

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

CRI/BAIL/00163/2022

BETWEEN

PATRICK DARELUS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Mrs. Jeanine Weech – Gomez

Appearances: Mr. Geoffrey Farquharson, for the Applicant

Ms. Janessa Murray, for the Respondent

Hearing Date(s): 13 December, 2022.

RULING- BAIL

Weech-Gomez J

1. The Applicant, Patrick Darelus, (hereinafter the “**Applicant**”) applies for bail in respect of the charges of two (2) counts of Unlawful Sexual Intercourse in contrary to section 10(1)(a) of the Sexual Offences Act, Chapter 99 and made application for Bail via Summons and Affidavit both filed the 22nd November, 2022 and the Respondent maintained its position via its Affidavit filed the 19th July, 2022.

SUBMISSIONS

2. Counsel for the Applicant relayed that objection to Bail in this matter goes against the Judgments of the Court of Appeal and Privy Council, particularly as there has been no evidence tying the Applicant to the offence, only the statements of the Virtual Complainant (“VC”) and her sister. The Applicant’s Counsel also intimated that there has been no evidence that the Applicant will abscond and highlights that the Applicant’s previous convictions are of any entirely different nature that of robbery and causing harm. Counsel for the Applicant looked to the case of **Bradley Ferguson** that observed a prior conviction only being relevant in so far as they indicate as living a life of crime.
3. The Respondent relied on its aforementioned Affidavit, particularly where the Applicant has previous convictions, and not a person of good character. They continued that Bail should not be granted as a protection to the public, particularly as the evidence against the Applicant is cogent and relies on the ruling of Grant-Thompson J. The Respondent avers that there has been no unreasonable delay and no change in circumstances since July and for these reasons the Applicant is not a fit and proper candidate for Bail.

The Law & Discussion

4. “**Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty**” (*Section 20 (2) (a) of the Constitution of the Bahamas*) and for this reason the Applicant has a right to apply for bail though not an automatic right to be granted Bail.

5. The ***Bail Act 1994 (as amended)*** (hereinafter “**The Act**”), gives a Supreme Court Judge the discretion when determining whether or not to grant Bail and also details the factors with which to assist its discretion, particularly through Sections 4 and the First Schedule of the Act. The factors that are relevant to this matter will be taken in turn and thereafter a determination on the way forward.
6. The first factor of consideration is whether the Applicant will be tried in a reasonable amount of time, i.e. within three years as prescribed by the Act. This matter alleged to have occurred this year and the Voluntary Bill of Indictment having been served on the 30th September, 2022, seems to be moving in the usual timeframe of such matters and in this instance, unreasonable delay is not a factor even though stated otherwise by the Applicant’s Counsel and so this Court moves to the next relevant factors.
7. As it relates to the antecedents, the Applicant is said to have previous convictions for Dangerous Drugs in 2002, Possession of Dangerous Drugs with intent to supply in 2006, along with Robbery and Causing Damage in 2019. These are no doubt serious offences but this Court acknowledges that these convictions are not sexual offences or of similar nature to the charges the Applicant has received but also agrees with the Respondent that the Applicant could not be considered someone of good character.
8. While there is concern by the Respondent that the Applicant will abscond, there has been no evidence of a propensity to do same, for example if it could have been shown that during any of his previous convictions the Applicant tried to flee or breach bail conditions or advise someone of his plan to leave etc., but there has been nothing provided albeit that it also understood that the potential sentence could be an incentive for one to abscond (***Hurnam v The State, Privy Council Appeal No. 53 of 2004***). It was however noted in ***Jeremiah Andrews v the Director of Public Prosecutions SCCrApp No. 163 of 2019*** that there has to be more than “**bare assertions**” and in this instance, the Court has not been provided with more than his possibility to flee. The same can be said as it relates to Public Safety, this Court has not been presented with any threats or information that will lend to a threat to public safety. It is in such instances that the Court also considers conditions that could be imposed and if there is a breach of the same, Bail reconsidered.

9. Along this same vein, is also concern asserted by the Respondent for the VC. It is no doubt that this alleged offence is very serious and if the facts are true are gruesome for a child , for anyone to experience but this must also be balanced or as Evans JA states in ***Stephon Davis v DPP SCCrApp No. 108 of 2021***,

“ we walk a tight rope of having to protect the interest of society and the constitutional right of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity”.

10. This Court wants to protect as much as possible all civilians from criminal activity but if we are not given the evidence to assist us in such decision making, it makes any other decision difficult. The evidence as it relates to this matter will be delved further in the below section.

11. The Act rounds out its factors of concern by looking to the nature and seriousness of the offence and the nature and strength of the evidence against the Defendant. As detailed previously, this charge is indeed very serious and the age of the VC is even more of great concern.

12. As it relates to the evidence, however, this Court is provided by the witness statements of the VC, a 10 year old, fifth grade student and her sister who too speaks of allegedly being harmed by the hands of the Applicant but never reporting it. This Court has also been provided with the confrontation details between the parties. Again this Court reiterates that no one should have to undergo the alleged events if they have indeed occurred and deem this very serious, but the Respondent has failed to provide any evidence that raise reasonable suspicion of the commission of the offence as prescribed by ***Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016***, where it was observed that it was the duty of the Judge to,

“.....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 [she] ought to grant him bail.”

This Court has not been provided with medical samples or findings, phone messages, or any evidence that likely corroborates the Applicant to the charge and would lend to such reasonable suspicion of the commission and also has questions of its own that arise from the limited evidence provided but it is also acknowledged that Bail hearings are not “mini trials” (see *Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108, & 116 of 2008*), and it is still indeed a balancing act, where all evidence will be tested at trial but something must be presented for the Court to consider to justify the Applicant’s detention and not lie in contravention of Article 19 of the Constitution which prescribes that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence.

The Court having so reviewed all of the aforementioned factors has concluded its position below.

Conclusion

The facts surrounding this case if true, particularly on a VC of such an age is unfathomable, but at this point there has only been tendered a witness statement by the Respondent and antecedents reflecting convictions of the Applicants are unrelated to this matter. This does not give this Court a lot to work with when considering depriving the Applicant of his rights and liberties. Having regard to all the circumstances, the Court will exercise its discretion to grant bail to the Applicant at this time.

Bail is hereby granted to the Applicant on the following terms:

1. Bail in the sum of \$20,000.00 with two Suretors;
2. Applicant is to report to East Street South Police Station on Monday, Wednesday and Saturday before 7 pm ;
3. Applicant is to be outfitted with an Electronic Monitoring Device;
4. There is to be no deliberate interference with any witnesses or parties in relation to this matter either by the Applicant or through his agent;
5. No child is to be left in the care or custody of the Applicant at any time;
6. The Applicant must not live in the same community of the VC (and confirms he will reside at South Beach with his brother.)
7. The Applicant must appear to Court on all adjourned dates.

8. The Applicant is to turn in all travel documents if any to the Registrar;

A breach of any of these conditions may result in the Applicant's bail being revoked.

Dated this 19th December, 2022.

The Hon. Madam Justice Jeanine Weech – Gomez