COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2024/CRI/bail/00156

BETWEEN

JAICO CHOUTE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **Ms. Miranda Adderley for the Applicant**
Ms. Kara White, Ms. Audrey Bonamy for the Respondent

Hearing Date: **14th August A.D. 2024**

Ruling Date: 26th August A.D. 2024

RULING ON BAIL

1. The Applicant seeks to be released on bail after having been arraigned in the Magistrate's Court in April 2024 on charges of Murder, Armed Robbery, and Attempted Armed Robbery. He states that he is twenty five years old, with no related previous convictions, and was employed at a laundromat prior to his incarceration. The Applicant avers that he is a fit and proper candidate for bail, as he is not a threat to society, has strong ties to the community, and will abide by all conditions if granted bail.

2. In seeking to oppose the application, the Respondent filed the affidavit of Cashena Thompson, Counsel in the Office of the Director of Public Prosecutions, to which is exhibited a number of reports. From two unsigned Records of Interview which are exhibited to that affidavit it can be gleaned that the Applicant admitted his involvement in this matter to the police, claiming that a co-accused actually fired the fatal shots during an armed robbery of patrons at a bar in western New Providence.

3. On behalf of the Applicant it is submitted that he is not a flight risk, as he was gainfully employed, with strong ties to the community. Counsel suggested that there is no evidence, as there must be, that the Applicant is a flight risk, or that he will interfere with witnesses. While he has prior convictions, it was suggested that these were of a minor nature, and that the Applicant poses no threat to society. Counsel cited the decision of the Court of Appeal in Dennis Mather v DPP SCCrApp. No. 96 of 2020 as authority for the proposition that bail should only be denied where the Crown can identify substantial grounds for believing that the Applicant would not appear for trial or interfere with witnesses. Counsel further relied on the constitutional presumption of innocence and the right to liberty, and urged the court to grant bail to the Applicant on reasonable conditions.

4. In response, counsel for the Respondent notes that these are serious charges for which the penalty is severe, raising the likelihood of absconding. Counsel further suggests that the Applicant should be kept in custody for his own safety, as he allegedly named his accomplice in his interview with the police, and might therefore be in danger. Counsel further noted the previous convictions of the Applicant for Threats of Death and Possession of Dangerous Drugs, and suggest that the Applicant is escalating in the nature of criminality in which he is involved. It is therefore submitted that the Applicant is not a fit and proper candidate for bail.

LAW AND ANALYSIS

5. The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

"5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

"...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and

to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

6. At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

7. The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

> ***"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. Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to

drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(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".

9. The relevant provisions of the Bail Act Chapter 103 read as follows:

"4. (2) Notwithstanding any other provision 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)...
(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 be 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 considerations."

The factors referred to in Part A are:

"PART A
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) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
(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.";

10. In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

11. In considering those factors, I note that the Applicant is charged with serious offences, involving the use of a firearm, and resulting in the death of another. With respect to the seriousness of the offences, I am mindful that this is not a free-standing ground for the

refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

12. In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"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 in 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".***

13. I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

14. While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with the extremely serious offences of murder, armed robbery, and attempted armed robbery which, in considering the possible penalty which might follow convictions, raises the issue of the likelihood of not appearing for trial.

15. That likelihood must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"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."

16. In considering the cogency of the evidence, I note the following statement from the Court of Appeal in ***Stephon Davis v DPP SCCrApp. No. 20 of 2023***:
In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74:
"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

17. In considering what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that there is prima facie evidence linking the Applicant to the offences of armed robbery, attempted armed robbery, and murder.

18. While I am not conducting a trial of the matter, I must bear in mind that the case against the Applicant rests entirely on alleged admissions made to the police, which will likely be subject to challenge at trial. While the evidence does rise to the level of a prima facie case, in my view the case is not so strong as to create an incentive to flee. I also bear in mind the previous convictions of the Applicant for Threats of Death and Possession of Dangerous Drugs, for which he was given probation. In my view those previous convictions do not evidence a level of criminality from which the public must be protected.

CONCLUSION

19. In considering the question of bail, the court is required to conduct a balancing exercise between the Applicant's right to liberty, and the need to protect the public. A further concern in this case is section 4(2B) of the Bail Act as amended, which states that a primary consideration for the court in considering the grant of bail is the question of whether an applicant should be kept in custody for his own safety. In considering this question, I note that the Applicant is alleged to have made admissions on two occasions. On the first occasion, he named one person as his accomplice, while on the second occasion he named a different person, stating that he had lied about the identity of his

accomplice during the first interview because he was scared, because the person's people were powerful. In these circumstances, and having regard to the notorious fact that a large number of persons have been killed while on bail, it is my view that the Applicant should be kept in custody for his own safety.

20. In all the circumstances of this case, bail is refused.

Dated this 26th day of August A.D., 2024

Neil Brathwaite
Justice