

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL DIVISION
No. CRI/BAL/2024

DINO LAFLEUR

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Mr. Ian Cargill for the Applicant

Ms. Tischina Armbrose for the Respondent

Hearing Date: 18 March 2024

Attempted Murder — Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Strength of Evidence

BAIL RULING

Background

1. Dino LaFleur (“**Applicant**”) was charged with five (5) counts of Attempted Murder (“**Offence**”) contrary to section 292 of the Penal Code, Chapter 84 (“**Penal Code**”) and five (5) counts of Possession of a Firearm with intent to endanger life contrary to section 33 of the Firearms Act, Chapter 213 (“**FAA**”) and the charges collectively, “**Charges**”).
2. On 23 January 2024, the applicant filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.
3. The Respondent filed an Affidavit in Response on 12 February 2024 (“**DPP Affidavit**”).

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 was born on 16 June 2001 in the Commonwealth of The Bahamas and is a Bahamian citizen; (ii) he was arraigned before this Court; (iii) he plead Not Guilty to the Charges; (iv) his next court date before the Supreme Court is in June of 2024; (v) he has a prior conviction in the said Commonwealth for Possession of Dangerous Drugs; (vi) should he be granted bail, he has accommodations at Cow Pen Road, New Providence, The Bahamas; (vii) he is requesting bail because: (a) he will be disadvantaged in his ability to adequately prepare his defence if he is further remanded; and (b) he will be disadvantaged in his ability to support his son, himself and assist his family; (viii) if granted bail, he will comply with all rules and conditions set out by this Court; and (ix) he is a fit and proper candidate for bail

Respondent's Evidence

6. The DPP Affidavit provides that: (i) the Respondent opposes the Applicant's bail application; (ii) the Applicant was charged with the aforementioned Charges and they are of a serious nature (the Applicant's Antecedents are exhibited to the affidavit); (iii) the Applicant is not a fit and proper person for bail; (iv) there is sufficient evidence to suggest that the Applicant committed the alleged Charges (witness statements of Kinisha Jules, Shantique Green, Antoinessa Taylor, Anvinique Ferguson and D/Sgt. 3216 Percy Patton respectively are exhibited to the DPP Affidavit); (v) the Respondent further objects to the granting of bail for the following reasons: (a) there is a need to protect the safety of the public from the prevalence of attempted murders especially involving the use of firearms; and (b) the nature and seriousness of the offences committed and the nature and strength of the evidence against the Applicant.

Law

7. The law of bail is well settled in The Bahamas. The Applicant is shrouded by the presumption of innocence until his guilt is proven. I also acknowledge the need to protect the general public from crime and violence. A person's right to freedom and the presumption of innocence are preserved and expressly provided for in our Constitution. **Articles 19(1)(d), (3) and 20 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. Every person who is charged with a criminal offence —

(a) shall be presumed to be innocent until he is proved or has pleaded guilty"

8. The Court's power to grant bail can be found 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."

9. **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...”

10. The First Schedule, Part A of the Act provides factors which a Court must 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 taking 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;

(h) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant”

11. Furthermore, the Respondent must prove, through evidence that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail and/or interfere with witnesses or otherwise obstruct the course of justice. This was enunciated in the Bahamian Court of Appeal decision of **Attorney**

General v Ferguson et al SCCrApp Nos. 57, 106, 108 and 116 of 2008 (“Ferguson”) where the Court opined:

“35. In a bail hearing it is for the prosecution to produce evidence to show why the defendant should not be released on bail. The prosecution is not required to prove beyond reasonable doubt that the defendant would not report for his trial or to produce formal evidence to that effect. A prosecutor objecting to bail may state his opinion based on the evidence produced that if bail is granted the defendant, because of the circumstances, may fail to appear to take his trial or that given bail the defendant is likely to interfere with witnesses. A bail application is an informal inquiry and no strict rules of evidence are to be applied: R. v. Mansfield Justices, ex parte Sharkey [1985] QB. 613, Re Moles [1981] Crim. L. R. 170.”

12. The significance of evidence provided by the Respondent was also highlighted in the case of **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019**, (“Jeremiah Andrews”) Evans JA expressed the following at paragraph 26:

“In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence.”

13. Though there must be evidence in a bail application, the Court wishes to highlight that the hearing of a bail application does not entitle the court to conduct a forensic analysis of the evidence. This is a matter for the substantive trial. This was observed in the Court of Appeal decision of **Cordero McDonald v The Attorney General SCCrApp. No. 195 of 2016** the Court of Appeal at paragraph 34 where the Court opined:

“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 by the appellant, such as to justify the deprivation of his 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.”

14. I also wish to highlight the case of **Jonathan Armbrister v Attorney General SCCrApp No 145 of 2011** where the court highlighted the significance of the seriousness of an offence and how the Court should treat such when considering an application for bail. In that judgment, the Court made the following pronouncements:

“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 determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.”

15. Lastly, I bear in mind that the need to protect society is a paramount consideration. This was expressly stated in the Court of Appeal decision **Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022 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.

DISCUSSION AND ANALYSIS

Whether the Applicant should be granted bail?

16. I will now consider the evidence, law and specific facts of this bail application. The Applicant is charged with five (5) counts of attempted murder and five (5) counts of possession of a firearm with intent to cause harm. He also has antecedents - specifically, a conviction for possession of dangerous drugs, and a violation of bail conditions. This suggests that he is not of good character, as he is no stranger to the criminal justice system and appears to have a propensity toward criminal behavior. Not only this, but there is evidence that he has violated bail conditions granted in relation to another matter.
17. In relation to the witness statements, I will not conduct any critical analysis of such evidence. I do note, however that most of the witness statements merely state that each witness was shot. They did not see who shot them, but saw persons running in their direction who **may** have been responsible for the shooting. One witness, however, states that she saw an individual known to her as “Wongie” with a gun in his hand and he fired a number of shots at the vehicle the witness was in. She, unfortunately, was shot. Another witness did, however, identify the Applicant as one of the individuals present just before gunshots were fired at her and her friends in a car they were all in at the time of the shooting.
18. In relation to the need to protect the public safety, this is indeed a paramount consideration. Though I am aware of this important consideration, I must bear in

mind that the Applicant remains innocent until proven guilty and I must weigh his constitutional rights against the protection of the greater public.

19. I also note that the Charges are serious offences and, though the Applicant is deemed innocent until proven guilty, I am aware of his proclivity to criminal behavior and that it appears that such behavior has graduated to more serious crimes. I also find it alarming that he has breached bail conditions in another matter. I cannot and will ignore this uncontroverted evidence.

20. Bearing in mind all the evidence before me, particularly the Applicant's antecedents, the serious and nature of the Charges and the fact that he has breached bail conditions in the past, along with the serious of the ten (10) Charges, I am not prepared to grant bail to the Applicant.

Conclusion

21. Having regard to all the circumstances I refuse to grant bail to the Applicant.

22. He is to be remanded until the trial of this matter.

Justice Jeanine Weech-Gomez

Dated this 18 day of March 2024