IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2018/CRI/BAL/00243

Between

MARQUELLA DEAN

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Ms. Marquella Dean appearing *pro se*
Ms. Janessa Murray appearing for the Respondent

Hearing Dates: 3 July 2024 and 31 July 2024

RULING – BAIL DECISION

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Application for admission to 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 admission to bail – Application for admission to bail denied – Applicant is not a fit and proper candidate for admission to bail

Introduction

[1.] Marquella Dean, the Applicant named herein, is a 24-year-old Bahamian female who stands charged with one (1) count of Murder and two (2) counts of Attempted Murder contrary to the relevant provisions of the Penal Code, Chapter 84, which offences are purported to have occurred on 24 August 2023.

[2.] The Applicant was arraigned on said offences in Magistrate Court No. 9 before Acting Chief Magistrate Roberto Reckley (as he then was) on 31 August 2023. The matter was adjourned to 23 November 2023 and the Applicant was remanded to The Bahamas Department of Correctional Services ("BDOCS") pending the presentation of her Voluntary Bill of Indictment ("VBI").

[3.] The Applicant was arraigned on said offences before the Supreme Court on 26 April 2024 where she was presented with her VBI and pleaded not guilty. The Applicant is next scheduled to appear before the Court on 12 February 2025 for a status hearing.

[4.] The Applicant was previously granted bail by the Honourable Mr. Justice Gregory Hilton on 14 November 2019 for a separate and pending Murder offence.

[5.] The Applicant moved the Court relative to the present application for admission to bail via a BDOCS Bail Request Form dated 5 June 2024.

[6.] The Respondent opposed the present application by way of an Affidavit-In-Response sworn by Ashton Williams, Counsel and Attorney-at-Law attached to the Respondent's Office, filed on 1 August 2024 ("the Williams Affidavit").

[7.] The Court has read the Applicant's BDOCS Bail Request Form and the Respondent's Affidavit-In-Response and has heard the submissions made by the respective parties.

THE APPLICANT'S SUBMISSIONS

[8.] The Applicant appeared *pro se* and submitted to the Court, *inter alia*, that –

i. she pleaded not guilty to the said offences, is innocent, and intends to defend herself against the said offences at trial;
ii. if she is admitted to bail, she would have reasonable accommodations with her grandmother in New Providence, The Bahamas;
iii. alternatively, if she is admitted to bail, she would be amenable to relocating to Eleuthera, The Bahamas;
iv. she is a single mother of an infant male child who currently resides with her ailing grandmother due to her incarceration; and
v. her incarceration prevents her from providing for her infant male child, grandmother, and herself.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

[9.] The Williams Affidavit stated principally, that

i. I am an Attorney at the Office of the Director of Public Prosecutions and I am duly authorized to make this Affidavit on behalf of the Respondent from information received by me in my capacity aforesaid;
ii. I make no admissions concerning the Applicant's application save as hereinafter mentioned;
iii. the Applicant, Marquella Dean (Date of Birth: 16th December 1999), stands charged with one (1) count of Murder contrary to section 291(1)(b) of the Penal Code Ch. 84 and two (2) counts of Attempted Murder contrary section 292 of the Penal Code, Ch. 84;
iv. it is alleged that this Applicant being concerned with others while in New Providence did murder Dario Dawkins and did attempt to Murder Anton Davis and Jamari Bullard. **There is now produced and shown to me**

marked as "Exhibit AW.1" a copy of the charge sheet reference to same;

v. the evidence in this matter is cogent and admissible;

vi. the complainant Anton Davis explains the terrifying moment he was shot while [holding] his nine-month-old baby girl. **This is now produced and shown to me marked as "Exhibit AW.2" a copy of the statement of Anton Davis dated 24th August 2023**;

vii. according to Witness Alpha who observed the incident and recounted as kids scattered when three masked men emerged from a Suzuki vehicle firing shots. The witness explained that they are 100 percent sure that the assailant is a female known as Marquella Dean from Bain and Grants Town. **There is now produced and shown to me marked as "Exhibit AW.3" a copy of the statement of Witness Alpha dated 24th August 2023**;

viii. witness Alpha identified the Applicant as the individual known to Witness Alpha as Marquella Dean [who] drove the Assailants who fired gunshots that claimed the life of Dario Dawkins and caused serious injury to Anton Davis and six-(6)-year-old Jamari Bullard. **There is now produced and shown to me marked as "Exhibit AW.4" a copy of the statement of Witness Alpha dated 27th August 2023**;

ix. the Applicant confessed to being concerned with others [who] carried out the offence. **There is now produced and shown to me marked as "Exhibit AW.5" a copy of the Record of Interview dated 24th August 2023**;

x. the Respondent objects to the application for the grant of bail for the following reasons, that –

a. the Applicant is alleged to have committed this offence while on bail for the murder of seventeen-year-old Sean Augustine contrary to section 291(1)(b) of the Penal Code, Ch. 84 and one (1) count of Attempted Murder contrary to section 292 of the Penal Code, Ch. 84 against Jason Thompson. **There is now produced and shown to me marked as "Exhibit AW.6" a copy of the Voluntary Bill of Indictment (194/8/2018) reference to same**;
b. when questioned in relation to that matter the Applicant admits that she is be with members of the Mad Ass Gang. **There is now produced and shown to me marked as "Exhibit AW.7" a copy of the Record of Interview (Q.20)**;
c. the Applicant expressed that she was in fear of the persons who she was concerned with. In the circumstances, she ought to be kept in custody for the safety and protection of the Applicant;
d. the persons whom the Applicant was alleged to have been concerned with were never charged and are at large;
e. in the circumstances, the Applicant should be kept in custody in order to protect her from the masked individuals whom she says fired shots in this matter;
f. the Applicant's affiliation with the Mad Ass Gang not only makes her a target of attacks but increases her propensity to commit them;
g. the Applicant should be kept in custody for her own safety and protection. If the Applicant is released on bail she will very likely become the victim of a retaliatory attack;

h. the Applicant should be kept in custody for the safety of the public particularly as she indicates that she hangs with members of a dangerous street gang;
i. there are no conditions that will prevent the Applicant from becoming the victim of a retaliatory attack;
j. there are no conditions that can be imposed that can prevent the Applicant from being the victim of retaliatory attacks;
k. there are no conditions that can be imposed that can prevent the Applicant from being the victim of an attack by the persons whom she previously expressed she feared;
l. there are no conditions that can be imposed that can prevent the Applicant from being the victim of another duress (according to her) that may claim or endanger the life of other members of the public;

xi. In these circumstances, the Respondent requests that the Honourable Court exercise its discretion and not admit the Applicant to bail; and

xii. the contents of this Affidavit are true to the best of my knowledge, information, and belief.

ISSUE

[10.] The issue that arises for the Court's consideration is whether the Applicant is a fit and proper candidate for admission to bail.

LAW AND ANALYSIS

[11.] The concept of bail derives from the Constitution, Bail Act, Chapter 103 (as amended), and judicial authorities. Bail has its roots in the constitutional tenets that every person is presumed innocent until he pleads guilty or is convicted by a competent Court and ought not to have his liberty curtailed except where authority prescribed by law permits such curtailment: **see Articles 20(2)(a) and 19(1) and (3) of the Constitution of The Bahamas**.

[12.] It is now trite law that the Court has the inherent jurisdiction to grant or deny persons charged with criminal offences (even the most heinous criminal offences) admission to bail. Bail is within the discretion of the Court. Notwithstanding, parliament has provided guidelines, through the Bail Act, Ch. 103 (as amended), for the Court to consider when exercising its discretion on deciding whether to grant or deny an accused person admission to bail.

[13.] The Applicant stands charged with Murder and Attempted Murder. Murder and Attempted Murder are offences included in **Part C of the First Schedule of the Bail Act, Chapter 103 (as amended)**. Therefore, the Court, in determining the present application must consider **sections 4(2)(2A)** and **(2B) of the Bail Act, Chapter 103 (as amended)**. These provisions provide as follows –

> **"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 mine]

[14.] Equally so, the Court, in determining the present application, must consider the primary objective for detaining an accused person pre-trial, which is to ensure that the ends of justice are not thwarted by his flight to avoid trial or perverted by his interferences with any of the prosecution's witnesses or his proclivity to commit further offences if admitted to bail. If such fears could be reasonably allayed, the accused person ought to be admitted to bail. This is irrespective of the public perception concerning bail.

[15.] The Court, as the guardian of the Constitution and the individual fundamental rights and freedoms contained therein, must be vigilant that the denial of admission to bail is not being used by the prosecuting authorities as a pre-trial punishment. In considering an application for admission to bail, the Court must undoubtedly perform the difficult exercise of having to weigh the fundamental

rights and freedoms of the accused person and the right of society to be protected from the tentacles of the criminal element.

[16.] The burden rests on the Respondent, having regard to the Applicant's fundamental rights and freedoms, to satisfy the Court that the Applicant should not be admitted to bail. This burden is discharged only by sufficient and cogent evidence. Naked, bare, or ritualistic affidavit assertions by the prosecuting authorities without more would not suffice and cannot stand alone: **see 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

[17.] Sawyer P in the Bahamian Court of Appeal decision of **The Attorney General v Bradley Ferguson et al SCCr. Bail Application Nos. 57, 106, 108, and 116 of 2008** at paragraph 12 echoed the following sentiments –

> "12. It cannot be over-emphasized that it is the prosecution who has the duty to bring accused persons to trial as soon as reasonably possible, and that it is necessarily part of their duty to exercise due diligence so that persons arrested and detained on reasonable suspicion of having committed any arrestable offence are not kept in custody ad infinitum awaiting trial, or proceedings preliminary to trial."

[18.] An accused person is undoubtedly presumed innocent and ought to be afforded a fair trial within a reasonable time. What amounts to a reasonable time will depend on an individual case assessment. This is particularly so given the current state of affairs of the criminal justice system in The Bahamas. With the Supreme Court experiencing a systemic backlog of criminal matters and despite the various remedial efforts being implemented, particularly, the addition of additional criminal court, trials in the Supreme Court are being set some years ahead.

[19.] Irrespective of the current reality, time begins to run from the moment the accused is arrested, charged, and remanded into custody. Parliament fixed by statute three years to be deemed a reasonable time at which a criminal matter ought to proceed to trial: **see section 4(2A)(a) of the Bail Act, Chapter 103 (as amended)**.

[20.] The three-year timeframe fixed by statute and deemed to be a reasonable time is to be used as a guide and not a hard-fast rule. However, it is loathed to have an accused person incarcerated and/or subjected to criminal proceedings beyond the three-year timeframe. The latter is particularly so where there is no reasonable justification for such delay.

[21.] The Court of Appeal decision of **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 176 of 2014** lends helpful guidance to the Court in determining the present application and the issue of whether the Applicant can be tried within a reasonable time. Allen P at paragraphs 23, 24, and 25 surmised as follows –

"23. ... when one considers the authorities and indeed the wording of section 4(2)(a), it is clear that what is a reasonable time must be determined on a case by case basis and without regard to hard and fast rules or mathematical formulae. Consequently, the deeming provision of section 4(2A) must be construed as a marker and not a limitation of what is a reasonable time, and the Court must still consider whether, in all the circumstances, the time which has elapsed or will elapse between arrest and trial, is unreasonable.

24. As noted, an applicant under section 4(2)(a) or (b) must, imprimis, raise the presumption of unreasonable delay by establishing that the lapse of time in the circumstances is inordinate. This must be rebutted by the State in demonstrating that there is a reasonable explanation for the delay for example, that the delay was caused by the lack of judicial and other resources; by systemic delays and backlogs; by the complexity of the trial; by the number of witnesses to be called; or the unavailability of crucial witnesses; or that the delay was caused by the conduct of the accused.

25. The Court must balance the matters advanced by both sides and determine whether there has been, or is likely to be unreasonable delay in bringing the applicant to trial. **Consequently, depending on the circumstances, a reasonable time may be more, or indeed less, than three years**."

[Emphasis added mine]

[22.] It is to be noted that the Applicant's backup trial date and fixed trial date are scheduled for 24 April 2026 and 6 September 2027, respectively. The Court, having judicial notice of the current state of affairs of the criminal justice system in The Bahamas and not being supplied with any evidence to the contrary, is satisfied at this time that the Applicant can be tried within a reasonable time. In any event, should this circumstance change in the interim, the Applicant is scheduled to appear before the Court on 12 February 2025 for a status hearing. It is during this time the Court would be apprised of the status of the Applicant's matter and the Applicant would be afforded the opportunity to make any necessary applications and/or raise any necessary arguments.

Seriousness of the offence and likelihood to abscond

[23.] It is well-established that the seriousness of the offence, though an important consideration, is not a stand-alone ground for denying an accused person's admission to bail. The seriousness of the offence factor is now coupled with additional factors such as the strength of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding pending trial.

[24.] Murder and Attempted Murder are profoundly serious offences and are regarded as the ultimate crimes; having grave implications on the economic stability, social development, national security, and health care system of the wider Caribbean region. More concerning is that these offences more than often involve the use of firearms. The wider Caribbean region continues to grapple with the proliferation and trafficking of illegal firearms, which have no doubt wreaked havoc on Caribbean societies. Notwithstanding Murder and Attempted Murder being profoundly serious offences, they are not within themselves a

reason to deny the Applicant admission to bail given the law as it currently stands.

[25.] In the present application, no evidence was advanced by the Respondent that the Applicant is a flight risk. However, the Applicant facing serious offences in which she would be subjected to some of the harshest penalties known to the criminal law, if convicted, may have a powerful incentive to abscond or interfere with the prosecution's witnesses: **see Hurnam v The State (Mauritius) [2005] UKPC 49**.

[26.] The inference of flight is not weakened by the Applicant's Bahamian citizenship status and/or her submission that she is a single mother of an infant male child who currently resides with her ailing grandmother. The inference is further not weakened by the Applicant's submission that her continued incarceration prevents her from providing for herself and her infant male child and her ailing grandmother. The Applicant being previously charged with a separate and pending Murder offence, the inference is heightened.

Strength and cogency of the evidence

[27.] The Respondent advanced that the evidence against the Applicant relative to the present application is cogent and admissible to warrant her continued detention pending trial. The cogency of the evidence alone is not a basis for the denial of the Applicant's admission to bail. However, the Court must consider the cogency of the evidence before deciding whether there is justification for denying the Applicant's admission to bail.

[28.] The Court's role in bail applications is limited notwithstanding that the strict rules of evidence are relaxed. This limitation has been propounded upon in the Bahamian Court of Appeal decision of **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016** wherein Allen P at paragraph 34 adjudged as follows –

> "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 maintains her innocence and indicates a willingness to defend herself against the offences at trial. Notwithstanding, the Respondent, through the Williams Affidavit, exhibited a Record of Interview dated 28 August 2023 between the Applicant and police wherein the Applicant confessed to being concerned with others who carried out the offences. She alleged that she was coerced into driving the vehicle that transported the assailants to the scene to commit the offences. Whether the Applicant was coerced into driving the vehicle or not is a matter squarely within the province of the jury at her trial and not for the Court in determining the present application for admission to bail.

[30.] The Williams Affidavit seeks further to rely on the statement of an anonymous witness who identified the Applicant as the driver of the vehicle that transported the assailants to the scene to commit the offences.

[31.] The Court, having a perusal of the evidence proffered through the Williams Affidavit, is satisfied that the evidence against the Applicant is cogent, and compelling and raises a reasonable suspicion of her involvement in the offences such as to justify the deprivation of her liberty by arrest, charge, and detention.

Interference with the safety of witnesses

[32.] The Respondent's principal witness being anonymous, there is no risk of interference by the Applicant. Unless the identity of the witness is clandestinely or improperly revealed, the Applicant ought not to know the identity of the witness.

Character and antecedent

[33.] In **Stephon Godfrey Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2020**, Isaacs JA (as he then was) at paragraph 28 pronounced as follows –

> "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 …"

[34.] In **Lorenzo Wilson v The Director of Public Prosecutions SCCrApp No. 29 of 2020**, Barnett P (as he then was) at paragraph 19 stated as follows –

> "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."

[35.] The Bahamian Court of Appeal in **Jervon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019** provided examples of when the Court could reasonably infer that an accused person applying for admission to bail is a danger to public safety and public order. Crane-Scott JA at paragraph 68 adjudged as follows –

> "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 mine]

[36.] In **Dwayne Heastie v The Attorney General SCCrApp No. 261 of 2015**, Isaacs JA (as he then was) at paragraph 38 stated as follows –

> "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 Applicant is a person who stands convicted of a violation of curfew offence resulting from the COVID-19 pandemic dated 27 March 2020. She was fined $250.00 or two months in prison. Albeit a somewhat minor offence, the Applicant for the purposes of the law cannot assert that she is a person of good character.

[38.] The Respondent, through the Williams Affidavit, advanced that the Applicant ought to be kept in custody for her own safety and protection. The Applicant alleged that she was coerced by the assailants into driving to the scene to commit the offences. Neither of the assailants was charged with the offences and remains at large. There are no conditions that can be imposed to prevent the Applicant from becoming a victim of an attack by the assailants who she previously expressed coerced her. Further, there are no conditions to prevent the Applicant from being the victim of another duress (according to her) that may claim or endanger the life of other members of the public. The Applicant in her pending Murder offence matter admitted to associating with members of the Mad Ass Gang. Thus, not only increasing her likelihood of becoming a target of a retaliatory attack but also increasing her propensity to commit retaliatory attacks.

[39.] The Respondent, through the Williams Affidavit, further advanced that the Applicant should be kept in custody for the protection of members of the public, particularly as she admitted to previously associating with members of a dangerous street gang.

[40.] The Applicant, having been previously released on bail on a separate and pending offence of Murder is here before the Court subsequently charged with offences that are similar thereto and which are punishable by a term of imprisonment exceeding one year. Given the nature and seriousness of the Applicant's pending offence and the present offences, the Court can reasonably infer that the Applicant would likely commit an offence if admitted to bail.

[41.] The Court, while satisfied that the usual conditions of reporting, curfew, and electronic monitoring would suffice to secure the Applicant's attendance at trial, is not satisfied that such conditions are effective to allay the Court's concern of the Applicant being a threat to public safety and public order. The Court is further not so satisfied that there are conditions available to allay concerns of the Applicant becoming a victim of a retaliatory attack. The Court takes judicial notice that the Applicant is charged with several Murder and Attempted Murder

offences and is subject to the heightened risk of becoming a victim of a retaliatory attack. This is particularly so given the rising level of vigilantism in the Bahamian society.

[42.] The Applicant's submission that she would be amenable to relocating to Eleuthera, The Bahamas if required is a non-starter. The Court is duty-bound to protect society at large from the tentacles of the criminal element. This is particularly so given that many Bahamian Family Islands are already facing challenges with limited resources and manpower. The Court cannot risk having the criminal element traveling over into the Family Islands to disturb their peace and tranquility.

CONCLUSION

[43.] In these premises, the Court, having considered the circumstances of the present application, relevant law, and submissions of the relevant parties, is satisfied that the Applicant is not a fit and proper candidate for admission to bail at this time. The present application for admission to bail is hereby denied.

[44.] The Applicant is to continue her remand at BDOCS pending her trial and/or any proceedings preliminary thereto. Should the Applicant's circumstances change in the interim, she is at liberty to reapply to the Court for admission to bail.

Dated this 21st day of August 2024

Guillimina Archer-Minns
Justice of the Supreme Court