

REPUBLIC OF MAURITIUS

PROVISIONAL

INFORMATION UPON... SAY

Cause No. 385/23

CHARGE OF: MONEY LAUNDERING

Breach of Sections 3(1) (b), 6 & 8 of The Financial Intelligence and Anti-Money Laundering as amended by Act 19 of 2019

BEFORE THE DISTRICT COURT OF LOWER PLAINES WILHEMS

P. Binapen

An officer of Police
and saith as follows: SAY

maketh

THAT in or about the month of September 2019, at Belle Rose, in the District of Plaines Wilhems, one **HASSENJEE NIZAMDEEN CARAMUTH**, 45 years, (NIC C0606773018671) Company Director and residing at 11, Morcellement La Cocelle, Tombeau Bay was wilfully, unlawfully and criminally in possession of property which, in whole or in part, directly or indirectly represented, the proceeds of a crime, where he, the said **Hassenjee Nizamdeen CARAMUTH** had reasonable grounds for suspecting that the property was derived, in whole or in part, directly or indirectly from a crime.

PARTICULARS

On or about the aforesaid date and place, the said **Hassenjee Nizamdeen CARAMUTH** was in possession of property, to wit: Motor Car bearing registration No. 8162 DC 11, make BMW, model 640i, worth 1,435,000 MUR, which property in whole or in part directly or indirectly represented, the proceeds of a crime and where he, the said **Hassenjee Nizamdeen CARAMUTH** had reasonable grounds for suspecting that the said property was derived, in whole or in part, directly or indirectly from the said crime.

WHEREFORE the said complainant prayeth the Court that the said accused be brought before it and dealt with according to law.

TAKEN AND SAY

Before me the undersigned Magistrate, this 24th day of February in the year two thousand and twenty three.

Magistrate in and for the District Court of Lower Plaines Wilhems.



IN THE DISTRICT COURT OF LOWER PLAINES WILHEMS-ROSE HILL

CN: 385/23

IN THE MATTER OF: -

POLICE

V

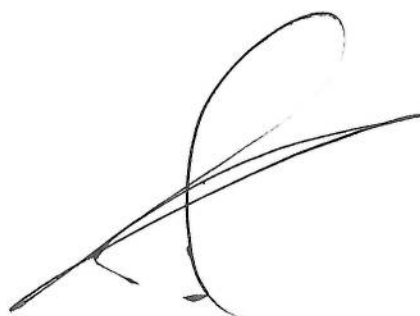
HASSENJEE NIZAMDEEN CARAMUTH

RULING

The Applicant is charged with the offence of Money Laundering in breach of Financial Intelligence and Anti money Laundering Act. The Applicant has through his counsel moved that the present charge be struck out on the ground of delay. Prosecution objected to the present motion. Both parties were legally represented during the proceedings. Arguments were heard on both sides, hence the present ruling.

The facts

In support of the objection raised by the prosecution, the enquiring officer, in a gist, explained that the investigation arose in the context of an ongoing enquiry on a suspect involved in a drug network having international ramifications. In the course of that investigation, information was received that other persons connected with the network were in possession of assets which were suspected to have been acquired from proceeds of crime and the enquiry led to the Applicant. A search was carried out at the residence of one of the suspects where two sale deeds relating to a BMW vehicle were secured. According to the enquiry, the said vehicle was registered in the name of another person but the actual owner was the Applicant and payment had been made in cash. The enquiry revealed that the Applicant had given instructions to conceal his ownership of the said vehicle. The enquiry further revealed that the Applicant operates a company which was running at a loss.



The Enquiring officer explained that given the nature and scope of the investigation, a substantial amount of material had to be gathered, examined and assessed before the investigation could be brought to a conclusion. Following the provisional charge, the investigation continued. Fifteen statements were recorded from the Applicant during the course of the enquiry. It was emphasized by the Enquiring officer that the investigation was a complex and serious money laundering enquiry. It involved several limbs of investigation, several persons and stakeholders. Substantial documentary material, several financial institutions and matters said to have international ramifications. The investigation also involved examination of bulky documentation and itemized bills from different operators.

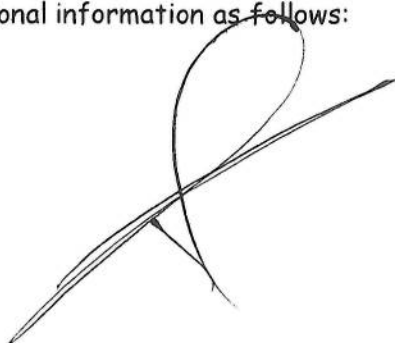
In cross examination, it was confirmed that the alleged offence occurred in 2019 and the provisional charge brought only in 2023. He explained that the said vehicle was seized during investigation and subsequently returned to the Applicant. The enquiring officer stated that the enquiry concerning the Applicant had been completed in February 2026. Despite the completion of the enquiry, he was unable to give any indication as to when the file would be forwarded to the Office of the Director of Public Prosecution for advice and consequently no indication as to when a main case would be lodged against the Applicant.

I have duly considered all evidence on record and submissions of both Counsel.

The Law

Section 5 of the Constitution provides for the right to personal liberty and a derogation is allowed in Section 5 (1) (e) of the Constitution which provides that no person shall be deprived of this fundamental right unless there is reasonable suspicion of him having committed, or being about to commit, a criminal offence. There is a duty on the Court to ensure that the integrity of the criminal process is protected and a fair treatment is meted to any person charged with a criminal offence in conformity with the norms prescribed in the Constitution

The concept of a provisional information is unique in the Mauritian context. It is used to implement section 5 (1) (e) of the Constitution. In the case of **Alain Gordon-Gentil and others v State of Mauritius (1995) MR 38**, describes a provisional information as follows:

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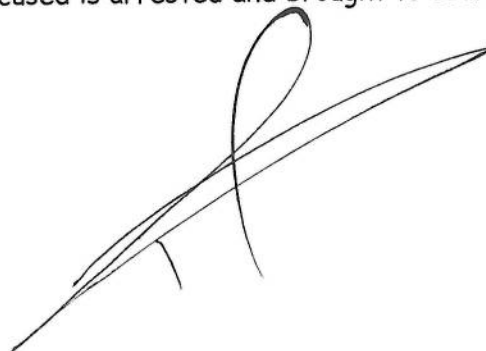
"A provisional information is a mechanism whereby a court is informed of the reason for the arrest of an individual. The police may well inform the Magistrate verbally but the use of a provisional information is now a well-established practice. Only an offence known to the law and not any act not sanctioned as an offence should give birth to the provisional information".

In the same case, the Court went on to state: "When a person is arrested, he must be taken before the Magistrate who is informed by the prosecutor of the reason for the arrest. This is but a prolongation of the initial process of arrest. Whereas at the initial stage the person arrested should be told the reason for his arrest, the next important step is to inform the court why the person is detained and taken before the court. This is not merely a formality. The court acts as arbiter between the executive and the citizen and, in such cases, may control the regularity of an arrest if the need for it arises."

*A provisional information is merely an indication of the offence which a person is suspected of having committed and same is lodged at a very early stage of the enquiry, when investigation may have hardly started and is certainly not over. It serves as a foundation for the detention or condition release of a suspect. As stated in the case of **DPP V. Indian Ocean International Bank & ANOR (1989) MR 110** a provisional charge is used to "bring the detention of an 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 provisional information and no trial takes place. Consequently, no question arises as to whether evidence is required to be given in those proceedings." **DPP V. Indian Ocean International Bank & ANOR (1989) MR 110.***

In Darmalingum v State 2000 UKPC 30, Accused had been arrested on provisional charges and remained on bail for years before substantive case being lodged. The Privy Council held that the relevant period commenced from the arrest not merely from the time the Accused was prosecuted

It follows thus from the above that this principle not only applies where the accused stands charged before a trial Court but also where the accused has been arrested and brought before Court, after a provisional charge has been lodged against him. The reasonable time requirement starts to run from the time the accused is arrested and brought to Court under a provisional charge.



The issue of delay is intrinsically linked with the reasonable time guarantee provided in the Constitution. I find it apposite to refer to **Section 10(1) of the Constitution** which provides that:

Where any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established.

In **Bissoon Mungroo v. the Queen [1990] PRV 22**, it was held that:

"The right to a trial "within a reasonable time" secures, first, that the accused is not prejudiced in his defence by delay and, secondly, that the period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum."

In **State v Bissessur 2001 SCJ 50**, it was held that there is no mathematical calculation by which the Court can determine that a particular period of delay is automatically unreasonable. Each case must be determined on its own facts. The Court has to consider the length of the delay, the reasons advanced by the Prosecution and prejudice caused to the Accused.

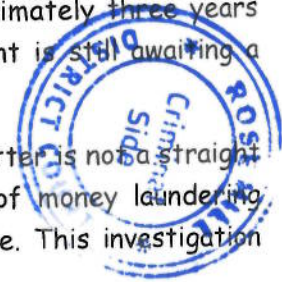
In **Boolell v State 2006 UKPC 46**, the Privy Council made it clear that there is no rigid formula for determining whether the reasonable time guarantee has been infringed. The Court must consider several factors, including complexity of the case, conduct of the Accused and the manner in which the case has been dealt with by the different authorities.

Analysis

Court bears in mind that at this stage it is not called upon to delve into the merits of the case but only to determine whether having regard to the totality of the circumstances, the continued maintenance of the provisional charge against the Applicant constitutes an unreasonable and inordinate delay contrary to his constitutional right under Section 10 of the Constitution to have his case afforded a fair hearing within a reasonable time.

The first consideration is the length of the delay. The alleged offence occurred in 2019 and the provisional charge lodged in 2023. Approximately three years have elapsed since the provisional charge and the Applicant is still awaiting a main case to be lodged against him, if any.

It is the contention of the Prosecution that the present matter is not a straight forward criminal investigation. It concerns an allegation of money laundering involving an asset allegedly derived from proceeds of crime. This investigation



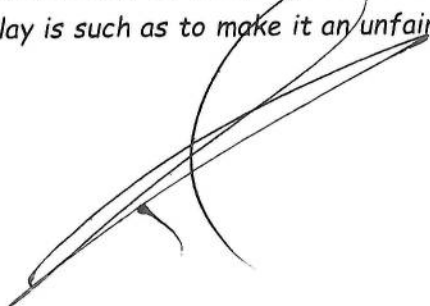
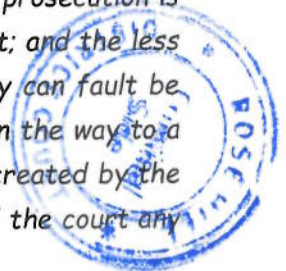
cannot be compared with a simple case involving a single suspect. It is submitted that the Court must give appropriate weight to the complexity of the investigation when determining what constitutes a reasonable delay.

This Court must not lose sight of the practical reality of the present situation. The Applicant is not merely awaiting the hearing of an existing criminal charge. He is living under a provisional charge while not knowing whether or when a main case will actually be lodged against him. This Court accepts the submission of the Prosecution that the enquiry was not a simple one. The evidence describes an investigation involving alleged money laundering, several suspects, substantial documentation and international ramifications. Those matters are not being disregarded by this Court. However, complexity is not a blanket justification for an indefinite provisional charge. The constitutional requirement remains one of reasonableness.

The authorities remain under a duty to proceed bearing in mind the constitutional right of the Applicant to be tried within a reasonable time. This principle is particularly important in the present case as enquiry is completed since February 2026. Whatever justification there may have been for investigative delay, the Court is now faced with a case where the investigation concerning the Applicant has been completed, yet the Applicant remains without an indication when a main case will be lodged against him. The Enquiring officer was unable to give an indication when the file will be sent to the Office of the Director of Public Prosecution for advice or when a main case will be lodged against the Applicant.

On the issue of establishing prejudice our Supreme Court in *Dahall v State* [1993] MR 220 referred to the Privy Council decision in *Attorney General of Hong Kong v Wai-bun* [1993] 3 WLR 242. In *Attorney General of Hong Kong v Wai-bun (supra)* approving the decision of the Board in the *Tan case* [1992] 2 A.C. 205 of that statement of Lord Lane C.J. was made subject to one exception, which the Board identified, namely as to whether it was appropriate in certain circumstances to presume that the delay has caused prejudice. As to this Lord Mustill, in his judgment, said, at p. 225:

"Naturally, the longer the delay the more likely it will be that the prosecution is at fault, and that the delay has caused prejudice to the defendant; and the less that the prosecution has to offer by explanation, the more easily can fault be inferred. But the establishment of these facts is only one step on the way to a consideration of whether, in all the circumstances, the situation created by the delay is such as to make it an unfair employment of the powers of the court any



longer to hold the defendant to account. This is a question to be considered in the round, and nothing is gained by the introduction of shifting burdens of proof, which serves only to break down into formal steps what is in reality a single appreciation of what is or is not unfair."

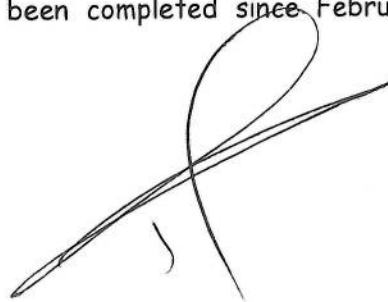
The Court shall refer to the matter of **Mungroo v The Queen (supra)** in which it was held that *period during which an innocent person is under suspicion and any accused suffers from uncertainty and anxiety is kept to a minimum*'.

As regards prejudice, it was submitted by the Prosecution that no prejudice has been established. It was submitted by the Defence that the prejudice must be considered cumulatively. The testimony under oath of the Applicant established that the Applicant was detained for several days as a consequence of the present provisional charge and he has been required to report weekly to the Police station for approximately three years now. Such a requirement imposes continuing restriction upon an individual and serves as a constant reminder that criminal proceedings remain unresolved. It is a continuing and concrete consequence of the provisional charge. The Applicant further explained that he is subject to a prohibition order and his ability to travel has thereby been restricted. It is also on record that the continuing criminal proceedings have prejudiced his business. He has lost clients and significant contracts.

True it is that the public interests require serious financial crimes allegations to be properly investigated. But the public interest is not served by permitting provisional charges to remain indefinitely without substantive proceedings. The constitutional protection exists precisely to balance the legitimate interests of law enforcement against the rights of individuals. In the present case, the enquiry concerning the Applicant has been completed since February 2026. Yet, the Prosecution is unable to provide any indication as to when the file of the Applicant will be sent to the Office of the Director of Prosecution and when a main case will be lodged, if any. The complexity of the present case explains why the investigation may have required time. This does not however explain why after the investigation has been completed, there is still no indication as to when a decision to prosecute or not will be taken.

Conclusion

In view of the above, I find that the Accused cannot be held hostage under a provisional charge and endure the consequences of that provisional charge while the enquiry has been completed since February 2026 and there is still no



indication as to when a decision to prosecute the Applicant or not will be reached. Such a situation is inconsistent with the Constitutional guarantee under Section 10 of the Constitution. I therefore order that the present provisional charge against the Applicant be struck out. All orders attached to the present provisional charge shall lapse.

P. VEERABADRAN- MUDALIAR
SENIOR DISTRICT MAGISTRATE
20 AUGUST 2026

