

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT

CRIMINAL DIVISION  
No. CRI/BAL/00081/2023

MARVIN PINDER

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Mr. Stanley Rolle for the Applicant

Ms. Jacqueline Burrows for the Respondent

Hearing Date: 09 April 2024

Shop Breaking — Threats of Death – Stealing – Attempted Stealing – Receiving - Bail - Constitutional rights – Nature and Seriousness of Offences – Public Safety and Order – Strength of Evidence

**BAIL RULING**

**Background**

1. Marvin Pinder (“**Applicant**”) was charged with: (i) eleven (11) counts of Shop Breaking contrary to section 362 of the Penal Code, Chapter 84 (“**Penal Code**”); (ii) nine (9) counts of Stealing contrary to section 345 of the Penal Code; (iii) one (1) count of Threats of Death contrary to section 418 of the Penal Code; (iv) one (1) count of Receiving contrary to section 358 of the Penal Code; and (v) one (1) count of Attempted Stealing contrary to sections 83(2) and 340(2) of the Penal Code (“**Offences**”).
2. On 23 February 2024, the applicant filed a Summons and supporting affidavit (“**Applicant’s Affidavit**”) requesting bail.
3. The Respondent filed an Affidavit in Response on 04 March 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 27 February 1990 in the Commonwealth of The Bahamas and is a Bahamian national; (ii) prior to his arrest, he was employed at D & D Service Station where he has been employed for about seven (7) years (iii) he was arraigned in Magistrates Court for the Offences on 15 July 2022; (iv) he has been on remand for the past 19 months and his trial has not yet started; (v) he has no other pending matters; (vi) he applied for bail in April of 2023, but was denied; (vii) He attends church with his family; (viii) he helps to support and maintain his Uncle who is handicapped; (ix) he only has ties in The Bahamas and has no valid passport and will not abscond; (x) he is innocent of the allegations and will vigorously defend his innocence; (xi) being in jail has taken a toll on the Applicant; and (xii) the Applicant is a fit and proper person for bail.

### **Respondent's Evidence**

6. The DPP Affidavit provides that: (i) the Respondent opposes the Applicant's bail application; (ii) the Applicant has fifteen (15) separate matters, all of which are in the Magistrates Court (the Applicant's Antecedents are exhibited to the affidavit); (iii) the Applicant was arrested in relation to the Offences on 05 July 2022; (iv) the Applicant is charged with Threats of Death contrary to section 418 of the Penal Code. The Virtual Complainant was in a close relationship with the Applicant for about six (6) months and reported that the Applicant started threatening her after she told him that she could not assist him with a place to live. Based on the nature of the complaint, the Respondent is particularly concerned about the safety of this witness (the Virtual Complainant's Statement is exhibited to the affidavit); and (v) the Respondent provides several other forms of evidence (in the form of witness statements, police reports and the Charge Sheet of the Applicant) of the other Offences the Applicant is charged with.

## **Law**

7. It is important to note that the Applicant is shielded by the presumption of innocence until his guilt is proven. The Court, however, also acknowledges 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 is located 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...”*

11. Also, it is for the Respondent to 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 expressly provided 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. 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 an in depth analysis of the evidence. 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 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.”*

13. The need to protect society is an important 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?***

14. I will now consider the evidence, law and specific facts of this bail application. The Applicant is charged with approximately 20 Charges – most of which are Shop Breaking and Stealing.
15. The Respondent has provided compelling and cogent evidence in response to the Applicant's affidavit. In relation to the witness statements, I will not conduct any critical analysis of such evidence. The Virtual Complainant's witness statement provides an extensive account of the particulars relating to the Applicant's charge of Threats of Death. I find this evidence quite compelling.
16. Furthermore, in relation to one of the Shop Breaking charges, there is a witness statement from the owner of one of the shops the Applicant allegedly committed the offence along with a police report. He allegedly admits to this Charge during an interview with police. Again, based on the contents of this evidence, it is quite compelling and weakens the Applicant's position as a "fit and proper person for bail".
17. In addition, according to another police report in relation to another one of the Charges, the Applicant allegedly again admits to Shop Breaking and Stealing of items from a red trailer.
18. The above evidence is both cogent and compelling. I am also quite concerned that, based on the Charge Sheet, the Applicant was convicted of absconding from Police Custody and that there is a charge for Threat of Death. I am compelled to take into account the seriousness and nature of the Charges and the blatant threat to public safety and order. Based on the foregoing, I do not find the Applicant to be a fit and proper persons for bail.

**Conclusion**

19. Having regard to all the circumstances I refuse to grant bail to the Applicant.
20. He is to be remanded until the trial of this matter.

**Justice Jeanine Weech-Gomez**

**Dated this 18 day of March 2024**