

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL LAW DIVISION
2020/CRI/bal/519

BETWEEN

JAVARDO ADDERLEY

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Madam Justice W. Renae McKay
Appearances: Ms. Christina Galanos for the Applicant
Ms. Cassie Bethel for the Respondent
Hearing Date: 21st December 2020
Ruling Date: 7th January 2021

1. The Applicant, Javardo Adderley (the “Applicant”) made an application to be granted bail, by way of his Summons and Affidavit filed 9th December 2020 (the “Bail Application”). The Respondent opposed his application for bail.
2. By way of his Bail Application, the Applicant, a 19 year old Bahamian citizen, averred that on or about 24th February, 2020, he was arraigned before Chief Magistrate Joyann Ferguson-Pratt sitting at Magistrate’s Court No. 9 for 1 count of murder. Thereafter, he was remanded into custody at The Bahamas Department of Correctional Services (“BDOCS”) until the service of his Voluntary Bill of Indictment (“VBI”).
3. In that regard, he explained that while the VBI was supposed to be served on him on 13th May 2020 and subsequently he was not taken to the Magistrate’s Court. Instead, he was served with the VBI on 9th July 2020. Thereafter, the Applicant appeared before this Court on several occasions for case management and his trial was set to commence on 7th June 2021. A Notice of Alibi was also laid over on his behalf.
4. The Applicant averred that he was not guilty of the charges, that he had no previous convictions and that there were no other pending matters against him. He further averred that he was an asthmatic and as a result smoke, pets and carpets triggered his asthma attacks. The Applicant added that within the past year his asthma was under control

however, every once in a while, he would experience shortness of breath which resulted in him needing to have his inhaler on him at all times.

5. He went on to say that this factor was disclosed to the Chief Magistrate during his arraignment, which resulted in his arraignment and the details thereof being published in the Nassau Guardian. The Applicant exclaimed that he was extremely afraid of contracting COVID-19 as he was informed that he was at a high risk for becoming extremely ill or worse.
6. He added that he was unable to practice proper physical distancing and proper hygiene at BDOCS and lived in a constant state of uneasiness that he would contract the virus, which could possibly be a death sentence for him.
7. The Applicant then went on to state that if he was granted bail, he would appear for his trial and every adjournment and additionally, that he would not breach any conditions imposed on him. He added that he is the father of a 2 year old boy and prior to his arrest he did odd jobs such as landscaping, painting and minor repairs in order to assist with providing for him financially and requested the opportunity to continue to do so. The Applicant concluded that if he was granted bail, members of his family were prepared to act as suretors.
8. Counsel for the Respondent, Ms. Bethel submitted that the offence was a very serious offence and that the evidence against the Applicant was strong. She added that while the evidence against the Applicant may not be direct evidence, it is circumstantial evidence which authorities say is sometimes even better than eye witness evidence.
9. Ms. Bethel accepted that the Applicant is an asthmatic, but contended that there was no evidence that there was a greater prevalence of COVID-19 in BDOCS than on the outside and in that regard, she submitted that the Applicant had the same chances of contracting the disease outside of BDOCS. She also accepted that the Applicant had no previous convictions and no pending matters and requested that stringent conditions be put in place if the Court was minded to grant the Applicant bail.
10. In turn, Counsel for the Applicant, Ms. Galanos objected to the submissions that COVID-19 was not proven to be prevalent inside of BDOCS as there was no Affidavit sworn to substantiate the claim. She further submitted that Ms. Bethel should not make such allegations at the bar table.

The Law

11. The Court's discretion to grant bail is set out in s.4 of the Bail Act as amended by the Bail (Amendment) Act, 2011 (the "Act") which states:

“4. (1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.”

Bail (Amendment) Act, 2011

“(2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged - -

- (a) has not been tried within a reasonable time;**
- (b) is unlikely to be tried within a reasonable time; or**
- (c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.**

(2A) For the purpose of subsection (2)(a) and (b) ---

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.

(2B) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the public or 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.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.

(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.”

“4. Amendment to First Schedule of the principal Act.

The First Schedule to the principal Act is amended –

- (a) by the repeal of Part A and the substitution of the following ---**

“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 while on bail; or**
- (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) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
- (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 so released or with an offence which is punishable by a term of imprisonment exceeding one year;
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

12. Additionally, by the **Bail (Amendment) Act, 2014**, the First Schedule was again amended to reflect another paramount consideration.

"3. Amendment to First Schedule to Ch. 103.

The First Schedule to the principal Act is amended by the addition thereto of the following factors –

"(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."

13. Therefore, the Court is required to consider the following factors: the character and antecedents of the applicant, the nature and seriousness of the offence and the strength of evidence against the Applicant, the safety of the Applicant or the safety of the public, whether the Applicant would interfere with the prosecution's witnesses and whether the Applicant would fail to surrender to custody or appear at trial.
14. The consideration of whether or not the Applicant will be tried within a reasonable time is a separate factor that should not be considered in conjunction with the aforementioned factors.
15. In conformity with the Act, I shall now consider the factors in line with the facts before me.

The character and antecedents of the Applicant

16. The Applicant averred that he did not have previous convictions or pending matters. The Respondent has not provided any evidence to the contrary.

The nature and seriousness of the offence and the strength of evidence against the Applicant

17. The Applicant is charged with Murder which do not doubt is a serious offence. The Respondent submits that while the evidence against the Applicant is circumstantial, it is

strong. However, they have not provided the Court with the evidence and without more, I am not permitted to give considerable weight to blanket assertions.

The safety of the Applicant or the safety of the public

18. There was no allegation made by the Respondent that the Applicant's safety or the safety of the public would be at risk if he was released on bail.

Whether the Applicant would interfere with the prosecution's witnesses

19. The Respondent has not provided any evidence that, if released on bail, the Applicant would interfere with any of its witness.

Whether the Applicant would fail to surrender to custody or appear at trial

20. The Respondent has not asserted that the Applicant would fail to surrender to custody or appear at trial.

Discussion

21. While an application for bail is made by an accused, the burden is on the Crown to prove that the accused is not a fit and proper candidate to be admitted to bail. This burden is high as the accused is protected by his right not to be deprived of his liberty pursuant to Article 19 of the Constitution.

22. In that regard, any allegations made by the Crown are required to be supported by evidence. Blanket assertions do not hold any weight against the consideration of bail and the paramount consideration is whether or not the Applicant would fail to surrender to custody or appear for trial while on bail.

23. In the instant case, the Respondent has only alleged that the offence the Applicant is charged with is a serious offence and that there was strong evidence against him. Without more, great weight cannot be placed on this factor as the Respondent is required to prove that there was a sufficient link between the Applicant and the commission of the offence.

24. The only factor in the Respondent's favour is the fact that the Applicant is charged with Murder which is a serious offence. The Respondent has not satisfied the Court that the Applicant would fail to surrender to custody or appear for trial. Additionally, the Respondent has not provided any evidence that the Applicant would interfere with its witnesses or that there would be a risk to his safety or the safety of the public if he was admitted to bail.

25. Likewise, the Respondent has not provided any evidence that would be contrary to the Applicant's averment that he has no previous convictions and no pending matters.

26. Therefore, after considering the evidence and submissions of both the Applicant and the Respondent, I find that the Applicant is a fit and proper candidate for bail.

27. Bail is granted to the Applicant in the amount of \$30,000 with 2 suretors and subject to the following conditions:

27.1 The Applicant shall report to the Grove Police Station every Monday, Wednesday and Friday before 6:00 p.m.;

27.2 The Applicant shall be fitted with an Electronic Monitoring Device;

27.3 The Applicant shall not interfere with any of the Respondent's witnesses;

27.4 The Applicant shall surrender any travel documents, if any; and

27.5 A curfew shall be imposed on the Applicant between the hours of 9:00 p.m. and 6:00 a.m. daily.

Dated the 7th January, 2021

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and flourishes, positioned above the printed name of the judge.

Hon. Madam Justice W. Renae McKay