

**COMMONWEALTH OF THE BAHAMAS**

**2023/CRI/BAIL/FP/00002**

**IN THE SUPREME COURT**

**Criminal Division**

**B E T W E E N**

**DANA GUILLAUME**

Applicant

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

**Before: The Honorable Mr. Andrew Forbes**

**Appearances: Attorney Mr. Sean Norvell Smith; c/o Director of Public Prosecutions**

**Attorney Mr. Nathan Smith c/o Applicant**

**Hearing Date: Parties elected for the Court determine that matter on the papers.**

## DECISION ON BAIL

**FORBES, J**

### INTRODUCTION

[1.] This Application is for the admittance of bail made by way of Summons and an Affidavit in Support filed on the 19<sup>th</sup> August, 2024.

[2.] On the 19<sup>th</sup> December, 2024, the Respondent filed an Affidavit in Response of Corporal Harris Cash in opposition of bail.

### AFFIDAVIT EVIDENCE

[3.] This Applicant is a Bahamian male citizen. He is 23 years old having been born on the 3<sup>rd</sup> August, 2001.

[4.] The Applicant is charged with the following offences:

- a. Murder contrary to section 291(1)(b) of the Penal Code Chapter 84; and
- b. Attempted Murder contrary to section 292 of the Penal Code, Chapter 84. (2 Counts)

[5.] The Applicant was arraigned and remanded to the Bahamas Department of Correctional Services on the 22<sup>nd</sup> July, 2024 before Magistrate Ancella Evans-Williams.

[6.] The Applicant's next scheduled appearance is before Magistrate Ancella Evans-Williams on the 30<sup>th</sup> October 2024 for service of his voluntary Bill of Indictment (VBI).

[7.] The Applicant asserts his innocence; further states that he has no previous breaches of bail and he is willing to comply with any condition the Court imposes.

[8.] The Applicant has no pending matters.

[9.] The Applicant has no prior convictions.

[10.] The Applicant has no intention of absconding.

[11.] The Crown opposes this application and relies on the Affidavit of Corporal 3913 Harris Cash of the Royal Bahamas Police Force. Corporal 3913 Cash stated that there is cogent evidence against the Applicant to which he exhibited the docket and a statement of an eyewitness who is presently anonymous and who also identifies the Applicant from a twelve (12) person lineup. Moreover, that there is no unreasonable delay. Further, he stated that the Respondent is objecting to the bail application due to the serious nature of the offence, the strength of the evidence. That according to this witness, while at an establishment, saw an individual who they identified by the name "Black Boy" brushed passed them as they walked towards the establishment and appeared to have something in his hand that appeared to be a firearm and they heard several loud popping sounds coming from the area they observed the

male had headed into and they returned to their vehicle and hid at the rear. That later they attended the Police Headquarters and had executed a Twelve person (12) identifying the person they had seen that evening who brush by them with something in their hands that appeared to be a firearm.

### **SUBMISSIONS**

[12.] Mr. Nathan Smith, Counsel for the Applicant submits, in part, that:

- a. Every person accused of an offence is innocent until proven guilty or as plead guilty pursuant to the Constitution of The Bahamas;
- b. That when considering whether to grant bail, the test to be applied is whether the Applicant will appear at trial and whether the public interest is at risk (see **Hubbard v Police**);
- c. That section 4 (2B) laid out the relevant factors in the Bail (Amendment) Act 2011;
- d. That the Court ought to assess the cogency of the evidence and the seriousness of bail (see **Duran Neely v. The Attorney General** SCCrApp. No. 29 of 2018).
- e. That the applicant has not been tried within a “reasonable time” and it is likely that His trial date will be set years after his next adjourn date of 27<sup>th</sup> January, 2025;
- f. That there is a lack of cogency amongst the evidence as the sole identification evidence is of a person who referred to the Applicant as “Black boy” in poor lighting conditions;
- g. That the Respondent has failed to demonstrate that the Accused will abscond, poses a threat to public safety or order, and/or likely to interfere with witnesses or obstruct justice.; and
- h. That he is a fit and proper person for the admittance of bail and will comply with bail conditions.

[13.] Mr. Sean Norvell Smith Counsel for the Respondent submits, in part, that:

- a. That the primary purpose of detention of an accused charged with an offence is to ensure his attendance at trial; however, the Court is mandated to take into consideration whether, if released, the accused would interfere with witnesses (see **Johnathan Armbrister v The Attorney General** SCCrApp. No. 145 of 2011);
- b. That at the time of this offence the Applicant was on bail for 2 very serious offences and that if released on bail he will commit further crimes;
- c. That a judge cannot simply refuse an application for bail merely because he is alleged to have committed a new similar offence while on bail; however, the crown has a duty to put before the court the evidence which raises a reasonable suspicion of the commission of the offences to deprive the Applicant of his liberty (see **Stephon Davis v DPP** SCCrApp. 108 of 2021.);
- d. That the judge is only required to evaluate whether the witness statements show a case that is plausible on its face of establishing the guilt of the appellant (see **Donovan Collie v DPP** SCCrApp. 132 of 2023); and

- e. That there are no conditions that can be put in place to mitigate the concerns that the Applicant will commit another offence as he was on bail with very stringent conditions.

### ISSUE

[14.] The issue for the Court to determine is whether the Applicant is a fit and proper person for bail pursuant to section 4 of the Bail (Amendment) Act, 2011 (“the Act”).

### LAW

[15.] The Applicant has the constitutional right to be presumed innocent of the charges in the Voluntary Bill of Indictment. Specifically, Article 20(2)(a) of the Constitution of The Bahamas states:

20 (2) Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty

The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the Applicant and the community. The rights and the safety of the Applicant and the safety of the public have to be weighed. The facts and circumstances of each case are different and needs an individual assessment.

[16.] The Bail Act Section 4(2) provides:

**“4(2) Notwithstanding any other provisions of the Act or any other law, any person charged with a Part C offence 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) should be granted bail having regard to all the relevant factors, including those specified in Part A of the First Schedule and the “primary considerations” set out in subsection (2B).”**

[17.] Subsection 4(2)(A) accordingly provides:

**(2A) For the purpose 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 be 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.”**

[18.] This matter is set for service of the VBI in the Magistrate Court on 27<sup>th</sup> January, 2025. Therefore, the Court must go on to consider the other statutory factors to be taken into account when considering the grant of discretionary bail set out in Part A of the First Schedule to the Act which provides 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 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."

[Emphasis added.]

[19.] The Court must also have regard to the primary considerations of section 4 (2)(B) of the Act which provides as follows:-

**"(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 of primary considerations."**

[Emphasis added.]

[20.] The burden is on the Crown to satisfy the Court that the Applicant ought not be granted bail and the standard of proof is on the balance of probabilities.

[21.] The Court must consider the nature and seriousness of the offence. Murder and Attempted Murder are sufficiently serious as the Applicant may face harsh penalties if found guilty. However, a bail hearing is not the forum for conducting a mini-trial. In the case of **Jonathan Armbrister v A.G.** SCCrim. App. No. 145 of 2011 *John, JA* states at paragraph 13:

**"13. The seriousness of the offence with which the accused is charged and the penalty which is likely to entail upon conviction, has always been and continues to be an important consideration 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 on the scale against the grant of bail."**

[Emphasis added.]

The nature and seriousness of an offence does weigh heavily against the Applicant with relation to the grant of bail. However, the case of Hurnam v. The State (Privy Council Appeal No.53 of 2004) as applied in Stephon Davis v. The Director of Public Prosecutions SCCrApp No. 108 of 2021 states as follows: -

16. Lord Bingham of Cornhill stated, inter alia, at paragraph 15 of Hurnam v The State (Mauritius) [2005] UKPC 49, as follows:

**"[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."**

17. Lord Bingham went on to say, inter alia, at paragraph [16]:

**"The European Court has, realistically, recognized that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see, for example, Ilijkov v Bulgaria (Application no 33977/96, 26 July 2001, unreported)), para 80, but has consistently insisted that the seriousness of the crime alleged, and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..."**

[22.] Further, the Court takes note of the comments of the Court of Appeal in Davis supra noting, in particular, the statements made in the headnote by the President of Appeal Sir Michael Barnett and Justice of Appeal Evans where they commented as follows:

*per Evans, JA: A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognize that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interest of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity.....*

*per Barnett, P: This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail as to why there are good reasons to deny bail to a person charged with an offence."*

[Emphasis added.]

[23.] The primary consideration whether to grant bail is whether the person will make himself available for trial and any other court dates mandated by this Court. This consideration cannot be answered in the negative simply because the person is charged with a serious offence.

[24.] The Court must also consider whether there are conditions which can be put in place to ensure the Applicant's attendance at trial, ameliorate or eliminate any perceived risk of absconding or witness interference (**Jevon Seymour v The Director of Public Prosecutions** SCCrApp. No. 115 of 2019.)

## **DISPOSITION**

[25.] In considering all the circumstances relevant to this hearing. The Court finds that the Respondent has satisfied me that this applicant ought not to be granted bail pending his trial and I hereby do not exercise this Court's discretion and deny bail.

[26.] Murder, contrary to section 291(1) (b) of the Penal Code Chapter 84 and Attempted Murder contrary to section 292 of the Penal Code Chapter 84 (2 Counts), are serious. There is strong evidence against the Applicant advanced by the Crown based on the statements and reports presented in this bail hearing, in that there is identification evidence of the alleged incident. However, this evidence must be vetted at trial not in a bail application. At this point the Court only has before it reports of an anonymous witnesses and the Applicant maintains his innocence and it is in this Court's view that the evidence is strong and cogent. The seriousness of this charge and *prima facie* evidence advanced by the Crown weigh heavily on the scale against the grant of bail but there are other factors that the Court must consider.

[27.] There has been no unreasonable delay thus far as the Applicant is likely to be served his VBI on the 27<sup>th</sup> January 2025. The Court will note the comments made by Justice of Appeal Evans in the case of **Tyreke Mallory v. The Director of Public Prosecutions** SCCrApp. No. 142 of 2021 in which he said the following:

*"The difficulties experienced by the courts in Freeport are well known and cases have been greatly affected by the lingering effects of Hurricane Dorian and the onset of the current pandemic. There was no direct evidence led by the DPP as to how this has operated in this particular case. However, the learned judge sitting in Freeport is fully aware of the issues affecting those courts and he was entitled to take judicial notice of the same in determining that the appellant's case could still be tried within a reasonable time..."* That being said however, the Court notes that the Applicant has yet been served his VBI which means that there is a strong likelihood that there may very well be a delay. In that regard the Court notes the comments again of Justice of Appeal Evans in **Kyle Farrington v. The Director of Public Prosecutions** SCCrApp. No. 80 of 2019, where he says the following: "135. In my view a trial judge in setting a trial date must have in mind Article 19(3) of the Constitution as well as the provisions of Section 4(2) of the Bail Act. Mr. Munroe's submission was that Section 4 contemplates that once it became evident that the applicant could not be tried within a three year period the judge

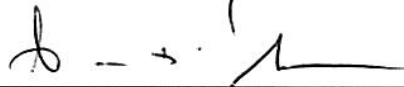
*was obliged to grant him bail. I do not agree. Section 4 in my view is a marker which requires the judge to be aware of the accused person's rights under Article 19(3) of the Constitution...*"

[28.] There is no evidence before the court to suggest that the Applicant might abscond. Moreover, there is no evidence before the Court that he will interfere with the witnesses. However, the Court again notes the communities in which the Applicant is likely to return is very small in comparison to New Providence and there is a very strong likelihood that the Applicant will be able to discern this anonymous witness which could have a very chilling impact on this case.

[29.] The Court is not satisfied that it can impose conditions of bail which will prevent possible interference, in light of the circumstances, of the Crown's witnesses in this case nor obstruct the course of Justice. Given the audacity of the crime as alleged that an individual would walk brazenly into an establishment and in essence allegedly execute an individual and attempt to allegedly execute others raises a very strong probability that that individual presents a safety issue for the public.

[30.] The application to admit bail is denied. The Defendant is to remain remanded to the Bahamas Department of Correctional Services. However, it becomes clear that the Trial in this matter is not set within a reasonable time the Applicant is invited to reapply. Parties aggrieved by this decision may appeal within the statutory time frame.

Dated the 14th day of January, 2025

A handwritten signature in black ink, appearing to be 'Andrew Forbes', written over a horizontal line.

Andrew Forbes  
Justice of the Supreme Court