

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**No. CRI/BAIL/00412/2016**

**BETWEEN**

**ERIC ARTHUR**

**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, for the Respondent

Hearing Date(s): 11 May 2022, 18 May 2022

**RULING- BAIL**

## **Archer-Minns J**

1. By Summons and Affidavit in Support filed 14 March 2022, the Applicant, Eric Franklyn Arthur has made application for admission to bail having been charged with Attempted Murder and Conspiracy to Commit Attempted Murder in March 2022.
2. The Applicant was conditionally discharged in 2019 of Threats of Death and has pending matters for Rape in 2018, Unlawful Sexual Intercourse with a person between the ages of 14-16 in 2020, Attempted Murder and Possession of a Firearm with Intent to Endanger Life in 2020, and Attempted Murder in 2021. Bail was granted in 2018 for the charge of Rape and in 2020 for Possession of an Unlicensed Firearm with Intent to Endanger Life, Causing Harm and Unlawful Sexual Intercourse. There is no indication as to whether bail had been granted with respect to the Attempted Murder charge for July 2021.
3. As per the Affidavit of the Applicant made in support of the application for bail, the Applicant asserts essentially that:
  - (i) he is innocent of the charge and intends to plead Not Guilty and;
  - (ii) will comply with whatever conditions are imposed by the court with respect to the grant of bail.

Further, in an Affidavit of one Italia Kelly filed on 18 May 2022, it is contended therein that if granted bail it is the intention of the Applicant to relocate to Governors Harbour, Eleuthera to reside with his girl friend, will return to Nassau only for the purpose of his trial and will not visit the area where the virtual complainants reside nor make contact with any of them.

4. Counsel for and on behalf of the Applicant finally advanced that in all of the circumstances of this case, the Applicant ought to be admitted to bail
5. Counsel for the Respondent objected to bail. Reliance was place on the Affidavit in Response filed on 1 April 2022. The content of which stated inter alia:
  - (i) the Respondent opposes the granting of bail considering the nature and seriousness of the offence of Attempted Murder which is a Part C offence;
  - (ii) there is clear and cogent evidence that links the Applicant to the offences for which he is charged;

- (iii) there are substantial reasons to believe that the Applicant if granted bail will fail to surrender to custody and will not comply with conditions of bail set by the court.  
Additionally, the Applicant is charged with serious offences and if convicted faces a lengthy penalty, which is an incentive to abscond;
- (iv) there is a need to protect the safety of the victim in this matter. The Applicant having made threats to kill the virtual complainant;
- (v) the Applicant should be kept in custody for his own protection. There is evidence by the virtual complainant, Shaquille Burrows to the extent that he and the Applicant were having a vibe on and off for a while because of several encounters in the past. Consequently, the court should take judicial notice of the retaliatory killings in the country;
- (vi) there are substantial grounds for having reasonable suspicion that the Applicant if released on bail, will commit further offences. The Applicant has pending charges for serious and violent crimes;
- (vii) the Applicant was previously released on bail for a number of offences and subsequently was charged with serious Part C offences of a similar nature and punishable by a term of imprisonment exceeding one year each time he has been released on bail;
- (viii) based on the foregoing, there is a need to protect the safety of the public and public order. The court ought to take judicial notice of the prevalence of gun violence in the country. Considering that the Applicant has been charged with multiple offences involving the use of a firearm and considering that the Applicant dangerously discharged the weapon in the residential area of Yellow Elder, he should not be granted bail in the public's interest and safety;
- (ix) there are no conditions that can be imposed which would reasonably ensure the Applicant's presence at trial and the safety of the victims. The Applicant was previously subjected to conditions when he found himself charged with these offences whilst on bail for other offences.

In all of the circumstances of this case, the Applicant ought not be admitted to bail.



6. The Court has reviewed and given consideration to the Affidavits and submission of counsel for the Applicant and Respondent. Consideration was also given to the relevant provisions of the Bail Act particularly sections 4(2) and Part A of The First Schedule, the antecedent of the Applicant, the nature and seriousness of the charges, the fact that the Applicant was previously granted bail with conditions and now finds himself before the Court again, the Court having given consideration of the authorities of Cordero McDonald, Bradley Ferguson, Jevon Seymour, Johnathan Armbrister and Richard Hepburn, is of the view that it ought not exercise its discretion to grant the Applicant bail at this time. The reasons for the exercise of this discretion against the Applicant are stated as follows:

### **Applicable Law**

7. The Constitution of the Bahamas provides that, “every person who is charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty”. The Applicant therefore has an unfettered right to apply for bail notwithstanding the seriousness or nature of the charges.

The Bail Act 1994

The granting of bail is a discretion exercised by the court. The Bail Act however, gives guidance on factors that ought to be considered where Part C offences are before the court.

8. Section 4(2) provide:-

***(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.**

Part A of The Bail Act states:

***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 .....***

***(c)***

***(d)***

***(e)***

***(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**

### ***Trial within a Reasonable Time***

9. 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 should receive bail. However, if they can be tried within a reasonable time, the court



should move on to give consideration to section 4(2) of the Act in order to make a determination as to whether the Applicant is a fit and proper candidate for admission to bail. (*Duran Neely v. The Attorney General* Appeal No. 29 of 2018). In the instant case, the offences were allegedly committed in March 2022. Unreasonable delay in the prosecution of the matter is therefore not an issue at this time.

**Previously granted bail and now charged with similar offences (character/antecedent)/commit an offence while on bail:-**

10. The character and 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 as per the antecedent, in April 2019 was conditionally discharged on a charge of Threats of Death upon completion of ordered community service, as per the Certificate of Acquittal and Affidavit of the Applicant filed on 18 May 2022 was acquitted of the August 2020 charges of Possession of a Firearm/Ammunition on 27 April 2022. He has pending charges: October 2020 – Unlawful Sexual Intercourse with a person between 14 – 16, Attempted Murder July 2021 and Murder, Conspiracy to commit Attempted Murder and Attempted Murder for March 2022.

The Court notes that with respect to the March 2022 charges, whilst the antecedent reflects a charge of Murder, there was no mention of said charge by either the Applicant or Prosecution as being an additional charge which the Court ought to be considering with those of Conspiracy to commit Attempted Murder and Attempted Murder. There was an indication in the Applicant's Affidavit that a copy of the charge sheet was exhibited therein but none was provided. Additionally, there is an outstanding Bail Bond in relation to a charge of Rape dated 4 November 2018.

**Failure to surrender to custody, or appear at trial:-**

11. Part A of the Bail Act require 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.

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)

12. Counsel for the Respondent advanced that this Applicant ought not be granted bail as it is unlikely that the Applicant will appear for trial. Reference was made to a

Warrant of Arrest issued by the Court in June 2021. Counsel for the Applicant contended that, the Warrant itself did not automatically indicate that the Applicant would not appear for trial. As soon as the Applicant became aware that the Warrant was outstanding he presented himself before the Court. In relation to the Warrant the same was issued on 9 June 2021 and was not cancelled until February 2022, the Applicant having absented himself from the Court on three scheduled adjourned dates. The Warrant was cancelled without any documented reason for the non-appearance of the Applicant.

13. Counsel for the Respondent also advanced that the Court ought to give consideration that according to the virtual complainant, Shaquille Burrows, there have been past threats by the Applicant to kill him and there has been an ongoing vibe between them. As such, the safety of the virtual complainant as well as that of the Applicant is of concern. The Court should also take note of the retaliatory attacks on individuals accused and subsequently granted bail. To this, Counsel for the Applicant contended that, the Respondent has provided no evidence to substantiate that such a vibe exist as between the parties. Further, the Applicant is prepared to relocate to another island, Eleuthera, to avoid any contact with the virtual complainant or any other prosecution witness.
14. The Court has taken into consideration the factors as outlined in the case of Jeremiah Andrews but was also mindful that these are to be factored along with others which must be considered when granting bail and not in isolation.

**Commit an offence while on bail/ released on bail previously, subsequently charged 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.**

15. It is patently clear that the Applicant has a series of pending matters all of a serious nature, most of which occurred whilst the Applicant was on bail with conditions attached. Whilst these are not convictions it begs the question on whether the conditions imposed are sufficient to ensure the Applicant's attendance at trial and also ensure he is not charged with any further offences. The most stringent conditions have been imposed but this notwithstanding, the Applicant finds himself before the court repeatedly.

**Nature and seriousness of the offence and the nature and strength of the evidence against the Applicant:**

16. It is no doubt that the offences of Murder and Attempted Murder are serious offences with which the Applicant is charged. This notwithstanding, the charges



are not of themselves a ground for the refusal of bail (*Dennis Mather v. The Department of Public Prosecutions SCCrApp No 96 of 2020*) and are bailable offences (*Jevon Seymour v. The Department of Public Prosecutions SCCrApp No.11 5 of 2019*).

17. It is the role of the Prosecution “to produce evidence to show why the defendant should not be released on bail. The Prosecution is not required to prove beyond a reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect” (*Bradley Ferguson*). The Respondents have produced evidence from the virtual complainant and an eye witness that strongly links the Applicant to the offence charged. They have provided his antecedent, previous bail bonds, stress the nature and seriousness of the offences and the heightened risk of a retaliatory attack due to an ongoing vibe as the premise against the granting of bail to the Applicant.

18. As highlighted in *Hurnam v The State (Mauritius)*, “that there is a tension which may exist between the rights of the individual, viewed in isolation, and the wider interest of the community as a whole” and in so assessing those rights together with the relevant provisions of The Bail Act, the Court so finds that there has been no unreasonable delay in the prosecution of this matter and has given consideration to additional factors:

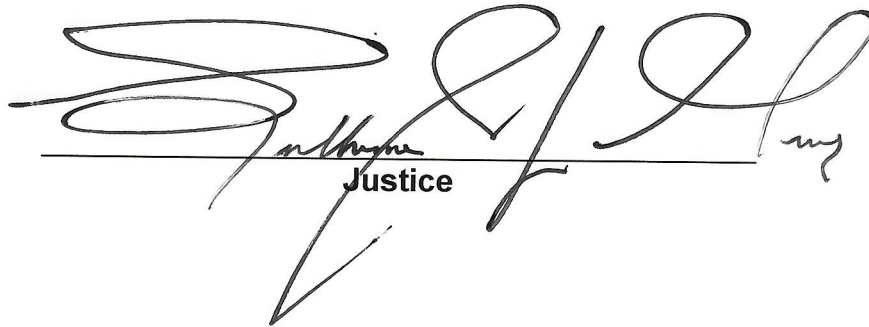
- (i) the serious nature of the offences;
- (ii) the strength of the evidence;
- (iii) antecedent of Applicant
- (iv) the competing interest of the Applicant’s presumption of innocence and his right to his liberty and that of the public its safety and security;
- (v) the safety of the prosecution witness that of the Applicant;
- (vi) the probability of the Applicant not appearing for trial;
- (vii) the probability of the Applicant committing other offences if granted bail and;
- (viii) conditions which could be imposed to minimize the risks involved with granting of bail.

All aforementioned factors having been considered, the Court is of the view that there are no conditions which can be imposed which have not been previously imposed that would minimize the risks involved with the granting of bail in relation to the safety of the witnesses or the Applicant himself, the general public or in relation to the Applicant committing other offences should bail be granted.



Bail is therefore denied. The Applicant is to continue his remand in custody. Should there be any change in circumstances, the Applicant is at liberty to reapply.

Dated this 8 day of June 2022.



Justice