

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

2019/CRI/BAL/00589

Criminal Division

Between

ALEXANDER SANDS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns
Appearances: Mr. Alexander Sands, Pro se
Ms. Jacqueline Burrows and Ms. Davina Pinder for the
Respondent
Hearing Dates: 29 and 30 November 2023

RULING

**Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended)
Application for bail – Murder contrary to section 291(1)(b) of the Penal Code,
Chapter 84 – Whether the applicant is a fit and proper candidate for the granting
of bail —Application for bail denied**

INTRODUCTION

1. The Applicant is a 23-year-old Bahamian male charged with murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 of the Statute Laws of the Commonwealth of The Bahamas who was remanded to The Bahamas Department of Corrections. It is alleged that the Applicant shot Lavardo Paul ("the deceased") on 10 July 2022, who succumbed to those injuries on 17 December 2022.
2. The Applicant made this application by way of a Summons filed on 5 October 2023. The application was supported by an Affidavit sworn by the Applicant also filed on 5 October 2023.
3. The Respondent opposed the application by way of an Affidavit-In-Response sworn by Ms. Vashti Bridgewater, Assistant Counsel employed with the Respondent's Office, filed on 7 November 2023.
4. The Court has read the Affidavits of the Applicant and Respondent and has heard their submissions.

5. The Applicant applied for bail on the following grounds, that:-
- i. he is a citizen of the Commonwealth of The Bahamas;
 - ii. he pleaded not guilty and will be defending the charge at trial;
 - iii. he does have a previous conviction for Housebreaking before the Court in the Commonwealth of The Bahamas;
 - iv. he does not have any pending matter(s) before the Court(s) in the Commonwealth of The Bahamas;
 - v. prior to his incarceration, he was self-employed as a Carpenter, New Providence, The Bahamas;
 - vi. should the Court admit him to bail, he will have accommodations;
 - vii. if granted bail, he will comply with all rules and regulations set out by the Court;
 - viii. he is a fit and proper candidate for bail;
 - ix. he respectfully requests that the Court admit him to bail pending his further Court appearances and for the following other reasons, that:-
 - (a) he will be disadvantaged in his ability to adequately prepare his defence if further remanded; and
 - (b) he will be disadvantaged in his ability to support his infant daughter, himself, and his family.
6. The Respondent opposed the application on the following grounds, that:-
- i. the evidence against the Applicant is cogent and compelling;
 - ii. the offence is profoundly a serious one;
 - iii. given the nature and circumstances of the offence, the Applicant is likely to 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;
 - vi. the Applicant is not a fit and proper candidate for bail at this time; and
 - vii. there has been no unreasonable delay regarding the matter.

ISSUE

7. The issue that the Court must decide is: whether the Applicant is a fit and proper candidate for bail?

LAW AND DISCUSSION

8. Bail refers to the right of a person charged with a criminal offence to be released from custody subject to his undertaking to appear for his trial at the requisite time and comply with any condition that the Court may think fit and just to impose.
9. The grant or refusal of bail is a judicial function exercised by the Court. It is the Court that is seized with the ultimate discretion of deciding whether a person charged with a criminal offence ought to be granted or refused bail. The Bail Act (as amended) provides general guidelines that the Court may consider when deciding whether to grant or refuse bail: **The Attorney General v Bradley Ferguson, Kermit Evans, Stephen Stubbs and Kenton Deon Knowles Appeals Nos. 57, 106, 108, 116 of 2008 (A.G. v Bradley Ferguson)**.
10. In determining the appropriate decision in this application, the Court reviewed the various provisions of the Constitution of The Bahamas, Bail Act (as amended), and recent authorities.

11. **Article 20 of the Constitution** affords every person charged with a criminal offence the presumption of innocence until he or she is found guilty or pleads to his or her guilt. It provides –

“20. (2) Every person who is charged with a criminal offence –
(a) shall be presumed to be innocent until he is proved or has plead guilty.”

12. **Article 19(1) and (3) of the Constitution** affords every person the right to personal liberty save for certain circumstances in which his or her liberty may be lawfully deprived. These provisions read as follows –

“19. (1) No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases –

(a) ...

(b) ...

(c) ...

(d) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;

(e) ...

(f) ...

(g) ...

...

(3) Any person who is arrested or detained in such case as 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 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 as are reasonably necessary to ensure that he appears at a later date for trial or proceedings preliminary to trial. “

(Emphasis added)

13. With respect to the exercise of the Court's discretion to grant or refuse bail for an accused person in criminal proceedings who is charged with a Part C offence, for which murder is included, **section 4 (2) (2A) and (2B) of the Bail Act, Chapter 103 (as amended)** was considered. It provides:-

“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.”

(Emphasis added)

14. Part A of the First Schedule (insofar as relevant to this application) provides:-

“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) ...
 - (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 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...”

15. The Court is cognizant that the primary objective of detaining an accused person is to ensure his attendance at trial. If the accused person’s attendance at trial can be reasonably ensured otherwise than by his detention, he should be permitted to bail. Bail is not to be withheld as a punishment.

16. The Court of Appeal in **Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019** provided guidance on the operation of the Bail Act (as amended) having regard to its provisions and the principles gleaned therefrom in recent authorities. Evans JA at paragraph 11 stated as follows:-

“11. When an accused person makes an application for bail in relation to a Part C Offence the Court must consider the matters set out in section 4(2) (a) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time he can be admitted to bail (as per (a)). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c) i.e., “all the relevant factors”, including those in Part A of the First Schedule and the “primary considerations” in section 4 (2B). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail.

17. In bail applications, the onus rests on the Respondent, having regard to the Applicant’s rights to the presumption of innocence and liberty as afforded by the Constitution, to satisfy the Court that he ought not to be granted bail. The Respondent discharges this onus by the production of evidence. Naked statements or bare assertions would not suffice. The law requires nothing more and nothing less: **Johnathan Ambrister v The Attorney General SCCrApp No.145 of 2011**

18. In **Jeremiah Andrews (supra)**, Evans JA at paragraph 26 opined as follows –

“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 section 4(2B) exists. 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.”

Seriousness of the offence and likelihood of absconding

19. Historically, the Courts have firmly held that the seriousness of the offence, though an important consideration, is not a free-standing ground for the refusal of a bail application. The seriousness of the offence factor is coupled with several other factors, namely, the strength of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding before trial. In this regard, reliance is placed on the dicta of Evans JA in **Jeremiah Andrews (supra)**. His Lordship at paragraph 30 opined –

“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 consideration of other relevant factors disclosed in evidence. E.g. the applicant's resources, family connections, employment status, good character and absence of antecedents.”

20. The Applicant is charged with murder. Murder is a serious and vicious form of brutality plaguing small island states such as The Bahamas and the wider Caribbean region. In recent times, the Court has become the subject of great criticism regarding the granting of bail to persons accused of serious offences such as murder. While the Court is not immune from criticism, it cannot be blamed for the level of violence in society. Crime is a perplexing phenomenon that requires the active participation of all stakeholders to effectively be resolved. Persons find themselves at the doorsteps of the Court only after the crime has been committed. The Court will not succumb to such criticism and will remain steadfast in its role of ensuring the administration of justice, upholding the rule of law, and balancing the interests of all parties – for the victim, the accused, and society: **Richard Hepburn v The Attorney General SCCrApp No. 276 of 2014**

21. In the present application, no evidence has been adduced by the Respondent that the Applicant is a flight risk. In fact, the Applicant, in his Affidavit, prayed that the Court admit him to bail pending his further court appearances. However, it may be reasonably inferred that given the seriousness of the offence for which the Applicant is charged, and the penalty likely to be imposed upon conviction, the Applicant may be tempted to abscond before trial. If the Applicant is convicted, he may likely receive a lengthy sentence which may be an incentive not to attend to his trial.

22. Lord Bingham of Cornhill in the Board decision of **Hurnam v The State (Mauritius) [2005] UKPC 49** at paragraph 15 stated –

"15. It is obvious that a person charged with a serious offence, facing a severe 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 drug 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."

23. The Court is not satisfied that the inference may be weakened by the Applicant's bare or naked assertions that his continued incarceration will disadvantage his ability to adequately prepare his defence or ability to support his infant daughter, himself, or assist his family. In fact, the inference may also be strengthened by other factors, which hereafter will be considered.

Strength and cogency of the evidence

24. The Applicant maintains his innocence, denies his involvement in the deceased's death, and indicates his willingness to defend the charge at trial. On the other hand, the Respondent exhibited to its affidavit a statement from the deceased, taken five days before his death, outlining the events on the day he was shot, *inter alia*, that it was the Applicant who shot him and how he knew the Applicant. The deceased subsequently identified the Applicant as his alleged shooter via a photo gallery. The Applicant has challenged the timing of the statement and his identification by the deceased. However, the Court is mindful of its role in bail applications. In this regard, the Court relies on the dicta of Allen P, at paragraph 34, in the Court of Appeal decision of **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016**, which states as follows –

"34. 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."

25. The Court finds that the evidence adduced as per the statement of the deceased exhibited to the Respondent's affidavit is strong and cogent and capable of raising a reasonable suspicion of the Applicant's involvement in the offence.

Character and antecedent

26. The Respondent advanced that it verily believes that given the nature and circumstances of the offence, the Applicant is likely to commit further offences should he be granted bail. The Respondent further submitted that it verily believes that given the nature and circumstances of the evidence, there is a need to protect the safety of the witnesses, the public, and public order. The Respondent attached the Applicant's Criminal Records Antecedent Form and the deceased's Police Hospital Medical Form, respectively, to support such assertions. With respect to there being a need to protect the safety of the witnesses, the public, and public order, the Court is not certain how the attachment of the deceased's Police Hospital Medical Form supports this

assertion (unless the Form is to show the extent of the injuries sustained by the deceased and the seriousness of the offence). Nonetheless, the Court finds that the Applicant's Criminal Records Antecedent Form better supports this assertion.

27. With reference to the Applicant's character and antecedent, the Court relies on the Court of Appeal decision of **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp No. 29 of 2020** wherein that Court at paragraphs 19-21 stated as follows –

“19. As to the antecedents, it is not required to show that the appellant lives a habitual life of crime before taking his antecedent into account.

20. In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.

21. In our view, it was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail.”

28. The Court further relies on the Court of Appeal decision of **Tyreke Mallory v The Director of Public Prosecutions SCCrApp No. 142 of 2021**. In that case, the appellant had multiple previous convictions and was on bail for armed robbery when he was charged with the offence of murder. Evans JA at paragraphs 24-25 stated as follows –

“24. In these circumstances this issue goes beyond whether the appellant will appear for his trial but turns on whether he is a threat to society. The learned judge's decision when read as a whole is based on his view articulated in paragraph 33 as follows:

“33. Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored.”

25. In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, 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 pending trial.”

29. The Applicant admitted to having a previous conviction of Housebreaking. In fact, the Applicant has two (2) prior convictions. The Applicant was convicted of Housebreaking and sentenced to one year in prison on each count and Possession of Dangerous Drugs with Intent to Supply and fined \$2,000.00 or six months in prison.

30. The Applicant indicated that he does not have any pending matter(s) before the Court(s) in the Commonwealth of The Bahamas. However, from a cursory glance of the Applicant's Criminal Records Antecedent Form attached to the Respondent's affidavit, the Applicant has a pending charge of Possession of Dangerous Drugs with Intent to Supply (03/09/19 – 1-19-027892) before Magistrate Court No. 8. Further, the Applicant appeared before this Court and was granted bail in relation to two additional charges, namely, Possession of a Firearm with Intent to Put another in Fear and Possession of an Unlicensed Firearm. There is no record that the Applicant was convicted of either of the

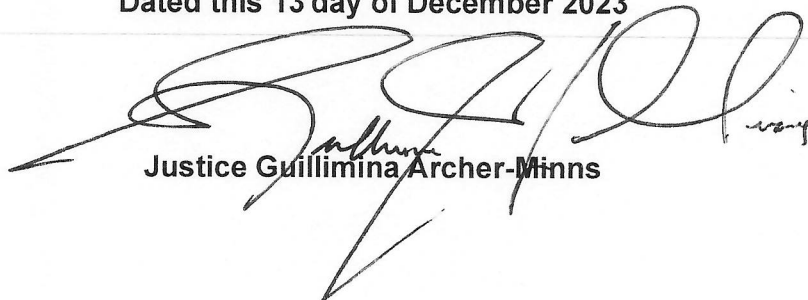
pending charges or that the pending charges were disposed of. The status of these charges is unknown.

31. The Court is not certain whether the non-disclosure of such pending charges was an inadvertent slip on the Applicant's part. Nonetheless, it can reasonably be inferred from the Applicant's previous convictions and pending charges, the latest charge of murder being while he was already on bail, that the Applicant is not of good character, *inter alia*, the Applicant is likely to commit further offences should he be granted bail and that there is a need to protect the safety of the witnesses, the public and public order as he is perceived to be a threat.
32. Furthermore, it was advanced before the Court that the alleged offence in relation to this application has some linkage to gang activity. Though not verified, the Court is of the view that if this is indeed the case, there is a greater need to protect the safety of witnesses, the public, public order, and to an extent the Applicant himself. The Court takes judicial notice of the retaliatory nature of offences linked to gang activity and the adverse effect such offences have on the safety of witnesses, the public, and public order.

CONCLUSION

33. The Court is cognizant that the imposition of conditions may address the Court's concerns of whether or not to grant the Applicant bail. The Applicant has prayed that should he be granted bail; he will comply with all rules and regulations set out by the Court. The conditions usually employed by the Court include reporting, electronic monitoring device, curfew, etc.
34. The Court is satisfied that while the latter conditions may mitigate the Court's concerns about securing the Applicant's attendance at trial; however, given that the Court is of the view that the Applicant is likely to commit further offences should he be granted bail and is a threat to the safety of the witnesses, the public, public order and to an extent the Applicant himself, the conditions would not be effective in addressing these concerns.
35. In the circumstances and having regard to the foregoing reasons, the Court finds that the Applicant is not a fit and proper candidate for bail at the present time. Therefore, the Applicant's application for bail is denied. Should the Applicant's circumstances change in the interim, he is at liberty to reapply to the Court for bail.

Dated this 13 day of December 2023



Justice Guillimina Archer-Minns