

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00155/2014

BETWEEN

PEDREITO MEJIASJR. a.k.a. "PJ"

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Mr. Alex Dorsett, for the Applicant
Mr. Levan Johnson and Mrs. Shirl Deveaux, for the Respondent

Hearing Date(s): 29 June 2022

RULING - BAIL

Archer-Minns J

1. Pedreiro Mejias Jr. a.k.a “PJ” (the “Applicant”) to these proceedings has been charged with one (1) count of Attempted Murder concerned with another, contrary to section 292 of the Penal Code, Chapter 84. He made this application to the Supreme Court via a Summons and Affidavit filed the 25 May, 2022.
2. The Applicant has pending matters for Murder and Attempted Murder for which he was charged with others and granted bail on 16 April, 2021. Notably the Applicant also has an outstanding bail bond for the offence of Unlawful Sexual Intercourse.
3. Reliance was placed on the Applicant’s Affidavit filed 25 May, 2022 and oral submissions which asserted essentially that the Applicant:
 - (i) is a Bahamian of 22 years of age and resides in the Joe Farrington Road area;
 - (ii) is presently unemployed and has one pending matter of Murder;
 - (iii) was granted bail in the sum of \$20,000 and was outfitted with an Electronic Monitoring Device (“EMD”);
 - (iv) lives with his mother, girlfriend and three month old daughter;
 - (v) was at home when the events occurred;
 - (vi) will comply with all bail conditions if granted.
4. Counsel for the Respondent objected to the granting of bail which was supported by the Affidavits of Shaneka Carey (“Carey Affidavit”) and that of Inspector Jermaine Toote (“Toote Affidavit”) both filed on 21 June, 2022.

In the Carey Affidavit, it was asserted inter alia:

- (i) the nature and seriousness of the case, being Attempted Murder, a Part C offence, must be considered.
- (ii) the nature and strength of the evidence that links the Applicant to the offence, particularly the statement of the Virtual Complainant, (“VC”) who avers to knowing the Applicant from high school and them playing basketball together. He also had the Applicant in sight while he pointed the gun in his face but was unable to fire and was then directed by his alleged conspirators also known to the Virtual Complainant and them screaming to the Applicant to shoot him which ultimately the Applicant did.
- (iii) the Virtual Complainant positively identified the Applicant via a “twelve-man” photo line-up.
- (iv) the Applicant if convicted, faces a lengthy penalty which provides an incentive to abscond.

- (v) there is an overriding need to protect the safety of the Virtual Complainant particularly where via his statement he relays that he believes the “Applicant tried to kill him because of the people he used to be around when he got mixed up in problems sometime in 2020”. There is also evidence from Inspector Jermaine Toote of the Intelligence Bureau of the Royal Bahamas Police Force that the Applicant and his co-accused are affiliated with and have strong ties to the Grove Hot Niggas gang and the Virtual Complainant affiliated with the rival gang, Tiger Nation.
 - (vi) there is also a need to protect the Applicant himself along with the society at large.
 - (vii) Judicial notice is to be given to the recent uptick in retaliatory killings in the country and commentary from the leadership of the Royal Bahamas Police Force on the emergence of new organized gangs in the Grove Area and drug retaliation or street justice and gang violence being attributed to many of the recent killings. It should also be noted that the offence along with pending matters involve the use of a firearm and in this matter was dangerously discharged in the residential area of Jones Drive off East Street South. The granting of bail would not be in the interest of public safety.
 - (viii) the Applicant was on bail when the matter occurred and has pending matters for Murder and Attempted Murder along with Unlawful Sexual Intercourse with Antecedent and Bail bonds to confirm same.
 - (ix) there are substantial grounds for believing that the Applicant, if released on bail, will commit further offences.
 - (x) there are no conditions which can be imposed to reasonably ensure the Applicant’s presence at trial and the safety of victims, and this was seen in the Applicant’s non-compliance of reporting conditions when granted bail previously.
- 5. In the Affidavit of Inspector Jermaine Toote (“Toote Affidavit”) he provided inter alia:**
- (i) he is the Administrator Inspector of the Central Intelligence Bureau (“CIB”) of the Royal Bahamas Police Force and makes the Affidavit as a result of diligent intelligence ascertained at the CIB;
 - (ii) the Applicant is known by the street alias, “P.J./Rifle Hand”;

- (iii) the Applicant came to the CIB's attention in March 2019 as being involved in gang activity and associated with the Grove Hot Niggas gang a splintered faction of the One Order Gang and since March 2019 the CIB has conducted enquiries with a view of establishing the Applicant's role, association, allegiance, and any activities associated with an illegal gang;
- (iv) the Applicant's role in the Grove Hot Niggas gang is that of a Street Enforcer against their rivals the Tiger Nation Gang. The present charge represents the attempted murder of a rival Tiger Nation gang member by the Applicant and his co-accused who are also both members of the Grove Hot Niggas Gang.
6. Inspector Jermaine Toote of the Central Intelligence Bureau of the Royal Bahamas Police Force was also called as a witness for the Respondent who essentially confirmed the contents of his Affidavit filed on 21 June 2022.
7. During examination Officer Toote also indicated that he works as a Prison Liaison Officer to BDOCs in his current capacity and previously worked on their Classification Board which determines where inmates are housed due to gang activity, all like gang members placed together for peace within the institution.
8. Whilst acknowledging that he did not personally know the Applicant nor interviewed him about his involvement in gang activity he was privy to such information from confidential informants within the gangs and CIB's registry holds this information. The Applicant came onto the bureau's radar as early as 2016 when he was a part of a rap group called the Hot Niggas who uploaded songs on violence to YouTube which later developed into the Grove Hot Niggas gang and the Applicant subsequently being charged in early 2019.
9. The Respondent further advanced that this current charge is serious in nature and relied on the authority of Johnathan Armbrister which speaks to the seriousness of the charge weighing heavily in the granting of bail. In this instant matter the evidence is cogent particularly the Virtual Complainant's statement as to his identification of the Applicant and his familiarity with the Applicant as someone he went to high school with, played basketball and also had in view for some 6 seconds during this incident. The Applicant was also identified by the Virtual Complainant via a twelve man photo lineup.
10. Counsel for the Respondent further contended that the protection of the Virtual Complainant and public is a factor of concern particularly given the Applicant's involvement in gang related activity which also signals the need to protect the Applicant due to the current dynamics of gang related retaliatory killings

particularly when granted bail and judicial notice should be given to the recent uptick in such killings which was also suggested through the Virtual Complainant who provided in his statement that he believed he was a target because of his previous relation to gang related activity.

11. Reliance was also placed on the authority of Dentawn Grant by the Respondent, a Court of Appeal ruling from a matter that was before this Court and thereafter appealed. At paragraph 27 the Court of Appeal stated, in part “once there is a basis for the Court to conclude that an accused person's life may be in danger if he is released on bail ----- and the attack days earlier on the Appellant provides such a basis the Court is obliged by the mandatory "shall", to deny bail to the Applicant”.
12. Counsel for the Respondent buttressed their position by relying on section 3(h) of The Bail Amendment Act 2014 which provides: “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”.

In all circumstances of this case, Counsel contended that the Applicant ought not be granted bail.

13. Counsel for the Applicant countered the assertions by Counsel for the Respondent by asserting that (i) the case of Dentawn Grant is distinguishable from this matter. In this case there is no present danger towards the Applicant, no assertions by any of the Affidavits to suggest any protection is required for the Applicant (ii) if the Court accepts that the Applicant has been affiliated whether loosely or otherwise with gang related activity, it should also be noted that the Virtual Complainant too is a gang related individual and there could be a motive to lie (iii) the Applicant was outfitted with an Electronic Monitoring Device at the time and was at home when this matter is said to have occurred, which is several miles away. The Respondents are aware of this and have not produced EMD results to speak to the Applicant's whereabouts or any interference with the device. The only evidence given is that of a rival gang member (iv) the Applicant prior to his arrest in March 2019 is said to have no affiliation with any gang. He has made his alibi clear (v) it cannot be said that because the Applicant is housed in a particular block at The Bahamas Department of Correctional Services means he is part of a gang or gang related activity. The Applicant is charged with Attempted Murder not being in a gang and there is no evidence of bad blood between the Virtual Complainant and the Applicant (vi) there was no allegations of the Applicant failing to appear at trial and that he never missed signing in as a part of his reporting conditions. In this instance the Court can impose reasonable conditions to ensure his attendance at trial.

In all of the circumstances of this case, Counsel for the Applicant contended that the Applicant ought to be granted bail with conditions attached.

14. Upon review of the Affidavits and considering the oral submissions of counsel for the Applicant and Respondent, the Court has determined that the Applicant having been granted bail previously, the nature and the seriousness of the charge, the Applicant's antecedents, the concern for the safety of the Virtual Complainant, Applicant and public at large, at this juncture, the Applicant is not a fit and proper candidate for admission to bail. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

15. The Bail Act (1994) (as amended) ("the Act") Sections 4(2), 4(2A), 4(2B) and Part A provides guidelines for a Judge's utilization in their discretion to grant bail for Part C offences. The most relevant to this instant matter:
- a. has the person charged been tried within a reasonable time? The discretionary period being within three (3) years of being arrested, if not they should be granted Bail.
 - b. the character or antecedent 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.
 - c. if released on bail, would the Applicant 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, whether in relation to himself or any other person;
 - d. 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;
 - e. 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;
 - f. The nature and seriousness of the offence and the nature and strength of the evidence against the defendant.

These factors are to be considered in tandem with Article 20(2) (a) of the Constitution of the Bahamas which states 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. And, 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.

Discussion and Reasoning

16. To determine the discretion to be utilized by this Court, the guidelines provided above will be taken in turn and expounded upon in relation to this matter.

Firstly, this matter having occurred in April 2022 is moving in the normal trajectory of such cases and does not currently impinge on the guidelines as provided in the Bail Act. *The court is also cognizant of the view expressed by Isaacs JA in Dentawn Grant regarding the likely delay in bringing the Applicant to trial as a consideration when deciding whether or not to grant bail.*

A. The character or antecedents of the person charged, the need to protect 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.

17. In this instant matter, the Applicant has pending matters for Murder and Attempted Murder in 2019 and Unlawful Sexual Intercourse in 2014 and was convicted in 2021 for Possession of Dangerous Drugs.
18. It is no doubt that these pending offences are very serious but are bailable as an individual is presumed innocent until proven guilty therefore this is a factor which will be considered amongst others.
19. In relation to the protection of the safety of the victim, this is a pivotal factor to this application. There is a concern on the part of the Respondent given the reported gang relation of the Applicant, the statement of the Virtual Complainant in relation to same, the Intel of the CIB, retaliatory killings, particularly in respect to the Virtual Complainant, and or the safety of the public generally and the uptick in our society of persons killed who have been released on bail and are said to be associated with drug/gang activities.
20. In relation to public safety, Crane Scott, JA provides in Dentawn Grant v DPP SCCrApp No. 59 of 2022
- “.....having regard to the material before the Court that this murder appears to have been in retaliation to a previous attack on the Appellant. There is not only a risk of the Appellant’s safety if granted bail, but also a risk to the public’s safety. Any retaliation against the Appellant puts members of the public at risk who may be in the area where any attack on the Appellant may take place (emphasis*

added). In the present case, the material before the Court does not suggest that the victim Brianna Grant was their object of the retaliation but was shot because she was with the intended victim at the time. ...In the circumstances, I am satisfied that in addition to the safety of the Appellant, it is also in the interest of the safety of the public that the Appellant should be denied bail.

21. *In Tyreke Mallory v Director of Public Prosecutions 142 of 2021* (January 2022) where the issue went beyond, "*whether the appellant will appear for his trial but turns on whether he is a threat to society* (emphasis added). The learned judge's decision when read as a whole is based on his view articulated in paragraph 33 as follows:

33. Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored (emphasis added).

25. In my view, having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society (emphasis added). Further, the evidence, in my view, 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 pending trial."

22. As opined by the Court of Appeal given the antecedent of the Applicant, the question for this court is whether there is a threat to the safety of the Virtual Complainant, the Applicant or the public at large. The evidence provided suggest there is indeed a heightened risk for all parties and therefore must be of concern to the Court.

B. If released on bail, would the Applicant 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, whether in relation to himself or any other person;

23. While there has been nothing provided concerning the Applicant's failure to surrender to custody or appear at trial, it was however exhibited by the Respondent that the Applicant failed to abide consistently with his reporting conditions as a part of his previous bail granted having reported for a total of five times only. Whilst it is alleged however that he committed this present matter

along with others while on bail there has been nothing put forward that he is or has interfered with witnesses.

C. 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;

24. As contended by the Respondent there is concern for both the victim and Applicant. The Applicant having been identified as a member of a rival gang, there is a great concern for retaliatory killings as highlighted by the Respondent which the court must give consideration to. In *Dentawn Grant (supra)* at paragraph 27,

“Once there is a basis for the Court to conclude that an accused person's life may be in danger if he is released on bail - and the attack days earlier on the Appellant provides such a basis the Court is obliged by the mandatory "shall", to deny bail to the Applicant (emphasis added). However, a caveat may be applicable here, to wit, if the Applicant is able to demonstrate to the Court that notwithstanding a finding that his life may be in danger if released on bail, he is able to minimize that risk either by relocation to another island or by remaining under house arrest, the Court ought to have regard to such conditions when deciding whether or not to grant bail.

25. In the instant matter, there is concern for the safety for the Applicant in light of his role and position in gang-related activity. There has also not been anything provided that seeks to minimize this risk particularly where previous stringent reporting Bail conditions have not been met.

D. 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;

26. In *Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016*, It was reiterated that “.....Attempted murder is considered a serious offence. An additional consideration to the seriousness of the offence is the fact that the appellant was on bail when he was charged with the offence of attempted murder (emphasis added). The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice”.

27. In *Tyreke Mallory supra*, where the evidence was determined to be “cogent and cannot be said to be very weak or non-existent..... this supports the findings by the trial judge that there is a reasonable basis for the Crown's allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail (emphasis added)....having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society.

28. In this matter the Applicant was previously charged in 2019 for a similar offence of Attempted Murder and Murder and was on Bail when the present offence was said to be committed. There is concern that there is proclivity for such actions on the part of the Applicant particularly where in this matter, the evidence presented via the CIB, the VC and the Applicant's criminal history support same.

E. The nature and seriousness of the offence and the nature and strength of the evidence against the defendant.

29. While it is understood that Bail hearings should not constitute mini trials (*Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108 & 116 of 2008*), the evidence provided assist with rendering a discretionary decision to the granting of Bail. In exploring this section, there are a series of principles provided throughout case law which are detailed below.

30. In this instance the strength of the evidence as reiterated in *Cordero McDonald supra*, that “notwithstanding however, the presence of the aforementioned factors in this case, the nature of the evidence against the appellant is of utmost relevance for it underpins the reasonableness of the suspicion of the commission of the offences by the appellant, and consequently, the basis for arrest and deprivation of his liberty in relation thereto”. It is also, “not the duty of a judge considering a bail application to decide disputed facts or law 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.”

31. In *Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019*, at paragraph 24:

"The strength of the case against the applicant is important for another reason. The authorities have recognized that the serious nature of a charge and the cogency of the evidence are a material consideration when determining the proper exercise of the discretion to grant bail

and In Jonathan Armbrister, John, JA observed as follows:

“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.” Indeed, paragraph (g) of Part A of the First Schedule to The Bail (Amendment) Act, 2011 requires the Court to consider “the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.”[Emphasis Added]”

32. In *Dentawn Grant supra*, the Judge was said to be well “within her rights to consider the offences faced by the Appellant as serious; and in so doing, conclude that the Appellant "who faces the severest penalty known to law may have a powerful incentive to abscond or interfere with witnesses": See Hepburn and Hurnam v The State [2006] 3 LRC 370.

33. In *Stephon Davis v. The Director of Public Prosecutions SCCrApp. No. 108 of 2021* it was opined, at paragraph 19, 35-36:

"19. It should be noted, however, 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 (emphasis added)...

35. 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 (emphasis added). 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 to show why there are good reasons to deny bail to a person charged with an offence.

36. In this case, the Crown alleges that he is a threat having regard to the fact that this offence was committed whilst he was on bail. But the Crown has produced scant evidence to show the basis upon which he has been charged”.

The above principles provide that the evidence put forth must show that there is reasonable suspicion of the commission of the offence, the

evidence must be assessed alongside the nature and seriousness of the offence and the Respondent must provide good reasons to deny bail and not scant evidence.

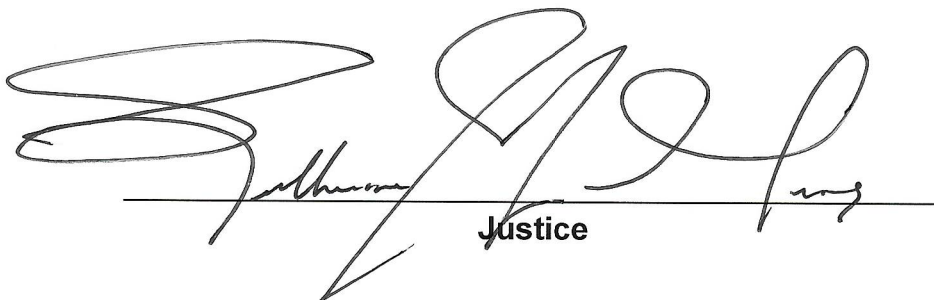
34. In this instant matter, this Court has determined that the Respondent has done just that and has provided through the evidence detailed in its Affidavits, oral submissions, the viva voce evidence of a witness and exhibits together with the principles outlined in the above authorities that it is satisfied that strong and cogent evidence against the granting of Bail to the Applicant has been adduced.

Conclusion

35. The relevant provisions of The Constitution, the Bail Act and the referenced authorities in addition to the evidence provided by both parties, having been considered, the Court so finds that there is currently no unreasonable delay in the prosecution of the matter. The Applicant has several pending matters that are serious in nature, has previously been granted bail and subsequently charged with further and similar offences, there is the need to protect the public and for public safety and that of witnesses as well as the need to protect the Applicant and the Virtual Complainant, particularly in light of the strength and cogency of the evidence, the Court is of the view that the Applicant should remain remanded at this time.

Bail is therefore denied. Should there be any change in circumstances in the interim; the Applicant is at liberty to reapply.

Dated this 1 day of August 2022



Justice