

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/2023

BETWEEN

HARTMAN ROLLE

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

Appearances: Ms. Tonique Lewis for the Applicant.

Mr. Bradley McKenzie for the Respondent.

RULING- BAIL

Weech-Gomez J

INTRODUCTION

1. The Applicant in these proceedings, Hartman Rolle (D.O.B. 9th March, 1994) (hereinafter the “**Applicant**”) has been charged with Possession of a Firearm and Possession of Ammunition contrary to Section 30 of the Firearms Act,

Chapter 213 and was arrested on the 30th December, 2022 in connection with the same and denied Bail by the Magistrate's Court. He applied for Bail from the Supreme Court via Summons and Affidavit both filed the 7th February, 2023. The Respondent thereafter sought to revoke the Applicant's Bail pursuant to section 12(3) of the Bail Act via its Summons and Affidavit in Support filed the 24th February, 2023.

SUBMISSIONS

2. The Applicant via his Affidavit states that he is 28 years old, a Bahamian citizen and employed with Road Runner Heavy Equipment Rental as a helper. He further states that he was arrested on the 30th December, 2022 and thereafter charged with Possession of a Firearm and Possession of Ammunition to which he pleaded not guilty but was not granted Bail by the Magistrate who ruled that the Applicant had the propensity to reoffend.
3. The Applicant continued that whilst on Bail he was charged with subsequent offences, for which he has plead not guilty and stated that he should be presumed innocent. He further stated that he was compliant with his bail conditions and was appearing on his adjourned dates and that if granted Bail he would abide by all the conditions stipulated by the Court.
4. Counsel argued that based on the conditions set out in the EMD report which her client signed, he was compliant in that he charged his device for the requisite period of 2 hours a day and therefore her client should not be penalized if during the course of the day the battery in the device needed to be repowered. She noted that in some instances it would have been literal minutes when her client's device was not properly charged. She further submitted that if the conditions under which her client was expected to be bound were poorly drafted by the makers of the Conditions to the report, he ought not to be penalized for the same.
5. The Respondent in its Affidavit highlighted that the Respondent had already been granted Bail in the amount of \$50,000 with two suretors and his bail conditions included being outfitted with an EMD which meant there was an obligation placed on him to abide by the regulations attached to the device and that the mere fact that the device was not properly charged at all times he was in breach of that regulation or said conditions.
6. The Respondent continued that the Applicant was not only charged with offences currently before this Court but with other matters mainly two counts of Murder before Justice's Fraser and Hilton respectively.
7. They contend that based on the report provided to them from Metro Security Solutions the Applicant had not charge his device on the following occasions which clearly speaks not only to the breach of failing to charge his device but also speaks to the breach of his curfew of 8 pm as highlighted below:

- 22nd December –GPS: Robinson Road- 5:56 pm–EMD Strap on- Battery at 0% until 6:15 pm when charged to 100%.
 - 25th December – GPS: Clayton Close – **4:12 am** -EMD Strap on- Battery at 0% until 1:17 pm when charged to 100%.
 - 26th December – GPS: Robinson Road –12:14 pm-EMD Strap on- Battery at 0% until 6:57 pm when charged to 100%.
 - 27th December – GPS: Clayton Close –**5:15 am**-EMD Strap on- Battery at 0% until 12:56 pm when charged to 84%.
 - 28th December – GPS: Anthol Road–4:10 pm-EMD Strap on- Battery at 0% until 9:29 pm when charged to 100%.
8. The Respondent further argued that there is real likelihood that if the Applicant would remain on Bail he will continue to breach the conditions set. Also of concern is that the Applicant has been subsequently charged with Possession of a Firearm and Possession of Ammunition while on Bail and seems to exhibit a propensity to commit offences while on Bail and is for this reason a threat to society.
 9. The Respondent highlighted that this is more than just a breach of charging a device as suggested by Counsel for the Applicant but they noted that the Applicant was found with a firearm and ammunition and argued that it was highly unlikely that the same would be used for the shooting of birds. For these reasons the Respondent argues that the Applicant is not a fit and proper candidate to be granted Bail and that he should not be granted Bail for the new charges and the Bail previously granted should be revoked.
 10. In response Counsel for the Applicant argued that the firearm and ammunition were not found on her client's person and reminded the Court that the charge was just that, a charge and that ultimately there is the presumption of innocence.

THE LAW & DISCUSSION

11. The presumption of innocence forms part of the foundation of the Constitution of the Bahamas and for this reason enables all citizens of a right to apply for bail.

This right however is not automatic and must be considered with the factors set out in ***The Bail Act (1994) (as amended) (hereinafter the "Bail Act", the "Act")***. For matters before the Supreme Court, Sections 4(2), 4(2A) and 4(2B) and the First Schedule of the Act sets out the guidelines for the Supreme Court in its decision making. The relevant factors of this particular matter will be taken in turn. The Court appreciates that every Bail matter must be reviewed and assessed on their particular facts.

12. The Court stands by the decision of the Learned Magistrate as it relates to the

Possession of prohibited weapons and ammunition.

13. Section 4(2B) of the Bail Act provides that the “*character or antecedents of the person charged, the need to protect the safety of the public or public order*

.....” are factors that should be considered. This is of significance given the Applicant’s antecedents, namely in 2015 and 2020 he was convicted for Possession of Dangerous Drugs, in 2017 Possession of an unlicensed firearm and was sentenced and fined accordingly. He is currently charged for three counts of murder and two counts of attempted Murder. Having regard to the nature of these charges, the Court notes that all the charges are all extremely serious in nature and involve the use of a firearm which the Court is obliged to take into account.
14. The Respondent has argued that there is real concern for public safety having regard to the Applicant’s blatant disregard for failing to charge his EMD adequately and breaches of curfew. They have also asked the Court to note the allegations with respect to the charge of firearm and ammunition charge the items are said to have been found on the Applicant’s person. This raises an even greater question of public safety.
15. This Court takes note that the Applicant’s Counsel has argued that her client shows up on his adjourned dates therefore there ought not be a concern as to whether he will fail to surrender to custody or appear at his trial relying on the case of *Dennis Mather, v Director of Public Prosecutions SCCrApp No.96 of 2020* that the “**main consideration for a court in a bail application is whether the applicant would appear for his trial**”. Whilst this indeed a point of consideration I hastened to add that this is not the sole consideration for this Court and I also note Part A of the Bail Act which deals with the consideration of whether the Applicant would **commit an offence while on Bail** .
16. Ultimately, it was noted in the Order for Bail with respect to the Applicant one of the conditions was that should be there “**any breach of these conditions, Bail shall be forfeited and renders the Applicant liable to further remand at the Bahamas Department of Correctional Services**”. The Applicant having been charged with multiple murders and attempted murder and now possession and having a history of crime and seemingly taking lightly the Bail conditions which have been set is not a fit and proper person to be granted bail. These charges are very serious and as was relayed in *Jonathan Armbrister v The 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 in determining whether bail should be granted or not**”.

Conclusion

17. Having heard the arguments and reviewing the evidence, this Court is very concerned with the breaches by the Applicant of his bail conditions. Consideration must also be had as to what if any conditions which the Court could impose that would minimize the risks involved with the granting of bail and is of the view that given all the circumstances none that would suffice as a safeguard.
18. Having regard to the foregoing this Court is of the view that this Applicant is not a fit and proper candidate of Bail and should remain on remand at the Bahamas Department of Corrections at this time. Bail is therefore denied.
19. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 23rd day of March, 2023.

The Hon. Madam Justice Jeanine Weech – Gomez