

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00519/2020

BETWEEN

JAVARDO ADDERLEY

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Troy Kellman for the Applicant
Ms. Cordell Frazier & Ms. Davina Pinder for the Respondent

Hearing Date: 17 August & 24 August, 2022

RULING - BAIL

Archer-Minns J

1. The Applicant Javardo Adderley has made application for admission to bail having been charged with one count of Murder, contrary to section 291(1)(b) of the Penal Code, Chapter 84.
2. Reliance was placed by Counsel for the Applicant on his Affidavit filed 2 August 2022 in which he asserts inter alia: :
 - (i) he is a Bahamian citizen, twenty (20) years of age;
 - (ii) generally employed in the construction field and part time in his grand father's upholstery business
 - (iii) resides with his grand parents in the Kemp Road area;
 - (iv) has no convictions/pending matters;
 - (v) is not a flight risk and ought to be treated as innocent until proven guilty;
 - (vi) Prosecution's evidence is tenuous and weak;

In all of the circumstances of the case, he is a fit and proper candidate for admission to bail.

3. The Respondent filed an Affidavit in Response on 15 August 2022 opposing the grant of bail to the Applicant; essentially stating therein:
 - (i) the evidence is cogent and admissible as against the Applicant. Reliance was placed on the statement of an anonymous witness who positively identified the Applicant as the person who entered Kevin's bar and thereafter walked out after gun shots went off and was seen placing a black hand gun in his waist as he walked out;
 - (ii) the witness Gentry Kellman observed a man with sponge looking hair walk in the bar approached the deceased, pulled out a black hand gun and fired in the deceased direction. The deceased fell to the ground and the male stood over him and continued firing upon him. The male thereafter ran out of the bar.

4. In the Affidavit of 15 August 2022, the Respondent also stated therein that the Applicant had a pending Possession of a Firearm with Intent to Endanger Life matter that occurred in 2019 for which he was on bail as reflected in the antecedent of 7 August 2022. Further by Supplemental Affidavit in Response filed on 23 August 2022, the antecedent of even date reflected a second pending matter dated 24 February 2020.
5. On 24 August 2022 during the hearing of the bail application, the Court was advised by Counsel for the Respondent that the outstanding Murder charge for 2020 had been nollied by the Director of Public Prosecutions and the only matter pending as against the Applicant was the current charge, the subject of this application. There being no other pending matters inclusive of the Possession of a Firearm with Intent to Endanger Life, the Respondent was withdrawing its opposition to the grant of bail for the Applicant.
6. Notwithstanding, the posture taken by the Respondent, the Court deferred its Ruling to (31 August 2022) today's date in order for a proper review of the evidence put before the Court, the relevant provisions of the Bail Act, Bail bonds and appropriate authorities prior to the exercise of its discretion to admit the Applicant to bail. ***Jeremiah Andrews v The Director of Public Prosecutions [1937] Richard Hepburn, Bradley Ferguson, Jonathan Armbrister 45/2011 considered.***
7. Upon review of the aforementioned, the Court noted in particular that with respect to the Murder charge of 2020, which was said to have been nollied by the Respondent (reasons undisclosed) it appears that one of the two suretors in respect of same is now a witness in the current Murder charge for which the Applicant seeks bail that is the witness/suretor, Gentry Sidney Kellman. The Court finds this very curious, is this a mere coincidence or something possibly more sinister. In his statement to the police, the witness who once lived in the area, still hangs out in the area and is familiar with persons in the area gives a very detailed account of what transpired, gives a description of the shooter noting that the shooter did not only shoot in the direction of the deceased but actually stood over the deceased and continued firing shots upon him even after the deceased had fallen to the ground. This witness says though that he is unable to identify the gunman.

8. Two other witnesses to the incident, brothers Thericene Olibrice and David Burrows also from the area and are familiar with persons from the area notwithstanding their detailed account of what transpired say they are not able to identify the shooter. The anonymous witness however, also from within the general area, is familiar with persons in the area and the bar where the incident occurred, he too gives a detailed account of what transpired, description of the male shooter, his vantage point and his looking directly into the face of the shooter and the shooter appearing to look in his direction was able to identify the shooter as the Applicant before the court - someone he has known for some four (4) years.
9. The Court fully appreciates that in accordance with the Constitution of The Bahamas, a person charged with an offence is presumed innocent until proven guilty and that bail ought not be withheld as punishment for a crime for which the Applicant has not been convicted.
10. In the connection, the Court had regard for the competing interest of the Applicant, his presumption of innocence and right to his liberty with that of the public, its safety and security. It is patently clear from the evidence which was adduced before the Court that this was a blatant act executed in a very public space, a bar where many had gathered and possibly could have resulted in the lost of more lives or others being innocently or seriously injured.
11. Certainly, the Court cannot ignore the increased number of violent crimes/murders that have been perpetrated within our inner city communities – the blatant disregard for human life resulting in death or serious injury. The Court also take note of the increased number of persons admitted to bail who themselves have been murdered upon their release as a result of retaliatory attacks. Regard was also given to the fact that in the instant case, the identity of the Applicant has been made known as the person who was allegedly responsible for the death of the deceased. There is a concern for the safety of the Applicant.
12. Moreover, the incident occurred in an area which is considered a hot spot for crime and borders other such areas. This Applicant and the witnesses as well as the attendees at the bar on the night of the incident more likely than not know or are familiar with each other. Although only one of the witnesses is anonymous, the safety of the one as well as the others could well be in jeopardy and possibly the identity of this anonymous witness revealed given the close ties and association within these communities. The Court is indeed cognizant of the heightened need for public safety and protection of potential witnesses.

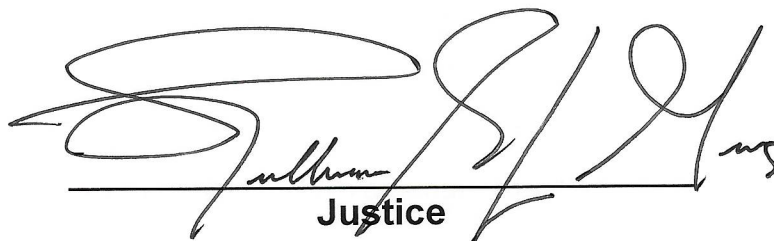
13. All relevant factors having been considered as per the Bail Act:
(i) the nature and seriousness of the charges (ii) the strength of the evidence (which no doubt will have to be tested at trial), (iii) the antecedent of the Applicant (no pending matters/convictions of a similar nature, (iv) Applicant's presumption of innocence (v) safety and security of the public/witnesses (vi) no unreasonable delay in the prosecution of the matter currently, the Applicant is scheduled to receive his Voluntary Bill of Indictment on 2 September 2022, (vii) conditions which can be imposed to minimize the risks involved with the granting of same, (viii) no evidence adduced as to the likelihood of this Applicant absconding or not appearing for trial or breaking conditions that could be imposed, the Court has determined that notwithstanding that there was no such evidence or the fact that the Applicant has no pending matters or previous convictions of a similar nature, not because he has none doesn't mean that should be the sole basis for which he is to be granted bail. Other factors must be taken into consideration and each case must be determined on its own merits.

14. In the circumstances of this case, the Court is of the view that to admit the Applicant to bail may be to his own detriment as well as to the safety and well being of the witnesses (the anonymous witness in particular) and generally the public at large. As such, the Court will not exercise its discretion in favour of granting the Applicant bail at this time. Bail is denied.

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

It is imperative that given the current climate within our communities, the appropriate arms within the judicial system must keep their eyes and ears open and in tune with what is happening. They must be vigilant and take note of all the varying factors that are adversely impacting the overall administration of justice. It will take the collective effort of all concerned to cohesively and effectively bring about a positive outcome.

Dated this 31 day of August 2022



Justice