

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

**2023
CRI/bal/00173/**

BETWEEN

JEFFEREY SHERMAN

Applicant

V

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

APPEARANCES: Mr. Bjorn Ferguson -Counsel for the Applicant

Mrs. Karine MacVean - The Office of the Director of Public Prosecutions for the Respondent

HEARING DATES: 3rd July, 2024.

BAIL JUDGMENT

Bail - Bail Act - Application for Bail –Bahamian-Ties to Community-Whether applicant is a fit and proper candidate for bail; Duran Neely v The Attorney General Appeals No. 29 of 2018; Jevon Seymour v The Director of Public Prosecution SCCrApp No. 115 of 2019; Hurnam v The State (Privy Council Appeal No. 53 of 2004)(Hurnam)

GRANT-THOMPSON, SNR. J

1. The Applicant, Jefferey Sherman (born on the 8th day of September A.D. 1957) now sixty-six (66) years old, seeks bail again in relations to the offences of **Attempted Murder**, contrary to Section 292 of the Penal Code, Chapter 84 (4 counts) and **Possession of a Firearm with Intent to Endanger Life** contrary to Section 33 of the Firearms Act, Chapter 213 (4 counts).
2. The Applicant's new application for bail was made by way of Summons supported by Affidavit, filed on the 9th day of April, 2024, which stated that:
 - a. The Applicant is a senior citizen of the Commonwealth of The Bahamas, aged 66, having been born on the 8th day of September, 1957;
 - b. The Applicant is a Retired Prison Officer of BDOCS and prior to his detention he was self-employed as a Taxi-Cab Driver;
 - c. The Applicant is a father of 18 children with the youngest being a male age 15, who he has fully custody, care and control of and resides with him;
 - d. On the 25th August, 2023, The Applicant presented himself along with his Attorney Mr. Bjorn Ferguson at the Central Detective Department and was arrested by officers of the RBPF on the suspicion of Attempted Murder;
 - e. The Applicant was interviewed by officers and charged with (2 counts) of Attempted Murder and (4 counts) of Firearm with intent to Endanger Life;
 - f. The Applicant was arraigned in Magistrate Court No. 5 before Stipendiary and Circuit Magistrate Raquel Whyms on the 28th August, 2023;
 - g. The Applicant submitted that he was remanded and served his VBI on the 31st October, 2023;
 - h. He was advised by Counsel that the relevant provision of the Bail Act in Section 4 (3A). He applied for an emergency bail at the Supreme Court on the 28th August, 2023. Moreover, he was granted bail by Her Ladyship the Honourable Madam Senior Justice Mrs. Cheryl Grant-Thompson under the following conditions: **Bail amount was \$20,000 with 3 suretors; He must report and sign in at the Carmichael Road Police Station on Mondays, Wednesdays and Fridays before 6pm; He must**

be fitted with an EMD; he has a daily curfew from 6am-6pm; and he must not interfere with the VC or any of the prosecution's witnesses;

- i. The Applicant admitted that whilst on bail he complied with all conditions imposed. However, in March, 2024 he attended a church service and had no knowledge that the VC was in attendance. Subsequently, during a hearing for a variation of bail Her Ladyship revoked his bail and remanded him to BDOCS ;
- j. The Applicant does not have any pending matters before the Court in the Commonwealth of The Bahamas;
- k. The Applicant does not have any prior convictions before the Courts in the Commonwealth of The Bahamas;
- l. Should this Honourable Court admit the Applicant to bail, he will have accommodations at apartment #16 Fire Trail Road in New Providence, The Bahamas;
- m. That he has abided by the bail conditions herein and have promptly and faithfully appeared before the Courts when summoned or directed to do so;
- n. The Applicant submitted that if he remain detained until his hearing, he would not be able to sustain himself and minor son;
- o. The Applicant is a proper candidate for the grant of bail;
- p. The Applicant is presumed innocent and he is a man of good character;
- q. The Applicant stated that a pretrial detention is prejudicial and affects his ability to adequately and properly prepare his defence;
- r. The Applicant submitted that he is not a flight risk; and
- s. The Applicant stated that if granted bail he will humbly comply and abide by all conditions the Court may imposed and will promptly appear before the Courts until his matter is properly disposed of by the judicial process.

The Court held a hearing to show cause relative to the Suretors on the 11 & 2 March, 2024 after the Defendant admitted the alleged breach detailed in paragraph (i) above, that he had come within 100ft of the VC. However, the three (3) suretors of the Applicant asked to be withdrawn as Suretors. As a result, the Applicant had no suretors therefore his Bail was revoked.

3. The Supplemental Affidavit in Response of **Bridgette Ingraham (Virtual Complainant)** in objection to the bail of the Applicant, dated the 16th May, 2024, citing inter alia, that:

- a. The Virtual Complainant in this matter submitted that on the 24th August, 2023, the Applicant fired several shots at her and fractured both arms. She was always afraid of him, and the incident brought about more fear in her and her family;
- b. The Virtual Complainant submitted that the Applicant constantly threatened her and her family. He was always violent towards her and made her continuously paranoid. To date, she still is paranoid and afraid of the Applicant;
- c. Since the incident, the Applicant attended her church Southwest Church of God located Shrimp and Carmichael Road. The first time he attended was on the 27th August, 2023 and he never stopped;
- d. The Virtual Complainant stated that since the incident, she started attending church on the 15 March, 2024. On that day she did not see the Applicant at the church service. However, on the following Sunday 27th March, 2023 during the service, she went up for prayers. Whilst, she was at the altar, she noticed he was about 2 ft away from her and he kept looking at her;
- e. Every Sunday at 9:30am when she goes to church he will be there looking at her. It got to the point that the Pastor and some of the members of the church noticed it. As a result, the church arranged for a police to escort her to church and home every Sunday;
- f. In addition to attending her church, he also tried to intimidate her by parking his son's car in the area of her mother's residence. The Applicant did this on several occasions in different vehicles. When the car was parked outside, no one came out of the vehicle. this made her extremely paranoid and afraid of him and fear for her life;
- g. The Virtual Complainant submitted that she knows what he is capable of doing. He has repeatedly threatened her and her family. Therefore, she is afraid if the Applicant is released on bail. The intimidating tactics of the Applicant have created a well-founded fear of him and if the Applicant is released she fears that he will

continue to interfere with her and her family. Mainly because after he shot her, immediately before he left the house, he told her that “he is coming back to finish her off”;

- h. The Virtual Complainant believes that if the Applicant is granted bail, due to the nature of these offences, the nature and strength of the evidence against him, there are no conditions that can be imposed that will eliminate or diminish the risk of the Applicant interfering with him and her family or otherwise obstruct the course of justice; and
- i. The Applicant is not a proper and fit candidate for the grant of bail and in the present circumstances; the VC prays that this Honourable Court refuses the Applicant’s application to be admitted to bail.

4. The Respondent objected to the grant of bail by Affidavit in Response of **Vashti Bridgewater** dated the 16th May, 2024, citing inter alia, that:

- a. The Applicant, sixty-six (66) years old **Jefferey Sherman**, seeks bail in relation to the offence of **Attempted Murder (4 counts)** contrary to Section 292 of the Penal Code, Chapter 84, and **Possession of a Firearm with Intent to Endanger Life** contrary to Section 33 of the Firearms Act, Chapter 213 (**4 counts**);
- b. The particulars of the Attempted Murder offences are that the Applicant on the 24th August, 2023, while at New Providence the Applicant did attempt to murder **Bridgette Ingraham (VC), Sean Pugh, Stantina Pugh and Cyrprion Pugh**. The particulars of the offence of Possession of a Firearm with Intent to Endanger Life are that the Applicant on the 24th August, 2023, did have in his possession a firearm to wit, a handgun with intent by means thereof to endanger the life of **Bridgette Ingraham (VC), Sean Pugh, Stantina Pugh and Cyrprion Pugh**;
- c. The Respondent submitted that the evidence against the Applicant is cogent and there are substantial grounds for believing that the said evidence raises a reasonable suspicion of the commission of the aforementioned offences, such as to justify the deprivation of liberty by arrest, charge and detention;
- d. The Applicant breached his bail conditions and was not complying with his terms and conditions imposed upon him by the Court. The Applicant

- attended a church service of the VC, Ms. Bridgette Ingraham. This breached his condition of not coming within 100ft of the VC;
- e. The Respondent avers that if the Applicant can come within 100 ft of the VC, there are no conditions that can be imposed that will eliminate or diminish the risk of the VC being harmed again by the Applicant or his agents;
 - f. In addition to the cogency of the evidence, the Respondent asserts that the **Attempted Murder** and **Possession of a Firearm with Intent to Endanger Life** charges are serious offences. Therefore, due to the nature and the seriousness of the aforementioned offences and the severity of each sentence, if convicted, provides sufficient incentive for the Applicant not to appear for his trial. the Respondent has substantial grounds for believing that the Applicant will abscond and not appear to stand trial;
 - g. The Respondent avers that the Applicant is not a fit and proper candidate to be considered for the grant of bail at this time;
 - h. The Respondent avers that the pending matter suggest that the Applicant has the propensity to commit serious offences, in particular with a firearm; similar offences while on bail. The Applicant also has the propensity to possess a firearm;
 - i. Although the Applicant is presumed innocent, the Respondent prays that this Honourable Court exercise a balancing act as it relates to public safety and order;
 - j. There is nothing peculiar about the Applicant's detention which suggests the same is unjustified or unfair at this time;
 - k. According to the Applicant's Royal Bahamas Police Force Criminal Records Antecedent Form dated the 15th April, 2024, the Applicant does not have any prior convictions or previous pending matters. However, based on the evidence of Bridgette Ingraham, the Applicant was always violent towards her which made her continuously paranoid. She further stated that the Applicant always threatened her and her family. She was always afraid of him, and the incident brought about more fear in her and her family. This suggests that the Applicant has a propensity for violence and will continue to interfere with the VC;
 - l. The Respondent verily believes that there are substantial grounds for believing that the Applicant should be kept in custody for his own protection and for the safety of the public;

- m. The Applicant will be tried within a reasonable time, as the offence occurred on the 24th August, 2023;
- n. Further, the Respondent also verily believes that there are no conditions that can be imposed that protect the Applicant, the VC and the public from harm, as well as effectively eliminate or diminish the risk of the Applicant absconding and not appearing to stand trial, interfering with witnesses or otherwise obstructing the course of justice whether in relation to himself or any other person, retaliation and committing further offences; and
- o. With due consideration of the aforementioned, it is proffered that the Applicant is not a fit and proper candidate for bail.

5. 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, his deliberate breach of conditions imposed by the Court and to ensure the Applicant does not abscond nor cause further injury to the VC. The Crown also requested that bail be denied for his own safety and that of the Virtual Complainant.

THE APPLICABLE LAW

6. 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

7. 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.

8. 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

9. 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;”*

10. 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.”

11. 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. After hearing the oral submissions and reviewing the Affidavit evidence provided to this Court by Counsel for the Applicant, Counsel for the Respondent, and the Virtual Complainant this Honourable Court finds that the Applicant will be tried within a three-year (3) period, which has been deemed to be reasonable by Parliament.

12. According to the Affidavit evidence provided by the Respondent the offences of **Attempted Murder** and **Possession of a Firearm with Intent to Endanger Life**, both allegedly occurred on the 24th August, 2023. The Applicant was then arraigned in Magistrate Court No. 5 before Magistrate Ms. Raquel Whyms on the 28th August, 2023. Further, the Applicant filed an emergency bail application at the Supreme Court before this Honourable Court on the 28th August, 2023 and bail was granted. This Court also notes that there is nothing peculiar about the Applicant's detention which suggests the same is unjustified or unfair at this time.
13. 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

14. According to the Affidavit evidence of the Respondent, the Applicant has been charged with the offences of **Attempted Murder**, contrary to Section 292 of the Penal Code, Chapter 84, and **Possession of a Firearm with Intent to Endanger Life** contrary to Section 33 of the Firearms Act, Chapter 213 (**4 counts**) . Other than these current charges the Criminal Antecedent Form of the Applicant does not show any prior convictions or pending matters before the Court. It was also submitted to this Court that before the Applicant was arrested; he was employed as a Taxi Driver and was also a Retired Prison Officer at BDOCS.

15. However, although the Antecedent Form of the Applicant states that he has no previous or pending convictions, this Court noted that the Applicant has no prior convictions nor pending charges before any Court. This Court finds him to be a man of good character. A primary consideration (subsection (2B) of the Bail (Amendment) Act 2011, for the purpose of subsection (2)(c)) is the character or antecedents of the person charged. The Applicant is innocent until proven guilty. Based on the current information **he is a man of good character.**
LIKELIHOOD OF THE APPLICANT TO ABSCOND

16. The Privy Council in *Hurnam v The State (Privy Council Appeal No. 53 of 2004)*(*Hurnam*) as per Lord Bingham of Cornhill, commented this:

“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.”

17. Similarly 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...”

18. For **Attempted Murder** and **Possession of a Firearm with Intent to Endanger Life** are serious in nature. Upon conviction for the offence of Attempted Murder, the Court may impose a sentence of life imprisonment. Additionally, the Court may also impose a sentence of fifteen (15) years for the offence of Possession of a Firearm with Intent to Endanger Life, if convicted. It follows therefore that the Applicant facing these serious charges for which he is liable to a severe penalty, if convicted, he has an incentive to abscond and not appear for trial. However, though the Court takes note that the Applicant is charged with a serious offence, the position is still held that he is innocent until proven guilty. As a result of this the Court adopts the view held within the case of *Jonathan Armbrister* which shows that bail is not to be withheld merely as punishment.

19. 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.”

20. After reviewing the evidence against the Applicant, this Court has concluded that due to the serious nature of the offences the Applicant has been charged with, coupled with the stiff penalties that accompany it, there does in fact exist a reasonable suspicion of the commission of the offence by the Applicant.

INTERFERE WITH WITNESSES OR OTHERWISE OBSTRUCT THE COURSE OF JUSTICE

21. 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.”

22. 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 appellants 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”

23. According to the evidence provided by the Respondent, the Virtual Complainant is well known to the Applicant. The Affidavit produced by the Respondent states that the Applicant and the Virtual Complainant reside within close proximity of each other. In addition to this, the Respondent also submitted that the Applicant and the Virtual Complainant were in a relationship before this incident. Moreover, the Respondent also avers that this is not the first encounter between the Applicant and the Virtual Complainant, and during their relationship the Applicant constantly threatened her and her family during this time. Under the circumstances, this Court finds that it is probable that the Applicant will interfere with the prosecution witnesses- if he is released on bail. This is a serious concern. In order to ameliorate this concern the Applicant will have to should that he can reside elsewhere.

NATURE AND SERIOUSNESS OF THE OFFENCE

24. As indicated earlier, the allegations of **Attempted Murder** and **Possession of a Firearm with Intent to Endanger Life** are serious in nature. In the event that the Applicant is convicted of these offences there is a possibility that the maximum sentences may be imposed. 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.

25. 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)...”

26. 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 SCCRivApp & 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.

27. In the case of **Jevon Seymour v The Director of Public Prosecution SCCrivApp 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.’”

28. 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.”

29. 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 then 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]”

AFFIDAVIT OF FEAR

30. What is apparent in this decision is that evidence capable of supporting a belief that the Applicant would interfere with witnesses, or he will be at risk of physical harm if released, is both relevant and required. The Court applies this principle to the matter at hand. This Virtual Complainant has filed what can be described as an “Affidavit of Fear”. She is extremely concerned for her personal safety; she fears for her life, she fears for he will “*finish her off*” having allegedly shot her multiple times, she worships on Sunday under armed guard. Her fear is for herself and that of her family. Contrary to the Applicant’s Affidavit it was not a “one off” incident where he accidentally wandered into her place of worship. He has been habitually attending her church to such an extent the Pastor of the church has provided her with armed escort.

The Court cannot ignore an Affidavit of Fear-particularly given the nature of the charges of personal injury and alleged Attempted Murder against this Virtual Complainant. This Honourable Court is of the view that the Applicant would interfere with the Prosecution's witnesses if granted bail. This is a serious concern which cannot be ignored under the circumstances.

Retaliatory Killings

31. 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. This Honourable Court is concerned that if released the Applicant could be killed based on these serious allegations by those who may in a misguided notion seek to protect this family. Innocent members of the public could be caught in the cross-fire.
32. Firstly, it must be expressed that this Court fully understands that finding the allegations of **Attempted Murder** and **Possession of a Firearm with Intent to Endanger Life** for which the Applicant is charged, are of a serious nature is not in itself a reason for denying the application.
33. 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.
34. This Court finds that the only way to be certain that the Applicant would be present for his trial; the protection of the VC, that public safety be maintained where innocent members of the public could potentially be caught in the cross fire is to have the Applicant detained at The Bahamas Department of Correctional Services.
35. The Applicant could have been granted bail primarily because of his age and lack of antecedents. However, this will not occur. It would appear that the Applicant He insists on putting himself deliberately in close proximity with the Virtual Complainant. The Applicant's brother under oath in the Surety Hearing informed the Court that the Applicant ordinarily attends and worship at Zion Baptist Church located on East & Shirley Street. Therefore, then the Applicant had no reason to be attending the VC's church particularly given the conditions

of his bail. The Court has to perform a balancing Act between the entitlement to bail under appropriate circumstances, the protection of the Virtual Complainant and her family and the general public to be protected. Bail will be denied for the following reasons:

- a. **This Court finds that the Applicant will be tried within the three (3) year period which has been deemed reasonable by Parliament. The offences of Attempted Murder and Possession of a Firearm with Intent to Endanger Life, both allegedly occurred on Friday 24th August, 2023. Therefore, this Court finds that the Applicant will be tried within the three (3) year period that has been deemed reasonable by Parliament;**
- b. **The Court finds that it is likely that the Applicant would interfere with the Virtual Complainant and her family, if released on bail as the Virtual Complainant is well known to the Applicant;**
- c. **The Affidavit evidence provided by the Respondent states that the Applicant insists on disobeying the Courts orders and going into close proximity of the Virtual Complainant. Under these circumstances, this Court finds that it is probable that the Applicant will interfere with the prosecution witnesses- if he is released on bail;**
- d. **The Court finds that the Applicant could be a flight risk if granted bail and the Applicant may not return for his trial, due to the nature and seriousness of the offence for which the Applicant is charged;**
- e. **The Court takes judicial notice of the retaliatory conduct in The Bahamas and is concerned for the safety of the Applicant. The Court would remand the Applicant for his own safety having regard to the current conditions which prevail in the country unless satisfied otherwise; and**
- f. **There could be no conditions implemented to ensure the Applicant's return for trial. If he is to be granted bail, the Court would have to be**

satisfied of the Virtual Complainants safety- which the Court is not satisfied of at this time.

36. This Court promised to put its reasons in writing, this it now does.

DATED this 3rd day of July A.D. 2024.

The Honourable Senior Justice Mrs. Cheryl Grant-Thompson