

**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Division**

**CRI/BAIL/00097/2022**

**BETWEEN**

**BRANDON ADDERLEY**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:** The Honourable Madam Justice Mrs. Jeanine Weech – Gomez

**Appearances:** Mr. Alex Dorsette, for the Applicant

Ms. Destiny McKinney, for the Respondent

**Hearing Date(s):** 31<sup>st</sup> May 2022

***RULING- BAIL***

**Weech- Gomez J**

1. The Applicant, Brandon Adderley (hereinafter the “**Applicant**”) applies for bail in respect of the charge of Murder of Diano Nixon and is alleged to have intentionally and unlawfully cause his death on the 29<sup>th</sup> November, 2021, contrary to section 291(1) B of the Penal Code, Chapter 84. The Applicant made this application for Bail via Summons and Affidavit filed the 29<sup>th</sup> April, 2022 and 6<sup>th</sup> May, 2022.
  
2. Counsel for the Applicant stood on its aforementioned Affidavit and also relayed via oral submissions that :
  - a. The Applicant is 19 years of age, has no previous convictions or pending matters. He is unemployed and lives with his two brothers including his identical twin brother and his mother is deceased;
  - b. The antecedent document exhibited by the Respondent is that of the Applicant’s identical twin brother not the Applicant. The Applicant had a summary matter as a juvenile but no others ;
  - c. The Applicant has not been served with his Voluntary Bill of Indictment (“VBI’) but intends to plead not guilty to the charge;
  - d. The Applicant enjoys a constitutional presumption of innocence and while the charge of Murder is a serious one, it is alsoailable;
  - e. The Affidavit of the Respondent relies on a sole anonymous witness who identifies the Applicant as being short, slim, brown skin and by the clothing he was wearing, which is circumstantial and should be vetted at trial. The Court should consider *R v Turnball* and mistaken identity;
  - f. This witness also speaks to the perpetrator touching various spots of the deceased’s car but the Respondent has not provided any fingerprint evidence or the like from the vehicle of the deceased to corroborate this claim but again all this should be vetted at trial;
  - g. This witness also asserts in their statement that, “If I see him again I may not be able to identify him”. Ultimately the evidence of the Respondent is not cogent; there is no fingerprint evidence, confession, firearm, gun residue or the like;

- h. It should also be noted that the evidence in the statement of the police officer viewing the surveillance fails to say how he knows the Applicant which is also a triable issue and should be vetted at that stage.
  - i. Part A of the Bail Act should be considered and also look to the good character of this Applicant, there has been nothing proffered that suggests the Applicant is a flight risk and there are conditions that can be imposed to ensure his attendance at trial. The principles on Bail should be considered from the cases of *Jonathan Armbrister*, *Jevon Seymour*, *Cordero McDonald* and *Bradley Ferguson*.
3. Counsel for the Respondent (the “DPP”) objected to the granting of bail and stood by its Affidavit of Skyler Deveaux, Pupil of the DPP, filed the 16<sup>th</sup> May, 2022 and further asserted via oral submissions *inter alia*,
- a. The Respondent will look into the claim of the Applicant concerning the antecedents and confirm the status of the same;
  - b. The Applicant will be served with his VBI at the end of May 2022;
  - c. The evidence provided particularly by that of the anonymous witness and lead investigator are cogent and the Applicant should remain in custody for his own protection as there have been frequent killings of individuals released on bail;
  - d. While an Electronic Monitoring Device can be utilized , these in recent times have been the subject of tampering;
  - e. The nature and seriousness of the crime and the punishment attached thereto would be a good reason for absconding;
  - f. It should be reiterated that there is nothing peculiar about the Applicant’s circumstances that would suggest that his continued detention is unjustified.

### **The Law & Discussion**

There is a presumption of innocence via the Bahamas Constitution, where, “**Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty**” (Section 20 (2) (a) of the

Constitution). The Applicant enjoys the presumption of innocence and has a right to apply for bail.

However, the granting of Bail is provided at the discretion of the Court and there are various factors through the Bail Act that assist in this discretion. One of those conditions is whether there has been any delay in the Applicant's case and going to trial (Section 4(2) of the Bail Act). In the instant case, unreasonable delay is not an issue in this regard, with the events occurring November 2021 and VBI projected to be served soon (4(2) Bail Act).

Once the test on delay has passed, there are other factors that are to be considered and in this instance, there has been nothing provided concerning the character or antecedents of the person charged (this having to be confirmed but via oral submissions is currently said to be incorrect concerning the Applicant), 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 as a primary concern against this Applicant (4(2A) Bail Act);

There has also been nothing proffered that he will fail to surrender to custody or appear at his trial, and as noted in *Jeremiah Andrews v The Director of Public Prosecutions [1937] 2 All ER 552* 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. Also considered is whether the Applicant will commit an offence while on bail, interfere with witnesses, in the instant case it is note that the witness is anonymous, or otherwise obstruct the course of justice nor for his safety and protection (Part A of the Bail Act).

However, most concerning of all the factors is that of the nature and seriousness of the offence and the nature and strength of the evidence against the defendant. Of note is the evidence in the statement of D/C 4050 Jervante Hutchinson asserting video surveillance reflecting the Applicant with the deceased sometime earlier in the day of the 29<sup>th</sup> November in Ridgeland Park where he insisted he didn't attend that area, finding the clothing described by the anonymous witness at the Applicant's home, particularly in the man hole above the Applicant's bed, the Applicant then being asked if that was him in the video which he replied in the affirmative but also stated that he "ain't

kill no one” and then finally when getting charged allegedly asserting , *“Bey never bey how I get charged? Yall een have no witness, een nobody see me !”*

While these factors are most concerning, it is understood that bail hearings are not mini trials (see *Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008*), and that this evidence is to be vetted at trial. These details do add some level of reasonable suspicion to this factor but is not the sole characteristics for which to consider the granting of bail, particularly where other factors tilt the scale in the opposing direction.

### **Conclusion**

For this reason and upon review of the Affidavit and considering the oral submissions of the Applicant and Respondent, the court has determined that while the charge of Murder is serious, there has been nothing provided to cast doubt on the Applicant attending trial and believes conditions can be imposed to ensure the applicant’s attendance at trial. In these circumstances, the Court will exercise its discretion to grant bail.

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

1. Bail in the sum of \$20,000.00 with two Suretors;
2. Report to the Nassau Street Police Station on Monday, Wednesday and Friday before 6 pm. until the trial is completed;
3. Remain at his home No. 3 Dean Street off Nassau Street between the hours of 7:00 p.m. and 7:00 a.m.;
4. Be outfitted with an Electronic Monitoring Device that is working effectively and agree to be bound by the conditions attached thereto;
5. Surrender his passport;
6. There is to be no obstruction of justice by interfering with any witnesses or parties in relations to this matter either by himself or through any other person;
7. The Applicant must appear to Court on all adjourned dates and on all occasions;

Any breach of any of these conditions on credible information may result in bail being revoked.

**The Hon. Madam Justice Jeanine Weech – Gomez**

Dated this 31<sup>st</sup> day of May 2022.