

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division
No. CRI/BAIL/0035/2021

BETWEEN

WESLEY DELHOMME

AND

THE DIRECTOR OF PUBLIC PROSECUTION

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

Appearances: Mr. Keith Seymour for the Applicant
Mrs. Erica Ingraham for the Respondent

Hearing Date: 3 March 2021

RULING-BAIL

Archer-Minns J

1. The Applicant, Twenty-one (21) year old Wesley Delhomme (D.O.B 23/October/1999), and Derron Deveaux were arrested and charged, with (1) one count of **MURDER** contrary to Section 291(1)(b) of the Penal Code and three (3) counts of **ATTEMPTED MURDER** contrary to section 292 of the same. The deceased in this matter is James Dalean and the virtual complainants are Kevin Telusnord, Walvins Garconville and Bryan Morley. The alleged incident took place on 28 May 2019. The Applicant was arrested on 29 May 2019 and now applies for bail.

2. The Applicant filed an affidavit on 4 February 2021 in support of his application for bail. In his affidavit, he stated that (i) before his remand, he resided at No.48 Pinedale, Nassau, The Bahamas and assists in paying bills at the residence (ii) he was employed at Master Motors as a helper for two (2) years and is the sole provider for his girlfriend and family (iii) he has no previous convictions and no pending matters before the court (iv) the evidence against him is weak, he knows nothing of the offence and if he is granted bail he would be able to continue to earn a living through gainful employment and would comply with the conditions of bail that may be attached (v) he poses no threat to society, is not a flight risk and (vi) maintains his innocence as it relates to this matter.

3. An affidavit of Nathan Mackey was filed on behalf of the Respondent on 23 February 2021 opposing the Applicant's application for bail. The Respondent objected to bail in this matter for the following reasons:
 - (i) the nature and seriousness of the offence and the nature and strength of the evidence against the Applicant is such that there is a need to protect the safety of the public or public order;

 - (ii) in the case of violence allegedly committed by the Applicant, the Court should take into consideration the possible interference of witnesses resulting in an obstruction of justice in this matter if granted bail especially in these

circumstances where the direct evidence is given by persons known to the Applicant;

(iii) there is no unreasonable delay in this matter as the Applicant has been in custody for less than two years and a back-up trial date is set for the 12 April 2021 and;

(iv) there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified.

During submissions, both counsel relied on the affidavits filed, Counsel for the Applicant further advanced that the cogency of the evidence ought to be determined at trial and more particularly the shooters were not identified. Reliance was placed on the case of **Jonathan Armbrister SCCrApp. No. 232 of 2012** stating that the proper test of bail is whether an Applicant will appear for trial. Counsel additionally submitted that the Applicant wants to gain employment and look after his affairs and therefore is desirous of being granted bail.

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 offences are "**Murder**" and "**Attempted Murder**", and are Part C offences therefore sections 4(2), 4(2A) and 4(2B) and schedule 1, Part A of the Bail Act must be considered. These sections read 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. Schedule 1, 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 incarcerated for less than two years. This is less than the three year period established by the Bail Act as a reasonable time for an accused person to be incarcerated. It is the view of the Court that there has been no unreasonable delay in this matter.
8. Whilst 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 whether or not to grant bail. 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.”

9. The evidence before the Court is that of a statement of Dominique Cox Lorfils made on 29 May 2019 who claims to have seen the Applicant ‘Wesley’ and two other men shooting the deceased as he laid on the ground. Mr. Lorfils claims to have known ‘Wesley’ since the seventh grade. He also alleges that he was able to see ‘Wesley’ clearly, since the area was well lit. Mr. Lofils additionally identified the Applicant via identification parade. Contrary to what Counsel for the Applicant stated in submissions that there was no identification of the shooters, Mr. Lorfils during the incident according to his statement could identify two of them.

The evidence in this matter is therefore cogent in the view of the Court. However the Court notes that at this stage in the proceedings, it should not be concerned entirely with the evidence before it and also that the discretion of the Court should not only rest on the strength of the evidence.

10. 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”.

The offences which the Applicant faces are very serious, and though the Court must consider this, it cannot be the basis for its decision even if it does weigh heavily in the scale against the grant of bail.

According to Mollan, CJ in the case of **Noordally v Attorney General and another [1987] LRC,**

“It has been established for centuries in England 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 a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record if any, and the likelihood of interference with witnesses”.

The main purpose of bail is to ensure that an Applicant will appear for trial. There is no evidence before the Court that the Applicant will abscond neither is their evidence presented by the Respondent to indicate that he will interfere with witnesses in this matter. The Court further notes that the Applicant has no previous convictions nor pending matters that would infer a habitual life of crime – Jevon Seymour considered.

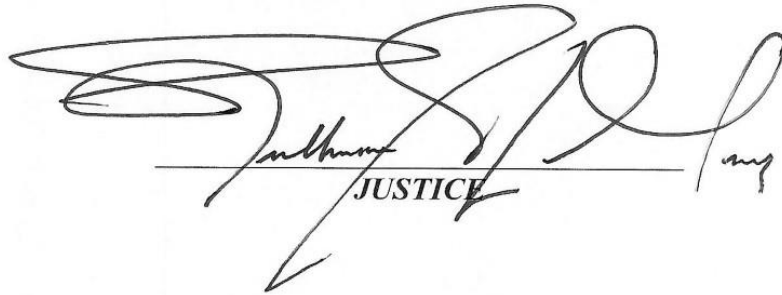
11. This notwithstanding, the Applicant resides in Pinedale and the key eye witness mentioned is from the adjacent neighbourhood of Peardale. The Court considers the prevalence of gang violence and rivalries in the area and between the neighbourhoods. It further considers that the evidence seems to suggest the possibility that the violence which occurred was of a gang related nature and a possibility of retaliation if the Applicant is released from prison on bail. The Court additionally notes that the Applicant's back-up trial date of 12 April 2021 is quickly approaching.

12. In consideration of the factors already mentioned above, the court is minded to exercise its discretion to grant bail subject to the commencement of the Applicant's trial on the back-up date. If the trial does not proceed on the back-up trial date, conditions of bail will be as follows:

- (i) Bail granted in the amount of \$30,000.00 with one or two suretors;
- (ii) The Applicant will report to the Wulff Road Police Station every Monday, Wednesday and Saturday before 6:00 p.m.;

- (iii) The Applicant will be subject to electronic monitoring; and shall agree to be bound by the rules issued by the Electronic Monitoring Unit which govern the process;
- (iv) The Applicant will surrender his Passport and any other travel Documents to the Registrar;
- (v) The Applicant will not to interfere with any prosecution witnesses nor anyone acting on his behalf in this case;
- (vi) Applicant is subject to a curfew between the hours of 7:00 p.m. – 7:00 a.m. until the completion of the matter.

Dated the 10 Day of March, 2021



A handwritten signature in black ink, written over a horizontal line. The signature is highly stylized and cursive. Below the signature, the word "JUSTICE" is printed in a bold, sans-serif font.