

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CRI/BAL/00190/2014

CORDERO JOHNSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Ms. Miranda Adderley for the Applicant
Mrs. Shenika Carey for the Respondent

Hearing Date: 24 April 2024

Attempted Murder — Armed Robbery – Arson - Possession of a Firearm with the Intent to Endanger Life – Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Antecedents – Whether the Applicant would appear for his trial – Reasonable suspicion of Applicant having committed, or of being about to commit, a criminal offence

BAIL RULING

Background

1. Cordero Johnson (“**Applicant**”) is charged with the following offences: (i) Attempted Murder, contrary to section 292 of the Penal Code, Chapter 84 (“**Penal Code**”); (ii) Armed Robbery, contrary to section 339(2) of the Penal Code; (iii) Arson, contrary to section 325 of the Penal Code; and (iv) three (3) counts of Possession of a Firearm with Intent to Endanger Life, contrary to section 33 of the Firearms Act, Chapter 213 (“**Offences**”).
2. On 04 March 2024, the Applicant filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.
3. The Respondent filed an Affidavit in Response.

Issue

4. The issue for this Court to consider is whether the applicant should be granted bail?

Evidence

Applicant's Evidence

5. The Applicant's Affidavit provides that: (i) the Applicant is Thirty-Three (33) years old and resided in Eleuthera, The Bahamas; (ii) the Applicant has two (2) children, ages six (6) and seven (7) respectively; (iii) he maintains his innocence; (iv) the Applicant will not interfere with any of the Crown's witnesses and, if granted bail, he will appear for trial; (v) the Court may attach an Electronic Monitoring Device ("**EMD**") to track the Applicant's movements while on bail and attach additional bail conditions to ensure he appears for trial; (vi) he has been in custody for some time now; and (vii) he is a fit and proper candidate for bail.

Respondent's Evidence

6. The Respondent's Affidavit in Response ("**DPP Affidavit**") provides that: (i) the Applicant is charged with the aforementioned Offences; (ii) the Offences allegedly occurred on 03 March 2015; and (iii) there is cogent evidence to support the Offences against the Applicant. According to one of the witnesses, on 03 March 2015 at approximately 8:30am, the witness left home to take his brother and nephew to Jordon Prince William High School located in the area of Baillou Hill Road by the stop light. He was driving his mother's red 2007 Dodge Durango Jeep at the time ("**Jeep**"). After leaving Prince William High School, he headed west towards the stop light at the junction of Baillou Hill Road and Cowpen Road. He then saw a male known to him as Cordero Johnson standing on the side of the road. Cordero Johnson approached his vehicle and asked for a ride as close as possible to Marshal Road, which he agreed to do. The witness had no issue with this as he knew Cordero Johnson well. However, another male, who the witness did not know, also came into the rear passenger seat of the vehicle. Upon reaching the intersection of Cow Pen Road and Faith Avenue, the witness pulled on the side of the road to let the males out of the vehicle. When he turned around he saw the male holding a firearm in his hand and he said to keep driving. Out of fear the witness jumped out of the vehicle and ran. He heard about six gunshots and felt a burning pain in his right hand. He further stated that Cordero Johnson stole his jeep (a copy of the witness' witness statement is exhibited to the affidavit).
7. The DPP Affidavit also states that: (i) another witness also reported to the police that on 03 March 2015, while in the vicinity of the intersection of Faith Avenue and Cowpen Road, she saw the Jeep heading west on Cowpen Road. The Jeep passed the stop light and made a turn into the road thereby blocking traffic. A

male jumped out of the vehicle and ran in her direction. A second male exited the vehicle in pursuit of the first male and began discharging a firearm in the direction of the first male. One bullet hit her front passenger door causing the glass to shatter. Her baby, was in the rear of the car in her car seat. The witness then pulled over to check on her baby and realized that the right rear tire of her vehicle was flat. The first male who exited the Jeep managed to escape and the second male returned to the Jeep, then fled the scene. The witness' witness statement is exhibited to the affidavit.; and (ii) PC 3627 Mackey reported that on 03 March 2015, he was an occupant of a gray Kia Sportage vehicle along with another person, travelling north on Faith Avenue. As they approached the traffic light, the other occupant of the vehicle brought to PC 3627's attention to an incident unfolding on the street. He saw a male running from a red Durango jeep heading south. As the male ran, another male exited the Durango jeep wearing a fluorescent vest and ran behind the first male with a sliver firearm in his right hand. The male wearing the fluorescent vest then discharged several shots in the direction of the first male. A third male then turned the Durango jeep around and proceeded onto Faith Avenue in the direction the males ran. The third male then waited in the vehicle for the male who was shooting to return. The Durango jeep then sped off heading south on Faith Avenue (PC 3627 Mackey's witness statement is exhibited to the affidavit).

8. The DPP Affidavit also states that: (i) according to Sgt. 1011 Colin Burrows, on 03 March 2015, fire personnel responded to a vehicular fire on Holiday Drive in the South Beach area. Upon arrival he met a red Dodge Durango Jeep registration number 44719 engulfed in flames. The vehicle was destroyed. As a result of the fire, an abandoned eight (8) room structure also received extensive fire damage. Sgt. 1011 Colin Burrows' statement is attached to the affidavit; (ii) on 02 September 2022, Sgt. 3695 Russell went to Caribbean Airlines flight JY270 from Jamaica where he arrested Cordero Johnson in reference to a shooting which occurred on 03 March 2015 (a copy of Sgt. 3695 Russell's witness statement is exhibited to the affidavit); and (iii) D/Sgt. 3412 identified the Applicant as the male he saw in the area of Faith Avenue dressed in a construction vest, who was discharging shots at another male on the morning of 03 March 2015 (D/Sgt. 3412's witness statement is attached along with the 12-man photo line-up from the photo identification are exhibited to the witness statement); (iv) the Applicant has a pending charge of Murder contrary to section 290 (2)(f)(1) and 291(1)(a) of the Penal Code in Indictment numbered 114/4/2014 for which he is also seeking bail. The said offence is alleged to have occurred on 16 November 2013 (the indictment is exhibited to the affidavit).
9. The DPP further provides that: (i) the Applicant was granted bail by Senior Justice Stephen Isaacs (as he then was) in reference to the charge of Murder with bail conditions (the bail bond is exhibited to the affidavit); (ii) a trial date of 17 August 2016 was fixed before Senior Justice Stephen Isaacs in respect of

Indictment numbered 14/4/2014, however, the Applicant failed to appear for his trial and a Warrant of Arrest was then issued. The Applicant only appeared before the court after he was deported from Jamaica and subsequently arrested in respect of Indictment number 74/2/2023 in September of 2022; (iii) the Applicant has previous convictions for Possession of Dangerous Drugs, Causing Harm and Causing Grievous Harm (the Applicant's Antecedent Form is exhibited to the affidavit); (iv) having regard to the cogency of the evidence and the seriousness of the offences, the Respondent verily believes that the severity of the penalty, if convicted, is sufficient incentive for the Applicant to abscond. Additionally, the Applicant has a history of absconding. Accordingly, the Respondent avers that the Applicant is a potential flight risk; (v) there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified and that there has been no unreasonable delay; - certainly not on the part of the Respondent; and (vi) due to the above aforementioned reasons, the Applicant is not a fit and proper candidate for bail and in the circumstances, bail should be denied.

Law

10. The law of bail is settled in this jurisdiction. The Court must bear in mind and balance one's presumption of innocence until his/her guilt is proven and the need to protect the general public from crime and violence. A person's right to freedom and the presumption of innocence are enshrined in our Constitution. **Articles 19(1)(d), 19(3) and 20(2)(a) of the Constitution of The Bahamas** provide:

"19 (1). No person shall be deprived of his personal liberty save as may be authorized by law in any of the following cases-

...

(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;"

"19(3). Any person who is arrested or detained in such a case as is mentioned in subparagraph 1(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph 1(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon reasonable conditions including in particular such conditions, as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

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..."

11. The Court's power to grant bail is expressly provided at **section 4 of the Bail Act, 1994 ("Act")**. **Section 4(1) of the Act** which states:

"(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail:

Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody."

12. **Section 4(2) of the Bail (Amendment) Act, 2011** provides:

"Notwithstanding any other provisions 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 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**...(emphasis added)"*

13. The **First Schedule, Part A of the Act** provides factors which a Court ought to consider in a bail application. It reads:

"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) *.....;*

(d) *whether there is sufficient information for the purpose of making the decisions required by this Part or otherwise by this Act;*

(e) *.....;*

(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...(emphasis added)”*

14. This Court wishes to highlight that it is the Crown (being the Respondent) who must demonstrate, through evidence, that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail, interfere with witnesses or otherwise obstruct the course of justice. This was expressed in the Bahamian Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019** (“**Jevon Seymour**”). There, the court made the following pronouncements:

“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the Crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown’s burden is only discharged by the production of such evidence.”

15. The hearing of a bail application does not entitle the court to assess the strength or weakness of the evidence against the Applicant. This is a matter for the jury at trial. This was expressly stated in the Court of Appeal decision of **Attorney General v Bradley Ferguson et al Appeal Nos. 57,106,108,166 of 2008** where the Court stated:

*“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 trial. As stated by Coleridge J in Barronets 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...

16. Also, in the Bahamian Court of Appeal decision of **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** (“McDonald”), Allen P (as she then was) explained the extent to which a judge may consider evidence at a bail application. There, the learned President opined:

*“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** (emphasis added).”*

17. I also bear in mind that the need to protect society is a significant consideration. This was expressly stated in the Court of Appeal decision of **Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022** (“Grant”) at **paragraph 42** where, the Court opined:

“I am also of the view that having regard to the material before the Court that this murder appears to have been in retaliation to a previous attack on the Appellant. There is not only a risk of the Appellant’s safety if granted bail, but also a risk to the public’s safety. Any retaliation against the Appellant puts members of the public at risk who may be in the area where any attack on the Appellant may take place. In the present case, the material before the Court does not suggest that the victim Brianna Grant was the object of the retaliation but was shot because she was with the intended victim at the time.

18. In **Grant**, the following was also noted at paragraph 25:

“However, it cannot be gainsaid that the Judge was fully entitled to consider the safety of the Appellant as one of the factors for her to weigh in the scale pertaining to whether or not to grant the Appellant bail based on the strength of the material provided to her by the Respondent, namely, the Appellant’s car had been shot at some days before the murder took place, an event the Appellant admitted occurred in his Record of Interview with the police.”

19. In the Privy Council decision of **Hurnam v. State of Mauritius [2006] 1 WLR 857** (“Hurnam”) the board made the following observations relating to factors the Court ought to consider when granting bail:

“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 his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as a whole. The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and his family. **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. In this appeal the Board considers the principles which should guide the courts of Mauritius in exercising their discretion to grant or withhold bail...

15. It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. 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...The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...(emphasis added)”

20. The Bahamian Court of Appeal in **Dennis Mather v Director of Public Prosecutions BS 2020 CA 163** (“Dennis Mather”) underscored, in relation to a bail application, the significance of the Applicant’s likelihood to appear at trial if he were to be granted bail. At paragraphs 16 to 17 of that decision, Barnett P made the following pronouncements:

“16. The main consideration for a court in a bail application is **whether the applicant would appear for his trial**. In *Attorney General v. Bradley Ferguson, et al* SCCrApp. No.’s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows:

“As stated by Coleridge J in *Barronet’s* case cited earlier **the defendant is not detained in custody 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.**”

17. In *Jonathan Armbrister v The Attorney General* SCCrApp. No. 145 of 2011, John, JA said 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.** The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses (emphasis added).”*

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

21. I will now apply the relevant principles to the application before me. The Respondent states that there is cogent and strong evidence which suggests that the Applicant committed the Offences. I will heed the admonishments made in ***McDonald*** and only consider whether or not the evidence provided by the Respondent raises a reasonable suspicion that the Applicant committed the Offences as alleged. I will, therefore, not go into a forensic analysis of the evidence.
22. Based on what is before me, the evidence against the Applicant is overwhelming. Seven (7) witness statements all suggest that the Applicant may have committed the offences as alleged. A few witnesses state that they saw the Applicant during the relevant time in question and saw him discharge shots from a firearm towards another. In addition, photo identification was done confirming the Applicant's identity at the time of some of the alleged Offences. Furthermore, an individual who knew the Applicant well, named the Applicant as an individual involved in some of the Offences. I am, therefore, satisfied that the evidence presented by the Respondent provides reasonable suspicion that the Applicant committed the alleged offences.
23. Having satisfied myself that there is reasonable suspicion that the Applicant committed the Offences, I now turn to the factors that I must consider in a bail application. It is also to be noted that three (3) of the four (4) Offences the Applicant is charged with are Part C offences (save and except Arson). I will, accordingly, apply the factors as listed at section 4(2) of the Act.
24. In relation to the seriousness and nature of the alleged offences, they are indeed quite serious – Attempted Murder, Armed Robbery, Arson and three (3) counts of Possession of a Firearm with Intent to Endanger Life. I also note the Applicant's Antecedents (namely, Possession of Dangerous Drugs, Causing

Harm, and Causing grievous harm). Not only does the Applicant has previous convictions, but it appears that he has graduated to more serious crimes, based on the new Offences which he is now charged with.

25. I now consider the issue of public safety and that of the Applicant himself. I acknowledge the very real risk of public safety in relation to serious and violent crimes, such as Murder and Armed Robbery – two of which the Applicant is charged with - if the Applicant were released. Relying on the **Grant** decision and the Act, I must bear in mind the likely risk to public safety the Applicant presents. He is charged with Attempted Murder, Armed Robbery, Arson and Possession of a Firearm with Intent to Endanger Life. I am of the view that the Applicant may very well be a risk to public safety based on the nature of the crimes alleged, his antecedents and the evidence strongly suggests his involvement in the Offences.
26. With respect to whether or not the Applicant will appear for trial, this is a concerning issue in this case. The evidence before me states that the Applicant absconded while on bail previously. This is a serious breach of the bail conditions. The Respondent submits that the Applicant has a propensity not to present himself for trial. This is not only an express breach of an order of the Court, but this automatically caused the initial trial dates to be vacated and obstructed the course of justice.
27. The **Dennis Mather** decision (stated above) highlights that Applicant's attendance at court is the main consideration in an application for bail. It is this factor that is of the greatest import and the evidence strongly suggests that the Applicant is unlikely to present himself for trial if this Court were to grant bail.
28. I also reiterate pronouncements made by the Privy Council in **Hurnam**: "*the community has a countervailing interest, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect*". I will not afford the Applicant another opportunity to abscond. He has demonstrated that he is likely not to attend his trial.
29. In the premises, I am not satisfied that the Applicant is a fit and proper person to be granted bail.

Conclusion

30. Having regard to all the circumstances I application for bail is refused.
31. Bail is therefore denied.

Justice Jeanine Weech-Gomez

Dated this 08 day of May 2024