

SUPREME COURT OF SEYCHELLES

	<u>Reportable</u> CO 04/2022
In the matter between:	
THE REPUBLIC <i>(rep. by Mr Georges Thachett)</i>	Republic
and	
MUKESH VALABHJI <i>(rep. by F Bonte)</i>	1st Accused
LAURA VALABHJI <i>(rep. by R Scott and ors)</i>	2nd Accused
LESLIE BENOITON <i>(rep. by B Hoareau)</i>	3rd Accused
LEOPOLD PAYET <i>(rep. by J Camille)</i>	4th Accused
FRANK MARIE <i>(rep. by J Camille)</i>	5th Accused

Neutral Citation:	<i>The Republic v Valabhji & Ors</i> (CO 04/2022) 5 th November 2025.
Summary:	Bail Application by the 1st Accused.
Before:	Govinden CJ
Heard:	8 th October 2025
Delivered:	5 th November 2025

RULING

GOVINDEN CJ

- [1] This is an Application for the release of the 1st Accused on bail conditions under Section 101(4) and (8) of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The Applicant has duly supported his application with his own affidavit together with supporting documents. He has, together with the 2nd, 3rd and 4th Accused,

together with supporting documents. He has, together with the 2nd, 3rd and 4th Accused, been on remand in custody by a decision of this Court made in accordance with Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution. The order for their detention was made following a Prosecution's application filed on the 11th of February 2022, after they were formally charged in this case.

[2] In his application Mr Valabhji moved the Court to be remanded on bail on the following conditions:

- That he shall not leave Seychelles and that his passport shall continue to be held by the Registrar of the Supreme Court.
- That he shall report to the Central Police station twice a week.
- That he shall keep a phone available with him at all material times so that he may be contactable at any time should the need to ascertain his whereabouts arise.
- That he shall provide such sureties as the Court deems fit.
- Any further and additional bail conditions that the Court deems fit and necessary in the circumstances.

[3] The applicant's affidavit is substantially as follows:

AFFIDAVIT IN SUPPORT

I, Mukesh Valabhji of Morne Blanc, Mahé, Seychelles, and presently at Bois De Rose Detention and Remand Facility, Victoria, Mahé, Seychelles, a Jain, hereby make oath and state as follows:

1. *That I am:*
 - a. *The deponent above-named; and*
 - b. *The First Accused in the case of Republic v Mukesh Valabhji and others – CR 4 of 2022 (the "Arms Case").*
2. *That I was arrested on 18 November 2021 in respect of case CR 114/2021 – The Anti-Corruption Commission v/s Mukesh Valabhji and others (the "ACCS Case") and remanded in custody.*
3. *That on 19 November 2021, I was arrested in the Arms Case and Detective Sergeant Davis Simeon applied to the Court pursuant to section 101 of the Criminal Procedure Code that I be held on remand based on the offences of:*

- a. Possession of firearms and ammunition contrary to section 84(1) of the Penal Code amended as per Section 84 act 2021; and
 - b. Purchasing, acquiring or having possession of firearms and ammunition without a firearms license contrary to section 4 of the Fire Arms and Ammunitions Act.
4. That I have been remanded in custody in the Arms Case since 19 November 2021 to date.
 5. That on 11 February 2022 I was charged with the offences as per the charges which charges have subsequently been amended on two occasions to which I have pleaded Not Guilty.
 6. That I was released on conditional bail in the ACCS Case in May 2022 and to date I have abided by the said bail conditions and have never attempted to breach these said bail conditions.
 7. That the trial in the Arms Case has been ongoing since 3 July 2023 and has now been adjourned to 13 January 2026. To date, I have been incarcerated for 3 years and 10 months, and by the time of the next trial phase begins, I will have been incarcerated for 4 years and 2 months.
 8. That throughout this almost 4 years of my incarceration, the Police and the Prison authorities, the Republic and the Court have witnessed first-hand my good conduct and my commitment to see this trial through despite the absence of counsel.
 9. That furthermore both the Police and Prison authorities have trusted my conduct when left unattended or unrestrained including on the many occasions when I have been on home visits to remove our personal belongings whereby I am left completely un-restrained for the whole day. I have repeatedly proved myself to be worthy of that trust and there is accordingly no likelihood that I would fail to surrender to Court if granted bail.
 10. That I have been advised that given that this overall period that I would have spent on remand by the time the Arms Case resumes, this calls for the Court to assess the reasonableness of my continued detention irrespective of whether any of the exceptions to the presumption in favour of bail are made out.
 11. That this is my first application for bail post Charge.
 12. That now that I have completed giving my evidence before the Court in the Arms Case, the evidential picture is radically different from when the Republic first sought my detention in November 2021. The submissions filed by my counsel on 24 June 2024 set out in detail why the proceedings should be stayed as an abuse of the court's process and why in the alternative they should be dismissed as disclosing no case for me to answer. Whilst the Court's ruling held that there was a case to answer, it acknowledged that the arguments and analysis my counsel had presented raised a number of issues which would have to be given careful consideration at the conclusion of the trial. Without going into the evidence led before the Court, it suffices to say that the evidence called during the defence case so far has served to strengthen my

position even further, demonstrating that I have no incentive to flee and every incentive to remain in Seychelles and fight the case on its merits as I have been doing until now.

- 13. That I have no intention to flee, as I have clearly demonstrated to the Court my commitment in engaging with these proceedings and showing the Republic's allegations to be false. I have represented myself since my counsel withdrew from the case (Proceedings 27 May 2025 am) and I have diligently attended Court, made preparations to represent myself and contest the charges against me. I have every reason to surrender as required by the Court to continue contesting the charges, and no reason whatsoever to attempt to leave Seychelles and embark on an isolated life as a fugitive.*
- 14. That my conduct whilst in detention and during the trial shows my commitment to contesting the charges and my adherence to all Court's orders made and guidance given by the Court. I have diligently prepared and conducted my own defence, questioning witnesses including the digital forensic expert witness, Mr. Rob Steer. I have prepared for and arranged for further defence witnesses to give evidence in my case and I have attended Court despite being sick unless excused by Court. The opportunity to clear my name is a powerful incentive to remain engaged with the trial, as I have been.*
- 15. That there are no records of me having committed any offences, misbehavior or breaching any rules or regulations of Prison throughout my entire 46 months of incarceration.*
- 16. That I have proven myself to be an exemplary inmate and have never attempted to abscond but on the contrary, I am a trusted inmate and on various occasions I have assisted the Prison Management in solving issues such as those relating to power outages/blackouts and stores management.*
- 17. That pursuant to the bail conditions set in the ACCS case, my passport which has already expired is not in my custody but with ACCS or the Registrar of the Supreme Court and I have no other travel documents whatsoever which I could travel on. It would therefore be impossible for me to leave the jurisdiction even if I wished to do so.*
- 18. That I have no other citizenships nor residencies in any other country and therefore no possibility of residing abroad.*
- 19. That all property which I hold (including the account that I jointly hold with my wife) is frozen under the terms of the restraint order obtained against me by the ACCS. This makes it impossible for me to access any of my funds locally or abroad without a Court Order even for the most basic of things such as food or toiletries.*
- 20. That my physical health has deteriorated whilst in custody and I am having to postpone required surgical procedures in view of medical advice given to me, that it is risky for me to undertake such procedures whilst in custody given my existing medical conditions and medications that I am currently on.*

21. That last year I developed Labyrinthitis, which is an inflammatory condition of the inner ear that caused me to suffer from vertigo and hearing loss in both of my ears. I have since then been seen by an audiologist, Dr. George Savy who has confirmed my hearing loss in both ears, with one ear being mildly affected and the other having severe hearing loss. I hereby produce and mark as **Exhibit MVI (a), (b) and (c)**, copies of the medical documentation relating to this condition. I am now supposed to wear hearing aid in both ears but due to the unavailability of such devices at the hospital, I have been provided with only one for one ear.
22. That upon my incarceration in November 2021, it took the over one year for the authorities to allow me to see an Optician/Ophthalmologist despite the fact that I had constantly complained of reduced vision. Last year I was diagnosed with cataract. Given the fact that I suffer from other pre-existing comorbidity conditions, namely diabetes, hypertension, high cholesterol and cardiac issues, I have been advised that there is added risk in undergoing the surgery whilst I am incarcerated. I hereby produce and mark as **Exhibit MV 2**, a report from the Consultant Ophthalmologist, Dr. Manasa confirming my condition.
23. That I was diagnosed with the following conditions:
- a. **Coronary artery disease**
 - b. **Anomalous origin of right coronary artery** (a rare congenital condition where the right coronary artery doesn't originate from the normal right aortic sinus but instead from the left aortic sinus or even the pulmonary artery).
 - c. **Hypertension with micro albuminuria** (a condition that indicated that high blood pressure has likely caused some damage to the kidneys, as micro albuminuria is a sign of increased urinary albumin excretion and is an early indicator of hypertension-mediated organ damage. This combination signals a high risk for future cardiovascular events and further renal dysfunction and requires aggressive management of blood pressure and other risk factors).
 - d. **Hypertensive heart disease** (a condition where there are structural and functional changes in the heart caused by chronic hypertension leading to thickening of the heart muscle, which can progress to heart failure, atrial fibrillation, coronary artery disease, and a higher risk of sudden cardiac death).
 - e. **Aortic sclerosis** is the thickening and calcification of the aortic valve leaflets.
 - f. **Dyslipidaemia** is an abnormal level of lipids in the bloodstream, which poses a significant risk factor for cardiovascular diseases often times referred to as high cholesterol.
 - g. **Diabetes Mellitus**

And I have undergone heart surgery prior to my incarceration and a stent has been inserted into my artery. Since my surgery I have been on blood thinners (Plavix) and was due to undergo a review with my cardiologist in Singapore in December 2021 but in view of my

incarceration I have not been able to do so. I hereby produce and mark as **Exhibit MV 3**, a report from my cardiologist, Dr. Mak Koon Hou, confirming my various medical conditions and the various medications that I am on.

24. That since my incarceration I have been undergoing temporary dental treatments for one of my wisdom tooth which I have been advised should be extracted. Recently that tooth got infected because the temporary filling, came out and I was unable to be taken to my dentist until a couple of days later as I did not have a Court order. I had to be placed on antibiotics and strong painkillers until I received your Lordship's order to be taken to the dentist. I have been advised by the dentist that I need to get off the blood thinner for a couple of weeks prior to having the tooth extracted to lower the risk of excessive bleeding and that I will need to have the tooth extracted under surgical conditions under supervision of a doctor instead of in a dentist's chair given my other comorbidity conditions. On the other hand my cardiologist is not able to give the go ahead for me to be taken off the blood thinner without doing a full and complete evaluation of my condition as there is an increased chance of blood clots, which can lead to serious and potentially fatal conditions such as a stroke, heart attack or pulmonary embolism. I have requested a report from my dentist on my condition but however, his clinic is closed until 6th October 2025. I hereby produce and mark as **Exhibit MV 4**, a copy of the notice displayed at the clinic of my dentist confirming his unavailability. I shall endeavour to provide the report by the hearing date of the Bail Application on the 8 October 2025.
25. That one of the medications that was placed on by my doctor in Singapore is nifedipine for which I was reviewed annually and my dosage adjusted accordingly. Since my incarceration, I have not been able to have such follow up and for the past 2 years I have been suffering from swelling in my feet and ankles. The cardiologist who saw me here in Seychelles last year informed me that they were unable to concretely state what is causing this edema, but however informed me that the prolonged use of nifedipine which is a calcium channel blocker can cause this edema and another possible cause could be poor blood circulation. Until now I have not been able to receive any treatment for this condition nor has any doctor adjusted my dosage nor switch me to any alternative medication.
26. That beginning late last year I started suffering from several episodes of dizziness and blackouts and upon undergoing various tests, I have been diagnosed as suffering from a C5-6 left paramedian disc-osteophyte complex causing ventral canal and left neural foraminal stenosis which has been explained to me as a condition where there disc degeneration and formation of bone spurs in the C5 and C6 vertebrae in my neck which is pressing on my spinal cord. This is causing me arm pain and numbness. As a result of this diagnosis, I have been placed on trice weekly physiotherapy to see if there is any improvement failing which surgery is the alternative. I hereby produce and mark as **Exhibit MV 5** a copy of the report of Dr Olena Koalska confirming my medical condition.
27. That a release on bail would enable me to undergo the different medical procedures that is required and allow me to properly recuperate in time for the resumption of the trial in January 2026.

28. I am advised that 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* SCA 1, 2 and 3 of 2014 paragraph (45) 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. In *Esparon*, the Court of Appeal held that:

'Bail also walks in the shadows of a criminal case in as much as the Court before whom a defendant appears may well move that the Court should grant him bail because the case is taking too long. The Judge may, for good reason, grant him bail on being satisfied that the case is taking too long, the defendant is one that will not abscond, the facts are too tenuous against him and for many other reasons such as there have been a change of circumstances since the decision to deny him bail.'

29. I am advised that in the above mentioned case, the Appellants had spent just over 1.5 years in remand and they had been charged with possession of firearms and ammunitions, drug trafficking and possession of turtle meat and their trial was scheduled to be completed within one month of their appeal regarding bail. In that case the Court of Appeal stated that:

"It is quite likely that, despite the mandatory nature of the sentence, the appellant subject to evidence adduced against him of a more serious nature, be visited by a sentence which is below the period he will have spent on remand if he is kept in custody till the trial is over ... It is not permissible in a democratic society that a detainee awaiting trial should have served his sentence before trial."

30. I am advised that, that the UN Human Rights Committee ("UNHCR") General Comment No. 32 (2007) as [35] states that:

'The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice. What is reasonable has to be assessed in the circumstances of each case, taking into account mainly the complexity of the case, the conduct of the accused, and the manner in which the matter was dealt with by the administrative and judicial authorities. In cases where the accused are denied bail by the court, they must be tried as expeditiously as possible. This guarantee relates not only to the time between the formal charging of the accused and the time by which a trial should commence, but also the time until the final judgment on appeal. All stages, whether in first instance or on appeal must take place "without undue delay."

31. I am advised that the European Court of Human Rights ("ECtHR") found a violation of rights in cases that involved pre-trial detention of 2 years and 4 months (*Gonta v Romania* (Application No. 38494/04)) and 1 year and 4 months (*Ismayilov v Azerbaijan* (Application No. 16794/05)). The former case involved an international drug trafficking network.

32. I am advised that in a previous bail application concerning the 3rd Accused in this Arms Case, the Court stated that it is inspired by decisions of international tribunals, such as those of the ECtHR and the UNHCR by virtue of the provisions of Article 47 of the Constitution.
33. I am advised that in respect of the same application, the Court expressly stated that the duty to determine whether detention has become unreasonable applies even where there are otherwise sufficient reasons to justify detention. This is the two-step process laid down by the jurisprudence of the ECtHR, (See Ruling on the motion for bail in respect of the 3rd accused, Republic v Valabhji & Ors [COO4/22] [2023] SCSC 7, paragraph [11-15] and [20]).
34. In that application the Court held at paragraph 24 of its Ruling that it was “too premature and hypothetical” for Mr. Benoiton to invoke the unreasonableness of the length of his detention by reference to a projected (likely) overall detention of 2 years. In my case I have been in actual detention for almost double that period of 2 years and I have shown several reasons that justifies that I be released on bail as well as the absence of any justifiable reasons for my continued detention.
35. None of the UNHCR or ECtHR cases of the Seychelles Court of Appeal case considered by the Court in previous bail applications in this Arms Case involved periods of detention as long as the 4 years that I am about to complete, let alone the 4, 5 years that I will have completed by the time that this trial is scheduled to be completed if I am not released on bail. The longest period under consideration in the cases cited was 2 years and 4 months (which was held to be unreasonable in a case involving an international drug trafficking network) which I would say is as serious if not more serious than the offences I have been charged with.
36. I am advised that the test (known by the ECtHR) as the ‘Labita test’ – deriving from Labita v Italy (Application No. 26772/95)) is whether the prosecution has displayed “special diligence in conducting the proceedings against a defendant”. Put another way: “The fundamental criterion is the assessment of the authorities’ behavior. Particular importance has to be attached to the presence of ‘downtimes’ in the proceedings.” The Republic has in no way demonstrated ‘special diligence’ in its prosecution of this trial.
37. On the contrary, there are many clear examples of inactivity by the Republic and delays in its prosecution of this case which is due to the Republic’s fault such as:
- a. The prosecution took from July 2023 until April 2024 to present its evidence. This period included significant ‘downtimes’ of a week or weeks at a time (in September, October, November, December, and early January). It also included several ‘downtimes’ when no prosecution witnesses were available to attend court, or when the proceedings had to be adjourned due to late disclosure.
 - b. Despite the Republic claiming to have been read for trial in December 2022, failure to process and examine digital devices seized in November 2021 resulted in late disclosure of digital evidence relied upon by the Republic in October 2023.

- c. Similarly, a huge number of additional witness statements were served during the trial (some served as late as 29 February 2024 – statement of Major Ferdinand Payet) and new witnesses were added to the Republic's list.
- d. Failure of the Republic to obtain a summon against President James Michel until 26 February 2024, more than a year after the Court was told (in connection with the application for bail by Mr. Benoiton) that summons had been issued to all prosecution witnesses. This late attempt to secure the attendances of Mr. Michel (the timing of which was never explained by the Republic) caused significant further delay to the close of the prosecution case.
- e. The Republic then sought an adjournment of the close of its case on the grounds that it required time to examine the non-LPP contents of the 2nd Accused's digital devices.
- f. Even after I had started preparing my evidence, the Republic sought a lengthy adjournment during the voir dire relating to Item D 13 in order to instruct a forensic document examiner and then spent further court time on an unsuccessful application for that expert to give evidence via video-link. I closed my case in the voir dire on 11 March 2025 but the Republic then took nearly three weeks to close them on 30 March 2025.

For all those reasons I have stated above, it is impossible for the Republic to be able to claim that it has acted with 'special diligence' in conducting its case against me.

- 38. *That in the ACCS Case, ACCS, which initially was relying on the same grounds as the Republic is namely the seriousness of the offence, flight risk, tampering with witnesses and commission of further offences if I was granted bail, quickly realized that all these reasons were not justifiable and therefore offered me bail in May 2022 on only 2 conditions, namely, the surrender of my passport and for me not to leave the jurisdiction.*
- 39. *That after almost 4 years in remand, I have not proved that none of the grounds being relied by the Republic to remand me and that there are several changes in circumstances namely in respect of my health, the extremely long period of time that it is taking to complete this trial, and the change in the evidential picture since I was charged.*
- 40. *That all averments contained in paragraph 1 to 39 above are true to the best of my knowledge, information, advice and belief.*
- 41. *That the stringent conditions for bail that I am proposing are:*
 - (1) *That I shall not leave Seychelles and that my passport shall continue to be held by the Registrar of the Supreme Court.*
 - (2) *That I shall report to the Central Police station twice a week.*
 - (3) *That I shall keep a phone available with me at all material times so that I may be contactable at any time should the need to ascertain my whereabouts arise.*
 - (4) *That I shall provide such sureties as the Court deems fit.*

(5) Any further and additional bail condition the Court deems fit and necessary in the circumstances.

42. I am willing to abide by and conditions of bail this Court may impose.

- [4] The applicant made oral submissions in support of his application and it can be summarized as follows;
- [5] The primary reason for this bail application, after almost four years on remand, is the applicant's significantly worsening health. He avers that he suffers from multiple severe cardiac conditions, including coronary artery disease with a stent, a rare artery origin, hypertension, hypertensive heart disease, aortic sclerosis, and high cholesterol, diabetes, hearing loss, foot and ankle swelling, cataracts, and spinal degeneration, all requiring complex medical management and potential surgeries that cannot be safely performed in prison.
- [6] The applicant highlights that individuals with less severe medical conditions have previously been granted bail in other cases, including drug trafficking and arms cases, demonstrating that health issues can be a compelling factor for release.
- [7] The applicant asserts a constitutional right to bail under Article 18(7)(b) and (c), citing legal precedents that emphasize bail as a fundamental right that should not be arbitrarily denied, unless there are compelling reasons in exceptional cases.
- [8] He submitted that all prosecution witnesses have already given their testimonies, eliminating any risk of the applicant interfering with them, and there have been no complaints of such attempts over the past four years. With no jury, all suspects charged, investigations complete, and the prosecution having closed its case, the risks of intimidating jurors, warning other suspects, or destroying evidence are non-existent.
- [9] Despite nearly four years on remand, the applicant submitted that he has maintained an exemplary record, never committing any offense or breaching prison regulations, and his good character, adherence to rules, and clean police record demonstrate he is a law-abiding citizen.

- [10] The applicant also submitted that he possesses no other citizenship or permanent residency, his only passport is expired and held by authorities, all his accounts and valuables are frozen, and his businesses cannot make payments without court orders, making it impossible for him to leave Seychelles.
- [11] The applicant stated that is highly motivated to continue the trial to clear his name, expose what he perceives as weak evidence and discrepancies from the prosecution, and has diligently engaged with court proceedings for four years, even when ill. He argued that he has had ample opportunities to abscond (e.g., when remand was forgotten, or during visits home with minimal supervision) but never attempted to do so, demonstrating his commitment to the legal process.
- [12] According to him the Anti-Corruption Commission Seychelles (ACCS), which initially objected to bail, later agreed to minimal bail conditions, implying they assessed the risks, including absconding, and concluded it would be impossible for him to flee given his lack of travel documents, funds, and other citizenship.
- [13] He goes on to submit that Legal precedents establish that the seriousness of the offense is only one factor, and not the sole determinant for bail; it only becomes relevant if there are substantial grounds for believing that other risks, such as absconding or interference, exist. The correct approach is to presume bail, then assess if exceptions in Article 18(7)(c) apply. If not, the seriousness of the offense is irrelevant. If exceptions apply, the court must consider if substantial conditions can eliminate or reduce those risks.
- [14] He submitted that his exemplary behavior and conduct as an inmate and before the court throughout the entire four years, combined with his clean police record, further support his bail application and that he would have spent approximately 4.5 years in prison by the expected completion of the trial in April 2026, which he argues is an unreasonable length of time.
- [15] Finally, the applicant believes the prosecution's evidence is weak, full of discrepancies, and will be further undermined by his witnesses, providing him with a strong incentive to see the trial through rather than abscond.

- [16] The Republic chose not to file any formal reply to the application. However, Learned Counsel for the Republic strenuously opposes the Application to be remanded on bail in his submissions in reply, which can be summarized as follows;
- [17] The case is at an advanced stage, with the prosecution having closed its case, a “no case to answer” motion rejected, and the defence case nearing completion, distinguishing it from typical pre-trial bail applications. There is a real danger the accused may abscond, especially since the “*pinch of the case has been felt*” and the trial is going badly for them.
- [18] Books on “*How to disappear and start a new life*” were seized from the accused, indicating a potential intent to flee.
- [19] The prosecution further submitted that accused faces very serious charges involving firearms and terrorism counts. A previous Supreme Court ruling (*Republic v Dubignon*, 1998 SLR 47) supports denying bail at an advanced stage, similar to this case where bail was sought after 27 prosecution witnesses. Bail guidelines suggest refusal once a trial has begun if there is a real danger of absconding or interfering with witnesses or jurors.
- [20] It is the Republic’s contention that the accused’s medical conditions are not a sufficient reason for bail, as there is no evidence they cannot be managed while in custody. The accused has already been allowed to attend physiotherapy sessions at the hospital on alternate days while in custody. And that there is no evidence presented that the specific medical procedures required cannot be undertaken or treated effectively during detention. The applicant’s intention to undergo treatments in Seychelles if released on bail suggests these treatments are locally available and thus potentially accessible in custody.
- [21] Accordingly the prosecution submitted that there are no new circumstances to justify granting bail at this advanced stage of the trial. The reasons for denying bail under Article 18 (7) (c) regarding absconding remain relevant.
- [22] The prosecution finally submitted that the defence case is steadily proceeding, and the trial is set for continuation from January 2026, indicating imminent closure. The application for bail should be dismissed. A direction should be given to the Prison to ensure the accused receives any required further medical treatment.

Legal and Constitutional provisions

- [23] In an appeal against a similar Ruling, made by the 2nd accused in this case, in SCA CR08/22, the Court of Appeal had set out the applicable law pertaining to bail. This Court in considering the issue arising in this application has apply each and every principles enunciated by the apex court in that decision. Those fundamental legal principles relevant to bail as a whole bears repeating in this decision regardless of how familiar they are to the court.
- [24] Our law on bail is laid down in the Constitution of the Republic of Seychelles. Chapter III of the Constitution of the Republic of Seychelles is interpreted in accordance with Article 48 as follows -

“Consistency with international obligations of Seychelles

This Chapter shall be interpreted in such a way so as not to be inconsistent with any international obligations of Seychelles relating to human rights and freedoms and a court shall, when interpreting the provision of this Chapter, take judicial notice of—

- a. the international instrument containing these obligations;*
- b. the reports and expression of views of bodies administering or enforcing these instruments;*
- c. the reports, decisions or opinions of international and regional institutions administering or enforcing Conventions on human rights and freedoms;*
- d. the Constitutions of other democratic States or nations and decisions of the courts of the States or nations in respect of their Constitutions.”*

- [25] Chapter III, Part I of the Constitution of the Republic of Seychelles is titled the Seychellois Charter of fundamental human rights and freedoms. The most relevant applicable provisions of our Constitution to the facts in issue are the following;

- [26] The right to a fair trial and public hearing is provided for under Article 19 of the Constitution of Seychelles:

“(1) 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.”

(2) Every person who is charged with an offence –

(d) has a right to be defended before the court in person, or, at the person's own expense by a legal practitioner of the person's own choice, or, where a law so provides, by a legal practitioner provided at public expense;

(c) shall be given adequate time and facilities to prepare a defence to the charge [...]”

- [27] On the other hand, the guarantee of the right to personal liberty and the circumstances in which a person may be deprived of his or her liberty pursuant to fair procedures established by law are contained in Chapter III, Part I, Article 18 of the Constitution of the Republic of Seychelles which states the following;

“18(1) Every person has a right to liberty and security of the person.

(2) The restriction, in accordance with fair procedures established by law, of the right under clause (1) in the following cases shall not be treated as an infringement of clause (1)-

(a) the arrest or detention in the execution of a sentence or other lawful order of a court;

(b) the arrest or detention on reasonable suspicion of having committed or of being about to commit an offence for the purposes of investigation or preventing the commission of the offence and of producing, if necessary, the offender before a competent court;

(3) A person who is arrested or detained has a right to be informed at the time of arrest or detention or as soon as is reasonably practicable thereafter in, as far as is practicable, a language that the person understands of the reason for the arrest or detention, a right to remain silent, a right to be defended by a legal practitioner of the person's choice and, in the case of a minor, a right to communicate with the parent or guardian.

(4) A person who is arrested or detained shall be informed at the time of the arrest or detention or as soon as is reasonably practicable thereafter of the rights under clause (3).

(5) A person who is arrested or detained, if not released, shall be produced before a court within twenty-four hours of the arrest or detention or, having regard to the distance from the place of arrest or detention to the nearest court or the non-availability of a judge or magistrate, or force majeure, as soon as is reasonably practicable after the arrest or detention.

(6) A person charged with an offence has a right to be tried within a reasonable time.

(7) 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. "

[28] Bearing in mind the applicable Constitutional provisions, it is important to reiterate that to automatically order detention of a defendant in a criminal proceeding would be contrary to the basic entitlement to be granted bail. Since the inception of our democratic constitution and despite the wordings of Section 179 of the Criminal Procedure Code, our courts no longer enjoys a discretion in this instance. The Defendant has to be released once his or her continuing detention pending trial ceases to be constitutionally valid. By virtue of the provisions of Article 48 of the Constitution, the courts are required to take judicial notice

of decisions of both domestic and international tribunals established under constitutions similar to ours. To this extent, just as the Court would be bound to follow the guidance of our Court of Appeal, it should also stand to be persuaded by the decisions cited by both parties to this motion.

Analysis and Determination

- [29] I have carefully considered the legal arguments advanced by the Applicant and the Respondent with regards to the legal and constitutional provisions applicable to the facts before the Court. I have also carefully considered the submissions made before the Court and have given close and meticulous attention to the application, its supporting affidavit and attached documents. The same consideration has been given to the submission in reply. Having done so, I have come to the following determination.
- [30] In the previous Ruling made in a bail application decision in this case this court also made these two pronouncements, namely that;
- [31] The continued remand of the accused can only be justified where there are substantial factual grounds allowing the Court to believe that the requirements of Article 18(7) of the Constitution have been met. In such circumstances, notwithstanding the presumption of innocence, detention will prevail over the right to individual liberty. The burden of proof rests on the Republic, which must be discharged beyond a reasonable doubt. These substantial reasons correspond to the four *pericula libertatis*: the risk of escape, risk of evidence tainting, risk of offence commission and risk to public order. In this case, the Court is once again invited to assess and rule on whether the four *pericula libertatis* still exist.
- [32] When considering the issues relating to the closure of the prosecution case and bail applications, the Court finds the submission of the Applicant to be misguided given that it is known that the closure of the prosecution case is only part of the normal progression of the trial process. There is nothing exceptional that creates a groundwork for a bail application as each case has to be decided on its own basis. A particular case can perfectly create the foundation for such an application, whilst another will not. It is in this context

that the Court's determination with regards to assessing the strength of the prosecution case should be taken, which is but one factor in considering whether requirements of Article 18(7) has been met by the prosecution at this stage of the proceedings.

- [33] The Court's position has not changed on those two principles and they are taken up; maintained and made as part of its reason for determination in this Ruling.

Application based on medical grounds

- [34] In the Constitutional Court case of *Soopramanien v Government of Seychelles & Ors* (MA 12 of 2025 (Arising in CP 05 of 2024)) [2025] SCCC 4 (5 June 2025) the Petitioner filed an application on January 23, 2025, seeking an urgent order for the applicant to receive overseas medical treatment, as a plastic surgeon's report indicated that the required "free flap" procedure and multidisciplinary care are unavailable in Seychelles.
- [35] The applicant, an inmate, claimed to have sustained severe injuries, including being shot with live ammunition and rubber bullets while handcuffed, during a prison disturbance on December 6-7, 2024, leading to a tangible risk of leg amputation. He also sought full disclosure of all medical records (including X-rays, CT scans, medication details, and information on bullet fragments), claiming current disclosure was incomplete and prevented informed consent for impending surgery. The applicant also requested an order for the respondent to facilitate a second medical opinion from an independent specialist, ideally before any irreversible surgical procedures. The applicant asserted that the treatment endured constituted inhumane and degrading treatment, violating Articles 16, 18, and 29 of the Constitution. The applicant specifically complained that medical reports did not mention gunshot injuries or show X-rays of bullet fragments, despite having lost sensation in the leg, muscle, and fat.
- [36] The 4th respondent in that case (Health Care Agency) stated that all medical records and reports had been fully disclosed to the applicant's representatives and that the applicant has received proper and adequate medical care, with no current life-threatening situation. It countered that the "free flap" is only one treatment option, the applicant's clinical condition was dynamic, and the applicant declined assessment by a local plastic surgeon on January

24, 2025. The 4th respondent affirmed it had not obstructed a second medical opinion, provided it came from a doctor licensed in Seychelles.

- [37] In coming to its decision the Constitutional Court found that the applicant was receiving comprehensive medical care from multiple specialists at the Seychelles Health Care Agency. These specialists were providing timely interventions, including surgeries and ongoing treatment for infections. The court highlighted that the treatment protocols followed by the local healthcare system aligned with international standards, ensuring that the applicant's medical needs are being met adequately within the country. The court had already facilitated the applicant's access to second medical opinions, which further demonstrated the state's commitment to providing thorough medical evaluations.
- [38] The Overseas Treatment Act mandates that all possible local treatment options must be exhausted before considering overseas care. The applicant's refusal to be assessed by a local plastic surgeon was seen as a failure to fulfill this requirement. The Act outlines a detailed process involving referrals and endorsements by local specialists, which had not been fully pursued by the applicant. The court emphasized that these steps are necessary to ensure that overseas treatment is genuinely warranted.
- [39] The court reiterated that there is no legal authority under the Prisons Act or other relevant laws for a court to order a prisoner's release for medical treatment abroad without adhering to the established statutory processes. Concerns about maintaining lawful custody of the prisoner while ensuring necessary medical care were also considered, highlighting the balance between individual rights and institutional security.
- [40] The Constitutional court acknowledged international human rights obligations, such as the right to dignity and humane treatment, and reiterated the state's duty to provide medical care that respects these rights. The court referenced past cases where prisoners received overseas treatment under exceptional circumstances, emphasizing that such cases require thorough justification and adherence to legal frameworks.
- [41] The court concluded that the applicant's medical treatment within Seychelles was adequate and consistent with constitutional and international obligations. The refusal to engage fully

with local medical assessments and the absence of a legal framework to support overseas treatment without meeting statutory criteria led to the dismissal of the bail application on medical grounds.

- [42] This landmark decision has been followed by a number of decisions in this jurisdiction. Having thoroughly considered these decisions in the light of arguments presented by the applicant, the Court has come to the following determination regarding the application based on the applicant's medical condition.
- [43] Having considered the totality of the facts and circumstances of the case, the application and the various submissions made by both parties in the light of this Constitutional Court decision, this court finds that the applicant is receiving medical care consistent with international standards, administered by multiple specialists within Seychelles. The Court finds no evidence of inadequate treatment or any contravention of the applicant's constitutional rights to healthcare.
- [44] The Overseas Treatment Act requires all local treatment options to be exhausted before considering overseas treatment. In *Soopramanien* (supra) the applicant's refusal to be examined by a local plastic surgeon obstructed the fulfillment of these requirements. The process of eligibility for overseas treatment involves recommendations and assessments by local specialists, which were not fully pursued by the applicant. No statutory authority exists under current laws, including the Prisons Act, to allow for the release of a prisoner for medical treatment abroad without following the due process outlined in the Overseas Treatment Act. The court in *Soopramanien* emphasized the need for adherence to these legal frameworks, which apply universally to all citizens. Past cases, such as the case of Mr. Tony Dubignon, suggest that exceptional circumstances could warrant overseas treatment, but these are subject to rigorous legal and procedural conditions. The court reiterated the state's obligation to provide equivalent specialist treatment within Seychelles if overseas treatment is not feasible.
- [45] This Court agrees that health issues can be a compelling factor for release of an accused from custody. However, on the facts and circumstances adduced before this Court, it is clear that the applicant's current medical treatment is appropriate and consistent with what

any detainee would receive, and there is no legal basis to grant the bail application for treatment abroad or in Seychelles. At any rate as the proceedings in this case would reveal, the applicant has consistently been given sufficient time and opportunities to visit medical specialist in order to address his medical conditions.

[46] As to the other grounds adduced by the applicant, this Court finds as follows;

[47] Based on the evidence before the Court, the application for bail is hereby denied. The court finds that the accused's case involves serious charges, which significantly heighten the risk of absconding or interfering with the due course of justice. The gravity of the charges indicates a greater likelihood that the accused may attempt to evade prosecution or obstruct the judicial process, thereby compromising the integrity of the proceedings.

[48] Although the applicant has argued that health concerns and the absence of witnesses' intimidation risk weigh in favor of granting bail, these factors do not outweigh the serious nature of the charges and the potential danger posed by releasing the accused at this stage. In balancing the interests of justice and society's need for accountability, the Court concludes that denying bail is justified to preserve the integrity of the judicial process and ensure the accused's appearance for trial. The Court notes that all relevant witnesses have already testified, and investigations are complete, reducing concerns of witness interference. While the applicant's exemplary conduct, clean police record, and the lengthy period already spent in custody are positive indicators of the applicant's demeanor and commitment to appear for trial, these factors do not constitute a material change in circumstances sufficient to justify granting bail at this stage, particularly given the seriousness of the charges involved.

[49] The jurisprudence emphasizes that the correct approach is to presume bail, and then assess whether any exceptional circumstances, as outlined in Article 18 (7) (c), apply. In this case, the seriousness of the charges indicates the presence of significant risks, such as absconding or interference with the course of justice, which cannot be dismissed solely based on good conduct or the perceived strength of the defence.

- [50] Furthermore, for these factors to justify a change in the bail status, the Court would need to be satisfied that conditions could be imposed to effectively mitigate the risks associated with the specific circumstances of the case. Given the gravity of the charges and the substantial potential risks, these positive factors do not outweigh the need to safeguard against such risks.
- [51] Therefore, while the applicant's behavior and the detention period are relevant considerations, they do not amount to a sufficient change in circumstances to override the presumption against bail in serious cases. The risks associated with the nature of the charges remain significant, and in the absence of conditions capable of adequately mitigating these risks, bail cannot be granted.
- [52] The issue of trial within a reasonable time has no doubt arisen in this application. In this regard, the Court has come to the following findings. The adage "Justice delayed is justice denied" underscores the importance of timely justice, as recognized by the European Court of Human Rights (ECtHR). Prolonged uncertainty undermines the rule of law and can amount to a denial of justice. Article 6 § 1 of the ECHR guarantees the right to a fair trial, which implies that the trial must be timely, effective, and secure.
- [53] Conversely, "Justice hurried is justice buried." Swift proceedings should not compromise justice quality. The term "within a reasonable time" under Article 6 ECHR protects against avoidable delays, not all delays. Under criminal law, Article 6 § 3 (b) of the ECHR ensures adequate preparation time for defence, which must not be sacrificed for speed.
- [54] Even when valid reasons for detention exist, the ECtHR requires assessing whether the detention period is objectively reasonable. The notion of 'reasonable length' cannot be precisely defined in terms of days or months (ECtHR, *Stogmuller v. Austria*). (1971-1980) 1 EHRR 155 61 /1.
- [55] To evaluate reasonableness, the ECtHR considers: (a) case complexity, (b) defendant behavior, and (c) authority conduct. Complexity includes factors like multiple defendants or international letters of request (ECtHR, *Naudo v. France*; *Application 35469/06*,

Judgment 8 October 2009; ECtHR, Dzeilli v. Germany) Application no 65745/01, Judgment 10 November 2005.

- [56] Distinguishing between legitimate rights exercise and dilatory abuse is challenging. The Court cautiously views appeals as insufficient justification for extended detention (ECtHR, *Toth v. Austria*) Application no 11894185 , Judgment 12 December 1991

The primary criterion is assessing authority conduct, specifically their diligence, known as the ‘Labita test.’ Decided in the case of *Labita vs Italy* , Application no. 26772/95, Judgment 6 April 2000

- [57] Prolonged trials with periods of inactivity are deemed unreasonable. The reasonableness of detention must be considered in context. Criteria affecting trial length need evaluation, considering similar cases and trial durations. When assessing reasonable time compliance, the Court determines the starting and ending points of the period. Complaints often concern overall proceeding lengths, though the Court may focus on specific judicial stages.
- [58] The case time computation starts when the first applicant was remanded, on November 21, 2021, as per section 101 of the Criminal Procedure Code. This aligns with when liberty was restricted, consistent with the Human Rights Committee’s view in *Xavier Evans v Trinidad and Tobago*. Communication No. 908/2000. The applicant predicts trial completion may extend beyond the time fixed for continuation early next year. If due diligence is brought to bear by all parties this will not happened.
- [59] The applicant focuses his application on his actual detention period. The Court however will have to determine whether the period of pre-trial of detention constitutes unreasonable delay, taking into account the complexity of the case, applicant’s conduct, authority’s behavior, and the stakes for the applicant. Having considered all the relevant facts and circumstances contributing to the delay, the Court finds that the complexity of the case, including procedural challenges, multiple charges, multiple defendants, and international

evidence, constitute substantial factors causing the delay. The delay therefore meets the *Labita test*.

[60] Accordingly, the Court finds that the remand in custody period of the applicant is still within the reasonable time limit and as such there has been no violation of Article 18 and 19 of the Constitution or international precedents as aforementioned. Further, that the Republic has again managed to prove beyond a reasonable doubt that there are substantial grounds to believe, that if released, the Applicant would at this crucial stage of the proceedings abscond and defeat the due course of justice, if he is enlarged on reasonable bail conditions. This court will continue to treat the applicant's health conditions with the highest consideration and hence keep this order under review with a view to affording the applicant continued access to full medical services as and when this is required, in accordance with his constitutional rights.

[61] Accordingly, I will dismiss the 1st accused application to be released on bail.

Signed, dated and delivered at Ile du Port on the 5th of November 2025


Govinden CJ