

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/00273/2020

BETWEEN

SHACARDO CULMER
aka: Donut

AND

THE COMMISSIONER OF POLICE

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

Appearances: Mr. David Cash for Applicant
Ms. Cassie Bethel for the Respondent

Hearing Date: 2 September 2020

RULING-BAIL

Archer-Minns J

1. By Summons filed on 20 August 2020 together with an Affidavit in Support filed on even date, the Applicant Shacardo Culmer made application for admission to bail having been charged with offences of Attempted Murder, contrary to section 292 of The Penal Code and Possession of a firearm with intent to endanger life, contrary to section 33 of The Firearms Act.

2. Counsel for and on behalf of the Applicant submitted inter alia:
 - (I) the Applicant's matter is proceeding by VBI - which is scheduled for presentation on 3 September 2020

 - (II) Applicant is not a flight risk – he volunteered himself into custody and asserted his innocence in providing an alibi along with the names of the alibi witnesses.

 - (III) acknowledges his previous conviction for Possession of an unlicensed firearm/ammunition

 - (IV) there has been no unreasonable delay in the prosecution of the matter therefore Applicant does not seek bail on this basis

 - (V) there being no unreasonable delay is not a basis for the court to automatically refuse bail – relies on Kyle Farrington and Duran Neely.

 - (VI) the only evidence upon which the Crown seeks to rely upon is that from the virtual complainant – identification evidence which was made in difficult circumstances an issue which will ultimately be determined during the trial.

 - (vii) the evidence of the Crown hold no more value than the alibi evidence of the Applicant as they both hold equal weight.

 - (viii) there must be substantial grounds that the Applicant will abscond, interfere with witnesses or obstruct the course of justice. No averment by the Crown that the Applicant will abscond or interfere with witnesses.

(ix) contrary to the Crown's assertion that the Applicant will commit offences whilst on bail, the evidence adduced by the Applicant shows otherwise. The Applicant whilst on bail for the Possession of an unlicensed firearm/ammunition matter attended court until he was convicted. He did not commit any other offences whilst on bail.

(x) Applicant is shielded by the presumption of innocence.

In all of the circumstances of this case, the Applicant ought to be admitted to bail.

3. The Crown opposed the application and relied principally on its Affidavit in Response and Supplemental Affidavit in Response filed on 1 September 2020.
4. Counsel for and on behalf of the Crown submitted further:
 - (i) the offence of Attempted Murder is a Part C offence the burden is on the Applicant to show why he ought to be granted bail – reliance placed on Kyle Farrington & Dimagio Whyms.
 - (ii) Applicant has not been presented with a VBI – no delay in the prosecution of the matter – court must therefore consider the relevant factors in section 4(2)B of the Bail Act.
 - (iii) Circumstances under which the incident took place, there was a blatant disregard for public safety
 - (iv) Applicant has a previous conviction for Possession of an unlicensed firearm/ammunition – recent conviction. The current offences for which the Applicant seeks bail was committed with the use of a firearm – Applicant has a propensity to commit offences with the use of a firearm.
 - (v) Applicant has not met the burden that he is a fit and proper candidate for admission to bail. Applicant ought not be admitted to bail.

5. The court considered the content of the Affidavit in Support of the Applicant, the Affidavit in Response and Supplemental Affidavit in Response of the Respondent respectively together with the oral submissions of Counsel, the relevant provisions of the Bail Act particularly section 4(2)(c) all relevant factors including the statutory requirements for the granting of discretionary bail specified in Part A of The First Schedule as well as the primary considerations in sub-section 4(2)B, the relevant authorities of Kyle Farrington, Jevon Seumour and Richard Hepburn. The nature and seriousness of the offences, the antecedent of the Applicant, his presumption of innocence and his right to his liberty with the competing interests of the public, its safety and security were also considered.
6. The court noted that the application is one whereby the Applicant seeks admission to bail – pre-trial bail in relation to Part C offences – therefore, there is no issue as to unreasonable delay in the prosecution of the matter.
7. The facts in this case are disputed. The Applicant asserts his innocence, the Crown asserts otherwise. As stated by Allen P in Cordero McDonald “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.”
8. In relation to this case, the Crown relies principally on the evidence of the virtual complainant, Venel John whose evidence as it pertains to the Applicant is to the extent that after he had been shot to the chest whilst in his vehicle by two males armed with firearms whom he identified he left his vehicle and started running into a yard to get away. Whilst looking back he saw that the two men had been joined by another whom he identified as donut. This was the extent of his evidence as it pertained to donut in his statement. He subsequently identified the individual referred to as donut from a photo gallery days after the alleged incident as one of the three persons whom he

identified as donut.. This was the extent of his evidence as it pertained to donut in his statement. He subsequently identified the individual referred to as donut from a photo gallery twelve days after the alleged incident as one of the three persons who he alleged shot him. I make no further comment in respect of his evidence as it pertains to the Applicant.

9. Having regard to the submissions made to the court and the content of the affidavits relied upon by the respective parties, the pivotal question for the court to determine is whether or not the Applicant is a fit and proper candidate for whom the court ought to exercise its discretion to admit to bail having been charged with Part C offences and for which there has been no unreasonable delay in the prosecution of the matter.
10. As stated in Jevon Seymour at Paragaragh 74 "It must never be forgotten 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 punishment."
11. There was no evidence adduced before the court of any likelihood that if the Applicant is released on bail he would abscond or interfere with witnesses or otherwise obstruct the course of justice. In his favour, the court took note that the Applicant volunteered himself into custody. The Crown nevertheless asserted that the Applicant has a previous conviction for Possession of an unlicensed firearm/ammunition and therefore is not of good character. Further, the offences for which the Applicant now seeks bail are offences committed with the use of a firearm. Having regard to the content of the virtual complainant's statement, and reference to the Applicant being known as donut, the Applicant's involvement is not patently clear to the court although the virtual complainant's statement of 19 August 2020, identified the individual referred to as donut as one of the men whom shot him
12. This notwithstanding, all relevant factors having been considered and in the absence of any evidential basis in relation to risk of committing offences whilst on bail , absconding, interference of witnesses or obstructing the course of justice, the court is of the view that the imposition of

conditions could ameliorate or eliminate any of the perceived risks involved with the granting of bail.

13. In all of the circumstances of this case, the court will exercise its discretion to grant the Applicant bail on stringent terms and conditions.

- (i) Bail is granted in the amount of \$20,000.00 with one or two suretors
- (ii) Applicant to be electronically monitored
- (iii) Applicant is to report to the Quakoo Street Police Station every Tuesday, Thursday and Saturday before 7:00 p.m.
- (iv) Applicant is not to contact or otherwise interfere with any of the Prosecution witnesses nor anyone acting for or on his behalf
- (v) Applicant's Passport/Travel Documents to be surrendered to the court until the completion of the matter

Breach of any of these conditions subjects the Applicant to his bail being revoked.

Dated this 16 day of September 2020


Justice