

IN THE SUPREME COURT

Criminal Division

Between

DENNIS MATHER JR.

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns
Appearances: Ms. Cassie Bethell for the Applicant
Ms. Janet Munnings for the Respondent
Hearing Date: 21 February 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 of bail – Application for bail denied – Applicant not a fit and proper candidate for the admission of bail

INTRODUCTION

1. The Applicant herein, Dennis Mather Jr. (D.O.B 29-06-1991), is a 32-year-old Bahamian male who stands charged with Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84 of the Statute Law of the Commonwealth of The Bahamas (as amended), which offence is said to have occurred on 13 October 2023.
2. The Applicant was previously granted bail by the Honourable Madam Justice Jeanine Weech-Gomez on 11 August 2022 for a separate and pending Murder charge.
3. The Applicant was arraigned in Magistrate Court No. 5 before Senior Magistrate Raquel Whymms on 20 October 2023. The matter was adjourned to 22 January

2024 and the Applicant was remanded to The Bahamas Department of Corrections.

4. The Applicant made the present application by way of a Summons and Affidavit-In-Support sworn by himself, both filed on 5 December 2023.
5. The Respondent opposed the present application by way of an Affidavit-In-Response and Supplemental Affidavit sworn by Betty Wilson, Counsel and Attorney employed at the Respondent's Office; and Sgt. 235 Allan Ferguson, Police Officer attached to the Court Liaison Office at the Respondent's Office, respectively, both filed on 30 January 2024 and 20 February 2024, respectively.
6. The Court has read the Affidavits of the Applicant and Respondent and has heard the submissions made by the respective Counsel.

THE APPLICANT'S AFFIDAVIT EVIDENCE

7. The Applicant in his Affidavit stated, that:-
 - i. he is the Applicant in this matter;
 - ii. he was born on 29th June 1991 in the Commonwealth of The Bahamas and is 21 years of age;
 - iii. he pleaded not guilty and will be defending this charge at trial;
 - iv. he respectfully requests that the Court admit him to bail pending further court appearances;
 - v. he does have a pending matter for Murder before the Court in the Commonwealth of The Bahamas;
 - vi. should the Court admit him to bail, he will have accommodations;
 - vii. prior to his incarceration, he was employed at Whymco as a Security Officer, New Providence, The Bahamas;
 - viii. he is a Bahamian;
 - ix. 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;
 - b. he will be disadvantaged in his ability to support his two (2) children, himself, and assist his family;
 - x. if granted bail, he will comply with all rules and regulations set out by the Court;
 - xi. he is a fit and proper candidate for bail; and
 - xii. the contents of his Affidavit are true and correct to the best of his knowledge, information, and belief.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

8. The Affidavit of Betty Wilson stated, that:-
 - i. she has read the Affidavit filed by and on behalf of the Applicant, and save as hereinafter stated, no admissions are made regarding the assertions contained in the Affidavit of the Applicant filed on 5 December 2023 in this matter;

- ii. she makes this Affidavit in opposition to an application for bail by the Applicant;
- iii. this offence is of a serious nature and falls under Part C (section 4(3)) of the Bail Act, Chapter 103;
- iv. there is sufficient and cogent evidence against the Applicant in the matter mentioned;
- v. an Anonymous Witness gave a statement to the police on 13 October 2023 that while in the area of Tyler Street, he had seen a male later identified as the Applicant, wearing a dark-coloured hoody, walking up to another male (the deceased) with a handgun in his hand. As the other male was about to enter a dark-coloured Nissan Cube, several shots were fired by the Applicant at very close range. The Anonymous Witness was able to look at the Applicant's face very closely and saw him run back to a light blue Nissan Note. The Applicant was picked out on a photo line-up by the Anonymous Witness;
- vi. a statement was given by another witness who noted that the Applicant had made threats to the deceased in their presence just a few days before he was shot dead. The witness identified the Applicant on a photo lineup as the person who made those threats to the deceased;
- vii. the Respondent therefore opposes this application for the Applicant to be admitted to bail as stated in the First Schedule (section 3) Part A of the Bail Act, Chapter 103 for the following reasons, that:-
 - a. the nature and seriousness of this offence and the nature and strength of the evidence against the Applicant is such that there is a need to protect the safety of the public and public order;
 - b. in the case of violence allegedly committed by the Applicant, the Court should take into consideration the possible interference with witnesses in this matter if granted bail;
 - c. the Applicant does have a conviction for Possession of an Unlicensed Firearm and Ammunition where he was sentenced to two(2) years imprisonment;
 - d. the Court should take judicial notice of the use of a firearm during the alleged offence and those committed previously and the ongoing problem regarding the use of firearms in The Bahamas. The Applicant has previously been convicted on the charges of Possession of an Unlicensed Firearm and Ammunition which shows his unwillingness to curb his behaviour of involving himself with firearms.
- viii. there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified; and
- ix. the contents of this Affidavit are true to the best of her knowledge, information, and belief.

9. The Affidavit of Sgt. 235 Allan Ferguson stated, that:-

- i. the Applicant has a pending matter for the offence of Murder before Mr. Justice Franklyn Williams that has a trial date of 2 July 2024;
- ii. the Applicant has committed the alleged Murder while on bail for a previous Murder which is alleged to have occurred on 9 April 2018; and
- iii. the contents of his Affidavit are true to the best of his knowledge, information, and belief.

ISSUE

10. The issue that the Court is confronted with and must decide is whether the Applicant is a fit and proper candidate for the admission of bail?

LAW AND ANALYSIS

11. 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.
12. The grant or refusal of bail is governed by relevant provisions of the Constitution of The Bahamas, Bail Act, Chapter 103 (as amended), and judicial authorities. The Court, for the determination of this application, has considered the relevant law.
13. 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 ought to 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)**.
14. Guidance relative to applications for bail was laid out by the Court of Appeal in the decision of **Richard Hepburn v The Attorney General SCCrApp No. 276 of 2014**. Allen P at paragraphs 11, 32, 33, and 36 of that decision adjudged –
 - “11. The general right to bail clearly requires judges on such an application, to conduct a realistic assessment of the right of the accused to remain at 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.
...
 32. The appellant also complained that there was no evidence to suggest that he would abscond or fail to appear for his trial. Inexorably, a person who is charged with such a serious offence as murder, and who faces the severest penalty known to law may have a powerful incentive to abscond or interfere with witnesses (Hurnam).
 33. These circumstances are grounds for refusing bail under Part A, and while they do not do so in and of themselves, they are weighty factors relevant to that decision whether to deprive the accused of his liberty. The learned judge was entitled to consider and weigh these matters heavily against the grant of bail, and to determine whether in all the circumstances, including the appellant’s assertion that he would appear for his trial, the appellant should be deprived of his liberty.
...

36. We reiterate, following the opinion of this Court (differently constituted) in Attorney General v Ferguson and others SCCrApp No's 57, 106, 108, 116 of 2008, that is not the duty of the judge, during a bail application, to decide disputes of evidence, but rather to perform a balancing act and consider the evidence for and against the appellant on its face."
15. It is now trite law and the grundnorm of any free democratic and constitutional society who have an abiding respect for the basic fundamental rights and freedoms of persons, even those persons accused of committing criminal offences, that individuals are presumed innocent until they are proven guilty and ought not to be deprived of their personal liberty without just cause. In The Bahamas, said fundamental rights and freedoms are outlined in **Articles 20(2)(a) and 19 (1) and (3) of the Constitution**. These provisions need not be reproduced or repeated herein.
16. 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 c-harged –**
- (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)

17. **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) 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) Whether having been released on bail previously, he is charged with 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..."

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 potential witnesses or his propensity 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 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**.

Tried within a reasonable time

20. The Applicant's matter was adjourned to 22 January 2024. The Applicant did not assert 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. The Court, having regard to the circumstances and taking judicial notice of its calendar, is satisfied at this time that the Applicant will be tried within a reasonable time.

Seriousness of the offence and likelihood to abscond

21. In **Johnathan Ambrister (supra)**, Isaacs JA at paragraphs 12 and 13 stated –

"12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any, and the likelihood of interference with witnesses. This principle has received

recognition in the case of *Noordally v Attorney-General and Another* (Mollan, C.J.) [1987] LRC.

13. The seriousness of the offence, with which the accused is charged and the penalty which is likely to entail upon conviction, has always been, and continues to be an important consideration 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.”
22. 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. 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.”
23. The Applicant is charged with Murder. Murder is profoundly serious and is regarded as the ultimate crime, having grave implications on the economic stability, social development, national security, and health care of the Caribbean region, including The Bahamas. The Bahamas and the wider Caribbean region continue to grapple with the spiraling increase of homicides with firearms being the predominant weapon of choice. At a recent CARICOM summit and special meeting focused on heightened crime in the region and held in The Bahamas and Trinidad & Tobago, respectively, CARICOM leaders declared crime a public health issue and declared war on the proliferation and trafficking of illegal firearms.
24. Most concerning is the apparent perception that many of the recent murder victims are accused persons charged with serious offences (such as murder), who are subsequently admitted to bail. 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.
25. In the present application, no evidence was advanced by the Respondent that the Applicant is a flight risk or would interfere with the safety of witnesses. The Applicant, in his Affidavit, requested to be admitted to bail pending his further court appearances. However, the Applicant facing a serious charge in which he

is liable to one of the harshest penalties known to law, if convicted, may have a powerful incentive to interfere with witnesses or abscond. The Applicant is charged with two separate murders; not one murder. Furthermore, he has an upcoming trial. The inference is heightened.

26. 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.”

27. The inference is not weakened by the Applicant's advancement of his Bahamian citizenship and employment status or that his continued incarceration will disadvantage his ability to adequately prepare his defence or ability to support himself, his two children, and his family.

Strength and cogency of the evidence

28. The Respondent advanced that the evidence against the Applicant relative to the charge, the subject of the present application, is sufficient and cogent to warrant his continued detention. The cogency of the evidence is not the basis for the refusal of bail but is a factor the Court must consider before deciding whether there is justification for refusing the Applicant bail. The Court's role in bail applications is limited given that the rules of evidence are relaxed. This limitation has been adeptly propounded upon in **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016**, wherein Allen P at paragraph 34 enunciated –

“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.”

29. The Applicant denies his involvement in the offence, maintains his innocence, and indicates a willingness to defend the charge at his trial. The Respondent seeks to rely on the statement of an Anonymous Witness who told the police that he saw the Applicant wearing a dark-coloured hoody walking up to the deceased with a handgun in his hand. As the deceased was about to enter a dark-coloured Nissan Cube, several shots were fired by the Applicant at very close range. The Anonymous Witness was able to look at the Applicant's face very closely and saw him run back to a light blue Nissan Note. The Anonymous Witness subsequently identified the Applicant in a photo line-up.

30. The Respondent seeks to further rely on the statement of Petra Curry, which stated that the Applicant had made threats to the deceased in her presence just

a few days before he was shot dead. Petra Curry subsequently identified the Applicant on a photo lineup as the person who made those threats to the deceased.

31. The Court is satisfied that the evidence against the Applicant is cogent and compelling and raises a reasonable suspicion of his involvement in the alleged Murder.

Interference with the safety of witnesses

32. The Respondent, in its Affidavit, advanced that given the nature of violence involving the alleged offence, the Court ought to take into consideration the possible interference with the safety of witnesses if the Applicant is admitted to bail. The Respondent presented no evidence before the Court that the Applicant, if admitted to bail, would interfere with the safety of witnesses. The Respondent's witnesses include one anonymous witness and one named witness, Petra Curry, the girlfriend of the deceased. Apart from the anonymous witness whose identity is not known, the Court, having regard to the seriousness of the offence, *inter alia*, the penalty likely to be imposed on the Applicant if he is convicted of the said offence and the nature and circumstances of the evidence, is satisfied that it may be reasonably inferred that the Applicant likewise has a powerful incentive to interfere with the safety of the named witness in his case. The said inference cannot be weakened. This is particularly true given the growing level of vigilantism and retaliatory atmosphere in the Bahamian society.

Character and antecedents

33. 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.”

34. 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)

35. In **Stephon Godfrey Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2020**, Isaacs JA at paragraph 28 stated –

“28. The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are trivial ...”

36. In **Dwayne Heastie v The Attorney General SCCrApp No. 261 of 2015**, Isaacs JA at paragraph 38 stated –

“38. When courts are considering the grant of bail for persons charged with murder, judicial notice may be taken of the number of persons who have been charged with murder and released on bail who have themselves become victims of homicide.”

37. The Respondent, in its Affidavit, advanced that given the nature and seriousness of the offence and the nature and strength of the evidence against the Applicant, there is a need to protect the safety of the public and public order. The Respondent further advanced that given the level of violence allegedly committed by the Applicant, the Court ought to take into consideration the possible interference of witnesses in the matter if he is granted bail. Additionally, the Court should take judicial notice of the use of a firearm during the alleged offence and those committed previously and the ongoing problem regarding the use of firearms in The Bahamas. Moreover, the Applicant has previously been convicted on the charges of Possession of an Unlicensed Firearm and Ammunition and demonstrates an unwillingness to curb his behaviour of involving himself with firearms.

38. As aforementioned, the Applicant has an upcoming Murder trial before the Honourable Mr. Justice Franklyn Williams, KC. The trial for the said offence is scheduled to commence on 2 July 2024 – some three (3) months and twenty (20) days from now. The Applicant was granted bail for the said offence on 11 August 2022. He satisfied the conditions of said bail on 31 August 2022. One (1) year, one (1) month, and twenty-one (21) days later, the Applicant finds himself before the Court for a subsequent Murder charge, the subject of the present application.

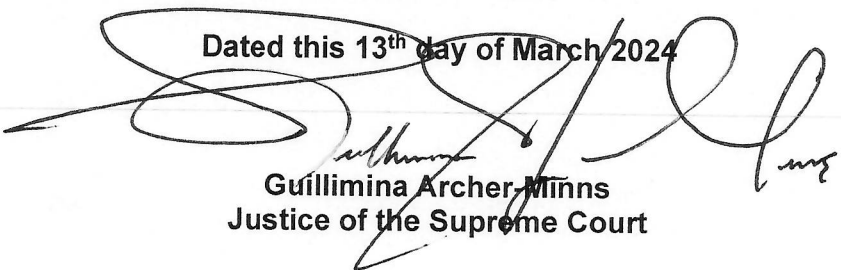
39. Attached to the Respondent's Affidavit is the Applicant's Criminal Record Antecedent Form. It is to be noted from the Applicant's Criminal Record Antecedent Form that the Applicant has previous convictions for violent and/or firearm-related offences. Furthermore, the Applicant having been released on bail previously is charged subsequently with an offence similar to that for which he was so released.

40. The Applicant appears before the Court as a person who has convictions for violent and firearm-related offences for which he served a term of imprisonment. The Applicant for the purpose of the law cannot assert that he is of good character. The Court is satisfied that this application goes beyond whether the Applicant would appear for trial but turns to whether he would interfere with the safety of witnesses, and/or is a threat to the public and public order. Taking all this into consideration, the Court is reasonably satisfied that the Applicant, if admitted to bail, would interfere with the safety of the named witness, Petra Curry, and pose a grave threat to the public and public order.
41. Moreover, the evidence, in the Court's view, raises a reasonable suspicion of the commission of the offence by the Applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention pending trial. Furthermore, the Applicant ought to be kept in custody for his own safekeeping and the preservation of his upcoming Murder trial. The Court takes judicial notice of the number of accused persons who are charged with murder and subsequently released on bail who have themselves become victims of murder. The Applicant is charged with two separate murders. The threat to the Applicant's safety and protection is therefore heightened. Additionally, to admit the Applicant to bail, there is a likelihood that he would commit further offences (whether of a similar nature or otherwise). The Applicant demonstrates an unwillingness to curb his behaviour of involving himself with firearms. Public safety and law and order are paramount and in these circumstances cannot be ignored.
42. The Court is not satisfied that any effective conditions could be imposed at this time to assuage its concern regarding the Applicant's own safety and protection, the safety of witnesses, and the Applicant's threat to the public and public order.

CONCLUSION

43. In the circumstances and having regard to the foregoing, the Court is reasonably satisfied that the Applicant is not a fit and proper candidate for the admission of bail at this time. The application for bail is hereby denied. Should the Applicant's circumstances change in the interim, he is at liberty to reapply to the Court for the admission of bail. Any party aggrieved by this decision is at liberty to appeal this decision to the Court of Appeal.

Dated this 13th day of March 2024


Guillimina Archer Minns
Justice of the Supreme Court