

**COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00474/2018**

BETWEEN

JOHNATHAN EYMA

AND

THE DIRECTOR OF PUBLIC PROSECUTION

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

Appearances: Mr. Nathan Smith for the Applicant
Ms. Eleanor Pintard for the Respondent

Hearing Date: 14 July 2021

RULING - BAIL

Archer-Minns J

1. The Applicant, Twenty-eight (28) year old Johnathan Eyma (D.O.B 17/November/1992), was arrested and charged, with (1) one count of **MURDER** contrary to Section 291(1)(b) of the Penal Code. The alleged incident took place on 12 March 2020. The deceased in this matter is Cynthia Bertha Wilson. The Applicant now applies for bail.

2. The Applicant filed an Affidavit on 2 July 2021 in support of bail herein. In his affidavit, he stated inter alia that:
 - he resides off of Shrimp Road and Faith Avenue;
 - he is a Bahamian citizen and has a four year old son;
 - before he was arrested he was employed as a Dive and Water Sports operator with Bastian Daiquiri Company;
 - he has no pending matters but has a previous conviction for **Disorderly Conduct** and that he completed his sentence on April 30 2021;
 - he was arraigned in the Magistrates Court for the current charge in April 2020;
 - his matter has been adjourned to Tuesday 14 July, 2021 for case management before this Court;
 - a back-up trial date is set in this matter for 15 August 2022 and a substantive date is set for 6 November 2023;
 - he is innocent of the stated charge and has no involvement in it;
 - he agreed to participate in an identification parade but was never placed on one and was never identified in the photo array;
 - he is the main provider for his family which is of limited means;
 - his co- accused has been released on bail and;
 - he is not a flight risk.

3. An Affidavit of Nathan Mackey was filed on behalf of the Respondent on 14 July 2021 and an Amended Affidavit in Response was filed 20 July 2021

herein, both opposing the Applicant's application for bail. The Respondent objected to bail in this matter for the following reasons:

- that there is no unreasonable delay in this matter;
- there is strong evidence against the Applicant;
- that the Applicant himself stated that he has a previous conviction for which he recently completed serving a sentence approximately two and a half months ago;
- that given the seriousness of the offence and the severity of the penalty for which the Applicant stands charged, the Respondent verily believes the likelihood of being convicted provides within itself sufficient incentive for the Applicant to abscond or fail to appear for trial,
- that there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified or unfair at this time.

Applicable law

4. 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.
5. In any application for bail, the Bail Act 1994 (as amended) (the "**Bail Act**") must be considered. Because the relevant offence is "**Murder**", a part C offence, sections 4(2), 4(2A) and 4(2B) and schedule 1, part A of the Bail Act must be considered. Those sections read 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”

6. Schedule 1, 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

7. The Bail Act and Constitution require a court, when considering bail, to evaluate whether an Applicant will have a trial within a reasonable time. In these circumstances, the Applicant has a back-up trial date set for 15 August 2022 and a substantive trial date set for 6 July 2023. He was arrested in April 2020. It is the view of the Court that in these circumstances, there has been no unreasonable delay currently.

8. Although it is not the function of the Bail judge to thoroughly evaluate evidence, it is necessary to look at its strength in order to exercise its discretion in whether or not to grant bail. In the case of **Cordero McDonald v. The Attorney General SCCrApp No 195 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.”

9. The evidence before the Court is that of a statement of Willnay Fenelus made on 27 March 2020 who claimed to have seen a person he knows as “Black Boy” hand a firearm to someone he knows as ‘Evenette’ who then shot the deceased. Mr. Fenelus allegedly identified ‘Black Boy’ in a 12- man photo line-up and according to the statement of D/Sgt. 2586 Evans, “Black Boy” and the Applicant are the same person.

10. The Court in **Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011** said:

“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail”.

The offences which the Applicant faces are very serious, and though the Court must consider this, it cannot be the sole basis for its decision but does weigh heavily in the scale against the grant of bail.

11. According to Mollan, CJ in the case of Noordally v Attorney General and another [1987] LRC,

“It has been established for centuries in England that the proper test of whether bail should be granted or refused is, whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record if any, and the likelihood of interference with witnesses”.

The main purpose of bail is to ensure that an Applicant will appear for trial. There is no evidence before the Court that the Applicant will abscond neither is there evidence that he will interfere with witnesses in this matter. The Court further notes that the Applicant does have a previous conviction but that it is not similar to the offence which he is charged.

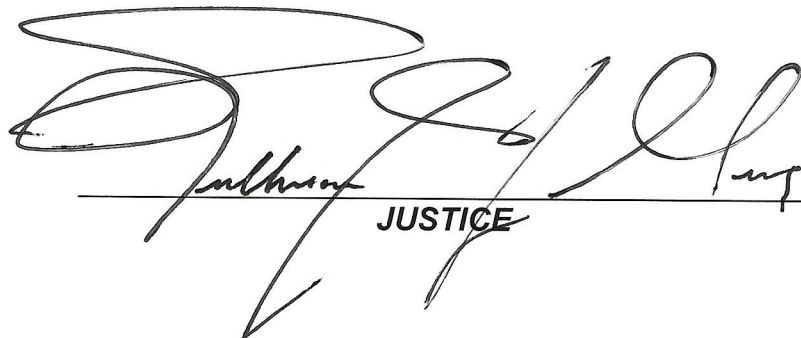
12. In consideration of the factors already mentioned above, I am minded to exercise my discretion to grant bail in this matter at the sum of \$30,000 with **two suretors** and the following conditions:

- (i) The Applicant will report to the Carmichael Road Police Station every Monday, Wednesday and Saturday before 6:00 p.m. each day;
- (ii) The Applicant will be off the streets and at his residence from 7:00 p.m. to 6:00 a.m.;

- (iii) The Applicant will be subject to electronic monitoring; and shall agree to be bound by the rules issued by the Electronic Monitoring Unit which govern the process;
- (iv) The Applicant will surrender his passport and any other travel documents to the Registrar and;
- (v) The Applicant will not interfere with any Prosecution witnesses in this case;
- (vi) The Applicant is to appear to court on each and every adjourned date.

Any breach of these conditions, Applicant's bail is subject to being revoked.

Dated the 28 Day of July, 2021



A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive. Below the signature, the word "JUSTICE" is printed in a bold, sans-serif font.