

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

**CRIMINAL DIVISION
CRI/BAL/00153/2024**

BETWEEN

YEWILL A.S. MORETA

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: **Mr. Geoffrey W. Farquharson for the Applicant**

Mrs. Shenicka Carey for the Respondent

Hearing Dates: **31 June 2024; 09 August 2024.**

Bail Variation – Request to Remove Ankle Monitor – Section 9(6) of the Bail Act, Chapter 103 – Innocent until proven guilty – Article 20(2)(a) of the Constitution of The Bahamas

RULING

WEECH-GOMEZ, J:

[1.] This is an application brought on behalf of Mr. Yewill A.S. Moreta (“**Applicant**”) requesting a variation of his bail conditions.

Background

[2.] The Applicant was charged with: (i) Possession of an Unlicensed Firearm contrary to section 9(2)(a) of the Firearms Act, Chapter 213 (“**FAA**”); and (ii) Possession of Ammunition contrary to section 9(2)(a) of the FAA (“**Offences**”).

[3.] The Applicant filed an application for bail and was granted same under the following conditions: (i) The Applicant is to be fitted with an Electronic Monitoring Device (“**EMD**”); (ii) The Applicant is to relinquish all travel documents to the Criminal Registry; and (iii) the Applicant is to sign in at the Elizabeth Estate Police Station (no confirmation of the days of signing on or any curfew has been provided).

[4.]He now seeks a variation of his bail conditions, which the Respondent challenges.

[5.]At the initial hearing, the Respondent requested time to review the file and to make submissions to the Court. This was permitted, thus a brief adjournment was granted. Thereafter, the Court heard the submissions of counsel and considered the application.

Issue

[6.]The issue that the Court must determine is whether the Applicant's bail conditions ought to be varied?

Evidence

Applicant's Evidence

[7.]The Applicant's Affidavit provides that: (i) the Applicant was born on 07 April 1993; (ii) he has no prior convictions; (iii) on or about 02 July 2024, the Applicant was arraigned before the Magistrates' Court for the Offences; (iv) he was admitted to bail; (v) before his release from prison, he was fitted with an EMD, although there was no mention of this device on his bail bond; (vi) his bail conditions are as follows: (a) he was required to wear an EMD; (b) he was to relinquish his passport to the Criminal Registry; and (c) he was to sign in at the Elizabeth Police Station; (v) there was no objection to bail by the Respondent and no hearing of any kind whatsoever as to the risks of absconding, reoffending, interference with witnesses or with the justice system; (vi) there was never an allegation that the Applicant was a flight risk or that there was any evidence of any kind that there was a risk of any kind which could be minimized by the imposition of an EMD; (v) he is requesting the Court remove the EMD as he is a barber and personal trainer and his client base has dwindled sharply due to the EMD; (vi) as his financial condition has worsened, his family and friends, and a few clients have urged him to remove the EMD as it creates a very negative reaction in many people, particularly among his female clients; (vii) the Applicant has exhausted all of his resources since his release on bail and is now facing financial ruin; and (viii) he requests that the Court allow the variation of bail and remove the EMD.

Respondent's evidence

[8.]The Respondent did not provide any affidavit evidence in response to this application.

Discussion and Analysis

Whether the Applicant's Bail Conditions ought to be varied?

[9.] The Court's power to vary existing bail conditions is governed **section 9(6) of the Bail Act, Chapter 103**. It provides:

“(6) Where a Court has granted bail in criminal proceedings, the Court may on application —

(a) by or on behalf of the person to whom it was granted; or

(b) by the prosecutor or a police officer

vary the conditions of bail or, in respect of bail which it has granted unconditionally, impose conditions.”

[10.] By virtue of **Article 20(2)(a) of the Constitution of The Bahamas**, every person charged with a criminal offence is presumed innocent unless and until his guilt is proven or pleads guilty to the offence he is so charged. The Article provides:

“(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”

[11.] I note that the Respondent did not provide any affidavit evidence in this application, however, the Respondent's counsel submits that the bail conditions were set during the hearing with all parties present, with no objection by the Applicant's counsel. Further, the Respondent's counsel submits that one of the Applicant's bail conditions was the relinquishing of his travel documents to the Criminal Registry, which has not been done. The Respondent requests that the Applicant be ordered to do so. The Respondent also asserts that the suretors ought to be summoned to confirm that they have no issue with the Applicant's EMD being removed prior to the decision of the Court.

[12.] Conversely, the Applicant's counsel submits that there is nothing before the Court which can be relied on to refuse the relief sought and that the Court ought to act in accordance with law and grant the requested variation.

[13.] I find it curious that the affixation of the EMD on the Applicant was never expressed on the bail bond. If this were the case, a visit to the Magistrates Court could

have easily resolved the issue. Furthermore, while I accept the Respondent did not provide any affidavit evidence in this application, it still challenges the application through its submissions to the Court.

[14.] Whereas the Applicant is cloaked with the presumption of innocence until his guilt is proven, I am of the view that the EMD should remain affixed to the Applicant in order to ensure he presents himself for trial. He is charged with a firearm related offence. Such offences are very serious in this jurisdiction and it is incumbent on the Court to ensure that accused persons appear for trial.

[15.] I find it concerning that the Applicant has not surrendered his travel documents to the Criminal Registry, despite this being one of his bail conditions. This means that he is still in possession of his passport and is not in compliance with his bail conditions. At the outset, this does not bode well for the Applicant and the Court takes judicial notice of this failure to comply with such bail conditions.

[16.] Furthermore, though no risk of the Applicant absconding has been evidenced, the Court finds that the bail conditions set are reasonable and that the Applicant is afforded the freedom of being released on bail until his trial. He is not remanded and is able to move freely, save and accept the EMD. Whereas I acknowledge the financial hardship the Applicant is faced with, the purpose of the EMD is not to ensure the Applicant is able to work or move about as he wishes – it is to protect, as far as practically possible, the Applicant’s constitutional rights, while ensuring that he appears for his trial for a criminal act which he stands accused of. The Court believes that his whereabouts should be monitored until his trial is complete.

CONCLUSION

[17.] Based on the circumstances, the variation for bail is refused.

[18.] The Applicant is also ordered to relinquish all travel documents to the Criminal Registry until further order of the Court.

Dated this 9th day of August 2024

**Jeanine Weech-Gomez
Justice**