COMMONWEALTH OF THE BAHAMAS CASE NO. CRI/BAIL/FP/00023/1999

IN THE SUPREME COURT

Criminal Side

BETWEEN

JARET KIERAN PINDER

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Attorney Mrs. Erica Kemp c/o Director of Public Prosecutions

Attorney Mr. Parko Deal c/o Jaret Pinder

Hearing Date: 23rd May 2023 & 20th June 2023

RULING

Forbes. J.

BACKGROUND

1. The Applicant had initially self-filed an application seeking consideration of the court as to the question of bail thereafter Counsel was appointed and filed a summons dated 7th March 2023 and an affidavit in support filed on the 18th April 2023. In which the Applicant notes that he was remanded on the charge of Murder having appeared before Magistrate Laquay Laing sometime on the 8th February 2023.

2. The Court also notes that this Applicant avers that he was to be served his Voluntary Bill of Indictment before Magistrate Laing on 5th May 2023.

3. That the Applicant further avers that he has no previous convictions nor does he have any pending matters. That he is unemployed. That the Applicant has no previous breaches of bail. That the Applicant avers that the evidence is weak and idled with inconsistencies.

4. The Applicant further avers that he has been advised by his Attorney that the allegations are serious and carry a serious penalty if convicted. The Applicant then further avers to various aspects of the evidence and suggest it is not as cogent as presented by the Crown. The crown has filed an Affidavit in response on 21 April 2023 sworn by Corporal 771 Anastasia Rolle who avers that she is the liaison Officer in the Officer of Director of Public Prosecutions. That the Applicant Jaret Pinder is charged with murder. That it was further averred that it is Applicant is a flight risk. That exhibited thereto was deportee report which demonstrated that the Applicant had been deported from the United States of America.

5. That the Respondent's affidavit further that there is cogent evidence as there are exhibited statements of witnesses who positively identify the Applicant as well as suggest that the Applicant made certain admissions which are adverse. Court heard the parties on the 23rd May 2023 wherein additional questions arose specifically given that there were questions as to the Applicants ability to enter the United States of America undetected. The Respondent and Applicants are invited to file additional material. In Applicant therein filed a Supplemental Affidavit on the 16th June 2023, in which the Applicant avers that he was never made aware that a wanted poster was ever issued for him. That he avers that the wanted poster was submitted only to Bahamas Weekly.com and not to a wider circulation like the National Broadcasting Network, namely ZNS. That the Applicant further avers that he departed the United States of America (USA) in May 2010. Provided as an exhibit was document from Homeland Security Immigration and Custom Enforcement dated 25th August 2022. It is noted in the document as follows: *"that the Applicant left the USA on 31st May 2010, that you subsequently entered the USA at an unknown sate and unknown place. You were not then admitted or paroled after inspection by an Immigration Officer."*

6. It is consistent with the Applicants contention that he left the USA in May 2010. He indicated he returned to the USA in 2019. That he made no attempts to evade the Police and that the Responded also filed a Supplemental Affidavit on 25th May 2023 sworn by Anastacia Rolle who speaks to a wanted poster being published in the bahamasweekly.com and attaching the photo. This documents was exhibited. That according to the former employer of the Applicant he would have left his vehicle with the Applicant when he traveled in August 2016. The Respondent further avers that the Applicant has demonstrated the ability to enter another country undetected and that he is unfit for consideration of bail.

SUBMISSIONS

7. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence. That Counsel for the Applicant notes that notwithstanding the Applicant apparent confession he should still should be admitted to bail. And that the Applicant ought to be given the presumption of innocence as articulated with our Constitution. Counsel cited the cases of **Jevon Seymour v. DPP SCCrApp. No. 115 of 2019**. Also **Hubbard v. Police (1986) 2 NZLR 738**, in which that is reported by Counsel to say that when considering whether to grant bail, the test is twofold (i) the Applicant will answer to his bail and appear at his trial and (ii) the public interest is at risk. Counsel for the Applicant also cites Lord Bingham in **Hurnam v. The State (Mauritius) (2005) UKPC 49** and the case **of Commissioner of Police v. Beneby (1995) BHS J. No. 17** noting the comments of Hall J (as he was at the time) "***20. ... I am surprised that Mrs. Christie objected to bail before the Magistrate on the basic ground that the offence of which the accused are charged is "serious". That never was and is not now, without more, sufficient reason for the denial of bail notwithstanding the frequency with which prosecutors chant it ritualistically or use it as a pro forma objection to bail. Most offenses before our courts nowadays are serious, and if this were a ground for the refusal of bail, the overwhelming majority of persons before the Court would be remanded in custody until trial."*** Counsel then offers much discussion as to the quality of the related evidence. Noting the inconsistencies and the lack of corroboration. Certainly these are matters for the jury and not any issue for this Court to delve into at this point. Counsel then notes the case of **Shaquille Culmer v. Regina SCCrApp. & CAIS No 98 of 2020.** It should be noted that Counsel did not refer the Court to any specific paragraph within the case. Counsel also references **Richard Hepburn and the Attorney General SCCrApp. No. 276 of 2014** and specifically the comments of President of Court Appeal Dame Anita Allen specifically her comments at paragraph 6 thru 8.

8. The Respondents Submission is that they believe that the Applicant is a flight risk as they believe he has shown the propensity to abscond. The respondent also argued the conditions that the Court could impose would not prevent

the Applicant from reoffending and finally the offence is of such a heinous nature that it's an affront to public safety. In this regard the Respondent sought to rely on ***Stephon Davis v The Director of Public Prosecution 2014/Cri/bail/00069*** where the Davis was charged with Murder and two (2) counts of Attempted Murder. He appeared before a Judge of the Supreme Court and was denied bail on the basis that the Davis was a threat to public safety as one of the grounds. On Appeal the Court of Appel in **Stephon Davis v. DPP SCCrApp. No. 108 of 2020,** Justice of Appeal Isaacs addressed each of these arguments. At paragraph 9 the Court said as follows: ***"9. On my reading of the appellant's case, it does not appear that he was applying for bail on the basis of undue delay in bringing his case on for trial. On a reading of the Judge's 6 assessment of the respondent's case, the only real reason for their objection to bail being granted to the appellant, was the cogency of the evidence."*** The Court unsure why the Crown continues to rely on the comments of the Lower Court which was overturned by the Court of Appeal. The substance of the Respondents submissions are that the Applicant is of such a bad character and has allegedly committed such heinous acts he ought not to be granted bail. The Respondent also relied upon the case of **Jonathan Armbrister v. The Attorney General SCCrApp. No. 45 of 2011,** specifically the comments made at paragraph 13 by Justice of Appeal John. They also point to the case of **Jeremiah Andrews v. DPP SCCrApp. No. 163 of 2019**, where Justice of Appeal Evans at paragraph 30 said as follows: ***"These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. E.g. the applicant's resources, family connections, employment status, good character and absence of antecedents."***

9. There has been multiple decision by the Court of Appeal of recent vintage and not so recent which has established what criteria a Court ought to consider when the issue of bail is being reviewed. In the Court of Appeal decision of ***Dennis Mather and the Director of Public Prosecution SCCrApp***

96 of 2020 the Court cited a number of cases as the starting point. *"The main consideration for a court in a bail application is whether the applicant would appear for his trial. In* ***Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008****, Osdabay, JA observed as follows: "As stated by Coleridge J in Barronet's case cited earlier the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial." In* ***Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011****, John, JA said as follows: "12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses."*

LAW

10. The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial. Additionally it appears that the Respondent arguments also are that the Applicant is a possible flight risk and that the evidence adduced is cogent and powerful which should be grounds to deny the Applicant bail. The Applicant faces charges involving murder, an offence that has been included in Part C of the First Schedule of the Bail Act Part C states, inter alia as follows:- ***"PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84."***

11. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits the grant bail to those charged with a Part C offence ***"(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 ti1nc; 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), .r .. And where the cour1 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. (JA) 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.*** in addition to Part A Judges hearing a bail application for a Part C 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 purposes of taking the decisions required by this Part or otherwise by this Act; (c) 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."; offence must exercise their discretion to issues such as character and antecedents, the need to protect the safety of the public or public order and also to consider the need to protect the safety of victim of the alleged offence or for his own protection as well the nature and seriousness of the offence and the nature and strength of the evidence against the defendant."

ANALYSIS AND DISCUSSION

12. Thus the question would the Applicant surrender for trial? The Respondent offers evidence to suggest that the Applicant could potentially abscond. The facts are provided in the Affidavit of the Respondent that he was in fact deported from the USA back to the Bahamas. The Applicant for his part attempts to rebuff the suggestion that he was deported and in this regard has exhibited several pages of his passport. The court notes at item 5 of the exhibit No.2 in the Applicant's supplemental Affidavit these comments made by Department of Homeland Security and Immigration and Customs Enforcement document signed by ICE Counsel which states as follows: "**You subsequently entered the United States at an unknown date at an unknown place.**" The Court is reasonably concerned as to whether this Applicant would attend trial. There is indications that he entered the USA outside of the lawful process and was as a consequence removed. The document further notes an actual address in the United States in which the

Applicant was said to be residing. The Document at item 2 notes **"you are an alien present in the United States who has not been admitted or paroled."** The clear inference is that the Applicant entered the Borders of another Country without proceeding to their Immigration procedure. The Court of Appeal in ***Davis*** cited ***Vasyli v. The Attorney General (2015) 1 BHS.J. No 86*** where Allen P said: - ***"12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A." [Emphasis added]***

13. The final issue raised was the serious of the offense and the cogency of the evidence. In this regard this court will note the statement of the Court of Appeal in **Davis case** where in the headnote the court said as follows: - ***"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."*** The Court is satisfied that there is reasonable cogent evidence, certainly given the delay it will present challenges in the Prosecution. However there are provisions within the evidence Act which will ameliorate many of these deficiencies. The Court takes note of the comments of Justice

of Appeal John in **Armbrister (supra)** where at paragraphs 17 and 18 he noted that it is the obligation of the Prosecution to present evidence and not make blanket statements as they have the burden where they are seeking to deny an individual from obtaining bail.

14. Further that the Court must note that strict rules of evidence is not applicable in a bail proceeding. This was noted in the case of the **Attorney General v. Bradly Ferguson (supra)** at paragraph 35, the Court of Appeal said the following: ***"That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that in order to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam release on bail was thought proper in circumstances where the evidence against the accused was comprised of accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial."***

15. The Court notes that the issue of delay was not raised by either the Applicant or the Respondent. It is noted that the Applicant was arraigned before the Magistrate Court on the 8th February 2023 and his initially hearing before the Court on Bail application occurred on the 16th may 2023 with the substantive hearing occurring on the 23rd May 2023. The evidence is that of identification and thus may present challenges however the witnesses substantially selected the Applicant as the shooter. There also a witness who appears to indicate that the Applicant made and out of Court admission. Although the Applicant and his Counsel cast serious doubt as to this witness and his credibility. These are all issues for the jury. The Court notes that the Applicant has several antecedents they commence in 1999 for Causing Harm where the Applicant was given a conditional discharge, again in 1999 for Disorderly Behavior and was fined twenty five Dollars ($25.00) and similarly in 1999 convicted for Resisting Arrest and fined Two Hundred Dollars

($200.00) and the finally matter occurring in 2005 for Fighting in which he was given a conditional discharge for 6mths and to complete 50 hours of community service. The Court would consider many of these offences misdemeanors. Whereas any violation of law is serious these offenses are not to be considered as significant or causes the court pause. The Court notes the comments of Justice of Appeal Isaacs in **Stephon Davis case (supra),** where has says as follows: ***"The antecedents of 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 applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are as trivial as vagrancy. That offence is committed merely by being found to have contravened section 3 of the Vagrancy Act. It is essentially a victimless crime and may be committed by persons who are merely in a penurious state...."***

16. Now, the Court notes none of the offences are Vagrancy they can perhaps be regarded within similar context. The other issue for consideration is whether there are any conditions which may reasonable restrain this Applicant should he be released on bail. The Argument of Counsel for the Applicant is to outfit him with an Electronic Monitoring Device (EMD) as well as require his surrender his travel documents. These devices albeit the latest technology and can provide some modicum of assurance that person will comply with their operations. There are several instances where individuals have removed the devices or substantially disabled them. As for travel documents that appears laughable given the evidence that the Applicant actually entered the USA and it unclear how he did so. It appears to suggest that he would not require travel documents if so minded.

17. DISPOSITION

a) The Court will grant bail on the Applicant's request at this time.

b) The Applicant is granted bail in the amount of $30,000 with 1 or 3 Suretors.

c) Applicant is to outfitted with an Electronic Monitoring Device and comply with all conditions thereto. Applicant is to be required to be placed on curfew from 10pm to 5am Monday to Sunday.

d) Applicant is required to Report to the nearest Police Station to his registered address each Monday, Wednesday and Friday by 6pm at the latest.

e) Applicant is to surrender all of his travel documents.

f) Applicant is to have no contact with Prosecution witnesses.

Parties are at liberty to reapply.

Parties aggrieved may appeal to the Court of Appeal.

Dated the 11th July, 2023

Andrew Forbes
Justice of the Supreme Court