

IN THE SUPREME COURT

Criminal Division

Between

KAZINSKI JOHNSON

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: 6 March 2024

RULING

Criminal Law – 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) – Attempted Murder contrary to section 292 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. Kazinski Johnson, the Applicant herein, is a 20-year-old Bahamian male who stands charged with Murder and Attempted Murder contrary to sections 291(1)(b) and 292 of the Penal Code, Chapter 84 of the Statute Laws of the Commonwealth of The Bahamas (as amended). The said offences are alleged to have occurred on Sunday 24 December 2023.
2. The Applicant was arraigned on said charges in Magistrate Court No. 9 before Acting Chief Magistrate Roberto Reckley on 29 December 2023. The matter was adjourned to 11 April 2024 for the presentation of a Voluntary Bill of Indictment (VBI) and the Applicant was remanded to The Bahamas Department of Corrections.
3. By Summons and Affidavit-In-Support sworn by himself, both filed on 23 January 2024, the Applicant moved the Court for the consideration of bail.

4. By Affidavit-In-Response sworn by Timothy Bailey, an Attorney attached to the Respondent's Office, filed on 5 March 2024, the Respondent opposed the present application for bail.
5. The Court has read the Affidavits of the Applicant and Respondent and has heard the submissions advanced by the respective Counsel.

THE APPLICANT'S AFFIDAVIT EVIDENCE

6. The Applicant in his Affidavit stated, that:-
 - i. he is the Applicant in this matter;
 - ii. he was born on 4 February 2004 in the Commonwealth of The Bahamas and is [20] years of age;
 - iii. he was arraigned in Magistrate Court No. 9 before Acting Chief Magistrate Roberto Reckley on 29 December 2023;
 - iv. he pleaded not guilty and will be defending these charges at trial;
 - v. he respectfully request that the Court admit him to bail pending his further court appearances;
 - vi. he do not have any previous conviction(s) before the Court(s) in the Commonwealth of The Bahamas;
 - vii. should the Court admit him to bail, he will have accommodations;
 - viii. prior to his incarceration, he was unemployed in the Commonwealth of The Bahamas;
 - ix. he is a Bahamian citizen;
 - x. 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 one-year-old child, himself, and assist his family;
 - c. he has a medical condition; his nerve is damaged in the left leg and requires constant monitoring and medical attention;
 - xi. if granted bail, he will comply with all rules and regulations set out by the Court; and
 - xii. he is a fit and proper candidate for bail.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

7. The Affidavit of Timothy Bailey stated, that:-
 - i. the Applicant has previous convictions of Possession of Dangerous Drugs and Possession of Dangerous Drugs with Intent to Supply;
 - ii. there is cogent evidence that links the Applicant to the alleged offences of Murder and Attempted Murder for which he is charged;
 - iii. the Anonymous Witness in their statement to the Police stated that sometime after 7:00 pm on Sunday 24 December 2023 while at the tracks located at the Sports Center Road, they observed a male from the Ida Street area by the name of "AJ" who drove his motorbike across the street to where "Trolley" was pulling up at that time. This Anonymous Witness observed as "KJ" pulled out a handgun and began shooting "Trolley". This Anonymous Witness also observed "KJ" leaving the scene with another male. This Anonymous Witness also identified the

- Applicant from a twelve-man photo lineup as the shooter who was seen shooting and killing the deceased.
- iv. the witness, Rueben Martin, would have given the Police a statement where he stated that on Sunday 24 December 2023, while at the tracks he would have been shot by a male known as "KJ". This witness also identified the Applicant from a twelve-man photo lineup as the male responsible for shooting him on Sunday 24 December 2023;
 - v. the Respondent verily believes that the Applicant will interfere or intimidate the Complainant if he is granted bail;
 - vi. the Applicant is charged with a serious offence and given the severity of the penalty that is attached, if the Applicant is admitted to bail, coupled with the cogency of the evidence, the Respondent verily believes that the Applicant will either abscond or fail to appear for his trial;
 - vii. in the interest of the public, the Applicant should not be granted bail;
 - viii. there has not been any unreasonable delay as the Applicant was arrested on 25 December 2023, and he is expected to be presented with his Voluntary Bill of Indictment on 11 April 2024;
 - ix. there is nothing peculiar about the Applicant's situation that suggests his continued detention is unjustified and unfair at this time; and
 - x. this Applicant for the above reasons is not a fit and proper candidate for bail and in the present circumstances, the Respondent submits that the Court exercise its discretion and not admit the Applicant to bail.

ISSUE

8. The issue for the Court to determine is whether the Applicant is a fit and proper candidate for the admission of bail.

LAW AND ANALYSIS

9. Bail, when granted by the Court, permits an accused person to be released from custody on his undertaking that he would appear for his trial and/or all further court appearances and subject to conditions as the Court deems just and appropriate.
10. Bail in criminal proceedings is governed by the Constitution of the Commonwealth of The Bahamas ("the Constitution"), Bail Act, Chapter 103 (as amended), and judicial authorities.
11. The Court, in denying bail, must be satisfied that compelling reasons exist to believe that the accused person, if granted bail, would fail to appear for his trial, commit further crimes while on bail, interfere with the safety of the witnesses in his case or otherwise thwart the administration of justice.
12. The burden rests on the Respondent, having regard to the Applicant's fundamental rights and freedoms to the presumption of innocence and personal liberty, to satisfy the Court that he ought not to be admitted to bail. This burden is discharged by the production of compelling evidence – nothing more and nothing less. Naked or bare assertions without more are meaningless. If that were not the case, it would be unfair to the accused person: **Johnathan**

Ambrister v The Attorney General SCCrApp No. 146 of 2011 and Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019.

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

14. **Article 20(2)(a) of the Constitution** ensures that every person charged with a criminal offence is afforded the right to the presumption of innocence save 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.”

15. **Article 19(1) and (3) of the Constitution** ensures that no person is deprived of his personal liberty without just cause. It provides –

“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)

16. The Applicant stands charged with Murder and Attempted Murder; two offences included in **Part C of the First Schedule of the Bail Act (as amended)**. **Section 4(2)(2A) and (2B) of the Bail Act (as amended)** permits the grant of bail to accused persons charged with Part C offences wherein 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.

Part A (First Schedule)

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) fail to surrender to custody or appear at his trial;
- (ii) ...
- (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...”

(Emphasis added)

Tried within a reasonable time

17. The present application is made prior to the Applicant being presented with his VBI, *inter alia*, prior to him being officially arraigned before the Court, and prior to his trial date being fixed. Consequently, the issue of whether or not the Applicant would be tried within a reasonable time is not before the Court.
18. Notwithstanding, the Applicant did not advance in his Affidavit that he would not be tried within a reasonable time and the Respondent, in the Affidavit of Timothy Bailey, advanced that there has been no unreasonable delay in this matter. The Applicant was arrested on 25 December 2023, charged on 29 December 2023, and is expected to be presented with his VBI on 11 April 2024. Additionally, the Respondent advanced that there was nothing peculiar about the Applicant's

situation that suggests that his continued detention is unjustified and unfair at this time. The Court, having regard to the prevailing circumstances, is satisfied at this time that the Applicant will be tried within a reasonable time.

Seriousness of the offence and likelihood of absconding

19. 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 in 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.**”

(Emphasis added)

20. In **Jeremiah Andrews (supra)**, Evans JA 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. “

21. As aforementioned, the Applicant stands charged with Murder and Attempted Murder. These offences are profoundly serious ones and are regarded as the ultimate crimes. They demonstrate a blatant disregard for the sanctity of human life and have negative implications on the economic stability, social development, national security, and health care system of The Bahamas.

22. In The Bahamas, the murder rate has continued to spiral at an alarming rate. Violence and vigilantism are at an all-time high. The escalating crime rate, murders, in particular, have become the number one topic of discussion and concern among society. Bail, now more than ever, has been placed under a microscope and has subjected the Court to much scrutiny and criticism. There is an apparent notion that many of the murder victims are accused persons charged with serious offences, including murder, who are released from

custody on bail. The Court, while taking judicial notice of the current state of affairs in the country and being likewise concerned, must nevertheless perform the difficult balancing exercise of having to balance on the one hand the fundamental rights and freedoms of the accused person and the interest of the society on the other hand.

23. 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)

24. While Murder and Attempted Murder are profoundly serious offences, that is not within itself a ground to deny the Applicant bail given the law as it currently stands. Though, the seriousness of Murder and Attempted Murder should invariably weigh against the Applicant being admitted to bail. The Applicant stands charged with Murder and Attempted Murder, he has not yet been found guilty of said offences – arrest, charge, and detention do not and cannot equate to guilt. The Applicant’s refusal of bail and continued detention may only be warranted where the safety of witnesses, the public, and public order trumps his fundamental rights and freedoms to the presumption of innocence and personal liberty.

25. In the present application, the Applicant advanced that if he is admitted to bail, he would appear for all of his further court appearances. On the other hand, the Respondent advanced that the Applicant, if admitted to bail, will either abscond or fail to appear for his trial. The Respondent produced no evidence before the Court to controvert the Applicant’s advancement that he would appear for his further court appearances. However, it follows that the Applicant facing these profoundly serious charges for which he is liable to some of the harshest

penalties known to the law, if he is convicted, may have a powerful incentive to abscond.

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 Court, having regard to the circumstances, is not satisfied that the Applicant’s flight inference may be weakened by his citizenship status and/or bare or naked assertions that his continued incarceration will disadvantage his ability to adequately prepare his defence, or ability to support his one-year-old child, himself and assist his family. The Court is further satisfied that the Applicant’s flight inference may not be weakened by his bare or naked assertion that he suffers from nerve damage to his left leg and needs constant monitoring and medical attention. The Applicant presented no evidence before the Court of him being diagnosed with such a medical condition nor that he would not be able to have his medical needs attended to at The Bahamas Department of Corrections.

Strength and cogency of the evidence

28. The Court has a limited role in bail applications. It is now trite law that a judge hearing a bail application is not to weigh up the evidence that may be adduced at trial. Bail applications are not forums for mini-trials, any challenge to the intended evidence is best reserved for trial. The Court’s limited role was adeptly summarized by Allen P in **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016** wherein it was stated at paragraph 34 –

“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 alleged offences, maintains his innocence, and indicates his willingness to defend the charges at trial. The Respondent advanced that the evidence against the Applicant is cogent and links him to the alleged offences. The Respondent seeks to rely on the statement of an Anonymous Witness who stated that the Applicant was the male who shot and killed the deceased and the statement of Reuben Martin, the individual who stated that the Applicant was the male who shot him and made an attempt on his life. Both witnesses subsequently and on separate occasions identified the Applicant in a twelve-man photo lineup. They both

alleged to be well acquainted with the Applicant and know him from the Ida Street area.

30. All considered, the Court is satisfied that the evidence proffered by the Respondent is cogent and compelling and capable of linking the Applicant to the alleged offences.

Interference with witnesses

31. The Respondent advanced that it verily believes that the Applicant will interfere with or intimidate the Virtual Complainant if admitted to bail. However, the Respondent presented no evidence before the Court to show that the Applicant, if admitted to bail, would interfere with the safety of the Virtual Complainant. However, it is alleged that the Applicant already made an attempt on the Virtual Complainant's life. There is no doubt a powerful incentive to carry the alleged act to completion. The Court, having regard to the seriousness of the offences, the penalties likely to be imposed on the Applicant if he is convicted of the said offences, and the nature and circumstances of the evidence, is satisfied that inference cannot be weakened. This is particularly true given the growing level of violence and vigilantism in the Bahamian society.

Character and antecedents

32. 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.”

33. 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)

34. 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.”

35. The Respondent advanced that the Applicant should not be admitted to bail in the interest of the public. Furthermore, the Court, having regard to the present circumstances, should exercise its discretion and not admit the Applicant to bail.
36. The Applicant advanced that he did not have any previous convictions before the court(s) in the Commonwealth of The Bahamas. However, from a cursory glance of the Applicant’s Criminal Record Antecedent Form attached to the Affidavit of Timothy Bailey, the Applicant has two convictions for Possession of Dangerous Drugs and Possession of Dangerous Drugs with Intent to Supply. He was given a conditional discharge; bound over to keep the peace for three months and fined \$500.00 or six months in prison. It is not certain whether this non-disclosure on the Applicant’s part was a reasonable slip. Additionally, the Court notes from the Applicant’s bail file that the Applicant in May 2022 was admitted to bail for two (2) counts of Unlawful Sexual Intercourse with a Minor. The said charges are not reflected on the Applicant’s Criminal Record Antecedent Form nor were they referenced by the Applicant. The status of the said charges or bail is unknown. Notwithstanding, the Applicant stands before the Court as a person with previous convictions; thus, he for the purposes of the law, cannot assert that he is a person of good character.
37. Irrespective of the Applicant’s previous convictions, the Court is reasonably satisfied that this application goes beyond whether the Applicant would appear for trial but turns on whether the Applicant would interfere with witnesses, and/or is a threat to the public and public order. Taking these factors into consideration, the Court having already found that it may be reasonably inferred that the Applicant if admitted to bail would interfere with the safety of the Virtual Complainant, is further satisfied that the Applicant poses a threat to the public and public order and should be kept in custody for his own protection.
38. The alleged offences involved the use of a firearm and occurred in a densely populated area used by members of the public for recreational use and enjoyment. Thus, placing the lives of members of the public in grave jeopardy – luckily no more lives were lost or endangered. The alleged offences amounted to senseless acts of vigilantism and demonstrated a blatant disregard for the sanctity of human life. Illegal firearms have become evasive instruments used by members of the criminal faction and immensely aid in the spiraling criminal activity in The Bahamas and the wider Caribbean region. Illegal firearms have become the weapon of choice for the criminal element.
39. Furthermore, one of the alleged offences involved a failed attempt on the life of the Virtual Complainant, Reuben Martin. Reuben Martin survived the incident. He appears to be well acquainted with the Applicant and subsequently identified

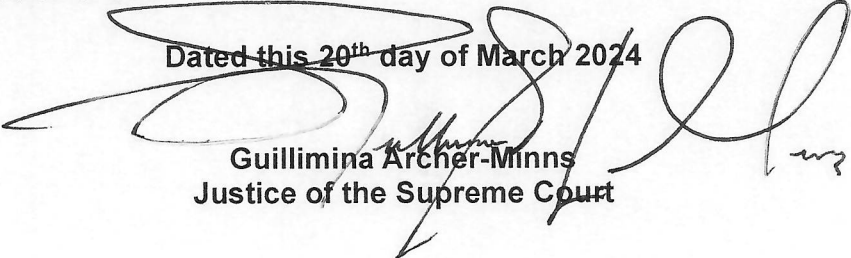
the Applicant as the male who made an attempt on his life. Two scenarios could arise from this predicament. First, the Applicant has a powerful incentive to interfere with the safety of Reuben Martin and/or seek to complete the failed attempt on Reuben Martin's life; or second, Reuben Martin may have a powerful incentive to seek retribution on the male whom he identified as having made an attempt on his life. Consequently, the Applicant ought to remain in custody for the safety of Reuben Martin, and/or for his own safety and protection. The latter scenario is particularly worrisome given the heightened level of vigilantism and retaliatory atmosphere in the Bahamian society to date. There is also a prevailing concern that the Applicant is a threat to the public and public order.

40. The Court is sufficiently satisfied that there are no effective conditions available to the Court at this time to assuage its fears of the Applicant being a threat to the public and public order and that his continued detention is necessary for the safety of witnesses and his own protection and safety.

CONCLUSION

41. The Court, having regard to the above circumstances and foregoing reasons, is not satisfied that the Applicant is a fit and proper candidate for the admission of bail at this time. The Court, in the exercise of its discretion, does not accede to the present application. The application for bail is hereby denied and the Applicant is to be further remanded at The Bahamas Department of Corrections pending his trial and/or all further court appearances. Should the Applicant's circumstances change in the interim, he is at liberty to reapply to the Court for the admission of bail.

Dated this 20th day of March 2024


Guillimina Archer-Minns
Justice of the Supreme Court