COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CRI/BAL/00589/2019

ALEXANDER SANDS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Honourable Madam Justice Jeanine Weech-Gomez**
Appearances:	**Mr. Alexander Sands appearing Pro Se**
	Mrs. Shenika Carey for the Respondent
Hearing Date:	**14 May 2024**

Bail Application - Murder – Possession of a Firearm with intent to put another in fear - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Antecedents – Whether the Applicant would appear for his trial – Reasonable suspicion of Applicant having committed, or of being about to commit, a criminal offence – Cogent Evidence

BAIL RULING

Background

1. Alexander Sands ("**Applicant**") is charged with the following offences: (i) Murder contrary to section 291(1)(b) for allegedly shooting and causing the death of Lanavdro Paul ("Deceased"); (ii) Possession of a Firearm with intent to put another in fear contrary to section 34(1) og the Firearms Act, Chapter 213; (iii) Possession of an unlicensed Firearm contrary to section 58 of the Firearms Act, Chapter 213; (iv) Possession of Ammunition on 17 December 2022.

2. On 04 March 2024, the Applicant filed a Summons and supporting affidavit ("**Applicant's Affidavit**") requesting bail.

3. The Respondent filed an Affidavit in Response.

Issue

4. The issue for this Court to consider is whether the Applicant should be granted bail?

Evidence

Applicant's Evidence

5. The Applicant's Affidavit provides that: (i) the Applicant is a twenty-four (24) year old citizen of The Bahamas; (ii) that he has a two (2) year old daughter and he is the sole provider for her; (iii) the Applicant is a carpenter by profession and was employed at Master Carpentry for five (5) years; (iv) the Applicant was charged with attempted Murder in 2019, but was amended to a charge of Murder; (v) evidence against the Applicant is weak and without supporting evidence with respect to identification made in very difficult conditions and circumstances; (vi) the Applicant's antecedents are not of the same kind as the current Offences for which he is charged; (v) he has already paid his debt to society with respect to his previous convictions; (vi) there is no evidence that the Applicant would be a threat to public safety; (vii) the Applicant's rights ought to be preserved and protected. His trial has yet to come forward and he is languishing in prison; and (viii) all the circumstances of the case ought to be considered prior to making a ruling on bail.

Respondent's Evidence

6. The Respondent's Affidavit in Response ("**DPP Affidavit**") provides that: (i) the Applicant is charged with an offence; (ii) that the Deceased prepared a witness statement confirmed that he saw the Applicant as one of the gunman shooting at him at the time he (the Deceased) was shot. According to the Deceased's statement, he had the Applicant in his view for about ten (10) seconds during the shooting. The Deceased also identified the Applicant as the individual who shot him in a 12 man photo lineup. A copy of the Deceased's witness statement along with the 12 man photo lineup are exhibited to the affidavit; (iii) having regard to the cogency of the evidence and seriousness of the Offence, the Respondent verily believes that, due to the severity of the penalty if convicted, it is sufficient incentive for the Applicant to abscond. The Respondent, therefore, believes the Applicant is a flight risk; (iv) due to the nature and circumstances of the Offence, the Respondent believes that the Applicant is also likely to commit further offences if granted bail (a copy of the Applicant's Antecedents Form is exhibited to the Affidavit); (v) the Applicant made an application for bail in the past before Justice Guillimina Archer-Minns, which was denied on 13 December 2023; (vi) the Respondent believes that, due to the nature and circumstances of the evidence, there is a need to protect the safety of the witnesses and the public (a copy of a Police Medical Hospital form for the Deceased is exhibited to the affidavit); (v) there has been no delay on the part of the Respondent in relation to proceeding with trial; and (vi) based on the foregoing, the Applicant is not a fit and proper person for bail.

Law

7. The law of bail well-settled. The Court must bear in mind and balance one's presumption of innocence until his/her guilt is proven and the need to protect the general public from crime and violence. A person's right to freedom and the presumption of innocence are enshrined in our Constitution. **Articles 19(1)(d), 19(3) and 20(2)(a) of the Constitution of The Bahamas** provide:

> *"19 (1). No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-*
>
> *...*
>
> *(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;"*
>
> *"19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.*
>
> *20. (2) Every person who is charged with a criminal offence —*
>
> *(a) shall be presumed to be innocent until he is proved or has pleaded guilty..."*

8. The Court's power to grant bail is expressly provided at **section 4 of the Bail Act, 1994 ("Act")**. **Section 4(1) of the Act** which states:

> *"(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:*
>
> *Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody."*

9. Section **4(2) of the Bail (Amendment) Act, 2011** provides:

> *"Notwithstanding any other provisions of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged —*
>
> *(a) Has not been tried within a reasonable time;*
>
> *~~(b) Is unlikely to be tried within a reasonable time~~; or*
>
> *(c) Should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B)*
>
> *And where the court makes an order for the release, on bail, of that person, it shall include in the record a written statement giving the reasons for the order of the release on bail……*
>
> *(2B) For the purpose 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 or antecedents of the person charged, 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, are to be primary considerations****…(emphasis added)"*

10. The **First Schedule, Part A of the Act** provides factors which a Court ought to consider in a bail application. It reads:

> *"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 while on bail; or*
>
> *(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) whether there is sufficient information for the purpose of making the decisions required by this Part or otherwise by this Act;*

(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 so released or with an offence which is punishable by a term of imprisonment exceeding one year;;

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant…(emphasis added)"

11. This Court also wishes to highlight that it is the Crown (being the Respondent) who must demonstrate, through evidence, that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail, interfere with witnesses or otherwise obstruct the course of justice. This was expressed in the Bahamian Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019** ("**Jevon Seymour**"). There, the court made the following pronouncements:

> *"…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."*

12. The hearing of a bail application does not entitle the court to assess the strength or weakness of the evidence against the Applicant. This is a matter for the jury at trial. This was expressly stated in the Court of Appeal decision of **Attorney General v Bradley Ferguson et al Appeal Nos. 57,106,108,166 of 2008** where the Court stated:

> *"It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at trial. As stated by Coleridge J in Barronets case earlier-* ***the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial****…"*

13. I also bear in mind that the need to protect society is a significant consideration. This was expressly stated in the Court of Appeal decision of **Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022 ("Grant") at paragraph 42** where, the Court opined:

> *"I am also of the view that having regard to the material before the Court that this murder appears to have been in retaliation to a previous attack on the Appellant. There is not only a risk of the Appellant's safety if granted bail, but also a risk to the public's*

safety. Any retaliation against the Appellant puts members of the public at risk who may be in the area where any attack on the Appellant may take place. In the present case, the material before the Court does not suggest that the victim Brianna Grant was the object of the retaliation but was shot because she was with the intended victim at the time.

14. In ***Grant***, the following was also noted at paragraph 25:

> "However, it cannot be gainsaid that the Judge was fully entitled to consider the safety of the Appellant as one of the factors for her to weigh in the scale pertaining to whether or not to grant the Appellant bail based on the strength of the material provided to her by the Respondent, namely, the Appellant's car had been shot at some days before the murder took place, an event the Appellant admitted occurred in his Record of Interview with the police."

15. It too was noted in **Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019** by Evans Ja at paragraph 11 that:

"When an accused person makes an application for bail in relation to a Parc C Offence the Court must consider the matters set out in section 4(2)(a) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time he can be admitted to bail (as per (a)). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c) i.e., "all the relevant factors", including those in Part A of the First Schedule and the "primary considerations" in section 4 (2B). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail."

16. In the Privy Council decision of **Hurnam v. State of Mauritius [2006] 1 WLR 857 ("Hurnam")** the board made the following observations relating to factors the Court ought to consider when granting bail:

> *"1. In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should 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 interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family.* ***But the community has a countervailing interest, 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. In this appeal the Board considers the principles which should guide the courts of Mauritius in exercising their discretion to grant or withhold bail…

15. It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail….The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well…provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given…(emphasis added)"

17. The Bahamian Court of Appeal in **Dennis Mather v Director of Public Prosecutions BS 2020 CA 163** ("**Dennis Mather**") underscored, in relation to a bail application, the significance of the Applicant's likelihood to appear at trial if he were to be granted bail. At paragraphs 16 to 17 of that decision, Barnett P made the following pronouncements:

"16. The main consideration for a court in a bail application is ***whether the applicant would appear for his trial****. In Attorney General v. Bradley Ferguson, et al SCCrApp. No.'s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows:*

> *"As stated by Coleridge J in Barronet's case cited earlier* ***the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial****."*

17. In Jonathan Armbrister v The Attorney General SCCrApp. No. 145 of 2011, John, JA said as follows:

> *"12. 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, and that bail is not to be withheld merely as punishment.*** *The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the*

accused's record, if any and the likelihood of interference with witnesses (emphasis added).”

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

18. I will now apply the relevant principles to the application before me. The Respondent states that there is cogent and strong evidence which suggests that the Applicant committed the Offences. The Applicant forms the view that the evidence against him is weak.

19. Based on what is before me, the evidence against the Applicant is compelling. The Deceased, though a written statement to the Police, stated that the Applicant was the one who shot at him. Furthermore, he not only saw his face for about ten (10) seconds but identified the Applicant in a 12 man photo lineup. It is difficult to accept this evidence as weak.

20. Also, I do note that the Applicant has antecedents and he himself confirms that he had previous convictions. According to the Antecedent Form, he has two convictions (namely, Housebreaking and Stealing and Possession of dangerous drugs with intent to supply) and two pending matters: (i) Possession of Dangerous Drugs with intent to supply; and (ii) Murder. As was observed at paragraphs 19 to 21 in **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp No. 29 of 2020**:

> *“19 As to the antecedents, it is not required to show that the appellant lives a habitual life of crime before taking his antecedents into account.*
>
> *20 In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.*
>
> *21 In our view, it was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail”*

21. In my view, the evidence (being the witness statement of the Deceased coupled with the Antecedent Form), suggests that the Applicant would indeed be a threat to public safety and order. He not only has two previous convictions, but presently have two pending matters. There seems to be a pattern of criminal behavior which is of a similar nature to which the Applicant is before the Court for once again. It is the role of the Court not only to consider the rights and freedoms of the Applicant, but the rights and freedoms of all other members of society. The Applicant seems very likely to be a threat to public safety and order based on the current Offences and previous convictions. Whereas I observe the Applicant has repaid his debt to society by serving time for such convictions, I am

mindful of the omnipresent threat of crime and the real possibility that the Applicant is likely to threaten peace in society.

22. In relation to the seriousness and nature of the alleged offences, they Offences are indeed quite serious. Not only does the Applicant has previous convictions, but it appears that

23. With respect to whether or not the Applicant will appear for trial, this is a concerning issue in this case. The evidence before suggests that the Applicant will likely abscond. He already has two convictions, has several pending matters and one of which is for Murder. I am of the firm view that this is sufficient incentive for the Applicant to abscond and fail to appear for trial. This Court will not allow the Applicant any opportunity to abscond nor potentially risk public safety and order.

24. In the premises, I am not satisfied that the Applicant is a fit and proper person to be granted bail.

Conclusion

25. Having regard to all the circumstances the application for bail is refused.

26. Bail is therefore denied.

Justice Jeanine Weech-Gomez

Dated this 04 day of June 2024