicant in Mauritius. Following statements given by the Applicant, more than ten witnesses will have to be interviewed by the FCC, including foreigners whose names appear on the documents secured during the search at the Applicant's place. Those witnesses would be called to give material evidence regarding certain aspects of his betting and construction activities. Therefore, the FCC has reasonable grounds to believe that if granted bail, the Applicant will tamper and influence those witnesses. As regards the tampering with evidence, the FCC is actually investigating into the receipts secured at the Applicant's place. Investigation revealed that some of them might be bogus in nature inasmuch as they differ in terms of the official pattern of the betting house receipts. The FCC is in the process of verifying the genuineness of those receipts from the betting houses and a line of communication has been established with the relevant betting houses. The Applicant is very well acquainted with the managing staff of the betting houses and if released on bail, there is a strong likelihood that he can influence them in the manipulation of records. According to information received, the Applicant has a very close link to a staff member working in the betting house. Eventually, all the staff members will have to be interviewed.
16. In cross-examination, when it was put to the EO that the money also came from the Applicant's pockets as confirmed by the bank statements, the EO replied in the affirmative by stating that the Applicant has companies, three companies of which two are operational



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as construction companies. However, the EO stated that it was worth noting that as per the version of the Applicant, the companies are not going through good financial health. When it was put to the EO that it was only recently that the companies have been going through a rough patch, the EO did not agree that the companies had sufficient income, although there has been some money received by the companies. Upon being asked whether the Applicant has interfered with any witnesses before his arrest, the EO replied that before his arrest, the Applicant was not aware that he will be arrested and as such there was no reason for him to interfere with any witnesses. It is only now that he is aware of the charges that he can do that. There is no belief on the part of the FCC that the Applicant will interfere with Wendip Appaya, the risk of interference is with regards to those witnesses who are part of the managing team of the betting houses and those involved in the Applicant's construction activities. Wendip Appaya is not the reason of the Applicant's arrest. The Applicant has also explained that he did construction works for certain persons but he could not provide any documentary evidence pertaining to the amount of funds he received for these works. The FCC will have to verify from those witnesses. According to the Applicant's version, all the income received from his construction activities goes through his bank account. The Applicant has given authorisation to the FCC to verify his bank accounts. When it was put to the EO that the FCC did not secure all the receipts of his betting, the EO did not agree and stated that a diligent search was carried out and all receipts were in fact bound carefully in a pack file and kept. It was also confirmed from the Applicant's wife that all receipts were secured. However, a few days after the recording of the Applicant's statements, his wife produced more receipts. Those receipts were not at the Applicant's house at the time of the search. The EO further explained that the Applicant might tamper with the people at the betting houses concerning those receipts which are suspected to be false and fabricated. There is a high risk that the Applicant may influence those people since he is very well acquainted to them, more specifically, the Applicant has some close links with one of the persons working at the betting houses. When it was put to the EO that the receipts are already in possession of the FCC, hence impossible to tamper with, the EO replied that there are original records which are kept at the betting houses which are confidential and those records may be tampered with upon the influence of the Applicant. There is a high risk given the nature of the present case.

- 17. The person in Madagascar who incriminated the Applicant is the latter's family member. The Applicant admitted having met with the said person who would help him find foreign labour to bring to Mauritius.



18. The Applicant is married and has children. The Applicant was not met with at his family residence. The Applicant admitted that he habitually resides at different addresses. Hence, the EO could not confirm whether the Applicant has a fixed address where he can be met with anytime. When it was put to the EO that the Applicant eventually came to the FCC voluntarily, the EO replied that the Applicant actually asked whether it was important for him to come. He did not come voluntarily. The EO confirmed that the FCC has retained the Applicant's passport. There is a strong apprehension that the Applicant might escape by sea as he has financial means to afford speed boats to flee Mauritius.

C. The case for the Applicant

19. From the dock, the Applicant stated that he has four children and he is the only who works. He undertook to abide by all bail conditions if granted bail.

D. Analysis

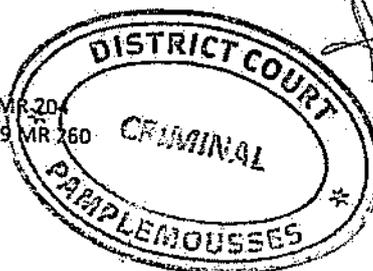
20. The right to liberty of an individual is enshrined in Section 5(3) of our Constitution and is reflected in Section 3 of the Bail Act 1999 (the "BA") which provides that notwithstanding any other enactment and subject to section 4, every defendant or detainee shall be entitled to be released on bail. Thus, in considering this present application, I bear in mind the fundamental constitutional principle that freedom is the rule and detention on account of reasonable suspicion the exception,¹ and I must see to it that bail is not being withheld as a form of punishment.²

21. Pursuant to Section 4(2) of the BA, the nature of the evidence is a relevant consideration in the court's assessment of whether or not to refuse bail. Hence, for the purpose determining the present bail application, I am not to delve into the merits of the case but only give due consideration to the nature of the evidence available to the police with regard to the offence. The case of *Maloupe M.G. v The District Magistrate of Grand Port*³ explained that 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.

¹ *Noordally v Attorney General and DPP* 1986 MR 204

² *Sheriff v District Magistrate of Port Louis* 1989 MR 760

³ 2000 SCJ 223





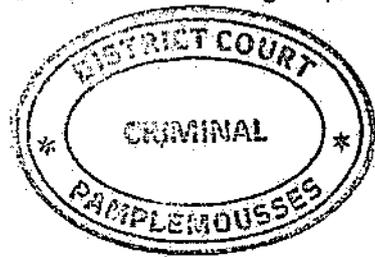
22. The Applicant is the subject of an international warrant of arrest and is wanted for cases of money laundering, drug dealing and engaging in criminal organised crimes in Madagascar where he has travelled several times in the past. He was also incriminated by a co-accused who stated having delivered to the Applicant, in Madagascar, a parcel containing 16.45kg of cocaine which was destined for Mauritius. Following a search at the Applicant's house and office, several items of value, notably, a Ford Ranger, a golden chain, and a BMW were secured, and the said items are believed to be derived from proceeds of crime. The plot of land where the Applicant's office is located is also believed to have been acquired with tainted money. The EO stated that the acquisition of the Ford Ranger and the plot of land is not commensurate with the Applicant's financial means. The Applicant's alleged gains from his betting also did not tally.

23. Based on what was elicited from the EO, I find that the nature of the evidence against the Applicant is strong in nature.

24. Regarding the risk of absconding, the court in Deelchand v The Director of Public Prosecutions and others⁴ citing the case of Neumeister v Austria,⁵ held 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. 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.

25. The Applicant is charged with a serious offence visited by a fine not exceeding 10 million and to penal servitude for a term not exceeding 20 years, if convicted. I also bear in mind the following:

- 25.1. The strong nature of the evidence against the Applicant;
- 25.2. The enquiry is still at an early stage. The Applicant was arrested on 14.01.26;
- 25.3. The Applicant was not met with when officers raided his house and office. In fact, the Applicant was unreachable via phone and, despite his wife calling him, he did not turn up;



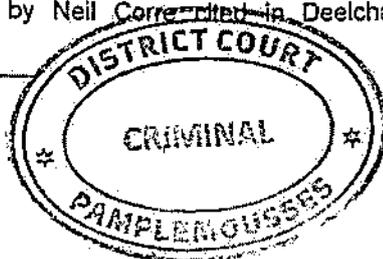
⁴2005 SCJ 215
⁵(1968) 1 ECHR 91

- 25.4. There is no indication whether the Applicant cooperated with the FCC. In fact, the EO made it clear that the Applicant did not come voluntarily to the FCC and had actually asked whether it was necessary for him to come;
- 25.5. No permanent home address for the Applicant could be provided and according to the Applicant himself, he habitually resides at different addresses. I have not been enlightened whether the addresses where he habitually resides belong to him or whether the addresses are rental properties;
- 25.6. It was not disputed that the Applicant had travelled numerous times in the past, i.e., to Madagascar, Thailand, and Malaysia;
- 25.7. It was also not disputed that that the Applicant has family ties in Reunion Island and he travelled there on nine occasions between the period 2018-2023;
- 25.8. The Applicant is in employment and he has three companies. Two of his companies are in the construction business. I have not been enlightened further as to the nature of the Applicant's employment or what it is exactly that he does or how long he has been doing it;
- 25.9. The fact that the Applicant has the financial means to leave Mauritius by the sea was not even disputed or rebutted by his counsel. It was simply his generalised contention that the risk of absconding was based on a mere apprehension. Given the number of times the Applicant travelled in the past, it would seem that he does indeed has the financial means to leave the country by sea.
26. Taking the above factors into account, I find that there is indeed a real and plausible risk that the Applicant may abscond by sea and at this stage I bear in mind what was stated in DPP v Marthe:⁶

"At the end of the day, we have to bear in mind that Mauritius is a small island having other islands as close neighbours. This is something very specific to our country. It is very difficult if not possible, for the authorities to keep the whole shores of Mauritius under constant surveillance. The court can take judicial notice of the fact that, in the recent past, there have been cases where the accused parties awaiting trial and persons convicted of drugs offences have simply left the country by hiring a very powerful boat following which there has been a great outcry in the country."

27. With respect to the risk of interference with witnesses, I refer to "Bail in Criminal Proceedings" (1990) by Neil Corbett in Deelchand v The Director of Public

⁶ 2013 SJC 386a



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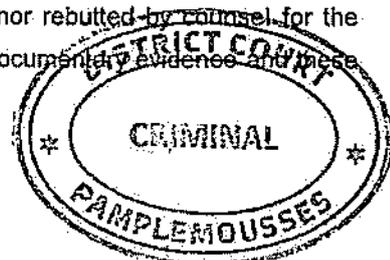
Prosecutions & Ors⁷, where it was stated that the risk of interference with witnesses is an important exception to the right to bail because any system of justice must depend upon witnesses being free of fear of intimidation or bribery and upon evidence being properly obtained. The exception's most common 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 locations of inculpatory documentary evidence which he may destroy, or has hidden stolen property or the proceeds of crime.⁸ The court also stated in Deelchand that 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.

28. I note that it was only after having recorded the statements of the Applicants that the FCC came to find that there are several material witnesses who will have to be questioned regarding the Applicant's betting activities. According to the EO, the Applicant is very well acquainted with the managing staff of the betting houses and as such is capable of influencing them as witnesses. It is worth noting that at no point during cross-examination did counsel for the Applicant dispute or rebut the fact that the Applicant does not have such influence over these witness(es). Again, I bear in mind the seriousness of the charge as well as the strong nature of the evidence and the fact that the enquiry is progressing. I find that these factors are likely to motivate the Applicant to interfere with the witnesses and as such I find that the said risk is real and substantiated.

29. As regards the risk of tampering with evidence, the EO stated that there are additional documentary and physical evidence whose location are best known to the Applicant. The original records of the Applicant's betting are kept at the betting houses and according to the EO, those records may be tampered with upon the influence which the Applicant has over the managing staff. Again, this was not disputed nor rebutted by counsel for the Applicant. I bear in mind that we are here dealing with documentary evidence and these

⁷ 2005 SCJ 215

⁸ ibid



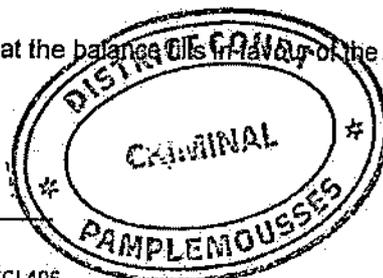
can easily be destroyed and concealed. Once again, the seriousness of the charge, the strong nature of the evidence and the fact that the enquiry is progressing may well motivate the Applicant to tamper with the evidence; the risk is real and substantiated.

30. Notwithstanding my finding, I must still consider whether the imposition of conditions can reduce the identified risks to a negligible level. I find it apt to refer to the case of *Maloupe v The District Magistrate of Grand Port*⁹ where the Court held that the rationale 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 to such an extent that they become negligible.

31. I have addressed my mind to a number of conditions which are mainly imposed to address the risk of flight and maintaining confidence in the administration of justice. Conditions such as the imposition of a surety and recognisance, reporting conditions, residing at a fixed address, a curfew order, informing the police of one's whereabouts, or the use of mobile phone for communication with the police as and when required, would not be adequate as they will not provide effective supervision over the activities and interactions of the Applicant on a constant basis, the more so that there are no facilities yet available in Mauritius such as electronic monitoring device or electronic bracelet to allow for the tracking by GPS of the Applicant's movements.¹⁰ Equally, for the same reasons, I do not find how those conditions will effectively prevent the Applicant from the tampering with the evidence or interfering with the witnesses. Conditions not to contact or interfere with witnesses have been argued to be unsound both in law and in practice.¹¹

32. At the end of the day, once the Applicant is admitted bail, pursuant to some financial conditions, he would be free from any type of effective control over his activities other than reporting to the nearest police station twice or even three times a day. In between, there won't be any effective control as to what the Applicant does, where he goes, under whose influence he falls or with whom he associates himself with.¹²

33. At this stage, I find that the balance is in favour of the Applicant's continued detention.



⁹ 2000 SCJ 23

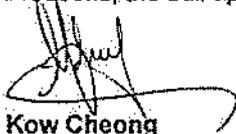
¹⁰ *Aubert F. v The State* 2022 SCJ 405

¹¹ *Bail in Criminal Proceedings*, Neil Corre and David Wolchover, 3rd edition 3.3.1. Reporting to a police station

¹² *Siddick Islam v Senior District Magistrate Grand Port District Court* 2006 SCJ 282

E. Conclusion

34. For all the aforesaid reasons, the bail application is accordingly set aside.



Mrs. M. D. Chung Kow Cheong

District Magistrate

12.02.26

