

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00376/2019

BETWEEN

D'JAVON DESMOND JOHNSON

AND

THE DIRECTOR OF PUBLIC PROSECUTION

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

Appearances: Mr. Glendon Rolle for the Applicant
Ms. Eleanor Pintard for the Respondent

Hearing Date: 14 April 2021

RULING-BAIL

Archer- Minns, J

1. The Applicant, D'Javon Johnson (D.O.B-16 June 1989) in this matter was charged with Murder contrary to section 291 of the Penal Code Chapter 84. The incident relative to this charge allegedly occurred on 10 July 2019 when a man was stabbed to death. He has been remanded at the Bahamas Department of Correctional Services since the date of the incident and his arrest. The Applicant has twice previously applied for bail by affidavits filed on 29 July 2019 and 2 July 2020. Bail in both instances was denied. The Applicant now again applies for bail.
2. In the Applicant's affidavit, filed herein on 1 April 2021 he avers essentially that:
(i) his trial herein is scheduled for 4 July 2022 (ii) he has one minor child to take care of (iii) he has no previous convictions or pending matters and; (iv) if he is given bail he would have accommodations at East Street South Cox Way, would have a job as a painter, will comply with any conditions of bail which this Court may impose and (v) he has a suretor whom is willing to execute his bail bond.
3. The Respondent filed an affidavit of A.S.P Nathan Mackey on 1 April 2021 in opposition to bail. He stated therein that: (i) there is strong and cogent evidence against the Applicant (ii) the matter is serious leaving the Respondent to believe that the Applicant would abscond or interfere with witnesses in this matter whom he knows (iii) the Applicant has had an altercation with the witness, Pizzario Brenen before the substantive incident took place.
4. In submissions, Counsel for the Applicant contended that the Applicant has strong ties to the Bahamas and has no means to abscond even if he was minded to do so. He stated that he is willing to comply with all conditions of bail and should not be kept in custody awaiting his trial when it is unlikely that it would proceed in light of the COVID pandemic and the many challenges it has presented.

The Law

5. The Constitution gives the Applicant the right to apply for bail. Section 20 (2) (a) of the Constitution says 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.**" 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.

6. In any application for bail, the Bail Act 1994 (as amended) (the “**Bail Act**”) must be considered. The relevant offence is “**Murder**”, therefore Sections 4(2), 4(2A) and 4(2B) and Part A of the Bail Act must be considered. The section reads as follows:

“4. (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; 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 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 victim or victims of the alleged offence, are to be primary considerations”

7. 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.*

Analysis and Discussion

The Evidence

8. The Evidence before the Court is the statement of Pizzario Brennen who claims to have been in the vicinity of the alleged stabbing. He identified the Applicant as someone he knew for quite some time (fifteen years) and as someone who was usually an aggressor. The day of the incident, the Applicant allegedly argued with Mr.

Brennen for food which led to a physical altercation where the Applicant allegedly pulled out a silver bladed knife with a wooden handle. Mr. Brennen defended himself with a grill fork. After this situation diffused, Mr. Brennen heard someone say “Tumba (the Applicant) don’t jick him”. He also received information from other persons that the Applicant had stabbed the Deceased. Mr. Brennen subsequently identified the Applicant via a twelve man line-up as the person he was in a physical altercation with.

9. The witness statement of Cril McIntosh Jr. is also before the Court. Mr. McIntosh claims to have seen the Applicant and the Deceased in a bloody fight before he saw the deceased lying on the floor before he was taken to hospital and pronounced dead. Mr. McIntosh also identified the Applicant via a twelve man line up.
10. Cpl 2744 Kendal Brook’s witness statement is one that corroborates many aspects of both Cril McIntosh’s and Pizzario Brennen’s statements. Cpl 2744 Brooks however actually alleges that he saw the Applicant stab the Deceased even as he lie on the ground defenseless. Additionally, he informed the police through his statement that the Deceased had a knife as well. Cpl 2744 Brooks also identified the Applicant in a 12 man lineup. He said that he knew the Applicant for all his own life as they grew up in the same area and attended the same schools.
11. It is not the job of this Court, at this stage to fully evaluate the evidence. **Cordero McDonald v. The Attorney General SCCrApp No195 of 2016** Allen P explained that:

"34. It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 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". It is the Court’s view that the evidence against the Applicant is cogent and raises a reasonable suspicion of the commission of an offence.

Interference with witnesses

Counsel for the Respondent has submitted to the Court that the Applicant should be kept in custody so that he would not interfere with witnesses. The substantiation for this submission was the claim that the Applicant had a physical altercation with the Prosecution witness Mr. Brennen before the relevant incident occurred. However, Mr. Brennen does not seem to be in fear for his life. The evidence even showed that Mr. Brennen defended himself against the Applicant and attacked him after he had allegedly stabbed the Deceased. Counsel also stated that all of the witnesses are known to the Applicant which, according to the Court of Appeal in a plethora of judgements is simply not enough to deprive the freedom and liberty of a man.

Possibility of Absconding

12. The offence of Murder is a very serious one. There is evidence before the Court that the Applicant ran from the police officer in this matter when he was trying to arrest him. This act may show a likelihood of absconding which the Court does not consider negligible. However, the relationship the police officer has with the Applicant and the fact that he was out of uniform is taken into consideration. Additionally, the fact that the Deceased possibly had a weapon during the incident and was allegedly chasing him is also taken into consideration. The nature of the offence is also concerning because the perpetrator of the offence seemed to have been intoxicated, aggressive and looking for a fight. This Court holds the safety of the public in very high regard. The Court does take into consideration a factor that weighs positively in the scale of granting bail which is, that the Applicant has no previous convictions. He has already spent some time in prison. The Court in these circumstances is bound by law to consider conditions that may curb the possibility of absconding.

Conclusion

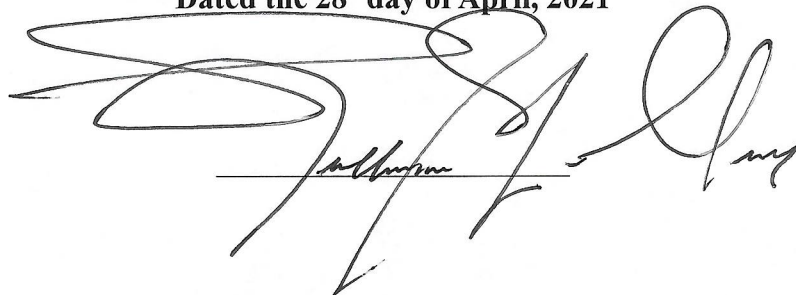
13. In all the circumstances of the case, the Court having given consideration to the nature and seriousness of the charge, the length of time that the Applicant has been in custody from the date of his arrest to his fixed trial date which is 4 July 2022, just six days out from the three year guideline, the absence of an antecedent, the competing interests of the Applicant and his right to his liberty with those of the public, its safety and

security, the Court is of the view that there are conditions which could be imposed which ought to substantially reduce any risk involved with the granting of bail. Bail is therefore granted in the sum of 30,000.00 with two suretors and the following conditions:

- the Applicant shall report to the East Street South Police Station every Monday, Wednesday and Friday before 6 pm each day;
- the Applicant is to be subject to electronic monitoring; and shall agree to be bound by the rules issued by the Electronic Monitoring Unit which govern the process;
- the Applicant shall be off the streets and at his place of residence between the hours of 8:00 pm and 6:00am each day;
- the Applicant shall surrender Passport and any other travel Documents to the Registrar and;
- the Applicant shall not interfere with any prosecution witnesses in this case.

Any breach of any of these conditions, Bail shall be forfeited.

Dated the 28th day of April, 2021

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and difficult to decipher, but it appears to be a name starting with 'J'.

JUSTICE