

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT**

Criminal Side

2022/CRI/bal/No. 00254

BETWEEN

LYNDEN VINCENT

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honourable Mr Senior Justice Bernard Turner

**APPEARANCES: Mr Calvin Seymour for the Applicant
 Ms Racquel Whymns for the Respondent**

HEARING DATE: 24 November 2022

RULING

1. The applicant herein applied for bail by way of a summons with an affidavit in support thereof filed on 8 November 2022. On 28 November 2022 I granted the applicant bail and promised to put my reasons in writing. This I now do.
2. The applicant is charged with the offence of murder, which is alleged to have been committed on 31 October 2022.
3. The affidavit of the applicant acknowledges that he was charged with the offence as indicated above and stated on the day of the alleged murder, when he became aware that the police wanted to see him, he voluntarily turned himself in at around 12:00pm to ascertain what the matter was about.
4. The affidavit asserted that the applicant was a man of good character and mature years, being 48 years old at the time. He further asserted that he was an entrepreneur in the landscaping field, that he was not a member of any gang and that he was peaceful, hardworking and a productive citizen. In these circumstances, the applicant asserted that he was entitled to being granted bail, although charged with murder.
5. The initial application was for the applicant's application to be heard under the emergency bail procedures put in place by the judiciary for the purposes of hearing certain bail applications which fit an established criteria posted on the court's official website. Having considered the criteria and the application, the court determined that

the application did not fit the criteria and therefore was not treated as an emergency bail application.

6. In response to Counsel's submission, Counsel on behalf of the respondent, the Director of Public Prosecutions, objected to the grant of bail. Counsel contended that the applicant was not a fit and proper candidate for bail as the case was a serious one and the evidence was cogent. The affidavit in objection stated **"That notwithstanding that the accused has no other pending matters, the offence that the accused is charged is one of a serious nature."**
7. The affidavit then went on to state a belief that the applicant would fail to surrender into custody or interfere with witnesses if granted bail, and that for those reasons the applicant is not a fit and proper candidate for bail.
8. The charged offence is a Part C offence and in relation to those types of offences section 4(2) of the Bail Act provides:

"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,

(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 make 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 for the released on bail.

(2A) For the purpose 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 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.”

Part A of the First Schedule of the Act provides:

In considering whether to grant bail to a defendant, the court shall have regard to the following factors:-

- (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;...**

(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.

9. Relative to the nature and seriousness of the offence of murder, that offence is obviously one of the most serious offences and attracts a severe penalty upon conviction which can give rise to the risks of the applicant absconding or failing to appear for his trial.
10. There are moreover, appellate decisions on the issue of what justifies a denial of bail on the issue of a fear of absconding. That standard generally is that there must exist sufficiently probable grounds that the applicant "**would**" (and not "may") abscond the jurisdiction of the court if granted bail. Only then would detention be necessary to secure and ensure the applicant's appearance (see **Toni Sweeting v. Commissioner of Police** MCCrApp No. 133 of 2013; **Attorney General v. Bradley Ferguson et. Al** SCCrApp No. 57, 106, 108, 116 of 2008).
11. Further, the Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, stated, at paragraph 66, the following:

"66. In the absence of evidence, merely listing the relevant factors and using expressions such as "may"; or "is likely to"; or "it is recommended" as was done in the McHardy affidavit, cannot discharge the Crown's burden. We take this opportunity to stress

once again what this Court (differently constituted) said in *Armbrister*, which is that that is not how the Crown's burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail "would", if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden."

12. Paragraph 70 concludes the review of this issue by stating:

70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant's good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable of supporting the judge's ultimate conclusion at paragraph 16(v) of his decision that: "in the circumstances of this Applicant and this application the need for public order and public safety is paramount". In the absence of evidence that the appellant posed a substantial threat to the Crown's witnesses or to public safety and public order, the judge's decision was unreasonable and clearly wrong."

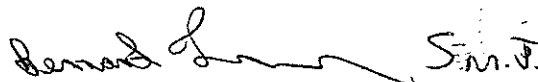
13. The position of the appellant in *Seymour* is the exact position this applicant is in, a person who asserts his good character and absence of criminal convictions. The Crown invites the court to merely find that the applicant would fail to surrender to custody or interfere

with witnesses, without providing any basis for the court to do so, that would clearly be unreasonable and wrong, in the Court of Appeal's analysis.

14. The applicant is therefore granted bail on the following terms:

1. Bail in the sum of \$30,000.00 with two sureties.
2. The applicant is to be electronically monitored and is required to comply with the Regulations for the use of such a device.
3. The applicant is not to come into any deliberate contact with any of the witnesses in this matter, either by himself or through any agent.
4. The applicant is to remain at least 100 feet from the home of the deceased.
5. The applicant is required to sign in at the Carmichael Road Police Station on Mondays and Fridays before 6:00pm.
6. The applicant is required to remain at his identified home between the hours of 9:00pm and 6:00am.
7. Any breach of any of these conditions will render the applicant liable to further remand.

Dated this 28 day of November, A D 2022



**Bernard S A Turner
Senior Justice**