

HOUSE OF REPRESENTATIVES

Monday, July 01, 2024

The House met at 1.30 p.m.

PRAYERS

[MADAM SPEAKER *in the Chair*]

**LEAVE OF ABSENCE**

Madam Speaker: Hon. Members, I have received communication from Mr. Davendranath Tancoo, MP, Member for Oropouche West, who has requested leave of absence from today's Sitting of the House. The leave which the Member seeks is granted.

VIRTUAL ATTENDANCE- HON. AYANNA WEBSTER-ROY**(Legal Notice No. 267)**

Hon. Members, further to Legal Notice No. 267, dated August 30, 2023, a proclamation by Her Excellency the President, authorizing the Speaker to establish guidelines to facilitate any Member, if necessary, to attend a Sitting of the House virtually, while in Trinidad and Tobago, with prior approval of the Speaker.

Hon. Members, I have received a request from the Member for Tobago East to participate virtually in today's Sitting of the House in light of the Office of Disaster Preparedness and Management's advisory, and as well as the Caribbean Airlines' public advisory dated today, Monday, July 01, 2024, at 10.00 a.m., indicating that domestic operations on the air bridge between Trinidad and Tobago are unable to resume before 5.00 p.m. today, Monday, July 01, 2024.

Hon. Members, I have approved the request by the Member for Tobago East, and I have approved guidelines to be circulated to Members in relation to the virtual attendance.

UNREVISED

PAPERS LAID

1. Ministerial Response of the Ministry of National Security to the Tenth Report of the Public Accounts (Enterprises) Committee on the Examination of the Audited Financial Statements of the National Maintenance Training and Security Company Ltd. (MTS) for the financial year 2018 and follow up on the Implementation of the Recommendations contained in the Committee's Eleventh Report from the 11th Parliament. [*The Minister of Housing and Urban Development (Hon. Camille Robinson-Regis)*]
2. Trinidad and Tobago Special Economic Zones (Amendment to Schedule 1, 2 and 4) Order, 2024. [*Hon. C. Robinson-Regis*]

ANSWERS TO QUESTIONS

Madam Speaker: Leader of the House.

The Minister of Housing and Urban Development (Hon. Camille Robinson-Regis): Thank you, again, Madam Speaker. Madam Speaker, there are three questions for oral response and we will be answering all three.

Madam Speaker: Member for Couva North.

ORAL ANSWERS TO QUESTIONS

Underground Drainage, Couva Main Road

(Desilting of)

86. Mr. Ravi Ratiram (Couva North) asked the hon. Minister of Works and Transport:

When will the underground drainage along the Couva Main Road be desilted?

Madam Speaker: Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, Madam Speaker. Madam Speaker, the Ministry of Works and

Transport has identified the section of road referred to as the Couva Main Road, as the Southern Main Road, between the 31 km and the 33 km mark. Tender documents are currently being prepared for a project to desilt this area and work will commence once this process has been completed, subject to the availability of funding. Thank you.

Madam Speaker: Member for Couva North.

Mr. Ratiram: Thank you most kindly, Madam Speaker. Madam Speaker, to the hon. Minister: Minister, knowing fully well that this area floods when the rain comes down, can you advise why this work was not done during the dry season?

Madam Speaker: Minister.

Sen. The Hon. R. Sinanan: Madam Speaker, the Ministry of Works and Transport, Drainage Division, is responsible for—and the Highways Division is responsible for work of this nature. The Ministry has undertaken over 1,000 projects around Trinidad. All cannot be done at the same time, but it is being programmed and it will be done. Thank you.

Hon. Members: [*Desk thumping*]

Madam Speaker: Member for Couva North.

Mr. Ratiram: Thank you most kindly, Madam Speaker. Madam Speaker, to the hon. Minister: In light of the current hurricane season, where the threat of flooding is imminent, can the Minister commit to expedite this process?

Madam Speaker: Member, I think that answer, with respect to the timeline and so, was given in the original answer, so I rule this supplemental out of order. Member for Couva North.

**Waterloo Main Road
(Repaving/Upgrading to Concrete Box Drains)**

87. Mr. Ravi Ratiram (*Couva North*) asked the hon. Minister of Works and Transport:

With regard to the Waterloo Main Road, will the Minister indicate the following:

- a) when will it be repaved; and
- b) when will the earthen drains along the road be upgraded to concrete box drains?

Madam Speaker: Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, again, Madam Speaker. Madam Speaker, the Waterloo Road starts from the Southern Main Road at St. Mary's Junction at the 0.0 km mark, and ends at the junction of the Couva River Bay Road at Carli Bay Road at the 12.7 km mark. In January 2024, via the Caroni district, the Ministry undertook the spot-patching exercise using 30 tonnes of hot mix to repair the critical road section. A sectional milling and paving contract was approved to be executed in this fiscal year, subject to availability of funding, and the tender documents are currently being prepared. Thank you.

Improvement in the roadside drains form part of a roadway upgrade and structural improvement programme. Technical assessment is ongoing on several roads across the country to determine the current capacity, and adequacy, and the most feasible solution for upgrade. Thank you.

Madam Speaker: Member for Couva North.

Mr. Ratiram: Thank you most kindly, Madam Speaker. Madam Speaker, to the hon. Minister: Minister, you are aware if there is not proper drainage, all the road works conducted along this roadway and other roadways will effectively be compromised without proper drainage. Can you advise how soon the drainage—

Madam Speaker: Member, remember, this is not for making statements. Okay? You have 15 second to ask a question, so, please.

Mr. Ratiram: Thank you, Madam Speaker. To the hon. Minister: Minister, can you advise when the drainage will be upgraded along the Waterloo Main Road?

Madam Speaker: Member.

Sen. The Hon. R. Sinanan: Madam Speaker, I thought I answered that in b) when I said:

“Technical assessment is ongoing on several roads across the country to determine the current capacity, and adequacy, and the most feasible solution...”

Once this is completed, documents will be prepared, tenders will go out, and based on the availability of funding, work will be executed. Thank you.

Madam Speaker: Member for Couva North.

Mr. Ratiram: Hon. Minister, you have been the Minister for the last nine years and up to now, we are still waiting for this work to be—

Hon. Members: [*Interruption*]

Madam Speaker: Member for Couva North, Question No. 88.

Southern Main Road, Edinburgh

(Upgrade of Earthen Drains to Concrete Box Drains)

88. Mr. Ravi Ratiram (*Couva North*) asked the hon. Minister of Works and Transport:

When will the earthen drains along the Southern Main Road, Edinburgh, Chaguanas be upgraded to concrete box drains?

Madam Speaker: Minister of Works and Transport.

The Minister of Works and Transport (Sen. The Hon. Rohan Sinanan):

Thank you, again, Madam Speaker. Madam Speaker, improvement to roadside

drains form part of a roadwork upgrade and structural improvement programme. The network of drains in that area is being assessed by the Ministry of Works and Transport's technical team to determine the current capacity, and adequacy, and the most feasible solution to upgrade the local drainage system. Thank you.

Madam Speaker: Member for Couva North.

Mr. Ratiram: Hon. Minister, with the greatest of respect, you have been doing assessments for the longest while, can you advise—

Madam Speaker: Member.

Hon. Members: [*Interruption*]

Madam Speaker: Member. The Attorney General and Minister of Legal Affairs.

BAIL (AMDT.) BILL, 2024

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much, Madam Speaker. Madam Speaker, I beg to move that:

The Bill to amend the Bail Act, Chap. 4:60, be now read a second time.

Madam Speaker, as I engage and embark on my remarks today on this very important piece of legislation, I ask that you allow me to make a few prefatory remarks as I introduce and speak to this Bill, and the role of a responsible Government and Opposition.

Firstly, Madam Speaker, I think we are all familiar with the decision of Akili Charles, the *Attorney General of Trinidad and Tobago v Akili Charles*, which was reported at 2022 UKPC 31, delivered on the 28th of July, 2022. And significantly, in the judgment of the Board, that judgement followed after and applied the reasoning of another significant decision of the board, that is to say, the decision in *Suraj v the Attorney General*, 2022 UKPC, page 26.

Secondly—and, of course, we will discuss Akili Charles in more significant detail as I continue my remarks, but I consider it important that I state from the outset two significant points emerging from that decision. On the first principle issue, whether the bail provision in the Act then being challenged, the Bail Act, 1994, was an existing law under section 6 of the Constitution. And in holding that it was not, the Privy Council underscored a very important common law position, dating back to 1898, and the decision of *The Queen v Spilsbury*. And the quotation which the Privy Council adopted and applied in the Akili Charles decision was this, from Spilsbury:

“This Court has, independently of statute, by the common law, jurisdiction do admit to bail.

The Court...or any judge...in vacation, not being restrained or affected by...statute...in the plenitude of that power which they enjoy at common law, may, in their discretion, admit persons to bail in all cases whosoever...”

So the point emerging from—a very important emerging from Akili Charles, Madam Speaker, is that we must salute and pay respect to the proper exercise of discretion, judicial discretion, which this Bill, before this House today, is tailoring and putting before our legislators of this House to pass into law. And that discretion was actually underscored by our Court of Appeal in the very Court of Appeal decision in Akili Charles, and that Court of Appeal decision was endorsed by the Privy Council, at paragraph 37 of the Privy Council decision.

The second point I wish to make, emerging out of Akili Charles, Madam Speaker, has to do with the second principle issue which arose for decision in that court, with reference to section 13 and the application of section 13 of our Constitution. And the Board reminded itself of the now refined and applicable

proportionality test, refined that is, in the Suraj decision.

Madam Speaker, in examining and discussing this Bill today, it is useful to remind ourselves as parliamentarians, Members of this House on both sides, of the powerful reasoning of the Board in paragraph 56 of the Akili Charles decision, and I refer now to that paragraph of that decision. This is what the Board had to say in Akili Charles at paragraph 56 in its recent decision in Suraj and others against the Attorney General of Trinidad and Tobago. The Board addressed the nature of the test to be applied under the proviso in section 13, whether a law passed thereunder is:

“...reasonably justifiable...”

—this is quoting from section 13:

“...is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual...”

The Board continues, for the reasons there stated, it concluded that:

“...the test to be applied...”

—that is to say the Suraj decision concluded that:

“...the test to be applied...”—is a—“proportionality test, albeit one framed in a way which gives especially strong weight to the judgment of Parliament regarding the imperative nature of the public interest.”

1.45 p.m.

In particular:

“(1) The onus is on the complainant to show that the measure is not ‘reasonably justifiable’. This places a ‘heavy burden’ on the complainant and a court will be slow to conclude that this has been shown...

(2) The test of proportionality appropriate under section 13(1) involves a

lesser intensity of review by the courts and a wider margin of appreciation or discretion for the state, acting by legislation passed by a super-majority in both Houses of Parliament...

- (3) In relation to such legislation, Parliament will have identified in a particularly clear and forceful way its opinion as to where the public interest lies. In a democratic state, the courts must be expected to be especially respectful of the choice made by Parliament to pass legislation in that form and slow to substitute their own view of the necessity for and proportionality of the measure taken..."

Still quoting from Suraj:

- "(4) Although the court has to make the ultimate judgment whether the proviso in section 13(1) has been satisfied or not, it is obliged in doing so to give especially great weight to the judgment of Parliament regarding the importance of the public interest which is sought to be promoted by the measure in question."

Madam Speaker, I emphasized those passages of Akili Charles, which have borrowed from the Suraj decision, to make the point that we who are assembled here, Members of the Legislature, have a very solemn responsibility to pass legislation, which we are satisfied is in the public interest, to serve the needs of the whole society.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: And this injunction of two recent decisions of the Privy Counsel, the Suraj decision, and the Akili Charles decision, is particularly important to the Bill which is before us today, which as I shall speak to, requires a three-fifths majority. It is not enough. Simply to say, as the Opposition is wont to do, "This requires a three-fifths majority and therefore, I am voting against it."

The fact that it requires a three-fifths majority is not a reason to vote against the Bill.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: You have to look at the provisions of the Bill; the different clauses in the Bill; You have to look to the purpose that the Bill is intended to serve; you have to look to the public interest that the Bill is intended to serve. And on the principles of Suraj, endorsed in Akili Charles, you have to look to see whether the measures proposed in the Bill are proportionate and can stand the scrutiny of any challenge in the courts. And if at the end of the day, it is not made out, that there is no sufficient public interest, or if at the end of the day, it is not made out that the Bill is excessive in the infringement that it touches on, with respect to the individual rights and freedom of citizens, then there may be some reason to vote against it, but not simply to say, “It requires a three-fifths majority and therefore, I vote against it.”

So, I stress the point, Madam Speaker, that it is for this Parliament, Members of the House on both sides, in our consideration of this Bill, and all that I will place before this House today, to apply the proportionality test, framed in a way which gives especially strong weight to the judgment of this Parliament, regarding the imperative nature of the public interest, and to identify in a particularly clear and forceful way, this Parliament's opinion as to where the public interest lies. It is for us here, on both sides, Madam Speaker, to accept our mandate conferred by section 46 of the Constitution, of Members of this House, as legislators in these challenging times, to pass constitutionally-compliant legislation whether by simple or super majority, tailored to protect and serve the public interest.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: Reminded, Madam Speaker, of the injunction of the Board in Akili Charles, referring to Suraj, that in a democratic state, the courts must be expected to be especially respectful of the choice made by us here in Parliament, to pass legislation in that form and by a balance, an appropriate exercise of their discretion, dating back to 1898, the Spilsbury case which Akili Charles relied on to be slow to substitute their own view of the necessity for, and proportionality of the measures taken.

The point there that is to be emphasized, Madam Speaker, is that after we have engaged in a careful and deliberate consideration of the public interest considerations, which I will come to, and satisfy ourselves by an able, active and meaningful debate on both sides, that the measures are proportionate, and we pass this legislation as I implore the Opposition to support today by a three-fifths majority. The courts will be very slow to interfere with that solemn, legitimate, imperative duty of the Parliament, to pass legislation in the public interest. So again, I repeat, it is not enough, simply to say, “This Bill requires a three-fifths majority and therefore, I am voting against it.” This, Madam Speaker, is the point of opportunity for us to have confidence in ourselves to do our job.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: To pass this amendment Bill in the public interest and equally, to have the confidence that our judges, exercising their ancient 1898 discretionary judgment to respect, to interpret this amendment and legislation with appropriate balance. Because as the Board reminds us in Akili Charles, the court has to make the ultimate judgment to give especially great weight, to the judgment of this Parliament, regarding the importance of the public interest, which is sought to be promoted by the measures in question, which this Bill promotes.

Accordingly, Madam Speaker, by the presentation of this Bill for debate and

passage into law by this hon. House, it is the intention of this Government, one, for this House, elected as it has been under the mandate of the Constitution, to make laws for the peace, order and good government of all of Trinidad and Tobago, and by the first amendments to the Bail Act brought before this House, since the 28th of July 2022; since the decision in Akili Charles to pass this Bill in recognition and affirmation of that Akili Charles decision.

The Akili Charles decision, Madam Speaker, affirm the confidence in the correctness of the decision of our Court of Appeal and the jurisdiction of our judges, to exercise their ancient judicial discretion, to grant or refuse bail in accordance with well-established common law principles. This decision also recognizes that Parliament, in the plenitude of its legislative-making powers is entitled to legislate for prescribed guidelines, which serves the legitimate aim of the public interest, and satisfy the proportionality test to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

Secondly, Madam Speaker, this Bill is introduced today, to introduce legislative guidelines with respect to the granting or refusal of bail for serious offences, unless the accused can prove to the satisfaction of the court, that his remand, continuation in remand, is not justified because of exceptional circumstances. And I will return to that, the point of exceptional circumstances.

Thirdly, as part of this Government's continuing mandate to make laws for the peace, order and good government of Trinidad and Tobago, by introducing a more expeditious criminal justice system, to facilitate the implementation of the Administration of Justice (Indictable Proceedings) Act, 2011 (Act No. 20 of 2011), AJIPAA, which is accomplished among other things, the abolition of preliminary inquiries, which has been a blot on due process and respect for our fundamental human rights and freedoms.

1.55 p.m.

In point of fact, I could allow myself to remark, Madam Speaker, that Akili Charles was in jail for eight years in the course of an unfinished preliminary enquiry, before he was freed by the decision of our Court of Appeal, which was affirmed by the Privy Council. This Government has taken the step to abolish those preliminary enquiries as part of its approach to improve our criminal justice system.

Prior to the Akili Charles decision, Madam Speaker, the offence of murder was one of the non-bailable offences listed in Part I of the Schedule. And, as we have seen, the Privy Council confirmed that a high court judge has always had an inherent common law power to grant bail for the offence of murder, prior to, and following committal to trial.

As a result, Akili Charles declared that section 5(1) of the Act was unconstitutional, insofar as it sought to remove the discretion of a judge to grant bail for murder. The Privy Council found that section 5(1) of the Act was disproportionate and that a blanket approach to denying bail for murder in every case amounted to an unjustifiable restriction of fundamental rights in relation to the objectives being pursued.

This Bill before this House today is asking this House to pass legislation which does not adopt that blanket approach. It recognizes the right to bail, but it gives guidelines to the Judiciary to determine in certain specified circumstances when that bail ought to be granted, or when that bail ought to be refused. So it pays respect to and affirms the decision in Akili Charles not to adopt a blanket approach, to adopt a proportionate approach to the grant of bail so that the rights of the citizens are protected, but equally, Madam Speaker, so that the rights of the society, the public interest of this society is protected from rampant criminality.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: Madam Speaker, the Akili Charles decision means that there is now a right to apply for bail but not a right to be granted bail. You can apply for bail to the judges and if you make out your case for bail the judges will grant you bail under the Bill before this House. But if you do not make out your case for bail, the courts will deny that bail in the public interest of protecting the society from repeated offenders, recidivism and other such occurrences. I emphasize, Madam Speaker, that our courts retain under this Bill, their judicial discretion, their ancient judicial discretion to decide whether to grant refused bail.

Madam Speaker, in presenting a Bill such as before this House today, I asked the Law Reform Commission to consider and advise upon certain specific issues and other pertinent issues to the reform of the Bail Act, Chap. 4:60. The Commission firstly examined, bail legislation in other Commonwealth jurisdictions including England, Australia, Canada, South Africa and New Zealand. Secondly, the Commission gave due consideration to an accused's constitutional rights and freedoms under sections 4 and 5 of the Constitution and to relevant jurisprudence. Thirdly, the Commission considered recent legislative developments, which have had significant impact on the granting of bail, particularly in relation to the offence of murder and other serious offences. And fourthly, considered the crime situation in Trinidad and Tobago particularly, the commission of serious offences including murder, gang, and firearm related offences within the last five years. I will put those statistics before this august House this afternoon.

In the result, Madam Speaker, the Commission recommended that the Bail Act be amended in the terms which is before the House today to firstly, give to Masters of the High Court the jurisdiction to grant bail for the offence of murder.

Masters previously did not have that jurisdiction. The amendments before this House now seek to give that jurisdiction to Masters. There can be nothing objectionable about that. Secondly, to provide that a person charged with the offence of murder may be granted bail, if he can show that there are exceptional circumstances why that bail should be granted.

This assists Madam Speaker, and gives support and guidelines for the exercise of proper judicial discretion, applying the guidance delivered by the board in Akili Charles. Recommending that instead of an absolute ban on bail imposed by the impugned legislation, Parliament could instead impose conditions on the exercise of the court's discretion, rather than removing it altogether, amounting to less intrusive measures. I quote there from paragraph 64 through to 66 of the Akili Charles decision.

Thirdly, Madam Speaker, the Bill before this House is to repeal Part II of the first schedule to the Bail Act and substitute a new Part II setting out serious offences, which will attract enhanced bail restrictions. Fourthly, the Bill before this House will require a Judge or Master to give the accused and the prosecution reasons for his decision to grant or refuse bail or to impose conditions of bail in criminal proceedings originated in the High Court.

Fifthly, creating a right of appeal for the accused or the prosecution against the decision of the High Court to grant or refuse bail to the Court of Appeal. Sixth, to introduce enhanced bail restrictions, guiding the judicial discretion with respect to persons charged with specified serious offences, or where a firearm prohibited weapon or imitation firearm was used or in the possession of the accused or any other person involved in the commission of the offence.

Consideration has also been given by the Commission to the following recent developments, which have had significant impact on the granting of bail,

particularly in relation to the offence of murder and other serious offences. It is noted that the Bail (Amdt.) Act 2019, Act No. 17 of 2019, expired in August 2022. The specific provisions in the 2019 amended Act, which restricted bail to persons charged with serious offences and who had either a pending charge or a previous conviction for a serious offence are no longer in force.

We are now tabula rasa bringing this Bill to the Parliament to amend the existing Bail Act to introduce guidelines for the exercise of a proper discretion in the allowance of bail. This is very significant, Madam Speaker, as a result of the likelihood of repeat offenders of serious offences on obtaining bail, because this has significantly increased and I will show this with reference to the statistics.

Madam Speaker, we recognize that the Administration of Justice, AJIPAA Act took effect on the 12th of December 2023. AJIPAA, as I have said, already abolished preliminary enquiries, replaced it with a sufficiency hearing presided over by a Master of the High Court. The power to grant bail for indictable offences was transferred from magistrates to Masters. Under AJIPAA, persons charged with indictable offences, including the offence of murder, will first appear before a Master who will consider the issue of bail. These are the provisions brought before this House today by the vehicle of this Bill.

There is a real concern, Madam Speaker, under the current bail regime of the likelihood that repeat offenders will continue to commit offences after they obtain bail. The work of the Commission has interrogated and taken into consideration the high levels of crime in Trinidad and Tobago, particularly the commission of serious offences, including murder, gang and firearm-related offences within the past five years.

Madam Speaker, these are the statistics. For the period 2019 to 2024, the Trinidad and Tobago Police Service has identified 772 persons as being repeat

offenders. Data provided by the Commissioner of Prisons shows that out of a total of 2,261 convicted male offenders in 2019, there were 1,110 repeat offenders, which represented 49 per cent of the total of male convictions. During the following two years, there was an average decrease of male convicted repeat offenders by 10 per cent. But this was because this was in the heart of the COVID-19 pandemic when we were all locked in.

Towards the end of the pandemic however, in 2022, there was an increase of approximately 5 percent, that is 451 repeat offenders out of 1,366. In 2023, Madam Speaker, the percentage of reoffenders surged to 52 per cent. That is 1,076 repeat offenders out of 2,070 convictions. During the period 2022 to 2023, there was a 139 per cent increase of convicted male reoffenders. Madam Speaker, the data also reflects a steady increase in the number of male convictions for firearm and dangerous drug offences following the COVID-19 pandemic.

This Government is of the view, Madam Speaker, that it is necessary for Parliament, this Parliament, to introduce conditions to guide the exercise of the court's discretion in the grant of bail to persons charged with serious offences by requiring such persons, to show sufficient cause or that exceptional circumstances exists to justify the court granting bail to them and these measures are particularly critical in addressing recidivism.

Madam Speaker, I turn to an overview of the Bill before this Parliament.

“The Bill contains nine clauses, and requires a three-fifth majority vote pursuant to section 13(2) of the Constitution because...”—some of the proposed measures introduced restrictions on— “a person's right to”— reasonable— “bail.”

“The purpose of this Bill...”—as I have said— “is to...make provision for the restriction of bail...it seeks to give effect to the ruling...Akili

Charles...and it seeks to..."—give effect to the ruling that "persons charged with...murder..."—can now exercise their right to apply for bail.

The ruling also confirmed that:

"...a Master"—who did not previously have inherent common law power—"to grant bail..."—can now grant bail.

The Bill will now give to Masters the power to grant bail in the same terms as the power possessed by a judge of the Supreme Court.

"The Bill also seeks to..."—introduce—"conditions..."—for—"the exercise of the High Court's discretion in granting bail to persons charged with the offence of murder, serious offences listed in Part II of the First Schedule..."—of the Bail Act—"and firearm related offences. Further the Bill seeks to impose..."—a—"...reversal of burden on persons charged with the offence of murder and firearm related offences to require such persons to show exceptional circumstances to justify the granting of bail..."—and—"...seeks to require a review of the Act to be conducted every five years after its commencement. Finally, the Bill seeks to provide a bail granted to an accused under section 5 of the Act"—which is proposed to be deleted and substituted by a new section 5—"will continue to apply after this..."—amendment Act—"comes into operation."

On a clause-by-clause analysis of the Bill, Madam Speaker, clauses 1 to 3 speak to preliminary matters, except that clause 2 is important in ensuring in the context of constitutionality of this amended Act and the parliamentary certificate, as well as the Preamble. Due consideration is being given by this Bill to an accused constitutional rights and freedoms under sections 4 and 5, and in particular, the right of an accused person not to be deprived of his liberty under

section 4(a) and the right to reasonable bail and to be presumed innocent under section 5(2)(f) of the Constitution.

2.10 p.m.

Madam Speaker, I reiterate the point—and I cannot do that too often—that the decision of Spilsbury, which the Privy Council adopted and applied in the Akili Charles decision, emphasized that our courts have, independently of statute by the common law since 1898, jurisdiction to admit to bail, and that:

“The Court...or any judge thereof in vacation, not being restrained or affected by...statute...in the plenitude of that power which they enjoy at common law, may in their discretion, admit persons to bail in all cases, whatsoever...”

The reason why I emphasized this point, Madam Speaker, is to touch on another subject, which we sometimes debate in this Parliament and which, I regret to say, does not seem to be properly understood by the other side, that is to say, the constitutional concept of the separation of powers. The separation of power does not mean that the arms of State under the Constitution are not to work together in the public interest.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: And what this Bill is asking Parliament to endorse and to give effect to, by its passage, is the embrace of a working understanding of the separation of powers, in that, the Bill is proposing to pass legislation to provide legislative guidelines, endorsed by this Parliament, on the circumstances in which bail will be granted or refused, understanding and accepting that the working of our courts, who are the other arms of the State, in the discharge of their judicial responsibility, will exercise their discretion on a case-by-case basis as an applicant makes an application for bail to determine whether that

applicant has made out a sufficient case for bail, whether just cause or exceptional circumstances in order to be granted bail, or whether the public interest, which motivates the passage of this Bill, is so overriding, that the public must be protected from that individual being allowed to walk back into the streets and perpetrate new crimes against innocent members of the public. So that is how the separation of powers is envisaged to work, that the arms of State work together to keep the society forged on the path to freedom, honest living and the amplitude of the enjoyment of life. That is what this Bill prescribes for, by the mechanism in which we are proposing to guide the exercise of discretion by the Judiciary.

Clause 4 of the Bill, therefore, seeks to repeal and replace the existing section 5, and to introduce a new section 5, Madam Speaker. And that new section 5 allows for the grant of bail, but with restrictions on its granting to persons charged with serious offences.

It is interesting, Madam Speaker, when we look at the Schedule to the Bill, which is before this House, we are proposing, in Part II, certain specified offences, and persons who are charged with specified offences, or who have already been convicted of specified offences under Part II of this Bill. When they come back to the court for bail, the court is to look at and take into consideration the fact that they are already charged with, or convicted of those offences. What are those offences? Part II of the “Specified Offences”, First Schedule:

- “(a) an offence committed by a person over the age of eighteen years under the Anti-Gang Act 2021, which is punishable by imprisonment for ten years or more;
- (b) an offence under the Offences Against the Person Act, which is punishable by imprisonment for ten years or more, or an offence under section 48 or 54 of that Act;”

2.15 p.m.

Thirdly:

“an offence under the Dangerous Drugs Act...punishable by imprisonment for ten years or more;

Fourthly:

“an offence under the Kidnapping Act...”

—and I can go on. The Schedule is there, Madam Speaker. The First Schedule, Part II, you will see, lists a number of very serious offences punishable by imprisonment for 10 years or more.

So when someone who is already charged with such an offence comes before a Master or the High Court to say, “I am charged with something else and I wish bail”, those accused applicants will have to satisfy the court, in the appropriate circumstances outlined by the new proposed section 5 of the Bill, that there exists exceptional circumstances or just cause why he or she may be granted bail.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: Madam Speaker, under the amendments that are being proposed, a Magistrate will continue to have the jurisdiction to grant bail for summary offences. Secondly, a Master or a judge will now have expressed jurisdiction to grant bail to a person charged for murder. The accused must satisfy the judge or Master of the existence of exceptional circumstances to justify the granting of bail.

Thirdly, the offences listed in Part I of the First Schedule are to continue, that is to say, treason and piracy, and murder is removed from there because, of course, by the Akili Charles’ decision, murder is no longer a non-bailable offence, and it takes us through the different sections, Madam Speaker. The judge’s

discretion, I wish to emphasize, to deny bail may be based on a previous conviction for any offence once that offence was punishable with 10 years or more and not just for an offence listed in Part II of the First Schedule. Secondly, the denial in the exercise of the judge's discretion may also be based on the fact that the accused has a pending charge for any offence listed in Part II of the First Schedule. A previous conviction means a conviction recorded within the last 10 years.

Finally, a burden is being imposed on the accused to satisfy the court of the existence of sufficient cause. As proposed, seen in clause 5(4)(a):

“A Judge or Master may not grant bail to a person who on or after...”—this Bill becomes law— “is charged with an offence-

- (a) under section 6 of the Firearms Act and...has a pending charge for possession of a firearm, ammunition or prohibited weapon...unless he can show exceptional circumstances to justify the granting of bail.”

Madam Speaker, I could continue through but I would like to take you to some of the reasons why I submit constitutionally that this Bill is an appropriate piece of legislation that must be passed today, and I ask the Opposition to do so by way of voting on the three-fifths majority. Most of the amendments proposed in this Bill are not in consistent with any fundamental rights. However, there are some amendments proposed which propose to restrict bail and which can raise the question of the requirement for a three-fifths majority. The key issue in that respect would be whether the amending Act consistent with the Suraj principle, which Akili Charles has endorsed, whether that Act to restrict bail on the basis of a pending charge for a serious offence will require a special majority or not.

It is very important when we look at section 13 to appreciate that the Suraj case, which has been applied in Akili Charles, went on to provide a definitive

ruling on the interpretation of section 13 and the special majority requirement. Essential learning from the Suraj case is that Parliament has a choice to either enact legislation with a simple or special majority. The Privy Council held that the rights set out in sections 4 and 5 of the Constitution are not absolute and are subject to an inherent limitation, which is the proportionality test.

Therefore, where legislation infringes a fundamental right, its constitutionality will be upheld once it satisfies that proportionality test. That proportionality test, Madam Speaker, will be tested against the statistics that I have already put before this House to demonstrate the legitimate interest that is being served by putting restrictions on the ability of persons to get bail carte blanche, without conditions, and, secondly, on the measured guidelines by which those restrictions can be applied by a judge exercising his or her discretion.

Madam Speaker, it is my respectful view in the circumstances on this Bill that it will, in most respects, not require more than a special majority but to the extent that it introduces restrictions on the right to bail. It is my respectful advice to the Government that it does require a three-fifths majority, that it satisfies the criteria laid out in the Suraj decision, which I have already referred to. Paragraph 56 of the Akili Charles' decision lays out those considerations and therefore the proposed measures which are introduced by the legislation will require a special majority given the restrictions on that right to bail.

When one looks at the restrictions, Madam Speaker, the restrictions are not a blanket approach to the denial of bail. They are proportionate. They are measured in terms which allow the judges to take into consideration the particular circumstances of the particular accused before the court at the particular stage, and critical will be the fact that the State will be able to oppose the application. At the end of the day, the judges, if they grant or refuse bail—and this is

proportionality—will have to show reasons, written reasons why they have denied or granted bail. So it is not a question of a *carte blanche* disapproval of the application for bail and therefore, the proportionality of the exercise of the judge's discretion under the amendments which we are asking this House today to affirm will be appropriate in all of the circumstances.

It will serve due process. It will protect the right of the individual to bail, subject to the court, that is to say an independent arm constitutionality endowed with the powers to determine the application before it. The court will assess whether the application that is made is an application that is worth granting or not. Therefore, Madam Speaker, to give effect to the ruling of Akili Charles, this Bill gives Masters the jurisdiction to grant bail. It provides a right of appeal for the accused or the prosecution to appeal against the refusal or the grant of bail. It gives the right to impose conditions on the exercise of the court's discretion to grant bail and it imposes an enhanced burden on persons charged with serious offences to justify the granting of bail.

In conclusion, Madam Speaker, the Government recognizes that the proposed restrictions on the exercise of the court's discretion to grant or refuse bail to persons charged with serious offences will not somehow miraculously put an end to the wave of criminality we have been faced with in recent years. However, we recognize that the majority of citizens are law-abiding citizens, constantly being terrorized by the recidivism of repeat offenders coming back out and committing crimes, who live in fear of a minority of persons who blatantly continue to choose a path of lawlessness. In the circumstances, we believe as a Government, as a responsible Government, that the proposed measures which are in this Bill are crucial to reducing the likelihood of repeat offenders, particularly seasoned criminals, from obtaining bail. The reoffending statistics, which I have

placed before this House justifies the imposition of a reversed burden on such persons, and an enhanced burden, that is to say, to show the existence of exceptional circumstances to justify the granting of bail in relation to the most serious offences.

I firmly believe, Madam Speaker, that this Bill strikes an appropriate balance between the fundamental rights of the individual and the public interest, that is to say, the interest of the society. The proposed measures are proportionate to the legitimate public interest objective being pursued, and are therefore reasonably justifiable in accordance with section 13 of the Constitution. I beg to move.

Hon. Members: [*Desk thumping*]

Question proposed.

Madam Speaker: Member for Siparia.

Hon. Members: [*Desk thumping*]

Mrs. Kamla Persad-Bissessar SC (Siparia): Thank you very much, Madam Speaker, for the opportunity to join in this debate. May I take one moment please, Madam Speaker, to give praise and thanks to the Almighty that we escaped the brunt of Beryl here in Trinidad; in Tobago as well but Tobago is still experiencing some bad weather, but our prayers remain with our CARICOM brothers and sisters, our neighbours—

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: —as they are taking some battering. I trust that Trinidad and Tobago will be able to assist some of them in the days up ahead.

So I join this debate and, you know, it is said that history repeats itself because sometimes no one listens, and I find that very relevant today because we come yet again, to debate yet another version of bail amendments. Today will make it the sixth time that we are in this House since 2016, debating amendments to the Bail

Bill—the Bail Act. Two things I think we can look at is that the Government has found it necessary in this last week of the session to hasten slowly, as they say, to come to Parliament today, Monday, giving us late notice on Friday of this Bill for debate. I guess in some ways we are playing catch-up because we are on the cusp of a general election.

The second point I would like to make before I go into the Bill itself, is Government has come to the House with another piece of legislation to battle the unprecedented crime wave that is plaguing our country, which it seems to me is an admission of failure on the part of the Government.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: The hon. Attorney General spoke of Akili Charles repeatedly. Indeed, in his first whatever minutes, we were repeating, “public interest, proportionality, peace, order and good governance—to make laws for peace, order and good government”, and so on. This was repeated, repeated, repeated, and so, well, show me and tell us how does this serve the public interest.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: That word was repeated, repeated, repeated. In what way does it? In what way does it to show us peace, order and good governance?

I want to share with you, Madam Speaker, the fact that the Member referenced Akili Charles, that judgment, on several occasions brings us to the question, why did you take two years? That judgment was handed down in July 2022. If you were so concerned about the public interest, if you were so concerned about fighting crime and this was one of the measures that you wanted to use, why did you take two years in this last week of the session to come to the Parliament? Why? Tell us why.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: What public interest is being served by delaying for two years when you bring a nine-clause Bill here, and, really, the substantive provisions in it—the clauses in it, and it is just a few? Why did it take you two years? And then you cry here today and complain about criminals and criminals, and we have to end this criminality and we must serve the public interest. That definitely did not serve the public interest to wait two years to come and give effect to the Akili Charles judgment of the Privy Council. So that is the first point I will make.

I will go further with that. You have here, if we look at the context of the Bail Bill, the Bail Act and the various amendments, that same judgment, the Akili Charles judgment, I quote paragraphs 59 to 61. The conditions which existed when the Bail Act, 1994, was passed are described, Madam Speaker, in Akili Charles, paragraph 59:

“The Attorney General drew attention to the fact that the rate of murder and violent crime at the time of the Bail Act was very high. As the Court of Appeal observed in their 1992 decision in Sinanan...‘It is a well-known fact that serious crimes of violence, including murders, have been an almost everyday occurrence over the past seven years’. In the same passage the Court referred to the ‘spate of crimes, including murders, in the country over the last decade’.”

2.30 p.m.

Paragraph 60 of that same Akili Charles Judgement:

“In putting forward the Bill that led to the Bail Act the Attorney General justified it on the basis of the percentage of accused who sought bail in 1990 who had committed offences while on bail was very high. This was said to

be the driver behind the provisions...”

—of that Act. What has changed from that Act in 1990? What has changed? The rationale that is being handed over by the Attorney-General is the same rationale, rampant crime, spate of crimes, spate of murders:

“...accused...sought bail...had committed offences while on bail...”—is—

“...very high.”

And that is the same two reasons and rationale being handed down by the hon. Attorney-General today. That was 30 years ago, 30 years ago, when that Bail Act was debated and put into effect in our country; 30 years ago. But the crime explosion continues. The numbers of repeat offenders continues, and we are going back to use the same tool, the same weapon, to say we are going to deal with criminality. We are going to deal with the criminals? The public institutions have to deal with them, and 30 years ago that is exactly what you tried to do. And for the last nine years, on five occasions, coming with bail amendments, bail amendments, bail amendments. They have not—

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: They have not helped. What has changed? What has changed? That has not changed the state of play. And so, whilst it is we talk proportionality and public interest, and good governance and laws for good governance, and so on, how, tell us please, is this piece of legislation going to help in reducing crime? Because we have tried this before, it has not worked, and here we are, back again, 30 years later, with the same reasoning that we have been dealing with since 1994.

So I move along, Madam. The Attorney-General en passant talked about the Opposition must not say that this needs a two-fifths majority, so we are not supporting, you will not support it and you must support it, and we must have the

confidence in ourselves—. Let me just set the record straight. The Bail (Access to Bail) (Amdt.) Bill, 2017, let me set the record straight on this. This Bill was considered in the committee of the whole of this House. We suggested amendments. We came out with a stronger piece of legislation and we gave support. We passed it.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: The Bail (Amdt.) Act, 2019, we supported the Government's decision to deny bail to persons charged with serious criminal offences such as possession of firearms, gang offences, dangerous drugs, kidnapping, and sexual offenses. That Bill, we also gave support to and that is the same thing we are hearing today that this Bill is seeking to do.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: We supported that. We supported the 2019 Bail Act and there was a sunset clause, three years. And then we came back after that with trying to remove the sunset clause. That was the 2022 Bill, if I am not mistaken. We could not support it at that time because it was not justified. We did not see how that helped and we refused in 2022. First of all, it went up to the Senate. It was defeated in the Senate. It did not even reach our House, the 2022 Bill. And why? Why? Our Senators there did not support because then, we had the benefit of the knowledge of this same Akili Charles Judgment in the Court of Appeal which was saying, you cannot in that manner, take away the rights of the judges, the same Judiciary. The hon. Minister is telling me I do not know about the separation of powers. So that is totally false, it is not true.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: It is totally false. And because of that decision in the Court of Appeal, in the same Akili Charles matter, we could not support the

Bail (Amdt.) (Extension of Duration) Bill, 2022, then, because we would have been trespassing on that very same separation of powers, on the powers and functions and roles of the Judiciary. So we did not support it then, and then we came back. Here we are today, 2024. We support, as I said, good bail legislation. The 2017 Bill—the 2019, we supported. The 2019 Bill, here, in this House. So the narrative about none supporting bail legislation is totally incorrect.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: The record will show three Bail Bills were defeated and I have explained some of that already. So we come back today, what shall we do? What shall we do? Should we give our support? The AG made a very impassioned plea. We must have confidence in ourselves; we must do what we have to do.

I want to talk about the constitutionality of section 5 (2) of the 2019, Bail Act, which we did not support. There had been some changes in the temporary provision, that was not in, the second time that the Court looked at it, and we could not in all consciousness, support that particular piece of legislation. Now what happened? We rejected the 2022 extension to the 2019 Act because that Bail Bill had a total ouster of the Judiciary's jurisdiction to consider the grant of bail and that was unconstitutional. The AG himself is admitting that now. You cannot totally remove the jurisdiction of the Court or the Judiciary. You cannot take away that function that the person is not to be deprived of their liberty, without recourse to the Judiciary or judicial officer exercising their function in that matter. So there was a total ouster of the jurisdiction of the Court in deciding to grant bail or not to grant bail and that was to the 2019 Bail Act, when they came for the extension.

I continue Madam. The 2024 Bail (Amdt.) Bill, now, we can look at what is the purpose of this Bill. And I quote, the AG said some of it, but we have it in the

Explanatory Note of the Bill and I think it is important for us to understand the purpose of this particular Bill. The Explanatory Note tells us what is the purpose of this Bill:

“The purpose of this Bill is to amend the Bail Act, Chap. 4:60...to make provision for the restriction of bail to persons charged with serious offences. The Bill seeks to give effect to the ruling of the Privy Council in the case of *Akili Charles v State [2022] UKPC 31* by providing that a Judge or Master may grant bail to a person charged with the offence of murder”

“A judge or master may grant bail to a person charged with the offence of murder”.

Further:

“The Bill also seeks to impose conditions on the exercise of the Court's discretion in granting bail to persons charged with the offence of murder...”

Then:

“The Bill...”—further— “...seeks to impose conditions on the exercise of the Court's discretion in granting bail...”

—as said, for:

“...murder...”—and— “...serious offences listed in Part II of the First Schedule and firearm related offences. Further, this Bill seeks to impose an enhanced reversal of burden on persons charged with the offence of murder and firearm related offenses to require such persons to show exceptional circumstances to justify the granting of bail.”

I want to pause there in stating what the Explanatory Note tells us what the purpose of the Bill is. Throughout this Bill, there is no definition of what are “exceptional circumstances”. AG said, yes, we have not taken out that right to go before a court, before a judge or a master, and they would get bail, so it is not taken

away completely. You have the right to apply. You do not have the right to get bail. You have to show exceptional circumstances. There is no definition of “exceptional circumstances” and I will ask the AG to kindly deal with that matter when he is doing his winding up.

I raise this because I have a letter here from the Law Association of Trinidad and Tobago, dated July 30, 2019. Comments of the Law Association of Trinidad and Tobago on the Bail (Amdt.) Bill No. 4 of 2019. I do not know if the AG was still then head of the Law Association. I really cannot say. But, this is what they said at pages 3 to 4, paragraphs 12, 13, 14.

2.40 p.m.

It deals with a similar provision that was contained in that Bail (Amdt.) Bill, No. 4 of 2019:

The association is unable to discern exactly what this means.

And paragraph 11 says:

Much the same analysis and conclusion would apply to persons falling within certain categories, but for the provision that a person falling within those categories may, in exceptional circumstances, make an application to the court for bail.

So you could make an application in exceptional circumstances.

The association—I continue—is unable to discern exactly what this means. The phrase “in exceptional circumstances” is not defined. So it would be left for the Judiciary to flesh out the circumstances in which it may depart from the prohibition against granting bail. Absent the creation of categories, a person will ordinarily be denied bail only where he or she is likely to abscond or commit an offence while on bail, or interfere with witnesses. The Bail (Amdt.) Bill prima facie prohibits the grant of bail

even where there is no evidence that any of these things will happen. It is, therefore, unlikely that it is intended that the absence of evidence of an intention to abscond, to offend or tamper with witnesses will constitute an exceptional circumstance and, if not, it is difficult to imagine what an exceptional circumstance might be.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: Continuing, paragraph 14 of these comments from the Law Association of Trinidad and Tobago then:

In the absence of any definition of “exceptional circumstances”, therefore, the association’s view is that certain categories of persons are also likely to be held to be not reasonably justifiable in a society that has respect for individual rights and freedoms.

The AG, again, belaboured the point about being reasonably justifiable, using the other words about proportionate and so on. Here it is the Law Association of Trinidad and Tobago is saying, without a definition of these exceptional circumstances, these things:

...are likely to be held not reasonably justifiable in a society that has respect for individual rights and freedoms.

I will ask the hon. Attorney General, through you, Madam, to please help us with how we will we deal with the comment from the Law Association of Trinidad and Tobago, because these words are replicated in the present Bill before us.

I continue with the purpose of the Bill. So I had stopped there, saying that, look, you can get the Bill, you can apply bail, you have the right, but there must be exceptional circumstances to be considered to give that to you. The Law Association of Trinidad and Tobago is telling us that they do not believe that that is sufficient to make the provision reasonably justifiable.

Then we have come further:

“The Bill also seeks to require review of the Act to be conducted every five years after its commencement.”

I would like to propose an amendment, Madam, when we come to that stage of the Sitting, that, yes, the Bill requires a review of the Act to be conducted every five years after its commencement; to add there too, that a report should be submitted to Parliament when that review is completed.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: And, of course, there have been some persons who have already been granted bail under the existing law, before this amendment. This Bill now tells us that, look, the Bill will provide that bail granted to an accused under section 5 of the Act, that is those already granted bail, this is a good provision that this Bill, when it comes into operation, that we will continue apply. So you are not going to pull them back in and put them in jail.

There are nine clauses, as we know, and then we to come down to clause 4, which is an important clause, that:

“...seeks to repeal...existing section 5 of the Act and substitute a new section 5 which would set out the jurisdiction of a Judge and Master to grant bail for indictable offences...”—magistrates will— “...grant bail for”—persons charged with— “summary offences. The proposed section 5 will also restrict the granting of bail to persons charged with serious offences. Further, the proposed...5 seeks to impose a burden”—as I said before— “on an accused person to satisfy a Court of the existence of exceptional circumstances which justify the granting of bail or to show sufficient cause why his remand in custody is not justified. Provisions is also made to allow a person charged with a serious offence to make an

application for bail where no evidence is taken within one hundred and eighty days from the date of the reading of the charge or where evidence has been taken but the trial is not completed...”

I want to ask, through you, Madam, why was this changed? There was a 120-day window, why has it now changed to be 180 days? I will ask the hon. Minister, in his winding-up, to clarify that for us. So these here represent the purpose of Bill.

When we come to the actual amendments now, the 2024 amendments, we have clause 8 of this Bill. Clause 8 of the Bill amends the First Schedule. It states as follows:

“The First Schedule is amended-

- (a) in Part I, by deleting paragraph (a) and renumbering paragraphs (b), (c) and (d) as paragraphs (a), (b) and (c), respectively;”

The current part of the First Schedule reads as follows:

“CIRCUMSTANCES IN WHICH PERSONS ARE NOT
ENTITLED TO BAIL

Where a person is charged with any of the following offences:

- (a) murder;
- (b) treason;
- (c) piracy or hijacking;
- (d) any offence for which death is the penalty fixed by law.”

So the amendment, while it deletes the offence of murder from the First Schedule because of the Akili Charles matter, it still keeps (d) here:

“(d) any offence for which death is the penalty fixed by law.”

As far as I remember, murder is an offence where the penalty of death is fixed by law and therefore, there would be a further amendment, hon. Attorney

General, to look at clause 8 and to amend:

“(d) any offence for which death is the fixed penalty by law.”

If you want to tie that back, make it in sync with what you have done about removing murder from that part of the Act, then you may want to put in:

any offence for which death is the penalty fixed by law, except murder.

So you are taking out murder in part (a), but you are keeping—

Hon. Member: [*Inaudible*]

Mrs. K. Persad-Bissessar SC: Yes.

“any offence for which death is the penalty fixed by law.”

So that will delete it and I will get you into where you want to be, that old (d):

“any offence...”

—I propose, be amended:

...for which death is penalty fixed by law, expect for murder.

Now, we have some other issues I would like to raise—and we do not intend to be very long in this debate. Indeed, I want state now, the Opposition will support this Bill.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: This is not a garbage Bill by the way. This is a Bill—

Hon. Members: [*Desk thumping and laughter*]

Mrs. K. Persad-Bissessar SC: —which remedies some of the deficiencies. As the hon. Attorney General has indicated, it is a Bill which remedies some of the defects in the law which, because of the Akili Charles judgment, does give us that balance of proportionality, so we are prepared to support it.

Hon. Members: “Raaa”.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: And it has nothing to do with rubbish, I tell you, nothing to do with the garbage. This has to do, as you say, with the public interest of the people of Trinidad and Tobago.

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: So while we will support the Bill, it is clear that this is not a plaster on gaping wound. Denial of bail alone is not the answer to fighting crime and I have seen, you know—it is not even a crime-fighting measure. I have shown you before, since 1994, 30 years we have been doing these bail things and nothing has happened.

Hon. Members: [*Interruption*]

Mrs. K. Persad-Bissessar SC: The objective of the Bill—

Madam Speaker: Members, particularly Members in the lower part of the Chamber, I would really like to hear the remainder of the contribution by the Member for Siparia. Member for Siparia, you have about—your original time ends at 2.55 p.m. So as I am on my legs, if you wish to avail yourself of your extended time, which would be a further 15 minutes, if you indicate that now, then you would proceed till 3:10 p.m.

Mrs. K. Persad-Bissessar SC: Thank you very much, Madam.

Madam Speaker: You are welcome.

Mrs. K. Persad-Bissessar SC: Thank you very much. Now, the objective of the Bill is to deny bail in certain circumstances and the question will now arise, where are we going to put these people? We already have severe reports of overcrowding, about the cost of feeding one prisoner, of keeping a prisoner, and we are going the place more prisoners into the system. At the end of the day,

denial of bail is one thing, but we definitely need to have speedier justice. We have seen—

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: We have seen where persons stay on remand, I think, on average, six to eight years, this data shows us; six to eight years before they come to justice. They sit there, bail is denied, you are either guilty or not guilty, but in this country, we have people rotting in jail for 10 years whilst awaiting trial. Of course, the Bill provides for persons to apply:

“...where no evidence is taken within one hundred and eighty days...”

—but this should really operate sparingly in exceptional circumstances. If there is delay, persons can utilize this provision. Well, with our justice system, this would be the norm. Persons will be routinely applying under the section because the system is so slow and therefore, we have to take some measures to speed up the justice system.

The fight against crime, as I said, is holistic. The entire system needs an overhaul. In a perfect world, evidence will be taken before the 180 days and the trial completed within the year. But this is not even possible, when the Office of the DPP is telling us that they are understaffed. The hon. AG said that the DPP refused lawyers from the Commonwealth. The DPP said that it was taken out of context. I do not know what to believe, but the point is that the office is understaffed and should be given some kind of priority—

Hon. Members: [*Desk thumping*]

Mrs. K. Persad-Bissessar SC: —should be given some priority.

So we look again—when we come to the Akili Charles judgment, I say that that judgment has, in effect, created a balance as reflected in this judgment. Akili Charles has remedied some of the problems we have had with the earlier

judgments that we had and in the earlier Bills that came. I am looking for one piece of paper, Madam, and then that would be the end of my contribution today. One moment, Madam, too much paper. Okay. “Cyah” find it, too much paper.

I repeat, they asked for our support. You took our advice, there are certain key amendments contained within this Bill that were not in the previous Bills that we did not support. I say, this may not curb the unprecedented crime in our country. It takes willpower, it takes competence to do this, and this Government is simply not capable of doing that. No matter how much legislation we support, they cannot solve the problem. Madam Speaker, the great Albert Einstein said:

“We cannot solve our problem with the same thinking we used when we created them.”

Today, I say, this country will soon go to the polls. We have sent this very message to the Government, and the population knows that our crime problems will not be solved by the same thinking from this incompetent Government. Madam Speaker, I say that we support this Bill. We do not intend to put up another speaker, unless necessary, and we thank you very much for your time.

Hon. Members: [*Desk thumping*]

2.55 p.m.

Madam Speaker: Prime Minister.

Hon. Members: [*Desk thumping*]

The Prime Minister (Hon. Dr. Keith Rowley): Madam Speaker, wonders never cease.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: I am beginning to think that if my colleague from Siparia comes to the Parliament more often, we will get a lot of work done.

Mr. Hinds. Oh yes.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: Because, Madam Speaker, this Bill has a history in this House as the Member for Siparia pointed out. We have been grappling with this Bill on many an occasion, and while the Leader of the Opposition made a big point in saying, why are we coming with it again and again, it is because, Madam Speaker, we genuinely believe that this Bill will assist the police to, at least, put a bit of pressure on those who have chosen crime as a way of life in this country. The police are the ones who asked the Government, the parliamentarians to put this measure in place to deal, not with every citizen, but with a small number of people who are literally terrorizing the population.

So when the Member asked, what is the purpose of the Bill? I think everybody knows the answer to that. The purpose is to prevent people from using the goodwill of the population to terrorize the population, because the criminals know exactly what the law permits and what it does not permit, and they know the logistics in applying the law to them, and they have no regard for the discomfort that they are causing to the wider national population. So the answer to that question is simply, if you get yourself in a situation where you can be charged, taken before the court for these listed, very serious offences, the people's representative in the House have put positions in place where you will be inconvenienced. You will be inconvenienced.

Madam Speaker, to say that because the law has not put an end to criminality or an end to the growing incidents of violent crime, that the law is going to be useless is not a reasonable argument because there are a number of laws on the books that are not applied every day, because the instances of their crime or whatever, does not happen every day. Because if you are saying that the laws can only go or should only go on the books if the breaches take place every

day, well then the ones where it has not happened for the last 10 years or the last two weeks, should come off the books. So that does not really change the price of anything.

There are offences that are occurring very frequently, Madam Speaker, and there will be a number of instances where this provision will be found to be suitable on a case by case basis. It does not say that everybody who commits a violent crime will end up being denied bail, but there are instances that their judicial officers will say to themselves and to the population, you require to be kept here for a while. In fact, Madam Speaker, there is another purpose to it. If a person is to be denied bail, we trust that the rest of the system, the Judiciary, will be cognizant of that, and the police will be cognizant of that. So that when a person is denied bail for this prescribed period, people at this time in our country facing the criminal onslaught will know that we have to work faster and better to be able to have the trial expedited so that a position of guilt or innocence can be established in a reasonable time frame having the benefit of the person having been denied bail for the number of days that the law provides.

So the matter does not end after this law is passed. It puts a requirement on others to use it, because if after the number of days the conditions are not met by the police and the Judiciary, then this will be another failure of the part of the societal response. So, Madam Speaker, I notice that my colleague Member for Siparia is obsessed with the elections and saying—

Hon. Member: [*Interruption*]

Hon. Dr. K. Rowley: —that with your record I will stay very far from you—

Hon. Members: [*Desk thumping and laughter*]

Hon. Dr. K. Rowley: But my colleague is talking—every time my colleague gets the opportunity, she talks about an election is due. “Who tell you dat”? Madam

Speaker, I want to comfort my colleague from Siparia. I do not intend to call the election very soon. You will have to be here for a little while longer in that seat.

Hon. Members: [*Desk thumping*]

Hon. Hinds: In purgatory!

Hon. Dr. K. Rowley: So, Madam Speaker, this Government that I lead is elected to serve for five years, and as far the last time I checked there is a long time—a British parliamentarian, I think it was Harold Wilson, who said that, a week is a long time in the politics. A week is a long time in politics, and so therefore we have a number of weeks ahead of us. So therefore, as far as my colleague is concerned I think she should take it that we have a long time to go to your next defeat, so do not be—

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: —do not be too anxious. Alright? Do not be too anxious. Madam Speaker, the reason why the Bill is here today is that it could have been here before. I think, I cannot remember how many months ago, almost a year ago when we talked—it was over a year ago, it was since the new President was there, we talked about discussing things that the Government should meet the Opposition, whoever. I remember writing the Opposition leader immediately and saying, look we have a team led the Attorney General who would chair a team, this was one of the number one matter.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: This was one of the matters that we identified and we did say, our list is not exhaustive. You might have other things that you think we should do, and I thought that covered the whole plethora of things, but again in the strange way of interpreting things, the Opposition did not see it useful to meet to discuss this. So let us thank Beryl. It might have been brought by the hurricane,

but, let us thank Beryl that today we are going to meet in the Chamber, in committee, to do what we said we should have done a while ago.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: Because my colleague did point out it is basically the same Bill, there are a few changes, there are some amendments to be offered, some amendments to be accepted or rejected, but today, according to what my colleague has said, today we are going to pass this Bill in this House and for that we are [*Inaudible*].

Mr. Hinds: Oh yeah.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: So, Madam Speaker, sometimes it takes a colleague from purgatory to advise—

Hon. Members: [*Laughter*]

Hon. Dr. K. Rowley: —my colleague from Siparia to accept the Bill today. Because another point I want to—

Mrs. K. Persad-Bissessar SC: Who is that?

Hon. Dr. K. Rowley: Madam Speaker. Madam Speaker, I would like you to ask the Member for Naparima, he mash up the UNC already. Tell him—

Hon. Members: [*Desk thumping and laughter*]

Hon. Dr. K. Rowley: —have nothing—tell him—

Madam Speaker: So, hon. Members, you know, it is very, very, it is very heartening to see that we are in this sort of mood, but we are still bound by the Standing Orders. Okay? No crosstalk, you address the Speaker. If a Member wants to speak, they could either stand on a point of order. We know the rules, so let us practise them, even in the good spirit that we are in. Prime Minister.

Hon. Dr. K. Rowley: Thank you, Madam Speaker. I just want to advise him to

stay out of PNM business and PNM elections, eh.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: But I did observe, Madam Speaker, I did observe in the contribution of the Member for Siparia, the point made about, you know, the setting of new yardsticks, saying that, I think she was taking from—the Attorney General saying that, we here in the House should stay with the template of leaving with the Judiciary, this discretion that they have and apparently we should not do anything to interfere with that because discretion belongs to the Judiciary. That might be true and that is how it was, that is how it is, but because of the exceptional circumstances of the behaviour of a small number of citizens who are terrorizing this country with criminal conduct, violent crime of the worst kind, the people's representatives in this House are to take it upon ourselves to change the rule, so that an advantage could come to the wider law-abiding population, and if it inconveniences the small criminal minority, then so be it.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: But the Parliament should change it, and the Parliament in our system is to make the law, and the Judiciary's role is to interpret the law and apply the law.

Hon. Member: That is right.

Hon. Dr. K. Rowley: If we do that, then the criminals will find themselves with no safe haven.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: I think my colleague from Siparia understands that, you know. I think my colleague from Siparia knows that, what used to happen in the Judiciary for decades or even centuries can be changed by parliamentary action.

Mrs. K. Persad-Bissessar SC: Certainly.

Hon. Dr. K. Rowley: Madam Speaker, in some jurisdictions they are putting—there was never any control over the number of times you could commit a crime and have a specific response in terms of the punishment. But some people it went to their Parliament when recidivism was getting the better of the law-abiding citizens, they went to the Parliament and they created three strikes and you are out, or it was three strikes and you are in. If you appear in court on a third occasion for an offence that you have committed in this instance, criminal offence, you are automatically going to make a serious jail because you have come here on a third occasion, three strikes. In the United States, there are many States that use that to bring criminals to heel because they were coming too frequently for the conduct of violent crime. So they changed the law and dictated to the Judiciary that those who come before you on a third occasion must go to jail, left no discretion.

So, I think my colleague from Siparia knows that because when section 34 was enacted in this House, it was novel legislation saying that, if an offence was committed in a certain time, retroactively we look back, and then and if it was not prosecuted by a certain time, then you get to walk.

3.10 p.m.

That was a situation where you were treating with this data scope and passing law to make substantial change, expect on that occasion it was not for the purpose and the benefit of the wider population, it is a for small select minority.

Hon. Member: [*Desk thumping*]

Hon. Dr. K. Rowley: Madam Speaker, if you talk to the police officers—and I want to make the point again. The police officers, especially those who go out there every night and every day and confront the armed murderous criminals, they will tell you that what irks them most is the revolving door, having to go to the same people over and over. You arrest them, you go before the court, they go

through the process, and within 48 hours they back out on the street doing the same thing again or worst.

Mr. Hinds: To get money to pay the lawyers.

Hon. Dr. K. Rowley: You talk to the police officers, the ones who we send out there to put their lives on the line, they will tell that is worst part of their job. If they manage to apprehend, if they manage to identify, they believe that that should slow down the role that they play in the criminal instance in the country. But no, they go to the court, they have no fear of the court, they have no fear of being detained, they just go back out the next day, the next week, and they carry on.

So, Madam Speaker, this measure will bring about a certain amount of inconvenience to those who we pick up who have been doing this crime. Of course, Madam Speaker, in many instances, what drives us to do this is also the brazenness that some of these criminals operate with in this country, as though they are in your face. “We doh care. You can do us nothing”. Sometimes, when you read and we hear the news about the crime, you ask, what manner of people conceived that? And therefore, when the police identify that person, then you need to know that there is some element of restraint and all we can expect after we do this and pass the law, is that we will operate our judicial system so that justice can be had in a timely manner. That is all we can do.

Madam Speaker, my colleague from Siparia asked about exceptional circumstances, and it brings me to point again. In one breath we are saying that we should not leave exceptional circumstances for the Judiciary to interpret. Well I think that is something that you can leave to the Judiciary, because to deem something exceptional, you have identify it in the context of what is the average behaviour. If it is average, or appears in the average statistically, you will know what point on the curve you will pick to say that this is the average, the mean, and

if the action is way beyond that mean then clearly, it is exceptional.

I mean today, all last night we spent our time looking at a hurricane. Hurricanes do pass in the southern part of the Caribbean, but so infrequently that anybody who looks at it against the occurrences on the annual basis and where they pass during the year, will say a hurricane threatening Tobago or Trinidad is an exceptional occurrence. It does not say it does not happen, but on a case by case you can judge it against the mean. I think the judges and the magistrates can do that very easily because we know what the mean is.

So in one breath you are saying, “Do not leave that discretion to identify the exceptional”, but in the other breath you are saying, “Leave the bail which is to the discretion”. So, to determine bail and to restrict bail and to identify where bail should apply under exceptional circumstances, you say, “No, no, you are trampling on the Judiciary’s discretion” but then you say in the next breath, “Leave exception where circumstances interpretation to the discretion”.

3.15 p.m.

So I think, you know, these are arguments which were interesting but do not change the need for this Bill. And the most important thing I would like to see out of this Bill, Madam Speaker, when it is re-enacted, is the expediting of trials in the country’s ports. The criminals must know, once you are apprehended, you are on a fast track to making a jail if you are guilty and to get back to your freedom, if you are interested.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: When we pass this, if it is still business as usual in the courts, where today’s matter will be heard in the next five, 10 years, then we would have accomplished nothing. But if on the other hand, we manage to expedite trials, dispense justice in a timely manner, this measure will bring about a significant

relief for the wider population.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: Madam Speaker, the Opposition Leader offered the House, today, a chance to save time by saying that our colleagues on the other side will, today, support this Bill. I am glad to hear that.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: I will be the only speaker on this side—

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: —because let us spend our time in committee treating with the suggested amendments and any other. And as responsible parliamentarians, let us give the police a chance and let us let the criminals know that in this Parliament, the people's representatives have taken the initiative to shorten the instances of persons taking advantage of a population that has had just too much of violent criminal conduct, and this is what parliamentarians can do. As they say, “You know what police can do?”, this is what parliamentarians can do.

Hon. Members: [*Desk thumping*]

Hon. Dr. K. Rowley: Madam Speaker, I look forward to a productive session in committee and at the end of it, in quick order, given the number of hours we spend debating this over and over, today, in short order, with the amendments we have in front of us and whatever comes up in committee, that we leave this House as early as possible, passing this amendment and we are re-enacting this law.

Madam Speaker, I am grateful for the support—on behalf of the wider national population, we are grateful for the support and we expect that at the end of the day, the population will get the relief that these measures offer. Madam Speaker, I thank you.

Hon. Members: [*Desk thumping*]

Madam Speaker: Attorney General.

The Attorney General and Minister of Legal Affairs (Sen. The Hon. Reginald Armour SC): Thank you very much, Madam Speaker. Madam Speaker, I take note of the remarks of the hon. Prime Minister and I am quite keen to get to the committee stage so that we can conclude this important exercise for the benefit of the people of this country. There were a couple questions that were asked by the Leader of the Opposition, which raised just a few points that I will immediately reply to. The few points that were raised, if I may respond to that immediately—

Mrs. K. Persad-Bissessar SC: Hon. AG, your Prime Minister spoke and he answered the questions. He said he would be the only speaker.

Hon. Members: [*Desk thumping*]

Dr. Rowley: [*Inaudible*]

Hon. Members: [*Crosstalk*]

Madam Speaker: All right. So I just want to remind Members—

Mrs. Persad-Bissessar SC: [*Inaudible*]

Madam Speaker: Member for Siparia, so that if it is—it is not a—

Mrs. Persad-Bissessar SC: [*Inaudible*]

Madam Speaker: Member for Siparia.

Mrs. Persad-Bissessar SC: Yes—[*Inaudible*]

Madam Speaker: Please, it is not a breach of the Standing Orders that you are rising on. Okay? And the Attorney General was gracious enough to give us an interruption, allowed you to interject, let us get on with it.

Mrs. Persad-Bissessar SC: [*Inaudible*]

Sen. The Hon. R. Armour SC: Thank you very much. Thank you very much, Madam Speaker, just a few remarks—

Hon. Members: [*Interruption*]

Sen. The Hon. R. Armour SC: Just a few remarks, if I may be permitted by the other side, Madam Speaker.

Mrs. Robinson-Regis: But he has to wind up the Bill.

Hon. Members: [*Interruption*]

Sen. The Hon. R. Armour SC: The reality of where we are today on the Bill before this House is that we appear close to getting into committee so that we can conclude the business of the House. I just want to make a few remarks in my winding up because the Leader of the Opposition—

Dr. Rowley: You are required to wind up.

Mr. Young SC: Seems to be anxious.

Sen. The Hon. R. Armour SC: —seems to—

Mrs. Robinson-Regis: You have to wind up.

Dr. Rowley: [*Inaudible*]

Sen. The Hon. R. Armour SC: Exactly.

Mrs. Robinson-Regis: He has to wind up.

Sen. The Hon. R. Armour SC: The Leader of the Opposition allowed herself to make a few remarks, which I am going to respond to in my wind-up. One of the remarks that I make in response to the hon. Attorney General, she wanted to know what has this Government been doing since the passage of the delivery of the Akili Charles' decision in July 2022. Well, one of the things that this Government has done was to pass the Indictable Proceedings, AJIPAA, Criminal Procedure—amendments to the AJIPAA legislation, which has revolutionized the pursuit of an expeditious criminal justice system in this country.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: And I will give one example of that. There is the case of *The State v Sheldon Doodnath*. The case was filed on January 11, 2024,

alleging offences of kidnapping and larceny of a motor vehicle. The sufficiency hearing was concluded on April 16, 2024, with the accused committed to stand trial before the San Fernando Assizes. So that was four months after the accused was charged, a sufficiency hearing.

Mr. Hinds: AJIPPA at work.

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: And the trial judge has indicated that the trial is going to be completed within six months of the charge having been laid. That is to be compared with preliminary enquiries, which have taken as long as 13 years. We know in the case of Mr. Akili Charles, he was in jail for eight years before he was freed.

Mr. Hinds: Correct.

Sen. The Hon. R. Armour SC: And to make a point, to demonstrate the need for us to put shoulder to the wheel, to put our criminal justice system, as this Bill is seeking to do, back on track, we regret to record the fact that two days after Akili Charles was freed on bail as a result of the decision of the Privy Council, he was shot and killed. Mr. Akili Charles, whose name lives in memory by that decision, was shot, murdered and killed. That is the state that we are trying—state of crime that we are trying to fix by this legislation.

Let me make a further point, Madam Speaker, in answer to the suggestion of the Leader of the Opposition that crime is run away, and somehow or the other it is the fault of this Government, the reality is that crime, as a public health issue, is worldwide. As recently as the last two months, the United States Surgeon General made a declaratory statement associating the United States with the fact that crime is a public health concern in the United States of America, in relation to gang and gun-related offences, and the advisory acknowledges the high incidence of

firearms-related homicides and violence in the US, the contributing factors, and advances a public health approach to firearm injury and violence prevention. That is existing in the United States.

Only two days ago, Belize declared a state of emergency to deal with guns and gang-related violence. So let us not pretend that the unfortunate circumstances, which this Government is seeking to fix by this legislation, is simply limited to and exclusive to Trinidad and Tobago. It is not. And unless we put shoulder to the wheel to fix this country for the people of this country, we will always be able to find ourselves in a situation in which an opportunistic Opposition will be prepared to say, “It is your fault and not theirs.”

Hon. Members: [*Desk thumping*]

Sen. The Hon. R. Armour SC: Madam Speaker, I am not going to prolong this anymore. With those few words, I beg to move.

Hon. Members: [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

Madam Speaker: This Bill has nine clauses and a Preamble.

House in committee.

Mr. Armour SC: Madam Chairman—[*Inaudible*]

Madam Chairman: Hon. Members, it seems that we will have to suspend for maybe just about 10 minutes to allow the drafting staff to come to join the committee. So it is now 3.27, and therefore, I say we would resume here at 3.40. Yes? This committee meeting is now suspended.

3.27p.m.: *Committee suspended.*

3.40 p.m.: *Committee resumed.*

Madam Chairman: This Committee is now resumed. So AG we could go from 1 to 3?

Sen. Armour SC: Yes, yes, thank you, Madam Chair.

Madam Chairman: 1 to 3.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed: That clause 4 stand part of the Bill.

Madam Chairman: Attorney General.

“4. Delete the proposed subsection (8) of the proposed section 5, and substitute the following subsection:

(8) For the purposes of subsections (2) (a), 3 and 4, the accused person shall have the burden, on a balance of probability, of satisfying the Judge or Master of the existence of exceptional circumstances or sufficient cause, as the case may be, to justify the granting of bail.”

Sen. Armour SC: Thank you very much, Madam Chair. We have circulated the proposed amendment to delete the proposed subsection (8) of the proposed section 5 and to substitute a new subsection. And that subsection will read, 8:

“For the purposes of subsections (2) (a), 3 and 4, the accused person shall have the burden, on a balance of probability, of satisfying the Judge or Master of the existence of exceptional circumstances or sufficient cause, as the case may be, to justify the granting of bail.”

Madam Chairman: Member for Siparia.

Mrs. Persad-Bissessar SC: No comments, Ma'am. No objection.

Madam Chairman: Member for Barataria/San Juan.

Mr. Hosein: Yeah. I just want to seek clarification from the hon. Attorney

General on a particular matter. AG procedurally, I just want to be very clear with the intent of the legislation here. Now, a person who is charged with the offence of murder will now have to show exceptional circumstances before the Judge entertains the application for bail. But then when we look—

Sen. Armour SC: No, that is not correct. Not before the Judge entertains it on the application—

Mr. Hosein: He has to show exceptional circumstances.

Sen. Armour SC: Not before he makes an application.

Mr. Hosein: And that is within 180 days. If the 180 days expires then does he have to show exceptional circumstances also?

Sen. Armour SC: Give me one minute, let me consult with—the answer to that is, yes.

Mr. Hosein: So during the 180 days and after 180 days, he still has to show exceptional circumstances.

Sen. Armour SC: Yes.

Mr. Hosein: So then, I remembered when we did the 2019 amendment where there was a denial of bail for the 120 days. Within that period, you have to show exceptional circumstances, but after the 120 days has expired, you no longer had to show exceptional circumstances and the person could make the application for bail before a Judge. Now I thought that was the intent of putting the time limit period of the 180 days.

Hon. Members: [*Crosstalk*]

Madam Chairman: So who is answering this, Attorney General or do I recognize the Member for Port of Spain South?

Sen. Armour SC: Yes, Member. So, the 180 days will continue to apply and—

Mr. Hosein: Sorry, I cannot hear. I am being—

Sen. Armour SC: The 120 days will apply and even if it expires you still have to make the application and satisfy the Judge of exceptional circumstances. And I rely on paragraph 92 of the Akili Charles Privy Council Judgement which reads:

“The nature and seriousness of the offence charged and the likely penalty, if convicted, will always be major considerations in the decision whether or not to grant bail. However, they cannot be the only, determinative and overriding considerations in every case of murder so as to entirely preclude the exercise of judicial discretion, which is also concerned with other factors like the risk of flight or re-offending.”

So the point is it remains the judicial discretion, you will have to make the application and it would be for the Judge in her or his discretion to determine.

Mr. Hosein: So just to be clear also for the record. We are preserving the right of a person to still apply for bail within the 180 days.

Sen. Armour SC: Correct.

Mr. Hosein: Yes.

Sen. Armour SC: Thank you. So the answer to that is, yes.

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed: That clause 5 stand part of the Bill.

“Clause 5 A. In section 6A, by inserting before the word “Master” wherever it appears, the words “Judge or”.

B. In section 6A, wherever the word “High Court” appears delete it and replace it with the words “Judge or Master”;
and

C. In section 6A, in subsection (2), by deleting the words

“or (2)” and substituting the words “or (1A).”.”

Madam Chairman: Member for Barataria/San Juan.

Mr. Hosein: Yes, please, Madam Chair. Madam Chair, I know the Leader of the Opposition circulated some amendments but I think there is an error, it should read clause 5 there. Not 6, yes.

Madam Chairman: So I therefore call on Member for Barataria/San Juan with respect to clause 5 and the amendment.

Mr. Hosein: So the reason or the reasoning behind this particular amendment is this. When we insert a new section 5 of the Bill, and where the words a user is Judge or Master. So we are clear that it is a Judge or Master. The language has now changed when you look at the amendment in clause 5 to read, “A High Court or Master.” The Master is still part of the High Court. So if we are drafting I believe the language should be consistent throughout the legislation. So instead of using the words “High Court” we should replace it with “Judge or Master”.

We recently had an issue with this in the Privy Council, in the Zachary Da Silva judgement where the Privy Council commented on the precision of the drafting of legislation in terms of, the terms that we use. So the amendment here really is to propose that the language be consistent throughout the legislation to read Judge or Master, because we are now for the first time giving the powers to a Master to grant bail for the offence of murder.

Madam Chairman: Attorney General.

Sen. Armour SC: Thank you very much, Madam Chair. In answer to the Member for Barataria/San Juan, throughout the Act the language which is used is in the proposed amendment, is the High Court or a Master. And there is, in my respectful view, no difference between a Judge and the High Court. So we would prefer to maintain the language which we have proposed in our amendment which

is the High Court or a Master which appears throughout the Act.

Mr. Hosein: AG if I may just take your attention to clause 4 that we just amended. The language that you use there, the Judge or Master, not High Court or Master. So it is incorrect to say the legislation is consistent, the language, the language being used in clause 4, is Judge or Master, not High Court or Master.

Mrs. Persad-Bissessar SC: If you want to be consistent as you are suggesting, it is at present inconsistent. So it has to be an “or”, it cannot be “and”.

Madam Chairman: Attorney General.

Sen. Armour SC: Thank you very much, Madam Chair. In answer to the Member for Siparia and the Member for Barataria/San Juan, the definition of “court” in the Act includes a Judge, Master, magistrate, a Justice of the Peace. So we want to be consistent in the language that we are using. And the fact that I have said throughout the Act, the words, “a High Court” are used and is not contradicted by the fact that the term “court” is already defined. So we want to remain consistent with the language of the Act.

Mrs. Persad-Bissessar SC: If you want to be consistent, what has been used is Judge or Master. We are not disputing the definition of what court is. The Master is a part of the High Court. So it is “Judge or”, if you want to differentiate, it should be differentiated throughout. You do not want to come back here after you go to the Senate, do you?

Mr. Hosein: Madam Chair, if I may also add to what the Member for Siparia said also. The definition section in the Bail Act does not define High Court, it just defines court. Here you are using a term “High Court”. High Court is not defined in the Bail Act.

Mrs. Persad-Bissessar SC: What would be the harm in taking the proposal that we are making? One thing I can say, if we do not accept it, we may have to come

back here on Friday, with Senate amendments if you are going to get this law into—if it is that there is no harm in taking the approach that we are suggesting, I would ask you to kindly consider it out of an abundance of caution.

Mr. Imbert: May I just say something here? May I come in here, please—

Madam Chairman: Just one minute.

Mr. Imbert:—on the same point? May I?

Madam Chairman: Minister of Finance.

Mr. Imbert: Yes, when you look at the parent Act which I just have, they use the term “High Court”. So I “doh” quite understand what the Member for Barataria/San Juan just said. Because if you go for example, to 10 of the parent Act it says “High Court”, if you go to 11 of the parent Act it says “High Court”. So the term “High Court” appears in the parent Act.

Mr. Hosein: Madam Chair, may I just respond to the Minister of Finance.

Madam Chairman: Yes, Member for Barataria/San Juan.

Mr. Hosein: If the Minister of Finance looks at this particular section, in terms of 6A of the parent Act, High Court is used, but then the language differs in your new amendment that you are making to clause 4. That is the point I am trying to make. In clause 4, the amendment—

Mr. Imbert: I am not arguing that point, I am just clarifying that there is a reference to High Court in the parent Act as opposed to court, which is what you just—

Mr. Hosein: But now we are giving the powers—

Mr. Young SC: If I may? When you look at the clause 4 that you are referring to and that court, so, for example, look at the same clause 4, which is section 5 of the parent Act and where we are introducing this 5 now. There, persons charged with the offence of murder on an offence mentioned in subsections (3) and (4) and

brought before the “court”, and then you go to the parent legislation, “court” is defined in the parent legislation. So that is what that court refers to. When you are seeing High Court, so in the parent Act here, whilst the AG is getting it, in the parent Act here, looks at section 11 of the Act:

“(1) Where a Magistrate’s Court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the High Court...on application...”

So it is creating that definition between the Magistrates’ Court then and the High Court. So it is not the Court of Appeal, et cetera. So it is not wrong.

Mr. Imbert: Quite correct.

3.55 p.m.

Mr. Hosein: I take the point in terms of the distinction between the Magistrates’ Court and the High Court because they are two layers of appeal in terms of that. This appeal from the Master or judge goes to the Court of Appeal, which 6A now provides for if they are denied or the bail is granted. Whatever the case, the prosecution or the accused could make their application for the appeal. However, I just want to be clear because the Master is also part of the High Court. You are making a distinction by saying here “the High Court or Master”. So you are saying that the—the Master is a subset of the High Court if you agree with that. A judge or Master belongs in the High Court, but now the legislation says High Court or Master. So it seems as though it is making a distinction as though the Master does not form part of the High Court and that is the point I am making here.

Mr. Al-Rawi SC: Madam Chair, if I may?

Madam Chairman: Member for San Fernando West.

Mr. Al-Rawi SC: Part of the difference in the use of the terms, “Master”, “magistrate” and “High Court”, resides in the fact that there is an inherent

jurisdiction dispute between the High Court, which has inherent jurisdiction, and the Master and the magistrate not having inherent jurisdiction which there is learning on. So the Court of Appeal ruled on that. In these circumstances, therefore, it is necessary to specify the three creatures so that there is no doubt as to appellate rights with inherent jurisdiction issues or not, and that is part of the rationale.

Madam Chairman: Okay. So I think the AG would like to propose a way forward.

Sen. Armour SC: Yes, if I may suggest to pass on to the other proposed amendments, I will consult further on that with my team and we can return to that.

Madam Chairman: Okay. So the question is that clause 5 be postponed until later in the proceedings?

Assent indicated.

Clause 5 deferred.

Clause 6.

Question proposed: That clause 6 stand part of the Bill.

Madam Chairman: Attorney General.

Sen. Armour SC: In clause 6, Madam Chair, in the proposed section 9A(1), we propose amendments:

- (a) After the word 5(2) to insert the words “three or four”; and
- (b) Delete the words “making an application” and substituting the words “filing an appeal”.

Madam Chairman: Member for Siparia. Member for Barataria/San Juan.

Mrs. Persad-Bissessar SC: [*Inaudible*]*—*the Member for Barataria/San Juan, Madam Chairman.

Madam Chairman: Member for Barataria/San Juan.

Mr. Hosein: No difficulty, Madam Chair.

Madam Chairman: The question is that clause, be amended, as circulated.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed: That clause 7 stand part of the Bill.

Madam Chairman: I believe there is an amendment. Member for Siparia.

Mrs. Persad-Bissessar SC: Thank you, Madam. We are proposing to insert a new subclause. Now this clause was to do with a report being done, a review every five years, and we are saying we insert thereafter a new subclause, that:

The Attorney General shall, within three months after the review of the Act referred to in subsection (1), cause a report on the review of the Act, to be laid in Parliament.

Madam Chairman: Attorney General.

Sen. Armour SC: Thank you, Madam Chair. In principle, I do not have any objection to that. There is just a little tidying up that I will propose. So we are dealing with clause 22, so the existing clause 22 would have to become clause 22(1), and the new subclause that is proposed would then follow as clause 22(2). In the last line a report, that is, of 22(2), a report on the review of the Act, that “,” between “Act” and “to” should be removed. Other than that, I am happy to associate myself with, and to accept the proposed amendment.

Madam Chairman: Okay. So that the question is that clause 7, be amended, and further amended to remove the “,” between “Act” and “to be laid in the Parliament”. The other amendments with respect to numbering is consequential and naturally will happen.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8.

Question proposed: That clause 8 stand part of the Bill.

In paragraph (a), in the renumbered paragraph (c), after the words “by law” insert the words “, except murder”.

In paragraph (b), in the proposed Part II of the First Schedule, in paragraph (e), insert the word “a” before the words “sexual offence”.

Madam Chairman: Attorney General.

Sen. Armour SC: Thank you, Madam Chair. We propose, as circulated, an amendment, that is to say, in paragraph (a), in the renumbered paragraph (c), after the words “by law” insert the words “except murder”.

Madam Chairman: And is there another—

Sen. Armour SC: And then secondly, in paragraph (b) in the proposed Part II of the First Schedule, in paragraph (e), insert the word “a” before the words “sexual offence”.

Madam Chairman: Member for Barataria/San Juan.

Mr. Hosein: I think the Member for Siparia has amendments to this clause.

Mrs. Persad-Bissessar SC: You can **offer** it in the debate and I think this reflects the same amendment I have circulated here for clause 8 to put the words “except murder”. So we accept the amendment we proposed that is now put into writing by the hon. Attorney General.

Madam Chairman: The question is that clause 8, be amended, as circulated.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9 ordered to stand part of the Bill.

Clause 5 reintroduced.

Question again proposed: That Clause 5 stand part of the Bill.

Sen. Armour SC: May I ask that we defer for perhaps 10 minutes? I would like to have a consultation with my team and return to this.

Madam Chairman: So that it is a request for a further suspension?

Sen. Armour SC: That is right.

Madam Chairman: All right. So in the circumstances, Members, it seems that there is a request for further consultation on clause 5. So that I am—

Hon. Member: [*Interruption*]

Madam Chairman:—going to suspend. If I give you AG till 4.15 will that be sufficient?

Sen. Armour SC: That will be sufficient. Thank you.

Madam Chairman: This committee is now further suspended until 4.15 p.m. We would resume at 4.15 p.m.

Sen. Armour SC: Thank you, Madam Chair.

4.03 p.m.: *Committee suspended.*

4.15 p.m.: *Committee resumed.*

Clause 5 reintroduced.

Question again proposed: That clause 5 stand part of the Bill.

Madam Chairman: Attorney General.

Sen. Armour SC: Madam Chair, in my earlier answer to the Member for Barataria/San Juan, I had said in answer to his question, yes. I want to withdraw that and correct my answer. The answer is no.

Mr. Hosein: We are on clause 5. That is clause 4, AG, with respect to that issue. We are on clause 5.

Sen. Armour SC: Clause 5?

Mr. Hosein: Yes. I think we are at clause 5.

Sen. Armour SC: My apologies, Madam Chair, I was referring to another section. We accept. In the case of clause 5, we accept the change proposed.

Hon. Members: [*Desk thumping*]

Madam Chairman: The question is that clause 5, be amended, as circulated.

Mr. Imbert: Madam Chairman, circulated as corrected because this says 6. It does not say 5. It says 6. This 6 is supposed to be a 5.

Madam Chairman: Thank you so much Member for Diego Martin North/East. The error was noted and correct, but maybe—

Hon. Members: [*Interruption*]

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Preamble approved.

Question put and agreed to: That the Bill, as amended, be reported to the House.

House resumed.

4.20 p.m.

House resumed.

Bill reported, with amendment.

Question put: That the Bill be now read a third time.

Madam Speaker: This Bill requires a three-fifths majority.

The House voted: Ayes 38

AYES

Robinson-Regis, Hon. C.

Rowley, Hon. Dr. K.

Imbert, Hon. C.

Young SC, Hon. S.

Hinds, Hon. F.

Deyalsingh, Hon. T.

Al-Rawi SC, Hon. F.

Beckles, Hon. P.

Webster-Roy, Hon. A.

Cudjoe-Lewis, Hon. S.

Gadsby-Dolly, Hon. Dr. N.

Gonzales, Hon. M.

Mc Clashie, Hon. S.

Cummings, Hon. F.

Forde, E.

de Nobriga, Hon. S.

Leonce, Hon. A.

Manning, Hon. B.

Morris-Julian, Hon. L.

Scotland SC, K.

Richards, K.

Monroe, R.

Lee, Mr. D.

Persad-Bissessar SC, Mrs. K.

Charles, R.

Ameen, Ms. K.

Indarsingh, R.

Padarath, B.

Moonilal, Dr. R.

Hosein, S.

Paray, R.

Ratiram, R.

Bodoe, Dr. L.

Rambally, D.

Ram, A.

Ragbir, Dr. R.

Hon. Members: [*Interruption and laughter*]

Division continued.

Benjamin, M.

Haynes-Alleyne, A.

Question agreed to.

Bill accordingly read the third time and passed.

Hon. Members: [*Desk thumping*]

ADJOURNMENT

The Minister of Housing and Urban Development (Hon. Camille Robinson-Regis): Thank you very kindly. Madam Speaker, I beg to move that this House do now adjourn to Wednesday the 3rd day of July, 2024, at 1.30 pm. On that day, we will do, as we indicated on Friday, the Miscellaneous Provisions (Judicial and Legal Service) Bill, 2024; the Administration of Justice (Indictable Proceedings) (Amdt.) (No. 2) Bill, 2024; and if time permits, we will do the national instrument Bill.

Madam Speaker: Whip?

Mr. Lee: Just for clarity, Madam Speaker, I am not seeing, my good friend, on the Order Paper, what she has just described which we will be doing on Wednesday.

Hon. C. Robinson-Regis: Madam Speaker, we laid these Bills on Friday with the Supplemental Order Paper and the Attorney General did indicate that we will do

those two Bills, the indictable offences and the miscellaneous on Wednesday. The Attorney General did say that on Wednesday, that we would do them on Wednesday, and the national instrument Bill has been on the Order Paper for quite some time.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.25 p.m.