

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**No. CRI/BAIL/00105/2022**

**BETWEEN**

**DION EXELANT**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

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

Appearances: Mrs. Ciji Smith for Applicant  
Mr. Denard Brown and Ms. Shanika Carey for the Respondent

Dates: 1 June 2022

**RULING - BAIL**

## ***Archer-Minns J***

1. By Summons and Affidavit in Support filed on 4 May 2022, the Applicant Dion Exelant made application for admission to bail having been charged with one count of Attempted Murder allegedly committed on 23 April 2022.
2. Reliance was placed on the contents of the Affidavit which essentially stated therein:
  - i. the Applicant is a citizen of The Commonwealth of The Bahamas and is twenty (20) years of age;
  - ii. on 23 April 2022 he was arrested for the offence of Attempted Murder and would have advised in his Record of Interview that he was outfitted with an Electronic Monitoring Device and was in the area of Carmichael Road at the time of the alleged offence;
  - iii. on 29 April 2022 he was formally charged and advised to apply to the Supreme Court with respect to bail;
  - iv. he has no previous convictions;
  - v. he did not commit the offence and will defend against it;
  - vi. the prosecution's evidence is tenuous and the case against him is weak;
  - vii. he is not a flight risk and will not interfere with any of the witnesses in the matter nor does he pose a risk to the safety or security of the Bahamian society;
  - viii. if granted bail, will comply with all conditions imposed by the court.
3. Counsel for the Applicant further contended orally that the content of the Respondent's Affidavit in Response is weak. There is no evidence before the court that the Applicant is affiliated with organized crime; the Applicant at the material time was outfitted with an Electronic Monitoring Device and there is no evidence of any tampering with the same, (the Applicant has an alibi) nor any evidence that the Applicant will not appear for trial, will commit an offence on bail or interfere with witnesses.

In all of the circumstances of the case, the Applicant is a fit and proper candidate for bail. And, there are any number of conditions which could be imposed to minimize any risks involved with the granting of bail

4. The Respondent objected to the Applicant being admitted to bail. Reliance was placed on the Affidavit of Inspector Demetrius Taylor, filed 1 June, 2022 the contents of which state inter alia,

- i. the evidence is cogent and admissible as the virtual complainant, Tavarus Beneby recognized a male known to him as "Deon" as one of the members who exited a red Suzuki Swift when he was shot. Deon and the male who was driving the vehicle were "coaching" the male from the back seat to shoot him. The male who exited the back passenger seat shot the virtual complainant;
- ii. at the time this offence was committed, the Applicant was on bail for Possession of an Unlicensed Firearm/Ammunition;
- iii. the Applicant ought to be kept in custody for his own protection as the Applicant is known to be affiliated with the "Grove Hot Boys Gang". It is a common knowledge of gang wars and retaliatory killings that occur in New Providence;
- iv. even if the Applicant is fitted with an electronic monitoring device there is no assurance that he will not tamper, remove it completely and escape the jurisdiction or commit other offences while on bail;
- v. there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified and that there has been no unreasonable delay.

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

- 5. Upon review of the Affidavits and considering the oral submissions of Counsel for the Applicant and Respondent together with the relevant provisions of the Bail Act, the Court has determined that given the nature of the charge i.e. Attempted Murder one for which bail is routinely granted, the strength of the evidence as adduced before the Court for the purpose of this application, the Applicant's antecedent or lack thereof, the Court is minded to grant the Applicant bail for the reasons specified below.
- 6. In accordance with the Constitution of The Bahamas, the Applicant enjoys the presumption of innocence and has a right to apply for bail. Article 20 (2) (a) provides, **"Every person who is charged with a criminal offence (a) shall be presumed to be innocent until he is proved or has pleaded guilty."**
- 7. The granting of bail is a discretion exercised by the court for which The Bail Act provides guidelines as to the factors that ought to be considered in cases where



Part C offences are before the court. Sections 4 and Part A of The First Schedule of The Bail Act stipulates those factors to be considered.

8. In accordance with The Bail Act and Article 19(3) of The Constitution, "if a person is charged with an offence who can't 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 First Schedule of The Act in order to make a determination as to whether an applicant is a fit and proper candidate for admission to bail. (*Duran Neely v. The Attorney General Appeals No. 29 of 2018*).
9. In the instant case, the Applicant was arraigned before the Magistrate's Court on 29 April 2022 and awaits service of a Voluntary Bill of Indictment and a trial date before the Supreme Court. There is currently no issue in relation to unreasonable delay in the prosecution of the matter.

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

10. 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 previous convictions but does have a pending charge of Possession of Unlicensed Firearm/Ammunition. This current charge for which the Applicant seeks bail is one in which a firearm was said to be used.

***Failure to surrender to custody or appear at trial***

11. Part A of the Bail Act invites the court to consider whether there are substantial grounds for believing that if released on bail the Applicant would fail to surrender to custody or appear at his trial or interfere with witnesses.
12. It is well established 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 albeit not the only one. (*Jeremiah Andrews v The Director of Public Prosecutions [1937] 2 All ER 552*).
13. The Applicant averred in his Affidavit and through Counsel that he will not abscond and has no intention of not appearing to his trial, will abide by any and

all conditions imposed by the court, will attend to defend his innocence and will not interfere with the prosecution witnesses.

14. Counsel for the Respondent contended otherwise. Notwithstanding the position taken by the Prosecution there has been no evidence whatsoever to substantiate that position. Mere assertions without more certainly cannot be the basis upon which the court ought to exercise its discretion against the granting of bail.
15. The Court has taken into consideration the conditions stipulated in the case of *Jeremiah Andrews* which have been factored together with other factors that the Court must also consider with granting bail.

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

16. It is no doubt that the offence of Attempted Murder is a serious one but is also an offence for which bail is routinely granted and; therefore the seriousness of the charge cannot be the sole reason to deny bail.

17. Recognizing, that Bail hearings should not constitute mini trials (*Attorney General v. Bradley Ferguson 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:

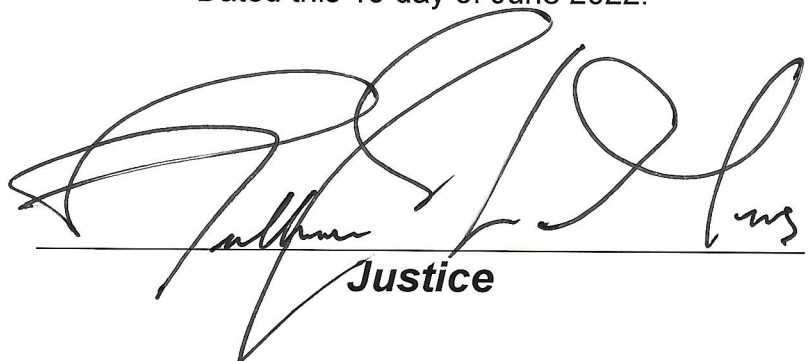
***“The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offence such as to justify the deprivation of liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him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

18. There was very little to no evidence adduced before the Court with respect to the Applicant's involvement in the matter. Reliance was placed by the Respondent on a statement from the virtual complainant who therein made reference to an individual by the name of “Deon” nothing more. In this statement provided there was no indication whether the individual referred to as Deon was subsequently identified by the virtual complainant or otherwise. The Court cannot be left to speculate and can only make a determination based on the evidence which is adduced before it. The Respondent is required to do more and must provide the

Court with essential information to properly assist the Court in making a determination in matters of this kind.

19. The Court having given consideration to the Affidavits, submissions of Counsel, the relevant provisions of The Bail Act, specified authorities, the antecedent, the nature of the charge, the lack of evidence before the Court, the Applicant's presumption of innocence and right to liberty with those competing interests of the public, its safety and security, will exercise its discretion to admit the Applicant to bail. There are any number of conditions which can be imposed by the Court that will minimize the risks involved with the granting of same.
20. Bail is therefore granted in the amount of Fifteen Thousand dollars (\$15,000) with **one to two suretors**. (ii) Applicant is to report to the Carmichael Road Police Station every Tuesday, Thursday and Friday before 7:00 p.m., (iii) to be outfitted with an Electronic Monitoring Device, (iv) not to interfere with witnesses or otherwise obstruct the course of justice nor anyone acting for or on his behalf and (v) to appear to court on each and every adjourned date until completion of the matter. Breach of any of these conditions, Applicant's bail is subject to being revoked.

Dated this 15 day of June 2022.



Justice