

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

MEMORANDUM

AND

ORDER

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Plaintiff,

\_\_\_\_\_  
07-CR-429 (TCP)

-against-

VARSHA MAHENDER SABHNANI and  
MAHENDER MURLIDHAR SABHANANI

Defendants.

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PLATT, District Judge.

Before the Court is the Government's motion for permanent orders of detention pursuant to 18 U.S.C. § 3142(e) for the Defendants, Varsha Mahender Sabhnani and Mahender Murlidhar Sabhanani (collectively "Defendants"). This Court must determine whether in light of this Court's finding that the Defendants present a risk of flight, no such conditions or combination of conditions would adequately assure the presence of Defendants.

After careful review of the record both before this Court and Magistrate Judge Tomlinson, the written and oral submissions of Government and the Defendants, and the attempts by the parties to agree on conditions of release which would mitigate Defendants' risk of flight, this Court concludes that no such conditions or combination of conditions exist. The Defendants are hereby remanded to custody pending the trial of this case pursuant to 18 U.S.C. §

3142(e).

### **BACKGROUND**

On May 17, 2007, after holding a two-day hearing on the Defendants' application for release on bail pending the trial of this action, Magistrate Judge Tomlinson granted Defendants' application over the Government's objection, and imposed the following conditions:

1. One million dollar secured bond for Defendant, Mahender Murlidhar Sabhnani, and a two million, five hundred thousand dollar secured bond for Defendant, Varsha Mahender Sabhnani;
  2. Restraining orders on the Defendants' personal accounts, except for living expenses, ensuring they not be used in any way to assist the Defendants in fleeing the jurisdiction; limited restraining orders on the Defendants' corporate accounts, ensuring only funds necessary for daily operations of the corporations;
  3. Home detention and electronic monitoring of the Defendants at the Defendants' expense; the Defendants would be subject to random visits and searches of the home by pretrial services and would only be allowed visits to their attorneys and their doctors and would be permitted to attend religious services;
  4. Pen registers on the Defendants' household telephone lines subject to monitoring by pretrial services; and
  5. The surrender of Defendants' passports.
- May 17, 2007 Bail Trans. at 45-63.

Judge Tomlinson ordered that the Defendants remain in custody until several issues were resolved regarding the bond and the implementation of

Defendants' home detention. Id. at 57. Thereafter, on May 22, 2007 an Indictment was returned charging the Defendants with two counts of forced labor in violation of 18 U.S.C. § § 1589, 1594(a)(2), and 3551, and two counts of harboring in violation of 8 U.S.C. § § 1324(a)(1)(A)(iii), 1324(a)(1)(A)(v)(II), 1324(a)(1)(B)(iii), and 18 U.S.C. § 3551. The criminal case was then assigned to this Court. Within two days of the filing of the Indictment, the Government filed an application with this Court to reopen the bail hearing in light of additional information which surfaced subsequent to the hearing before Judge Tomlinson. The Defendants submitted their opposition papers on the same day. On May 24, 2007, this Court ruled that it would hear argument on the issue of whether the bail hearing should be reopened and whether there exist grounds to reverse Judge Tomlinson's ruling releasing Defendants on bail subject to the aforementioned conditions.

At oral argument on May 30, 2007, the Government presented evidence of significant financial transactions between the Defendants and relatives overseas, transaction which, according to the Government, had not been disclosed before Judge Tomlinson. May 30 Trans. at 6. In addition, the Government presented evidence of additional accounts and assets over which the Defendants had control that had also not been disclosed. Id. at 6-7. The Government

questioned the lack of full disclosure by the Defendants regarding their 2005 tax returns and international clients associated with their perfume business. Id. at 10, 12. Finally, the Government questioned several significant transactions between the Defendants and the Defendants' relatives overseas. Id. at 9. In addition to evidence regarding risk of flight, the Government presented arguments that the Defendants bribed and threatened a relative of one of the victims who resides in Indonesia. The Government submitted a sworn statement by this relative stating that the victim's life was threatened at some point in 2006 and that he had recently been offered a sum of money if he would arrange the victim's immediate return to Indonesia. May 30 Trans. at 14-18.

The Defendants responded to each of the Government's allegations arguing that the Defendants met and were continuing to meet each of the Government's demands for the Defendants' financial information. Furthermore, the Defendants denied the allegations of threats and bribery and asserted that the "affidavit" was not in proper affidavit form as it was not a properly notarized statement, and therefore should not be considered by the Court.

At the outset, this Court explained that it had examined the record established before Judge Tomlinson and agreed with her conclusion that the Defendants present a clear risk of flight. May 30 Trans. at 43.

After hearing the various arguments by the Government and the Defendants, this Court expressed its view that while the Government put forth evidence of danger to the “international community,” this Court did not feel that this was a danger contemplated by the Bail Reform Act. May 30 Trans. at 43-42, 49. Furthermore, this Court agreed that the “affidavit” was not in proper form, and could not therefore form the basis for a “clear and convincing” finding that the Defendants posed a danger to the community. However, at the conclusion of the hearing this Court reiterated its concurrence with Judge Tomlinson’s ruling that the Defendants indeed present a substantial and real risk of flight.

After having determined that Defendants posed a risk of flight, and in light of additional evidence produced on the issue of risk of flight, this Court was then required to establish whether conditions or a combination of conditions would reasonably assure the appearance of the Defendants. See United States v. Shakur, 817 F.2d 189 (2d Cir. 1987) (explaining the two-step process required by the Bail Reform Act). This Court suggested that the parties attempt to come to an agreement as to terms of the release and submit said terms to this Court for approval.<sup>1</sup> The Court stressed that the Defendants would have to comply with the

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1. The Defendants seemingly have misunderstood this Court’s direction to agree upon terms of release. According to the Defendants, this Court at the May 30<sup>th</sup> conference rendered a final decision granting Defendants’ release on bail. However, in fact that was not the ruling of this Court. As of the conclusion of

Government's terms as long as such terms were reasonable. May 30 Trans. at 44. If the parties could not come to an agreement as to the terms of release, this Court stated that it would establish terms that it felt would adequately address Defendants' risk of flight. Id. at 45.

Thereafter, two separate draft Stipulations were submitted by Defendants to this Court, without approval from the Government. This Court declined to approve or even consider both Stipulations for failure to comply with this Court's direction that the stipulated terms be agreed upon by both parties prior to submission to this Court for approval. See June 5, 2007 Order. On June 6th, after receipt of Defendants' last proposal, the Government rejected same and by letter motion indicated that it maintains its position that no adequate terms can mitigate the finding that Defendants present a risk of flight and can assure that the Defendants will not present a risk of danger to the community. Govt. Ltr. dated June 6, 2007. The Government indicated that it would not consent to release on bail under any conditions. Id.

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the May 30<sup>th</sup> conference this Court had made two findings, one was that the Defendants posed a risk of flight, and the other was that the Court did not find that the Government proved the Defendants posed a danger to the community by clear and convincing evidence. May 30 Trans. at 59. The decision on bail, however, was not final as this Court still had to determine whether a condition or combination of conditions would mitigate Defendants' risk of flight such that the Defendants could be released under strict terms of home detention.

## DISCUSSION

### I. The Bail Reform Act

Pursuant to the Bail Reform Act, 18 U.S.C. § 3142, a court may order a defendant's detention pending trial if "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community . . . ." § 3142(e). In the present case, the focus of this Court's inquiry is the Defendants' risk of flight and whether any condition or combination of conditions can mitigate this risk.

As interpreted by the Second Circuit, a district court must engage in a two-step inquiry before ordering a defendant detained. United States v. Shakur, 817 F.2d 189 (2d Cir. 1987). "First, the [district] court must make a finding as to whether the defendant presents a risk of flight if not detained." Id. at 195. Second, if the court finds that the defendant is likely to flee, then the court must proceed to the next step: determining whether "conditions or a combination of conditions which reasonably will assure the presence of the defendant at trial if he is released." Id. When considering whether a condition or combination or conditions will assure the appearance of the person as required the court "shall" consider the following factors: "(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence . . . ; (2) the weight

of the evidence against the person; (3) the history and characteristic of the person . . .<sup>2</sup>; (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release." § 3142(g). The burden is on the government to establish by a preponderance of the evidence that no such condition or combination or conditions exist which will assure the person's appearance. Shakur, 817 F.2d at 196.

"Whether there are conditions or a combination of conditions which reasonably will assure the appearance of the defendant at trial is a mixed question of law and fact." Id. When issuing an order of detention prior to trial, the Second Circuit has instructed district courts to, on the record, explain the extent to which it considered any alternatives to incarceration and on what basis the court rejected such alternatives. Unites States v. Berrios-Berrios, 791 F.2d 246 (2d Cir. 1986). Finally, throughout this inquiry a district court should bear in mind that "it is only a limited group of offenders who should be denied bail pending trial." Shakur,

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2. The "history and characteristics of the person" include:
- (A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and
  - (B) whether, at the time of the current offense or arrest the personal was on probation, on parole, or on other release pending trial, sentencing, appeal or completion of sentence for an offense under Federal, State or local law.

18 U.S.C. § 3142 (g).

817 F.2d at 195. However, “the right to release before trial is conditioned upon the accused giving *adequate* assurance that he will stand trial and submit to sentence if found guilty.” Stack v. Boyle, 342 U.S. 1 (1951) (emphasis added).

## **II. Defendants’ Risk of Flight**

Upon review of the oral and written submissions of the parties, and the record before this Court and Magistrate Judge Tomlinson, this Court finds that the Defendants present and continue to present a risk of flight. Throughout the past three weeks since the bail issue was taken under consideration before this Court, evidence has been introduced of several financial transactions undertaken by Defendants and assets held by Defendants which were not initially or fully disclosed to Pre-Trial Services and were not satisfactorily explained by Defendants throughout the several appearances before this Court. See May 30 Trans. at 7-8. Evidence was also produced by the Government of contacts the Defendants have with foreign countries with which the United States does not have extradition treaties.

These discrepancies, as the Government argues, paint a picture of non-disclosure which leaves the Government and this Court alike with an inaccurate and untrustworthy picture of Defendants’ finances. While the Defendants have attempted to explain these inaccuracies, this Court finds no solace or security in

Defendants' explanations all of which include sending the Government on a fishing expedition through Defendants' lengthy financial records.

Ample opportunity was given to the Defendants over the course of the past three weeks to address these alleged misrepresentations and explain to this Court with some degree of adequate assurance the nature of Defendants' finances. Instead the Defendants have offered statements such as, "Any discrepancy between records and account activity is probably due to the natural lag between record-keeping and the bank account records." Def.'s June 7 ltr. at 3. The Defendant then directed any questions to the Defendants' accountant, Mr. Schindel, who failed to provide any credible evidence of Defendants' finances before Magistrate Judge Tomlinson. Judge Tomlinson noted that Mr. Schindel's offer of proof of Defendants' assets was "neither a sworn statement, nor backed up by paper documentation." See May 17 Trans. at 55. Thus, Defendants have utterly failed to provide this Court with any adequate explanation as to the Defendants' finances.

In addition to a failure to provide credible explanations for discrepancies in Defendants' finances, the Defendants have also misrepresented the nature of Defendants' business. Defendants own and operate a perfume business with factories located both in New York and New Jersey. Defs.' May 24 Bail Ltr. at 7.

At the bail hearing before Magistrate Tomlinson, defense counsel stated that Defendants' perfume factories are "in New York and New Jersey. The factories are not abroad. The factories are here and in this country." May 17 Trans. at 43. However, several days later it was revealed that part of Defendants' product is manufactured overseas in the United Kingdom by two subcontractors. Govt.'s May 24 ltr. at 2. Defendants' response was that the relationship between Defendants and these European subcontracts was purely professional and "above board." May 30 Trans. at 34. This explanation, however, does not answer the question as to why the Defendants did not disclose this information at the outset nor has there been any offer of proof or sworn statement to that effect. Moreover, Defendants have left open, to this day, the question of the ownership interest or precise business relationship between Defendants' company in the United States and its subcontractors overseas. See Govt's Ltr. dated June 6, 2007 at 3.

Notwithstanding substantial document disclosure, the complete failure on the part of the Defendants to explain to this Court the various transactions questioned by the Government which, given their substantial value and ties with foreign countries, leaves this Court with an incomplete and unsubstantiated picture of Defendants' finances. Without an accurate picture of the Defendants' finances, this Court cannot be assured that restraining orders will prevent the

Defendants or family members acting on their behalf from accessing sufficient funds to support their flight from this country. Furthermore, due to the Defendants' initial lack of disclosure with Pre-Trial Services and throughout the course of these proceedings, this Court cannot without great trepidation accept Defendants' representations as to their access to financial resources both in this country and abroad. For the aforementioned reasons, this Court finds that the Government has proven by a preponderance of the evidence that Defendants present a substantial risk of flight.

### **III. Conditions of Release**

After having determined that the Defendants present a substantial risk of flight, this Court must determine whether any conditions or combination of conditions can adequately assure the Defendants' presence as required before this Court. As stated above, this Court gave the parties an opportunity to establish a set of conditions including substantial home confinement which would adequately assure Defendants' presence before this Court, and would assure the Court that the Defendants would not flee the jurisdiction. See May 30 Trans. at 45-54. The Court was very clear that said terms would have to be agreed upon by both parties before submission to this Court for final approval. Id.; see also June 5, 2007 Order. This Court then explained that if the parties could not agree to such terms,

this Court would attempt to establish adequate terms of release. Id.

The Court instructed defense counsel that they should sit down and agree to conditions suggested by the Government. Instead, defense counsel submitted two proposals of conditions and in neither case did they attempt to agree with any conditions required by the Government. In the first proposal the conditions proposed by the defense were virtually meaningless, and the second proposal was insufficient because defense counsel failed to seek advice, approval, or agreement by the Government. Accordingly, the Court rejects both proposals.

It became clear upon this Court's receipt of the Government's letter objecting to Defendants release that the parties could not come to an agreement as to proposed terms of release. Thereafter, this Court took under consideration whether such adequate terms could be established which would mitigate Defendants' risk of flight.

After considering the factors set forth in 18 U.S.C. § 3142(g), the two draft terms of release submitted to this Court, the recent written submissions in Opposition to the Government latest letter, and the complete record in this case, this Court concludes that because the Defendants pose a substantial risk of flight, complicated by other factors discussed herein, no conditions or combination of conditions would adequately assure the Defendants' presence before this Court.

When considering the nature and circumstances of the offenses charged, this Court may not ignore the violent nature of the crime. The Defendants are charged with serious acts of violence and cruelty which occurred over a period of five years and within the confines of Defendants' household. Defendants' point to this as a mitigating factor favoring Defendants' release and establishing that Defendants' pose no overall danger to the community. However, this Court finds that the nature of the offense does not end within the confines of the home. Meriting equal consideration is the fact that the crimes charged in the Indictment involve elements of deceit. If proven at trial, Defendants will have secreted this conduct from their friends, neighbors, and the public alike.<sup>3</sup> In addition, the Indictment charges the Defendants with "harboring and *shielding* from detection" aliens. These charges implicate dishonesty on the part of the Defendants which this Court may take into account when considering the nature and circumstances of the offense charged. See United States v. Lair, 2007 U.S. Dist. LEXIS 7916, at \*13 (S.D.N.Y. Feb. 2, 2007). Accordingly, this Court finds that this factor weighs in favor of the Government.

The next factor to be considered is the weight of the evidence against the

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3. The Court notes that the Defendants still enjoy the presumption of innocence and only looks to the offense charged as a factor to be considered when determining bail. 18 U.S.C. § 3142(j).

Defendants. In support of its original bail motion before Judge Tomlinson, The Government presented the following in support of its case against Defendants: (1) photographic evidence of bruising and cuts on the victims; (2) copies of the affidavit and complaint supporting the arrest warrant for Defendants, which set forth statements from the victims detailing the alleged abuse; and (3) photographic evidence of items seized from the Defendants' home during the execution of a search warrant. In light of the evidence produced by the Government, this Court, agrees with Judge Tomlinson's finding that the Defendants are facing a substantial period of incarceration, albeit by either Defendants' calculation of 46-57 months, or the Government's calculation of 210-262 months. See Defs.' May 24 Ltr. at 3-4.

The third factor is the history and characteristics of the Defendants. This Court finds that the Defendants have substantial contacts with this country and in particular this jurisdiction as the Defendants own real estate both here and in New York City. Both Defendants are United States citizens, all four of their children still reside at home, two of whom suffer from diabetes. See also May 17 Bail Trans. at 52. These considerations weigh in favor of Defendants.

However, the picture with respect to the Defendants' business contacts with this country has changed somewhat since since the parties appeared before

Magistrate Tomlinson. This Court finds that the Defendants' business is not confined solely to the New York area or the United States. In addition to contacts with two subcontractors in the United Kingdom, the *primary* market for Defendants' product is overseas in the Middle East. See May 30 Trans. at 25. Thus this Court finds that it is entirely possible for Defendants to operate their business from overseas, especially in light of the fact that the Defendants' primary market is located overseas in the Middle East. See May 17 Trans. at 25. This consideration therefore weighs heavily in favor of the Government.

The fourth factor is the nature and seriousness of the danger to any person in the community that would be posed by the person's release. This factor was addressed at the May 30th hearing whereby this Court concluded that while the Government presented evidence of a danger to persons abroad, this Court did not find that the Government established a danger to the community by clear and convincing evidence and even if this Court did find a danger to the community, this Court concluded that the "international" community was not within the purview of the Bail Reform Act. Therefore, this factor weighs in favor of the Defendants.

Complicating the issue of home detention, is the fact that the Defendants' four children reside in the household and if released Defendants would return

home to live with their four children who were also present in the home during the period set forth in the Indictment. This raises a significant question of whether the children have information relating to the conduct charged in the indictment and could potentially be called as witnesses during the trial. Furthermore, in light of a substantial loan of money between Defendant Mahender Sabhanani's brother who resides in the United Arab Emirates and the Defendants' son, there is great concern over the children's access to finances located outside this country which could fund Defendants' flight from the jurisdiction.

Thus, while the children would be subject to surveillance while in the home, it became clear in light of these concerns that not only would the children have to be monitored while inside the home, but they would have also had be monitored while outside the home as well. These are conditions which this Court concludes would be a particularly onerous imposition on the children considering their age and the fact that they are not charged with any crime.

After careful evaluation of the suggested alternatives to confinement and after consideration of the factors set forth in 18 U.S.C. § 3142(g), this Court finds that notwithstanding the finding that the Defendants may pose no danger to the immediate community, no conditions or combination of conditions could mitigate the substantial risk of flight posed by the Defendants.

