

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00044/2022

BETWEEN

DENTAWN GRANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Alex Dorsett for the Applicant
Mr. Basil Cumberbatch and Mr. Levan Johnson for the Respondent

RULING- BAIL

Archer-Minns J

1. Dentawn Grant, the Applicant (the “**Applicant**”) in these proceedings has been charged with the Murder of Franklyn Ginton and Clinton McClean and Attempted Murder of Brianna Grant (the “**Virtual Complainant**”) on 5 March, 2022. He made application for admission to bail via Summons and Affidavit filed on 14 March, 2022.
2. The Applicant was convicted in 2020 for Stealing and paid a \$500 fine and thereafter was discharged. He has no matters pending.

The Applicant asserts in his aforementioned Affidavit the following:

- i. he is 22 years of age and was born in New Providence;
 - ii. he has one previous conviction which has been spent and no pending matters;
 - iii. he has means of employment as he works with his father as a skilled labourer;
 - iv. he is innocent of the charges and intend to plead Not Guilty;
 - v. he will dutifully report to court when required and abide by all conditions if granted bail.
3. Counsel for the Applicant further contended that the application should not be hinged on a sole eye witness, Brianna Grant or the witness statement of Billy Cejour as there has been no proper connection made between Mr. Cejour and the Applicant nor his motives or criminal history known. Further the description of the gunmen by the virtual complainant Brianna Grant is generic and there is no description of the face or other characteristics of the Applicant.
 4. Counsel asserted that whilst the court must take into account public safety, the case of Duran Neely must also be considered in this connection. Public safety should not be assessed in a vacuum but rather together with the character of the Applicant and other factors. Reliance was placed on the case of Bradley Ferguson.
 5. Counsel further advanced that based on the evidence which the Prosecution intend to rely upon is not such that the Applicant will interfere with witnesses, or

not appear for trial. Additionally, the Applicant is not a prolific offender, has no other matters pending of a violent nature, no evidence adduced that if released on bail, the Applicant will cause any injury to the virtual complainant. The court can impose conditions that can address any concerns regarding the witness or the public at large.

In all of the circumstances of the case, the Applicant ought to be admitted to bail.

6. Counsel for the Respondent objected to the granting of bail supported by an Affidavit of Inspector Demetrius Taylor, filed 23 March, 2022 asserting *inter alia*,
 - i. the nature and seriousness of the crime and the punishment attached thereto would be a good reason for the Applicant absconding;
 - ii. there is cogent evidence linking the Applicant to the respective crime through the Virtual Complainant, Brianna Grant who contends that she knows the Applicant and that he was not wearing a face masks at the time of the murder and attempted murder during which she was shot and there was also no obstruction to her observation of the Applicant. She also positively identified the Applicant via a 12 man photo line-up. There is also included in the Affidavit, the evidence of another witness Billy Cejour who provides information on events that occurred days before the killings including that the Applicant's own vehicle was shot at multiple times without the incident being reported to police and a conversation held about possible retaliation by the Applicant and others. Also included is the record of interview of the Applicant wherein he confirms his car was shot at days before.
 - iii. the Applicant's life might be in danger considering that persons accused of serious offences upon their release on bail, are in turn murdered themselves and that the Applicant ought not to be

released, not only in the interest of the virtual complainant and other prosecution witness but for his own protection.

In all of the circumstances of the case, Counsel for the Respondent contended that the Applicant ought not be admitted to bail.

7. Upon review of the Affidavits and considering the oral submissions of counsel for the Applicant and Respondent, the court has determined that given the nature and the seriousness of the charges, the strength of the evidence upon which the prosecution intend to rely, the Court is of the view that it ought not exercise its discretion to grant the Applicant admission to bail at this time. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

The Constitution

8. The Applicant (who has been charged with an offence) enjoys the presumption of innocence and has a right to apply for bail. Section 20 (2) (a) of the Constitution states that: **“Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty.”**

The Bail Act (1994) (as amended) (the “Bail Act”)

9. The granting of bail is a discretion exercised by the courts, the Bail Act however, gives guidance on factors that should be considered in cases where Part C offences are before the court. Sections 4(2), 4(2A) and 4(2B) of the Act provides as follows:

(2) Notwithstanding any other provisions 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;

(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 a written statement giving 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 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.

10. Part A of the Bail Act states as follows:

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.

Discussion and Reasoning

The Bail Act

Trial within a Reasonable Time

11. In accordance with the Bail Act and Article 19(3) of the Constitution, a person charged with an offence who cannot be tried within a reasonable time, they should receive bail. However, if they can be tried within a reasonable time, the court should move on to give consideration to sections 4(2B), 4(2C) and Part A of the Act in order to make a determination as to whether an applicant is a fit and proper candidate for admission to bail (see *Duran Neely v The Attorney General Appeals No. 29 of 2018*).

12. In the instant case, the Applicant has recently been charged and awaits service of his Voluntary Bill of Indictment and trial date. Unreasonable delay is therefore not a issue.

Previously granted bail and now charged with similar offences (Character/Antecedents)/Commit an offence while on bail

13. The character or antecedent of the person charged is a primary consideration, but this factor alone does not automatically result in the release of a person on bail. The Applicant has a previous conviction of Stealing which has been spent and no pending matters.

Failure to surrender to custody or appear at trial

14. Part A of the Bail Act invites the court to consider whether there are substantial grounds for believing that, if released on bail the defendant would fail to surrender to custody or appear at his trial or interfere with witnesses.
15. It is an established practice concerning bail applications that the appropriate test for granting bail is whether or not a court is of the view that the applicant will or will not appear for trial (Jeremiah Andrews v The Director of Public Prosecutions [1937] 2 All ER 552).
16. In his Affidavit, the Applicant avers that he will not abscond and that he has no intention of not appearing to his trial and seeks to attend to vigorously defend his innocence. Counsel for the Respondent has asserted that the very nature and possible punishment attached if convicted is sufficient a reason to abscond. Apart from this assertion, no evidence has been presented by the prosecution to support this position.
17. The court has also taken in consideration the conditions in the case of *Jeremiah Andrews* but this is factored along with other factors which must also be considered when granting bail and not in isolation.

The Nature and Seriousness of the Offence and Nature and Strength of the Evidence

18. It is no doubt that the offence of Murder, a double Murder in this instance and Attempted Murder are serious offences; but are bailable offences and certainly not the sole reason to deny bail.
19. Recognizing, that Bail hearings should not constitute mini trials (Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008), it is also important that the court considers the strength of the evidence in accordance with the Bail Act. In Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016, Allen P stated that:

“The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

20. There is reasonable suspicion on the evidence before the court as to the commission of the offence by the Applicant. This suspicion arises from the statement of the virtual complainant recognizing the Applicant and also averring that she did not have any obstruction to his face as a result of his wearing a mask or the like. The virtual complainant was also shot with the other two men who subsequently succumbed to their injuries and confirmed through a photo lineup that the Applicant is the individual she saw on the night in question. There is also the witness statement of Mr. Billy Cejour who is said to be familiar with the Applicant and was also able to provide information of an earlier shooting aimed at the Applicant, which suggest a motive on the part of the Applicant for the retaliatory attack. Additionally the Applicant's own record of interview sheds light on a shooting incident during which he was the target and bring into question his own safety and protection .

Conclusion

21. The relevant provisions of The Bail Act having been considered, together with the Affidavits of both Counsel and their respective submissions, the court so finds that unreasonable delay is not an issue in the instant case and therefore gave consideration to the following factors:

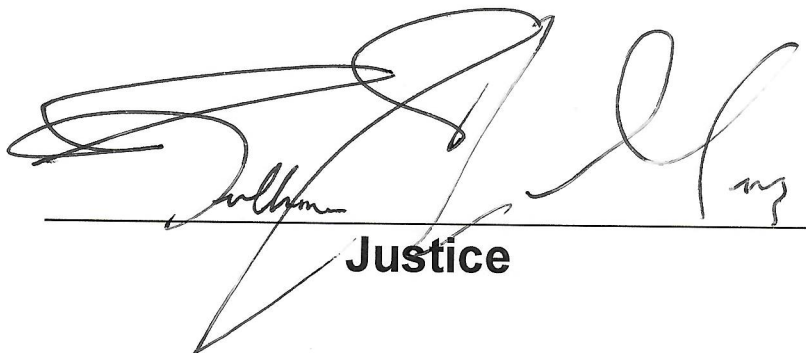
- i. the serious nature of the offences;
- ii. the strength of the evidence against the defendant;
- iii. the antecedent of the Applicant;
- iv. the competing interest of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;
- v. the safety of the Applicant and the prosecution witnesses, the familiarity of the witness with the Applicant, the fact that the witnesses and the Applicant reside in the same general area;
- vi. the bail conditions which could be imposed.

22. The Court having given consideration to all of the aforementioned factors is of the view that the Applicant should remain incarcerated at this time for the safety and protection of the witnesses and the Applicant himself. The court is cognizant of the fact that the incident occurred in a hot spot for crime and there is a strong possibility of retaliatory attacks either upon the witnesses and or the Applicant.

Consideration was also given to conditions which the court may impose that would minimize the risks involved with the granting of bail and have found none that would sufficiently or effectively safeguard the prosecution witnesses or the Applicant. Bail is therefore denied.

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

Dated this 6 day of April 2022



A handwritten signature in black ink, appearing to be 'Justice', is written over a horizontal line. The signature is stylized and cursive. Below the line, the word 'Justice' is printed in a bold, black, sans-serif font.