

BETWEEN

GLENARDO JOHNSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Glenardo Johnson Pro se
Mr. Basil Cumberbatch for the Respondent

Hearing Date: 5 July, 2023

RULING - BAIL-

Archer-Minns J

Introduction

1. Glenardo Johnson (D.O.B: 8th April, 1996) the Applicant (hereinafter the **Applicant**) has been charged with the 4 October 2022 murder of Giovanni Lafleur contrary to section 291(1)(b) of The Penal Code, Chapter 84. He has made application for admission to bail via The Bahamas Department of Corrections Request Report Form dated 3 April 2023. The Respondent replied thereto via two Affidavits in Response filed 3 and 4 July 2023 respectively.

Submissions

2. By oral submissions the Applicant advanced that:
 - i. he is a hard working young man and was at work when the matter is said to have occurred;
 - ii. he works from 9:00am to 5:00pm each day and is the sole bread winner for his family;
 - iii. since being arrested his mother and two younger siblings have had to move in with someone else because the bills could not be maintained due to his mother's unemployment;
 - iv. once he was released from prison many years ago, the police has assumed he is a violent person which he is not and can be seen from the fact that he has no pending cases nor was involved in any other incidents;
 - v. the corner where he resides is known to be one that is violent but he is not;
 - vi. he has an alibi- his employer attended at the Criminal Detective Unit and advised that he was to work during the time of the incident but he is now being made aware through the Respondent's Affidavit that his employer is saying otherwise which was not so at the time of his arrest;
 - vii. he is maintaining that he was to work during the incident and had been from 7:30am in the Eastern district on Queen's Road, Nassau Boulevard attending to a customer's home with his employer and;
 - viii. he has no knowledge of the matter.

In all of the circumstances, he should be admitted to bail as he is a fit and proper person.

3. The Respondent objected to the Applicant's admission to bail and asserted essentially in their Affidavit dated 4 July 2023 that:
 - i. the Applicant was previously convicted for murder but the matter was quashed in December 2019 for failing to follow the Judge's rule in regard to a juvenile being interviewed;
 - ii. the Applicant is now accused upon reasonable suspicion of murder for which the evidence is cogent;

- iii. an anonymous witness provided that at about 9:15am they entered the bus on the 4 October 2022, driven by the deceased and observed when a male passenger wearing a dark colored outfit grey hat and lime green construction vest entered the bus. They recognized the Applicant as he was a regular commuter on that bus and; that the Applicant sat at the back of the bus. The Applicant requested that the deceased (the driver) stop near Florida Court. The Applicant upon walking to the front of the bus, produced a firearm pointed it in the direction of the deceased and discharged it several times. The Applicant then walked off the bus as if nothing occurred;
- iv. the anonymous witness stated that they got a good look at the Applicant who was wearing a lime green construction vest when he entered the bus and recognized him from having taken the same route previously. He had him in view for five to ten seconds when he first entered the bus. He also got a good look a second time when the Applicant was exiting the bus and before he put on his covid mask. There was nothing blocking the witness view of the Applicant;
- v. the last time the anonymous witness observed the Applicant was a week prior. The witness subsequently positively identified the Applicant as the person whom they observed shoot the bus driver on 4 October 2022;
- vi. the witness, Francis Adderley the employer of the Applicant cannot account for the Applicant's whereabouts before 12noon on 4 October 2022 (exhibit CB2);
- vii. the witness, Latoy Mackey was present on bus 15A when he heard gunshots and gave a statement of having seen a tall male 6'0- 6'2 walking on the street to the left of the bus wearing a lime green construction vest with dark clothing (exhibit CB3);
- viii. Cpl. 3827 Sawyer reported that on 28 November 2022, he went to the residence of the Applicant and found a lime green construction vest in the Applicant's closet whilst searching his home (exhibit CB4);
- ix. ASP. Altida Bowles conducted an identification parade with the Applicant standing in position No.5. The Applicant in position No.5 was identified as the shooter of the deceased bus driver on 4 October 2022. (exhibit CB5)
- x. Sgt.2688 Brian Coakley reported visiting the Shells Crafty Store on 4 October 2022 and collected video footage showing a teal and blue bus

stopping at the junction of Florida Court and Robinson Road. Moments later, a male wearing a dark colored outfit green fluorescent vests and hat exited the bus and travelled north on Florida Court. Sgt. Coakley also conducted a record of interview with the Applicant and highlighted the Applicant's response at question and answer 8 where the Applicant stated that he was to work from 7:30am (exhibit CB6);

- xi. the Applicant's antecedent (exhibit CB7) is attached and marked;
- xii. there is a need to protect the safety of the public and public order which are primary considerations in relation to bail applications;
- xiii. the Applicant when he appeared before Chief Magistrate Joyann Ferguson-Pratt on 2 December 2022, in regards to the murder complainant, he stated that he was in fear for his life as the deceased was a gang member and leader of the Fire and Theft gang and; his step-dad a prison officer;
- xiv. if given bail, the Applicant may put some unsuspecting citizen's life at risk by his mere presence;
- xv. there is a need to protect the Applicant's life by keeping him in custody for his own protection;
- xvi. concern for the safety of the Applicant and his protection should be a primary consideration of the Court;
- xvii. the nature of the charge, the cogency of the evidence against the Applicant and the likely sentence to be imposed if convicted, gives the Applicant an incentive to flee the jurisdiction. Also, the Applicant even if outfitted with an Electronic Monitoring Device (EMD), the Court has no assurance that the Applicant will not tamper with or remove it. The Applicant was subject to conditions previously and is now before the Court;
- xviii. there is nothing peculiar about the circumstances of the Applicant which suggests that his continued detention is unjustified;
- xix. murder is a serious Part C offence and one where bail should only be granted in exceptional circumstances as stated in **Hurman vs The State (2006) 3 LRC 370**.

4. By oral submissions, Counsel for the Respondent contended that:

- i. the contents of its Affidavit of 3 July 2023, by Inspector Jermaine Toote, Administrative Inspector of the Central Intelligence Bureau was being relied upon wherein the affiant averred that:
- the Applicant has been on their radar since the July 2012 murder charge;
 - since 2012, they have established that the Applicant is a member of the Mad Ass and Tiger Nation gangs wherein he functions as a shooter/ hitman;
 - that his current charge is for the murder of Giovanni Lafleur who was a senior lieutenant of the Fire and Theft gang of Nassau Village;
 - the Applicant is presently housed in cell four (4) of the G-block, which is an area of the prison designated for members of the Tiger Nation gang.
- ii. that the Applicant being a member of the gang in and of itself is an offence. Moreover, such association puts citizens in jeopardy if the Applicant is granted bail. As the hitman for a gang, the possibility of retaliatory attacks is increased. The Applicant should not be granted bail for his own protection, as well as to ensure the protection of society. Clearly the Applicant has a propensity for violence as an alleged gang hitman. Reliance was placed on **Dentawn Grant vs The Department of Public Prosecutions SCCrApp No. 59 of 2022**. In this case the Applicant's bail was denied for his own protection and the same consideration ought to be given to this Applicant. Counsel further advanced that clearly the Applicant has what appears to be a propensity for violence as an alleged gang hitman.

In **Jevon Seymour vs The Department of Public Prosecutions SCCrApp No. 115 of 2019** at paragraph 68, it was stated therein:

“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 the 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.”

- iii. the Affidavit of Inspector Jermaine Toote certainly raises the concern with respect to the protection of the Applicant himself as well as that of the public which the Court cannot ignore.

In all of the circumstances of the case, the Applicant ought not to be admitted to bail.

5. The Applicant rebutted the Respondent's assertion and asserted that he told the Chief Magistrate that he was in fear for his life because he was an innocent man and that she was about to remand him to prison for no reason. He continued that since his remand in custody for some six to seven months, there has been not one attack and lives peacefully with no issues. And that in the alternative, he could move to an island and live with his grandmother.
6. It was further adduced by the Applicant, that he lives at the remand center which is different from the "big prison" or general population which is not divided up by gang affiliations. He maintained that he is not associated with the "Tiger Nation" or "Mad Ass" gang.

The Law

7. Article 20 of the Constitution of The Bahamas confers to all persons charged with a criminal offence a presumption of innocence and the unalienable right to make admission to bail. Additionally, the Court gave consideration to the relative provisions of **The Bail Act** and the guidelines provided therein particularly **Section 4 and The First Schedule** which concerns Part C offences such as murder.

Discussion

Tried within a reasonable time

8. The first consideration of the Court was whether the Applicant's matter will be tried within a reasonable time. Section 4(2A) of The Act provides a guideline of three (3) years for the date of arrest. This incident is said to have occurred in October of last year. Seemingly, the matter is moving in the normal trajectory for matters of this kind. There is currently no issue of unreasonable delay in the prosecution of the matter. **Dentawn Grant vs The Department of Public Prosecution** relied upon.

Character/ Antecedent of the person charged the need to protect the safety of the Public/ Public Order

9. The Court notes that the murder charge of 2012 has since been quashed in 2019 and there is no other offence which equates to the seriousness of the charge or one that attracts a like penalty for the one which he is now before the Court if convicted.
10. Consideration was also given by the Court for the need to protect the safety of the public and public order. The Court is of the opinion that it is of the highest importance and in the present circumstances cannot be ignored. **Stephon Davis vs The Department of Public Prosecutions SCCrApp No. 108 of 2021** considered.

11. The Court also noted the Applicant's contention that his words to the Chief Magistrate concerning himself being remanded were in relation to the fact that he was being remanded when he was innocent of the charges. This notwithstanding, given the evidence upon which the Respondent intend to rely, the Court cannot ignore the manner in which the deceased met his death as well as the intel provided in the Respondent's 3 July 2022 Affidavit linking the Applicant to being a member of a gang.
12. Given the aforementioned, the Court is concerned for the Applicant's safety and that of the public should he be admitted to bail. The Court cannot turn a blind eye to the Applicant who stands accused of killing a local rival gang leader. There is the intel from the Royal Bahamas Police Force of the Applicant's and the deceased's involvement in rival gangs; And the Applicant's own revelation of the deceased's role in gang. **Alcott Fox vs The Director of Public Prosecutions SCCrApp No. 119 of 2023** considered.
13. The evidence upon which the Respondent intend to rely in the Court's view is neither tenuous or weak. The Court is satisfied that it raises a reasonable suspicion of the Applicant's commission of the offence such as to justify the deprivation of his liberty by arrest, charge and detention. **Cordero McDonald vs The Attorney General SCCrApp No 195 of 2016** considered.

Conclusion

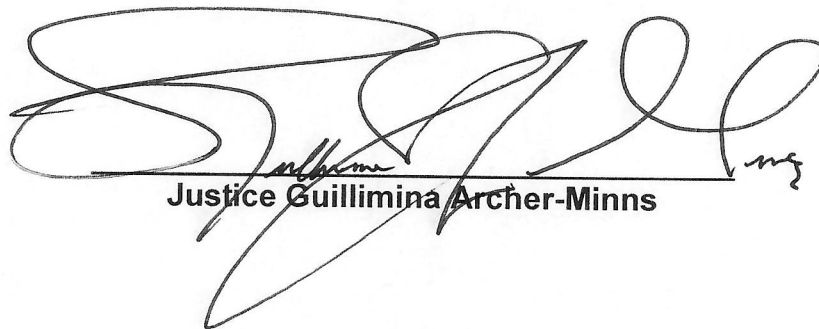
14. The Court having considered the submissions of the Applicant and those of the Respondent both documentary and oral, the relevant provisions of The Bail Act and judicial authorities finds that unreasonable delay is currently not an issue. The following factors were also considered:
 - i. the strength of the evidence against the Applicant;
 - ii. the Applicant's antecedent;
 - iii. the competing interests of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;
 - iv. the Applicant's safety and;
 - v. bail conditions which could be imposed that would minimize the risks involved with the granting of same. The court has found none that would be effective in the circumstances of this case.
15. The Applicant indicated that if granted bail, he could relocate to the Family Island with his grandmother. The Court must be cautious when considering such a condition. We must be careful not to transfer violent acts or the potential for such violent acts to our quiet and quaint islands because it seems that the criminal

elements will go to any extreme to get at the target for which they aim. We must be careful not to transfer these type of violent acts to our Family Islands. The Court cannot ignore that in recent times, persons charged with murder when released on bail are oftentimes murdered and those who seek to murder will go to any extent to achieve their objective.

16. All of the aforementioned factors having been considered, the Court is of the view that the Applicant should remain incarcerated at this time. Bail is denied.

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

Dated this 2nd day of August 2023.



Justice Guillimina Archer-Minns