

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/2023

BETWEEN

CORDERO JOHNSON

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. Cordero Johnson, the Applicant *pro se*
Ms. Janet Munnings for the Respondent.

RULING- BAIL

Weech-Gomez J

INTRODUCTION

1. Cordero Johnson (D.O.B. 1st April, 1991) the Applicant (“**Applicant**”) in these proceedings has been charged with Armed Robbery contrary to sections 339(2), Attempted Murder contrary to section 292 and Arson to a motor vehicle contrary to section 235 all of the Penal Code, Chapter 84 said to have occurred on the 3rd March, 2015. The Respondent objects to his granting of Bail supported by its Affidavit in Response filed the 20th February, 2023.

SUBMISSIONS

2. The Applicant began his submissions by asserting that he did not know the Virtual Complainant (“VC”) in this matter and that he got shot in his hand when he was released from jail and that the VC could’ve been the person who did this and believed this to be retaliatory.
3. He continued that the police stated a low haired person carried out the crime but that he has always had locks in hair. The Applicant acknowledged and apologized for absconding to Jamaica but said to have done so as his girlfriend was about to have a child and wanted to be there. He avers that he is not a flight risk as he has a girlfriend and two children in Jamaica to provide for. He also intimated that he ran a club in Jamaica and got in no criminal problems during his time there but was arrested for overstaying.
4. The Applicant concluded his submissions by stating that he has no gang affiliation, he wants the freedom to be back with his family, he can be outfitted with an ankle monitor and carry out sign in requests and will show up for trial.
5. The Respondent via its Affidavit highlighted that the Applicant was on Bail for Murder said to have occurred in 2013 when these new charges were committed and also has previous conditions for which he served custodial sentences.
6. The Respondent continued that there is strong and cogent evidence to the commission of the offences by the Applicant through eye witnesses of the event including a civilian and police officers.
7. The Respondent provided that the Applicant was thereafter arrested at the Lynden Pindling Airport in September 2022 as a result of being deported from Jamaica.

8. The Respondent continued that there has been no unreasonable delay as the Applicant was arrested on the 2nd September, 2022 and expected to receive his VBI on the 27th February, 2023. These offences were committed while he was on Bail for Murder which suggests a propensity to commit another offence. The Applicant is also a flight risk having absconded while on Bail for murder and it is of note that these offences are serious in nature and the public interest ought to be considered along with the severity of the penalty attached. For these reasons the Respondent concludes that the Applicant is not a fit and proper candidate to be considered for the grant of Bail and should not be admitted to same.

THE LAW & DISCUSSION

9. The Constitution of the Bahamas provides to all citizens a presumption of innocence, which therefore provides a right to apply for bail. It is through the discretionary power of the Judge as bestowed by *The Bail Act (1994) (as amended) (hereinafter the "Bail Act", the "Act")* that decisions on whether or not to grant Bail are made. Sections 4(2), 4(2A) and 4(2B) and the First Schedule of the Act are looked to as guidelines in the decisions making power of the Judge. The relevant factors concerning this application will be looked to in turn.
10. In relation to the matter being tried in a reasonable amount of time, while these events were alleged to occur in 2015, the Applicant having absconded to Jamaica while on Bail for another matter and thereafter deported to the Bahamas in September 2022 has now allowed him to be formally charged and arraigned and "**voluntarily placed himself in peril**" (*Jiles Jackson Russell v Director of Public Prosecutions SCCrApp No.*) where absconding to another jurisdiction and for this reason from September 2022 to present has allowed for this matter to move in the normal trajectory of such matters and does not pose an issue at this time.
11. The next factor of significance as highlighted in the *First Schedule, Part A* of the Act is "**whether there are substantial grounds for believing that the Defendant, if released on Bail, would (i) fail to surrender to custody or fail to appear at his trial**". There is great concern for this factor as it relates to this Applicant. If not for getting deported from Jamaica for overstaying, we may have never seen this Applicant again. In *Dennis Mather, v Director of Public Prosecutions SCCrApp No.96 of 2020* it was asserted that the "**main consideration for a court in a bail application is whether the applicant would appear for his trial**" and the same in *Jonathan Armbrister v the*

Attorney General SCCrApp No. 145 of 201 , where it was highlighted that ,
“**it has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the Defendant will appear to take his trial**”.

12. From the Applicant's file, it was determined that he never fulfilled signing in conditions under his 2014 bail conditions at the North Eleuthera Police Station via the correspondence dated the 21st March, 2017 of Superintendent Christopher Wright and while the police had a duty to ensure his signing in, the Applicant also had an obligation which was not fulfilled and thereafter he absconded. There is great concern now having been formally arraigned with these offences which are also serious in nature that there is a probability of the Applicant not appearing at trial. He has placed his Suretor's at risk and the timely trying of these matters at risk with no regard of the implications and there is a fear that he will abscond again.
13. There is also concern of the Applicant committing another offence while on Bail when looking to his antecedents (**Section 4(2B) of the Act**) and the fact that he was on Bail for Murder when these offences are said to have been committed. This also fulfills the **First Schedule, Part A of the Act, section 'f'**, where “**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**”. It is very concerning that the Applicant will be charged with further offences if granted Bail again, particularly with the cogency of evidence provided concerning these charges.
14. The final relevant factors to this matter is the nature and seriousness of the offence and the nature and strength of the evidence against the Defendant. Attempted Murder and Armed Robbery, are Part C offences, which are very serious and attach to themselves lengthy sentences coupled with the Applicant's previous charge of Murder ,combined if found guilty , presents severe punishment and these are not taken lightly by this Court , particularly with how the events are alleged to have occurred and which will be dealt with in the section below on evidence , but as intimated in **Jonathan Armbrister (supra)** the “**seriousness of the offence with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not**”.
15. When looking to the nature and strength of the evidence, the VC in this matter is said to have known the Applicant and that's what prompted him to render

transportation assistance to him as he waited on the side of the road to then being said to have allegedly been pointed with a gun in his face by the Applicant who then got away with his car and he having to go to receive medical attention for being shot in his hand. This evidence was supported by that of Jonnel Johnson, niece to the VC, who relays seeing the Applicant, who she knew to be a longtime friend of her Uncle waiting on the side of the road and who positively identified the Applicant via a twelve man lineup and thereafter Officers Mackey and Davis who are also said to have witnessed the alleged events of that morning in traffic. While Bail hearings should not constitute “mini trials” (*Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108 & 116 of 2008*), it also pertinent to note that “a finding by the Judge that the Prosecution's evidence is cogent does not mean she has delved to an impermissible degree into the evidence” (*Dentawn Grant SCCrApp No. 59 of 2022*) and same was followed upon review of the evidence.

16. From the evidence adduced, the Applicant is said to have robbed the VC in the school run hours of the 3rd March, 2015, someone known to him and with whom he is said to have grown up with in Eleuthera who is said to have given him a ride and was subsequently allegedly robbed with alleged witnesses to the events who are said to corroborate same. While it’s “**not the duty of a judge considering a bail application to decide disputed facts or law, the judge must 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**” (*Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016*). From the evidence provided it lends to a reasonable suspicion of the offence being committed by the Applicant and has been taken into consideration by this Court.

Conclusion

17. While the nature and strength of the evidence is most concerning, also concerning is that this Applicant was able to abscond for some time for matters so serious in nature. There is great concern that if granted Bail again he will not appear for trial. While he has relayed that he did so to attend the birth of his child, which is no excuse to avert a Court’s order without proper protocol, between 2015 to present has been near to 8 years of his absence to his reporting conditions and appearance at Court.
18. Having regard to the foregoing factors this Court is of the view that the Applicant should remain incarcerated at this time, consideration was also

given to conditions which the Court may impose that would minimize the risks involved with the granting of bail and have found none that would suffice as a safeguard following the factors itemized above. Bail is therefore denied.

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

Dated this 6th day of March, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez