

COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT

CRIMINAL DIVISION  
CRI/BAL/00154/2022

BETWEEN

AARON VIRGIL

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

**Before:** The Honourable Madam Justice Jeanine Weech-Gomez

**Appearances:** The Applicant appearing Pro Se  
Ms. Cashena Thompson for the Respondent

**Hearing Date:** 29 August 2024

**Bail Application – Murder - Attempted Murder - Nature and Seriousness of Offence –  
Articles 19 and 20 of the Constitution of The Bahamas – Public Safety and Order -  
Presumption of Innocence – Strong and Cogent Evidence**

**RULING**

**WEECH-GOMEZ, J:**

[1.] This is a bail application brought by the Applicant, Mr. Aaron Virgil (“**Applicant**”).

**Background**

[2.] The Applicant was charged with: (i) one (1) count of Murder contrary to section 291(1)(b) of the Penal Code Chapter 84 (“**Penal Code**”); and (ii) three (3) counts of Attempted Murder contrary to section 292 of the Penal Code (collectively, “**Offences**”).

[3.] The Applicant has made an application for bail, which the Respondent objects.

**Issue**

[4.] The issue that the Court must determine is whether the Applicant ought to be granted bail?

## **Evidence**

### **Applicant's Evidence**

[5.]The Applicant provided viva voce evidence. He stated that: (i) He moved in with his uncle Godfrey Virgil. His house is on a solar panel generator. On certain days, the weather is bad, which causes the generator to run all day and power is out all night. He further stated that, as a consequence, he would not be able to charge his electronic monitoring device (“EMD”). On the three occasions he was contacted by the company which monitors the EMD, he explained that the EMD could not be charged. (ii) He stated that he ran from the police on one occasion, while on bail, as the police approached him, but never addressed themselves as police officer. They never showed up in any logo stating they were the police. They were not in a marked police vehicle. They were in a black CRV unmarked vehicle. (iii) In relation to him allegedly running away from his surertors, he stated that he saw them a few days before his arrest. He was aware he had court, but he went to the wrong court room (he thought he was supposed to be at Fraser J’s (as she then was) court, but Williams J was seized with the matter).

[6.]He also stated that: (i) He has been incarcerated for seven (7) years before he was granted bail for this matter. He stated the matter is nine (9) years old. The fault of the case not starting has nothing to do with him. The Applicant’s children were babies when this all first transpired, but now they are teenagers. He also stated that he is 32 years old and was a salesman and Aquapure.

[7.]Furthermore, he asks for the Court’s forgiveness for violating bail and causing any issues. He further requests leniency and that he be permitted to see his children face to face. He asks to be granted bail. He also stated that he was incarcerated for fourteen (14) months and already denied bail. He has already served a sentence for violation of bail. Lastly, he stated that trial is scheduled for 23 October 2024 before this Court.

### **Respondent's Evidence**

[8.]The Respondent filed an Affidavit in Response on 29 July 2024 which provides that: (i) the Applicant is charged with the Offences; (ii) there is cogent evidence to support the charges against the Applicant. The Applicant gave a sworn statement under caution at which time he admitted to his involvement in the commission of the alleged offences (attached is the sworn statement of the Applicant and Record of Interview of the

Applicant); and (iii) the Applicant was granted bail by Justice Deborah Fraser (as she then was) on 22 March 2022, but absconded on 17 April 2023; (iv) On 02 May 2023, Senior Justice Bernard Turner (as he then was), ordered the suretors for the Applicant in this matter to bring the Applicant to court or to show cause as to why the bond should not be forfeited. The suretors advised the court that they told the Applicant to come to court but he refused to do so. On another occasion, the police arrived but the Applicant ran.

[9.] Furthermore, the Respondent's affidavit provides that: (i) the Applicant has two (2) previous convictions (a) three (3) counts of Unlawful Sexual Intercourse; and (b) three (3) counts for Violation of Bail conditions; (ii) the Applicant has a pending matter before the Magistrates Court for Causing Harm in addition to the charges subject to the instant application (the Applicant's Antecedent Form is attached to the affidavit); (iii) there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified and there has been no unreasonable delay; (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. Furthermore, the Applicant has a history of absconding. Thus, the Applicant is a potential flight risk; and (v) the Applicant is not a fit and proper person to be admitted to bail

## **Law**

[10.] The law on bail is settled. The Court must balance one's presumption of innocence unless and until his/her guilt is proven (as enshrined in our Constitution) and the omnipresent need to protect the general public from crime and violence. The right to freedom and the presumption of innocence are preserved and enshrined 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”

[11.] The Court power to grant bail can be found at **section 4 of the Bail Act, Chapter 103 (“Act”). Section 4(1) of the Act** 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, Chapter 103** 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... ”*

[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 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...”*

[14.] The onus is on the Crown to prove, through cogent evidence that the Applicant would likely fail to surrender to custody, appear at trial, commit an offence while on bail or 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 Court also recognizes that a bail hearing is not the proper forum to assess the strength or weakness of the evidence against the Applicant. This was overtly stated

by Osadebey J at page 61 in the Court of Appeal decision of **Attorney General v Bradley Ferguson et al Appeal** Nos. 57,106,108,166 of 2008 where he 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.] 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 hearing. 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.] This was also noted in the Bahamian Court of Appeal decision of **Attorney General v Bradley Ferguson et al Appeal** Nos. 57,106,108,166 of 2008 where Osadebey J 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...”*

[18.] Public safety is a significant factor which the Court must also consider in a bail hearing. The Court may also consider an applicant's antecedents. This was observed in the case of **Lorenzo Wilson v The Director of Public Prosecutions** SCCRAp No. 29 of 2020 ("**Wilson**"). At paragraphs 19 to 21 in relation to public safety and antecedents of the Applicant, the Court opined:

*"19 As to the antecedents, it is not required to show that the appellant lives a habitual life of crime before taking his antecedents into account.*

*20 In this case, the appellant is 24 years old and has already been convicted of a criminal offence which was serious enough to serve 18 months imprisonment. That offence involved an unlicensed firearm and this offence also involves a firearm which was alleged to be used indiscriminately against members of the public on a public street.*

*21 In our view, it was not unreasonable for the judge to have found that the appellant was a danger and not a fit person to be granted bail.*

*[Emphasis added]"*

[19.] The nature and seriousness of the offence (particularly murder) is another factor which is considered in bail hearings. This was noted in the case of **Jonathan Armbrister v Attorney General** SCCrApp No 145 of 2011 where the Court opined:

*"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.*

*[Emphasis added]"*

[20.] In the Bahamian Court of Appeal decision of **Richard Hepburn v The Attorney General** SCCRAPP & CAIS 276 of 2014 Allen P, (as she then was) made the following observations:

*“5 Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed a crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.*

*6 Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in *Hurnam v The State* [2006] 3 L.R.C. 370. At page 374 of the judgment Lord Bingham said inter alia:*

*“... the courts are routinely called upon to consider whether an un-convicted suspect or defendant shall 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 deprive 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...”*

***7 The objective of detaining an accused person is to secure his appearance for his trial and to ensure he is available to be punished if found guilty.** Indeed, if a person's presence at trial can be reasonably ensured otherwise than by his detention, it would be unjust and unfair to deprive him of his liberty.*

*8 Moreover, even if a person's appearance could not be so ensured, he is entitled to be released either unconditionally or on reasonable conditions if he is not put to his trial within a reasonable time, or if it is unlikely that he will be so tried.*

*9 Accordingly, bail is the right of a person charged with a criminal offence to be released from custody on his undertaking to appear for his trial at a specified time, and to comply with any conditions that the court may think fit to impose.*



10 The relevant law on bail is found in articles 19(3), 20(2)(a) and 28 of the Constitution, and in sections 3, and 4 of the Bail Act 1994, as amended (“the Act”). **It is immediately apparent from a reading of those provisions that two distinct rights to bail are given, namely, a general right to an un-convicted person to be released on bail unless there is sufficient reason (Part A of the Schedule) not to grant it; and the absolute right of such a person to be released on bail if his constitutional time guarantee is breached or is likely to be breached.**

11 The general right to bail clearly requires judges on such an application, to conduct a realistic assessment of the right of the accused to remain at liberty and the public's interest as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest.

[Emphasis added]”

[21.] The Privy Council in the case of **Hurnam v. State of Mauritius** [2006] 1 WLR 857 also made pronouncements on the paramount factors to be considered in a bail application. There, the Court opined:

**“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...**

[22.] [Emphasis added]”

## Discussion and Analysis

### *Whether the Applicant ought to be granted bail?*

[23.] I shall now consider the bail application before me, while bearing in mind the aforementioned principles and evidence.

[24.] In relation the evidence, I must be satisfied that there is cogent evidence which suggest the Applicant's involvement in the Offences. Whilst I am not to go into a forensic analysis of the evidence, I will consider same to the extent necessary in order to properly consider the application before me. Based on the Respondent's evidence, there are two witness statements that evidence that Applicant's involvement in the crimes. I note that both statements are typed and one appears to provide a confession by the Applicant. I do not see his signature on the statement. I say no more in that regard. The officer's statement, however, provides compelling evidence which suggests that the Applicant was involved in the crimes. I also note certain admissions made by the Applicant in his Record of Interview relating to his presence in the area where the alleged crimes took place armed with a firearm. I bear in mind the pronouncements from Allen P in *McDonald*. I must be satisfied that the evidence before me: "*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 [the Judge] must then consider the relevant factors and determine whether he ought to grant him bail.*"

[25.] Based on the foregoing, I am satisfied that 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 satisfied myself of this preliminary requirement, I shall now consider the relevant factors in a bail hearing.

[26.] The Offences (Murder and Attempted Murder) are both classified as Part C offences under the First Schedule of the Act. Accordingly, the following are primary considerations in this application: 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. I shall consider each in turn.

[27.] Turning now to the character and antecedents of the Applicant. According to the Applicant's Antecedents form he is presently charged with the Offences and was

found guilty of three (3) counts of Unlawful Sexual Intercourse and three (3) counts of Violation of his bail conditions. Whilst I acknowledge that the Applicant is no stranger to the criminal justice system, he has paid his debt to society for the former offences for which he was found guilty. I do, however, bear in mind that the Applicant seems to have a propensity for criminality as the crimes and Offences all took place within a time span of eight (8) years. I also note that the Applicant appears to be graduating to more serious and heinous offences.

[28.] In relation to public safety and order, gun violence is a pressing issue in our society. The evidence suggests that the Applicant, while concerned with others, were in a vehicle which drove through Alexandria Blvd and Matthew Street, and caused the death of a member of society and threatened the safety of others. The evidence suggests that the Applicant is potentially a real risk to public safety. This raises a great concern for the Court with respect to both public safety and order.

[29.] In relation to whether or not the Applicant will fail to appear at trial, interfere with witnesses or otherwise obstruct the course of justice, there is compelling evidence that suggests that the Applicant will fail to appear at trial. He has already violated bail conditions in the past - on four occasions. Whereas three of these occasions may be as a result of his inability to charge his EMD, this is inexcusable. He could have found other means to satisfy this bail condition or apprised the Court of such difficulty prior to the violations. Furthermore, his failure to appear in Court is inexcusable. He stated that he came to the wrong court. He could have easily appeared before the correct court, explained his error and requested leniency. Instead, he simply failed to appear in Court when he knew this was a requirement of his bail conditions.

[30.] Additionally, it is alleged that he ran from police while on bail for failing to appear in Court. Though he provides an explanation for absconding (i.e. he was unaware that the officers who approached him were police officers), the fact is that he failed to appear in Court. It appears that the Applicant has a propensity to consistently breach bail conditions. The Court has a duty to ensure that the Applicant appears to Court for his trial. Given his history, it is unlikely that, if he is granted bail he will appear for trial.

[31.] I am, therefore, not prepared to grant the Applicant bail.

## **CONCLUSION**

[32.] Based on the aforementioned principles and the state of the evidence, bail is therefore, denied. The Applicant shall be remanded to the Bahamas Department of Corrections until his trial or further order of the Court.

**Dated this 26<sup>th</sup> day of September 2024**

**Jeanine Weech-Gomez  
Justice**