

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00116/2013

BETWEEN

ROMANDO HUYLER

AND

THE COMMISSIONER OF POLICE

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

Appearances: Mr. Romando Huyler Pro se
Ms. Pintard for the Respondent

Hearing Date: 17 February 2021

RULING-BAIL

Archer-Minns J

1. The Applicant, Thirty (30) year old Romando Huyler (13/March/1990), was arrested and charged with one count of **MURDER** contrary to Section 291(1) of the Penal Code. The Respondent has alleged that the Applicant murdered the deceased in this matter in January 2018. He has been remanded at the Bahamas Department of Correctional Services since his arrest. The Applicant now applies for bail.

2. The Applicant filed an Affidavit on 2 February 2021 in support of bail herein. In his affidavit, he deponed (i) that he was employed as a construction worker and did landscape and gardening work as well as side jobs, (ii) he was arrested in November 2018 and served the VBI in February of 2019. The trial was scheduled for November 2020 but it was vacated and a new trial date has been set for some time in 2021, (iii) he has been convicted on occasions however he could not say what he was convicted for. His last conviction would have been in 2017, (iv) the facts of his case are similar to that of Renaldo G. Armbrister as he was the last person in the presence of the deceased and this information is told by an Alpha witness. He denies committing the offence, (v) he has a nine year old daughter who needs him, he is not a flight risk, will appear for trial, will have employment if given bail and will be able to hire private counsel.

3. An Affidavit of Nathan Mackey was filed on behalf of the Respondent on 11 February 2021 opposing the Applicant's application for bail. The Respondent avers (i) that the evidence in this matter is cogent,(ii) given the severity of the penalty for the offence in itself gives the Applicant an incentive to abscond, (iii) there has been no unreasonable delay in this matter as the trial date is set for May 2021 and the Applicant has numerous convictions indicating the possibility that if the Applicant is released on bail, he would commit additional offences.

Applicable law

4. The Constitution gives the Applicant the right to apply for bail. Section 20 (2) (a) of the Constitution says that **"Every person who is charged with a criminal offence - (a) shall be presumed to be innocent until he is proved or has pleaded guilty."**Article 19(3) of the Constitution entitles the Applicant to a fair trial within a reasonable time and in the event that this cannot ensue, the Applicant must be granted bail unconditionally or subject to reasonable conditions.
5. In any application for bail, the Bail Act 1994 (as amended) (the "**Bail Act**") must be considered. The relevant offence is "**Murder**", Sections 4(2), 4(2A) and 4(2B) and Part A of the Bail Act must therefore be considered. That section reads as follows:

“4. (2) Notwithstanding any other provisions of this 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;

(b) is unlikely to be tried within a reasonable time; or

(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 a written statement giving reasons for the order of the release on bail.

(2A) For the purpose of subsection (2)(a) and (b)-

(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 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 a reasonable time.

(2B) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations”

6. Part A of the Bail Act states as follows:

“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) 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 person;

(b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;

(c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(f) whether having been released on bail previously, he is charged 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.

DISCUSSION

7. The Bail Act and Constitution guides a court, when considering bail, to evaluate whether an Applicant will have a trial in a reasonable time. In these circumstances, the Applicant would have been arrested for over two years and his trial is set for May 2021, a date before the expiry of the three year guideline period.
8. Although it is not the function of the Bail judge to thoroughly evaluate evidence, it is necessary to look at its strength in order to exercise its discretion as to whether or not bail should be granted. In *Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016* Allen P explained that:

“34. It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 such as to justify the deprivation of 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.”

The evidence before the Court is that an anonymous eyewitness, Alpha, on 17 January 2018, (almost a year after the alleged incident took place) sometime after 11:00 p.m. saw the Applicant and the Deceased entering an old abandoned building. Around 12:00 a.m. on 18 January 2018, the

witnesses alleged that they saw the Applicant exiting the old City Market building, running frantically and sweating. The witness further alleged that the Applicant's white shirt was also dirty at this point. He is a known 'baser'. Additionally, Inspector Lavardo Sherman conducted an identification parade during which Alpha allegedly identified the Applicant as the man whom they saw leaving the abandoned building on the night of the alleged incident.

The Court in **Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011** said:

“The seriousness of the offence, with which the accused is charged and the penalty which it 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”.

9. The offence which the Applicant faces is very serious, and though the Court must consider this, it cannot be the basis for its decision but does weigh heavily in the scale against the grant of bail. According to the Bail Act, the Court must consider if the Applicant would commit an offence while on bail and previous convictions can assist in evaluating this consideration. In these circumstances, the Applicant

has been convicted of **four** relevant offences which he has either served time or paid a fine for; they are:

- one count of **Possession of Dangerous Drugs with intent to Supply** on 10 February 2016 (Convicted and fined \$500.00 or five (5) months in prison);
- one count of **Possession of Dangerous Drugs with intent to Supply** on 18 April 2016 (Convicted and fined \$750.00 or nine (9) months in prison) and;
- one count of **Possession of Dangerous Drugs** on 17 March 2017 (Convicted and fined \$500.00 or three (3) months in prison).

The Court considers that the last offence did not occur long before the Applicant was arrested for this current offence. The previous offences also occurred very closely together. According to the case of **Stephon Godfrey Davis and The Director of Public Prosecutions SCCrApp. No. 108 of 2020,**

“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”

The Court of Appeal in **Stephon Godfrey Davis** (Supra) went on to explain that certain offences should not be given much weight such as vagrancy. In this current matter, the Court considers that the offences which the Applicant were

convicted of are serious although not of similar nature as the current offence should nevertheless be given sufficient weight. Further, they provide a barometer for the likelihood of the Applicant to commit other offences while on bail. The Court is of the view that it is very likely that the Applicant will commit an offence on bail and is not willing to take this risk in the interest of the public interest.

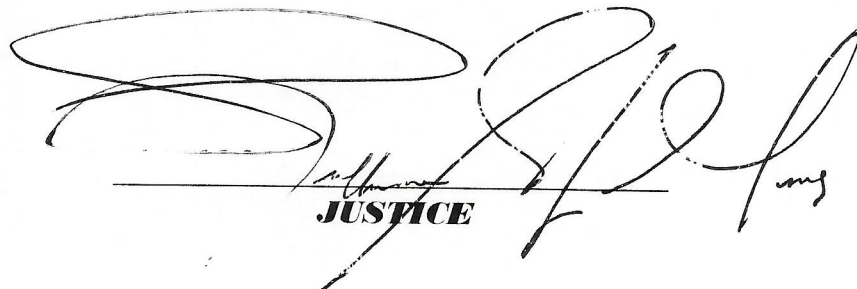
10. The main purpose of bail is to ensure that an Applicant will appear for trial. There is evidence before this Court that the Applicant is a repeat offender with seemingly no fixed address as he is referred to as a 'baser'. In the circumstances, the Court is not willing to risk not being able to track or find the Applicant when the need arises. In considering the varying conditions of bail which are normally applied, there is no practical way in which the Court can ensure that the Applicant will not abscond or appear for trial and at the same time protect the interests of the public. No curfew can be given as he seemingly has no permanent residence, nor an EMD ordered as it would be impractical to track him using an EMD since he would have no means by which to charge the device. Lastly, he can be required to report to the Police Station but the Court does not consider that this would be a sufficient condition to minimize the risks involved with granting bail. The Court has considered further the safety of the public and the interest of others that may be involved in this matter.

Conclusion

11. I am minded to exercise my discretion to deny bail for the following reasons:
- (a) the offence in which the Applicant faces is serious giving the Applicant an incentive to abscond;
 - (b) the Applicant does not have a permanent address, therefore cannot be traced or contacted;
 - (c) there are no conditions which can be imposed to the satisfaction of this Court that would ensure that the Applicant would appear for trial and not abscond while protecting the safety of the public; and
 - (d) the Applicant has multiple previous offences, which shows a propensity for committing crime, making it very likely that he would commit an offence while on bail.

Bail is hereby denied and the Applicant is at liberty to re-apply for bail in the event that there is a change in circumstance.

Dated the 24 Day of February, 2021



JUSTICE