

BETWEEN

RASHAD PHILIP MCPHEE

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Ms. Cassie Bethel for the Applicant
Ms. Abigail Farrington for the Respondent

Hearing Date: 14 June, 2023

RULING- BAIL-

Archer-Minns J

1. The Applicant Rashad Mcphee (D.O.B: 23 February, 1995) hereinafter referred to as the **Applicant**, being concerned with others has been charged in Voluntary Bill of Indictment (VBI) No. 262/11/2021 with Armed Robbery contrary to section 339(2) of the Penal Code Chapter 84, Possession of an Unlicensed Firearm (Two Counts) contrary to section 5(1)(b) of the Firearm Act and Possession of Ammunition (Two Counts) contrary to section 9(2)(a) of the Firearm Act, Chapter 213 relative to alleged events on 21 September 2021. By Summons and Affidavit filed on 26 May 2023, the Applicant makes application for admission to bail relative to the aforementioned offences. Opposing the application, the Respondent filed an Affidavit in Response dated 8 June, 2023.
2. Relying on his Affidavit in Support of the bail application, the Applicant avers in part that:
 - i. he was born on 23 February, 1995 in the Commonwealth of The Bahamas and is 28 years of age;
 - ii. he is currently remanded on the charges of Armed Robbery, Possession of an Unlicensed Firearm (two counts) and Possession of Ammunition (two counts);
 - iii. he was arraigned in the Magistrate's Court No. 11 on 27 September, 2021 and his next appearance for trial in the Supreme Court is set for 27 September 2023;
 - iv. he has pleaded not guilty and will be defending the charges at trial;
 - v. that he has previous convictions of Armed Robbery, Causing Harm, Stealing and Housebreaking;
 - vi. he has no pending matters before the court in the Commonwealth of The Bahamas;
 - vii. should he be admitted to bail, he will have accommodation at Charles Vincent Street, Englerston;
 - viii. prior to his incarceration, he was a self-employed auto-mechanic;
 - ix. he will be disadvantaged in his ability to adequately prepare his defense if further remanded;
 - x. he will be at a disadvantage in his ability to support himself and assist his family;
 - xi. if granted bail, he will comply with all rules and regulations set by the Court and;
 - xii. he is a fit and proper candidate for bail.
3. Counsel for and on behalf of the Applicant further submitted orally:
 - i. that even if the court is satisfied on the evidence reflected in the Respondent's Affidavit in Response as to a suspicion of guilt on the part of the Applicant, it is just one factor to be considered;

- ii. there is no evidence adduced before the court to indicate that the Applicant is a flight risk or is likely to abscond;
- iii. the Applicant's resources, family connection and employment status weakens an inference of the Applicant's likelihood to abscond. Reliance was placed on **Jeremiah Andrews vs The Director of Public Prosecution SCCrApp No. 161 of 2019;**
- iv. the Applicant is a Bahamian and has lived in the jurisdiction his entire life and has strong ties to The Bahamas;
- v. the Applicant is not a man of great means. He is a self-employed mechanic;
- vi. there is no evidence before the court of any possible witness interference nor has the Respondent averred that it is of concern;
- vii. with respect to committing offences whilst on bail, the Applicant's antecedent indicates offences for which he has received his penalty. None of which were committed while on bail. Further notwithstanding, the penalties he received relative to the offences, he still appeared to face his trial;
- viii. there is no evidence that the Applicant will not comply with bail conditions imposed by the court.

In all of the circumstances of this case, the factors weigh in favor of the Applicant being granted bail and ask the court to exercise its discretion in doing so.

4. The Respondent opposed the application and relied on its Affidavit in Response. Counsel for and on behalf of the Respondent orally submitted inter alia:
 - i. one of the primary considerations for the grant or denial of bail is the character or antecedent of the person charged. The Applicant has been sentenced for several similar offences prior to the current offences therefore the Applicant cannot be regarded as having a good character;
 - ii. there is also a need to protect public safety and order. Reliance was placed on **Jevon Seymour vs The Director of Public Prosecutions SCCrApp No. 115 of 2019;**
 - iii. the Applicant's antecedent and VBI No. 273/11/21 indicate that the Applicant has pending charges for similar offences. The Applicant is a threat to public safety and order;

- iv. the evidence is cogent. In addition to being found in the stolen vehicle (which grounds the charges of the pending matter) and was also in possession of an unlicensed firearm and ammunition) (two counts each);
- v. there are no conditions which could be imposed that would prevent the Applicant from committing another offence;
- vi. the Applicant is not a fit and proper candidate for bail and there are no conditions what could be imposed that could prevent the Applicant from committing another offence;
- vii. the Applicant was released from The Bahamas Department of Correctional Services on 14 August, 2021. The alleged offences were committed one month after release in September 2021.

In all of the circumstances of this case, the Applicant ought to remain remanded in custody. The charges are serious in nature and a threat to the peace within our society.

The Law

5. The Constitution of The Bahamas affords to all persons charged with a criminal offence the presumption of innocence and an unalienable right to apply for bail. **The Bail Act 1994** gives judicial officers a discretionary power to admit or not admit an Applicant to bail. Given the nature of the charges with which the Applicant has been charged, the Court had regard to the relevant provisions of The Bail Act particularly Sections 4(2), 4(2A), 4(2B) and the First Schedule of The Act.

Discussions

6. The Applicant before the Court makes application for admission to bail in relation to the charges as reflected in VBI No. 262/11/2021. Notably, the Applicant has another pending matter with similar offences committed days apart; VBI No. 273/11/2021, being concerned with another charged with Armed Robbery, Receiving and Possession of a Firearm with the Intent to Endanger Life. Multiple applications for admission to bail in relation to both VBIs have been made by the Applicant which were all denied. This notwithstanding, the Court has given due consideration to the current application so as to determine whether on the merits of the case as presented before the Court; this Court ought to exercise its discretion to admit the Applicant to bail. **Michael Renaldo Mackey and Edward A. Johnson vs The Director of Public Prosecutions SCCrApp No. 288 of 2015** considered.

7. The antecedent of the Applicant makes it clear that he has previous convictions in relation to two matters for Armed Robbery in 2016 for which he was sentenced to eight (8) years imprisonment. The sentences were to run concurrently. He was released from The Bahamas Department of Correctional Services on 14 August, 2021 and less than one month of his release, he allegedly committed armed robbery; i.e on 2nd September 2021 VBI No. 273/11/2021 and on 21 September 2021 No. 262/11/2021. The Applicant has a Back-up Trial Date with respect to VBI No. 262/11/2021 before this Court on 18 March, 2024; Fixed Trial Date: 30 June, 2025 and is next scheduled to appear before this Court on 27 September, 2023 for Case Management. VBI No. 273/11/2021 has a Fixed Trial Date for 3 November 2025. The matter is therefore proceeding in the normal trajectory and currently there is no issue with the trial not proceeding within a reasonable time.
8. As stated by the Court of Appeal in **Cordero McDonald vs The Attorney General SCCrApp No. 195 of 2016**, “the nature of the evidence against the Applicant is of utmost relevance”. The Court had regard to the statement of the virtual complainant, Sidney Sinclair and the report of Cpl. 2136 Jasma Bain exhibited to the Respondent’s Affidavit in Response of Inspector Demetrius Taylor. On this evidence, the Court is satisfied as to the sufficiency of the evidence raising a reasonable suspicion of the commission of the offences by the Applicant. Whilst, the Court fully appreciate that the bail application is not one for a forensic review of the evidence to be relied upon; it does assist the Court in determining whether the intended evidence is cogent and in consideration of all other relevant factors to be considered; bail should or should not be granted to the Applicant. The intended evidence in the Court’s view is neither tenuous or weak.
9. The evidence also indicates the manner in which the offences were committed and the subsequent pursuit, arrest and detention of the Applicant and others with him. No doubt the Applicant has a presumption of innocence and a right to his liberty. This notwithstanding, given the evidence as to the conduct of the Applicant in the Court’s view, was one that exhibited a total disregard for law and order. It was an affront to public safety and order and ultimately put the lives and safety of persons within our community at a heightened risk. **Stephon Davis vs The Director of Public Prosecutions SCCrApp No. 20 of 2023** also considered.

Conclusion

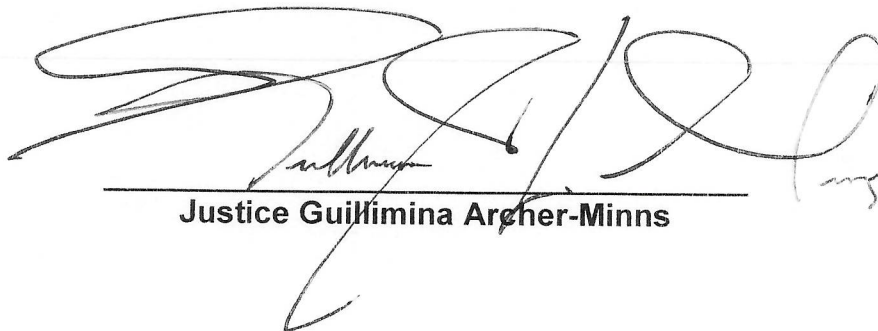
10. The Court having therefore given consideration to the Constitution, the relevant provisions of The Bail Act, Affidavits of both Counsel and their respective submissions and authorities cited, the previous Bail decision of my learned colleague, this Court so finds that unreasonable delay is currently not an issue and gave additional consideration to the following factors:

- i. the strength of the evidence against the Applicant;
- ii. the seriousness of the charges;
- iii. the pending matters concerning the Applicant;
- iv. the character and antecedent of the Applicant;
- v. the competing interest of the Applicant and his presumption of innocence and right to his liberty with the rights of the public, its safety and security and;
- vi. bail conditions which could be imposed to minimize the risks involved with granting of bail.

11. Consideration having been given to all of the aforementioned factors, the Court is further of the view particularly given the fact that (i) the Applicant has previous convictions for similar offences for which he served a sentenced of some eight (8) years; was released on 14th August 2021 and within less than a month of his release was charged with Armed Robbery matters committed within weeks of each other and (ii) the cogency and strength of the evidence in this matter with which the application is concerned that raises a reasonable suspicion of the Applicant's commission of the offences all of which cumulatively indicate that the Applicant is a threat to public safety and order and for which there are no conditions which the Court can impose that will effectively thwart the risks involved with the granting of bail. In the circumstances, the Court will not exercise its discretion to grant the Applicant bail. He is to continue his remand in custody. Bail is denied in respect of the offences specified in VBI No. 262/11/2021; the subject of the Summons filed and for which evidence was adduced before this Court for the purpose of the bail application.

The Applicant is at liberty to reapply should there be any changes in circumstances in the interim.

Dated this 5 day of July 2023.



Justice Guillimina Archer-Minns