**COMMONWEALTH OF THE BAHAMAS CRI/bal/0006/2024**

**In The Supreme Court**

**Criminal Side**

**B E T W E E N**

**MARIO CASH JR.**

***Applicant***

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

***Respondent***

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

**Appearances: Ian Cargill for Applicant**

**Bradford McKenzie along with Tyler Murray**

**for Respondent**

**Hearing Date: 25th January, 2024 and 1st February, 2024**

**BAIL DECISION**

Hilton, J.

1. The Applicant is a twenty-six (26) year old citizen of the Unites States of America. He is charged with Murder alleged to have occurred on 1st January, 2024.

2. The Applicant resides in the Bahamas and prior to his remand was employed at Haven Medical Centre in New Providence. The Applicant’s parents are Bahamian citizens and that he has strong ties to the Bahamas.

3. The Applicant has no previous convictions and no other cases pending and maintains his innocence. He submits that the evidence against him is weak and that he poses no threat to society and will not interfere with witnesses and will abide by any condition placed on him if he is granted bail.

4. The Respondent has objected to bail on the grounds that the offence of Murder is serious and the evidence is cogent and that given the severe penalty attached to the offence and the fact that the Applicant is a U.S. Citizen the Applicant would not return for this trial if he is granted bail.

5. The Court has reviewed the Affidavit filed by the Applicant and Respondent and have heard their oral submissions.

6. In determining what is the appropriate decision in this application the Court has reviewed the relevant provisions of the Bail Act (as amended) and the Constitution and Case Authorities.

7. In bail applications the onus is on the Respondent (having regard to the presumption of innocence and the right to liberty as guaranteed in the Constitution) to satisfy the Court that the Applicant ought not to be granted bail.

8. In the present application the Applicant is charged with the serous offence of Murder. Although serious it is still bailable. 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 of Murder.

9. However, it is also accepted that the seriousness of the offence is not an independent ground for refusing bail. The right to liberty, is an important constitutional right and an Applicant (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.

10. The Respondent avers that there is strong and cogent evidence against the Applicant. That the Applicant and the deceased victim. (who is the father of the Applicant) were involved in a physical altercation which resulted in the Applicant stabbing the deceased multiple times with a knife which incident was witnessed by a visitor to the house where the incident took place.

11. The Applicant avers that he was acting in self-defence when he stabbed the deceased and avers that he will vigorously defend the charges.

12. It is not the function of the Judge in bail applications to determine contested evidential issues and I do not do so in this this case. However, I do find that the statement of the witness can implicate the Applicant and gave the Respondent sufficient grounds to charge the Applicant.

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

13. 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).**

14. **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;**

15. 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.”**

16. Save for the fact that the Application is a foreign national with no substantial ties to the Bahamas nothing else has been produced to cause the Court to believe the Applicant will abscond, interfere with witnesses or otherwise obstruct the course of justice if granted bail; And but for the nature and seriousness of the offence and evidence in support of it nothing else has been put forward to suggest that the Applicant will abscond.

17. 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.”**

18. 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.”**

19. The Respondent has stressed that the Applicant is a foreign national and due to the serious charge of Murder he is a flight risk and may not return for his trial if he is granted bail.

20. The Applicant submits that he has strong family ties to the Bahamas and was lawfully working in the Bahamas. He has referred to and cited decided Case Authorities in the Bahamas where foreign nationals have been granted bail for Rape and Murder allegations.

21. The Applicant submits that he is not a danger to society and conditions can be imposed to minimize any attempt to abscond.

22. In weighing the competing interests of the parties and having regard to the Constitutional, 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.

23. Bail is granted to the Applicant in the sum of Thirty Thousand ($30,000.00) with two (2) suretors on the following conditions:

a) The Applicant is to surrender his passport.

b) The Applicant is to be electronically monitored.

c) The Applicant is to report to the J. F. K. Airport Police Station every Monday, Wednesday and Friday before 6:00p.m.

d) The Applicant is to have no contact with Prosecution Witnesses.

**Dates this 8th Day of February, 2024**

**Gregory Hilton**

**Justice of Supreme Court**