**COMMONWEALTH OF THE BAHAMAS CRI/bal/209/2022**

**In The Supreme Court**

**Criminal Side**

**B E T W E E N**

**WILLIAM SMITH**

***Applicant***

**Vs**

**DIRECTOR OF PUBLIC PROSECUTION**

***Respondent***

**Before: The Honourable Mr. Justice Gregory Hilton**

**Appearances: T. A. Thompson for the Applicant**

**Cashena Thompson for the Respondent**

**Hearing Date: 8th September, 2022**

**BAIL DECISION**

**Hilton, J.**

1. The Applicant is an eighteen (18) years old Bahamian charged with two (2) counts of Attempted murder alleged to have occurred on 12th September, 2021. The Voluntary Bill of Indictment has been filed and he is waiting on a date to be fixed for his trial.

2. The Applicant ordinarily resides in Abaco and was employed as a Fisherman prior to his remand.

3. The Applicant has a previous conviction for Grievous Harm for which he was sentenced to eight (8) months imprisonment in February 2021 and he has two (2) additional pending charges for Causing Harm and Causing Grievous Harm.

4. The Applicant filed his Summons supported by an Affidavit on 14th September, 2022 and the Respondent filed an Affidavit in response on 28th September, 2022. The Court has carefully considered the contents of both Affidavit.

5. The Applicant avers that he is innocent of these present offences that he is not a flight risk; that he has strong ties to the community that he will not interfere with witnesses and based on the presumption of innocence and his right to liberty he should be granted bail.

6. The Applicant submitted that he has been in custody for nine (9) months and no date has yet been set for his trial and conditions can be imposed to endure his whereabouts and prevent him from absconding should he be granted bail.

7. The Respondent submitted that the Applicant should not be granted bail that the evidence against him is strong and cogent and as such, given the severe penalty the Applicant will face, if he is convicted, he may fail to appear for his trial if he is granted bail.

8. The Respondent also submitted that the Applicant has had previous conflicts with one (1) of the virtual Complaints and is a danger to society and due to his antecedents he is likely to commit further offences if he is granted bail. And in the interest of public safety and order he should not be granted bail.

9. In determining what is the appropriate decision in this application the Court has reviewed the relevant provision of the constitution and the relevant section of the Bail Act (as amended) and case authorities.

10. In bail applications the onus is on the Respondent (having regard to the presumption of innocence and the right to liberty as guaranteed in the constitution) to satisfy the Court that the Applicant should not be granted bail.

11. In the present application the Applicant is charged with the serious offence of Attempted Murder (2 counts). Although serious it is still bailable. The strength of the evidence is relevant to whether the Accused would appear for this trial in the sense that one who knows that there is a good chance of acquittal is less likely to abscond than one who anticipated conviction given the severity of sentence attached to the offence of attempted Murder.

12. However, it is also accepted that the seriousness of the offence is not an independent ground for refusing bail. The right to personal liberty is an important constitutional right and an accused (who is presumed innocent) should remain at liberty unless it is necessary to refuse bail in order to serve one of the ends for which detention before trial is permissible.

Each case is individual and needs an individual assessment.

13. The Respondent submits that there is strong and cogent evidence against the Applicant. That one of the victims of the shooting and another eye-witness both identified the Applicant as the man with the gun who fired shots at the victims causing gunshot injuries and the victim’s Police statement indicated that the Applicant had a previous altercation with one of the victims.

14. The Applicant has denied committing the offences and avers that he will vigorously defend the charges.

15. It is not the function of a Judge in bail application to determine contested evidential issues and I do not do so in this case. However, I do find that the eye-witness statements can implicated the Applicant and gave the Respondent sufficient grounds to charge the Applicant

**Statutory Framework for grant / refusal of Bail.**

16. With respect to the exercise of the discretion whether to grant or refuse bail, **Section 4 (2) (C) of the Bail Act (as amended)** sets out what should be considered. It states:-

“**4 (2) Notwithstanding any other provisions of the Act or any other Law, any person charged with a Part C offence shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged:**

**a) ………………………………………**

**b) ………………………………………**

**c) Should be granted bail having regard to all relevant factors, including those specified in Part A of the First Schedule and the primary considerations set out in subsection (2B).**

17. Part A of the First Schedule (insofar as relevant to this application) provides

**PART A**

**In considering whether to grant bail to a Defendant, the court shall have regard to the following factors:**

**a) Whether there are substantial grounds for believing that the defendant, if released on bail would: –**

**(i) Fail to surrender to custody or appear at his trial;**

**(ii) Commit an offence whilst on bail;**

**(iii) Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;**

**b) Whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**

**c) …………………………………………..**

**d) …………………………………………..**

**e) ……………………………………………...**

**f) Whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was released or with an offence which is punishable by a term of imprisonment exceeding one year; and**

**g) The nature and seriousness of the offence and the nature and strength of the evidence against the defendant;**

18. In expounding upon what is necessary for the court to be provided with to properly exercise its discretion in relation to paragraph **(a) *Justice Crane – Scott J.A. at para: 65 of Seymour v. D.P.P. SCCr App No. 115 of 2019 stated:***

**“65. It is obvious from the above paragraph that the evidence which the crown placed before the learned judge in an effort to discharge its burden of satisfying the court that the appellant should not be granted bail was woefully deficient. Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would”, if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown’s burden is only discharged by the production of such evidence.”**

19. In this application there has been nothing adduced by the Respondent to cause the Court to believe that the Applicant would interfere with witnesses or obstruct the course of justice if granted bail; And but for the nature and seriousness of the offences and the evidence in support of it (which has already been considered) nothing else has been put forward to suggest that the Applicant will abscond.

20. This Court is also constrained to have regard to the ***“primary considerations”*** in **Section 4 (2B)** of the character and antecedents of the Applicant and the need to protect the safety of the public and public order.

**Section 4 (2B) states:**

**“(2B). For the purposes of subsection (2) (c) in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character and antecedents of the person charged the need to protect the safety of the public or the public order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence are to be primary considerations.”**

21. In this regard I have found the decision of the Bahamas Court of Appeal in the case *of* ***Richard Hepburn and The Attorney General S.C.Cr. App. No. 276 of 2014*** very instructive. President of the Court Dame Allen delivering the majority decision had this to say in paragraphs 5-11.

**“5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed a crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.**

**6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council’s decision in *Hurnam v The State [2006] 3 LRC 370*. At page 374 of the judgement Lord Bingham said inter alia:**

**“…..the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of a crime sufficiently serious to deprive him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many case, his livelihood and his family. But the community has a countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences….”**

**7. The objective of detaining an accused person is to secure his appearance for his trial and to ensure he is available to be punished if found guilty. Indeed, if a person’s presence at trial can be reasonably ensured otherwise than by his detention, it would be unjust and unfair to deprive him of his liberty.**

**8. Moreover, even if a person’s appearance could not be so ensured, he is entitled to be released either unconditionally or on reasonable conditions if he is not put to his trial within a reasonable time, or if it is unlikely that he will be so tried.**

**9. Accordingly, bail is the right of a person charged with a criminal offence to be released from custody on his undertaking to appear for his trial at a specified time, and to comply with any conditions that the court may think fit to impose.**

**10. The relevant law on bail is found in articles 19 (3), 20 (2) (a) and 28 of the Constitution, and in Sections 3, and 4 of the Bail Act 1994, as amended (“the Act”). It is immediately apparent from reading of those provisions that distinct rights to bail are given, namely, a general right to an unconvicted person to be released on bail unless there is sufficient reason (Part A of the Schedule) not to grant it; and the absolute right of such a person to be released on bail if his constitutional time guarantee is breached or is likely to be breached.**

**11. The general right to bail clearly requires judges on such an application, to conduct a realistic assessment of the right of the accused to remain at liberty and the public’s interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interests.”**

22. The Respondent has raised the issue that the Applicant is a danger to society and may commit further offences if granted bail. They submit that his previous conviction for Causing Grievous Harm and Causing Harm together with allegations of prevision conflicts with one of the victims in the Attempted Murder charges support their view that in the interest of public safety and public order the Applicant should not be granted bail.

23. In ***Davis v. D.P.P. S.C.Cr. App. No.108 of 2020*** Isaacs J.A. stated at para 28.

***“The antecedents if an Applicant for bail is an important***

***factor to be taken into account by a Court considering the application. This record may provide a barometer for the likelihood of the Application to commit other offences while on bail.”***

24. As earlier detailed Section 4(2B) of the Bail Act enjoins the Court to consider the character and antecedents of the Applicant as a primary consideration; And also outlines that the need to protect the safety of the public and public order are to be primary considerations.

25. In the present state of circumstances in The Bahamas there is an unacceptable high rate of the offences of Murder and Attempted Murder (particularly with the use of firearms) as well as a growing culture of vigilantism. This is indicative of a breakdown in public order and a consequential depreciation in public safety.

Indeed it has become common place for persons released on bail for Murder and other serious offences to be killed in apparent retaliation for the alleged offences they are on bail for.

26. Having regard to all the circumstanced surrounding this application. The Applicant’s antecedents. The statements of the witness. The serious charges involving the use of a firearm there is a real concern for the protection of public safety and order.

27. I am of the view, that there is a real possibility of the Applicant committing further offences if he is granted bail. And I can find no conditions that can be imposed to prevent that possibility.

In weighing the competing considerations of the presumption of innocence and the right to liberty with the need to ensure public safety and order (including safety of witnesses and the Applicant) that in the case with this particular Applicant the right to remain at liberty must give way to the accommodation of public safety and order.

28. Bail is denied.

**Dated the 5th day of October A.D. 2022**

**Gregory Hilton**

**Justice of Supreme Court**