

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

**CRIMINAL DIVISION  
CRI/BAL/00125/2022**

**BETWEEN**

**KAZINSKI LEROY JOHNSON**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**Appearances: Ms. Karina Rolle for the Applicant**

**Mr. Ashton Williams for the Respondent**

**Hearing Date: 03 September 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 on behalf of Mr. Kazinski Leroy Johnson (“**the 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) one (1) count of Attempted Murder contrary to section 292 of the Penal Code (collectively, “**Offences**”).

[3.] The Applicant has made an application for bail with respect which the Respondent challenges.

## **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's Affidavit provides that: (i) Prior to his remand, he resided at #60 Washington Street in the New Providence; (ii) he was charged with the Offences (the Applicant's antecedent form is exhibited to the affidavit) before Acting Chief Magistrate Roberto Reckley on 29 December 2023; (iii) he is twenty (20) years old and was born in Nassau, The Bahamas on 04 February 2004; (iv) he has a daughter (a birth certificate for the child is exhibited to the affidavit); (v) he is prejudiced by his remand as he is unable to provide for his child and assist his family; (vi) if admitted to bail, he can resume his role as father and provide for his child through gainful employment; (v) he was unemployed prior to remand, but would assist a friend as a Jet Ski operator; (vi) if admitted to bail Kerr's & Sons Convenience Store is prepared to employ him (a letter of intended employment is exhibited to the affidavit); (v) that he is innocent; (vi) he is a person of good character; (vii) he has no prior convictions in the Commonwealth of The Bahamas; (viii) he is in dire need of medical attention as he has nerve damage in his left leg and require constant monitoring and medical attention (a copy of a Referral Note from the Princess Margaret Hospital and Public Hospitals Authority form for Rehabilitation Services Department are exhibited to the affidavit); (ix) he is not affiliated with any gang; and (x) since his incarceration, the nerve in his left leg has gotten worse and caused him great pain and discomfort, as he has not been receiving any Physical therapy to assist with his medical condition and as a result his is disadvantaged.

[6.]The Applicant's affidavit further provides that: (i) if granted bail, he would be in a position to receive the necessary medical attention and treatment; (ii) he has not been served with a Voluntary Bill of Indictment; (iii) if admitted to bail, he will reside with his child and other family at #60 Washington Street, New Providence and he undertake that: (a) he will not commit any offences if granted bail; (b) he is not a flight risk or breach any bail conditions should the Court be minded to grant bail; (c) he has no ties to any other country that would permit him to abscond; (d) he poses no risk to the safety

or security of Bahamian society or himself; (e) he has no pending matters; and (f) he will appear on every date that the court sets for his matter and will not interfere with any witnesses; (iv) he strongly maintains his innocence; (v) he is a fit and proper person for bail; and (vi) he humbly requests bail.

Respondent's Evidence

[7.] The Respondent filed an Affidavit in Response on 16 July 2024, which provides that:

(i) the Applicant is charged with the Offences (the Applicant's antecedent form is exhibited to the affidavit); (ii) he was denied bail by Justice Guillimina Archer-Minns on 06 March 2024 (the bail ruling is exhibited to the affidavit); (iii) since 06 March 2024, there has been no change in circumstances; (ii) there is cogent evidence that links the Applicant to the Offences; (iii) an Anonymous witness in their statement to the police said that sometime after 7am on 24 December 2023, while at the tracks located at the Sports Centre Road, they observed a male from the Ida Street area by the name of "KJ" who drives his motorbike across the street to where "Trolley" was pulling up at the time. This witness observed as "KJ" pulled out a handgun and began shooting "Trolley". This witness also identified the Applicant from a twelve-man photo lineup in photograph #2 as the shooter that was seen shooting and killing the deceased (the statements of the Anonymous witness, the report of D/Sgt. 3912 D'Andre Cadet with the twelve man photo line-up are exhibited to the affidavit); and (iv) another witness ("Witness X") gave the police a statement where he said that on Sunday 24 December 2023 while at the tracks, he would have been shot by a man known as "KJ". This witness also identified the Applicant from a twelve man photo line-up in photograph #6 as the male responsible for shooting him on 24 December 2023 (the statement of Witness X and the report of D/Sgt. 3308 Nakeita Pickstock with the twelve man photo line-up are exhibited to the affidavit).

[8.] The Respondent's Affidavit further states that: (i) the Applicant is charged with serious offences and given the severity of the penalties attached to the offences, if convicted, is sufficient incentive for the Applicant not to appear at his trial; (ii) the Respondent verily believes that public safety would be at risk if the Applicant is released on bail; (iii) there is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified and unfair at this time; and (iii) the Respondent humbly asks the Court to deny the Applicant bail.

## Law

[9.] The law on bail is settled in The Bahamas. The Court must bear in mind and 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 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"*

[10.] The Court's power to grant bail is 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."*

[11.] **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... ”*

[12.] 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...”*

[13.] It is important to note that the onus is on the Respondent 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. In relation to this burden of proof, the Court in **Jevon Seymour v**

**Director of Public Prosecutions**, No. 115 of 2019 (“**Jevon Seymour**”) 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”*

[14.] The Court also appreciated that a bail hearing is not the proper forum to assess the strength or weakness of the evidence against the Applicant. This is a matter for the jury at trial. This was expressed 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...”*

[15.] 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 placed before him/her 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]”*

[16.] The Court must also bear in mind that there is substantial grounds/evidence provided by the Crown to justify the Applicant's detention. This was highlighted by the Court of Appeal in **Jeremiah Andrews v The Director of Public Prosecutions** SCCrApp No. 163 of 2019 where Evans JA made the following pronouncements at paragraph 26 of the ruling:

*“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.”*

[17.] Public safety is a material factor in a bail application. The Court is permitted to consider an applicant's antecedents (if any). This was noted in the case of **Lorenzo Wilson v The Director of Public Prosecutions** SCCrApp 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]”*

[18.] 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 with respect to bail hearings:

“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]”

## **Discussion and Analysis**

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

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

[20.] In relation to the evidence, I will not go into a deep dive, however, I bear in mind the pronouncements made by Evans JA in Jeremiah Andrews. There must be cogent and compelling evidence which justifies the Applicant’s detention until trial. Based on the evidence that is before me, an Anonymous Witness and Witness X confirmed that the Applicant was responsible for shooting Witness X. Both witnesses identified the Applicant as the shooter in a twelve man photo line-up.

[21.] The Anonymous Witness also confirms that the area where the shooting occurred was well lit and that nothing obstructed his view of the incident. In fact, the Anonymous Witness said he had the Applicant in his view for about eight (8) second and that he was close enough to observe him during the alleged shooting. This demonstrates that two witnesses identified the Applicant as the individual responsible for a firearm related offence against an innocent member of society. This evidence is further corroborated by the statements of two officers who confirm that both the Anonymous Witness and Witness X separately identified the Applicant as the person

who shot Witness X. This is compelling evidence which, as was noted by Allen P in *McDonald*: “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.” I am therefore satisfied that there is reasonable suspicion of the commission of the Offences by the Applicant.

[22.] Turning now to the factors for consideration. The Offences (Attempted Murder and Possession of a Firearm to Endanger Life) are both classified as Part C offences under the First Schedule of the Act. Accordingly, the following are primary (but not the only) 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.

[23.] In relation to the character and antecedents of the Applicant, the Applicant’s antecedent form proves that he has no prior charges or convictions in The Bahamas. This strongly suggests that he is of good character, save for the present allegations and Offences.

[24.] Furthermore, the alleged Offences are said to have taken place in a public setting. This suggests that the Applicant had a blatant disregard for the general public. As a result, it raises a very real concern for public safety and order. In addition, there is a concern with respect to the safety of Witness X, who is a key witness in this trial - having identified the Applicant as the person who shot him.

[25.] In relation to whether or not the Applicant will fail to appear at trial, interfere with witnesses or otherwise obstruct the course of justice, the fact that Witness X is overtly named in the witness statement and is a key witness in the trial, there may very well be a possibility that the Applicant may interfere. His testimony is crucial to the trial and his safety may be at risk if the Applicant is at risk. The Court has great hesitancy in granting bail under such circumstances.

[26.] Lastly, in relation to the nature and seriousness of the Offences, both are very serious and are related to the use of firearms. As was noted by the Court 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]”*

[27.] I also realize that, should the Applicant be convicted of the Offences, the punishment is extremely severe. This may be sufficient incentive for the Applicant to abscond prior to his trial. This warrants great caution and concern when considering the granting of bail to this Applicant.

[28.] While I am sympathetic towards the Applicant’s medical condition, the evidence against him is compelling and the very nature of the Offences greatly concerns this Court. The risk to public safety and order coupled with Witness X’s safety are paramount considerations. Though he has no prior convictions and does not appear to be a flight risk, I am very concerned about the safety of the general public and that the evidence strongly suggests that the Applicant is directly involved in the matter. The Court can assist the Applicant in obtaining the required medical attention while on remand and is prepared to do so.

[29.] Accordingly, I am not prepared to grant bail.

## **CONCLUSION**

[30.] Having regard to the circumstances, bail is denied. The Applicant is remanded to The Bahamas Department of Corrections until his trial or further order of the Court.

**Dated this 25<sup>th</sup> day of September 2024**

**Jeanine Weech-Gomez  
Justice**