COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2013/CRI/Bal/00194

BETWEEN

NM, a juvenile

Applicant

V

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: **The Honourable Mr. Justice Franklyn K M Williams MB KC**

Appearances: The Applicant juvenile by his mother on 22 April 2025

The Applicant by his father on 20 May 2025

Mrs. Abigail Farrington for the Director of Public Prosecutions on 22 April 2025

Mrs. Janet Munnings for the Director of Public Prosecutions on 20 May 2025

Hearing Dates: 22 April 2025; 20 May 2025

RULING ON BAIL

Williams J

[1.] The applicant juvenile Bahamian citizen is charged with Murder (two counts) and Attempted Murder (one count).

[2.] The applicant makes his application by form given remanded persons; the same is not attended by affidavit.

[3.] The respondent relies on the affidavit of Mr.Brent Mcneil, counsel, for the Director of Public Prosecutions in opposition to the application; appended thereto are the statement of witness **"BETA"** (anonymized) and the records of interview of the applicant.

[4.] Sometime around 4:30 pm on 30 November 2024, witness Beta while at an office on Willow Tree Avenue and Plane Street, Pinewood Gardens observed the applicant enter that office. The applicant then left, returned after five minutes, returned and finally left after thirty minutes. The applicant wore a black Nike hooded jacket, with small white Nike swoosh across the chest, blue long jeans and black Nike Air Force tennis shoes. Sometime later at about 10:30 pm, while at same premises, Beta observed two men brandishing handguns enter the property from Willow Tree Avenue and fired into the group of persons gathered there including the deceased and the wounded. One of those men wore a black hoodie jacket, black tam, black ski mask, long blue jeans and black tennis shoes, clothing similar to that worn by the applicant earlier. In a police interview of 5 December 2024, the applicant places himself at Plane Street "Shortly after ten." on the night of 30 November 2024, but denies that he killed or attempted to kill anyone. The following day, at his request, he was again interviewed.

> **"Ques. 6 You was previously interview with respect to the Murders of Raynaldo Rolle and Kischnell Edgecombe in addition to the attempted Murder of Shanton Lloyd, but you requested another interview why?**
>
> **Ans. 6 Yes because the first interview I was lying about some of it.**
>
> **Ques. 7 What was you lying about?**
>
> **Ans. 7 I was lying about I don't know Jubby and I was lying**

about I wasn't around him that night. *NM*"

"Jubby" is the alias of Lavardo Dorsette, who was positively identified as one of the gunmen firing into the group gathered at the office premises of the deceased Raynaldo Rolle, which group included Rolle, the other murdered man, and the wounded man. The applicant and Lavardo Dorsette are jointly charged.

[5.] The applicant states in the 6 December 2024 police interview that Raynaldo Rolle was the target, he (the applicant) claiming to have been told by "Jubby" just prior to the shooting on 30 November 2024, that he (Jubby) intended to kill Raynaldo. He again denied killing or attempting to kill anyone.

LAW AND ANALYSIS

[6.] The presumption of innocence obtains.

[8.] Allen P in **Richard Hepburn v The Attorney General** SCCr.App. No. 276 of 2014 summed up the tension of competing interests at stake on an application for bail:

"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 interest 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."

[9.] On an application for bail pursuant to section 4(2)(c), I am required to consider the relevant factors set out I Part A of the First Schedule, as well as the provisions of section 2B.

[10.] There has not been unreasonable delay in trial.

[10.] In considering the relevant factors on an application for bail, I note that the applicant is charged with serious offences, involving the use of a firearm. With respect to the seriousness of the offences, I am mindful that this is not a freestanding ground for the refusal of a bail application, yet it is an important factor which I must consider in determining whether the accused is likely to appear for trial.

[11.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General*** SCCrApp. No 45 of 2011, the court stated:

"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.".

[12.] I note also the dicta of the Court of Appeal in ***Jeremiah Andrews v The Director of Public Prosecutions*** SCCrApp No. 163 of 2019:

"30. These authorities all confirm therefore the seriousness of the offence, coupled with the strength of the evidence and the likely penalty 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 may be weakened by the consideration of other factors disclosed in the evidence. e.g. the applicant's resources, family connections.".

[13.] While no direct evidence has been provided that the applicant will not appear for trial, the possible penalties consequent upon conviction raises the likelihood of not appearing for trial.

[14.] Such likelihood is contrasted with the nature of the evidence against the applicant. In ***Cordero McDonald v The Attorney General*** SCCrApp No.195 of 2016, Allen P 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.] On this issue of cogency, I note the dicta of the Court of Appeal in ***Stephon Davis v DPP*** SCCrApp No.20 of 2023:

"In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence require at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [1996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

[**16.**] While I bear in mind that I am not to engage in a forensic examination, in my view the evidence discloses a prima facie case.

[**17.**] In respect of public safety and order, I note here, the evidence of "Beta" and the admissions of the applicant contained in the 5 and 6 December 2024 interviews make him both accused and witness. The very real possibility of attack, both retaliatory as assailant and simply as witness, resulting, in the extreme in death, or in the least in serious harm, exists. Concomitantly, the spectre of loss of life, or serious harm to innocent members of the public looms. On either plane, I am of the view that the applicant, a juvenile, should be kept in custody for his own protection and safety.

[**18.**] I have considered the utility of imposition of the usual conditions of reporting, electronic monitoring and curfew in mitigating the risks that here obtain. In my considered view, there are none.

[**19.**] In the premises, I find that the applicant is not a fit and proper candidate for bail; therefore bail is refused.

FKM Williams

Franklyn K M Williams MB KC

Justice

22 May 2025