

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Side
2022/CRI/bal/No. 00225

BETWEEN

BERLIN BELFORT

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: **The Honourable Madam Justice Camille Darville Gomez**

APPEARANCES: **Mr Geoffrey Farquharson for the Applicant**
 Mr Timothy Bailey for the Respondent

HEARING DATE: **November 30th, 2022**

DECISION

Darville Gomez, J

1. I already gave my decision orally, however, I had promised to put my reasons in writing later and I do so now.
2. The Applicant applied to vary his bail to remove the electronic monitoring device ("EMD") by Summons and Affidavit filed on August 17, 2022.
3. The Applicant is charged with Murder contrary to section 291 of the Penal Code, Chapter 84.

4. He was granted bail by the Honourable Justice Mr. Gregory Hilton in the sum of \$30,000 with one or two sureties and the following conditions:
 - (i) Report to the Carmichael Road Police Station every Monday, Wednesday and Friday;
 - (ii) To be outfitted with an EMD;
 - (iii) To have no contact with the prosecution witnesses.
5. The trial of the Applicant is before this Court and has been scheduled for January 16th 2023.
6. The Applicant in his affidavit in support has averred as follows:
 - “3. Since January of 2021, I have been on bail from this Honourable Court for murder.*
 - 4. I have been fitted with an electronic monitoring device as a condition of my bail.*
 - 5. I work as a deliveryman which often requires me to enter the homes and businesses of the clients of my employer.*
 - 6. Since the monitor has been installed, I have been concerned by its potential impact on my employment and have taken measures to keep it secret from my employer and their clients.*
 - 7. Until now, I have been able to do so but on a number of recent occasions, it has been activated while I was in the presence of my co-workers and I am increasingly concerned that it will be discovered and I will be terminated.”*
7. The Applicant’s Counsel in his submissions also confirmed that the Applicant’s employer was unaware that he had an EMD. Further, he submitted that the EMD monitors everything including phone calls and that the information is openly available to others for sale.
8. The Respondent has filed an affidavit in response and I refer to the following paragraphs:
 - “8. The sole reason the Applicant made this Application for variation is to evade being electronically monitored.*
 - 9. That Applicant allegation of working as a deliveryman is put to strict proof as he has proved no evidence to the court to support same.*
 - 10. That even if the Applicant is employed, he admits that his employers are not aware of the electronic monitoring device presence on his body.*

12. That one of the reasons for which an electronic monitoring device is activated is if the Applicant has failed to charge the device in accordance with the terms and conditions of being electronically monitored.

13. That the Applicant has been charged with a serious offence for which the electronic monitoring device is necessary to ensure not only his attendance at court, but also to monitor the Applicant's whereabouts to avoid any possibility of him committing another offence."

9. The Respondent's counsel submitted that the Applicant commenced his employment on the wrong foot by not informing his employer that he had an EMD.

10. The Applicant has requested a variation of bail to conceal the fact that (i) he is on bail and (ii) to avoid being terminated for wearing an EMD.

11. The Applicant obtained employment without notifying his employer that he is on bail and the existence of his EMD. While the Respondent is correct that the Applicant has not provided any proof of working as a deliveryman, even if I were to accept this as true, it is in my view, an insufficient reason to vary his bail.

12. The Applicant is charged with a serious offence per the First Schedule Part A of the Bail Act and the Court can impose whatever conditions on the grant of bail that it sees fit. Further, and in any event, given the closeness of his trial in less than one months' time, there has been no compelling reason offered to vary his condition of bail to remove the EMD at this time.

13. For the reasons given, this court does not accede to the Applicant's application for bail at this time.

15. His application for a variation of bail is therefore refused.

Dated this 20th day of December, 2022.



Camille Darville Gomez

Justice