COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CRI/BAL/00048/2024

SHANDO KING

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**Her Ladyship The Honourable Madam Justice Jeanine Weech-Gomez**
Appearances:	**Mr. Devard Francis for the Applicant**
	Mr. Kenny Thompson and Mr. Ashton Williams for the Respondent
Hearing Date:	**09 April 2024**

Attempted Murder –– Possession of a Firearm with the Intent to Endanger Life - Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Strength of Evidence

BAIL RULING

Background

1. Shando King ("**Applicant**") was charged with four (4) counts of Attempted Murder contrary to section 292 of the Penal Code, Chapter 84 ("**Penal Code**") and four (4) counts of Possession of a Firearm with the intent to endanger life contrary to section 33 of the Firearm Act, Chapter 213 ("**Offences**").
2. On 07 March 2024, the Applicant filed a Summons and supporting affidavit ("**Applicant's Affidavit**") requesting bail.
3. The Respondent filed an Affidavit in Response and the Affidavit of Inspector Jason Brown on 18 March 2024

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 member of the Royal Bahamas Police Force ("**RBPF**"); (ii) he is twenty-one (21) years old; (iii) he has one (1) child whom he solely supports; (iv) he was charged with the aforementioned Offences; (v) the Applicant was arrested on 18 February 2024 and subsequently arraigned on 26 June 2023 before Magistrate Shaka Serville in relation to the Offences; (vi) the Applicant's matter was adjourned to 04 September 2024 and was thereafter remanded to the Bahamas Department of Correctional Services; (vii) he plead Not Guilty to the Charges; (viii) he has no previous convictions nor any other pending matters before any court; (ix) that he maintains his innocence; (x) that he has been threatened multiples times with harm and threats of death;(xi) as a member of the RBPF, he verily believes that his life is in danger; and (xii) he humbly requests bail.

Respondent's Evidence

6. The Respondent's Affidavit in Response ("**DPP Affidavit**") provides that: (i) a Voluntary Bill of Indictment is being prepared in reference to the Applicant and is set to be served; (ii) the Applicant has no previous convictions, but does have one pending matter (being the matter concerning the Charges – the Applicant's Criminal Record Antecedent Form is attached to the affidavit); (iii) the Offences took place on 18 February 2024 (exhibited are statements of several police officers involved in the matter); (iv) On 20 February 2024, D/Sgt. 3214 Melbert Munroe presented the Applicant with a search warrant in reference to his white I-phone. The Applicant willingly gave the police officer his phone's password and upon observation of the phone, the officer viewed certain information connecting the Applicant to the alleged shooting of one of the victims (exhibited is a copy of the statement of D/Sgt. 3214 Melber Munroe); (v) the Respondent opposes bail because: (a) the evidence against the Applicant is strong and cogent; (b) notwithstanding that there were no eye witnesses to the alleged Offences, the statement of all police officers corroborate the finding of a white I-phone which was retrieved at the scene of the offences, which belongs to the Applicant; (c) upon examination of the cell phone data, information of the Applicant's involvement in the Offences was further extracted from the I-phone by police officers; (d) the Applicant admitted to his involvement in the Offences; and (vi) having regard to the circumstances in which the Offences occurred, the Respondent believes that there are substantial grounds to believe that the

Applicant should be kept in custody for his own safety and for the safety of the general public.

7. Furthermore, the DPP Affidavit states: (i) the Applicant's affidiavit indicates that he has been threatened multiple times with harm and threats of death on his life and that he believes he is in danger; (ii) the Applicant is a member of the RBPF and allegedly shot a member of the public and members of the RBPF and he is charged with very serious offences; (iii) there are no conditions for bail which could be imposed that will eliminate the risk that the Applicant would appear to his trial, is a danger to the general public, or the risk that he be murdered; and (iv) the Applicant is not a fit and proper person for bail.

8. The Affidavit of Inspector Jason Brown provides that: (i) Inspector Jason Brown is the Field Inspector at the Central Intelligence Bureau of the Royal Bahamas Police Force ("**Bureau**"); (ii) the Applicant came to the attention of the Bureau since December 2020 as being associated with the "MAD ASS" gang; (iii) the Applicant has been confirmed as an active member of the "MAD ASS" gang, the "OUTLAWS" gang and also has active ties to the "TIGER NATION" gang; (iv) the Applicant is a member of the "MAD ASS" and "OUTLAWS" gangs, which are involved in in an ongoing feud with the "23 NATION" and "DIRTY SOUTH" gangs; (v) that the Bureau has also established that Applicant's role in the "MAD ASS" and "OUTLAWS" gangs as a "SHOOTER"; (vi) the Applicant was recently charged with Attempted Murder: (vii) if he is released on bail, he poses a danger to the life of witnesses in this matter; (viii) there have been credible threats on the life of the Applicant; and (ix) the life of the Applicant would be in imminent danger if released on bail.

Law

9. The law of bail is well settled in The Bahamas. I must keep at the forefront of my mind 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), (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 power to grant bail is imbued upon the Court by virtue of **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."

11. 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…"

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;*
>
> *(h) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant"*

13. It is incumbent upon 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 or interfere with witnesses or otherwise obstruct the course of justice. This was firmly 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 also 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. The Court wishes to highlight 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..."*

16. Also, 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 is to consider evidence at a bail application. There, 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."*

17. 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.*

18. 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."

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…"*

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

20. 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. Four of the five witness statements attached to the DPP Affidavit does not overtly state that any of the witnesses saw the Applicant at the scene of the crime. This evidence does not suggest that the Applicant was on the scene or even involved in the Offences.

21. Furthermore, the Respondent's own affidavit states that there were no eyewitnesses at the time of the alleged crimes.

22. I do, however, note that one of the officer's witness statements expressly state that the Applicant, when interviewed by the officer, admitted to his involvement in the Offences and the reason for his involvement. Though this is overtly provided, I am not satisfied that any such admissions were made as there was no record of interview placed before me confirming and corroborating such admissions by the Applicant. I am reluctant to accept such evidence without more.

23. In addition, I too note that "certain information" obtained from the police state that information came from the Applicant's I-phone relating to the Offences, however, once again, there is no evidence corroborating this. It is incumbent on the Respondent to provide cogent and strong evidence to show a prima facie case that the Applicant indeed committed the Offences and should thus not be granted bail. Based on what is before me, I am not satisfied that there is any real cogent, strong and corroborating evidence placing the Applicant at the scene of the crime or involved in the Offences.

24. I am very aware that the Applicant also has concerns for his safety – as does the Respondent. None of the affidavits state whether the Applicant's fear of his safety emanates from his incarceration or possible release while on bail, however, I am of the view that, as the Applicant is a police officer, the Applicant must have meant his safety was at risk due to his incarceration with inmates who may very likely have a vendetta against members of the RBPF.I am therefore of the view that the Applicant's safety would be at a great risk if he was to remain remanded.

25. Conversely, I note that these are very serious offences that the Applicant is charged with and the need to protect the public's safety.

26. I also note Inspector Jason Brown's Affidavit. There is no evidence before the Court that the Applicant would be a threat to society. These are bare assertions, with no corroborating evidence. The Crown has not satisfied me that the Applicant would be a risk to public safety. An affidavit merely stating that the Applicant is involved in three (3) gangs with no corroborating evidence reaches are bare assertions which this Court does not accept as cogent and strong evidence.

Conclusion

27. Having regard to all the circumstances I am prepared to accede to the application and grant bail to the Applicant.

28. Bail is therefore granted in the sum of $30,000.00 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 Airport 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.

29. Failure to comply with any of the above conditions may render the applicant's bail being revoked.

Justice Jeanine Weech-Gomez

Dated this 09 day of April 2024