

**COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division**

CRI/BAIL/00032/2023

BETWEEN

BRANDON MAJOR

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: Her Ladyship, The Honourable Madam
Justice Guillimina Archer- Minns

Appearances: Ms. Cassie Bethel for the Applicant
Mr. Uel Johnson for the Respondent

Hearing Date: 21 February, 2024

RULING - BAIL-

Archer-Minns J

1. By Summons and Affidavit in Support, the Applicant Brandon Major (D.O.B: 31 January, 2003) made application for admission to bail having been charged with one (1) count of Murder contrary to section 291(1)(b) of The Penal Code, Chapter 84.
2. The Applicant's Affidavit in Support avers inter alia:
 - i. the Applicant was born on 31 January 2003 and is 21 years old;
 - ii. he appeared before Magistrate Court No. 5 before Senior Magistrate Raquel Whyms on 31 January 2024. The next court date is 19 April 2024;
 - iii. he has pleaded not guilty and will be defending the charge;
 - iv. he has no previous convictions nor any pending matters;
 - v. prior to his incarceration, he was employed at Blue Lagoon;
 - vi. he will be disadvantaged in his ability to adequately prepare his defense if he is further remanded;
 - vii. he will be disadvantaged in his ability to support himself and assist his family and;
 - viii. if granted bail, he will comply with all rules and regulations set by the Court.

In all of the circumstances of the case, he is a fit and proper candidate for admission to bail.

3. The Respondent objected to the grant of bail to the Applicant and relied principally on the contents of its Affidavit in Response to the extent that:
 - i. the Applicant and his co-accused Nel Major are charged in relation to the death of Sanchez Gittens who was 19 years old at the time of his death;
 - ii. the deceased died as a result of a stabbing incident which allegedly occurred on 27 January 2024;
 - iii. there is cogent evidence to support the charge against the Applicant. The statements of Daisha Newbold and an anonymous witness speak to be nature of the evidence against the Applicant, having seen the Applicant stab the deceased;
 - iv. there has been no delay in the prosecution of the matter and;
 - v. the Respondent is opposing bail having regard to the interest of the public and there being nothing peculiar about the Applicant which render his continued detention unjustifiable.

In all of the circumstances of this case, the Applicant is not a fit and proper candidate for bail and the application for bail should be denied.

4. The Court heard the submissions of Counsel for the Applicant and Respondent and read the Affidavit in Support and the Affidavit in Response of the respective Counsel.

The issue for the Court to determine is whether given the circumstances of this case, the Applicant is a fit and proper candidate for admission to bail.

The Law

5. The Constitution of The Bahamas affords to all persons charged with a criminal offence the presumption of innocence and the unalienable right to apply for bail. **The Bail Act** gives judicial officers a discretionary power to admit or not admit an applicant to bail. Given the nature of the charges with which the Applicant has been charged, the Court had regard to the relevant provisions of **The Bail Act particularly Section 4 and The First Schedule of The Act.**
6. The Applicant before the Court makes application for admission to bail in relation to the charge of Murder- no doubt a very serious offence. Nevertheless, it is trite law that the seriousness of the offence, though an important consideration in the determination of bail, is not a stand alone ground for the refusal of bail and must be considered with additional factors such as the strength of the evidence, the penalty likely to be imposed upon conviction, the likelihood of the applicant absconding pending trial and the interference of witnesses.
7. Evans JA in **Jeremiah Andrews vs The Attorney General SCCrApp No. 163 of 2019**, stated inter alia:

“These authorities all confirm therefore that the seriousness of the offence coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon convictions have always been and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by consideration of other relevant factors disclosed. Eg. the applicant’s resources, family connections, employment status, good character and absence of an antecedent.”
8. The Court further notes that the Applicant has no previous convictions nor any pending matters and can therefore be considered a person of good character which factor ought to weigh in favor of the Applicant being admitted to bail.
9. In **Richard Hepburn vs The Attorney General SCCrApp No. 176 of 2014** Allen P stated therein:

“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 canon, which secures freedom from arbitrary arrest and detention and serves as the bulwark against punishment before conviction.”

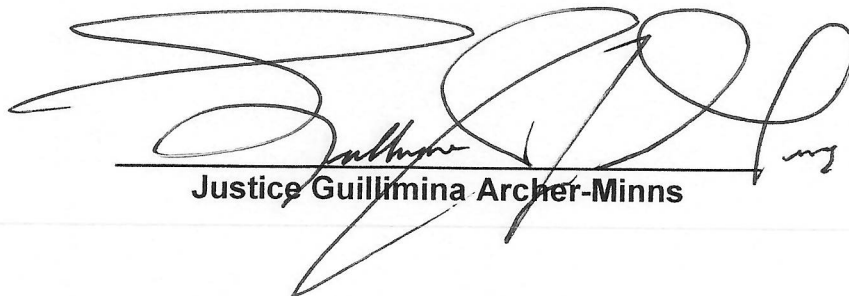
10. The Court fully appreciates that a bail application is not one for a forensic review of the evidence to be relied upon but it is certainly of utmost relevance when considering a bail application. It does assist the Court in determining whether the intended evidence is cogent and in consideration of all other relevant factors, bail should or should not be granted to the Applicant.
11. The Respondent is placing reliance on the statement of Daisha Newbold, the friend of the deceased and an anonymous eyewitness. On this evidence, the Court is of the view that the intended evidence raises a reasonable suspicion of the Applicant's involvement in the commission of the offence. The evidence is neither tenuous or weak.
12. The evidence clearly indicates the manner in which the offence was committed. The manner in which the deceased met his untimely death. Seemingly his death was due to an unprovoked and senseless act of violence. No doubt the Applicant has a presumption of innocence and a fundamental right to his liberty albeit not an absolute right. This right of the Applicant is to be considered with the competing rights of the public, its safety and security and public order. The evidence as to the conduct of the Applicant notwithstanding that he is considered a person of good character his alleged conduct in the circumstances of this case indicates his total disregard for the sanctity of life and for law and order. **Stephon Davis vs The Department of Public Prosecutions SCCrApp No. 20 of 2023** considered.
13. The Court gave consideration to the Constitution, the relevant provisions of the Bail Act, the submissions of Counsel for the Applicant and Respondent, the relevant authorities and the following factors:
 - i. the strength of the evidence against the Applicant;
 - ii. the seriousness of the charge;
 - iii. the Applicant has no pending/ previous convictions;
 - iv. the competing interests of the Applicant and his presumption of innocence and right to liberty with the rights of the public, its safety and security and;
 - v. bail conditions which could be imposed to minimize the risk involved with admitting the Applicant to bail.
14. Consideration having been given to all of the aforementioned factors, the Court is of the view that the application goes far beyond whether the Applicant will appear for his trial but rather whether there is an increased likelihood given the penalty associated with this offence if convicted, the Applicant will interfere with witnesses or be a threat to public safety and security and public order. There are two principle witnesses whom the Respondent intend to rely upon, one is anonymous and the

other named and known to the Applicant. The named witness was actually present and witnessed the commission of the offence by the Applicant. The safety and wellbeing of this witness is of serious concern particularly given the close proximity in which the Applicant and named witness reside and the fact that the matter occurred on 27 January, 2024 and in less than three (3) months the Applicant is making application for admission to bail when from the evidence, his actions were so callous and a blatant disregard for the sanctity of human life. Even more so, the Applicant's actions are telling when he was only in a position of bystander and had no involvement in the initial dispute between the prosecution's named witness and another female, which had already been quelled. Seemingly the Applicant immersed himself into the situation.

15. The Court also took judicial notice of the retaliatory attacks upon persons who have been charged with murder who are subsequently released on bail. The safety and wellbeing of the Applicant is therefore of equal concern. In the circumstances of this case, the Court is further of the view that there are no conditions which can be imposed by the Court to effectively assuage the Court's concern in this regard. Bail is therefore denied.

The Applicant is to continue his remand in custody. Should there be any change of circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 20 day of March 2024.



Justice Guillimina Archer-Minns