

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division
2022/CRI/bal/No.00113**

BETWEEN:

ROGER WALLACE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Camille Darville Gomez
Appearances: Miss Cassie Bethel and Levan Johnson for the Applicant
Mr. Eucal Bonaby and Miss Syklar Deveaux for the Respondent
Hearing Date: 13th July, 2022

BAIL DECISION

Darville Gomez, J.

FACTUAL BACKGROUND

1. The Applicant, 29 year old Roger Wallace is charged with Conspiracy to Commit Murder contrary to Section 89(1) and 291 (1) B of the Penal Code Chapter 84. The particulars are: 'That you on Monday 13th March, 2023, while at New Providence, while being concerned together, with a common purpose, did conspire to commit Murder of D/Sgt. 2735 Raphael Miller.
2. On the 20th March, 2023, the Applicant was arraigned in Magistrate's Court No. 9 before Chief Magistrate Mrs. Joyann Ferguson- Pratt. He is currently held at the Bahamas Department of Correctional Services ('BDOCS').
3. On the 23rd March, 2023, the Applicant applied for Bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit.
4. The Respondents filed an Affidavit in Response to Bail on the 18th April, 2023 outlining various reasons why the Applicant should not be granted bail.

THE APPLICANT'S CASE

5. The Applicant admitted at paragraph 8 of his Affidavit that he has pending matters for Murder, Attempted Murder, and Possession of Firearm with intent to endanger life before the Supreme Court. However, there are no previous convictions before the court. He swore that he is a fit and proper candidate for bail and the grant of bail will allow him to adequately prepare his defence, and financially support himself and his family. In addition, he swore to abide by all conditions should this court exercise its discretion and grant him bail.
6. In support of the application for the grant of bail, Counsel for the Applicant provided the court with several cases: **Dennis Mather and Director of Public Prosecutions SCCrApp. No 96 of 2020, Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022, Jeremiah Andrews and The Director of Public Prosecutions SCCrApp No. 163 of 2019, Shaquille Culmer vs Regina SCCrApp & CAIS No. 98 of 2020, and Stephon Davis and The Director of Public Prosecutions SCCr App No. 108 of 2021.**
7. Counsel argued that the Respondents failed to show evidence that the Applicant will, if granted bail, interfere with witnesses, or would abscond and not appear for trial. In addition, she submitted that the evidence produced by the prosecution in their Affidavit in Response cannot be considered cogent evidence because the prosecution has failed to prove the elements of the offence of Conspiracy to Commit Murder as there was no plan or agreement made to commit murder. Counsel also added that the recording referred to Miller and not Sgt Miller which implies that it could have meant anyone and not particularly Sgt. Raphael Miller.
8. Counsel for the Applicant highlighted that if the Court is concerned about the nature and seriousness of the offence, there are conditions which can be imposed to limit the risk of those factors outlines in Part (a) of the First Schedule.
9. Counsel averred that the Respondents lack of substantial grounds for the denial of bail makes the Applicant a fit and proper candidate.

THE CROWN' S CASE

10. The Crown relied on its Affidavit in Response to Bail to support its objection to the grant of bail. Statements were exhibited to support the argument that there is cogent evidence in this matter against the Applicant. More particularly, a statement from D/Sgt 2735 Miller whereby a recording said "Officer Miller won't stop until four rifle man pop up at his door and fuck up his head."
11. Crown Counsel produced the Applicant's Antecedent Form and submitted that he has a tendency to commit crimes; particularly those of a similar nature. Reliance was placed on 2(B) of the Bail (Amendment) Act, 2011 which indicates that a Court can consider an Applicant's antecedent form when determining whether or not to grant bail.

12. He added that the current matter is serious in nature therefore the Applicant is a threat to public safety and public order. Counsel relied on **Lorenzo Wilson and The Director of Public Prosecutions SCCrApp No. 129 of 2020** where the court at paragraph 13 cited the following quote from Jonathan Armbrister v Attorney General SCCrApp No 145 of 2011:

“ 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 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. Counsel went further stating that there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified. He stated that the bail conditions which are usually imposed by the Court's are insufficient to protect the police officer who was threatened by the Applicant.

14. Crown Counsel concluded his submissions contending that the Applicant is not a fit and proper candidate for bail at this time.

THE ISSUE

15. The issue at hand is whether the Applicant, Roger Wallace should be granted or refused bail.

THE LAW

16. **Article 20(1) of the Constitution** provides that:

“If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.”

17. And at 20 (2)(a) 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;...”

18. According to the **Bail Act, 1994 (Amendment 37 of 2011)**, Section 4(2) reads:

“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 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) 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 to be a reasonable time;

(b) Delay which is occasioned by the act or the 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 public or 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.

(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.

(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule."

19. The Amendments to the First Schedule found at Part A outlines some factors that the Court must take into consideration when determining whether to grant bail to an Applicant/Defendant. Part A reads 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;*
- (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."*

ANALYSIS and CONCLUSION

20. The burden of proving that the Applicant is not a fit and proper candidate for bail rests with the Crown. This principle is enshrined in the First Schedule of the Bail (Amendment) Act, 2011 and affirmed by Madam Justice of Appeal Crane- Scott in *Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019* at paragraph 65 :

"...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail "would" if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence."

21. The Crown ought to demonstrate that: (i) if the Applicant is granted bail he will 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. In *Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022*. Sir Michael Barnett, P at pronounced at paragraphs 11, 12, and 19 pronounced the following judgment:

" 11. In my judgment a judge in denying bail must have "substantial" grounds for believing the an applicant for bail "would" not "might" or "may" abscond, interfere with witnesses or commit a crime whilst on bail.

12. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.

19. *In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents.*"

22. The Crown relied on 3 statements; cell phone evidence; the record of interview; and the Applicant's antecedent form to substantiate their reasons for the objection to bail. Rightly stated by Crown Counsel, the Court is not required to delve into the evidence of this matter during a bail application unless there are special circumstances requiring it so to do. That is the purpose of criminal trials.

23. I am also reminded of the Article 20 (2) (a) of the Constitution which provides that "every person charged with a criminal offence shall be presumed to be innocent until he is proved or has pleaded guilty." Granted the court can take an Applicant's criminal record into account when determining whether to grant or deny bail, the court must also consider the fact that those pending matters are simply charges, and not convictions. Having assessed the Applicant's record, he was charged with similar offences however, he has no convictions before the court. The Applicant is innocent until proven guilty or until he pleads guilty.

24. I adopt the point of view expressed by Isaacs, JA in ***Dennis Mather*** :

" The fact that a person has been charged with one offence while he stands accused of having committed an earlier offence cannot provide support for a conclusion that a propensity to commit offences has been disclosed should the person be admitted to bail particularly after the person has been discharged on the earlier offence."

25. Evans, JA at paragraph 19 in ***Stephon Davis*** also pronounced that:

"...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."

26. There was no evidence proffered to suggest that the applicant will not appear for his trial, commit an offence while on bail, interfere with the witnesses in this matter, or abscond if granted bail. The Crown failed to sufficiently provide this court with substantial grounds to support their objection to bail.

27. As noted above, the Crown argued that the matter is serious in nature because a police officer was threatened which left him in fear for his life and his family. John, JA in

Jonathan Armbrister v The Attorney General SCCrApp. No. 45 of 2011 highlighted 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.”

However, In **Jeremiah Andrews and The Director of Public Prosecutions SCCr App No. 163 of 2019**, Evans JA highlighted that *“serious nature of offences charged without more is not a sufficient basis for the denial of bail.”*

28. The Court of Appeal have on many occasions pointed out that bare assertions are not sufficient to deny bail. I echo the sentiments of appeal justices that the Crown must produce substantial evidence when objecting to bail applications.
29. The evidence produced by the Crown is not sufficient to deprive the Applicant of his liberty. Nevertheless, due to the seriousness of the offence with which the Applicant is charged, it is necessary to impose strict conditions to mitigate the risk of any breach of the factors laid out in Part A of the First Schedule.
30. Having examined the law and measured all the relevant factors, I exercise my discretion in accordance with the Bail Act and grant bail to the Applicant in the amount of Thirty Thousand (\$30,000.00) with 2 sureties and stringent terms and conditions as follows:
- I. The Applicant is to be fitted with an Electronic Monitoring Device and must comply with the regulations for the use of such a device;
 - II. The Applicant must surrender his passport or travel document.
 - III. The Applicant is required to sign in at the Grove Police Station on Mondays, Wednesdays, and Fridays before 6:00p.m until the completion of the trial;
 - IV. the appellant is to remain at his home in Blue Hill Heights between the hours of 10:00pm and 6:00am;
 - V. The Applicant is not to communicate or interfere with any of the Prosecution witnesses in this matter whether by himself or through an agent; and

Dated this 14th day of June, A. D., 2023


Camille Darville Gomez
Justice