

SUPREME COURT OF SEYCHELLES

Reportable
[2025]
CO03/2025

In the matter between:

THE REPUBLIC

(rep. by Mr Adam Afif)

Prosecution

versus

MYRIAM D'UNIENVILLE

(rep. by Mr Basil Hoareau together with Mr Tony Juliette)

1st Accused

JEAN-FRANCOIS ADRIENNE

(rep. by Mrs Alexia Amesbury)

2nd Accused

NEDDY MICOCK

(rep. by Mrs Alexia Amesbury)

3rd Accused

RINO D'UNIENVILLE

(rep. by Mr Basil Hoareau)

4th Accused

TREVOR KLAUS CUPIDON

(rep. by Mr Tony Juliette)

5th Accused

SHAUN LEMI BARBE

(rep. by Ms Nissa Thompson)

6th Accused

LUIGI STEPHANE NIOLE

(rep. by Ms Nissa Thompson)

7th Accused

JERRY KERRY ALCINDOR

(rep. by Mr Joshua Revera)

8th Accused

ADEDOYIN ADEDEJI DADA

(rep. by Mr Joel Camille)

9th Accused

CLEONICE MANUELLA LISABETTE COURSE

(rep. by Mr Daniel Cesar)

10th Accused

Neutral Citation: *The Republic v Myriam D'unienville & Ors* CO 03/2025 [2025] (30th May 2025)
Before: N. Burian, J
Summary: Bail Application
Heard: 12th May 2025
Delivered: 30th May 2025

RULING ON BAIL

N. BURIAN, J

Introduction:

- [1] This Ruling arises from four bail applications of Rino Barry D'Unienville, Trevor Klaus Cupidon, Jerry Kerry Alcindor and Adedoyin Adedeji Dada (individually to be referred to as 'Accused No. 4, 5, 8 and 9' and collectively as 'the accused') in which they are asking to be released on bail pending trial.

Background:

- [2] The accused were charged on the 26th March 2025 under amended formal charge together with 6 others. Accused No.4 is charged under count 1 for *agreeing with another person or persons to commit the offence of importation of a controlled drug*, Accused No.5 is charged under count 2, 3 and 4 for offences of *money laundering*, Accused No.8 is charged under counts 1 and 6 of *agreeing with another person or persons to commit the offence of importation of a controlled drug and organizing to commit the offence of importation of a controlled drug* and Accused No.9 is charged under count 1 for *agreeing with another person or persons to commit the offence of importation of a controlled drug*.
- [3] The accused have been on remand since their arrest in January 2025. On the 30th January 2025, Accused No.4 reserved his right to apply for bail at a later date and therefore this is to be considered his first application. Accused No.5, 8 and 9 all objected to being held on

remand and it was determined by the Court on the 31st January 2025 that there were substantial grounds set out to remand them in custody.

Bail Application of Rino Barry D'Unienville:

- [4] I will commence with the application filed by Accused No.4 for his release on bail. The court takes note that this is his first application for bail.
- [5] The Affidavit submitted in support of the application primarily relies on two grounds; the extended period of time that Accused No.4 is expected to spend on remand before the case concludes and on the principle of fair treatment and uniformity in judicial decision making.
- [6] Accused No.4 has stated that the trial is scheduled to take place from the 18th May 2026 to the 12th June 2026. He argues that, if he remains in custody, he will likely have spent nearly two years on remand by the time the trial is concluded. In light of anticipated duration of proceedings, he has requested that the court consider granting him bail pending the final determination of the case.
- [7] Furthermore, Accused No.4 has submitted that during the period which he has served on remand, both Cleonice Course (hereinafter 'Accused No.10') charged with Money Laundering and Shaun Barbe (hereinafter 'Accused No.6') charged in count 1 alongside him for the offence of conspiracy, have been released on bail without any objections being raised by the Prosecution. Therefore, considering the principle of fair treatment and uniformity he is of the view that he too should be released on bail pending trial.
- [8] Accused No.4 has stated in his Affidavit in support of his motion for bail, that he is prepared to abide to any reasonable conditions to secure his attendance before the court and to also ensure that he does not obstruct the course of justice in any manner whatsoever.
- [9] The Prosecution are objecting to the application for bail and are relying on the facts and circumstances as laid out in the initial affidavit duly sworn by Detective Corporal Ruddy Pillay and the 2nd affidavit duly sworn by Detective Sergeant Stenio Cadeau in support of their reply to the present application.

- [10] It is averred that ‘a prima facie’ case has been made out against Accused No.4 and reference is made to paragraph 31 of the initial affidavit in support of the remand of all the accused persons. According to the Prosecution, the investigation has led to the extraction of digital evidence from the mobile phone of Myriam D’Unienville (hereinafter ‘Accused No.1’) which the Prosecution argues are sufficient to establish a ‘prima facie’ case against Accused No.4.
- [11] It is further submitted that due to the complexity of the case, an extended trial period of one month was necessary. Coordinating the availability of six defence counsels also contributed to scheduling challenges, ultimately resulting in the trial being set for the 18th May 2026 to the 12th June 2026. Under these circumstances, the Prosecution argues that the resulting delay is not unreasonable. Reference was made to the case of *Republic v Mwai & others*¹.
- [12] When addressing their decision not to oppose the release of Accused No.6 and Accused No.10 on bail, the Prosecution argued that from the evidence gathered during the investigation, it indicates that the role of Accused No.4 was more organisational and operational than the roles of the Accused No.6 and Accused No.10. The latter acting solely under the directive of Accused No.1. It is pointed out that Accused No.4 is the son of Accused No.1, that as such he had more direct involvement in the criminal activity, actively participating in the financial coordination of the crime. It is because of his more central role, that he warrants differential treatment by the court when considering whether to grant him bail.
- [13] Lastly, it was argued that given Accused No.4’s participation in the international drug trafficking network, his access to substantial financial resources and cross-border connections, there exists a real risk that he may abscond if released.

Submissions by counsel:

- [14] Counsel for Accused No.4 highlighted that bail is the rule and that remand is the exception, and that the courts’ role is not to punish an accused person by denying them bail if

¹ (CO 12/20220 [2022] SCSC 1004

reasonable conditions can be imposed to mitigate the risk of absconding and interference with the course of justice.

- [15] He reiterated that the risks if released must be ‘real’ and not ‘fanciful’. Emphasis was placed on the length of time that his client will be spending in detention by the time the trial is concluded and urged the Court to take this factor into account when considering the application for bail before it. Numerous references were made to Article 18(7)² and 19(1)³ of the Constitution and questioned whether the remand of Accused No.4 was being used as a short-term form of punishment before the case was even presented. It was argued that at this stage the Prosecution has adduced no evidence to show substantial grounds for the continued remand of his client.
- [16] Mr Hoareau, counsel for Accused No.4, took issue with the assertion by the Prosecution that all the accused persons in the present case were interconnected and formed part of an organized criminal network. He argued that if this allegation were true then it would have warranted the remand of all ten accused in this case, instead the court has released Accused No.6 and Accused No.10 on bail with conditions. He maintained that all persons charged with the same offence should be treated uniformly and fairly and that when the Prosecution chose not to object to the application of Accused No.6 for bail, it had a duty to inform the Court of the reasons. Reference was made to the cases of *De Bruin v S (Director of Public Prosecutions) and Another*⁴, *Majali v S*⁵, *Abhishek Yadav v State of U.P.*⁶, *Sibanda v The State*⁷ and *Shamu v The State*⁸ in which the courts canvassed various principles including but not limited to parity and uniformity of decision making in bail applications as well as

² A person who is produced before a court shall be released, either unconditionally or upon reasonable conditions, for appearance at a later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstances, determines otherwise—(a)where the court is a magistrates’ court, the offence is one of treason or murder;(b)the seriousness of the offence;(c)there are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;(d)there is a necessity to keep the suspect in custody for the suspect’s protection or where the suspect is a minor, for the minor’s own welfare;(e)the suspect is serving a custodial sentence;(f)the suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.

³ Every person charged with an offence has the right, unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.

⁴ (6359/2024) [2024] ZAFSHC 376; 2025 (1) SACR 231 (FB) (25 November 2024)

⁵ (41210/2010) [2011] ZAGPJHC 74 (19 July 2011) — South Gauteng High Court, Johannesburg

⁶ Criminal Misc Anticipatory Bail Application U/S 438 CR.P.C No. 4592 of 2024 (neutral citation:2024:AHC:101220) (In the High Court of Judicature at Allahbad, India)

⁷ (HB 204/23; 111 of 2024) [2024] ZWBHC 111 (27 August 2024)

⁸ (B69-21, arising out of HMA 18-21) — S v Shamu (18 of 2021) [2021] ZWMSVHC 18 (30 March 2021)

the duty if any of the Prosecution to disclose reasons in order to assist the court in making just and informed decisions.

[17] In respect of the present case, counsel for Accused No.4 has argued that there is no material difference between the role allegedly played by Accused No.4 and Accused No.6 as they are both charged in the same count.

[18] It is lastly averred that the Prosecution have essentially grouped all the accused into one basket and made blanket statements in respect to their risks of absconding, interfering with witnesses, access to funds and resources overseas. Reference has made to *Blackstone's Criminal Practice* ⁹ where it reaffirms that the risk must be real and not fanciful and in which it explored the commonly imposed conditions of bail that could be imposed on an accused person.

[19] In reply, the Prosecution have placed emphasis on the seriousness of the offences and the involvement of Accused No.4 in the criminal enterprise. It is argued that the circumstances are very different for Accused No.4 and that the Court must take these material differences into account when determining whether to release Accused No.4. To conclude it was stated that bail conditions would not be sufficient in this instance to mitigate any risk that his release would pose.

Bail Application of Trevor Klaus Cupidon:

[20] I will now move on the application filed by Accused No.5 who is applying for bail on medical grounds.

[21] According to the affidavit in support of the motion, Accused No.5 has since the 11th March 2025 been experiencing certain ailments which has resulted in him having to consult with various medical practitioners and undergo two surgical interventions on the 16th and 23rd April 2025. Copies of the medical notes and appointment slips have been exhibited as *TC1-TC4*. It is averred that considering his current medical condition, including his ongoing symptoms and the need for further medical intervention, that it would not be suitable for

⁹ page 1692

him to remain in police custody. It is argued that his condition requires continuous monitoring, proper hygiene care, access to medical facilities and the ability to undergo necessary surgical treatments without undue delay or complications.

- [22] The Prosecution are again objecting to the application for bail and are relying on the facts and circumstances as laid out in the initial affidavit duly sworn by Detective Corporal Ruddy Pillay and the 2nd affidavit duly sworn by Detective Sergeant Stenio Cadeau in support of their reply to the present application.
- [23] The first ground for their objections is centred around the seriousness of the offence of Money Laundering and it's potential to undermine the integrity of the financial system and further facilitate criminal activity. Reference is made to the cases of *Beeharry v Republic*¹⁰, *Barreau v Republic*¹¹ and *Steve Hoareau v Republic*¹².
- [24] The Prosecution does not dispute Accused No.5's medical condition but is of the opinion that he has been receiving treatment during his detention and that he can continue to do so whilst in police custody. It is argued that there is no evidence that Accused No.5 cannot fully recuperate or undergo further medical intervention whilst in detention. Reference was made to the case of *Republic v Dubignon*¹³ in which case it was found that none of the medical reports stated in explicit terms, or at all, that Mr Dubignon's medical condition(s) were incompatible with pre-trial detention and therefore after weighing the arguments the court decided that the balance tilted in favour of the accused's continued detention as long as he was provided with all his medical needs.
- [25] According to the Prosecution the investigations have led to the determination that Accused No.5 has close connections to a cross-border drug enterprise that transacts money and controls drugs internationally because he is charged with the offences of Money Laundering which is suspected to be related to the importation of controlled drugs. As such

¹⁰ [2009] 11

¹¹ (SCA7/2011)

¹² (SCA28/2010)

¹³ (CM 14 of 2025 (Arising in CR 2 of 2025) [2025] SCSC 24

there is a substantial risk that Accused No.5 will abscond if released on bail, especially given the potential penalty he faces.

- [26] The Prosecution is also of the belief that there is a real risk of interference with evidence and witnesses if Accused No.5 is released on bail. It is averred that the investigation in this case has revealed that there is a pattern of deliberate financial manipulation, including the use of fraudulent cheque deposits, unauthorized withdrawals and foreign exchange transactions designed to evade regulatory scrutiny. It is averred that the digital evidence extracted during the investigation points to Accused No.5 having an active role in coordinating illicit transactions and knowingly engaging in activities to launder illicit funds, including using internal contacts within the banking system to bypass regulatory controls.

Submissions by Counsel:

- [27] It is argued by Counsel, Mr Juliette that Accused No.5's medical condition is very serious and that his detention in cell is making his recuperation difficult and is detrimental to his health. He thus leaves it to the Court to consider the medical information on record and to come to a determination as to whether his client's condition is such that it renders his continued detention unjustifiable.
- [28] Counsel has also brought to the Court's attention that the seriousness of the offence is but one determining factor to be considered when deciding whether to grant an accused bail. He placed particular emphasis on the averment that the predicate offence for which Accused No.5 is charged is one of 'issuing a cheque without provision' which not in his opinion a serious offence and he challenged the accusation that his client was involved in any sophisticated money laundering scheme.
- [29] It was denied that there is any real risk of his client absconding because Accused No.5's passport remains in the possession of the police authorities. Counsel also challenged the averment that his client would interfere with witnesses and it was pointed out that most of the witnesses in the present case are police officers. Lastly, the Court's attention was drawn to various cases of Money Laundering in which bail was granted by the courts.

[30] In their submissions, the Prosecution relied on their reply and the affidavits of Detective Police Corporal Ruddy Pillay and that of Detective Sergeant Stenio Cadeau along with the authorities referred to in their reply to oppose the release of the Accused No.5. Additionally, it was submitted that the seriousness of the offence is a very crucial element of the charges against Accused No.5 because the nature of his involvement in the criminal activity can be differentiated from that of A6 and A10. Prosecution argues that although the predicate offences in respect of Accused No.5 is '*issuing cheques without provision*' it was pointed out that the transactions involving Accused No.5 were for substantial sums of money as borne out in the amended charge sheet and that therefore given the total sums of cash involved it gives the Prosecution strong reasons to object to the grant of bail.

[31] It was further argued that the risk of interference with witnesses and the evidence in this case is high because of Accused No.5's connection to the criminal organization and the other co-accused, principally, A1 and Accused No.4. There is according to the Prosecution, evidence of Accused No.1 offering bribes to police officers in return for destruction of evidence and threatening co-accused and this leads to a strong risk that Accused No.5 may also interfere with witnesses and evidence if he is released on bail.

Bail application of Jerry Kerry Alcindor:

[32] Consideration will now be given to the application of Accused No.8 who has come with a fresh application for bail alleging that his continued remand violates his constitutional right to liberty and principles of justice. The crux of the application is based on the averment that there is no direct or circumstantial evidence implicating him in the alleged offences, save for a single Facebook photograph and that the Prosecution case rests solely on hearsay evidence of a co-accused. A change in circumstances has also been alleged, namely, that trial dates have been set for next year and that the docket has revealed no direct nor circumstantial evidence against the accused.

[33] The Prosecution have filed an affidavit in reply strenuously objecting to the release of Accused No. 8 on bail. It is argued by the Prosecution that there exists a 'prima facie' case against the accused for the offences as charged. They rely on the initial affidavit for remand, paragraph 36 which directly implicated the accused. Additionally, there are

communications which have been gathered, which link the accused though the use of his alias 'Jerico' to the suspected criminal activity.

[34] It is further argued by the Prosecution that no change in circumstances have been established that would justify a departure from the Court's prior order remanding Accused No. 8 into custody. Reference has made to the case of *The Republic v Terence Alphonse*¹⁴.

[35] In respect of the Constitutional considerations raised by Accused No. 8, it is maintained by the Prosecution that Article 18 (2) permits lawful restrictions on liberty where such restrictions serve the interests of justice and public order. It is submitted that his continued detention is both necessary and lawful considering the seriousness of the charges, the strength of the evidence and the risks posed by his release. Lastly, there is a continued reliance on the reasons as set out in the initial affidavit for the remand of the accused as follows: (i) seriousness of the offence as impacted by the severity of sentence; (ii) for victim protection;(iii) the accused person poses a flight risk; (iv) the accused's form part of a well-organized criminal group(s) and has links abroad; and (v) there is a potential risk for evidence tampering.

Submissions by Counsel:

[36] Counsel for Accused No. 8 was given the opportunity to address the Court and he has argued that there has been a material change in circumstances with the disclosure of the docket allegedly revealing no credible basis to establish a 'prima facie' case against his client. Additionally, Counsel has relied on the fact that the trial dates have been set for the 18th May 2026 to 12th June 2026, which he alleges will result in the prolonged detention of his client thus violating Accused No. 8's right under Article 18(7) of the Constitution. Reference was made to the case of *Valabhji v Republic*¹⁵.

[37] Counsel for Accused No. 8 maintained that his client has no documented ties to any criminal organizations or enterprises, that there no risk of absconding as he was charged previously before the courts in CR64/2023 and was released on bail with conditions which

¹⁴ (CR 47/2006) and HL V Republic (CR 41/2023)

¹⁵ (SCA CR8 of 2022)

he duly respected, that all the witnesses in this matter are police officers, that he has no criminal record, stable community ties and a permanent place of abode.

[38] Mr Revera submitted that Accused No.8 is willing and able to abide by strict bail conditions including a curfew, the continued surrender of his passport, regular reporting to a designated authority and to provide the Court with sureties that would ensure his appearance when required.

[39] In their submissions, the Prosecution relied on the affidavits of Detective Police Corporal Ruddy Pillay and that of Detective Sergeant Stenio Cadeau along with the authorities referred to in their reply in opposition to the release of Accused No.8 on bail. It was submitted that the digital evidence collected in this case has established clear links between Accused No.8, No.1 and No.4, therefore the statement that the docket disclosed no direct nor circumstantial evidence is misleading. It was further argued that there has been no change in circumstances to warrant a release of Accused No.8 and that the issue as to whether there is sufficient evidence to convict the accused will be decided at trial.

[40] In respect of the alleged extended time that the accused will spend on detention awaiting the conclusion of the trial, the Prosecution have themselves stated on record that they are agreeable to earlier dates if convenient to both the Court and Defence counsels.

Bail application of Adedoyin Adedeji Dada:

[41] Lastly, I will turn my attention the application of Accused No.9 who is also applying for a variation of the remand. The thrust of the application is grounded on the averment that there is little to no evidence to support Accused No.9's involvement in any criminal offences. He maintains that he will not interfere with witnesses, nor will he abscond and accuses the Prosecution of being vague with their statements and failing to substantiate the alleged risks posed by him if released on bail. It is strenuously denied that Accused No.9 forms part of any well-organised criminal group with links abroad and he asks the Court to consider the fact that he is married to a Seychelloise and has a fixed address and place of abode in the Seychelles as evidence to support his release.

- [42] The Prosecution are again objecting to the application for bail. It is the Prosecution's position that paragraphs 46 and 47 of the initial affidavit, establish a clear 'prima facie' case against Accused No.9 whereby the investigation has revealed digital communications with instructions to pay large sums of money for the alleged sale of illicit substances to mobile no: 2812604, which mobile number was found in Accused No.9's possession upon his arrest.
- [43] The second objection raised by the Prosecution is that there is no change in circumstances to warrant a release on bail. Reference was again made to the cases of *Terence Alphonse (Supra)* and *HL (Supra)*.
- [44] Thirdly, Accused No.9 is currently being investigated for another offence relating to controlled drugs and that therefore given his involvement in a separate investigation involving importation of drugs, there is substantial grounds for believing that Accused No.9 is at risk of committing offences whilst on bail.
- [45] The Prosecution also relies on the fact that Accused No.9 is a Nigerian national, having full residency rights abroad and connections to a cross-border drug enterprise, as substantial reasons to believe that there is a risk he may abscond, especially considering the penalty he faces if found guilty.

Submissions by counsel:

- [46] Counsel, Mr Joel Camille has submitted that the initial affidavit on which the Prosecution relies is defective as it is vague and any allegations of Accused No.9's involvement in any criminal activity is unsubstantiated. Emphasis was placed on the court's discretion to release accused persons on conditions if they pose no substantial risk.
- [47] It was argued that there is no evidence that Accused No.9 has any contact with victims or witnesses in this case, that he would pose a flight risk or that he is part of a well-organised criminal group. Additionally, other accused in the present case, have already been released on bail and as such the Court must ensure that there is parity of treatment and consistency in its decision making.

[48] Reference was also made to the fact that the trial dates in the present case had been set for 18th May 2026 to the 12th June 2026 which will result in Accused No.9 being on detention for an alleged unreasonable amount of time. It was thus argued that the most reasonable decision would be to release Accused No.9 on strict conditions such as curtailing his movement, sureties, and reporting requirements.

[49] In reply, the Prosecution contend that there is evidence to establish a strong ‘prima facie’ case against Accused No.9 and that there is no change in circumstances to warrant his release on bail. They maintained that the serious nature of the offence remains, there is evidence of Accused No.9 being involved in a well-organised criminal group with overseas connections, there remains a flight risk and considering all the circumstances, in their totality, that the balance points to Accused No.9’s continued detention.

Law and Analysis:

[50] I have carefully listened to the submissions made before the Court and I have given close and meticulous consideration to the affidavits and supporting documents in support of the applications for release of the four accused. I have also given the same consideration the affidavits in reply and their supporting documentation.

Trial date and alleged delay

[51] From the very outset and before I delve into the merit of each application for bail, I feel it is important to address the alleged delay in commencement of the trial.

[52] It is important to put on record that the trial date was set immediately after taking of the plea. The Court has made it clear that it is amenable to early trial dates. Article 19 of the Constitution is always at the forefront of my mind in that every person charged with an offence has the right unless the charge is withdrawn, to a fair hearing within a reasonable time by an independent and impartial court established by law.

[53] In the case of *Bresson & Ors v R*¹⁶ it was emphasised that where a trial cannot be completed within a reasonable time, the defendants should be granted bail. This case referred to two

¹⁶ (SCA 44/2014) [2015] SCCA 5 (17 April 2015)

European Court of Justice cases which considered how long may be too long for pre-trial detention. The first case is that of *Gonta v Romania the Court*¹⁷ and the second case of *Novruz Ismayilov v Azerbaijan*¹⁸.

- [54] The question of bail on grounds of delay in trial was also considered in the case of *Chang-Tave Percy & Ors v The Republic & Anor*¹⁹ in which reference had been made to the case of *Brioche v R*²⁰ which rightly held that:

“Pre-trial detention, including detention through trial, is an exceptional measure of the very last resort in a democratic society founded on the rule of law as the Republic of Seychelles is.... It is the joint responsibility of the law enforcement authorities, the Office of the Attorney-General, the Bar and the Courts to jealously guard this citadel of freedom of the individual from which flows the exercise of all other freedoms of our democratic society.”

- [55] It was however determined in the case of *Chang-Tave* (supra) that the case of *Brioche* (supra) was an exceptional case in which bail had been granted to the detainees by the court who had already been incarcerated for three years with no end in sight for their trial (emphasis mine). In the present matter, just like in the case of *Chang-Tave*, the detainees were charged in January of this year and their trial has been set. It cannot therefore be argued in my opinion that there is ‘no end in sight’ for this case and as such it cannot be compared to the case of *Brioche*.

- [56] Regarding the period of remand in custody, the Court of Appeal in *Beeharry* (supra) laid down that a “reasonable period” is permissible. Relying on the jurisprudence of the UNHRC, the court determined that what constitutes a reasonable period is *a matter of assessment* of each particular case. When I apply this method of assessment to present case, the trial date was agreed upon immediately after taking of the plea and was wholly dependent on defence counsel’s availability and not the court diary. It is never an easy task

¹⁷ [Application No. 38494/04] (decided on 1 October 2013 where detention from arrest to sentence for a period of two years was found in breach of a constitutional right of fair hearing)

¹⁸ [Application No. 16794/05] (decided on 20 February 2014 where detention for one year and four months on charges of a breach of revenue law was found to be unwarranted)

¹⁹ (CP 13/2019) [2020] SCCC 394 (7 July 2020)

²⁰ (SCA 20/2015) [2015] SCCA 46 (17 December 2015)

to set trial dates in cases involving multiple defence counsels who are all taken up before other courts and in this instance, I have done my utmost to secure the earliest possible dates and within a reasonable time.

- [57] I recognize that, in a democratic society, it would not be reasonable for a detainee to have served his length of sentence or more whilst awaiting trial. Therefore, the possible sentences associated with the charges faced by all accused is a key consideration when determining what constitutes a 'reasonable period'. In this case, the charges are of a serious nature and if the accused are found guilty, they are likely to receive custodial sentences significantly longer than the time required to conclude the trial. Taking all these factors into account, I do not consider the length of time that the accused would spend on remand pending the completion of this trial to be unreasonable.

Constitutional considerations

- [58] Article 18 provides a right to liberty which is not absolute and subject to permitted derogations. The permissible derogations relevant to the present case concern the seriousness of the offences with which the accused persons have been charged, the substantial grounds for believing that they would fail to appear for the trial or would interfere with the witnesses or would otherwise obstruct the course of justice or commit an offence while on release²¹.
- [59] Bail is a constitutional right provided for under Article 18(1) of the Constitution. Bail remains the rule and not the exception. As provided for in *Esparon v the Republic*²², such right can only be curtailed in exceptional cases where the Prosecution has satisfied the court that there are compelling reasons in law and on facts for remanding the accused. I agree with the Learned Judge in case *R v Joseph & Ors*²³ that although Article 18(7) provides for derogations whereby this right to liberty can be curtailed, I do not believe that this list of derogations is an exhaustive one and I agree that the court should be able to evaluate the particular circumstance of the case and exercise its discretion to decide that

²¹ See Article 18 (7) (b) and (c) of the Constitution

²² *SCA 1,2 and 3 of 2014*

²³ *CO 52/2016* [2016] SCSC 892 (15 November 2016)

there are exceptional reasons for remanding or granting bail to the accused. This position was supported in the case of *Beeharry (supra)* whereby it was held that the right to liberty is subject to the rights of others and to the public interest.

[60] In the case of *Beeharry (supra)* it was stated that –

“A person must be released unless the state can show there are relevant and sufficient reasons for continued detention, including an assessment of risks of absconding or re-offending.

Continued detention can be justified if there are specific indications of a genuine requirement of public interest, which, notwithstanding the presumption of innocence, outweighs the rule for respect of individual liberty.

To support detention, the prosecution must show a prima facie case against the accused, and where not released on bail, the accused has the right to be tried within a reasonable time.

Further, that seriousness of the offences charged and the severity of the penalty linked to that offence though relevant to a decision of whether the accused should be refused bail and denied the right to personal liberty, are not of themselves grounds for refusing bail.

[61] The Learned Judge in Joseph found support in the International Covenant on Civil and Political Rights (ICCPR) which Seychelles ratified in 1992 which provides that “*it shall not be the general rule that persons awaiting trial be detained in custody, but release may be subject to guarantees to appear at trial.*” These guarantees include conditions of reporting to the police, curfew, not committing any offences whilst on bail, not contacting or interfering with witnesses and victims or otherwise obstruct the course of justice and a total surrender of all travel documents.

Prima Facie case:

[62] All four accused have argued that there is a lack of a ‘prima facie case’ against them to warrant their continued remand to custody pending trial.

[63] I have considered the initial affidavit of Detective Corporal Ruddy Pillay and that of Detective Sergeant Cadeau. The affidavits go into length to lay out both the evidence gathered through witnesses and the digital evidence that has led to the arrest and charge of

the accused persons. I am cautious that I am not to pre-judge the case at this stage and I am only making a preliminary assessment on affidavit evidence presented before me. At this stage, I am not required to go in-depth into the evidence, for example to determine whether the evidence against an accused is inadmissible. I am only to be satisfied ex-facie that there is a prima facie case against the accused persons in the charges preferred. Hence without making a pronouncement on the merits of the case, I am satisfied at this stage that a prima facie case has been made out against all four accused persons. Being satisfied that a prima facie case exists, I must now move on to determine whether it so warrants the continued remand of all four accused persons to custody or if stringent conditions cannot make the risks of, inter alia, absconding negligible.

[64] It is a well-established principle that an accused is presumed to be innocent until he pleads or is proven to be guilty and the right to personal liberty dictates that unless the risks inherent his release on bail pending trial cannot be made negligible by the imposition of stringent conditions he should be released on bail.

[65] The reasons for which bail is being opposed are as follows: (i) seriousness of the offence as impacted by the severity of sentence; (ii) for victim protection; (iii) the accused person poses a flight risk; (iv) the accused's form part of a well-organized criminal group(s) and has links abroad; and (v) there is a potential risk for evidence tampering. I will proceed to consider each of these reasons individually below.

Seriousness of the offences:

[66] In the present case, the accused persons have been charged with the serious offences of conspiracy to import a controlled drug carrying a maximum sentence of life imprisonment and a maximum fine of SR 1 million, the offence of organizing and financing of drug trafficking carries a maximum sentence of life imprisonment and a maximum fine of SR 750,000/- and lastly the offence of Money Laundering which carries a maximum sentence of 15 years' imprisonment and a maximum fine of SR 5 million. The accused persons if found guilty are therefore likely to face serious custodial sentences.

- [67] It was held in the case of *The Republic v/s Raymond Kenneth Thomas and Robert Roland Lai Lam* ²⁴ that the seriousness of the offence does not mean only offences that carry hefty fines and/or long term of imprisonment but must also be considered in a broader perspective, including the prevalence of the offence; the prevailing tendency of such crime, the necessity to root out or curb the vice the negative impact of the offence on society; whether the offence is the act of a sole individual or a possible conspiracy involving other parties who may be directly or indirectly, openly or secretly involved; amongst others.
- [68] It is my considered view that the seriousness of the offence remains undiminished. The offences for which the accused persons are charged place the accused within the context of a transnational drug trafficking network, with significant organisational capacity, cross-border operations, and large-scale illicit proceeds. The alleged role of the Accused No.5 in laundering these proceeds is neither peripheral nor administrative and it is allegedly integral to the operation and concealment of international criminal activity. Money laundering is inherently serious, regardless of the predicate offence, because it aims to conceal or disguise the illicit origin of funds, undermining the financial system. I also take notice of the fact that there is an increase in drug related crimes in our country which are becoming more sophisticated (i.e. using financial schemes to conceal the source of funds) and that these crimes continue to have a negative impact on our society. These types of offences in my opinion must as such be considered with the upmost seriousness.

Victim Protection:

- [69] As rightly stated by Daffue J in the case of *De Bruin v S and another (supra)*, the Prosecution have a duty to establish facts which justify the further incarceration of a detained person before he or she can apply for the detainee's further incarceration.
- [70] I feel it is important therefore to lay out some brief background in respect of the present case. The Prosecution has drawn the Courts attention to the fact that this case is related two other cases before the Supreme Court²⁵. The polices interest in the present case

²⁴ (14 of 2004) [2004] SCSC 14 (07 April 2004)

²⁵ Rep v Myriam D'Unieville & others CO 63/2024 and Rep v Percy Samson & others CO 04/2025

commenced when a report was received regarding a missing individual which led to the arrest of Mr. Vincent Samson for Trafficking in Persons. Mr. Samson is now serving 10 years' imprisonment. In the year 2024, through the assistance of foreign law enforcement the Seychelles government were able to negotiate the successful recovery and repatriation of two Seychellois who are now being kept in a safe house for their own security. These individuals (hereinafter referred to as 'victims') were victims of human trafficking by an organised criminal group whereby they were recruited, transported to Iran and kept in captivity by criminals associated to the Taliban and held as drug guarantors for six years.

[71] Following extensive investigations, the authorities have been able to link all ten accused to the same organised criminal group, which was responsible for the recruitment and transportation and pro-longed captivity of the victims in Iran. The ten accused have been arrested and charged with offences related to conspiracy to import controlled drugs and Money Laundering. From the affidavit of the Investigating Police Officers, it has been established, on a prima facie basis, that upon the arrest of A1 she attempted to bribe the police officers offering large sums of money to destroy evidence. Additionally, despite Accused No.2 and Accused No.3 being incarcerated, there is digital evidence which shows that they continue to play crucial roles in the international criminal organisation. I further take note that Accused No.4 is identified in paragraphs 34 and 52 of the initial affidavit, to be the son of Accused No.1, a statement which was not disputed by Accused No.4. I further take cognisance of the fact that there is extensive digital communication which link the accused to one another and to the well-organised criminal network which is involved in many illicit activities.

[72] I need to look at this case in its totality and consider all its aspects, taking all the prima facie evidence as laid out in the affidavits into account, bearing in mind the seriousness of the offences for which they are charged and the potential sentences that they each face if convicted, the interconnectivity of the cases and the fact that these criminal activities allegedly stem from a well-organised criminal network. Having considered the various factors above, I am satisfied that there is a real risk of both victim and witness interference in this case.

Involvement of a well-organized criminal group:

- [73] I am satisfied that substantial evidence has been provided to lead to the belief that the criminal activity involves numerous individuals across borders is enough to satisfy me that on a prima facie basis the accused persons form part of a well-organized criminal group that have links abroad.

Potential flight risk:

- [74] Given that the evidence in this case points to the involvement of a well-organised criminal group, the concern that the accused may abscond if released on bail is not without merit. The evidence demonstrates that this network has established connections outside of the jurisdiction of Seychelles, in Dubai, Oman, Iran, Nigeria and Nairobi amongst other locations., I am therefore satisfied that there are substantial grounds to believe that the accused persons would have the means and access to resources, particularly through these connections to facilitate an escape by sea.

Potential risk for evidence tampering:

- [75] The risk of interference with the witnesses are also real threats to the administration of justice; one that, in my view has not been adequately dispelled. I am of the opinion that there remains a significant risk of evidence tampering. The investigation points to a well-organized criminal network running from Seychelles to Iran with key evidence indicating that Iranian nationals have travelled to Seychelles by sea to transport victims. This demonstrates the network's capacity to interfere with evidence, witnesses, and victims involved in this case.
- [76] I am satisfied that the initial reasons to deny bail continue to exist and I shall now consider whether there has been any change in circumstances that would warrant a variation of the order to remand the accused persons in custody.

Change in circumstances:

- [77] All four accused persons have each argued that a change in circumstances have occurred to warrant their release from detention. Accused No.4 shall however be treated as a first time applicant.

Delay in completion of trial:

- [78] The issue of an alleged delay has been canvassed in paragraphs 51 through to 57 above and I shall therefore not repeat my observations on this matter apart from the additional points below.
- [79] In the case of *Esparon (Supra)* the COA explored the various reasons that can cause a delay in the hearing of a case²⁶ and in the case of *Mwai and Fred (Supra)* the Learned Trial Judge observed that delay is something inherent to the criminal process unless it is inordinate or unreasonable delay²⁷.
- [80] The decision whether to remand or release an accused on bail remains at the discretion of the court. When considering whether there has been a material change to warrant a variation of the remand, I cannot consider the length of time as a factor by itself but must look at all the circumstances of the case. In this instance, the fact that this case involves very serious aspects of human trafficking, the offences of conspiracy to import illicit drugs and Money laundering cannot be ignored. I need to consider the public interest and what effect the potential release of very influential and dangerous individuals would have on society.
- [81] The present case is one of a complex nature and will require a month long sitting, from the 18th May until 12th June 2026 to hear all the witness testimony. As such, I am not persuaded that the length of time to complete the trial override all other considerations. While

²⁶ Paragraph 3: "delay to the hearing of the case can be attributed to several factors, the re-listing of the case before a Judge different from the one who was originally due to hear the case, amendment of the indictment to add two other accused... accused changing counsel, continuation of other partly heard cases on the date this case was fixed for hearing, and the difficulty to find suitable dates for hearing in an otherwise busy cause list."

²⁷ Paragraph 17: "Delay in concluding criminal cases may be for different reasons, all having to do, mainly, with the court's diary, counsel's diary and sometimes unforeseen circumstances."

prolonged pretrial detention is not ideal, it is justified in exceptional cases, particularly where serious organised crime is concerned and the potential for public harm is significant.

Medical condition of Accused No.5:

- [82] It is not in dispute that Accused No.5 is suffering from a medical condition which has required surgical intervention and continued treatment whilst on detention. What needs to be decided is whether his medical condition warrants his release from custody.
- [83] It is clear from Accused No.5's own affidavit that his medical condition is being properly managed whilst on detention. In fact, he has undergone two successful surgeries whilst on remand as set out in paragraphs 8-10 of his affidavit in support. There is no evidence on record that Accused No.5 cannot continue being successfully treated for his condition whilst in detention and contrary to the averments of counsel, there is no evidence that the condition is serious or life-threatening.
- [84] The issue of continued treatment whilst on detention has been addressed by the courts in the cases of *Republic v Francourt*²⁸, *The Republic v Valabhji and others*²⁹, *Ngui v Republic of Kenya*³⁰ which are authorities that set out the principle that where the detainee can be administered treatment in detention, the medical condition would not be sufficient consideration for release on bail.
- [85] In the case of *Republic v Dubignon*³¹ it was held that if the accused continued to have access to his medications and medical care then the balance tilted in favour of detention. The learned Judge therefore did not consider the medical circumstances of the accused in silo but as one of the factors to be considered when coming to a determination.
- [86] I take note that counsel tendered a further medical note dated 9th May 2025 to show that Accused No.5 was treated at Nova Clinic for his on-going Lipomatosis.

²⁸ [2006] SLR 21

²⁹ (04/2022) [2023] SCSC 746 (3rd October 2023)

³⁰ [1986] LRC (Const) 308

³¹ (CM 14/2025 arising in CR 2/2025)

- [87] I am therefore satisfied that the facilities and opportunities available for Accused No.5 to address his medical conditions are satisfactory to the available standards and that his condition alone does not necessitate his release from detention.

Release of two co-accused:

- [88] The principles of parity and uniformity of sentencing have been raised as a reason on which this Court should consider the release of the accused person's, principally Accused No.4. I wish to first point out that each case has its own peculiarities. As rightly pointed out in the case of *Satyendra Singh v State of U.P*³²:

"....one Judge may be impressed by a particular point not considering sufficient in law for granting bail...another Judge is free to take a different view and may refuse bail...as such bail is granted on totality of facts and circumstances."

- [89] It is my view that this principle is applicable and relevant to the present case. The decision to release Accused No.6 and Accused No.10 on bail was taken by my Learned Colleague prior to my assumption of the role of Presiding Officer. That is not to say that I would have arrived at a different conclusion, but rather to clarify that I was not part of the decision-making process. I concur with Counsel for Accused No.4 that it would have been good practice for the Prosecution to inform the Court of the reasons behind their decision not to oppose the continued detention of Accused No.6. However, our legal framework does not impose a mandatory obligation on the Prosecution to do so. Ultimately, the decision whether to detain or release an accused lies with the Presiding Officer. Accordingly, I retain my judicial discretion to adopt a different view, if I consider it just and appropriate in light of the current applications before me.

- [90] Having closely examined the affidavits before me, I am satisfied that Accused No.4's circumstances are materially different from that of Accused No.6 and Accused No.10. The Prosecution have argued that Accused No.4 took a more organisational and operation role than Accused No.6 and after considering the affidavit evidence of Detective Pillay, I would agree that in so far as the commission of the offence is concerned, the evidence against him

³² (1996) 20 All Cri R 867 : 1997 AIHC 1051

is firmer thus justifying a differentiation in treatment. Paragraphs 31 and 32 refer to digital communications extracted from mobile phones which contain WhatsApp and voice note communications between Accused No.4 and his mother, namely, Accused No.1 in which he is seen organising and facilitating financial payments and keeping his mother informed of various transaction of funds in preparation for the commission of the offence of importation of controlled drugs into Seychelles. According to the digital communications, it was Accused No.4 that was keeping his mother informed of the arrival of Accused No.6 in Dubai and as such it can be inferred that he is higher up the chain of command within the organisation than Accused No.6.

[91] In the case of *S v Samson Ruturi*³³:

“One accused may have to be treated differently from another because of certain factors, either personal or related to the offence...In the case of admission to bail on jointly charged persons may in the view of the court, be likely to abscond and the other not. One may be more likely to interfere with evidence or witnesses and the other not...and one may be more much more closely connected to the offence and more liable to be convicted and the other not...”

[92] According to paragraph 27 of the Affidavit of Detective Pillay, the investigation has led the police to believe that Accused No.1, 2 and 3 are at the head of the structure of the organised criminal group. It is further clear from the digital communications that Accused No.1 has access to large sums of money and assets of value. Bearing in mind the familial connection between Accused No.1 and No.4, it is highly likely that he too is higher up the chain of command of the structure, which would give him access to funds and increase the likelihood of interference with witnesses and victims.

[93] As stated by Zisengwe J in the case of *Shamu (supra)*

³³ *S v Ruturi* (HH 26 of 2003) [2003] ZWHHC 26 (11 May 2003) at page 9

“equal treatment does not necessarily imply similar outcomes, equal treatment to my mind means being subjected to the same objective criteria in the resolution of the matter as opposed to being subjected to whimsical or capricious considerations”

- [94] The case of *Chang-Tave (Supra)* also considered the case of *Chander*³⁴ where the court held that parity amongst accused cannot be the sole ground for granting bail when a co-accused reappplies for bail after another has been released. Further developments and other considerations must be taken into account.
- [95] The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is determined by way of application of the law, and to a large extent, by the facts and circumstances of each particular case. The principle of parity with other accused granted bail cannot prevail where circumstances materially differ. In this case, the alleged international dimension and scale of criminality, coupled with the accused's access to significant resources, distinguish him from A6 and A10 and as such parity in treatment is not relevant in this instance.

Conclusion:

- [96] I acknowledge that the Court has the discretion to grant bail to the accused person if it is satisfied that they can meet certain conditions. These conditions may include a cash bail, curfew, and reporting to the police station numerous times a day. The presumption of innocence operates in favour of an applicant even where there is a strong 'prima facie' case against him³⁵. I must however evaluate different factors that make up the criterion of the interests of justice and attempt to strike a balance between the interests of society and the liberty of the accused person. The accused complained that denying them bail was equivalent to cruel, inhumane, and degrading punishment³⁶. It is however within the purview of the court to exercise deny bail where, inter alia, the offence is serious, there are substantial grounds to believe the accused person will fail to appear for trial or will interfere

³⁴ Chander Alias Chandra vs State Of U.P. on 12 December, 1997

³⁵ S v Essack 1965 (2) SA 161

³⁶ Every person has a right to be treated with dignity worthy of a human being and not to be subjected to torture, cruel, inhuman or degrading treatment or punishment.

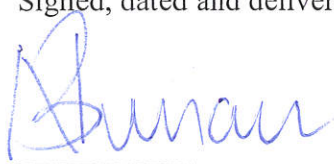
with the investigation. The right to liberty is a fundamental right enshrined in our Constitution but that liberty can be withdrawn where the individual becomes a threat to societal and legal order³⁷.

Order:

[97] Based on all the above considerations, I am satisfied that no substantial new circumstances have been raised by the Accused No.5, 8 and 9 to merit a reconsideration of their remand in custody. As such the application for variation of remand in respect of Accused No 5, 8 and 9 are denied.

[98] In respect of Accused No.4, I am satisfied on consideration of all the above facts, that a prima facie case exists to remand the accused in custody and that there are substantial grounds to believe that if released on bail he may seek to abscond, interfere with witness and victims in this case and interfere with the course of justice. Bearing in mind the international element of this offence and the large criminal network that the investigation has uncovered, the danger to society if he is released far outweighs his right to liberty and I am of the opinion that there are no conditions that would be sufficient, in mind, to mitigate this risk. The application for bail on behalf of Accused No.4 is therefore denied.

Signed, dated and delivered at Ile du Port on 30th May 2025



N Burian J



³⁷ R v Micock & Anor (CO 7/2017) [2017] SCSC 847 (4 April 2017)