COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
CRI/BAL/00116/2024

BETWEEN

GARSHANO MILLER

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Honourable Madam Justice Jeanine Weech-Gomez**
Appearances:	**Mrs. Wendawn Miller-Frazer for the Applicant**
	Mr. Ashton Williams for the Respondent
Hearing Date:	**02 July 2024**

Bail Application – Armed Robbery - Nature and Seriousness of Offence – Articles 19 and 20 of the Constitution of The Bahamas – Presumption of Innocence – Public Safety and Order – Likelihood to appear at Trial or interfere with Witnesses - Strong and Cogent Evidence

RULING

WEECH-GOMEZ, J:

[1.] This is a bail application brought on behalf of Mr. Garshano Miller ("**Applicant**").

Background

[2.] The Applicant was charged with Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84 ("**Offence**").

[3.] The Applicant then made an application for bail, which the Respondent objects to.

Issue

[4.] The issue that the Court must determine is whether the Applicant ought to be granted bail?

Evidence

Applicant's Evidence

[5.] The Applicant's Affidavit provides that: (i) the Applicant is a twenty-five (25) year old Bahamian citizen; (ii) he was charged with the Offence; (iii) he was arraigned on 22 April 2024 by Stipendiary & Circuit Magistrate Kendra Kelly; (iv) the Applicant maintains his innocence and intends to defend himself against the allegations made against him; (v) he is the father of two (2) children ages two (2) and three (3) of whom he is the primary provider and he and his girlfriend are expecting another child; and (vi) the Applicant is a fit and proper persons for bail.

[6.] The Applicant also filed two supplemental affidavits which state that: (i) the Applicant's matter was adjourned to 16 August 2024 for service of his Voluntary Bill of Indictment; (ii) he has prior convictions stemming from two (2) incidents – one on 26 June 2020 and the other on 30 June 2021; (iii) the Applicant has a conditional discharge for Fraud by False Pretenses and Attempted Fraud by False Pretenses from 26 June 2020; (iv) he has a further conviction for two (2) counts of Stealing and one (1) count of Fraud by False Pretenses from 30 September 2021; and (v) he has one pending matter for which he is making an application for bail.

Respondent's Evidence

[7.] The Respondent filed an Affidavit in Response on 17 June 2024 which provides that: (i) the Applicant is charged with the Offence; (ii) a Voluntary Bill of Indictment is being prepared in reference to the Applicant and is to be served; (iii) the evidence in the matter is cogent and compelling and the Offence is a serious one. On 08 April 2024, the Applicant is alleged to have approached the Virtual Complainant ("**VC**") at her residence, armed with a handgun and demanded that she hand over money. When the VC approached the vehicle (which the Applicant is alleged to have been driving at the time), she noticed that the robber was a bright-skinned male, with a scar on the bridge of his nose. The robber was said to have brandished a handgun and demanded the VC hand over the sum of $700.00 and, when the robber took the funds and began to pull off, she jumped on the back of the vehicle holding on until she eventually fell off. During the time this event transpired, the VC's girlfriend was present. The girlfriend reports that she witnessed the VC approach the car and saw her jump onto the vehicle but ended up falling (the witness statements of the VC and the girlfriend

are exhibited to the affidavit); and (iv) On 17 April 2024, the VC went to the Criminal Investigation Department and spoke to Sgt. 3535 Bell, where she was shown a 12-man photo lineup and positively identified the Applicant at photo #7 as the person who robbed her at gunpoint (the statement of the VC and a copy of the 12-man photo lineup are exhibited to the affidavit).

[8.] The Respondent's Affidavit in Response also provides that: (i) The Applicant has prior convictions for the offences of Stealing and a conditional discharge for Fraud by False Pretenses (the Applicant's Antecedent Form is attached); (ii) even though the Applicant has not been convicted of any violent offences involving a firearm, the Respondent notes that the nature of the offence seems to have escalated to a more serious crime; (iii) the Respondent believes that, given the nature and circumstances of the offence, the Applicant will commit further offences, should he be granted bail; (iv) given the nature and circumstances of the evidence, there is a need to protect the safety of the witnesses, the public and public order; (v) there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified, and the Applicant is not a fit and proper candidate for bail at this time; and (vi) the Respondent requests that the Applicant be denied bail.

Law

[9.] The law on bail is well-settled. The Court must bear in mind one's presumption of innocence unless and until his/her guilt is proven and the need to protect the general public from crime and violence. The right to freedom and the presumption of innocence are enshrined 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"

[10.] The Court is imbued with the power to grant bail by virtue of **section 4 of the Bail Act, Chapter 103 ("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."

[11.] **Section 4(2) of the Bail (Amendment) Act, Chapter 103** 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…"

[12.] 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 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…"

[13.] The Respondent must prove, through evidence, that the Applicant would likely fail to surrender to custody and/or appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was expressly stated 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*"

[14.] The onus on and requirement for the Respondent to provide cogent evidence was highlighted in the case of **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019**, ("**Jeremiah Andrews**") Evans JA expressed the following at paragraph 26:

"*In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to*

the Bail Act s 4 (2B) exist. ***We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence***

[Emphasis added]"

[15.] Furthermore, 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 substantive trial. This was noted by Osadebey J at page 61 in the Court of Appeal decision of **Attorney General v Bradley Ferguson et al Appeal Nos. 57,106,108,166 of 2008** where he stated:

"I*t 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...*"

[16.] In the Bahamian Court of Appeal decision of **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** ("**McDonald**"), Allen P (as she then was) explained the extent to which a judge may consider evidence at a bail hearing. The learned President opined:

"*34. It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 such as to justify the deprivation of 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]"

[17.] I also wish to highlight the case of **Jonathan Armbrister v Attorney General SCCrApp** No 145 of 2011 where the court highlighted the significance of the seriousness of an offence and how the Court should treat such when considering an application for bail. The following pronouncements:

"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 determining whether bail should be granted or not. ***Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail****.*

[Emphasis added]"

[18.] Furthermore, in the Bahamian Court of Appeal decision of **Dennis Mather v Director of Public Prosecutions** BS 2020 CA 163 ("**Dennis Mather**"), the Court highlighted the significance of the Applicant's likelihood to appear at trial if he were to be granted bail. At paragraphs 16 and 17 of that decision, the Court opined:

> "*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]"*

[19.] Lastly, in the Privy Council decision of **Hurnam v. State of Mauritius [2006] 1 WLR 857** the board made the following observations relating to the seriousness of offences when considering a bail application:

> *"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]"

Discussion and Analysis

Whether the Applicant ought to be granted bail?

[20.] I shall now apply the aforementioned law to the bail application that is before me. I also bear in mind that I am not to go into a forensic/deep analysis of the evidence as this is a bail application, not the trial.

[21.] With respect to the nature and strength of the evidence and whether there are substantial grounds for believing that the Applicant, if released on bail, would likely fail to surrender to custody or appear for trial, commit an offence while on bail or interfere with witnesses, the evidence suggests that: (i) the VC saw the Applicant's face at the time of the alleged armed robbery; (ii) she saw the firearm being purportedly held by the Applicant at the time of the incident; (iii) she identified the Applicant in a 12-man photo lineup as the person who robbed her and (iv) she was close enough to identify distinctive characteristics of the alleged robber (i.e. that he was light skinned with a scar on the bridge of his nose). Whilst this may be considered compelling evidence the Court is mindful that the complainant has not given evidence under oath nor has the complainant been cross-examined. Additionally, save for the evidence of the Complainant, there is no other evidence to incriminate the Applicant. There is no other evidence presently before the court that may incriminate the Applicant.

[22.] The VC has identified the Applicant as the robber and clearly heis no doubt aware. Her evidence is material to the trial as it places him at the scene of the crime. Having regard to the evidence and in particular the statement of the VC, the Court has considered the question of the safety of the VC. However, as there is no evidence from the Respondent to suggest that the VC may be in danger, I am satisfied that proper conditions could be attached to bail, In an effort to ensure the VC's safety.

[23.] I note the antecedents of the Applicant and he is clearly no stranger to the criminal justice system. He has a history of criminality and incarceration for offences committed. It appears that he has graduated to more serious offences (he was convicted of Stealing and Fraud by False Pretenses and now is before the Court for allegedly committing Armed Robbery). Though he may have previous convictions, none of them are as egregious as the current offence he is charged with. Additionally he has served his time for past criminal acts. However, and more importantly our constitution provides that the Defendant is innocent unless and until he is proven guilty.

[24.] In the premises, I am prepared to grant the Applicant bail with stringent conditions.

CONCLUSION

[25.] Bail is therefore granted in the sum of $20,000.00 with two (2) suretors.

(a) The Applicant is to sign in at the Central Police Station every Tuesday, Thursday and Saturday before 6pm.
(b) The Applicant is to be fitted with an electronic monitoring device.
(c) The Applicant nor any of his agents are to have any deliberate contact with any of the witnesses listed on the Voluntary Bill of Indictment.
(d) The Applicant is not to go within 100 feet of the Virtual Complainant and/or her residence.
(e) The Applicant is to relinquish his passport and any other travel documents to the Criminal Registry until the completion of his trial or further order.
(f) Any breach of these conditions may result in the applicant bail being revoked and he being remanded to the Bahamas Department Correctional Services (BDOCS) until his trial.

Dated this 23rd day of July 2024

Jeanine Weech-Gomez
Justice