COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2022/CRI/bal/No. 00114

BETWEEN

ALJARON STUBBS

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE:	The HonourableMrSenior Justice Bernard Turner
APPEARANCES:	Ms Cassie Bethellfor the Applicant MrUel Johnson for the Respondent
HEARING DATE:	13April 2023

RULING

TURNER SNR J

The applicant herein is applying for bail by way of a summons and an affidavit in support filed 23March 2023 in respect of charges of murder and conspiracy to commit murder.

2. His affidavit in support of the application for bail, reads, in part:

> **" 1. I am the Applicant in this matter.**
>
> **2. I was born on the 11th day of September, A.D., 2002, in the Commonwealth of theBahamas and I am 20 years of age.**
>
> **3. I stand remanded on the following Charge:-**
>
> **(a) MURDER: CONTRARY TO SECTION 291(1)(b) OF THE PENAL CODE, CHAPTER 84.**
>
> **(b) CONSPRACY TO COMMT MURDER: CONTRARY TO SECTION 89(1) AND 291(1)B OFTHE PENAL CODE CHAPTER 84.**
>
> **There now shown and exhibited a true copy of the charge sheet as "Exhibit A.S.1."**
>
> **4. I was arraigned in Magistrate Court No. 9 on the 20th day of March, A.D,2023 before ChiefMagistrate Mrs. Joyann Ferguson Pratt. My next court date is the 29th day of June, A.D., 2023.**
>
> **5. I pleaded Not Guilty and will be defending this charge at trial.**
>
> **6. I respectfully request that this Honourable Court admit me to bail pending my further CourtAppearances.**
>
> **7. I do not have any previous conviction(s) before the Court(s) in the Commonwealth of theBahamas.**

8. I do have pending matters for Attempted Murder and Possession of Firearm with intent toendanger life, before the Court(s) in the Commonwealth of the Bahamas.

9. Should this Honourable Court admit me to bail, I will have accommodations at Barbados Avenue,Elizabeth Estate, New Providence, Bahamas.

10. Prior to my incarceration I was employed at J & S Sewer Company, New Providence,Commonwealth of the Bahamas.

11. Iam a citizen of The Commonwealth of The Bahamas.

12. I respectfully request that this Honourable Court admit me to Bail pending my further courtappearances and for the following other reasons:-

a. That I will be disadvantaged in my ability to adequately prepare my defence if I amfurther remanded.

c. That, I will be disadvantaged in my ability to support myself, and assist my family.

13. If I am granted Bail I will comply with all rules and regulations set out by this Honourable Court.

14. I am a fit and proper candidate for Bail.

That the contents of this Affidavit are true and correct to the best of my knowledge, information and belief."

3. Attached to the affidavit of the Applicant is charge sheet number 701 of 2023 which indicates that the Applicant is charged with the murder of one Jorge Cuevas which is alleged to have occurred on 10th February 2023 in New Providence.

4. Also attached to that affidavit is another charge sheet, number 712 of 2023 which alleges that the Applicant is charged, along with another, with conspiracy to commit the murder of D/Sgt. 2735 Raphael Miller. That matter is alleged to have occurred on 13th March 2023 at New Providence.

5. From the Applicant's own affidavit therefore he was charged with two distinct and separate offences, notwithstanding that the body of the affidavit reads (see paragraph 3) as if the Applicant was charged on a single charge sheet with these two matters.

6. That affidavit also asserts, improbably (since the Magistrates Court does not have the jurisdiction to hear any of these offences), that the Applicant pleaded Not Guilty, and that he would be defending this charge at trial.

7. The Respondent filed an affidavit in response on 11April 2023objecting to the application. That Affidavit reads, in part:

> "...
>
> **3. That I have read the Application by the Applicant, save as hereinafter stated, no admissionsare made regarding the assertions contained in the Application of the Applicant in thismatter.**
>
> **4. That with due consideration of the aforementioned it is proffered that the Applicant is nota fit and proper candidate for bail.**
>
> **5. That the evidence against the Applicant is cogent, as, at the time of the offence, theApplicant was seen and subsequently**

identified as being one of the persons who exited andre-entered the vehicle which was used while this offence was being committed.

6. That the Applicant was specifically identified by his distinct facial characteristics of alazyeye and a scar on the side of his head. Marked and Exhibited as "T.B.1" is a copy ofthe Statement of the eye witness.

7. That there has been no undue delay with regards to the Applicant's trial, as this incidenttook place on 10th February, 2023.

8. That the charge of Murder and the severity of the penalty associated with the offencecreates a higher likelihood that the Applicant may not appear at his trial or interfere withwitnesses.

9. That the Applicant for the above reasons, is not a fit and proper candidate for Bail and inthe circumstances, his Application for Bail should be refused.

10. That the contents of this Affidavit are true to the best of my knowledge, information andbelief."

8. The issues to be considered in an application for bail are found in the Bail Act and several decisions of the Court of Appeal of the Bahamas. Section 4(2) of the Act states:

"4. (2) Notwithstanding any other provision 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 ;

(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),....."

9. Sub-section 4(2B) reads:

"(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."

10. Counsel for the applicant submitted that there was no evidence presented by the respondent of any threat of witness interference or of the likelihood (still less of the higher likelihood, as described in paragraph 8 of the respondent's affidavit) of the applicant absconding. Counsel for the applicant also cited several Court of Appeal decisions in relation to the issues to be considered in relation on an application for bail.

11. Those cases include **Dennis Mather v DPP (No. 96 of 2020)**in which their Lordships stated, at paragraph 44:

"44. The seriousness of the offence charged may lead a court to presume the applicant would seek to flee; but the presumption

is rebuttable and there must be substantial evidence to suggest flight."

And **Jeremiah Andrews v DPP (No. 163 of 2019)** in which it was stated, at paragraph 30:

"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed uponconviction, have always been, and continue to be important considerations in determiningwhether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. E.g the applicant's resources, familyconnections, employment status, good character and absence of antecedents."

12. Counsel for the applicant submitted that the applicant was not a man of substantial means, and that he had strong family ties to The Bahamas and was a man of good character, in as much as he did not have any previous convictions. Counsel acknowledged that the applicant had pending matters, of attempted murder and possession of a firearm with intent to endanger life. In this regard, counsel cited paragraphs 48 and 49 of the Court of Appeal in **Mather** (ibid), they read:

"48. The Judge was technically correct when she found at paragraph 12 that as a historical fact the appellant was on bail for other offences when he was arrested for murder:

"Commit an offence while on bail

(12) The Applicant was on bail for "Assault with a Dangerous Instrument" when he was arrested for this present offence (a charge in which he has since been discharged). I do note however, that there was a lapse of time of eight (8) years from the time in which he was arrested for the assault to when he was arrested and charged with the present murder offence. This behavior may represent a possibility that the Applicant may commit an offence if he is given bail."

49. However, inasmuch as the appellant was able to produce certificates evidencing that he had been discharged on those offences, he was to be regarded in relation to those as "pure as the driven snow" thereafter. Thus, the Judge erred when she concluded that the fact that he had been charged with offences and placed on bail prior to his arrest for the present murder offence disclosed that "This behaviour may represent a possibility that the Applicant may commit an offence if he is given bail". The fact that a person has been charged with one offence while he stands accused of having committed an earlier offence cannot provide support for a conclusion that a propensity to commit offences has been disclosed should the person be admitted to bail particularly after the person has been discharged on the earlier offence."

13. Finally, on the point of pending charges, counsel noted that the fact that the applicant was on bail for other charges supported a finding that he

would appear to take his trial since he had been complaint with the conditions imposed previously. Counsel cited the Court of Appeal in **Shaquille Culmer v R (No. 98 of 2020)** in this regard. In that oral decision the Court stated:

> **"This is an appeal against the refusal to grant bail made by the Supreme Court in a decision delivered on 10th September, 2020. The ground of the appeal is that the decision is unsafe and unreasonable, having regard to the reasoning of the judge.**
>
> **In paragraph 15 of her decision, the judge noted that there was no specific evidence before the court that the applicant did not surrender to custody and did not appear for trial, and the court then said:**
>
> > **"[...] The Court can implement a curfew, or allow the Applicant to surrender his passport; however, having taken into account above, it is likely that the Applicant would not appear to trial and any implementation of conditions may not be effective."**
>
> **Given that there is no evidence that the applicant is not likely to appear for trial and given the fact that on previous bail granted that he did, in fact, appear for trial, we are satisfied that the reasoning of the judge cannot be sustained and that this is a proper circumstance in which bail ought to be granted."**

14. The respondent submitted both that the evidence against the applicant was cogent and that having regard to the fact that the applicant, was on bail for serious offences, that their beliefs as adumbrated in their

affidavit are all reasonable and supported by the evidence of the attendant circumstances.

15. In **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, the Court of Appeal stated:

> **"66. In the absence of evidence, merely listing the relevant factors and using expressions such as "may"; or "is likely to"; or "it is recommended" as was done in the McHardy affidavit, cannot discharge the Crown's burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown's burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail "would", if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.**
>
> ...
>
> **68. If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; *or evidence of pending charges for violent or firearm offences;* or again, evidence for instance, of any known or**

suspected gang affiliation. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of his good character, strong family and community ties and the fact that he had a long and unblemished record of service within the BDF.

...

70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant's good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable of supporting the judge's ultimate conclusion at paragraph 16(v) of his decision that: "in the circumstances of this Applicant and this application the need for public order and public safety is paramount". In the absence of evidence that the appellant posed a substantial threat to the Crown's witnesses or to public safety and public order, the judge's decision was unreasonable and clearly wrong."[Italicized emphasis added]

16. A bail application is not to determine whether a person is guilty of any offence, but to determine whether any sufficient basis has established by the prosecution to the requisite standard that he should be remanded into custody to await his trial.

17. I note that the applicant, since he has no convictions, can be said to be, for the purposes of the bail application, a person of 'good character' as positive feature of his circumstances.

18. I also note that the applicant has a pending charge for the attempted murder of a police officer, for which he was on bail when charged with this offence. He is also now charged with conspiracy to commit murder of another named police officer.

19. The respondent asserted that the intended evidence was cogent, consisting of an anonymous witness who is purported to have identified the applicant as being one of the persons in a vehicle waiting in the vicinity of the deceased's apartment in a touristic area of New Providence, for over an hour. Once the alleged victim had returned home and as he exited that home, a person emerged from the vehicle from which the applicant had earlier emerged and shot the deceased.

20. I note that this relates to the evidence of the murder charge only however. There is absolutely no information provided as to the circumstances surrounding the allegation of the conspiracy to commit murder, or in relation to the cogency of that evidence. I restrict myself therefore to the murder matter and note that that evidence could be said to be cogent.

21. That however does not end the matter, as the cogency of evidence is not a free standing basis for refusing bail, but is a requirement before a court can even go on to consider whether there is any basis for refusing bail.

22. As noted, the applicant was on bail on two counts of the attempted murder of police officers, and several counts of possession of a firearm with intent to endanger life, when charged with this offence of murder. Those matters were alleged to have occurred in April 2022.

23. I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, and the treatment of this issue by the Court of Appeal in paragraph 68 of **Seymour** (ibid), since the applicant was on bail for both a violent offence and firearms offences; that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would not only interfere with the witnesses in this matter, and endanger public safety generally, but that he would also not appear to take his trial.

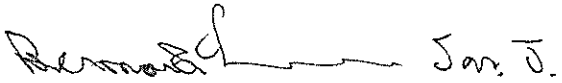
24. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and the applicant not appearing at his trial, I do not consider that any conditions could be placed on the Applicant which would prevent any of those eventualities..

25. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody in relation to this latest charge of murder.

26. His application for bail is therefore refused.

27. The applicant is at liberty to appeal this decision.

Dated this 4th day of May, A D 2023



Bernard S A Turner
Senior Justice