

**IN THE REPUBLIC OF TRINIDAD & TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV2016 –01612**

**IN THE MATTER OF THE HABEAS CORPUS ACT, CHAPTER 8:01**

**IN THE MATTER OF AN APPLICATION OF  
LAURENT PRET SOUOP  
FOR THE ISSUE OF A WRIT OF HABEAS CORPUS AD SUBJICIENDUM  
AGAINST THE CHIEF IMMIGRATION OFFICER**

**Between**

**LAURENT PRET SOUOP**

**APPLICANT**

**AND**

**THE CHIEF IMMIGRATION OFFICER**

**AND**

**THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO**

**RESPONDENTS**

**Before Her Hon Madam Justice Eleanor Donaldson-Honeywell**

**Appearances:**

**Mr Fareed Scoon and Mr. Ricky Pandohie, Attorneys-at-Law for the Applicant**

**Mr. Sanjeev Lalla, Ms. Tamara Toolsie and Mr Brent James, Attorneys-at-Law for the Respondent**

**Delivered on October 9<sup>th</sup>, 2017**

## **Ruling**

### **I. Introduction**

1. The Applicant, Laurent Pret Souop, has been detained at the Immigration Detention Centre in Arima since being arrested at Piarco Airport on May 11, 2016. He is challenging the lawfulness of his detention.
2. He is a citizen of the Republic of Cameroon who entered the country lawfully in 2013 but thereafter overstayed his permitted time in Trinidad. Following this, he sought and was granted an exemption from the Minister of National Security on 3<sup>rd</sup> May, 2016. He was, however, detained at the airport on the date of his flight out of the country and is now being held at the Immigration Detention Centre, Aripo.
3. The core of the disputed circumstances that led to his detention relate to the suspicions of the Respondents surrounding the Applicant's flight itinerary and the legitimacy of his attempted departure from Trinidad.
4. The Applicant contests his detention as unjustified. Accordingly, by Notice of Application filed pursuant to the **Habeas Corpus Act, Chapter 8:01** on May 13, 2016 and then amended on May 16, 2016 these proceedings commenced. The length of time he has been in detention is also being challenged and the Applicant seeks to be brought before the Court.
5. The powers of the Court when a person in detention is brought in by way of Habeas Corpus order extend to mandating the release of the detained person if continued detention cannot be justified.

### **II. Decision**

6. I have decided to order that the Applicant be brought before the Court for my further determination as to whether he should be released. This decision is made having

considered the Affidavit and submissions filed by the Applicant as well as affidavits filed on behalf of the Chief Immigration Officer and the Attorney General. Further information on the detention conditions is required for my determination. The hearing to which the Applicant will be brought will be followed by a visit to the Detention Centre. This will be done so as to take into account the conditions of the Applicant's detention before making a decision on whether he will be released.

### **Factual Background**

7. The evidence is outlined in the following affidavits:
  - i. Affidavit of the Applicant, Laurent Pret Souop, filed on 13 May, 2016
  - ii. Supplemental Affidavit of Laurent Pret Souop, filed 1 June, 2016
  - iii. Affidavit of Ryan Roopnarine, Immigration Officer II, for the Respondents, filed 24 June, 2016
  - iv. Affidavit of Gewan Harricoo , Immigration Officer IV (Enforcement)for the Respondents, filed 24 June, 2016
  - v. Affidavit in Response of Laurent Pret Souop, filed 5 July, 2016
  - vi. Affidavit dated 5 July, 2016 in support of the Applicant filed by Susan Assing, Manager of Susie's Travel, the Agency from which his travel itinerary was arranged.
  
8. The material facts of the case are contained in these affidavits and summarised below.
  
9. The Applicant was permitted entry into Trinidad in April, 2013 as a tourist/visitor and was allowed one month to remain in Trinidad. He then met Ms. Lelia Tricia Angela Roberts-Simmons and they were married on 18 June, 2013. The Applicant was then granted three extensions on his stay by the Immigration Division up until 30 January, 2014 on which date he failed to attend the Division. The Respondents' witness Ryan Roopnarine claims that the reason given for the final extension was that the Applicant's marriage had broken down and he required more time to facilitate his departure. The Applicant denies that this was the reason given and states that although they are now separated, they were not separated in or around 17 March, 2014.

10. Ryan Roopnarine's version of the events is as follows:

- i. On 28 February, 2014, the Applicant presented himself to the Immigration Division seeking another extension of his stay. He was not accompanied by his wife and indicated that she was unable to attend on account of her selling in Tobago. The Applicant's request for an extension was refused by the Immigration Officer and he was placed under an order of supervision until 6 March, 2014 by which date he was to produce a ticket for departure. The Applicant's passport was retained by the Immigration Division.
- ii. On 6 March, 2014 the Applicant did not report to the Division or produce a ticket as required, thereby breaching his order of supervision. However, he was granted a second order of supervision on 12 March, 2014 to produce a departing ticket on 19 March, 2014.
- iii. On 17 March, 2014 the Division received a statutory declaration from the Applicant's wife stating that she no longer supported his application for residence and that she had severed all ties with him.
- iv. On 19 March, 2014, the Applicant came to the Division and was interviewed. He stated that he had an open ticket to Cameroon but did not produce it. As a result, an Immigration Officer, Mr. Fareed Abraham, issued a detention order in respect of the Applicant and the Applicant was held at the Immigration Detention Centre for 12 days until 1 April, 2014. Upon his release, he was placed on a third order of supervision until 4 April, 2014. Thereafter, the Applicant did not return to the Immigration Division.
- v. His whereabouts remained unknown until the Division received correspondence from the Minister of National Security concerning the Applicant on 3 May, 2016. The letter instructed the 1<sup>st</sup> Respondent to allow the Applicant to return to his homeland on 4 May, 2016 and to waive the special inquiry requirements for the Applicant. Roopnarine contends that he was directed by Gewan Harricoo to convey the passport to the airport on 4 May, 2016 to be lodged with the Immigration office there.

11. The Applicant denies that he was put on an order of supervision on 28 February, 2014 and denies that he was asked to produce a ticket of departure at that time. There is in fact no exhibited order in this regard to corroborate the Respondents' story. The Applicant claims that the first order of supervision was made after his detention. The Applicant also states that the Immigration Division seized his original marriage certificate, Republic of Cameroon National Identification Card and Driver's Licence in addition and to his passport.
12. The Applicant says he was told by his attorney that information was received from the Minister that his passport would not be produced to him on 4 May, 2016 as it was locked in a building that the Immigration Department did not have immediate access to at the time. The advisor to the Minister granted the Applicant verbal approval extending the period for a further week. Arrangements were therefore made for the Chief Immigration Officer to meet the Applicant at the airport on 11 May, 2016 to furnish him with his passport for departure.
13. On May 11, 2016 the applicant went to the airport and presented his itinerary and ticket to the Copa Airlines Authorities. The Applicant claims that upon check-in at COPA Airlines, he told the officials that his passport was to be deposited with the Airline by the Immigration Division. However, checks for the passport produced nothing. The Applicant claims that attempts were then made to contact the Immigration Office in Port of Spain and his travel itinerary which was to Cameroon via Panama, Brazil, Ethiopia and Equatorial Guinea was faxed to and received by the Respondent along with a clear request for the passport.
14. According to the Applicant, the Immigration Officer at the airport then arrested him. The Immigration Officers reportedly dismissed the letter from the Minister and told the Applicant that a visa was required to travel through Brazil which he did not possess. The Applicant claims that he told the Immigration Officers that he was advised by Mr. Paul Diaz, Acting Consular Assistant at the Embassy of Brazil in Port of Spain that this was not so for a transit period of less than 8 hours. The Affidavit of the Applicant's supporting

witness, his Travel Agent, supports that such communication was received from the Brazilian Embassy by way of an exhibited email. The Applicant was however placed in handcuffs and sent in a vehicle to the Immigration Detention Centre.

15. The Respondents' account differs. Ryan Roopnarine claims that he was present at the airport on 4 May, 2016 to facilitate the Applicant's departure and was informed by the airline that the Applicant had no ticket for departure on that date. He therefore conveyed the passport to the Port of Spain Immigration Division.
16. Thereafter he received correspondence from the Applicant's Attorney-at-Law with the Applicant's flight itinerary for the 11 May, 2016. He then conveyed the passport to the registry at the Airport. He states that he was at the airport on the 11 May and observed the exchange between the Applicant and the airline clerk. He states that he saw the clerk get on the telephone and the Applicant remained at the counter for 10 minutes before leaving and walking to the seating area. There he reportedly got out a cell phone and made a call. Following this, he left the atrium and stood on the pavement, making some more calls. Then Roopnarine claims to have observed a station wagon heading toward the Applicant. He claims that as the Applicant appeared to be about to enter the vehicle, he approached him and questioned him.
17. Roopnarine states that the Applicant denied intending to leave the Airport but said that the clerk had refused to take his ticket and let him board the plane. They both went back to the counter to clarify the issue and the clerk informed them that due to his lack of visa for Brazil he would not be allowed to travel to Brazil on the airline.
18. Roopnarine claims that the Applicant was detained at this point and that the Applicant admitted to him that only the first leg of the trip had been paid for. He denies being shown the letter from the Minister and states that on the 18 May, 2016 the Chief Immigration Officer declared that the Applicant had ceased to be a permitted entrant and directed that an Inquiry be held in the matter.

19. The Applicant denies this version of events and within two days of his detention he filed the instant Habeas Corpus application on May 13, 2016. Then presiding Judge Madam Justice Pemberton, as she then was, gave directions at a number of hearings of the matter including for amendments to the application to be made as well as for responses to be filed. She also strongly advised the pursuit by the parties of diplomatic means to resolve the matter. At the hearing of the matter on 20 May, 2016 it was ordered:

- i. The Intended Respondents to take necessary and reasonable steps to facilitate the timely departure of the Intended Claimant; and
- ii. Mr. F. Scoon undertakes to facilitate this departure by facilitating the Intended Claimant's execution of any documents necessary for the departure.
- iii. Parties to report to Court on the 8th day of June 2016 at 9:30 a.m. in Courtroom POS04.

20. There has been no further information reported to the Court by Counsel for the Respondents regarding these orders and the Applicant has remained in detention since then.

21. Following the Applicant's arrest and detention and while the Habeas Corpus matter was still pending, a Special Inquiry was held on 15 June, 2016 and the Special Inquiring Officer, Mr. Allan Sookram determined that Mr. Souop be deported. On 05 July, 2016 the Applicant filed a notice of appeal against the deportation decision on the ground that there were serious irregularities and abuses of human rights, namely:

- i. That the Inquiry was held contrary to the instructions of the Minister;
- ii. That the person eliciting evidence from the Applicant was the same person who was making the decision on Inquiry;
- iii. The Inquiring Officer failed to give reasons for his refusal to grant an order of supervision;
- iv. No opportunity was given for the Applicant to provide a witness statement;
- v. No opportunity was given to summon witnesses for the Applicant;
- vi. No reasons were given for the final decision; and
- vii. The Inquiring Officer did not ask Counsel for the Applicant to make submissions on law.

22. The Applicant's appeal against the deportation order remains undetermined.

### **III. Issues**

The issues to be considered in determining whether the writ of habeas corpus should be granted to bring the Applicant to Court to consider his release are as follows:

- i. Whether the arrest and detention of the Applicant by the Immigration Officers at the airport was unlawful; and
- ii. Whether the Applicant's detention and continued detention in all the circumstances is unreasonable.

### **IV. Law and Analysis**

#### *Initial Arrest and Detention*

23. The question to be determined is whether the Immigration Officials acted in lawful exercise of their powers under the **Immigration Act, Chap. 18:01** in arresting the Applicant at the airport.

24. The powers of an immigration officer to arrest without warrant are limited **under Section 15 of the Immigration Act** to instances where a person is suspected on reasonable grounds of being a person referred to in section 9(4) or section 22(1)(i). The test of reasonable cause was outlined in **Barcoo v AG HCA 1388 of 1989**, as follows:

- i. Did the officer honestly have the requisite suspicion or belief?
- ii. Did the officer when exercising the power honestly believe in the existence of the objective circumstances which he now relies on as the basis for that suspicion or belief?
- iii. Was his belief in the existence of these circumstances based upon reasonable grounds?
- iv. Did these circumstances constitute reasonable grounds for the requisite suspicion or belief?



25. The affidavit of Ryan Roopnarine, the arresting officer in the present situation, details his knowledge of the Applicant's history with the immigration department, including his failure to report to the department in violation of an order of supervision for a period of almost two years. He further recounts the Applicant's failure to attend the airport on the first day designated for his departure (4 May, 2016). There are conflicting stories on this issue. The Respondent contends that the Applicant did not convey to them that he would not be departing on 4 May but simply sent correspondence after the missed date stating that he would be departing on the 11<sup>th</sup> instead. The Applicant states that it is the fault of the Immigration Department that he could not access his passport on the 4<sup>th</sup> and that the 11<sup>th</sup> was agreed.
26. The affidavit of Ryan Roopnarine also recounts the suspicious behaviour exhibited by the Applicant on the day of the arrest, including the calls made outside of the airport atrium and the alleged revelation by the Applicant that only the first leg of the trip (to Brazil) had been paid for. He also claims that the counter clerk informed him that the Applicant would not be allowed on board without a visa for Brazil.
27. The affidavit of Gewan Harricoo provides insight on techniques he claims are used by illegal immigrants to avoid deportation that are familiar to immigration officials. His expertise in the department, he states, has familiarised him with the practices and procedures for illegal repatriation by such persons. He states that it is common practice that an illegal immigrant is not provided with his passport until he boards the airplane.
28. He also states in relation to the stop-over in Brazil, that in his experience, a lay-over in excess of four hours would entitle the Applicant to be admitted into the country for the purpose of check-in. He states that this is often done by deportees in order to claim asylum in the country. Further, he considers that the Applicant's alleged non-payment for the second leg of the trip was also an indicator that the Applicant did not intend to return to Cameroon.

29. However, the Applicant's version of events is in direct opposition to those relayed by Roopnarine. The circumstances surrounding the Applicant's version of events are believable. The Applicant has in fact produced the tickets in his affidavit which show his flight schedule from Trinidad to Cameroon with all the stops in between. These tickets appear to have been confirmed. He has also provided confirmation from the Brazilian embassy that he would be allowed to stop over in Brazil for a period of less than eight hours without a visa. The evidence of his fully paid ticket and the Brazilian embassy communication is supported by the Applicant's witness, his Travel Agent. Further, it is clear that the Minister had given special permission for him to arrange his own departure from the country.
30. Relevant in determining the objective reasonableness of the arrest is the purported waiver of the requirement for a special inquiry by the Minister of National Security. The Respondents have stated in their evidence that they did not consider the Minister to have the jurisdiction to make such a waiver. However, the Respondents have failed to file any legal submissions in this matter. The Applicant, on the other hand, has provided an analysis of the law on this point.
31. Citing **s.48 of the Immigration Act** and **s.4 (3), 5(2) and 56(3) of the Immigration Regulations**, Counsel for the Applicant argues that the Immigration Act gives the Minister the general power to exempt the strict application of the Immigration Act in processes ranging from entry to removal, although it does not specifically provide for waiver of the Special Inquiry. Interpreted broadly, the Act appears to allow for a general discretion of the Minister in such matters as the present.
32. All these circumstances considered, the Respondent has not established on a balance of probabilities that the initial arrest was justified. The Applicant's documents and account of the events provide a more coherent story than that of Ryan Roopnarine. Further, even if Roopnarine had a subjective belief in the Applicant's intention to evade immigration orders, the surrounding circumstances and the Applicant's explanation for his behaviour make the arrest objectively unreasonable.

Continuing Detention

33. Even if it were found that the initial arrest was lawful, the continuing period of detention after an order for deportation was made after the Special Inquiry must be considered.

34. **Section 29(1) Immigration Act** provides:

*“Unless otherwise provided in this Act, a deportation order shall be executed as soon as practicable.”*

35. The Applicant submits that the period from the time of making the deportation order to now is an unreasonable period of detention. Counsel for the Applicant cites the decision of Dyson LJ (as he then was) in **R (I) v Secretary of State for the Home Department [2002] EWCA Civ 888** which outlines the considerations to be made in determining the lawfulness of the detention period:

*“[46] There is no dispute as to the principles that fall to be applied in the present case. They were stated by Woolf J in Re Hardial Singh [1984] 1 All ER 983, [1984] 1 WLR 704, at p 706D of the latter report in the passage quoted by Simon Brown LJ at para 9 above. This statement was approved by Lord Browne-Wilkinson in Tan Te Lam v Tai A Chau Detention Centre [1997] AC 97, [1996] 4 All ER 256, at p 111A-D of the former report, in the passage quoted by Simon Brown LJ at para 12 above. In my judgment, Mr Robb correctly submitted that the following four principles emerge:*

- i. The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;*
- ii. The deportee may only be detained for a period that is reasonable in all the circumstances;*
- iii. If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;*
- iv. The Secretary of State should act with the reasonable diligence and expedition to effect removal.*

*[47] Principles (ii) and (iii) are conceptually distinct. Principle (ii) is that the Secretary of State may not lawfully detain a person “pending removal” for longer than a reasonable period. **Once a reasonable period has expired, the detained person must be released.** But there may be circumstances where, although a reasonable period has not yet expired, it becomes clear that the Secretary of State will not be able to deport the detained person within a reasonable period. In that event, principle (iii) applies. Thus, once it becomes apparent that the Secretary of State will not be able to effect the deportation within a reasonable period, the detention becomes unlawful even if the reasonable period has not yet expired.*

*[48] It is not possible or desirable to produce an exhaustive list of all the circumstances that are or may be relevant to the question of **how long it is reasonable** for the Secretary of State to detain a person pending deportation pursuant to para 2(3) of Sch 3 to the Immigration Act 1971. But in my view they include at least: the length of the period of detention; the nature of the obstacles which stand in the path of the Secretary of State preventing a deportation; the diligence, speed and effectiveness of the steps taken by the Secretary of State to surmount such obstacles; **the conditions in which the detained person is being kept**; the effect of detention on him and his family; the risk that if he is released from detention he will abscond; and the danger that, if released, he will commit criminal offences.”[Emphasis Added]*

36. Insufficient evidence of the conditions of the detention centre has been produced. A site visit may fill this information gap so as to ascertain what a reasonable period to detain the Applicant is.

37. There has been no indication from the Respondents thus far as to the reasons why the Applicant has not yet been deported. There has been no statement given by the Respondents concerning the obstacles to deportation nor the steps they have taken thus far. However, there is evidence from the Applicant himself that the deportation order has been appealed as at 16 June, 2016. It is clear therefore, that to deport the Applicant prior to the determination of that appeal would result in an injustice to the Applicant. Thus the

Respondent clearly could not deport the Applicant without awaiting determination of the Appeal. The Applicant has suggested that he be released pending the determination of the appeal with conditions or under an Order of Supervision.

38. There is, however, some valid concern with regard to the Applicant having allegedly previously acted in breach of such an Order despite the waiver of the requirement for a Special Inquiry by the Minister. The alleged failure of the Applicant to attend the Immigration department for almost two years after a prior supervision order was made in 2014 does not augur well for the Applicant's future obedience to the terms of a supervision order. Therefore there is some risk that the Applicant would abscond if released.

39. However, due to the finding that the Immigration officials acted unreasonably in his arrest when the Applicant had sufficiently demonstrated his intention to leave the country, his continued detention pending determination as to whether his deportation order was valid seems unjust. Accordingly, consideration must be given to having him released with an Order of Supervision pending determination of the Appeal.

## **V. Conclusion**

40. The Applicant has demonstrated that he was unfairly arrested in his genuine attempt at departing from the country. As a result, his continuing detention is unjust. The Respondents, however, have had cause to be suspicious of the Applicant's activities due to the Applicant's previous alleged violation of a supervision order. Further, the continued non-deportation of the Applicant pending the appeal is reasonable as execution of the order to deport prior to determination of the appeal could result in an injustice.

41. On the evidence presented I am almost convinced that it is unreasonable that he be detained any longer while awaiting determination of the appeal and possible deportation. It is my view that a site visit to consider the conditions of the Applicants detention will be of assistance in making my decision. Thereafter I will determine whether fairness dictates that an order of supervision should be made upon release of the Applicant pending determination of the appeal in his favour and/or his deportation.

**VII. Order**

- i) A Writ of Habeas Corpus directed to the CHIEF IMMIGRATION OFFICER of No. 67 Frederick Street be issued commanding him to have the body of LAURENT PRET SOUOP before a judge in Chambers at the Hall of Justice, Knox Street, Port of Spain on the 12<sup>th</sup> day of October, 2017 at 11:00 am in POS 10.
- ii) Thereafter the court will conduct a site visit to the detention centre and make a further ruling that visit to the detention centre to be done on the same day;
- iii) That the respondent is to pay the costs of this Application to the Applicant;
- iv) Liberty to Apply.

**Dated 9<sup>th</sup> October, 2017**

**Eleanor Joye Donaldson-Honeywell  
Judge**

**Assisted by: Christie Borely, JRC 1**