

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

**2023
CRI/bal/00229**

BETWEEN

BLAKE STRACHAN

Applicant

V

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

**BEFORE: The Honourable Madam Senior Justice Mrs.
Cheryl Grant-Thompson**

APPEARANCES: Pro Se- Counsel for the Applicant

**Ms. Karine McVean along with Mr. Rasheid
Edgecombe- The Office of the Director of
Public Prosecutions for the Respondent**

HEARING DATES: December 15th, 2023; January 24th 2024

BAIL JUDGMENT

***Bail - Bail Act - Application for Bail –Bahamian-Ties to Community-Whether
applicant is a fit and proper candidate for bail***

GRANT-THOMPSON, J

1. The Applicant, **Blake Strachan** (born on the 8th day of April A.D. 1999) now twenty-four (24) years of age, seeks bail in relation to the charge of **Murder (2 count)** contrary to Section 291(1)(B) of the Penal Code, Chapter 84.
2. The Applicant's application for bail was made by way of the Bail Management System dated the 21st of September, 2023, which stated that:
 - a. The Applicant is a citizen of the Commonwealth of The Bahamas;
 - b. The Applicant presently resides at Lewis Street, Nassau Bahamas;
 - c. The Applicant is charged with the offence of Murder (2 counts);
 - d. The Applicant was refused bail by Her Worship Magistrate Mrs. Joyann Ferguson (as she then was) sitting at the Magistrates' Court #9, on the 27th of July, 2023; and
 - e. The Applicant has two (2) persons willing to act as suretors for him.
3. The Respondent objected to the grant of bail by Affidavit in Response of Vashti Bridgewater filed on the 8th of November 2023, citing inter alia, that:
 - a. The Applicant **Blake Strachan** (D.O.B. 04/08/99) is seeking bail in relation to the offence of **Murder (2 count)** contrary to Section 291(1)(B) of the Penal Code, Chapter 84;
 - b. The offence was alleged to have occurred sometime between Tuesday the 11th of April, 2023, and Friday the 14th of April, 2023. The particulars are that the Applicant murdered Ms. Allison Thompson and Ms. Trevonika Thompson on the alleged date;
 - c. The Respondent verily believes that there are substantial grounds for believing that the Applicant is not of good character. According to the Royal Bahamas Police Force Criminal Records Antecedent Form, dated the 13th of November, 2023, the Applicant has previous convictions of **Vagrancy** (19/11/18), **Stealing** (13/08/18), **Armed Robbery** and **Assault with Intent to Commit Rape** (04/02/19). The Applicant also has a Warrant of Arrest for **Possession of Dangerous Drugs** (15/12/17) and **Possession of Dangerous Drugs with Intent to Supply** (13/06/18). In addition to the previous convictions and the Warrant of Arrest, the Applicant also has a matter namely: **Murder (2 counts)** (27/07/23) for which the VBI was served;

- d. The Respondent avers that should the Applicant be granted bail, he may likely commit an offence while on bail. However, although the Applicant is presumed innocent, the Respondent verily believes that the noted convictions provide a barometer for the likelihood of the Applicant to commit other offences while on bail;
- e. There has been no unreasonable delay with respect to this matter as it is alleged that this offence occurred sometime between the 11th and the 14th of April, 2023. The Applicant was arrested on the 14th of April 2023, and subsequently charged for the aforementioned offence. The Voluntary Bill of Indictment with respect to this matter has been served on the 27th of July, 2023. The trial date of this matter is scheduled for the 12th of May, 2025;
- f. The Respondent verily believes that the evidence against the Applicant is cogent and there are substantial grounds for believing that the evidence against the Applicant raises a reasonable suspicion of the commission of the offence such as to justify the deprivation of liberty by arrest, charge and detention;
- g. Having regard to the cogency of the evidence as well as the nature and seriousness of the offence coupled with the severity of the penalties attached to each murder count, should the Applicant be released on bail, there is sufficient incentive for the Applicant to interfere with witnesses likely to give evidence. The Applicant also lives in the same area as the murder victim's family and he is the boyfriend of Ms. Allison Thompson (one of the deceased);
- h. Also due to the nature and seriousness of the offence coupled with the severity of the penalties attached to each murder count, it is probable that the Applicant will abscond and not return for his trial in the event that he is released on bail;
- i. The Respondent ask this Honourable Court to take Judicial Notice of the notorious facts such as the high rate of murder in the community and the growing culture of vigilantism;
- j. The Respondent also ask this Honourable Court to take Judicial Notice of the number of Applicants charged with serious offences who when released on bail were themselves murdered. Hence this Applicant whose identity was not hidden during the commission of this alleged offence and known to the victim's family should be kept in custody for his own safety;
- k. According to the Situation Room of the Central Detective Unit, Royal Bahamas Police Force, between the 14th of January, 2022 and 17th of

December, 2022, a total of twenty-two (22) individuals outfitted with an electronic monitoring device were murdered;

1. There is nothing peculiar about the Applicant's detention which suggest the same is unjustified or unfair at this time; and
 - m. The Respondent verily believes that the Applicant will be tried within a reasonable time, the evidence against the Applicant is cogent, and the Applicant is not a man of good character. Further there are no conditions that can be imposed that will eliminate or diminish the risk of the Applicant interfering with witnesses, obstructing the course of justice in relation to himself or any other person, as well as committing further offences or absconding.
4. The Crown has laid before the Court a myriad of reasons why they believe this Applicant is not a fit and proper candidate for bail. The primary reasons are the cogency of the evidence against him in this matter and also that there no conditions available to the court to ensure the Applicant does not abscond. The Crown also requested that bail be denied for his own safety and due to there being nothing peculiar relative to his present circumstances.

THE APPLICABLE LAW

5. The Applicant is presumed to be innocent of the charges contained in the Indictment. In this regard Article 20(2)(a) of The Constitution of The Bahamas obtain and states:

“20.(2) Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty
6. Furthermore, Article 19(1)(b) of the Constitution guarantees that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence. Although personal liberty is guaranteed by the Constitution the law authorizes the taking away of that personal liberty upon reasonable suspicion of a person having committed a crime.
7. Parliament has set general standards for the Court's consideration when deciding the issue of bail. So far as is applicable in the instant case the Bail Act 2011 amendment provides:

“3. Amendment of section 4 of the principal Act.

Subsections (2) and (3) of section 4 of the Bail Act are repealed and replaced as follows-

“(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;**
- (b) is unlikely to be tried within a reasonable time; or**
- (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 makes 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 of the release on bail.**

(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 victim or victims of the alleged offence, are to be primary considerations.

PART A

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

- (a) whether there are substantial grounds for believing that the defendant, if released on bail, would-**
 - (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;**
- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;**

- (d) *whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;*
- (e) *whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;*
- (f) *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;*
- (g) *the nature and seriousness of the offence and the nature and strength of the evidence against the defendant”*

TRIAL WITHIN A REASONABLE TIME

8. Section 3(2)(A)(a) of the Bail (Amendment) Act 2011 (the Act) states:

“2(A) 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;”

9. In **Duran Neely v The Attorney General Appeals No. 29 of 2018**, Evans JA at paragraph 17 stated:

“17. It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2)(a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail.”

10. Section 4(2)(a) the Bail (Amendment) Act 2011 requires the judge to consider whether there has been such unreasonable delay as will warrant the Applicant being admitted to bail because his fair trial rights are in jeopardy. The offence for which the Applicant allegedly committed occurred sometime between the 11th and the 14th of April, 2023. The Applicant was arrested on the 14th of April 2023, and subsequently charged for the aforementioned offence. The Voluntary Bill of Indictment with respect to this matter has been served on the 27th of July, 2023. The trial date of this matter is scheduled for the 12th of May, 2025. On the 21st of September, 2023, the Applicant then filed an application for bail by way of the Bail Management System.
11. After hearing the oral submissions and reviewing the Affidavit evidence provided to this Court by the Applicant and Counsel for the Respondent, this Court is of the view that the Applicant will be tried within the three (3) year period which has been deemed to be reasonable by Parliament. Further, according to the Affidavit in Response provided by the Respondent there is nothing peculiar about the Applicant's detention which would suggest the same is unjustified or unfair at this time. As a result of this, the Court is of the view that the trial of the Applicant should commence as planned, as there are no changes or peculiar circumstances in the matter which would hinder or stop the trial of the Applicant from commencing.
12. Taking these factors into consideration this Honourable Court is of the view that there has been no unjust delay in the prosecution of the Applicant's matter. As such, the considerations under Section 4(2)(a) of the Bail (Amendment) Act 2011 which the Court is mandated to take into account in determining a Bail Application has failed as the Applicant in this matter, barring there are no setbacks, will commence his trial within three (3) years from the date of his arrest and detention.

CHARACTER OR ANTECEDENTS OF THE APPLICANT

13. According to the Royal Bahamas Police Force Criminal Records Antecedent Form, dated the 13th of November, 2023, the Applicant has previous convictions of **Vagrancy** (19/11/18), **Stealing** (13/08/18), **Armed Robbery** and **Assault with Intent to Commit Rape** (04/02/19). Further, the Respondent submits that the Applicant also has a Warrant of Arrest for **Possession of Dangerous Drugs**

(15/12/17) and **Possession of Dangerous Drugs with Intent to Supply** (13/06/18). Additionally, this Court also takes in consideration the fact that other than the current charge of Murder, the Applicant has no pending matters before the Courts.

14. A primary consideration according to subsection (2B) of the Bail (Amendment) Act 2011 for the purpose of subsection (2)(c) is the character or antecedents of the person charged. Though the Applicant is innocent until otherwise proven guilty, this Court is of the view that based on the current information before the Court **the Applicant is not a man of good character**. Having reviewed the evidence provided, this Court finds that the criminal record of the Applicant may indicate that the Applicant has a propensity to be involved with similar offences should he be released on bail.

LIKELIHOOD OF THE APPLICANT TO ABSCOND

15. In dealing with this element, the findings of the Privy Council in the case of *Hurnam v The State (Privy Council Appeal No. 53 of 2004)* (*Hurnam*) is quite helpful. Lord Bingham of Cornhill, in delivering the Judgment of the Board said:
“It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have an incentive to abscond or interfere with witnesses likely to give evidence.”

16. In *Jonathan Armbrister v The Attorney General* SCCrApp. No.145 of 2011 John, JA observed as follows:-
“12. It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment...”

17. In this regard, the allegation of **Murder** is serious in nature. Upon conviction, the Court may impose a sentence of life imprisonment. It follows therefore that the Applicant facing this serious charge for which he is liable to a severe penalty, if convicted, he has an incentive to abscond and not appear for trial.

18. In *Cordero McDonald v. The Attorney General* SCCrApp No 195 of 2016, Allen P., explained the extent of the judge’s task in relation to the evidence which is adduced before the court on a bail application. Allen P., explained:

“34. It is not the duty of a judge considering a bail application to decide disputed facts or law and it is not expected that on such an application a judge will conduct a forensic examination of the evidence. 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.”

19. After reviewing the evidence against the Applicant, this Court has concluded that due to the serious nature of the offences, coupled with the stiff penalties that accompany it, the number of pending matters, the Applicant is a flight risk. This is an additional reason for the Court to deny bail.

INTERFERE WITH WITNESSES OR OTHERWISE OBSTRUCT THE COURSE OF JUSTICE

20. While it is true that the Board did express the view that the seriousness of the offence and the severity of the penalty may be an incentive to interfere with witnesses, the Board in the case of *Hurnam* also expressed the view that there must be reasonable grounds to infer that there is a likelihood of interference with witnesses or obstruction of the course of justice. In this regard, Lord Bingham stated:

“...Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail.”

21. The Court of Appeal in the case of **Jonathan Armbrister and The Attorney General SCCrApp No. 145 of 2011 (Jonathan Armbrister)**, John JA at paragraph 11 stated:

*“11. A good starting point in reviewing the principles applicable where an appellant has been charged but not yet put on trial is the statement of Lord Bingham of Cornhill in *Hurnam v The State (Supra)* where he said at paragraph 1:*

“In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail,

subject to conditions, pending trial... But the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence, and that he does not take advantage of the inevitable delay before trial to commit further offences”

22. The Respondent submits in their Affidavit evidence that there is sufficient incentive for the Applicant to interfere with witnesses likely to give evidence. In addition to this Counsel for the Respondent submits that the Applicant also lives in the same area as the murder victim’s family. The Applicant is also the boyfriend of Ms. Allison Thompson (one of the deceased). Taking this into consideration, although there has been no direct evidence produced by the Respondent which proves that the Applicant would in fact interfere with the Prosecution’s witnesses, this Court finds that this information does raise reasonable suspicion, that if granted bail there is a likelihood that the Applicant would interfere with witnesses.

NATURE AND SERIOUSNESS OF THE OFFENCE

23. As indicated earlier, the allegation of **Murder** is serious in nature. In the event that the Applicant is convicted of this offence there is a possibility that the maximum sentences may be imposed. The Applicant may be sentenced to life imprisonment. The seriousness of the offence and the severity of the punishment may be viewed as an incentive for the Applicant to abscond and not return for his trial in the event that he is released on bail.

24. This Court accepts that the hearing of a bail application is not the appropriate place for assessing or determining the strength or weaknesses of the evidence that the Prosecution proposes to present at trial. The Court of Appeal expressed this view in the case of **A.G. v Bradley Ferguson**. Osadebay JA said at page 61 of the Judgment:

“It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at the trial. As stated by Coleridge J. in Barronet’s case earlier- the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it

proper that he should be tried and because the detention is necessary to ensure his appearance at trial” (emphasis provided).....”

25. This Court is guided by the Judgment of the Court of Appeal, and this Court therefore makes no findings on the probative value of the witness statements laid before it. This Court accepts that it is not the duty of a judge, during bail applications, to decide disputes of evidence as was seen recently in *Richard Hepburn v Attorney General SCCRAPP & CAIS No. 276 of 2014*. This Court also accepts that whether the evidence against the Applicant is strong or weak is yet to be determined.

26. In the case of *Jevon Seymour v The Director of Public Prosecution SCCrApp No. 115 of 2019*, Crane-Scott JA at paragraph 49 of Judgment stated:

“49. As Lord Bingham pointed out at paragraph 16 of the Board’s decision in Hurnam, while recognizing that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the European Court of Human Rights has consistently insisted that:

‘the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight.’

27. Furthermore, the discussion by Crane-Scott JA in the case of *Seymour* at paragraphs 58 and 60 were also noteworthy:

“58. On behalf of the Crown, Mr. Algernon Allen Jr., submitted that the judge exercised his discretion reasonably. He supported the judge’s decision and reasons set out in the judge’s Decision for refusing bail. There was no requirement, he said, for the judge to embark on a forensic examination of the evidence since the identification and recognition evidence and the question whether the Crown’s eye-witnesses were mistaken as the appellant alleged, were issues which (as the judge correctly found) were matters to be vetted at the trial.

60. Mr. Allen Jr. further relied on Hurnam and submitted that it is permissible on a bail application for a judge (as this judge did at paragraph 15 of his Decision) to take judicial notice of notorious facts, such as the high rate of murder in the community and the growing culture of vigilantism indicative of a break down in public order and a depreciation in public safety in denying

bail to the appellant and to have regard to the fact that at the time of the incident, the victims and witnesses were located at the residence of the Head of State of The Bahamas”

28. This Court also takes note of the decision handed down by the Learned Senior Judge The Honourable Justice Mr. Bernard Turner in the case **Alcott Foxx v Director of Public Prosecutions 2020/CRI/bal/No. 00472** at paragraph 9. In this matter the Learned Senior Judge relied on the Court of Appeal case of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019** at paragraph 68 which stated that:

“68. If the Appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again, evidence for instance, of any known or suspected gang affiliation. [Italicized emphasis added]”

29. What is apparent in this decision is that evidence capable of supporting a belief that the Applicant would interfere with witnesses, or himself be at risk of physical harm if released, is required. Applying this principle to the matter at hand, given that there is evidence of pending charges for violent offences, this Honourable Court is of the view that the Applicant may interfere with the Prosecution's witnesses if granted bail.

Retaliatory Killings

30. This Court takes Judicial Notice of the Retaliatory killings which have become prolific in our small island nation. Public safety is a paramount concern in the grant or denial of bail. In addition to this, this Honourable Court also takes Judicial Notice of the number of Applicants who when released on bail have been murdered themselves. According to Affidavit evidence given in the case of **Tarrico Bowleg v Director of Public Prosecutions 2023** it was submitted that between the 14th of January, 2022 and the 17th of December, 2022, a total of twenty-two (22) individuals outfitted with an Electronic Monitoring Device was Murdered.

31. Firstly, it must be expressed that this Court fully understands that finding the allegation of **Murder** for which the Applicant is charged is of a serious nature is not in itself a reason for denying the application.
32. Additionally, this Honourable Court is aware that having concluded that the Applicant might be tempted to abscond, in the proper exercise of its discretion, the Court must also consider whether that risk could nonetheless be effectively eliminated by the imposition of appropriate conditions.
33. This Court finds that the only way to be certain that the Applicant would be present for his trial, that public safety be maintained is to have the Applicant detained at the Bahamas Department of Correctional Services. There are no appropriate conditions which could be imposed to ensure the Applicant's presence at trial given that the Court has determined he is a flight risk, and is likely to interfere with witnesses, his own safety is at risk.
34. The Applicant is denied bail for the following reasons:
- a. **The Court finds that there has been no delay in the progression of this matter. The offence which the Applicant allegedly committed occurred between the 11th and the 14th of April, 2023. The Applicant was arrested on the 14th of April 2023, and subsequently charged for the aforementioned offence. The Voluntary Bill of Indictment with respect to this matter has been served on the 27th of July, 2023. The trial date of this matter is scheduled for the 12th of May, 2025. On the 21st of September, 2023, the Applicant then filed an application for bail by way of the Bail Management System;**
 - b. **This Court finds that the Applicant is not a man of good character.** According to the Royal Bahamas Police Force Criminal Records Antecedent Form, the Applicant has previous convictions of **Vagrancy** (19/11/18), **Stealing** (13/08/18), **Armed Robbery** and **Assault with Intent to Commit Rape** (04/02/19). Further, in the past the Applicant has also had a Warrant of Arrest for **Possession of Dangerous Drugs** (15/12/17) and **Possession of Dangerous Drugs with Intent to Supply** (13/06/18);

- c. **The Court finds that the Applicant is a flight risk. The Court is not satisfied that if granted bail the Applicant would return for trial, due to the nature and seriousness of the offence in which the Applicant is charged with, coupled with the nature and seriousness of the offences that are currently pending against the Applicant;**
- d. **The Court takes judicial notice of the retaliatory killings in The Bahamas and is concerned for the safety of the Applicant. The Court therefore remands the Applicant for his own safety having regard to the current conditions which prevail in the country; and**
- e. **The Court is of the view that there are no conditions that can be implemented to ensure the Applicants return for trial. The Court also remands the Applicant for the safety of the public who may be caught in the “cross-fire” if the Applicant is released on bail.**

35. I promised to put my reasons in writing, this I now do.

DATED this 7th day of February A.D. 2024

The Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson