

IN THE SUPREME COURT

Criminal Division

Between

ALFRED COAKLEY

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns
Appearances: Ms. Cassie Bethell with Mr. Levan Johnson for the Applicant
Ms. Jacqueline Burrows for the Respondent
Hearing Date: 24 January 2024

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 (as amended) – Whether the Applicant is a fit and proper candidate for the admission to bail – Application for bail granted – Stringent conditions imposed

INTRODUCTION

1. The Applicant herein is a 22-year-old Bahamian male who stands 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 26 April 2023.
2. The Applicant was arraigned in Court No. 9 on 20 November 2023 before Acting Chief Magistrate Roberto Reckley. The matter was adjourned to 29 February 2024 and the Applicant was remanded to The Bahamas Department of Corrections.
3. This application is made by way of a Summons and supported by an Affidavit sworn by the Applicant both filed on 21 November 2023.

4. The Respondent opposed this application by way of an Affidavit-In-Response sworn by Inspector Monique Turnquest, a Police Officer attached to the Court Liaison Section of the Respondent's Office, filed on 23 January 2024.
5. The Court has read the Affidavits of the Applicant and Respondent and has heard their respective submissions.

THE APPLICANT'S AFFIDAVIT EVIDENCE

6. The Applicant stated, that –
 - i. he was born on 16 July 2001 in the Commonwealth of The Bahamas and is 22 years of age;
 - ii. he plead not guilty and will be defending the charge at trial,
 - iii. he respectfully requests that the Court admit him to bail pending his further court appearances;
 - iv. he does have a previous conviction before the Court for Simple Possession of Dangerous Drugs in the Commonwealth of The Bahamas;
 - v. should the Court admit him to bail, he will have accommodations;
 - vi. prior to his incarceration, he was employed at Gray Cliff Restaurant as a Helper and Delivery Driver in New Providence, The Bahamas;
 - vii. he respectfully requests that the Court admit him to bail for the following other reasons, that –
 - a. he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded; and
 - b. he will be disadvantaged in his ability to support himself and assist his family.
 - viii. if granted bail, he will comply with all rules and regulations set out by the Court; and
 - ix. he is a fit and proper candidate for bail.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

7. The Respondent stated, that –
 - i. the evidence against the Applicant is strong and cogent;
 - ii. the Respondent is opposing bail in the interest of the public, having regard to the fact that the shooting incident occurred in a residential area;
 - iii. the Applicant is not a fit and proper candidate for bail and that this application for bail should be denied.

ISSUE

8. The issue to be considered by the Court is whether the Applicant is a fit and proper person to be admitted to bail?

LAW AND DISCUSSION

9. Bail, when granted by the Court, permits an accused person charged with a criminal offence to be released from custody on his undertaking to appear for his trial and/or any adjourned dates relative thereto at a specified time and to comply with any conditions, if any, that the Court may impose.
10. The grant or refusal of bail is governed by the Constitution, Bail Act (as amended), and judicial authorities. This notwithstanding, the Court, as the superior court of record, has been seized and continues to be seized with the

inherent power to grant bail to persons charged with a criminal offence (even the most serious criminal offences) from time in memoriam. 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.

11. In **Donna Vasyli v The Attorney General SCCrimApp & CAIS No. 82 of 2015**, Isaacs JA, at the headnote, stated –

“... a classical character of a sovereign democratic state is the separation of powers. This doctrine provides each arm of the government with the power and functions it needs to discharge its duties and each branch may not trespass into the realm of another. The grant of bail is a judicial function therefore the power to grant or refuse bail is reserved to judicial officers, to be considered in light of the prevailing circumstances.”

12. In determining this application, the Court reviewed the relevant provisions of the Constitution, Bail Act (as amended), and judicial authorities.

13. **Articles 19 (1) and (3) and 20(2)(a) of the Constitution** are instructive to this application as these provisions relate to the fundamental rights of persons and their remand and/or custody and release on bail pending trial.

“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. “

“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.”

(Emphasis added)

14. The Applicant is charged with Murder. Murder is an offence listed in **Part C of the First Schedule of the Bail Act (as amended)**. Part C offences are offences for which the Court would not routinely grant bail. The Court, in determining this application gives length and breadth to **section 4(2)(2A) and 2(B) of the Bail Act (as amended)**. These provisions provide –

- “4(2) Notwithstanding any other provisions of the 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)

15. **Part A of the First Schedule** (insofar as relevant to this application) outlines factors the Court must consider in bail applications. **Part A of the First Schedule** states –

“In considering whether to grant bail to a defendant, the Court shall have regard to the following factors –

- (a) ...
 - (i) ...
 - (ii) ...
 - (iii) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant...”

16. Bail now more than ever has become a controversial issue in the Bahamian society. The Court, in deciding bail applications, must undoubtedly perform the difficult balancing exercise having to wrestle with two important but competing interests; first, the interest to preserve the fundamental constitutional rights of accused persons and; second, the interest to protect society at large from persons accused of committing criminal offences.

17. In **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 176 of 2014**, Allen P at paragraphs 5, 10 and 11 pronounced –

“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 a crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

...

10. The relevant law on bail is found in articles 19(3), 20(2)(a) and 28 of the Constitution, and in sections 3, and 4 of the Bail Act 1994, as amended (“the Act”). It is immediately apparent from a reading of those provisions that two distinct rights to bail are given, namely, a general right to an unconvicted person to be released on bail unless there is sufficient reason (Part A of the Schedule) not to grant it; and the absolute right of such a person to be released on bail if his constitutional time guarantee is breached or is likely to be breached.
11. The general right to bail clearly requires a judge on such an application to conduct a realistic assessment of the right of the accused to remain a liberty and the public’s interest 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.”

(Emphasis added)

18. The Court is mindful that the primary objective of detaining an accused person is to ensure the ends of justice are not thwarted by his flight to avoid trial or perverted by his interference with witnesses or his proclivity to commit further offences (whether of a similar nature or otherwise) if admitted to bail. Bail is not to be withheld as a punishment. An accused person is not to be kept in custody *ad infinitum* awaiting trial or proceedings preliminary thereto.

19. In **Commissioner of Police v Beneby [1995] BHS J. No. 17**, Hall J (as he then was) at paragraph 18 stated –

“18. ...The system of law which we have inherited and the family of legal systems to which we belong are predicated on the presumption that – unless and until he has been convicted by a competent Court – the citizen is entitled to his freedom and notwithstanding what the popular preference or perception might be, the Courts are vigilant to ensure that the denial of bail pending trial is not used by the prosecuting authorities as a means of pre-trial punishment.”

20. In bail applications, the burden rests on the Respondent, having regard to the Applicant’s fundamental rights to the presumption of innocence and personal liberty afforded by the Constitution, to satisfy the Court that he ought not to be admitted to bail. In order for the Respondent to discharge this burden, evidence must be produced to support their opposition to the admission of bail. Naked or bare assertions are meaningless: **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**.

21. In **Stephon Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2021**, Evans JA at paragraph 26 pronounced –

“26. We are not unaware of the serious nature of the crime for which the applicant has been charged and the prevalence of such offences within this country. We are also aware that this charge has been laid after this Court has previously granted bail to the applicant for a similar offence. However, our Country being founded on the principle of the rule of law we must recognize that every individual charged before the court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity.”

Tried within a reasonable time

22. With respect to this consideration, the Applicant did not advance in his Affidavit that he would not be tried within a reasonable time nor did the Respondent indicate that the Applicant would not be tried within a reasonable time or that his continued detention is unjustified. The Court, having regard to the circumstances and the absence of evidence to the contrary, is satisfied at this time that the Applicant will be tried within a reasonable time.

Seriousness of the offence and likelihood of absconding

23. It is now trite law that the seriousness of the offence, though an important consideration, is not a stand-alone ground for the refusal of bail. If that was the law, many accused persons before the Court would be remanded in custody until trial. Many of the offences before the Court nowadays are serious in nature: **Beneby (supra)**

24. The seriousness of the offence factor is now coupled with additional factors, namely, the strength of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding pending trial. Evans JA in **Jeremiah Andrews (supra)** at paragraph 30 stated –

“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. “

25. Notwithstanding, it has been recognized that in cases involving murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail: **Johnathan Ambrister (supra)**

26. As previously mentioned, the Applicant stands charged for Murder. Murder is one of the most serious offences known to the criminal law. In the current

Bahamian climate, Murders have become extremely prevalent and spiraling ever upwards. Most concerning is the apparent perception that many of the murder victims are accused persons charged with serious offences (such as Murder), who are subsequently admitted to bail.

27. Nevertheless, the refusal of bail cannot be perceived as the solution to crime. A more concerted effort is needed to address crime and get to the root of it. The Court, while not immune from constructive criticism, ought not be the subject of unwarranted condemnation. The Court is sworn to safeguard the fundamental rights of all individuals (even accused persons) and administer justice without fear, favour, or ill will. Crime is a perplexing problem that requires the active participation of all stakeholders to be effectively resolved. Persons find themselves at the doorsteps of the Court only after the crime has been committed. Unwarranted condemnation of the Court will only serve to erode public confidence in the Court which every person in the Bahamian society depends on for the delivery of justice.
28. While Murder is one of the most serious offences, it is not within itself a reason to deny bail given the law as it currently stands. The Court cannot deny bail simply because a person has been charged with Murder (not convicted of Murder) without more convincing reasons to do so. Each case must be determined on its own facts and merits. The Applicant's denial of bail may only be warranted where the safety of potential witnesses, public safety, and public order or the safety of the Applicant himself trumps his fundamental rights of the presumption of innocence and personal liberty. The wheels of justice do not begin to churn at the moment an accused person is brought before the Court for trial but from the point of his arrest.
29. In the present application, no evidence was advanced by the Respondent that the Applicant is a flight risk or would interfere with witnesses. The Applicant, in his Affidavit, requested to be admitted to bail pending his further court appearances. It follows therefore that the Applicant facing a serious charge which he is liable to one of the harshest penalties known to law, if convicted, may have an incentive to interfere with witnesses or abscond.
30. 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.”
31. The Court, having regard to the circumstances, is not satisfied either by the Applicant's assertions that the inference may be weakened by the Applicant's citizenship status, or naked or bare assertions that his continued incarceration

will disadvantage his ability to adequately prepare his defence or ability to support himself and his family.

Strength and cogency of the evidence

32. The Applicant denies his involvement in the offence, maintains his innocence, and indicates a willingness to defend the charge at his trial. The Respondent, by Affidavit, advanced that the evidence against the Applicant is strong and cogent. The Respondent seeks to rely on the statement of an anonymous witness, who identified the Applicant as the male wearing a hoody who allegedly approached another male sitting on the porch of a residence and shot him several times. The anonymous witness subsequently identified the Applicant in a 12-man photo lineup. According to the statement of Detective Inspector Demetrius Taylor, which is also exhibited to the Respondent's Affidavit, the Applicant was identified by this means because he allegedly refused to participate in an identification parade.

33. Notwithstanding the above circumstances, the Court is aware of its limited role in bail applications. Allen P in **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016** at paragraph 34 stated –

“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.”

34. The Court's role in bail applications is further expounded upon in **Jevon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019**. Crane-Scott JA, writing for that Court, at paragraph 24 stated –

“24. The law is that while a judge who is considering a bail application is mandated by paragraph (g) of Part A of the First Schedule to the Bail Act to have regard, *inter alia*, to “the nature and seriousness of the offence” coupled with “*the nature and strength of the evidence against the defendant*”, it is well established that the judge is not required to decide contested issues of fact or law, nor to conduct a forensic analysis of the evidence. In short, a bail application is not the forum for conducting a mini-trial and such contests are to be reserved exclusively for the substantive trial.”

35. All considered, the Court is satisfied that the evidence proffered by the Respondent is capable of raising a reasonable suspicion of the Applicant's involvement in the offence, which no doubt will likely be extensively challenged during trial. The anonymous witness being presumably the principal witness upon which the case for the Respondent will stand or fall.

Character and antecedent

36. In **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp No. 29 of 2020**, Barnett P at paragraph 19 stated –

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

37. In **Jevon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019**, the Court of Appeal provided examples that would lead the Court to conclude that an accused person applying for bail may be a danger to public safety or public order. Writing for that Court, Crane-Scott JA at paragraph 68 stated –

“68. If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against witnesses, Perry McHardy’s Affidavit should have included the necessary evidence of his propensity for violence for the judge’s consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again evidence, for instance, of any known or suspected gang affiliation. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of good character, strong family and community ties and the fact that he had a long and unblemished record of service within the RBDF.”

(Emphasis added)

38. The Respondent opposed the present application in the interest of the public, having regard to the fact that the shooting incident occurred in a residential area – nothing more and nothing less. While the Court is likewise concerned with the latter assertion, virtually all areas in The Bahamas where criminal activity occurs may be classified as residential areas. This assertion without more cannot suffice. Bearing also in mind that this incident is alleged to have occurred at nighttime when the Applicant was said to be wearing a hoody and the identifying witness was seated in a vehicle when he/she saw the Applicant for only three to five seconds. Also of note is that the incident occurred in April 2023 and the Applicant was not arrested until some seven months later in November 2023. The Applicant admitted to having a previous conviction of Possession of Dangerous Drugs. On 20 October 2023, the Applicant was convicted in Magistrate Court No. 8 and fined \$500.00 or three months in prison relative to the offence. There is no evidence before the Court that the Applicant paid the fine and/or served the sentence. Even if the Applicant had not paid the fine, the Court is satisfied that the time relative to the three-month sentence has been spent. The Applicant was arrested for the offence, the subject of the present application, on 13 November 2023 and arraigned on 20 November 2023. Thereafter, he was remanded up to the present time.

39. Apart from the Possession of Dangerous Drugs conviction and Murder charge, the subject of the present application, the Applicant has no previous convictions and/or other pending matters before the Court(s) in the Commonwealth of The Bahamas. The Court, having regard to the foregoing circumstances and the absence of any evidence to the contrary, is not satisfied that the Applicant poses

a threat to public safety and public order nor to any potential witnesses, particularly, since the Respondent's principal witness is anonymous.

Conditions

40. In **Jevon Seymour (supra)**, Crane-Scott JA opined that while it is not expressed in the Bail Act (as amended) as a factor to be considered by the Court in the exercise of its discretion of whether to grant or refuse bail, the imposition of appropriate conditions is now recognized as a relevant factor which may be taken into consideration.
41. The conditions usually employed by the Court include reporting, electronic monitoring device (EMD), curfew, etc.
42. The Court, having been satisfied that the Applicant poses no threat to public safety and public order is further satisfied that there are sufficient conditions available to the Court that would assuage its fear and/or the inference of the Applicant absconding or interfering with witnesses. Moreover, the Respondent's witness has been anonymized. Unless the identity of the witness is clandestinely or improperly revealed, the Applicant ought not to know the identity of the witness.

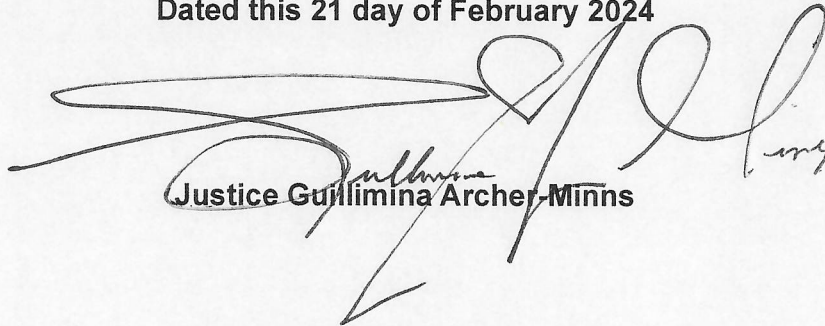
CONCLUSION

43. Having regard to the evidence before the Court, submissions, relevant law, and foregoing reasons, the Court is of the view that the Applicant is a fit and proper candidate for the admission of bail. Therefore, the Court, in the exercise of its discretion, accedes to the Applicant's bail application subject to the following stringent conditions, that –
 - i. bail is to be fixed in the amount of \$25,000.00 with one or two suretors to be approved by the Registrar;
 - ii. the Applicant is to report to the South Beach Police Station every Monday, Wednesday, and Saturday on or before 6:00 pm;
 - iii. the Applicant is to surrender his passport and/or all travel documents to the Court;
 - iv. the Applicant is to be outfitted with an Electronic Monitoring Device and comply with all conditions thereto;
 - v. the Applicant is to be placed on curfew in which the Applicant must remain at his registered address between the hours of 7:00 pm to 5:00 am Monday to Sunday;
 - vi. the Applicant is to appear to Court each and every adjourned date until the completion of the matter;
 - vii. the Applicant is not to come into any deliberate contact with any of the witnesses of this matter, either by himself or through any agent; and
 - viii. the Applicant is to surrender himself into custody at the Central Police Station, New Providence, The Bahamas on or before 6:00 pm the day before the

scheduled trial date of this matter and thereafter to remain in custody during his trial, unless further ordered.

44. Breach of any of these conditions, the Applicant's bail is subject to being revoked and render him liable to further remand at The Bahamas Department of Corrections.

Dated this 21 day of February 2024



Justice Guillimina Archer-Minns