

ORAL ANSWERS TO QUESTIONS

TOOFANY, MR IQBAL - DEATH - POLICE CUSTODY

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Rt. hon. Prime Minister, Minister of Defence, Home Affairs, Minister for Rodrigues and National Development Unit whether, in regard to the death of Mr Iqbal Toofany whilst in Police custody at Rivière Noire, he will -

(a) for the benefit of the House, obtain information -

(i) from the Commissioner of Police -

A. if the Police objected to the release on bail of the Police officers arrested in connection therewith and if not, why not;

B. if he or his representatives has/have received members of the family of the deceased, and

C. where matters stand as to the Police inquiry carried out thereinto;

(ii) if the Director of Public Prosecutions has received members of the family of the deceased, and

(iii) where matters stand as to the judicial inquiries carried out thereinto, and

(b) state if urgent measures will be taken for the protection of detainees from Police brutality.

The Prime Minister: Madam Speaker, at the very outset, I would like to present my sincere condolences to the bereaved family of late Mr Mohamad Iqbal Toofany.

I am informed by the Commissioner of Police that on Monday 02 March, 2015 at 0105 hours along Black River Road near La Balise Marina, Black River, Police stopped a private car bearing Registration No. 3166 ZM 00, coming from the direction of Tamarin and proceeding towards Le Morne, which was driven by one Mohamed Iqbal Toofany, residing at Vingta No. 3, Vacoas, for stop and search purposes. Mr Toofany produced his driving licence on request.

Whilst checking the vehicle, the Police officers noticed that the registration number on the insurance vignette was different from that on the said vehicle. When questioned, the driver failed to provide any explanation thereon.

Police effected a body search on Mr Mohamed Iqbal Toofany and secured -

- (a) one jigsaw, and
- (b) a Swiss knife;

The vehicle was also searched and a bag containing the following items were secured

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- (a) a torchlight;
- (b) a cutter;
- (c) a pair of socks, colour blue;
- (d) one right hand side glove, colour white;
- (e) screwdrivers;
- (f) 3 cellular phones make Nokia, and
- (g) a sum of Rs345.

On being questioned about the items secured, he remained silent. He was consequently booked for the offences of “Insurance vignette not affixed” and “Motor Vehicle Licence not affixed”.

In view of the items secured during the search, Mr Toofany was brought to Black River Police Station for enquiry at 01.45 hours. He was handed over to Black River CID for further questioning as he was suspected to be involved in cases of larceny of vehicles reported in Black River Station area.

I am further informed by the Commissioner of Police, that on the same day at 10.00 hours while Mr Toofany was being brought to Bambous District Court for lodging of a Provisional Complaint of “Rogue and Vagabond” against him, he complained of pain in the stomach. He was immediately conveyed to Victoria Hospital for treatment. Whilst he was undergoing treatment at the hospital, he collapsed. He was reanimated, but in vain. At 10.50 hours, Dr Jeetun, Senior Medical Officer, certified death and the body was referred to the Police Medical Officer for an autopsy. The autopsy carried out at 17.00 hours revealed the cause of death as being “Acute Pulmonary Oedema”. The body was, thereafter, handed over to the relatives.

Following the autopsy, the Chief Police Medical Officer informed the Commissioner of Police of the probable cause of death and the extent of injuries found on the body of Mr

Toofany. The Commissioner of Police referred the matter to the CCID in view of the seriousness of the case.

The CCID immediately initiated an enquiry in the course of which five officers of CID Western Division who dealt with the case were arrested on 03 March 2015. They were detained during the night and on the next day they were provisionally charged with the offence of “Torture by Public Officials” before the District Court of Bambous.

In regard to part (a)(i)A of the question, I am informed by the Commissioner of Police that Police did not object to the release on bail of the five Police Officers for the following reasons -

- (i) the Police Officers were charged with “Torture by Public Officials” as a result of the injuries found on the body of the deceased and the cause of death was certified by Chief Police Medical Officer as “Acute Pulmonary Oedema”;
- (ii) the Police Officers have denied the allegations levelled against them, and
- (iii) their defence statements were already recorded and they were not needed for further inquiry at that point in time, and their further detention was not warranted.

They were therefore bailed out after each furnishing a surety of Rs9,000 and recognizance of Rs50,000. They were all interdicted from duty on the same day and will appear anew before Court on 25 May 2015.

I must say, Madam Speaker, that I am personally not satisfied with the circumstances leading to the release on bail. I have already conveyed my dissatisfaction to the Commissioner of Police. He has reassured me that he has already issued the necessary Order to better guide Police Officers how to handle such situations.

In regard to part (a) (i) B of the question, I am informed by the Commissioner of Police that on 03 March 2015 between 12.25 hrs and 12.40 hrs, together with the Deputy Commissioners of Police, Administration and Operations and the Assistant Superintendent of Police Western Division, he received the father of the deceased and his Counsel, Mr Erikson Mooneapillay. Following representations made by the father of the deceased, the Commissioner of Police reassured him that the Police inquiry would be conducted in a fair and impartial manner.

In regard to part (a) (i) C of the question, I am informed by the Commissioner of Police that the inquiry is in progress. The future course of action in the investigation will be determined, *inter alia*, by the outcome of the toxicological and alcohol report of the deceased.

With regard to part (a) (ii) of the question, I am informed that following receipt of a letter dated 05 March 2015 from Counsel Mooneepillay, on the same day at 11.00 hrs, the Director of Public Prosecutions received the father of the deceased and the said Counsel and another individual who accompanied them.

They made written and oral representations to the Director of Public Prosecutions to appeal against the decision to grant bail to the Police Officers involved. The Director of Public Prosecutions explained to them that there were no grounds of appeal. The meeting ended at around 11.30 hrs.

With regard to part (a) (iii) of the question, I am also informed that on 05 March 2015, the Director of Public Prosecutions lodged a judicial inquiry into the death of Mr Toofany before the District Court of Black River Bambous pursuant to sections 110 and 111 of the District and Intermediate Courts (Criminal Jurisdiction) Act. The matter is ongoing and is scheduled for hearing today.

With regard to part (b) of the question, I am informed that the Commissioner of Police has initiated immediate measures for the protection of detainees in Police custody, whereby when persons are arrested and detained, the officers dealing with the case will henceforth have to furnish all details of the arrest to the Police Information and Operations Room as well as their Divisional/Branch Operations Room. The Officer-in-Charge of the Police Information and Operations Room and the Divisional/Branch Operations Room concerned will be responsible to communicate the information to any Counsel or relatives of the detainees.

All interrogations will be recorded using existing CCTV and Audio Recording Systems which are available at all Divisional Headquarters.

I can assure the House that in my capacity as Minister for Home Affairs, I will not tolerate any abuse by Police Officers encroaching on the fundamental rights of citizens. Any *'brebis galeuse'* within the Police Force will be taken to task.

Mr Bérenger: Madam Speaker, after he has confirmed that the charge was “torture” - the Rt. hon. Prime Minister has told us that he is not satisfied the way this bail issue was handled - will he agree with me that, in fact, recently in any case, be it the Roches Noires case, be it the La Caverne tape issue and so on, in all cases, the Police asks the Court not to grant bail; it objected to bails, whereas in this case where the provisional charge is “torture”,

the Police did not object? Will he agree with me that this is perceived as *deux poids deux mesures* because some Police Officers are concerned?

The Prime Minister: That was my own impression, Madam Speaker, and I said it to the Commissioner of Police. I said: “I find it strange that, in all cases, Police had been objecting and, in this case, they chose not to object as if there are two classes of citizens in this country and the law does not apply equally to all of them.” I was not happy at all with the situation, and the Commissioner of Police knows that.

Mr Bérenger: Thank you. Is the Rt. hon. Prime Minister also aware that, in fact, adding insult to injury - if we can say so - the Police Officers’ lawyer, in fact, stated on Tuesday 03: “*Demain, ils obtiendront leur caution.*” Before they were brought before the Court, the lawyer had been informed, apparently from the Police Officers, that: “*Demain, ils obtiendront leur caution*” and this happened. Was the Rt. hon. Prime Minister aware of that?

The Prime Minister: Well, I have read it also. It was in the newspaper. What can I say about it? That was the opinion of the lawyer.

Mr Bérenger: Can I know, at this point in time, who, in the Police Force, gave the directives for bail not to be refused?

The Prime Minister: Well, I don’t have this information. If a specific question is put, I will get the information for the House.

Mr Bérenger: I see that the Ag. Commissioner of Police did, in fact, receive – and it is a very good thing – the family of the deceased. In the case of the DPP also – we have been informed - he received the family of the deceased. In both cases, it is a very good thing, but in the case of the DPP, what we have been provided with is only the information that the DPP concluded that there was no ground of appeal. I know that the DPP is totally independent, but did the Rt. hon. Prime Minister look into that? Because we know of cases where the DPP stepped in, after the Court had granted bail, to have the accused arrested again.

The Prime Minister: Well, this may be the case, but in this case we know the stand that was taken by the DPP and I don’t think that it will be fair for me to comment on that.

Mr Bérenger: As far as the Police and Judicial Inquiry are concerned, especially the Police, it seems that there was doubt as to where the deceased was, in fact, detained. Is it established now where he was detained?

The Prime Minister: What I have been told, it was in Black River Police Station.

Mr Bérenger: I take it, Madam Speaker, that all forensic possibilities and so on will be used in this and other cases. In this case, is the DNA dimension to the inquiry and so on being taken care of?

The Prime Minister: This, I am not aware of. If a specific question is put, I will get the information.

Mr Bérenger: On the last part of my question, Madam Speaker, I am glad to hear the Rt. hon. Prime Minister say that the Ag. Commissioner of Police has taken immediate measures. Can I ask the Rt. hon. Prime Minister, being given that there is a lot of confusion, before when a detainee alleged to have been brutalised, the statement was taken in that Police Station, then it was felt that it would be better that it be not taken in the same Police Station, but at CID in Rose Hill. Of course, this took time, people had to travel to Rose Hill and so on; it has not worked. Also, we know that regularly Magistrates, when the detainee says he has been roughed up, would order an enquiry and nothing would happen. So, are we looking at that? Since an independent Police Complaints Commission, presided over by a former Judge, has been announced in the Government Programme, is this coming as soon as possible and what will happen to the Police Complaints Bureau in that case?

The Prime Minister: We certainly mean to implement what is in our Programme, but, of course, it takes some time. We have no magic wand to do everything in two months.

Mr Mohamed: I have two questions with your permission, Madam Speaker. Could the Rt. hon. Prime Minister inform the House whether he could tell us why is it that those Police Officers were provisionally charged with torture and not anything like murder or even manslaughter?

The Prime Minister: Well, as a barrister, I think that the hon. Member should know from what we have heard, from what we have as evidence. I do not think a charge of murder is warranted. If the enquiry later on reveals that there is enough evidence of a *prima facie* case of murder, then obviously these people will be charged with murder.

Mr Uteem: But there was, at least, a case of wounds and blows causing death. The Rt. hon. Prime Minister, in the Government Programme, announced an independent Police Complaints Commission, but that comes in after the event, after the brutality. In order to ensure that there is no Police brutality, would the Rt. hon. Prime Minister agree that it is urgent for the Commissioner of Police to designate what we have elsewhere, which is known as a Custodian Police Officer, who is independent from the enquiry, who ensures that, from

the day the suspect is brought in till his release, there is proper recording and his human rights are properly looked after?

The Prime Minister: Well, I will convey that to the Commissioner of Police and I agree that every step must be taken to ensure that everything is done properly and that there is no unfair treatment towards any detainee.

Mr Jhugroo: Madam Speaker, will the Rt. hon. Prime Minister consider to ask the Commissioner of Police to investigate whether those Police Officers, who investigated the suspect, were under the influence of alcohol?

The Prime Minister: So far, I have no information whatsoever that they were under influence of drink or alcohol, but I will try to find out through the Commissioner of Police.

Mr Baloomoody: I have listened carefully to the Rt. hon. Prime Minister with regard to how events happened on the day when he was supposed to go to the District Magistrate. Can I ask the Rt. hon. Prime Minister whether the Magistrate was informed because section 110 of the District and Intermediate Courts (Criminal Jurisdiction) says clearly that where a person has died in prison or while in custody of the Police, the Magistrate should be informed and the Magistrate shall proceed or order an officer to proceed to the examination of the body and an investigation of the matter with the assistance of the medical practitioner? Can I know from the Rt. hon. Prime Minister whether the District Magistrate was informed that this gentleman has died whilst he was in Police custody?

The Prime Minister: I have no such information.

Mr Mohamed: Picking up from where the hon. Leader of the Opposition left off on the doubts as to where the deceased was detained, there is information to the effect that this deceased was detained not in Black River, but in Rose Hill. Could, therefore, the Rt. hon. Prime Minister verify, because if that is the case that this person was detained in Rose Hill and not Black River, this means that the persons that potentially could be still responsible for having caused his death, are still at large, and that those who are still responsible potentially for having caused this death unlawfully, are still roaming around and working as Police Officers day in, day out and not being worried at all by Police?

The Prime Minister: Well, they might have been transferred to Rose Hill, but I cannot confirm that, I will have to ask the Commissioner of Police.

Dr. Sorefan: May I know from the Rt. hon. Prime Minister that the disease was mentioned to be pulmonary oedema. Does that tally with the post-mortem report from the *médecin légiste*?

The Prime Minister: Well, yes. This is what the officer has found; it is his finding.

Mr Baloomoody: Coming to the provisional charge, normally when public officers are involved, especially in the case we have Senior Police Officers, the State Law officers are informed and they stepped in with regard to Bail Motion and what action to take with regard to the bail under drafting of the provisional information. Can I ask the Rt. hon. Prime Minister whether the State Law Office was consulted prior to the drafting of that information and prior to the Police taking the stand of not resisting to bail?

The Prime Minister: I have no such information. I will ask the hon. Member to come with a specific question.

Mr Bérenger: If I can conclude! Being given that when I raised that issue, I must say, in a sitting position on Tuesday 03 March, hon. Minister Soodhun reacted. There was a discussion with the Rt. hon. Prime Minister and then Minister Soodhun said publicly that the Prime Minister was going to follow that case personally and, more recently, he has stated that Government will help the family in every possible way? Can I ask the Rt. hon. Prime Minister - we are dealing here with a young man who leaves daughters behind and a young wife, the whole family, but especially his children and his wife are going through very difficult time - whether we can have confirmation that Government will do whatever can be done to help them along?

The Prime Minister: Madam Speaker, I must say that when this unfortunate thing happened, the very next morning when the Commissioner of Police came to see me, I told him what I felt about it. I told him that I wanted an enquiry to be fair, proper and to find out the truth so that the culprits may be brought to justice, and this is my line; I have been asking the Commissioner of Police every day how the enquiry is going on, but he assures me that everything is going well.

Madam Speaker: Any other question? No! Hon. Members, the Table has been advised that Parliamentary Question B/160 addressed to the Rt. hon. Prime Minister will now be replied by the hon. Minister of Local Government. Hon. Jhugroo!