

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2023/CRI/BAL/00099

Between

SHERMAN JOSEPH

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Guillimina Archer-Minns

Appearances: Ms. Cassie Bethel for the Applicant
Ms. Erica Duncombe-Ingraham for the Respondent

Hearing Dates: 1st and 8th May 2024

RULING – BAIL DECISION

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Successive Application for 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) – Possession of a Firearm with Intent to Endanger Life contrary to section 33 of the Firearms Act, Chapter 213 (as amended) – Whether the Applicant is a fit and proper candidate for the admission of bail – Applicant not a fit and proper candidate for the admission of bail – Application for bail denied

INTRODUCTION

1. Sherman Joseph, the Applicant named herein, is a 19-year-old Bahamian male who has moved the Court for the admission of bail concerning the charges of Murder (1 count), Attempted Murder (4 counts), and Possession of a Firearm with Intent to Endanger Life (4 counts), which said offences are said to have occurred on Monday 27th June 2022.
2. The Applicant was arraigned in Magistrate Court No. 4 on 15 July 2022 before Magistrate Shaka Serville. The matter was adjourned and the Applicant was remanded to The Bahamas Department of Correctional Services. The

Applicant's next appearance before the Court is scheduled for 20 November 2024. The Voluntary Bill of Indictment ("VBI") was filed on 30 March 2023.

3. The Applicant made two previous applications for the admission of bail and was denied bail by the Court. The written rulings relative thereto were delivered on 12 December 2022 and 19 July 2023. This application is now anew before the Court for its consideration and determination.
4. The Applicant moved the Court for the admission of bail by way of a Summons supported by an Affidavit sworn by himself. The Summons and Affidavit-In-Support were filed on 15 April 2024.
5. The Respondent opposed this application by way of an Affidavit-In-Response sworn by Vashti Bridgewater, Counsel and Attorney-at-Law attached to the Respondent's Office, filed on 16 April 2024.
6. The Respondent further opposed this application by way of the Affidavit of Inspector Tamara Edwards, Administrative Intelligence Inspector attached to the Criminal Intelligence Bureau of the Royal Bahamas Police Force, and the Affidavit of Sergeant 3611 Christopher Wilchcombe, Prison Liaison Officer for the Central Intelligence Bureau of the Royal Bahamas Police Force who is attached to The Bahamas Department of Correctional Services, both filed on 23 April 2024.
7. Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchcombe appeared before the Court on 8 May 2024 and provided *viva voce* evidence relative to their respective Affidavits. Both Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchcombe were extensively cross-examined by Counsel for the Applicant.
8. The Court has reviewed and considered the respective Affidavits and has heard the submissions of Counsel for the Applicant and Respondent, as well as the *viva voce* evidence of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchcombe.

THE APPLICANT'S AFFIDAVIT EVIDENCE

9. The Applicant in his Affidavit stated, that –
 - i. he is the Applicant in this matter;
 - ii. he was born on 17 September 2004 in the Commonwealth of The Bahamas and is 19 years of age;
 - iii. he was arraigned in Magistrate Court No. 4 on 15 July 2022 before Magistrate Shaka Serville. His next court date is set for 20 November 2024 before Justice Archer-Minns;
 - iv. he pleaded not guilty and will be defending these charges at trial;
 - v. he respectfully requests that the Court admit him to bail pending further court appearances;
 - vi. he does not have any previous convictions before the court(s) in the Commonwealth of The Bahamas;

- vii. he does not have any pending matter(s) before the court(s) in the Commonwealth of The Bahamas;
- viii. should the Court admit him to bail, he will have reasonable accommodations in New Providence, The Bahamas;
- ix. prior to his incarceration, he was self-employed as an Auto Mechanic in New Providence, The Bahamas;
- x. he respectfully requests that the Court admit him to bail pending his further court appearances and for the following other reasons, that –
 - a. he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded;
 - b. he will be disadvantaged in his ability to support himself and his family;
- xi. if he is granted bail, he will comply with all rules and regulations set out by the Court; and
- xii. he is a fit and proper candidate for bail.

THE RESPONDENT'S AFFIDAVIT EVIDENCE

10. The Affidavit of Vashti Bridgewater stated, that –

- i. she is an Attorney at the Office of the Director of Public Prosecutions and she is duly authorized to make this Affidavit on behalf of the Respondent from information received in her capacity aforesaid;
- ii. she makes no admissions concerning the Applicant's application save as hereinafter mentioned;
- iii. the Applicant, Sherman Nelly Joseph aka "Thirteen" (Date of Birth: 17 September 2004) stands charged on indictment 233/08/2022 for the following offences: Murder contrary to section 291(1)(b); and Attempted Murder contrary to section 292 of the Penal Code (3 counts). There is now produced and shown to me marked as "**Exhibit VBI.1**" a copy of the indictment in relation to same.
- iv. the Respondent objects to the application for the grant of bail for the following reasons:
- v. the evidence is cogent and admissible;
- vi. James King, an alleged witness to these offences, identified the shooter as a male known to him as Thirteen. Mr. King recalled that Thirteen shot at a group of men hanging through Dean Street. He also recalled that Thirteen approached him with a gun in his hand and the same was pointed at him and clicked twice. He recounted that the Applicant herein told him that he was lucky his gun was out of shots. There is now produced and shown to me marked as "**Exhibit VBI.2**" a copy of the statement of James King dated 28 June 2022.
- vii. James King positively identified the Applicant by way of a twelve-man photo gallery on 14 July 2022 in the presence of W/D/Sgt 3710 Valcin as one of the males who shot up the yard where "Grip" and the other males were hanging and who attempted to kill him. The Applicant was identified as Thirteen in position seven (7). There is now produced and shown to me as "**Exhibit VBI.3**" a copy of the report of W/D/Sgt 3710 Valcin.
- viii. the Applicant should be kept in custody for the safety and protection of the public, the maintenance of public order, and particularly the protection of the lone eyewitness James King;

- ix. the Court has a duty to protect the public from persons who commit these serious offences. The application for bail should be denied in the interest of public safety;
- x. there are no conditions that may be imposed that can prevent this Applicant from being a victim of retaliatory violence;
- xi. there are no conditions that may be imposed that can prevent this Applicant from interfering with prosecution witnesses; and
- xii. there is nothing peculiar about this Applicant's situation which suggests that his continued detention is unjustified.

11. The Affidavit of Inspector Tamara Edwards stated, that –

- i. she is an Administrative Intelligence Inspector attached to the Central Intelligence Bureau of the Royal Bahamas Police Force and she is duly authorized to make this Affidavit;
- ii. she makes the Affidavit as a result of diligent intelligence ascertained at the Central Intelligence Bureau (the Bureau);
- iii. the Applicant is Sherman Joseph;
- iv. the Applicant's date of birth is 17 September 2004;
- v. the Applicant is also known by the street alia "Thirteen";
- vi. the Applicant came to the Bureau's attention in January 2022 for murder;
- vii. since January 2022, the Bureau conducted inquiries with a view of establishing the Applicant's role, association, allegiance, and any activity associated with an illegal gang;
- viii. the Applicant is an active member of the "Tiger Nation" gang that originates from the Ridgeland Par West area and has expanded into Bain Town and other urban areas. His position in the gang is a "Shooter" in terms of official gang ranking, he is classified as a "Soldier" the lowest position;
- ix. the "Tiger Nation" gang is led by prolific convicted murderer Stephen Stubbs alias "Tiger/Die", who instructs members to carry out murders, hired hits, and other nefarious acts;
- x. the Applicant is involved in ongoing deadly gang feuds with rivals the "Dirty South" and the "Grove Hot Niggas" gangs resulting in multiple homicides;
- xi. the Applicant was charged with Murder, Attempted Murder, and Possession of an Unlicensed Firearm with Intent to Endanger Life;
- xii. if the Applicant is to be released from custody he is likely to target his rivals or be a victim of his rivals' retaliation. He is also likely to commit further indictable offences and continue in gang activities; and
- xiii. the contents of this Affidavit are true and correct to the best of her knowledge, information, and belief.

12. The Affidavit of Sergeant 3611 Christopher Wilchombe stated, that –

- i. he is the Prison Liaison Officer for the Central Intelligence Bureau of the Royal Bahamas Police Force attached to The Bahamas Department of Correctional Services and he is duly authorized to make this Affidavit;
- ii. he makes this Affidavit as a result of diligent intelligence ascertained at the Central Intelligence Bureau (the Bureau);
- iii. the Applicant is Sherman Joseph;
- iv. The Applicant is incarcerated at The Bahamas Department of Correctional Services and is being held on the C Block, notably, C-14,

- of the Maximum Security Housing Unit, which houses members of the "Tiger Nation" gang; and
- v. the contents of this Affidavit are true and correct to the best of his knowledge, information, and belief.

ISSUE

13. This application required the Court to consider one crucial issue, namely, whether the Applicant is a fit and proper candidate for the admission of bail.

LAW AND DISCUSSION

14. Bail permits an accused person to be released from custody pending his trial and/or the proceedings preliminary thereto and subject to conditions, if any, the Court may deem fit and just to impose having regard to the circumstances of the case.
15. Bail is governed by the Constitution of the Commonwealth of The Bahamas ("the Constitution"), Bail Act, Chapter 103 (as amended), and judicial authorities. In considering this application, the Court reviewed the necessary provisions relative thereto.
16. The golden thread running through any free democratic and constitutional society who have an abiding respect for the basic fundamental rights and freedoms of persons, even those persons accused of committing heinous criminal offences, is that individuals are presumed innocent until they are proven guilty and ought not to be deprived of their personal liberty without just cause. In The Bahamas, these fundamental rights and freedoms are recognized in **Articles 20(2)(a) and 19 (1) and (3) of the Constitution** and are so well-traversed in law that they need not be reproduced or repeated herein.
17. The grant or refusal of bail has been and continues to be within the discretion of the Court. Notwithstanding, parliament has provided general guidelines for the Court to consider when deciding whether to grant or refuse bail.
18. The Applicant has moved the Court for the admission of bail in relation to the charges of Murder, Attempted Murder (4 counts), and Possession of a Firearm with Intent to Endanger Life (4 counts). These offences are listed in **Part C of the First Schedule of the Bail Act (as amended)**. The Court, in determining this application, had regard to **section 4(2)(2A) and (2B) of the Bail Act (as amended)**. The above-mentioned provisions (insofar as relevant to this application) are 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) ...
 - (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 witness ;
- (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) ...
- (d) ...
- (e) ...
- (f) ...
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant; and
- (h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."

[Emphasis added mine]

19. The exercise to grant or refuse bail is not one in futility. The Court, in considering whether to admit an accused person to bail, must act judiciously, having regard to the law and circumstances of each case. The rule of law and administration of justice requires so. At this stage, the Court is not concerned with the guilt or innocence of the accused person save as to the extent of the cogency of the evidence before the Court to link the accused person to the commission of the offence(s) for which he stands charged to justify the deprivation of his liberty by arrest, charge, and detention.

20. Bail has been and continues to be a controversial and vexing issue in The Bahamian society. This is particularly true given the rising level of vigilantism and the perception that many accused persons charged with serious offences who are subsequently admitted to bail fall victim to crime themselves or commit further serious offences while on bail. The Court, in considering an application for bail, must undoubtedly perform the difficult balancing act having to wrestle with two concurrent interests, namely, the interest relative to the fundamental rights and freedoms of the accused person and the interest to protect society at large from the criminal element.
21. An accused person ought not to be kept in custody *ad infinitum* awaiting trial or any proceedings preliminary thereto. In refusing to admit an accused person to bail, the Court must have substantial grounds to believe that the accused person, if admitted to bail, would interfere with the witnesses in his case, abscond to avoid answering to his charges at trial, commit other offences or otherwise seek to pervert the course of justice.
22. The burden rests on the Respondent, having regard to the Applicant's fundamental rights and freedoms, to satisfy the Court that the Applicant ought not to be admitted to bail. The burden is discharged with the production of evidence. Naked, bare, or ritualistic affidavit averments by the Respondent without more are meaningless and fundamentally unfair to the Applicant and cannot stand: **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**.
23. As aforementioned, this is the Applicant's third time applying for bail before this Court. Guidance on successive bail applications was provided by the Court of Appeal in the decision of **Hepburn Jr. v The Attorney General (No.2) [2017] 1 BHS J. No. 84** wherein Allen P at paragraph 4 pronounced –
- “4. Hall, J's decision in **Keith Patton et al v Commissioner of Police** has since been overtaken by the decision of this court in **Michael Mackey and Edward Johnson v Regina SCCrApp Nos. 288 and 289 of 2015** where the Court, differently constituted, held in three separate judgments that the approach described by Hall, J namely that fresh applications for bail would only be heard if the applicants could show that the circumstances have changed was, in light of the Constitution and Bail Act, inherently wrong. Every application for bail pending trial should be considered afresh. A judge considering the application should cast his or her mind to the usual considerations pertinent to the decision to grant bail. The judge must “have regard to the previous finding on the application for bail, consider whether there is any new material relevant to the question of bail; and also consider whether there were existing circumstances at the time of the previous application which were not brought to the court's attention and [are] relevant to the grant of bail.”

Tried within a reasonable time

24. An accused person, who is undoubtedly presumed innocent, ought to be afforded a fair trial within a reasonable time. What amounts to a reasonable time varies on a case-by-case basis and requires an individual assessment.

Time begins to run from the point of charge, arraignment, and remand. Trials in the Supreme Court are being set some years ahead (even with the addition of additional criminal courts). This is the reality of the current state of affairs of the justice system in The Bahamas.

25. Parliament has fixed by statute three years to be deemed a reasonable time within which a matter is to proceed to trial: **section 4(2A)(a) of the Bail Act (as amended)**.

26. The Court of Appeal in **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 176 of 2014** lends helpful support to the Court in determining this application and considering whether the Applicant can be tried within a reasonable time. Allen P at 23, 24, and 25 stated 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]

27. In **Duran Neely v The Attorney General SCCrApp No. 29 of 2018**, Evans JA (Actg.) (as he then was) at paragraph 17 stated as follows –

“17. It should be noted that section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three-year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2)(a), (b), and (c). This means if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there

has not been unreasonable delay the Court must consider the matters set out (c). If after a consideration of those matters the Court is of a view that bail should be granted the accused may be granted bail.”

28. The Applicant in the present application did not advance that he would unlikely be tried within a reasonable time. The Respondent, on the other hand, and through the Affidavit of Vashti Bridgewater, advanced that there is nothing peculiar about the Applicant’s situation that suggests that his continued incarceration is unjustified. Nevertheless, the Court must consider whether the Applicant can be tried within a reasonable time. As previously mentioned, the Applicant was arraigned in Magistrate Court No. 4 on 15 July 2022 before Magistrate Shaka Serville in relation to the subject charges. The matter was adjourned and the Applicant was remanded to The Bahamas Department of Correctional Services. The Applicant made two successive applications for bail and was denied bail by the Court. He was further remanded to The Bahamas Department of Correctional Services pending his trial and/or any proceedings preliminary thereto. The Applicant remains incarcerated to date.

29. The Applicant has been incarcerated for 1 year, 10 months, and 8 days thus far. The Applicant’s backup trial date, and/or fixed trial date are scheduled for 9 January 2025, and 27 July 2026, respectively. If the Applicant were to remain incarcerated until his backup trial date, and/or fixed trial date, that would mean that he would be incarcerated for 2 years, 5 months, and 26 days, and/or 4 years and 13 days, respectively. The Court, having regard to the law, the circumstances of the present application, and the absence of evidence to the contrary, is satisfied that the Applicant, if further remanded, can be tried within a reasonable time. There is no evidence before the Court of any delay and/or potential delay relative to the Applicant’s matter at this time. In any event, the Applicant has a scheduled status hearing date before the Court on 20th November 2024. At this time, the Court will be fully apprised of the status of the Applicant’s matter.

Seriousness of the offence and likelihood of absconding

30. It is now trite law that the seriousness of the offence, though an important factor, is not a stand-alone factor for the refusal of bail. If that was not so, many accused persons before the Court would be remanded pending trial. At present, many of the offences before the Court are serious: **Commissioner of Police v Beneby [1995] BHS J. No. 17.**

31. The seriousness of the offence factor is coupled with several other factors, namely, the strength of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding before trial: **Jeremiah Andrews (supra).**

32. Notwithstanding, it has been recognized that in cases involving murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail: **Johnathan Ambrister (supra).**

33. The Applicant stands charged with Murder, Attempted Murder (4 counts), and Possession of a Firearm with Intent to Endanger Life (4 counts), some of the most prolific and serious offences known to law. Violence, vigilantism, retaliatory killings, and gang activity are at an all-time high. These offences demonstrate, *inter alia*, the ultimate crimes, a blatant disregard for the sanctity of human life, and have wide-reaching implications on the economic stability, social development, national security, and health care system of The Bahamas. The seriousness of these offences is particularly heightened given that they usually involve the use of a firearm or firearm apparatus. The wider Caribbean region, more importantly, The Bahamas has faced a proliferation of illegal firearms. These illegal firearms have no doubt contributed to a heightened level of criminality in the Bahamian society wherein the use of a firearm is the weapon of choice, therefore posing a serious threat to public safety and public order.
34. Notwithstanding, these offences are still bailable offences given the law as it currently stands. Bail ought not to be withheld as a punishment mechanism against accused persons, as these persons have not yet been convicted of committing the criminal offences for which they stand charged. Each application for bail is individual and needs an individual assessment. The Court, while taking judicial notice of the current state of affairs in the country and being likewise concerned, must nevertheless perform the difficult balancing exercise of having to balance on the one hand the fundamental rights and freedoms of the accused person and the interest of the society on the other hand.
35. In the present application, no evidence was advanced by the Respondent that the Applicant is a flight risk. The Applicant, in his Affidavit, requested to be admitted to bail pending his further court appearances. It follows therefore that the Applicant facing these serious charges for which he is liable to some of the severest penalties known to law, if convicted, may have a powerful incentive to abscond and/or interfere with the witnesses in this case.
36. Lord Bingham of Cornhill in the Board decision of **Hurnam v The State (Mauritius) [2005] UKPC 49** at paragraph 15 stated –
- “15. It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail.”
37. The Court, having regard to the circumstances, is not satisfied that the inference may be weakened by the Applicant's: (i) citizenship status, (ii) employment status, or (iii) bare or naked assertions that his continued incarceration will disadvantage his ability to adequately prepare his defence or ability to support himself and his family.

Strength and cogency of the evidence

38. The Court has a limited role in bail applications. It is now trite law that a judge hearing a bail application is not to weigh up the evidence that may be adduced at trial. Bail applications are not forums for mini-trials, any challenge to the intended evidence is best reserved for trial. The Court's limited role was adeptly summarized by Allen P in **Codero McDonald v The Attorney General SCCrApp No. 195 of 2016** wherein it was stated at paragraph 34 –

“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.”

39. The Applicant denies his involvement in the alleged offences, maintains his innocence, and indicates his willingness to defend the charges at trial. The Respondent advanced that the evidence against the Applicant is cogent and admissible. The Respondent exhibited to the Affidavit of Vashti Bridgewater the statement of James King, a key prosecution witness, who linked the Applicant to the subject offences. James King stated that Applicant was the male known to him as “Thirteen”, *inter alia*, who shot at a group of men hanging through Dean Street and who approached him with a handgun pointed at him and clicked the handgun twice. James King recounted that the Applicant told him that he was lucky that the handgun was out of shots.

40. James King positively identified the Applicant, in a twelve-man photo gallery in the presence of W/Sgt 3710 Valcin as one of the males who shot up the yard where “Grip” and the other males were hanging and who attempted to kill him.

41. The Court, having regard to the evidence adduced in the present application, is of the view that the evidence raises a reasonable suspicion of the commission of the subject offences by the Applicant to justify the deprivation of his liberty by arrest, charge, and detention.

Interference with witnesses

42. The Respondent, through the Affidavit of Vashti Bridgewater, advanced that there are substantial grounds for believing that the Applicant, if admitted to bail, would interfere with the prosecution's witness, James King, or otherwise obstruct the course of justice, whether in relation to himself or any other person. The Respondent further advanced that there are no conditions that may be imposed that can prevent the Applicant's potential interference.

43. The Respondent presented no evidence before the Court that the Applicant, if admitted to bail, would interfere with the prosecution's lone witness, James King. Notwithstanding, the Court, having regard to the seriousness of the offences, *inter alia*, the penalty likely to be imposed on the Applicant if he is convicted of the subject offences and the nature and circumstances of the evidence, is satisfied that it may be reasonably inferred that the Applicant likewise has a powerful incentive to interfere with the prosecution's witness,

James King. This inference cannot be weakened. In fact, the inference is heightened. The evidence of James King is fundamental to the prosecution's case against the Applicant. It is from this evidence that the prosecution's case may either fail or succeed. The Applicant had already made a purported attempt on the life of James King save for the gun being out of shots. The Applicant's purported utterance to James King demonstrates the behaviour of a callous individual who has a blatant disregard for the sanctity of human life.

Character and antecedent

44. In **Jevon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019**, the Court of Appeal provided examples that would lead the Court to conclude that an accused person applying for bail may be a danger to public safety or public order. Writing for that Court, Crane-Scott JA at paragraph 68 stated –

“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]

45. The Applicant stands before the Court as a young person with no previous convictions and/or pending matters before the court(s) in the Commonwealth of The Bahamas. The Applicant, for the purposes of the law, may rightfully assert that he is a person of good character.
46. Notwithstanding the Applicant's good character, the Court is satisfied that this application goes beyond whether the Applicant will appear for his trial but turns to whether he is a threat to public safety. The Respondent, through the Affidavit of Vashti Bridgewater, advanced that Applicant should be kept in custody for his own safety and protection, and the maintenance of public order. The Respondent further advanced through the Affidavits of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe that the Applicant is an affiliate of the “Tiger Nation” gang. The Applicant's position in the “Tiger Nation” gang is a “shooter” and in terms of official gang rankings, he is classified as a “soldier”, the lowest ranking. The Affidavit of Inspector Tamara Edwards also advanced that the Applicant is involved in ongoing deadly gang feuds with rival gangs, “Dirty South” and “Grove Hot Niggas” resulting in multiple homicides.

Moreover, if the Applicant is to be released from custody, he is likely to target his rivals, be the victim of his rivals' retaliation, commit further indictable offences, and/or continue gang activities.

47. Counsel for the Applicant invited the Court to reject the evidence of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe as she deemed their evidence "double hearsay" and therefore inadmissible. Both Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe advanced that their evidence in relation to this application has been ascertained from diligent intelligence at the Central Bureau of Investigation at the Royal Bahamas Police Force. The Court, having read the Affidavits of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe, *inter alia*, having heard their *viva voce* evidence and having observed their body language and demeanour, finds their evidence to be credible. Furthermore, in the absence of cogent evidence to the contrary, it is not within the purview of the Court to question the evidence provided by any member of the intelligence branches of the Commonwealth of The Bahamas.

48. The evidence of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe not only buttresses the Court's previous findings and evidence of witnesses for the Respondent relative to the Applicant's previous bail application but increases the Court's concern, in the present application, that the Applicant ought to be kept in custody pending his trial and/or the proceedings preliminary thereto for his own protection and safety, the protection of the prosecution's witness, James King, and the maintenance of public order. The Court's concern is further heightened given the purported and current uptick in retaliatory killings by rival gangs. Public safety and public order are paramount and non-negotiable. The Court is satisfied that there are no conditions available to ameliorate its aforementioned concerns.

49. Even if the evidence of Inspector Tamara Edwards and Sergeant 3611 Christopher Wilchombe was to be considered hearsay, the Court is satisfied that the evidence is nonetheless admissible. Bail applications are not formal inquiries and the strict rules of evidence are not to be applied. In **Bartholomew Pinder v The Queen SCCrApp No. 94 of 2020**, Barnett P at paragraph 28 affirmed as follows –

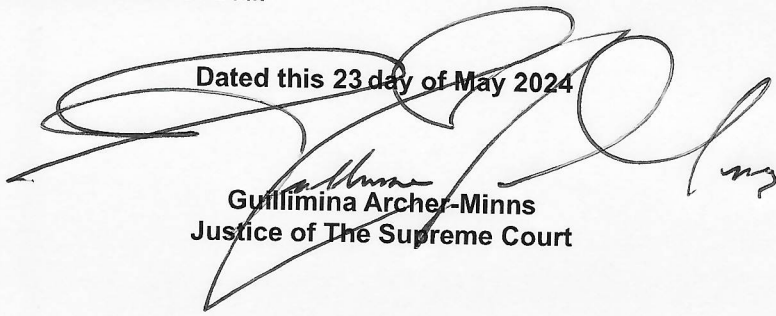
"28. It has been accepted for years that the strict rules of evidence do not apply to bail applications and that hearsay evidence may be relied upon..."

CONCLUSION

50. All factors and relevant law considered, the Court is satisfied that the Applicant is not a fit and proper candidate for the admission of bail at this time. This application for bail is hereby dismissed and the Applicant is to continue his remand at The Bahamas Department of Correctional Services pending his trial and/or the proceedings preliminary thereto. Should the Applicant's

circumstances change in the interim, he is at liberty to reapply to the Court for the reconsideration of bail.

Dated this 23 day of May 2024

A large, stylized handwritten signature in black ink, written over the date and partially overlapping the name below.

Gillimina Archer-Minns
Justice of The Supreme Court