

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/099/2023

BETWEEN

SHERMAN NELLY JOSEPH

a.k.a. "Thirteen/13/Nelly"

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Sherman Joseph, pro se
Mr. Uel Johnson for the Respondent

Hearing Date(s): 19 July, 2023

RULING- BAIL

Archer-Minns J

1. Sherman Joseph (D.O.B 17th September, 2004), the “**Applicant**” has been charged with one (1) count of Murder contrary to section 291(1) (b), four (4) counts of Attempted Murder, contrary to section 292 both of the Penal Code, Chapter 84, and four (4) counts of Possession of a Firearm with Intent to Endanger Life contrary to section 33 of the Firearms Act, Chapter 213 all stemming from the events of 27 June 2022. He made this application to the Supreme Court via The Bahamas Department of Corrections (“BDOCs”) form dated the 19 April, 2023. The Respondent replied thereto via its Affidavit in Response filed 23 June, 2023.
2. The Applicant orally submitted the following:
 - i. the defendant is not held in custody because of his guilt and is presumed innocent. *Hurnam v The State* relied upon.
 - ii. the strength of the evidence is best left for the jury at his trial. Reliance placed on the Court of Appeal decisions of *Stephon Davis v DPP No.108* and *Kyle Farrington*.
 - iii. he meets one of the primary considerations for bail in that he is of good character and has no pending matters nor convictions.
 - iv. it is said that a person of his character is less likely to abscond and more likely to appear for his trial.
 - v. one peculiarity concerning his matter is that he was a juvenile at the time the offence was alleged to have happened and prison should have been a means of last resort. Reliance placed on the case of *R.B.*, a juvenile decision from the Court of Appeal and also the case by former Chief Justice Stephen Isaacs of *Travis Lockhart* who was charged with murder and a pending serious matter, bail was granted under \$10,000 with minimum contact with the police.
 - vi. he is a fit and proper candidate for bail and should be given the benefit of the doubt.
 - vii. there are reasonable conditions that can be given for bail.
 - viii. he is not involved with any gang.
3. The Respondent’s Affidavit states principally that:
 - i. the evidence in this matter is cogent and relies on the Affidavit of Janessa Murray filed 8 November, 2022 (“Murray Affidavit”) and the Affidavit of

Inspector Jermaine Adderley filed 4 November, 2022 (“Adderley Affidavit”) as a part of the Applicant’s previous bail application before this Court in December 2022 which was denied and with no change of circumstances, he should remain remanded.

- ii. the Applicant’s further detention will ensure he will not abscond and will be present for the commencement of trial and
 - iii. there is nothing peculiar about the Applicant’s detention which is unfair or unjust.
4. In reply to the Applicant’s oral submissions, the Respondent reiterated that this was the Applicant’s second bail application and they were continuing to rely on the Murray and Adderley Affidavits as there had been no change in circumstances. Despite what the Applicant contended, there is gang affiliation with this Applicant as stated in the Adderley Affidavit. On the last occasion the Applicant’s safety and that of the public were central concerns and same remain. The Respondent also relied on the case of **Stephon Davis** and that of **Bartholomew Pinder** wherein the Court of Appeal highlighted that where the court believes or has reason to believe that the Applicant’s life may be in danger because of prevailing retaliation in society, the court is within its jurisdiction and has the discretion to deny bail.
5. In relation to the case of **R B**, a juvenile’s bail application, the Respondent stated that it was aware of the position that the Court was placed in with regards to juveniles but also that there are circumstances where juveniles are treated as adults and this matter is one of those cases where the Applicant is charged with murder and attempted murder being seventeen plus (17+) years at the time.

Applicable Law & Discussion

6. The Constitution of The Bahamas affords to persons charged with a criminal offence a presumption of innocence and for this reason, an opportunity to apply for bail. The **Bail Act** provides guidelines that assist the courts when exercising their discretionary power regarding the grant of bail. This is the Applicant’s second application for bail before this Court with no material change in circumstances. While this might be so, as was stated in **Michael Renaldo Mackey and Edward A. Johnson v Regina (SCCrApp No. 288 of 2015)**, the court must review the matter and determine if any new information is presented or other matters that could result in a change of the decision. **Allen, P** stated as follows:-

“[o]n a successive application for bail, the court must have regard to the previous finding on the application for bail and consider whether there is any

new material relevant to the question of bail to be considered; and also whether there were existing circumstances at the time of the previous application which were not brought to the court's attention and is relevant to the grant of bail.

In as much as the learned judge's initial applications were not appealed, and consequently stands; and in light of the principle enunciated by the case law, I determined that there was no error of law committed by the learned judge in relying on the findings she made previously, and in relying on what was essentially her finding that there were no changed circumstances which warranted reconsideration of her previous decision to refuse bail. Moreover, the appellants were unable to show that there were any existing facts which were not put before the learned judge on the previous occasion which would be relevant to the grant of bail".

7. As it relates to the matter being heard within a reasonable time, the Bail Act section 4(2) (2A) suggests that three years since being charged is within a reasonable time frame otherwise consideration ought to be given to the Applicant being granted bail subject to the other factors detailed in the Act. The Applicant was charged in 2022 and at this juncture, this being a little more than a year on remand, does not yet meet that threshold. Unreasonable delay in the prosecution of this matter is currently not an issue.
8. This Court stands on its previous ruling which dealt with the remaining factors of public safety and protection, the Applicant's safety and the nature and strength of the evidence upon which the Respondent intends to rely which this Court determined to be cogent and raised a *reasonable suspicion of the commission of the offences by the Applicant, such as to justify the deprivation of his liberty by arrest, charge, and detention* (**Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**).
9. The only new issue raised by the Applicant was that he was a juvenile when charged and placed his reliance on the case of **RB** which peculiarities should be considered as pertain to his matter.
10. In **R.B. (a juvenile) v AG SCCrimApp No. 205 of 2015** it was noted that "*the Appellant was, at the date of the application for bail, 16 years old, and was a 'child' within the meaning of the Child Protection Act*" (Ch.132 of the 2000 Revised Edition of the Statute Law of The Bahamas). In this instant matter, the initial bail application brought before this Court in December 2022, the Applicant was eighteen (18) years old. **Section 110 (3) of the Child Protection Act 2007 (CPA)**, provides , "*[w]here it appears to the court that the person so brought before it has attained the age of eighteen years, that person shall, for the purposes of this Act, be deemed not to be a child*".

11. This Court also considered **section 112 of the CPA** which also makes provisions for **'Bail and detention of Child'**, and states,

112. "(1) Where a person apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the officer or sub-officer of police in charge of the police station to which the person is brought shall as soon as practicable —

(a)

(b)

(c) enquire into the case and may, in accordance with the Bail Act, release the person on a recognizance being entered into by the person or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the officer secure the person's attendance upon the hearing of the charge, and shall so release that person unless —

(i) the charge is one of homicide,

(ii) it is necessary in the person's interest to remove the person from association with any reputed criminal or prostitute, or

(iii) the officer has reason to believe that the person's release would defeat the ends of justice.

(2) Where a person apparently a child is apprehended and is not released under subsection (1) the police shall cause the person to be detained in a juvenile correction centre until the person can be brought before a court.

113. "(1) Any court on remanding or committing for trial a child who is not released on bail shall commit that child to custody in a juvenile correction centre named in the commitment, to be detained there for a period for which the child is remanded or until the child is there delivered in due course of law:

Provided that in the case of a child who has attained the age of fourteen years —

(a) the court shall not be obliged so to commit that child if the court based upon sworn information certifies that the child is of —

(i) so unruly a character that the child cannot safely be so committed, or

(ii) so depraved a character that the child is not a fit person to be so detained; and

(b) where the court so certifies, the child may be committed to such place, including an adult correctional centre, as may be specified in the commitment warrant".

12. This Court does not know the circumstances under which the Applicant was initially remanded but at the time of applying for and determining his initial bail application and this current application he was at the material time eighteen (18) years old and as such his remand cannot be said to be unlawful. There is provision in the CPA to allow for the remand of a child to an adult institution upon being charged under certain circumstances

at the age of seventeen (17), however this Court cannot account for that only on what is presently before it.

Conclusion

13. The Applicant is to be commended for providing the requisite case law and submissions as concerns his application but upon review of the relevant provisions of the Bail Act, and submissions advanced, the Court is of the view that there is little to no material change in circumstances from the earlier application. The Court having given consideration to their being no unreasonable delay in the prosecution of this matter ; the safety and security of the public, the Applicant, and the intended witnesses, the Court remains fortified in its position that the Applicant ought to remain in custody until his trial date. The Court will not resile from its position as stated in its ruling of December 2022. Bail is denied.

14. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 2nd day of August, 2023.



Justice Guillimina Archer-Minns.