

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division
CRI/bal/00653/2018**

B E T W E E N

**ANTONIO PAUL
Applicant**

AND

**DIRECTOR OF PUBLIC PROSECUTIONS
Respondent**

Before: The Honourable Madam Justice Renae McKay

Appearances: Mr. Stanley Rolle for the Defendant
Mrs. Erica Ingraham for the Respondent

Hearing Date: 20th September 2024

Ruling Date: 3rd October, 2024

RULING ON BAIL

[1.]The Applicant, Antonio Paul is charged with two counts of Armed Robbery contrary to section 339(2) of the Penal Code and one count of Receiving contrary to section 358 of the Penal Code.

[2.]The Bail Application was moved by way of Summons and Affidavit in Support both filed on 10th June 2024. The Applicant has pleaded not guilty to the current charges and maintains his innocence. He also asserts that he is a fit and proper candidate for bail.

[3.]Prior to his arrest on 7th February 2022, the Applicant was employed at Mango Machine Shop, Ridgeland Park. The Applicant was also self- employed as a Plumber and worked in the construction field.

[4.] At the date of filing the Supplemental Affidavit, the Applicant had been in custody for 30 months and three weeks. The Applicant asserts that he has no pending matters in the Magistrates Court and does not have a previous conviction for Attempted Murder and Attempted Armed Robbery. However, he has been convicted for Robbery which he has pled guilty to and was subsequently sentenced. This sentence ended on 6th November 2023.

[5.] The Applicant further states that he is not a flight risk and will not abscond if admitted to bail and that he will not interfere with any witnesses in this matter.

[6.] The Respondent filed its Affidavit in Response on 4th September 2024 in opposition of the Bail Application. By the Respondent's Affidavit in Response it is averred that there is sufficient and cogent evidence against the Applicant which supports the charges against him. The Respondent objects to the bail stating that the Court should take into consideration the nature and seriousness of the offence.

[7.] The Respondent stated that at the time of the offence, the Applicant denied committing the offence, however he admitted to being present with his co-accused on the date in question as they were all driving in his vehicle. He further admitted to seeing both males take the red vehicle which was later stashed and stripped. He also admitted to having the stolen red iPhone in his possession and attempting to unlock it.

[8.] The Respondent further stated that based on the evidence and nature of the Applicant antecedents, there is a strong likelihood that the Applicant would commit further offences if he is to be released on bail. The Respondent believes that the Applicant should be denied bail in the interest of the public's safety and order.

[9.] The Respondent also indicated that the Applicant has a previous conviction for Robbery for which he was sentenced to two years imprisonment, showing that he has a propensity to commit similar offences. The Applicant was released in relation to that charge on 14th October 2023. The Respondent also informed the Court that the Applicant has several pending matters for the following:-

- i. Unlawful Possession- Case 1-18-16799 before Magistrate Court #2
- ii. Murder- Case 1-19-044246 before Magistrate Court #9
- iii. Armed Robbery while being concerned- Case 1-21-017900 before the Supreme Court; and
- iv. Armed Robbery and receiving- Case 1-22-010092 before the Supreme Court

[10.] The Respondent highlighted that at the time of the offence the Applicant was on bail pending a matter of the similar nature. The Respondent further opposed the Bail Application because the Applicant has an upcoming trial date for 2nd December 2024 and 6th April 2026.

[11.] Both Counsel sought to only rely on their respective filed Affidavits.

LAW & ANALYSIS

[12.] The Applicant is presumed to be innocent of the charges against him until proven guilty. In this regard, Article 20(2)(a) of the Constitution of The Bahamas states:-
“Every person who is charged with a criminal offence –
(a) shall be Presumed to be innocent until he is proved or has pleaded guilty”.

Article 19(1)(b) further provides that no person shall be deprived of personal liberty, save upon reasonable suspicion of having committed a criminal offence.

[13.] The Court’s powers to grant bail are found in the Bail (Amendment) Act, Chapter 103, Section 4(2) provides the statutory framework for the grant of bail for part C:-

“4. (2) Notwithstanding any other provision 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.

(2A) For the purposes of subsection (2) (a) ... (a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time; (b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.

(2B) reads, “For the purposes 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.”

[14.] The First Schedule Part A of the Bail (Amendment) Act outlines the relevant factors that the Court must consider in an application for bail which provides:-

“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) Whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) Whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e) Whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
- (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.”

[15.] The evidential burden lies on the Respondent to adequately prove to the Court that the Applicant would fail to surrender himself before the Court, appear at trial, commit an offence while on bail and interfere with witnesses, or otherwise obstruct the course of justice. In the Court of Appeal decision of Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019, the Court made a determination on whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 Crane-Scott, J.A. opined that:-

“...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.”

[16.] Evans J.A. in Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019 stated that:-

“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.] In **Hurnam v. State of Mauritius [2006] 1 WLR 857** at paragraph 15, the Court’s approach to bail was:-

“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...”

[18.] While I do find that the offence of armed robbery is a very serious offence in the present application, there is no direct evidence which has been adduced that the Applicant will abscond. However, I am reminded that the Applicant has an upcoming trial date for 2nd December 2024.

[19.] The Applicant maintains his innocence and denies the allegations against him. In **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016**, Allen P, examined the extent of the judge’s tasks relative to the evidence which is adduced at a bail hearing:-

“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).”

[20.] The alleged offences against the Applicant occurred while the Applicant was on bail. The evidence adduced by the Prosecution has adequately raised a reasonable suspicion against the Applicant. There has also been a positive identification of the Applicant by the witness Valentino Bethel which supports this reasonable suspicion.

[21.] I find that the evidence adduced before this Court as contained in the record of interview of Antonio Paul as attached to the Respondent’s Affidavit, is strong and cogent

and capable of raising a reasonable suspicion of the Applicant's involvement in this offence. I wish to highlight portions of the record of interview of the Applicant as follows:-

Ques. 5 Where were you on Wednesday 26th January 2022 sometime around 8:30pm?

Ans. 5 I was with my boys Anthon and Tuggy.

Ques. 11 I now show you a red iPhone 11. I put it to you that this was the phone that you took from Devardo Taylor Jr. during this matter. What do you have to say to that?

Ans. 11 I just tell you I ain't rob no one so what make you think I take that phone.

Ques. 12 Did you ever have this phone in your possession?

Ans.12 Yea bey.

Ques. 13 How did you get this phone in your possession?

Ans. 13 Anthon.

Ques. 17 Do you have any idea as to how Anthon got this cell phone?

Ans. 17 Yea bey. They take the car.

Ques. 18 Who was with him when the car was taken and what car are you referring to?

Ans. 18 Only them two and whatever car you talking bout.

Ques. 19 Did you see these males take the red 2010 Nissan Note on Wednesday 26th January 2022 sometime around 8:30pm n the Palmbreeze Lane area?

Ans. 19 Yea bey.

Ques. 22 Where did Anthon and Tuggy go after robbing Obiecheryl of her red 2012 Nissan Note?

Ans. 22 Stash it. Man out the interview I could say. We ain't gotta go through that.

Ques. 23 What did they do with the car after taking it?

Ans. 23 Strip it.

Ques. 24 Where is the car now?

Ans. 24 Stripped.

[22.] A paramount consideration before this Court is the public's safety. The alleged incident occurred around 8:30pm in a residential area of Palm Breeze Drive off Carmichael Road which is a highly frequented and populated area of New Providence in the Southern

district of the island. I also must take note that the incident occurred in the presence of a seven year old minor. I must agree with the Prosecution that this was a reckless crime. This raises a public safety consideration.

[23.] I do find that there is a likelihood that the Applicant will commit another offence, and one of similar nature if granted bail. Having considered the Affidavits and a review of the evidence adduced, I do not find that the Applicant is likely to abscond or that he is a flight risk. In the present application I note that the Applicant does have pending matters of a similar and serious nature.

[24.] In carrying out a balancing act, I also accept that there is a need to protect and ensure the public's safety. The previous charges against the Applicant suggest to me a proclivity that he is likely to reoffend. I find that having regard to the evidence of the Applicant's pending charges and the issues aforementioned, the Applicant is a threat to public safety and public order.

[25.] I have considered the imposition of the usual conditions concerning a Bail Application. There is circumstantial evidence which is able to support the charges against the Applicant. The Bail, as previously granted did not act as a deterrent for the Applicant in reoffending. The evidence taken together with the Applicant's pending matters supports my conclusion to deny the Applicant bail in this matter. I am of the view that the imposition of such and further conditions would not perfect the Court's apprehensions. These reasons, I find are substantial grounds for believing that the Applicant will reoffend.

[26.] Having taken the time to go over all of the evidence in this matter and being satisfied that while the Applicant was in custody for a period of 32 months, this period was a result of the fact that the Applicant served a sentence having plead guilty to another offence. I am also satisfied that the antecedents of the Applicant are substantial and he has two outstanding matters. More importantly the Applicants trial date is set for 2nd December 2024, for this these reasons bail is denied.

[27.] In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Therefore, the Applicant's application for bail is denied.

Dated this 3rd day of October A.D. 2024

The Hon Madam Justice Renae McKay