

COMMONWEALTH OF THE BAHAMAS

CRI/BAIL/2023

In The Supreme Court

Criminal Division

BETWEEN

ALVARDO CURRY

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: Her Ladyship, The Honourable Madam
Justice Guillimina Archer- Minns

Appearances: Mr. Jeffrey Farquharson for the Applicant
Mr. Timothy Bailey for the Respondent

Hearing Date: 3 May, 2023

RULING- BAIL

Archer-Minns J

INTRODUCTION

1. Alvarado Curry (D.O.B: 27th August, 1994) (hereinafter the “**Applicant**”) has been charged with Murder contrary to section 291(1) of the Penal Code, Chapter 84 relative to the death of Jermaine Smith on 24 February 2022. Prior thereto he, was on bail for the 2019 Murder of Javardo Thompson and the Attempted Murder of Antonio Morley. He has now made application for admission to bail via Summons and Affidavit filed on April 13, 2023 for the aforementioned offence. The Respondent opposed the application and replied thereto via an Affidavit in Response filed 3 May, 2023.

SUBMISSIONS

2. The Applicant’s Affidavit reflects that:
 - i. he has no previous convictions;
 - ii. no trial date has been set in the matter;
 - iii. the charge is unsupported by evidence;
 - iv. there could be no identifying witness as no witness has presented themselves to conduct an identification parade;
 - v. he was wearing an Electronic Monitoring Device (“**EMD**”) during the alleged time of the incident and was at the Comfort Suites hotel on Paradise Island visiting friends when the incident is said to have occurred;
 - vi. the police was advised of his whereabouts but no checks were made for his EMD report nor the hotel’s surveillance cameras;
 - vii. the anonymous witness who was contacted by police has since made himself known and has reported that he was coerced to make false statements against the Applicant;
 - viii. the case against him is inherently weak with no credible evidence that he would abscond, reoffend, interfere with witnesses or otherwise obstruct the course of justice.
3. The Applicant’s Counsel orally contended that the Applicant has been served with his Voluntary Bill of Indictment (“**VBI**”) but is still awaiting a trial date. Counsel maintained that there is no evidence in this matter which links the Applicant as he was at the Comfort Suites hotel on Paradise Island with friends at the time of the alleged incident.

4. Further, the anonymous witness is Kendrick Penn who has tendered an affidavit dated 18 October, 2022 attached to the affidavit of the Applicant that provides inter alia at paragraph 6 “a couple of days later while through Carmen Close two plain clothes police officers approached me and stated that they were from the homicide unit at CDU. They told me that they had found the persons responsible for killing Rocky and that they needed me to come and identify the person. I told them that I couldn’t because I didn’t see anybody, I only heard shots and ran for cover. They told me that I didn’t have to know who the person was I just have to circle the picture they tell me to sign another statement that they brought. I was also told by the officers that the person in custody wouldn’t know it was me who identified him as the shooter because they would make me anonymous.....”
5. The anonymous witness having revealed himself and providing this information is not someone upon whom the Crown can rely nor his evidence tendered. Moreover, the Crown has not responded to such assertions by the witness nor has denied same in its Affidavit of Response. For this reason, they have no evidence of a cogent nature.
6. Counsel further placed reliance on the case of **Dennis Mather SCCrApp No. 96 of 2020** in which the Court of Appeal makes it clear that outstanding allegations (charges) are not a basis for the outright denial of bail. Additionally, contrary to what counsel for the Respondent advanced, the Metro Security Solutions report does not place the Applicant at the scene of the Murder. Finally, notwithstanding that this charge is serious in nature, this is not the sole reason to deny the Applicant bail. In all the circumstances of this case, the Applicant should be admitted to bail.
7. The Respondent opposed to the grant of bail to the Applicant and relied principally on its affidavit of 3 May, 2023. It was highlighted that the Applicant at the time of being charged with the present offence of Murder had a pending Murder charge which allegedly occurred on 17 March 2019. The trial date is fixed for 14 August, 2023. The Applicant was granted bail relative to this charge in September of 2021 with conditions imposed inclusive of reporting to a police station three times per week and a curfew. The Respondent asserted that the evidence in this matter is cogent essentially relying on an anonymous witness who speaks to seeing the Applicant who is known to him with a firearm in hand shoot the deceased and thereafter ran from the deceased’s body. This witness subsequently identified the Applicant via a twelve (12) man photo gallery.
8. Further, Counsel contended that the matter is very serious in nature (ii) there has been no unreasonable delay, (iii) there are no circumstances that are peculiar

concerning this Applicant to suggest that his continued detention is unjustified,(iv) the severity of the penalty for the offence which the Applicant stands charged provides sufficient incentive to abscond and (v) there is a likelihood that the Applicant will commit other offences if granted bail. Counsel also brought to the Court's attention a possible breach of the bail conditions imposed upon the Applicant as per the report of P/C 4448 Leadon of the Carmichael Road Police Station. In the circumstances there are no conditions which can be imposed that would prevent the Applicant from re-offending and in the interest of the public, the Applicant should not be granted bail.

9. As to the anonymous witness, Counsel contended that they are not aware of anyone coming forward. They are not made aware of the identity of the anonymous witness even up to trial as this is to ensure the safety of the witness. If there was someone who purports to be the person, the proper protocol would be to go to the Office of the Respondent or the investigating officer of the Criminal Investigation Department to so advise. The Respondent cannot otherwise speak to the issue.
10. Contrary to the Applicant's indication that the EMD report did not place him at the scene. Counsel advanced that the EMD report reflects that at 6:59p.m the day in question, the Applicant was on the scene and not on Paradise Island.
11. Counsel for the Respondent also highlighted the case of **Tyreke Mallory vs DPP (SCCrApp No. 142 of 2021)**, where at paragraph 25, **“the crown has a duty to put before the court evidence which raises reasonable suspicion of the commission of the offences by the applicant, such as to justify the deprivation of his liberty by arrest, charge and detention”** and in this particular matter the Applicant while on bail for Murder was given certain conditions to abide by but nevertheless is now charged with a similar offence and all the evidence provided indicate sufficient grounds for denying bail to this Applicant.

THE LAW & DISCUSSIONS

12. In accordance with the Constitution of The Bahamas all persons charged with an offence is presumed to be innocent until he pleads or is found guilty and has an unalienable right to apply for bail. **The Bail Act (1994) (as amended)** gives judicial officers a discretionary power to grant bail or otherwise refuse it. The Applicant has been charged with the offence of Murder and therefore the Court had regard to sections 4(2), 4(2A), 4(2B) and the First Schedule in the Act.

13. The Court notes that the Applicant previously applied for admission to bail before Senior Justice Turner and a ruling was delivered on 28 November 2022. Bail was denied. This notwithstanding, the Court gave due consideration to the current application, submissions of respective Counsel, provisions of the Bail Act and all relevant authorities including those cited by Counsel.
14. The events of this matter, the court notes occurred in February 2022. The Applicant received the VBI documents but a trial date is yet to be fixed which the court anticipates will be set within the usual timeline for matters of this kind. Nevertheless there is currently no issue with respect to the matter not being tried with a reasonable period of time.
15. Of significance, during the Court's deliberation of the matter, the Court noted that the Applicant has pending charges of Murder and Attempted Murder which allegedly occurred in March 2019. These charges are scheduled for trial in August of this year. The Court having regard to the same gave further consideration to the likelihood of the Applicant being a threat to public safety, public order and safety of potential witnesses. In this regard, the authorities of Jevon Seymour, Tyreke Mallory and Stephon Davis vs DPP were considered.
16. As part of its deliberation, the Court also had regard to the report of Metro Security Solutions which placed the Applicant in the area where the alleged incident on February 2022 took place and the evidence of the anonymous witness which in the Court's view, establish a primary facie case as to the Applicant's involvement in the matter. There was the issue raised by the Applicant's Counsel as to the identity of the anonymous witness, being revealed as one Kendrick Penn who by an affidavit dated 18 October 2022 averred that he was the intended anonymous witness for the Prosecution and therefore reliance cannot be placed on this witness' evidence.
17. There was no indication, nor verification of the same by the Respondent as to the identity of the anonymous witness being revealed. The witness is anonymous as far as they are aware. In any event, the Court is of the view that this is not an issue which ought to be dealt with during a bail application even more so, when the Respondent has advanced they are uncertain as to the identity of the intended witness and have received no communication from those responsible for the safety of the witness in that regard. So for all intents and purposes the Court had regard to the evidence adduced before it and upon which the Respondent intend to rely. On this evidence, the Court is satisfied as to the likely involvement of the Applicant in the matter for which he has been charged. Tyreke Mallory and Stephon Davis also considered.

CONCLUSION

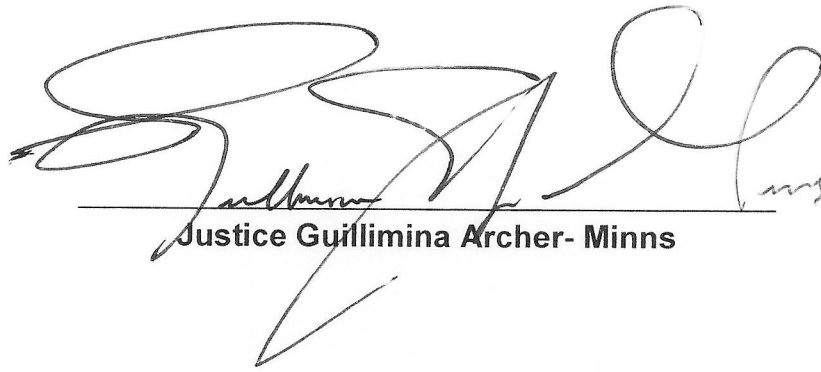
18. Having regard to the Constitution of The Bahamas, the relevant provisions of the Bail Act, the Bail Ruling of Senior Justice Turner , Affidavits of both the Applicant and Respondent and their respective submissions, the Court so finds that unreasonable delay is currently not an issue in this matter and therefore gave consideration to additional factors:

- i. the strength of the evidence against the Applicant;
- ii. the antecedent of the Applicant;
- iii. the competing interest of the Applicant as to his presumption of innocence and right to his liberty together with the rights of the public, its safety and security;
- iv. the Applicant previously being granted bail and now charged with similar offences;
- v. the Applicant's breach of bail conditions - the breach having occurred since June 2023 for which the Court is of the view was due to his incarceration for the offences for which he now seeks bail and;
- vi. bail conditions which could be imposed to minimize any risks involved with granting same.

19. Consideration having been given to all of the aforementioned factors, the Court is of the view that the Applicant should remain incarcerated at this time. Bail is denied as the Applicant having been previously charged with Murder and Attempted Murder and granted bail, is again before the Court for a like offence as, he is perceived to be a threat to the public safety, order and safety of potential witnesses. Moreover, the Applicant is scheduled for trial imminently for the 2019 charges.

Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 7th day of June, 2023.



Justice Guillimina Archer- Minns