IN THE DISTRICT COURT OF FLACQ

Cause No.: **2133/25**

Sanjay Bissessur

Applicant

v/s

Police

Respondent

RULING

1. The applicant stands provisionally charged, under count 1, with the offence of **"Money Laundering"** in breach of section 39(1)(a) and (2) and 47(5)(a) of the Dangerous Drugs Act (DDA) and for the offence of **"Possession of Roll Your Own Cigarette Paper"** in breach of section 156(1)(2) of Customs Act under Count 2.

2. Me Nuckcheddy, Learned Counsel for the applicant has moved for the provisional charge to be struck out on the ground that there is no reasonable suspicion capable of sustaining the provisional charge and the absence of objective facts linking the Applicant or monies seized to any offence under the Dangerous Drugs Act. He further grounded his motion on the fact that the offence under section 156 of the Customs Act does not allow for a Money Laundering offence under the DDA.

3. The motion was objected by the FCC and PS Seeboruth from Trou D'eau Douce CID and Mr Buccha, Investigator from the FCC, were deputed to sustain the objection. The respondent's case was conducted by Me T. Naga assisted by Ps Thatmabee.

The Respondent's case

4. It was explained that the enquiry was of 2 folds. Firstly, acting upon information received, the CID of Flacq proceeding for a search at the place of the applicant and a certain quantity of "Roll Your Own Cigarette Papers" and a considerable sum of money in local and foreign currencies were seized. The case was thereafter handed over to the CID of Trou D'eau Douce who enquired on the offence of "Possession of Roll Your Own Cigarette Papers". The FCC handled the case regarding the money seized under an aspect of money laundering.

5. The following evidence were given in court by both witnesses:

With regards to "reasonable suspicion" under Count 2

6. PS Seeboruth explained that he inherited the case from CID Flacq who were enquiring on the case following a warrant issued under the DDA and upon a search done at the place of the applicant, *"a certain number of small papers used to hold marijuana which is illegal in Mauritius*" was secured together with a sum of money suspected to be proceed of drugs. The items which were secured were 2369 Roll Your Own papers concealed in a carton box. It was clarified in the submission that these papers were in the form of 47 filled of Roll Your Own Cigarette Papers, 17 empty Roll Your Own Cigarette carnets, and 19 Roll Your Own Cigarette.

7. He confirmed that "ti papier" were seized from the place of the applicant and he admitted that although he cannot say if possession of "ti papier" is an offence under the DDA or not, he does confirm that "ti papier" is used for smoking drugs.

With regards to "reasonable suspicion" under Count 1

8. The witness admitted that before proceeding to the search at the place of the applicant, Flacq CID got information regarding drug offences by the applicant. However, no drugs were secured but only a large number of Roll Your Own Papers were secured.

9. The witnesses explained that when the search was done, a certain sum of money suspected to be proceeds of drugs was also secured from the premises of the applicant, namely a sum of MUR 1 273 344. The said sum of money was secured both in local and foreign currency and he explained that as per the enquiry of the FCC, the applicant did not have any trade licence to deal in foreign currency.

10. He further explained that no explanation has been given by the applicant as to how he came to be in possession of such a sum of money. However, applicant did state that the money comes from his activities from his shop and snack, albeit without any documentary evidence to substantiate same.

11. The prosecution witness explained that the applicant is provisionally charged under the DDA for money laundering based on the fact that drug related materials were seized together with the sum of money, such that it falls under the DDA. However, he admitted that no drugs or other drug related materials were secured from the premises of the applicant.

12. The witness further explained that the applicant's assets are still under enquiry, and these included a BMW and an acquisition of a property. A disclosure order is being awaited in order to enquire in to the bank statements of the applicant to analyse his capacity to acquire the above.

The Applicant's Case

13. Applicant deponed under oath and stated that he is not engaged in any drug or drug related things. He stated that he works in a shop and has a permit for same. With regards to the money secured, he stated that same is his yearly stock and that he already produced all documents to the FCC.

14. With regards to the prejudice being suffered by him, he stated that his work and reputation is being affected.

<u>Considerations</u>

15. Both counsels have filed their written submissions and I have carefully read through them.

<u>Reasonable suspicion</u>

16. In **DPP vs IOIB and Ajay Shanto 1989 MR 110**, the Court explained the existence of a provisional charge as follows:
"As everybody knows, a provisional information is entered when a suspect is arrested or is brought into custody. Its purpose is to bring the detention of the individual under judicial supervision and control so as to prevent an administrative detention and to enable a judicial authority to decide whether the detainee should be released on bail or not and, if not, for how long he should be detained. No detainee pleads to a provisional information and no trial takes place. Consequently, no question arises as to whether evidence is required to be given in those proceedings. When the need arises for evidence to be given, the provisional information is simply struck out and an information is lodged to which the accused pleads and in respect of which a trial takes place."

17. Therefore, the lodging of a provisional charge is but a prolongation of the initial process of arrest of a suspect. This allows the Court to act as an arbiter between the executive and the citizen, such that it allows the court to control the regularity of the arrest if the need for it arises. One way of controlling such arrest is to determine whether a provisional charge against a suspect should continue to stay or whether it should be struck out.

18. In addressing the issue of striking out a provisional charge, the Learned Judge Gunesh-Balaghee in the case of **Ramgoolam v The State of Mauritius & Ors 2024 SCJ 113** stated as follows:

"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. <u>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</u> the detainee should be released on bail or <u>the provisional charge should be struck out, as the case may be. The discretion of the Court to</u> grant bail or <u>strike out the provisional charge will depend largely on the evidence adduced at that stage by the police and/or the defence."</u>

19. To determine whether a provisional charge should be struck out, the court will have to determine whether the latter stands on reasonable suspicion. Indeed, prosecuting authorities are 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".*

20. The Court in **Manraj & Ors v ICAC [2003 SCJ 75]** explained, following a review of English case law, what would constitute 'reasonable suspicion' which would justify an arrest by the police –
"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..."

"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" must necessarily be distinguished from mere suspicion. "Mere suspicion, in contrast, is a hunch or instinct which cannot be explained or justified to an objective observer."

"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. All that an investigatory authority may do with its hunches is keep the person under observation but it cannot act on it."

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. <u>It should be appreciated from the objective standard, the point of view of a dispassionate bystander</u>: Inland Revenue Commissioners v Rossminster Ltd [1980] A.C. 952. Finally, and importantly, <u>the suspicion should be based on facts</u>: King v Gardner (supra); Prince (supra); Ware v Matthew February 11, 1981, 1978 W. No. 1780 (Lexis). <u>The facts relied on should be such as are consistent with the implication of the suspect in the crime</u>: 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. Only then will an Officer's exercise of powers on reasonable suspicion be democratic and not autocratic and the power user be said to be making a difference between democracy and dictatorship"

21. One may further refer to the case of ***Dr Navinchandra Ramgoolam GCSK FRCP V The State of Mauritius & Ors 2024 SCJ 113****)* quoting 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, <u>the arrest must be Wednesbury reasonable</u> (Castorina v Chief Constable of Surrey (1988) 138 NLJ 180). .... <u>Whether the constable had reasonable suspicion must be determined according to what he knew and perceived at the time</u>; reasonableness is to be evaluated without reference to hindsight (Redmond-Bate v DPP (1999) 163 JP 789). <u>Information required to form a reasonable suspicion is of a lower standard than that required to establish a prima facie case</u>. Prima facie proof must be based on admissible evidence whereas <u>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</u> (Hussein v Chong Fook Kam [1970] AC 942) ..."*

22. It follows from the above principles that no objective conclusion can be reached about the reasonableness of an arrest without taking into consideration the version of the defendant. One can refer to the case of **Sheriff v District Magistrate of Port Louis 1989 MR 260,** "…*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*."

23. With the aforementioned principles in mind, I shall proceed to 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 and the court will refrain from going into the merits of the case (vide **State of Mauritius v Utchanah [2023 SCJ 172]).**

24. In order to determine whether there is reasonable suspicion, it is apposite to refer to **section 39(1)(a) and (2) of the DDA** which provides for the offence of money laundering.

25. Section 39 under the DDA provides as follows:

39 Money laundering

(1) Every person who unlawfully –

(a) acquires, possesses, uses, converts or transfers goods, resources or rights thereto derived or realised, in whole or in part, directly or indirectly, from any offence under this Act;

(b) …..

where he suspects or has reasonable grounds for suspecting that the goods, resources or rights thereto are derived or realised, in whole or in part, directly or indirectly, from any offence under this Act, shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years.

(2) A person may be convicted for an offence under this section notwithstanding the absence of a conviction in respect of an offence under this Act, which generated the goods, resources or rights thereto alleged to have been laundered.

26. Therefore, for the present case, the elements for which there should be reasonable suspicion is as follows:
    (i) unlawfully possesses, goods or resources;
    (ii) derived or realised, in whole or in part, directly or indirectly
    (iii) from any offence under this act and
    (iv) Accused had reasonable grounds for suspecting that the goods or resources are derived or realised in whole or in part, directly or indirectly from an offence under the Dangerous Drugs Act

27. With regards to the first element identified, it has not been disputed that a sum of money in local and foreign currencies was secured from the premises of the applicant. Such monies fall under the category of resources as provided under section 39 of the DDA. For the purposed of section 39 of the DDA, resources include "possessions".

28. With regards to the second element, it is also not disputed that at the time that the money was secured from the applicant, a considerably large number of "Roll Your Own Papers" were also secured. The EOs have both agreed that such papers are used for smoking drugs/Marijuana. It is not a requirement that the money be derived directly from drugs itself but it suffices that the money is derived from anything that is related directly or indirectly to drugs, in this case, papers confirmed by the EOs to be used in the smoking of drugs. Therefore, this court can only conclude that the suspicion of the police is not a mere suspicion but rather a reasonable suspicion that the money is derived from the proceed of drugs, as same is based on the fact that a large number of papers used for smoking of drugs were secured. It cannot also be ignored that a certain quantity of empty Roll Your Own carnets were also secured, indicating that the papers have been used. Moreover, despite the applicant having stated that he has deposited all the necessary papers to substantiate his claims that the money comes from his business to the FCC, the prosecution witnesses have explained that those documents are only receipts and do not explain the source of the sum of money that has been seized.

29. The third element is that the money has to be derived from an offence under the DDA. Counsel for the applicant argued that since the applicant is not being charged with any offence under the DDA nor has any drugs been secured on his premises, the provisional charge under section 39 does not stand. He submitted as follows:

(i) "30. No evidence has been disclosed linking the applicant to any offence under the Dangerous Drugs Act."
(ii) "31. The EO was unable to identify the predicate offence under the DDA from which the monies allegedly seized were said to have been derived."
(iii) "32. He could not point to any fact, information or evidence linking the monies in question to any dangerous offences whatsoever."

30. I disagree with counsel for the applicant that the EO has failed to identify the predicate offence under the DDA. True it is that the EOs have both failed to mention the section of the law that they suspect is the predicate offence under the DDA but they have stated under oath that

"…also seized a certain small papers used to hold marijuana, which is illegal in Mauritius

…..

Q: As per police, did they get any drug from applicant?
A: No, but the papers were seized.
Q: But "ti papier" can be used for drug smoking?
A: Yes
…."

31. When going through these answers given by both EOs, this court can only be reminded of **section 34 of the DDA** which provides for the offence of possession of articles used in connection with smoking or consuming any dangerous drugs. Section 34 is referred below:

34. Unlawful use of drugs

(1) <u>Any person who unlawfully</u> –

(a) smokes, inhales, sniffs, consumes or administers to himself or any other person, in any way whatsoever, any dangerous drug;

(b) possesses, purchases, offer to purchase or transports any dangerous drug;

(c) <u>has in his possession</u> any pipe, syringe, utensil, apparatus or <u>other article for use in connection with smoking, inhaling sniffing, consuming or the administration of any dangerous drug</u>,

<u>shall commit an offence</u> and shall, on conviction, and subject to subsections (2) and (5), be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 2 years.

32. Therefore, in light of the above, this court finds that there is an offence under the DDA from which the monies are suspected to be derived from. Moreover, such suspicion is based on the fact that the "Roll Your Own Papers" have been secured in large number from the applicant. It is not a requirement under section 39 of the DDA for an accused to be charged with a drug related offence under the same information but it suffices that there is reasonable suspicion that the money is derived from any drug offence under the DDA, which is the situation in the present case.

33. In light of the above, 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, ie, firstly for the offence of money laundering and secondly for the offence of possession of "Roll Your Own Cigarette Papers". I consider that the police were fully entitled to arrest and lodge the provisional information against the applicant which is founded on reasonable suspicion. The police have also considered the version of the applicant and enquired into his snack and shop business but there have not been sufficient documents provided by the applicant regarding same and the enquiry into this aspect is still ongoing. Therefore, I find that there is a raison d'être for the provisional information to subsist at this stage and the provisional charge is based on reasonable suspicion.

<u>Conclusion</u>

34. I therefore find that the attainment of justice lies in maintaining the provisional charge against the accused at this stage, which provisional charge, I find, is based on reasonable suspicion.

35. I also note that counsel for the applicant moved for the provisional to be struck out on the basis that the information is defective in law. However, he did not submit on this aspect and I do not propose to address this point in my ruling.

B.W Galamali (Ms)

District Magistrate

Dated this