IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL DIVISION

2024/CRI/BAL/00032

Between

BRANDON MAJOR

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Ms. Terrel Butler for the Applicant
Ms. Janessa Murray with Ms. Kara Wight for the Respondent

Hearing Date: 3 July 2024

RULING – BAIL DECISION

Criminal Law – The Constitution – Bail Act, Chapter 103 (as amended) – Successive Application for bail – Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 (as amended) – Whether the Applicant is a fit and proper candidate for admission to bail – Application for bail denied – Applicant is not a fit and proper candidate for admission to bail

INTRODUCTION

1. Brandon Major, the Applicant named herein, is a 21-year-old Bahamian male charged with Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 (as amended), which offence is said to have occurred on Saturday 27 January 2024.

2. The Applicant was arraigned in Magistrate Court No. 5 before Senior Magistrate Raquel Whyms on Wednesday 31 January 2024. The matter was adjourned to Monday 19 April 2024 and the Applicant was remanded to The Bahamas Department of Correctional Services.

3. The Applicant previously applied for and was denied admission to bail by the Court. The reasons for denying the Applicant's previous application for admission to bail were contained in a written ruling delivered on Wednesday 20 March 2024 ("the previous ruling"). There was no appeal of the decision to deny the Applicant admission to bail. The present application for admission to bail is now anew before the Court for its consideration and determination.

4. The Applicant has moved the Court on the present application for admission to bail by way of a Summons filed on Monday 1 July 2024. The Summons was supported by an Affidavit-In-Support sworn by the Applicant himself and filed on the same date.

5. The Respondent opposed the present application by way of an Affidavit-In-Response sworn by Ashton Williams, Counsel and Attorney-at-Law attached to the Respondent's Office, filed on Wednesday 3 July 2024.

6. The Court has reviewed and considered the respective Affidavits and has heard the submissions made by Counsel for the Applicant and Respondent.

THE APPLICANT'S AFFIDAVIT EVIDENCE

7. The Applicant, in his Affidavit evidence stated principally, that –

   i. I am the Applicant herein and before I was incarcerated I was employed at Dolphin Encounters;
   ii. I am a citizen of The Bahamas, having been born on 31 January 2003. I am twenty-one (21) years of age and I have no previous convictions;
   iii. around February 2024, I was arraigned before the Magistrate Court for the offence stated in the charge sheet attached. The issue of bail did not arise in that court because of the nature of the offence. A copy of the charge sheet is herein attached and marked as Exhibit **"B.M. – 1"**;
   iv. in February 2024, I applied for bail before the Honourable Madam Justice Guillimina Archer-Minns and I was denied bail. Circumstances have changed since my last bail application, which includes that since my bail application was denied, I appeared in the Magistrate Court on at least three dates (once in March and 3 June 2024) for the presentation of my Voluntary Bill of Indictment (VBI) but it has not been ready. The new date is set for July 2024 but I am uncertain that it will be ready and I am uncertain as to when I will be arraigned in the Supreme Court and given a trial date;
   v. the food at the prison makes me very sick and I have had to receive medical treatment. My family has to bring food to the prison for me which is hard for them;
   vi. I was remanded at The Bahamas Department of Correctional Services;
   vii. I am innocent of the charges levied against me. The witness claims he was shot by someone riding on a bike. I never shot anyone and I was not found in possession of a firearm. The incident occurred in circumstances that were very tenuous to identify me;
   viii. I am humbly and respectfully applying to the Honourable Court to review my present status of confinement and thereby grant me bail;
   ix. I swear this Affidavit in support of my application for bail;
   x. if granted bail, I shall abide by any and all conditions imposed. I will not abscond, interfere with any prosecution witnesses, nor commit any offences while on bail. I shall also appear before the Court for the hearing of my trial and any adjourned dates; and

xi. I make this Affidavit from information presented to me and my knowledge of this procedure and to the best of my information, knowledge, and belief the contents are true and correct.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

8. The Affidavit of Ashton Williams stated principally, that –

i. I am an Attorney at the Office of the Director of Public Prosecutions, and I am duly authorized to make this Affidavit, on behalf of the Respondent, from information received by me in my capacity aforesaid;

ii. I make no admissions concerning the Applicant's application, save as hereinafter mentioned;

iii. the Applicant, Bardon aka Brandon Major, (Date of Birth: 31 July 2002) stands charged with one (1) count of Murder contrary to section 291(1)(b) of the Penal Code, Ch. 84. There is now produced and shown to me marked as **"Exhibit AW-1"** a copy of the charge sheet reference to same;

iv. the Respondent objects to the application for the grant of bail for the following reasons, that –

a. the evidence is cogent and admissible. Witness Daisha Newbold describes how a domestic dispute between her and the Applicant's cousin, led to the Applicant in her presence stabbing her nineteen-year-old male friend. **There is now produced and shown to me marked as "Exhibit AW-2" a copy of the statement of Daisha Newbold dated 27 January 2024**;

b. Newbold identified the Applicant as the male observed stabbing the deceased in a photo gallery. **There is now produced and shown to me marked as "Exhibit AW-3" a copy of the statement of Daisha Newbold dated 27 January 2024**;

c. the Applicant was identified by an anonymous witness whose version of the events corroborates Ms. Daisha Newbold's. **There is now produced and shown to me marked as "Exhibit AW-4" a copy of the statement of the Anonymous Witness dated 27 January 2024**;

d. the anonymous witness identified the Applicant as the male observed stabbing the deceased in a photo gallery. **There is now produced and shown to me marked as "Exhibit AW-5" a copy of the statement of the Anonymous Witness dated 27 January 2024**;

e. D'andre Cadet confirms that the Applicant was the male the witnesses identified. **There is now produced and shown to me marked as "Exhibit AW-6" a copy of the statement of the report of D/Sgt 3912 D'andre Cadet dated 28 January 2024**;

f. in a statement given by the Applicant he recounts that on the night in question, he received a phone call threat advising him that *"niggas looking for me"* and another call saying that they *"calling my name saying I jick the bei"*. **There is now produced and shown to me marked as "Exhibit AW-7" a copy of the statement of the Applicant dated 27 January 2024**;

g. the Applicant should be kept in custody for his own safety and protection. If the Applicant is released on bail, he will very likely

become the victim of a retaliatory attack, particularly, having regard to previous threats received;

h. the Applicant should be kept in custody for the safety of the public, particularly, as he was the aggressor in this situation that claimed the life of a nineteen-year-old young male who was not even a party to the altercation;

i. there is no change of circumstances and the Respondent relies on the ruling of the Honourable Court dated 20 March 2024. **There is now produced and shown to me marked as "Exhibit AW-8" a copy of the ruling dated 20 March 2024**;

j. the Applicant's Voluntary Bill of Indictment is scheduled to be served on 14 July 2024. He is scheduled to be arraigned on 2 August 2024;

k. even with the adjournments of the Voluntary Bill of Indictment presentation there still has not been any unreasonable delay and the Applicant can still have his trial heard within a reasonable time;

l. the Applicant is put to strict proof that he has had to receive medical treatment as a result of prison food;

m. the entirety of paragraph seven (7) is put to strict proof there is no indication of a shooting. The allegation is that the Applicant stabbed young Sanchez Gittens;

n. there is nothing peculiar about this Applicants situation which suggests that his continued detention is unjustified;

o. there are no conditions that will prevent the Applicant from becoming a victim of a retaliatory attack;

p. there are no conditions that can be imposed that can prevent the Applicant from interfering with the known Prosecution witness;

v. in the circumstances, the Respondent requests that the Honourable Court exercise its discretion and not admit the Applicant to bail; and

vi. the contents of this Affidavit are true to the best of my knowledge, information, and belief.

ISSUE

9. The proper and due disposal of the present application requires the Court to consider and determine one occurring issue, namely, whether the Applicant is a fit and proper candidate for admission to bail.

LAW AND DISCUSSION

10. Bail is undergirded by the fundamental constitutional rights and freedoms to the presumption of innocence and personal liberty save for where authority prescribed by law permits such deprivation: **see Articles 20(2)(a) and 19 (1) and (3) of the Constitution of the Commonwealth of The Bahamas**.

11. The Applicant stands charged with Murder. Murder is an offence listed under **Part C of the First Schedule of the Bail Act, Ch 103 (as amended)**. As a consequence, **sections 4(2)(2A) and (2B) of the Bail Act, Ch 103 (as amended)** have been engaged. These provisions provide as follows –

> **"4(2) Notwithstanding any other provisions of the 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; or

(b)...

(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.

(2A) For the purposes of subsection (2) (a) ...

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to have a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.

(2B) For the purposes 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, and antecedents of the person charged, the need to protect the safety of the public order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary consideration.

Part A (First Schedule)

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) ...

(iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other witness ;

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant..."

[Emphasis added mine]

12. The Applicant previously applied for and was denied admission to bail. Thus, the present application is the Applicant's successive application for admission to bail. Currently, there is nothing in the Bail Act, Ch 103 (as amended), or any other law that purports to limit or preclude an applicant who was previously denied bail from making successive applications for bail. However, a successive application for admission to bail ought only to be made when there has been some significant change in circumstances or material fact not previously considered. To do so otherwise would amount to a mockery of the system.

13. With respect to the law on successive applications for admission to bail, judicial deference is given to the dicta propounded by Isaacs JA (as he then was) in

Mackey and Another v Regina [2016] 1 BHS J No.140 wherein it was stated at paragraphs 57 and 60 as follows –

> "57. Articles 19 and 20 provide that a person may only be detained if the law authorizes it, and he is presumed innocent unless he pleads guilty or until it is determined otherwise after a trial. It is clear that no policy created by a magistrate or judge can override a person's undoubted ability to apply for bail as often as he wishes or his right to have that application fully considered…
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> 60. I do acknowledge that persons who have made unsuccessful applications for bail before a judge now have the right to challenge the denial of bail on appeal to this Court pursuant to section 8A(1) of the Bail Act (as amended). However, the availability of the avenue of appeal does not prevent an applicant from making further applications to a Justice of the Supreme Court if he deems such further applications more efficacious than an appeal. Each successive court must consider each application on its merits; having regard to and giving due deference to findings of fact made by himself or another judge in a previous application brought by the applicant."

14. Crane-Scott JA in **Mackey (supra)** at paragraphs 64 – 68 and 70 – 72 further expounded as follows –

> "64. Undoubtedly, the need to alleviate congestion in the courts and the desire of courts to address the problem having to hear successive bail applications from the same applicants based on the same facts and considerations previously considered and rejected, are issues which the Bahamas Supreme Court has also grappled with for decades. See for example the views expressed by Georges C.J. in 1988 in Paul Frazier v. D. Sgt. Dames (unreported) Supreme Court of The Bahamas No. 80 of 1988 and by Burton Hall, J in 1992 in Patton and Stubbs (unreported) Supreme Court of The Bahamas Nos. 149 and 150 of 1992 - two Supreme Court decisions to which Isaacs JA drew attention.
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> 65. In my view, both these appeals raise at the level of this Court an important point of principle for our consideration, namely, the extent to which (if at all) the English common law principle that on a renewed application for bail, a court should not hear arguments as to fact or law which it has previously heard unless there has been such a material change in circumstances as might have affected the earlier decision, applies to courts in The Bahamas given the constraints of Articles 19(1)(d) and 20(2) of our written Constitution.
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> 66. These two Articles of the Bahamas Constitution provide that a person may be deprived of his personal liberty only on the authority of law and further, is to be presumed innocent until his guilt is established following a trial. Notwithstanding sections 3 and 4 of the Bail Act, Ch. 103 (as amended), there would appear to be nothing in the Bail Act, Ch. 103 or any other law which can be taken to have limited or which precludes a person who has been deprived of his liberty, from making successive and repeated applications under the Act to secure his release on bail.
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> 67. In this regard and (given our Constitutional arrangements), I am of the view that no policy created by a magistrate or judge (nor, I would add, any policy adopted by English courts such as described in Nottingham Justices or Slough Justices) can lawfully restrict a person's statutory right as authorized by the Constitution and the Bail Act, to apply to the courts for bail as often as he or she wishes or to have that application considered on its merits.

68. Put differently, it is my view that each judge has the duty to consider afresh each application for bail on its merits and considerations (advocated in the English authorities) such as whether there has been a "material change in circumstances" since the earlier application have no place in our current bail regime...

70. Nonetheless, I have reviewed the Judge's written Ruling in relation to each appeal, which she carefully cross-referenced to her earlier Rulings in which she clearly identified the factors which she had already considered in each of the previous applications. I am satisfied from the reasons which she gave in respect of each appellant, that in accordance with her obligations under the Constitution and the Bail Act, she, dutifully considered each subsequent application on its merits and took into account (as required) the relevant statutory factors before she ultimately dismissed each application. In short, the judge's decision in each case was a reasonable exercise of her discretion and cannot be impugned.

71. It is undeniable that a court which is called upon to consider a second or repeat application for bail, may have before it material which was previously considered in relation to an earlier application. It may also have the benefit of an earlier ruling of its own or even a ruling of another court giving reasons why bail was denied. The earlier material or rulings (if available) will undoubtedly assist in assessing whether material relevant to the question of bail has been placed before it on the subsequent application.

72. It seems to me that once the court on the subsequent application demonstrates (as Watkins J did in these matters) that it has considered the fresh application on its merits, it is clearly fulfilling its Constitutional and statutory mandate and its decision to deny bail will not likely be impugned. However, any approach or language which suggests that the subsequent application has not been considered on its merits is, in my view, plainly wrong."

15. It is now trite law that the burden rests on the Respondent, having regard to the Applicant's fundamental rights and freedoms, to satisfy the Court that the Applicant should not be admitted to bail. This burden is discharged only by sufficient and cogent evidence. Naked, bare, or ritualistic affidavit assertions without more would not suffice and cannot stand alone: **see Johnathan Ambrister v The Attorney General SCCrApp No. 145 of 2011 and Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019**.

16. Equally so, where the Applicant seeks to make advancements in favour of him being admitted to bail, it is incumbent on the Applicant to support such advancements with sufficient and cogent evidence. Naked or bare advancements by the Applicant without more are as equally meaningless and cannot stand alone. Fairness and justice require so. This is irrespective of the established legal stance that the burden does not rest on the Applicant to satisfy the Court as to why he should be admitted to bail.

Tried within a reasonable time

17. A principal advancement of the Applicant, albeit subtly, is that he is unlikely to be tried within the reasonable timeframe established in law. A perusal of the Applicant's affidavit evidence would reveal such advancement. The Applicant, through his affidavit evidence, also advanced that he appeared before the Magistrate Court on at least three occasions for the service of his Voluntary Bill

of Indictment ("VBI") but it was not ready. The Applicant further contended that he is next to appear in the Magistrate Court sometime in July 2024 for the service of the VBI. However, he is uncertain that the VBI will be ready. Moreover, he is uncertain as to when he will be arraigned in the Supreme Court and given a trial date.

18. On the other hand, the Respondent, through the affidavit evidence of Ashton Williams, averred that the Applicant's VBI is scheduled to be served on 14 July 2024 and he is scheduled to be arraigned in the Supreme Court on 2 August 2024. This notwithstanding even with the adjournments regarding the service of the Applicant's VBI, there has been no unreasonable delay and the Applicant can still have his trial scheduled within a reasonable time.

19. The three-year timeframe fixed by **section 4(2A)(a) of the Bail Act, Ch 103 (as amended)** and deemed a reasonable time is to be used as a guide and not a hard-fast rule. What amounts to a reasonable time varies on a case-by-case basis and requires an individual assessment. Thus, depending on the circumstances of each case, a reasonable time may be more, or indeed less than three years: **see Richard Hepburn v The Attorney General SCCrApp & CAIS No. 176 of 2014**.

20. The Court, having regard to the Applicant not yet being served with his VBI, not being formally arraigned before the Supreme Court, and/or not having his trial date fixed, is nevertheless satisfied that the issue of whether the Applicant is likely to be tried within a reasonable time is premature. In any event, the Court, having judicial notice of the prevailing circumstances surrounding the backlog of trials in the Supreme Court and trial dates being set some years ahead (even with the addition of additional criminal courts), is satisfied, at this time, that the Applicant can be tried within a reasonable time.

Other bail considerations

21. The Court is cognizant that in applications for admission to bail, regard should be given to the guiding factors outlined in **Part A (First Schedule) of the Bail Act, Ch. 103 (as amended)** and/or established judicial authorities. The guiding factors relevant to the present bail application are as follows –

    i. seriousness of the offence and the likelihood of absconding;
    ii. strength and cogency of the evidence;
    iii. possible interference with witnesses;
    iv. character and antecedents; and
    v. bail conditions that may be imposed, if any, if the Applicant is to be admitted to bail.

22. Undoubtedly, the Court, in the previous ruling, gave regard to the above-mentioned guiding factors. Paragraph 13 stated therein as follows –

"13. The Court gave consideration to the Constitution, the relevant provisions of the Bail Act, the submissions of Counsel for the Applicant and Respondent, the relevant authorities and the following factors –

i. the strength of the evidence against the Applicant;
ii. the seriousness of the charge;
iii. the Applicant has no pending/previous convictions;
iv. the competing interests of the Applicant and his presumption of innocence and right to liberty with the rights of the public, its safety and security; and
v. bail conditions which could be imposed to minimize the risk involved with admitting the Applicant to bail."

23. The previous ruling was delivered on Wednesday 20 March 2024, some three months and fourteen days from the date of the present application. The Court is satisfied that no new material has been presented that is relevant to the question of bail to warrant the Court to resile from the previous ruling denying the Applicant admission to bail. Therefore, the Court gives full judicial deference to the previous ruling.

24. The naked and/or bare advancements made by the Applicant, through his affidavit evidence, that there has been a change in circumstances warranting him being admitted to bail are meritless. The Applicant produced no medical evidence to show that the food at The Bahamas Department of Correctional Services makes him very ill resulting in him having to seek medical attention on at least one occasion. Nor has the Applicant produced evidence to show that his family has been faced with having to retrieve food for him and transport the food to The Bahamas Department of Correctional Services causing them financial hardship.

25. Even if the purported change in circumstances were able to be substantiated with sufficient and cogent evidence, they are not significant enough to warrant the Applicant being admitted to bail. The Court is empowered to make an order to resolve issues of such a kind without having to admit the Applicant to bail. If that was not the case, the courts would be inundated with applications for admission to bail by persons charged with criminal offences, albeit serious criminal offences such as Murder, who make such advancements and have an expectation and/or entitlement to be admitted to bail.

26. The Respondent, through the affidavit evidence of Ashton Williams, not only presents a sufficient case to warrant the Applicant being denied bail but buttresses the reasoning of the Court in the previous ruling. The present application goes far beyond whether the Applicant will appear for his trial and/or proceedings preliminary thereto. The foundation of the present application rests on whether there is an increased likelihood given the penalty associated with the offence if convicted, the Applicant will interfere with witnesses or be a threat to public safety and public order, and the safety of the Applicant himself.

27. Notwithstanding that the Applicant is presumed to be innocent and cloaked with good character, his alleged conduct, having regard to the evidence presented herein and the circumstances of this case, demonstrates a willful and total disregard for the sanctity of human life and law and order. The alleged conduct of the Applicant is more telling given that he was only in the position of a bystander and had no involvement in the initial dispute between the prosecution's named witness and another female, which had already quelled. Unprovoked, the Applicant immersed himself in the ordeal, which resulted in the senseless loss of a human life.

28. The fundamental rights and freedoms of the Applicant as to his presumption of innocence and personal liberty are outweighed by the Court's overarching mandate to protect the society at large from the tentacles of the criminal element that continues to plague the Bahamian society. The Court takes judicial notice of the uptick in retaliatory attacks upon persons who have been charged with serious criminal offences such as Murder and subsequently admitted to bail. The Court's concern about the Applicant being a victim of a retaliatory attack is heightened as the Applicant, through his very own statement made to the police and exhibited to the affidavit evidence of Ashton Williams, admitted to a threat having already been made on his life.

29. In these circumstances and all relevant factors having been considered, there are no conditions that may be imposed to effectively assuage the Court's concerns associated with the Applicant being admitted to bail.

CONCLUSION

30. The Court having considered, *inter alia,* the present application on its merits, submissions of Counsel for the Applicant and Respondent, and the relevant law and having given deference to its findings in the previous ruling is satisfied that the Applicant is not a fit and proper candidate for admission to bail at this time. The present application for admission to bail is hereby denied. The Applicant is to continue his remand at The Bahamas Department of Correctional Services until his trial and/or any proceedings preliminary thereto. Should there be any significant change in circumstances in the interim, the Applicant is at liberty to reapply for admission to bail.

Dated this 31st day of July 2024

Guillimina Archer-Minns
Justice of the Supreme Court