

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CR/BAL/000892/2018

ANTONIO THOMPSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: The Applicant appeared Pro Se
Ms. Davina Pinder for the Respondent

Hearing Date: 26 March 2024

Abetment of Murder - Bail - Constitutional rights – Nature and Seriousness of Offences – Strength of Evidence

BAIL RULING

Background

1. Antonio Thompson (“**Applicant**”) was charged with: Abetment to Murder contrary to sections 86(1) and 291(1)(b) of the Penal Code, Chapter 84 (“**Offence**”).
2. The Applicant then filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.
3. The Respondent, in turn, filed an Affidavit in Response on 28 February 2024 (“**DPP Affidavit**”).

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 twenty-four (24) years old and was born in New Providence, The Bahamas; (ii) he is a Bahamian citizen; (iii) prior to his remand, he resided at Hay Street; (iv) the Applicant was arraigned in March of 2023 for the Offence; (v) his trial date is 05 November 2024; (vi) he has been incarcerated for one (1) year and that the delay is not his fault; (vii) on 14 March 2024, the Applicant had a bail hearing date; (viii) the Applicant requests bail, is not a flight risk and will not commit any offence if granted bail; (ix) the Applicant has no reason to nor will interfere with any of the Crown's witnesses in this matter; (xi) if granted bail, the Applicant will abide by all conditions set by the Court.

Respondent's Evidence

6. The DPP Affidavit provides that: (i) the Applicant is charged with the Offence; (ii) the Offence is a Part C offence under section 4(3) of the Bail Act, Chapter 103; (iii) the Offence is alleged to have occurred on 24 March 2023; (iv) the evidence against the Applicant is cogent (exhibited to the affidavit is a report of Sgt. 3358 Alcott Forbes, a few other witnesses, the Applicant's Record of Interview; the Applicant's antecedents, and a copy of the Voluntary Bill of Indictment issued against the Applicant); (v) the Respondent opposes bail because: (a) the nature and seriousness of the Offence; (b) the Applicant applied for bail on 03 May 2023 before Darville-Gomez J and was denied bail; (c) the Applicant was granted bail in relation to Murder and Attempted Murder on 05 December 2019 by Hilton J; (d) the Applicant has several previous convictions which include: Possession of Dangerous Drugs (2 counts), Causing Harm, Assault with a Dangerous Instrument, and Unlawfully Carrying Arms and Violation of Bail (3 counts) when he failed to charge his Electronic Monitoring Device ("**EMD**"); (e) the Applicant has current pending matters for Violation of bail (5 counts), Murder and Attempted Murder. The Respondent highlights that all of the Applicant's matters for which he was convicted and pending matters of Abetment to Murder and violation of bail were committed during the Applicant's release on bail; (f) this all demonstrates that the Applicant has a propensity to commit further offences if granted bail. Further, that the Applicant's convictions for violation of bail and current pending charges for violation of bail shows that he has the propensity to breach bail conditions if bail is granted and such are imposed.

Law

7. The law on bail is well-settled. The Applicant is shrouded by the presumption of innocence until his guilt is proven. The Court, also acknowledges the need to protect the general public from crime. I must weigh both in the balance. A person's right to freedom and the presumption of innocence are preserved and

expressly provided for in our Constitution. **Articles 19(1)(d), (3) and 20 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. 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 located 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...”

10. The **First Schedule, Part A of the Act** provides factors which a Court must 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 taking 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...”

11. It is incumbent on the Respondent to prove, through evidence that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail and/or interfere with witnesses or otherwise obstruct the course of justice.

This was expressly provided in the Bahamian Court of Appeal decision of **Attorney General v Ferguson et al SCCrApp Nos. 57, 106, 108 and 116 of 2008 (“Fegurson”)** where the Court opined:

“35. In a bail hearing it is for the prosecution to produce evidence to show why the defendant should not be released on bail. The prosecution is not required to prove beyond reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect. A prosecutor objecting to bail may state his opinion based on the evidence produced that if bail is granted the defendant, because of the circumstances, may fail to appear to take his trial or that given bail the defendant is likely to interfere with witnesses. A bail application is an informal inquiry and no strict rules of evidence are to be applied: R. v. Mansfield Justices, ex parte Sharkey [1985] QB. 613, Re Moles [1981] Crim. L. R. 170.”

12. The Respondent’s evidential burden in a bail application was also observed in **Vasyli v. The Attorney General [2015] 1 BHS J. No. 86**, where Allen, P (as she then was) stated at paragraph 12 of the judgment:

““12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A.””

13. The need for cogent and compelling evidence from the Crown was also emphasized in **Jevon Seymour v The Director of Public Prosecutions SCCrApp. No. 115 of 2019**. At paragraphs 65 and 66 of the judgment, Crane-Scott J.A. opined:

“65. It is obvious...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.

66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may” or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First

Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if release, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.”

14. Though there must be evidence in a bail application, the hearing of a bail application does not entitle the court to conduct an in depth analysis of the evidence. In the Court of Appeal decision of **Cordero McDonald v The Attorney General SCCrApp. No. 195 of 2016** the Court of Appeal at paragraph 34 the Court opined:

“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge, and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail (emphasis added).”

15. The need to protect society is an important consideration. This was expressly stated in the Court of Appeal decision **Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022** 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.

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

16. I will now consider the evidence, law and facts of this bail application. The Applicant is charged with Abetment to Murder, which is considered a Part C offence (i.e. a serious offence). The nature and seriousness of the Offence is a factor that I must take into account.
17. Having reviewed the witness statements referred to in the DPP’s Affidavit, I am not satisfied that there is compelling and cogent evidence rising to the level of reasonable suspicion that the Applicant committed the Offence. The witness

statements merely state that a vehicle which was involved in the Offence (which the Applicant had in his possession at the time) was taken by the police and that the Applicant rented the vehicle from Ms. Dyonne Smith. This does not mean that the Applicant was involved in any criminal act. Furthermore, upon review of the Applicant's Record of Interview, this too only confirms that the Applicant rented a vehicle from Dyonne Smith and used it to run errands. From a cursory view of the aforementioned evidence, I see no nexus between the Applicant and the Offence. In my view, the evidence against the Applicant is deficient.

18. According to the Applicant's Antecedent Form, he has several prior convictions, a pending murder charge and the current Offence. Though there is reference to breach of bail, the reason provided, according to the DPP Affidavit, was his failure to charge the EMD. I am aware that the EMD at times are defective and it is unclear whether or not this is the reason why the EMD was not charged. Accordingly, I do not believe that such a breach means he is unlikely to abide by any bail conditions this Court sets.
19. Furthermore, there is no evidence that the Applicant will fail to appear for trial/abscond, interfere with Crown witnesses or otherwise obstruct the course of justice.
20. Based on what is before me, there is no evidence placing the Applicant at the scene where the alleged Offence took place. I am therefore, prepared to grant bail.

Conclusion

21. Having regard to all the circumstances I accede to the Applicant's bail application.
22. Bail is therefore granted in the sum of \$25,000.00 with two (2) suretors together with the following conditions:
 - 1) The Applicant is to be fitted with an Electronic Monitoring Device ("**EMD**").
 - 2) The Applicant is to sign in at the Quakoo Street Police Station every Monday, Thursday and Saturday before 6pm.
 - 3) The Applicant nor his agents are to have any deliberate contact with the Prosecution's witnesses in this matter.
23. Failure to comply with any of the above conditions may render the Applicant's bail being revoked.

Justice Jeanine Weech-Gomez

Dated this 11 day of April 2024