**COMMONWEALTH OF THE BAHAMAS**

**In The Supreme Court**

**Criminal Side**

**CRI/bal/44/2024**

**B E T W E E N**

**Ma’LEK SAWYER**

***Applicant***

**Vs**

**DIRECTOR OF PUBLIC PROSECUTIONS**

***Respondent***

**Before: The Honourable Mr. Justice Gregory Hilton**

**Appearances: David Cash for the Applicant**

 **Jacqueline Burrows for the Respondent**

**Hearing Date: 14th & 15th March, 2024**

**BAIL DECISION**

Hilton, J.

1. The Applicant is charged with Murder alleged to have occurred on 22nd December, 2003. He was remanded to the Bahamas Department of Corrections in January 2024 and there is no date yet set for his trial.

2. The Applicant is a twenty-two year (22yr) old Bahamian with minor convictions for Assault, threats of Death and Threat of Harm in 2022 (for which he was fined $500.00) and has no other pending matters. He was gainfully employed as a Gymnastic Operator prior to his remand.

3. The Applicant submits that the case against him is weak and that he is not a flight risk and poses no threats to society; that he has several alibi witnesses and based on the presumption of innocence and his right to liberty he should be granted bail.

4. The Respondent submits that the Applicant should not be granted bail. That the evidence against him is strong and cogent and as such given the penalty the Applicant will face, if his is convicted he may fail to appear for this trial if he is granted bail.

5. The Respondent also submits that the Applicant should be kept in custody for his own protection as the majority of Murders occurring in New Providence appear to be retaliation; That the Applicant should

 not be granted bail to ensure the safety of the public and public order.

6. The Court has reviewed the Affidavits filed by the Applicant and the Respondent and considered their respective submissions.

7. In determining what is the appropriated decision in this application the Court has considered the relevant section of the Bail Act and the Constitution and Case Authorities.

8. In Bail Applications the onus is on the Respondent (having regard to the right to liberty as guaranteed by the Constitution) to satisfy the Court that the Applicant should not be granted bail.

9. In the present application the Applicant is charged with the serious offences of Murder. The strength of the evidence is relevant to whether the Applicant would appear for his trial in the sense that one who knows that there is a good chance of acquittal is less likely to abscond than one who anticipates conviction, given the penalty attached to the offence.

10. However, it is accepted that the seriousness of the offence is not an independent ground for refusing bail. The right to personal liberty is an important constitutional right and an Accused (who is presumed

 innocent) should remain at liberty unless it is necessary to refuse bail in order to serve one of the ends for which detention before trial is permissible. Each case is individual and needs an individual assessment.

11. The Respondent submits that there is strong and cogent evidence against her applicant. That an eye-witness identified the Applicant (in a photo line-up) as the man they saw shooting at the vehicle that the deceased was in.

12. The Applicant has denied committing the offence and submits that he as several alibi witness. Additionally the applicant has submitted that no evidence (by way of witness statements) has been provided to link that Applicant to the murder or to suggest he is part of a gang.

13. It is not the function of a Judge in Bail Applications to determined contests evidential issues and I do not do so in this case. However, I do find that the police witness statement can implicated the Applicant and gave the Respondent sufficient grounds to change the applicant.

**Statutory Framework for grant / refusal of Bail**

14. With respect to the exercise of the discretion whether to grant or refuse bail, **Section 4 (2) (C) of the Bail Act (as amended)** sets out what should be considered. It states:-

 “**4 (2) Notwithstanding any other provisions of the Act or any other Law, any person charged with a Part C offence shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged:**

 **a) ………………………………………**

 **b) ………………………………………**

 **c) Should be granted bail having regard to all relevant factors, including those specified in Part A of the First Schedule and the primary considerations set out in subsection (2B).**

15. **Part A of the First Schedule (insofar as relevant to this application) provides**

**PART A**

 **In considering whether to grant bail to a Defendant, the court shall have regard to the following factors:**

 **a) Whether there are substantial grounds for believing that the defendant, if released on bail would: –**

 **(i) Fail to surrender to custody or appear at his trial;**

 **(ii) Commit an offence whilst on bail;**

 **(iii) Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;**

 **b) Whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;**

 **c) …………………………………………..**

 **d) …………………………………………..**

 **e) ……………………………………………...**

 **f) Whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was released or with an offence which is punishable by a term of imprisonment exceeding one year; and**

 **g) The nature and seriousness of the offence and the nature and strength of the evidence against the defendant;**

16. In expounding upon what is necessary for the court to be provided with to properly exercise its discretion in relation to paragraph **(a) *Justice Crane – Scott J.A. at para: 65 of Seymour v. D.P.P. SCCr App No. 115 of 2019 stated:***

 **“65. It is obvious from the above paragraph that the evidence which the crown placed before the learned judge in an effort to discharge its burden of satisfying the court that the appellant should not be granted bail was woefully deficient. Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would”, if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown’s burden is only discharged by the production of such evidence.”**

17. In this application nothing has been produced by the Respondent to cause the Court to believe that the Applicant will commit other offences interfere with witnesses or obstruct the course of justice if granted bail; And but for the nature and seriousness of the offence and the evidence in support of it nothing else has been put forward to suggest that the Applicant will not appear for his trial

18. This Court is also constrained to have regard to the ***“primary considerations”*** in **Section 4 (2B)** of the character and antecedents of the Applicant and the need to protect the safety of the public and public order.

 **Section 4 (2B) states:**

 **“(2B). For the purposes 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 and antecedents of the person charged the need to protect the safety of the public or the 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.”**

19. In this regard I have found the decision of the Bahamas Court of Appeal in the case *of* ***Richard Hepburn and The Attorney General S.C.Cr. App. No. 276 of 2014*** very instructive. President of the Court Dame Allen delivering the majority decision had this to say in paragraphs 5- 11.

 **“5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed a crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.**

 **6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council’s decision in *Hurnam v The State [2006] 3 LRC 370*. At page 374 of the judgement Lord Bingham said inter alia:**

 **“…..the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of a crime sufficiently serious to deprive him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many case, his livelihood and his family. But the community has a countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences….”**

 **7. The objective of detaining an accused person is to secure his appearance for his trial and to ensure he is available to be punished if found guilty. Indeed, if a person’s presence at trial can be reasonably ensured otherwise than by his detention, it would be unjust and unfair to deprive him of his liberty.**

 **8. Moreover, even if a person’s appearance could not be so ensured, he is entitled to be released either unconditionally or on reasonable conditions if he is not put to his trial within a reasonable time, or if it is unlikely that he will be so tried.**

 **9. Accordingly, bail is the right of a person charged with a criminal offence to be released from custody on his undertaking to appear for his trial at a specified time, and to comply with any conditions that the court may think fit to impose.**

 **10. The relevant law on bail is found in articles 19 (3), 20 (2) (a) and 28 of the Constitution, and in Sections 3, and 4 of the Bail Act 1994, as amended (“the Act”). It is immediately apparent from reading of those provisions that distinct rights to bail are given, namely, a general right to an unconvicted person to be released on bail unless there is sufficient reason (Part A of the Schedule) not to grant it; and the absolute right of such a person to be released on bail if his constitutional time guarantee is breached or is likely to be breached.**

 **11. The general right to bail clearly requires judges on such an application, to conduct a realistic assessment of the right of the accused to remain at liberty and the public’s interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interests.”**

20**.** The Respondent has raised the issue of the rise in “vigilante justice” and the large amount of persons on bail for murder themselves becoming victims of Murder as a reason to deny bail to the Applicant. The Respondent submits that it is in the interest of public safety and public order and for the protection of the Applicant that he should not be granted bail.

21. The Applicant submits that he is not a part of a gang and has only minor convictions and as such there is no threat to public safety or order should he be granted bail.

22. In weighing the competing interests of the parties and having regard to the Constitution Bail Act and Case Authorities, I find that the Respondent has not satisfied me that the Applicant should not be granted bail pending his trial; and I exercise my discretion and will grant bail to the Applicant for the following reasons.

 ***(i) The Applicant is a young Bahamian with minor convictions.***

 ***(ii) The Applicant is presumed innocent and but for the nature and seriousness of the charge, no evidence has been produced to cause me to believe that the Applicant will abscond, interfere with witnesses of otherwise obstruct the course of justice.***

 ***(iii) I do not find that the Applicant is a threat to public safety and order.***

 ***(iv) Conditions can be imposed on the Applicant to minimize any attempt to abscond***

23. Bail is granted in the sum of Thirty Thousand Dollars ($30,000.00) with two or more suretors on the following conditions.

 **a) He is to be electronically monitored.**

 **b) He is to surrender his Passport.**

 **c) He is to report to the Central Police Station every Monday, Wednesday and Friday before 6p.m.**

 **d) He is to have no contact with the Prosecution witnesses**

**Dated this 28th  day of March A.D. 2024**

**Gregory Hilton**

**Justice of Supreme Court**

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