

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00106/2023

BETWEEN

CHRISTOPHER FORBES

A.K.A

CHRISTOPHER DESMOND FORBES

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable Madam Justice Jeanine Weech-Gomez

Appearances: Mr. Christopher Forbes, *pro se*.
Ms. Xandrell Bain for the Respondent.

RULING- BAIL

INTRODUCTION

1. Christopher Forbes (D.O.B. 9-Nov-1996), the Applicant in this matter has been charged under VBI 180/7/2022 with two (2) counts of Rape contrary to section 6(a) of the Sexual Offences Act, Chapter 99, and one (1) count of Armed Robbery contrary to section 339(2) of the Penal Code, Chapter 84 relative to the events of the 6th May, 2022. He applied for Bail via the Bahamas Department of Corrections (“**BDOC**”) Bail Request form dated the 9th May, 2023. The Respondent replied thereto via Affidavit filed the 5th July, 2023.

SUBMISSIONS

2. The Applicant submitted that the matters of which the Respondent speak occurred while he was a minor. He states that his rights have been breached and that he should get Bail. He is tired of the treatment received in this country and in his words “wants to get out of here”. Ultimately, he insisted that he did not do the things he has been accused of.
3. The Respondent relied on its Affidavit which stated principally:
 - a. The trial in this matter is set for September 11th, 2023.
 - b. The Applicant has a pending matter surrounding the events of the 8th May, 2022 for the charges of Housebreaking, Armed Robbery and Assault with a deadly instrument.
 - c. The Applicant has previous convictions for Housebreaking, Robbery, Assault with intent to Rape and Rape; suggesting a propensity to commit violent and dishonest offences.
 - d. The Applicant ought to be kept in custody for the public’s safety and his own safety as he has complained in open court about the Victim’s family members threatening him and is housed in the B-block of Maximum Security for further protection.
 - e. There are no conditions that can be imposed to ensure the Applicant’s protection if released nor prevent him from reoffending.

Law & Discussion

4. Articles 19 and 20 of The Bahamas’ constitution provides to all citizens a presumption of innocence and for this reason an opportunity to apply for Bail. Under the **Bail Act** (as amended) (“**the Act**”), guidance is provided to Judicial officers to assist their decision making powers as it relates to Bail applications. Those factors most relevant as it relates to this Applicant will be taken in turn to and thereafter the Court’s conclusion on this application.
5. The first to consider is ***whether the Applicant will be tried in a reasonable amount time***; with a reasonable time as provided by the Act being three (3) years or less from the date of arrest or detention. This matter having occurred in 2022 with trial set for September of this year is moving in a timely fashion

and not an issue of moment concerning this Applicant. Understanding this, the Act then asks us to consider the ***character or antecedents of the person charged and the need to protect the safety of the public and public order***. This Applicant's antecedent details previous convictions for Rape and Assault with intent to Rape (2 counts) in July 2014 with a sentence of fifteen years in prison, and prior to this, Indecent assault and threats of death in April 2014 and Possession of dangerous drugs as an adult and it also of note that he was convicted of unlawfully carrying arms, housebreaking, stealing and robbery in 2013. The Applicant having been previously convicted of Rape and now presented with similar charges seemingly after his imminent release from BDOCs is very concerning. Also, concerning is the pending charges of two counts of Rape and Indecent Assault in 2014 and armed robbery, house breaking and causing wounding in VBI 188/7/2022 allegedly having been committed two days after the events concerning this Application. There is no doubt that this also brings about a concern for public safety which the Act prescribes is a "*primary consideration*" and also meets the test laid down in ***Jevon Seymour v DPP SCCrApp No 115 of 2019*** concerning what constitutes threats to public safety and order and looked to "*any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences*" **para 68**.

6. This Court is also concerned for the Applicant's safety where on observing his behavior in Court raised concerns for his mental wellbeing and as a result requested a psychiatric evaluation be carried out and via the 18th January, 2023 report of Dr. John Dillett of the Sandilands Rehabilitation Center, the Applicant "*admits to non-compliance with medications and follow up*" for his mental health treatment and for these reasons, this Court is also concerned with the effects that this has on the safety of the Applicant and that of the public if granted Bail. While deemed fit to plea, it is incumbent on the Applicant to maintain compliance with his medication and follow up as prescribed by Doctors and there is no guarantee same will be followed if granted Bail.
7. The next consideration is if granted Bail whether there are substantial grounds for believing **the Applicant will fail to surrender to custody or appear at trial**. While there is no known occurrence of the Applicant failing to appear at trial, his outburst in Court during the hearing of this Application of being "*tired of this Country and wanting to leave*" is of concern to this Court and to be less than month away from trial wants to ensure nothing impedes the Applicant from attending his trial. This Court then considered whether there are substantial grounds for believing **the Applicant will commit an offence while on Bail**. Having been convicted of similar sexual offence charges and now charged with the same along with violent offences, there is concern for similar acts to occur if granted Bail.

8. The final factor of consideration is the **nature and seriousness of the offence and the nature and strength of the evidence against the Defendant**. Rape and armed robbery, both Part C offences are classed as very serious offences with lengthy sentences also attached thereto and further convey their seriousness and as observed in ***Jonathan Armbrister v AG SCCrApp No.145 of 2011***, the seriousness of the charge and the possible penalty attached, *“has always been, and continues to be an important consideration in determining whether bail should be granted or not”*.
9. As it relates to the **nature and strength of the evidence against the Defendant**, on a previous occasion the Court was presented with the statement of the virtual complainant (“VC”) in this matter by the Respondent but same for whatever reason was not exhibited to its Affidavit for this Application which gives further details to that in its Affidavit which states that *“It is alleged that the Applicant on the 6th May, 2022 did have sexual intercourse with Dania Holder-Clarke without her consent (2 counts). It is also alleged that on Friday 6th May, 2022 while armed with a cutlass did rob Dania Holder-Clarke”*. It is acknowledged that the Respondent has a duty to *“.....put before the court evidence which raises reasonable suspicion of the commission of the offences by the applicant, such as to justify the deprivation of his liberty by arrest, charge and detention”* ***Tyreke Mallory v DPP (SCCrApp. No. 142 of 2021, para 25)***. Notwithstanding the lack of detail in evidence, this factor is not the only reason to grant or deny bail, but that which was provided was considered.

Conclusion

10. This Court having considered the submissions of both parties, the Constitution, the relevant Law, particularly the applicable factors of the Bail Act and the information provided relative thereto particularly as it relates to the Applicant’s antecedents and notably his convictions for similar charges, concerns for the safety of the public, the Applicant’s safety, and the impending trial date, this Court is not minded in the circumstances to grant Bail at this time.
11. Consideration was also given to the conditions which the Court may impose that would minimize the risks involved with the granting of bail and avoiding such offences from repeating themselves and ensuring the Applicant’s attendance at trial have found none that would suffice at this time.
12. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 16th day of August, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez.