

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00208/2016

BETWEEN

TAHJ CHARITE

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns

Appearances: Mr. Tahj Charite, pro se
Mrs. Shaneka Carey and Shirl Deveaux, for the Respondent

Hearing Date(s): 15 June 2022

RULING - BAIL

Archer-Minns J

1. Tahj Charite, the Applicant (the "Applicant") to these proceedings has been charged with one (1) count of Murder concerned with another, contrary to section 291(1) B of the Penal Code, Chapter 84. He made this application to the Supreme Court via the online Bail Management System kiosk at the Bahamas Department of Corrections (BDOCs).
2. The Applicant has several pending matters, including six (6) counts of Attempted Murder, one (1) count of Attempted Armed Robbery, six (6) counts of Possession of a Firearm with Intent to Endanger Life and Possession of an Unlicensed Firearm (1) count under Voluntary Bill of Indictment (VBI 285//12/2017) and three (3) counts of Armed Robbery and Receiving (VBI 132/5/2017).
3. The Applicant appeared pro se and submitted inter alia that:
 - i. his co-accused who carried out the Murder was granted Bail two weeks after the arraignment;
 - ii. he has the aforementioned pending matters for which he is falsely accused and for which bail was granted;
 - iii. he has a presumption of innocence;
 - iv. he has never been associated with any gangs;
 - v. he worked in the Banquet section of Rui Hotel;
 - vi. he is the father of a two year old daughter and is the breadwinner of his family;
 - vii. his Mother is about to have surgery for injuries she recently sustained;
 - viii. he is a Brother at Emmanuel Tabernacle Church on St. Vincent Road;
 - ix. he had an Electronic Monitoring Device ("EMD") outfitted previously and because of good behavior applied for its removal which was granted;
 - x. he has never missed a court date or hearing and is not a flight risk;
 - xi. he has never breached any of his bail conditions and seeks the Court's mercy as he has given his best with no legal representation.
4. Counsel for the Respondent objected to the granting of bail supported by its Affidavit of Inspector Demetrius Taylor filed 14 June, 2022, which asserted inter alia, that (i) there is strong cogent evidence against the Applicant, particularly that of an eye witness who knows/was able to identify the Applicant from the area, and positively confirmed his identity through a 12 man photo lineup; (ii) the Applicant has the propensity to commit offences of a serious nature while on bail. At the time the present offence was committed, the Applicant would have been on bail for the aforementioned pending matters; (iii) he also ought to be kept in custody for his own protection, particularly given the gang wars and retaliatory killings which have occurred in New Providence as intimated by the Commissioner of Police and the Court ought to take judicial notice; (iv) not

withstanding that a previously ordered Electronic Monitoring Device of the Applicant was removed following a successful application to the Supreme Court even if the Applicant is fitted with an Electronic Monitoring Device there is no assurance that he will not tamper with it, remove it completely, escape the jurisdiction of the court, later apply for it to be removed or not commit other offences while on bail; (v) having regard to the cogency of the evidence and the seriousness of the offences and the severity of the penalty if convicted, is sufficient incentive for the Applicant to abscond and is therefore a potential flight risk; (vi) the Applicant's further detention will ensure he will not abscond and will be present for the commencement of trial; (vii) concern for the safety of witnesses due the Applicant's familiarity with them from being in the same area increasing the likelihood of interference with witnesses and (viii) there is nothing peculiar about the Applicant's case which suggests continued detention is unjustified and there has been no unreasonable delay.

5. Upon review of the Applicant's Bail file, therein lies a Bail ruling dated the 13 April, 2022 by Mr. Bernard Turner Senior Justice, concerning this Applicant in relation to a Summons and Affidavit filed the 21 March, 2022 concerning the same charge of the alleged Murder of Mr. Carlin Smith. Upon review of the said ruling, all applicable factors of the Bail Act were considered along with the evidence provided via Affidavit and oral submissions, this Court adopts the ruling of Senior Justice Turner particularly in his assessment of the evidence presented being cogent which "cannot be said to be very weak or non-existent" and also considering whether "any conditions could be imposed which would prevent public endangerment, the applicant not appearing at his trial or preventing him from committing other offences". This Court has also determined that the Applicant is not a fit and proper candidate for admission to bail and provides the reasons for the exercise of its discretion against the granting of bail to the Applicant.

Applicable Law

The **Bail Act (1994) (as amended)**("the Act") particularly Sections 4(2), 4(2A), 4(2B) and Part A together with Article 20(2)(a) of the Constitution of the Bahamas were considered. Article 20 states: "***Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty***", and Article 19(3) of The Constitution entitles the Applicant to a fair trial within a reasonable time and in the event that this cannot ensue, the Applicant must be granted bail unconditionally or subject to reasonable conditions.

The Act provides the statutory guideline for what is considered to be reasonable time of three (3) years (Section 2 (2A) and in the instant case, the matter having occurred in January 2022 is moving in the normal trajectory of such cases and for which todate

there is no contravention of same. It is also noted that the Applicant was on Bail for previous charges and now seeks bail for the instant case.

Discussion and Reasoning

Senior Justice Turner having ruled on the same application just a few months prior, with no change in circumstances, this Court agrees and adopts the key points which have been previously identified:

1.*The fact that the charge sheet only lists police officers as witnesses ignores the fact that the respondent's affidavit exhibits a statement by a purported eyewitness of the shooting the subject of the murder charge in which he identifies the applicant as a person well known to himself, from a familial relationship. That statement indicates that the applicant drove the vehicle from which shots were fired resulting in the present charges.*
2. *The issue of his being the alleged driver as compared to the alleged shooter is not a matter of moment for a bail application, the charge sheet indicates that they are charged as being concerned together. It is also not a matter of moment for a bail application to factor that the applicant's co-accused is already on bail, since each applicant must be looked at in relation to his own circumstances, inclusive of the charges for which he is applying for bail, and any pending charges and previous convictions.*
3. *The Applicant had been convicted of causing harm in 2016, when he was 16 years old, and placed on probation for six months. The Applicant's Affidavit asserts that he has no previous convictions. The conviction is not disputed, but the failure to mention it was explained as being an offence when he was a juvenile. This misleading information is not used against the applicant but applicants (and respondents) generally should be aware that there is a duty to put accurate information before the court.*
4. *In reference to the previous conviction of causing harm, it is not a very serious matter, and it was committed while the applicant was a juvenile and he did not receive a custodial sentence in respect of same. The applicant though does stand to be treated as a person who has been charged with the offence of murder, having previously been convicted for a criminal offence.*
5. *In addition, the applicant is also a person who has been charged with murder while on bail for two separate sets of offences, inclusive of several counts of attempted murder in relation to a chase involving the police which resulted in a crash at the foot of the bridge. As indicated, **the nature of the evidence against the applicant is of the utmost relevance**it cannot therefore be said that there is no evidence against the applicant, **indeed from the statement of the alleged eyewitness it could be said that the evidence is cogent.***

6. *I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would endanger public safety generally, and commit other offences while on bail and that he would also not appear to take his trial.*
7. *I turn now to consider whether any conditions could be imposed which would prevent public endangerment and the applicant not appearing at his trial or prevent him from committing other offences. The apparent evidence in this matter indicates that the applicant was the driver of a vehicle from which shots were fired in the presence of a number of other persons in a community setting. He is alleged to have done this while on bail for the attempted murder of a number of police officers who were shot at during a chase which ended when the vehicle from which the police alleged the shots were fired crashed in the vicinity of the bridge to Paradise Island. I do not consider that any conditions could be placed on the Applicant which would prevent any of the eventualities which I am required to consider.*
8. **In Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**, where the accused was charged “with two counts of attempted murder, and two counts of possession of a firearm with intent to endanger life allegedlyAt the time of his arrest and charge, the appellant was on bail in respect of a pending charge of armed robbery; and as a condition of that bail, he was ordered to wear an electronic monitor. Counsel noted that the appellant has no previous convictions.

.... “21.Inexorably, attempted murder is considered a serious offence. The penalty for attempted murder is the same as for murder, except for the death penalty. In addition to the presence of that factor weighing against the grant of bail in this case, **there is the other factor that the appellant was on bail when charged with an offence similar to that in respect of which he was already released on bail (emphasis added)**. The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice.

22. Notwithstanding however, the presence of the aforementioned factors in this case, **the nature of the evidence against the appellant is of utmost relevance (emphasis added)**, as it is in all cases, for it underpins the reasonableness of the suspicion of the commission of the offences by the appellant, and consequently, the basis for arrest and deprivation of his liberty in relation thereto.”

.....“34.As this Court has said on many occasions, **it is not the duty of a judge considering a bail application to decide disputed facts or law.** Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. **The judge must simply decide whether the evidence raises reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention (emphasis added).** Having done that he must then consider the relevant factors and determine whether he ought to grant him bail”.

9. Referencing Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019, the Learned Judge determined that *the factual matrix in this matter brings it within the principles enunciated in Seymour to the extent that the **type of evidence placed before the Court properly substantiate an assertion that the applicant is a threat to public safety and constitutes evidence on which it can be concluded that he may not appear to take his trial or would commit other offences while on bail***”(emphasis added).

10. In Tyreke Mallory v Director of Public Prosecutions 142 of 2021 (January 2022) -‘Released on Bail with a Similar Offence’ the court stated:

“21.At the bail hearing before the Supreme Court, counsel for the DPP, referred to the Affidavit of Sergeant 2169 Pinder and submitted that the appellant was already on bail for the charge of armed robbery and has multiple previous convictions. In response, counsel who appeared for the appellant in the Supreme Court relied on the recent decision of Stephon Davis v. The Director of Public Prosecutions SCCrApp. No. 108 of 2021. In that case this Court (differently constituted) opined, per Evans, JA, at paragraph 19:

"19. It should be noted, however, that a judge hearing a bail application **cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence.** There is a **requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge (emphasis added)**...

25. In his submissions Mr. Carroll asserted that the police file contains other information. However, whatever that information maybe it does not appear that it was placed before the judge as he made no reference to any other evidence. As the authorities show **the crown has a duty to put before the court the evidence**

which raises a reasonable suspicion of the commission of the offences by the applicant, such as to justify the deprivation of his liberty by arrest charge and detention(emphasis added)...

35. This Court has on more than one occasion repeated the principle **that bail should not be denied as a punishment for a crime for which a person has not yet been convicted (emphasis added)**. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. **The burden is on those opposing the grant of bail to should (sic) why there are good reasons to deny bail to a person charged with an offence.**36. In this case, the Crown alleges that **he is a threat having regard to the fact that this offence was committed whilst he was on bail**. But the Crown has produced scant evidence to show the basis upon which he has been charged.

23. Unlike in Stephon Davis the evidence against the appellant is cogent and cannot be said to be very weak or non-existent. The contents of the reports as exhibited to the Affidavit of Sergeant 2169 Pinder sets out what can only be described as a strong prima facie case. This supports the findings by the trial judge that **there is a reasonable basis for the Crown's allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail (emphasis added)**.

24. In these circumstances **this issue goes beyond whether the appellant will appear for his trial but turns on whether he is a threat to society (emphasis added)**. The learned judge's decision when read as a whole is based on his view articulated in paragraph 33 as follows:

"33. Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that **the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored (emphasis added)**."

25. In my view, **having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society (emphasis added)**. Further, the evidence, in my view, raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial."

11. It is evident in this case that the nature and strength of the evidence, a factor for consideration under the Bail Act (Part A (g)), is paramount also in the matter having occurred in a communal area with many around, it is agreed that there must be a concern for public safety and protection and also that of the witness (Bail Act, Section 2B). Additionally, the evidence signals a reasonable suspicion of the commission of the offence by the Applicant such as to justify the deprivation of his liberty by arrest, charge, and detention (McDonald, Mallory and Davis (supra)).
12. In Davis (supra) it was emphasized that there is a burden on the Respondent to provide good reasons to deny bail to a person charged with an offence. In that case, the Crown alleged that he is a threat having regard to the fact that this offence was committed whilst he was on bail but did not provide evidence to support, that this Court agrees with learned Senior Justice that the eye witness evidence, positive identification parade results and manner in which the events took place in a community setting stands as strong evidence.
13. In Davis (supra) it was also determined that there was a reasonable basis for the Crown's allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail. This is also the present scenario of this Applicant, who has a variety of pending charges including Attempted Murder of police officers during a police chase, however, notwithstanding that bail hearing do not constitute mini trials (***Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008***), the events that occurred in that community in such a manner could have harmed anyone and such a threat, by any perpetrator should not be taken lightly and it should be remembered from Davis (supra) that the "need for public safety and public order is of utmost importance and in the present circumstances cannot be ignored (emphasis added)."
14. In Mallory (supra) it was determined that "*having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society (emphasis added)..... the evidence, in my view, raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial.*" This is the circumstance in which the Applicant in this matter also finds himself and for which this Court stands on its decision.

Conclusion

15. The relevant provisions of The Constitution, the Bail Act and the detailed ruling of Learned Senior Justice Turner having been considered, this Court so finds that

the Applicant; (i) seemingly is on track to be tried in a reasonable amount of time, (ii) has several pending matters that are serious in nature and has previously been granted bail and subsequently charged with further and similar offences, (iii) there is a need to protect the public and public safety and that of witnesses and (iv) the nature and strength of the evidence suggests a prima face against the Applicant, the Court is of the view that the Applicant should remain remanded until his trial date.

Bail is denied. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply

Dated this 28 day of June 2022



Justice