

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

CRI/BAIL/00266/2022

BETWEEN

CENOPHA AUGUSTIN

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Mr. Geoffrey Farquharson, for the Applicant

Ms. Janessa Murray, for the Respondent

Hearing Date(s): 16 December, 2022

RULING- BAIL

Weech-Gomez J

1. The Applicant, Cenopha Augustin, (hereinafter the “**Applicant**”) applies for bail in respect of the charge of Murder of George Seymour and is alleged to have intentionally and unlawfully cause his death on the 20th August, 2022, contrary to section 291(1) B of the Penal Code, Chapter 84. The Applicant made this application for Bail via Summons and Affidavit both filed the 22nd November, 2022 and the Respondent replied thereto via its Affidavit filed the 9th December, 2022.

SUBMISSIONS

2. Both Counsel relied on their respective Affidavits and also gave oral submissions.

3. Counsel for the Applicant relayed that the evidence of the Respondent is inherently weak, classic Turnbull fleeting glances come into play, there is no suggestion that the Applicant will abscond or interfere with witnesses, the Applicant denied that his alias was Donkey, the receipt produced for boat travel bearing the Applicant’s name proves nothing as his signature is not affixed , if it was him there is nothing to suggest that he was aware of the action against him or that he was making arrangements to flee. Officer Bien’s evidence details that he didn’t actually see who shot the deceased, making his evidence prejudicial and of no evidential value. Ultimately, Counsel for the Applicant intimated that none of the evidential matters have been addressed by the Respondent and that the Applicant is a proper candidate for Bail.

4. The Respondent relied on its Affidavit that asserts that the Applicant saw to evade law enforcement after a wanted flyer bearing his information was circulated, he called into work, never returned and made efforts to flee the island and exhibited a ferry boat’s invoice to reflect same. The Respondent continues that the Applicant is seen on video committing the offence and also has the evidence of an Officer witnessing the assailant running from the scene into an alleged getaway car. For these reasons the Respondent has deemed this evidence very cogent and part of the reason not to grant Bail to the Applicant. The Respondent concluded its submissions by asserting that in the interest of public safety, possible retaliation on the Applicant by the Deceased’s community,

along with the probability that he will abscond, at this juncture, Bail should be denied.

The Law & Discussion

The presumption of innocence is grounded in 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*) and for this reason and Applicant has a right to apply for bail.

It is of note however that a right to apply for Bail does not mean an automatic right to grant Bail. Through the ***Bail Act 1994 (as amended)*** (hereinafter “**The Act**”), the Court is given guidelines with which to assist its discretion. These provisions are found in Section 4 and the First Schedule of the Act. The relevant provisions as it relates to this case will be taken in turn and conclusion provided thereafter.

The primary condition given by the Act is whether the Applicant will be tried in a reasonable amount of time, i.e. within three years and in this instant case, having occurred in August of this year, seems to be moving in the normal trajectory of such matters and for this reason we move to the other factors of consideration.

Of note, the Applicant does not have any antecedents reflecting any convictions or pending matters. In relation to failing to surrender to custody or appear at his trial, there was concern relayed by the Respondent that the Applicant sought to purchase a one way ticket to Eleuthera, same having been exhibited after seeing his Wanted Ad poster, with the intentions of never returning but the Applicant’s Counsel intimated that there is no signature or anything that directly connects the Applicant to said receipt nor was a Wanted Ad exhibited but understanding that Bail hearings are not “**mini trials**” (see ***Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008***) both arguments were noted by this Court.

There has also been concern that the Applicant should not be granted Bail as there has been public outrage in relation to this murder and there is fear of retaliation towards the Applicant but no evidence has been laid over of any threat or danger to the Applicant as to his need for protection and the Court cannot make its decision on “**bare assertions**” as was stipulated in ***Jeremiah Andrews v the Director of Public Prosecutions***

SCCrApp No. 163 of 2019. The same position is taken as to the Applicant being a threat to public safety, there has been nothing relayed concerning threats by the Applicant or the like by any witness or individual.

The final factor this Court looks to as prescribed by the Act is the nature and seriousness of the offence and the nature and strength of the evidence against the defendant. It is no doubt that Murder is a very serious offence particularly one in which a firearm is utilized and this is not taken lightly by this Court. As it relates to the evidence, Counsel for the Applicant has detailed that his client denied his nickname being Donkey via his record of interview and only used by other parties who have been questioned in the matter, the Respondent however provides evidence of an anonymous witness and two officers along with advising of a video all said to reflect the Applicant as the one who carried out the shooting. Counsel for the Applicant intimated that the Officer who is said to have been in the vicinity at the time of the incident did not actual see what occurred and the video as evidence to be ventilated at trial.

Ultimately, the evidence provided by the Respondent does raise some level of suspicion as to the commission of the offence by the Applicant but as was relayed in **Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016** it is the duty of the Judge to,

“.....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 [she] ought to grant him bail.”

Having reviewed all of the aforementioned factors this Court concludes as follows:

Conclusion

This Court has determined that while the charge of Murder is indeed an extremely serious charge. There is also evidence that creates suspicion of the offence being carried out by the Applicant, there are issues also submitted by the Applicant's Counsel that casts doubt on some of the arguments made by the DPP. This together with the Applicant having no previous convictions or pending matters; this Court is if the view

that conditions can be imposed to ensure the applicant's attendance at trial. The Court therefore will exercise its discretion to grant bail to the Applicant.

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

1. Bail in the sum of \$30,000.00 with two Suretors;
2. Applicant is to report to Central Police Station on Monday, Wednesday and Saturday before 7 pm;
3. Applicant is to be outfitted with an Electronic Monitoring Device;
4. There is to be no deliberate interference with any witnesses or parties in relation to this matter either by the Applicant or through his agent;
5. The Applicant must appear to Court on all adjourned dates and on the day before his trial he is to present himself to the Central Police Station;
6. That the Applicant is to reside in New Providence whilst awaiting trial and to turn in all travel documents if any to the Registrar.

A breach of any of these conditions may result in the Applicant's bail being revoked.

The Hon. Madam Justice Jeanine Weech – Gomez

Dated this 19th December, 2022