

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**No. CRI/BAIL/00629/2018**

**BETWEEN**

**JAVAUGHN CHARLTON**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

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

Appearances: Mr. Ryszard Humes, for the Petitioner  
Ms. Shirl Deveaux, for the Respondent

Hearing Date(s): 15 June 2022

**RULING - BAIL**

## **Archer-Minns J**

1. Javaughn Charlton, the Applicant (the “**Applicant**”) to these proceedings applied for Bail via a Summons and Affidavit filed the 31 day of May, 2022 and therein seeks bail for the charge of Murder, contrary to section 291 of the Penal Code, Chapter 84.
2. There appears to be some conflict as between the Applicant’s Antecedent, Bail Bonds and Charge Sheets. The Applicant’s Antecedent filed 15 June, 2022 reflects charges of Armed Robbery occurring September 2019, Murder, Possession of an Unlicensed Firearm, Possession of Ammunition also occurring in 2022. However the Bail Bonds and Charge Sheet of the Applicant also reflect that he has pending matters for Assault with a Deadly Weapon, Damage and Armed Robbery in 2019 and; Possession of an Unlicensed Firearm and Possession of Ammunition in 2020.
3. As per the Applicant’s Affidavit made in support of his application for bail, he asserts therein that (i) he is a Bahamian citizen (ii) is 21 years old, but (it is of note however that previous Bail Affidavits and the Applicant’s antecedents provide that the Applicant was born on the 17 September, 1998, which places him currently at 23 years of age); (iii) the Applicant was charged on April 3, 2022 with Murder and returns to Magistrate Court #9 for the service of his Voluntary Bill of Indictment (“VBI”) on the 7 October, 2022; (iv) he has one matter in Magistrate’s Court #5 for Possession of a firearm and no previous convictions; (v) he maintains his innocence with respect to this charge as he was at the Colony Club Resort with a female friend on the day in question; (vi) he saw the video of the person who committed the offence and their identity was completely concealed by a mask and clothing and he is certain he was arrested by mistaken identity and (vii) he is not a flight risk and will be present on every date the matter is set and abide by all bail conditions.
4. Counsel for the Applicant further advanced that the Crown had entered a Nolle Prosequi in relation to the Applicant’s outstanding 2019 matter but did not provide evidence of the same. The Crown was unable to verify same, they did not prepare an Affidavit in Response and indicated that they only received the Applicant’s antecedent at the Court’s doorstep but was nevertheless prepared not to object to the granting of bail since the Applicant’s Attorney advised a Nolle Prosequi was entered in the 2019 matter and would only seek stringent conditions be applied if bail was granted.
5. This Court was very concerned by the position taken by the Crown and was not prepared to exercise its discretion with the very limited, non-vetted information provided and reserved its decision for ruling today.

No Affidavit in Response was forthcoming in the interim nor a reversal of the Prosecution's position with respect to the granting of bail.

6. Upon review of the Applicant's Affidavit, Antecedents and Bail File, the court has determined that consideration having been given to the nature and seriousness of the charges, the Applicant's pending matters, the breach of current bail conditions and the scant information provided by the Defence and none by the Prosecution, and the court being mindful of the view expressed by Barnett, P in *Dennis Mather v The DPP*, "**the burden is on the prosecution ...to show that the an applicant would not be granted bail**", the Court determined that it will exercise its discretion to grant the Applicant bail at this time with stringent conditions. The reasons for the exercise of discretion are given below.

## **Law & Discussion**

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

7. The matter set before this court concerns a charge of Murder and the Applicant is scheduled to receive his Voluntary Bill of Indictment in October 2022. Seemingly, the matter is following the normal trajectory of such cases and does not currently indicate any unreasonableness of time as prescribed by the Bail Act 1994 (as amended) ("The Act") and Article 19(3) of the Constitution. The Court therefore gave further consideration to the guidelines provided in sections 4(2B), 4(2C) and Part A 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 Appeals No. 29 of 2018*).

### ***The Character or Antecedents of the person charged; the need to protect the safety of the victim or victims of the alleged offence***

8. In assessing this factor, the Applicant's antecedents, bail bonds and charge sheets were considered. It is noted that some of these charges attract very serious consequences and are not to be taken lightly particularly in instances where there was the possession and use of a firearm. The Applicant's criminal charge history is of significant importance in this decision whether or not to grant bail. (*Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008*)

***Substantial grounds for believing that if released on bail, the Applicant would commit an offence while on bail and 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;***

9. In this instant case, the Applicant was granted Bail in 2018, and thereafter charged in 2019 and again in 2020 with another offence as provided by his Bail bonds and now the present offence. While a charge does not equate to a conviction and the Applicant as provided by Section 20 (2) (a) of the Constitution “.....*shall be presumed to be innocent until he is proved or has pleaded guilty*”: In the circumstances these matters are still pending. It is however, most unfortunate that the Prosecution did not do its due diligence to provide any information or evidence to assist the court in making a determination of the matter.

10. What is of note however, is that the Applicant indicates in his Affidavit that he has an alibi to the extent that: that ***“on the day of the alleged offence I stayed at Colony Club Resort with a female friend”***. A condition of the 2021 Bail Bond was that the ***“Applicant is to remain at his place of residence No. 11 Falls End, Jubilee Gardens from 7:30 pm to 6:00 am daily. Any breach of these conditions and bail shall be forfeited and renders the Applicant liable to further remand at the Bahamas Department of Correctional Services”***. Clearly if the alibi is to be believed, the Applicant was in breach of bail conditions. This notwithstanding no apparent course of action was taken by the Prosecution in relation to the breach.

***Whether the defendant should be kept in custody for his own protection;***

11. Judicial notice is given to the uptick of killings of individuals who are granted bail which in any given week has become a norm and there is concern that the Applicant having been charged for Murder may be a target for retaliatory killings but again nothing has been provided to the Court concerning any threat to the Applicant nevertheless the Court cannot ignore the current trend in the community at this time.

***The nature and seriousness of the offence and the nature and strength of the evidence against the defendant.***

12. The offences with which the Applicant is charged are very serious but they are also bailable as expressed in *Jevon Seymour v D.P.P SCCrApp No 115 of 2019* and the judge has to 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”*** (*Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016*).

13. In this instant matter, the Court has not been provided with any evidence by any of the parties directly in relation to the matter for which the Applicant seeks bail. The Court fully appreciates that it is the Prosecution who must provide the Court with credible information or evidence against the granting of bail. None has been

provided by the Prosecution. The court can only make a determination based on what is adduced before it.

In the absence of evidence or information in relation to issues for the Court's consideration, there has been very little provided that would give rise for concern to any failure on the part of the Applicant surrendering to custody or appearing at trial, the need to protect the safety of the public or public order, or interference with witnesses as such, the Court will grant the Applicant bail noting as well there was no objection to it being granted by the Prosecution.

### **Conclusion**

The relevant provisions of The Bail Act having been considered, together with the referenced authorities, the Court so finds that there has been no unreasonable delay in the prosecution of this matter currently and gave consideration to the additional factors:

- (i) the serious nature of the offence,
- (ii) the strength of the evidence against the Applicant, in this instance no evidence having been provided;
- (iii) the antecedent of the Applicant,
- (iv) the competing interest of the Applicant's presumption of innocence and his right to his liberty and that of public safety and its security,
- (v) bail conditions which could be imposed to minimize the risks involved with the granting of bail.

Having regard to the foregoing, and there being nothing provided to cast doubt on the Applicant attending his trial, the Court will exercise its discretion to grant bail to the Applicant with stringent conditions.

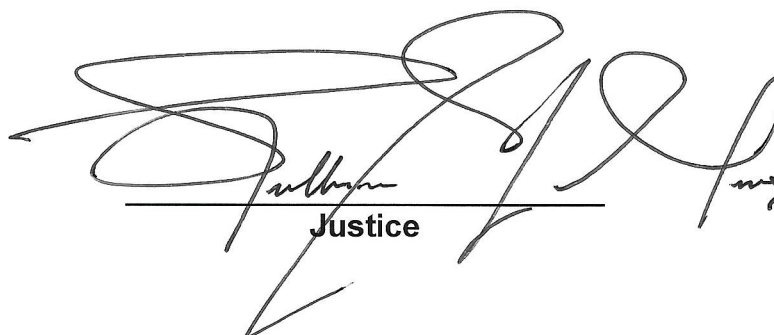
Bail is hereby granted to the Applicant on the following terms:

1. Bail in the sum of \$30,000.00 with one or two Suretors;
2. report to the Black Point Exuma Police Station every Monday, Wednesday and Saturday before 7 pm. until the trial is completed;
3. be outfitted with an Electronic Monitoring Device;
4. between the hours of 7:00 p.m. to 6:00 a.m. the Applicant is to remain at the residence of his mother Natasha Charlton on a daily basis until the completion of the matter;
5. there is to be no obstruction of justice by interfering with any witnesses or parties in relation to this matter either by himself or through any other person acting for or on his behalf;
6. surrender Passport or Travel document to the Registrar

7. The Applicant must appear to court on all adjourned dates until the completion of the matter.

Breach of any of these conditions on credible information the Applicant's bail is subject to being revoked.

Dated this 10 day of August 2022



Paul Brown  
Justice