IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2017/CRI/bail/00768

BETWEEN

KEONTAE PINDER

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Hon. Justice Neil Brathwaite**

Appearances: **Ms. Tonique Lewis for the Applicant**
Mr. Ashton Williams for the Respondent

Hearing Date: **30th January A.D. 2025**

Ruling Date: **4th March A.D. 2025**

RULING ON BAIL

[1.] The Applicant is a twenty-five year old Bahamian male who was charged in 2018 with two counts of Murder and one count of Attempted Murder. He was granted bail in February 2021, but bail was revoked on 24th March 2024. The Applicant claims that he had been arrested in January 2024 and later released, but that his cellphone, on which he stored important dates, was seized and not returned. He was convicted in February 2024 of Breach of Bail and was fined, but apparently missed a court date in March 2024. The Applicant further states that he was contacted by his suretors, and went to court the following day, when bail was revoked. He now seeks reinstatement of that bail.

[2.] In opposing the application, the Respondent proffered the affidavit of Calnan Kelly, Counsel in the Office of the Director of Public Prosecutions, in which it is averred that the Applicant has been identified as one of two men who shot at a group of men, resulting

in the deaths of two persons and serious injuries to another. The evidence also indicates that the Applicant has been identified as the person who had possession of a motorbike on which the gunmen arrived at the scene. The affidavit in response further indicates that the Applicant reportedly committed numerous breaches of his bail conditions in 2022, and failed to appear for his trial on 4th March 2024, as a result of which the trial could not proceed. A new trial date has now been fixed for 19th May 2025.

[3.] Counsel on behalf of the Applicant submits that the Applicant is not a flight risk, as he was on bail for these offences from 2021 to 2024, and has not fled. Counsel states that there can be no issue of the safety of the Applicant, as he was on bail with no issues for years. The failure to appear was attributed to a simple mistake, and it was emphasized that the Applicant came to court voluntarily as soon as he was contacted by his suretors. Counsel therefore submits that the Applicant has suffered significantly for his error, and ought not to be further punished, particularly as it is unlikely that the trial will proceed in May 2025 due to the engagement of the trial court in a long-running trial which is unlikely to be completed.

[4.] In response, the Respondent submits that the evidence is cogent and compelling, and that the Applicant has a history of breaches of bail, and is unlikely to comply with conditions if granted bail. The court was therefore urged to continue the remand of the Applicant until his trial.

LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

> "5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction."
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> 6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:
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> "...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is

convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences..."

[6.] At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest."

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

> ***"Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty".***

[8.] Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;

(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

"4. (2) Notwithstanding any other provision 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)...
(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 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 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 considerations."

9. The factors referred to in Part A are:
"PART A
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.";

[10.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[11.] In considering those factors, I note that the Applicant is charged with serious offences. I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[12.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"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".

[13.] I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

[14.] The offences with which the Applicant is charged, and the possible penalty attached to those offences, are sufficient to raise the issue of the likelihood of flight. That likelihood of flight must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"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."***

[15.] In reviewing what has been placed before me I am satisfied that the evidence rises to the level of a prima facie case. I further consider that the cogency of the evidence again raises the likelihood that the Applicant will not appear for trial.

[16.] While I am concerned that the nature of these offences are such that the issue of public order and safety arises, I must bear in mind that the Applicant was on bail for

several years, and was not charged or convicted of any serious offences while on bail. The major concern in this case must therefore be the likelihood that the Applicant will appear for his trial. I have noted the reference to breaches of bail in 2022, but note that no charges were laid and no actions taken as a result of those breaches. It is therefore of some concern that those breaches should be used three years later as a basis to justify a denial if bail. Of more concern to me is the failure of the Applicant to appear for his trial. The whole substrata of bail is that the Applicant is permitted to remain at liberty on the undertaking that he will appear for trial. This he failed to do. This failure is attributed to a mistake, as opposed to a desire to abscond. That may well be so, but it does not absolve the Applicant of responsibility for failing to appear. In my view, it would be a travesty to release the Applicant for bail at this time, when his failure to appear resulted in his trial not being able to proceed. I also bear in mind that the Applicant was on stringent conditions, but those conditions did not suffice to ensure the attendance of the Applicant at trial. I note the submission of counsel that the trial is unlikely to proceed in May 2025, but I am of the view that to so conclude at this time would be speculative, as circumstances may change prior to that date,

[17.] In all the circumstances of this case, I decline to exercise my discretion to grant bail at this time. Should the trial not proceed in May 2025, the situation might well be different, but at present the application for reinstatement of bail is denied.

Dated this 4th day of March A.D., 2025

Neil Brathwaite
Justice