

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

**CRIMINAL DIVISION
CRI/BAL/00116/2024**

BETWEEN

JAMAL MAYCOCK

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. Geoffrey Farquharson for the Applicant

Ms. Carmen Brown for the Respondent

Hearing Date: 04 July 2024

Bail Application – Possession of an Unlicensed Firearm and Ammunition – Nature and Seriousness of Offence – Articles 19 and 20 of the Constitution of The Bahamas – Presumption of Innocence

RULING

WEECH-GOMEZ, J:

[1.] This is a bail application brought on behalf of Jamal Maycock (“**Applicant**”).

Background

[2.] The Applicant was charged with: (i) Possession of an Unlicensed Firearm contrary to section 5B of the Firearms Act, Chapter 213 (“**FAA**”); and (ii) Two (2) counts of Possession of Ammunition contrary to section 9(a) of the FAA (“**Offences**”).

[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 was born on 09 September 2000; (ii) he was previously convicted for Possession of an Unlicensed Firearm and Possession of Ammunition; (iii) he is currently defending allegations of possession of Firearms and Ammunition; (iv) the firearm matter was later dismissed then brought back before the Chief Magistrate; (v) On or about 17 June 2024, the Applicant was remanded on suspicion of Possession of Firearms and Ammunition; (vi) on arraignment, the magistrate denied the Applicant bail and referred the matter to this Court; (vii) the Applicant was arrested after midnight while allegedly on the New Providence Highway; (viii) the Applicant was informed by officers that he was in a car which overturned multiple times where the firearm and ammunition were later discovered; and (ix) the Applicant does not own the car and has no memory of the alleged incident.

[6.]The Applicant's Affidavit further provides that: (i) the Applicant was taken to Hospital and treated for a fractured skull and other serious injuries; (ii) despite such injuries, he was taken by police from the hospital two days after the alleged crash and imprisoned; (iii) he is now at the Bahamas Department of Corrections ("**BDOCS**") where he cannot receive proper treatment for his injuries; and (iv) there is no credible evidence that the Applicant would abscond, re-offend, interfere with witnesses or undermine the justice system if admitted to bail.

Respondent's Evidence

[7.]The Respondent laid over an Affidavit in Response which provides that: (i) the Applicant is charged with the Offences; (ii) the matter is set for trial on 19 July 2024 in the Magistrate Court #15 before Magistrate Lennox Coleby The Applicant was denied bail because he has previous convictions; (iii) the Applicant's antecedent report indicates that he was charged with murder and attempted murder in Court #8 before Magistrate Samuel McKinney. However, upon further investigation, the Respondent and the Applicant confirmed that the Applicant was not charged for theses offences; (iv) the Applicant is, however, charged with causing harm before Magistrate Raquel Whyms and thus matter is adjourned to 18 July 2024 (the Applicant's antecedent form is exhibited to the affidavit); (v) the Applicant is also

charged with Possession of an unlicensed firearm and possession of ammunition before Magistrate Court #9; (vi) where the evidence against the Applicant appears to be cogent. According to the witness statement of W/PC 4677 Aaliyah Bain, on 14 June 2024 around 6:24am, the Police Control room received information of a vehicle which lost control and had overturned on New Providence Highway. Sgt. 2899 Hart and W/PC 4677 Aaliyah Bain went to the scene where the Applicant identified himself and his vehicle as a Gray Nissan Note L/P #SN6413. While making a check of the vehicle in the presence of the Applicant, the officers discovered a black Austria Glock 40 pistol serial number erased containing a black magazine and thirteen (13) unfired .40 ammunition. The Applicant was arrested and cautioned in reference to Possession of an Unlicensed Firearm and Ammunition (the witness statement of W/PC 4677 Aaliyah Bain is exhibited to the affidavit).

[8.]The Affidavit in Response also provides that: (i) Sgt. 2899 Hart's provides further evidence on the matter (Sgt. 2899 Hart's witness statement is exhibited to the affidavit); (ii) a suspect named Dudley Smith turned himself in to the Criminal Investigation Department ("**Mr. Smith**"). He was interviewed by W/DC 4081 Major in the presence of Inspector J. Seymour. Mr. Smith confirmed the grey Nissan Marche belonged to him and claimed that he lent his vehicle to the Applicant (the witness statement of WD/C 4801 Major and the record of interview of Mr. Smith is exhibited to the affidavit); (iii) the cogency of such evidence is strengthened by the witness statement of a witness ("**Witness A**") where she explained that sometime in March 2024, Mr. Smith rented a Silver Nissan March L/P #SN6413 for a few weeks. Witness A further reports that Mr. Smith came to purchase the vehicle on 30 April 2024 at a cost of \$5,500.00 (Witness A's witness statement is exhibited to the affidavit); (iv) they further contend that in the interest of public safety, the Applicant ought not be granted bail; and (v) that the Applicant is not a fit and proper person for bail.

Law

[9.]The law on bail is well-settled in this jurisdiction. The Court must bear in mind one's presumption of innocence unless and until his/her guilt is proven against 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’s power to grant bail is expressly provided under **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** states:

“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 relevant factors which the 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...”

[13.] The Respondent must prove, through evidence that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail or 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”

[14.] The significance of evidence to be provided by the Respondent 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.] Sir. Michael Barnett, President of the Court of Appeal (as he then was) in **Randy R. Williams and Director of Public Prosecutions** SCCrApp. No. 25 of 2022 made the following pronouncements at paragraphs 11, 12, and 19:

“ 11. In my judgment a judge in denying bail must have “substantial” grounds for believing the applicant for bail “would” not “might” or “may” abscond, interfere with witnesses or commit a crime whilst on bail.

12. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.

19. In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents.”

[16.] I also bring to counsel’s attention that 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:

“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...”

[17.] 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.”

[18.] I also bear in mind that the need to protect society is a paramount 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.”

[19.] The following was also noted at paragraph 25 of **Grant**:

“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”

[20.] 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. In that judgment, the Court made 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.”

[21.] 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...”

Discussion and Analysis

Whether the Applicant ought to be granted bail?

[22.] With respect to the application before me, I shall consider each of the relevant factors under the Act as well as the applicable principles emanating from the aforementioned decisions.

[23.] In relation to the nature and seriousness of the crime, the Offences are of a serious nature. It is important to note, however, that this alone is not sufficient reason to deny bail. There must be cogent evidence which suggests that the Applicant likely committed the Offences for which he is charged with.

[24.] With respect to the nature and strength of the evidence, I shall review all evidence before me without going into a forensic analysis of same – this is a matter for the jury at trial. According to the evidence the vehicle where the firearm was allegedly found does not belong to the Applicant nor was he cognizant of what transpired as he suffered injuries as a result of the accident. In fact, Mr. Smith confirms, through his Record of Interview confirms that he is the owner of the vehicle. I am not satisfied that there is cogent evidence that provides reasonable suspicion that the Applicant committed the alleged Offences for which he is charged.

[25.] I now turn to public safety or safety of the Applicant himself. There is no evidence which suggests that the public's safety or the Applicant's own safety is at risk. Again, it is incumbent on the Respondent to provide cogent evidence of any real or perceived risk to public safety and order. There is no such evidence before this Court suggesting the same.

[26.] There is also no evidence that the Applicant will fail to appear for his trial or interfere with witnesses. Time and time again, the Respondent is told that cogent evidence must be provided to suggest that the Applicant likely will not appear for trial, would likely abscond and/or interfere with witnesses.

[27.] Whereas I note that there are prior convictions of a similar nature, the Applicant has completed his sentence with respect to these offences. Further, the Applicant is presumed innocent unless and until his guilt is proven.

[28.] Counsel for the Applicant also submitted that the Applicant is currently suffering from a fractured skull together with other injuries as a result of the incident on 17 June 2024. He, however, did not produce any medical evidence to support the same. Based on questions put by the Court to the Applicant, the Court is satisfied that the Applicant did receive some injuries and he continues to be in some discomfort and ought to be provided with additional medical care. I wish to take this opportunity to formally thank the Respondent for its valiant efforts in assisting with the provision of a letter from BDOCS dated today's date by Dr. Timothy Providence speaking to the Applicant's medical history.

[29.] I wish to state that, whilst the Court accepts that the Applicant requires medical attention, this ought not in itself be a basis for the Court to grant bail as proper directions and/or orders can be made to the prison authority to address the same.

[30.] Having regard to all the circumstances, I am, therefore, minded to grant the Applicant bail.

CONCLUSION

[31.]

- (a) The Applicant is therefore granted bail in the sum of \$20,000.00 with two (2) suretors.*
- (b) The Applicant is to be fitted with an Electronic Monitoring Device (“EMD”).*
- (c) The Applicant shall surrender his passport to the Criminal Registry.*
- (d) The Applicant is to sign in to Central Police Station every Tuesday, Thursday and Saturday before 6pm.*
- (e) Applicant nor his agents are to have any deliberate contact with the Prosecution's witnesses in this matter.*
- (f) Failure to comply with any of these conditions may render the Applicant's bail being revoked.*

Dated this 5th day of July 2024

**Jeanine Weech-Gomez
Justice**