COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2017/CRI/bail/00422

BETWEEN

CHARLTON SAUNDERS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Hon. Justice Neil Brathwaite**
Appearances:	**Applicant Pro Se** **Ms. Erica Ingraham, Mr. Ashton Williams for the Respondent**
Hearing Date:	**3rd December A.D. 2024**
Ruling Date:	**14th January A.D. 2025**

RULING ON BAIL

[1.] The Applicant seeks bail, and indicates that he has been in custody since July 2022 after being charged with six counts of Armed Robbery and one count of Housebreaking and Stealing. He has already been granted bail on the Housebreaking and Stealing charges. He states that he is thirty-one years old, and worked as a security guard prior to his incarceration. He admits to having previous convictions for similar charges. The Applicant maintains his innocence, and states that his mental and physical health are deteriorating in prison, as he claims to have been abused by correctional officers, and to have suffered injuries to his hand, all of which he says led to severe depression and loss of weight.

[2.] In opposing the application, the Respondent filed the affidavit of Calnan Kelly, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of

documents, from which it can be gleaned that the Applicant has been identified by two persons as one of the males who robbed them at gunpoint on 2nd June 2022. There is also evidence that after the incident, the males returned to a home occupied by the girlfriend of the Applicant, and were recorded on cell phone counting a large sum of money. The girlfriend has given a statement indicating that the Applicant admitted that they had snatched a bag from a woman out east. The girlfriend was permitted to keep that bag, a Louis Vuitton, which was later recovered at her home, and identified by one of the complainants as the bag taken during the robbery. A Criminal Records Antecedent Form is attached, and indicates that the Applicant has been convicted in the past of Stealing, Possession of an Unlicensed Firearm and Ammunition, and Armed Robbery (four counts),

[3.] The Applicant was initially represented by counsel, who did not appear at the substantive hearing. The Applicant therefore represented himself, and indicated that while he had been denied bail three times, two pending matters of armed robbery had since been discontinued. The crux of the Applicant's plea is that he has been deteriorating in prison, and has not been receiving medical treatment which is necessary to restore his hand and his general health.

[4.] Counsel for the Respondent notes that the charges are serious, and attract a severe penalty, with cogent evidence, raising the likelihood of absconding. Most importantly, while the Respondent acknowledges that two matters have been discontinued, it was emphasized that five others are still pending. The Respondent further notes the previous convictions of the Applicant, and suggests that there is a severe risk of re-offending. The court was therefore asked to refuse bail.

LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

"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 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 The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

"...the courts are routinely called upon to consider whether an unconvicted 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 whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of 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 prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, 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..."

[6.] At paragraph 11 she further noted that

"The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests 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."

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which 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".

[8.] Furthermore, Article 19(1)provides as follows:

"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-
(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;
(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;
(c) for the purpose of bringing him before a court in execution of the order of a court;
(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;
(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;
(f) for the purpose of preventing the spread of an infectious

or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;
(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.
(2)...
(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".

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

"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)...
(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) 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 and antecedents of the person charged, the need to protect the safety of the 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."

9. The factors referred to in Part A are:

"PART A

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.";

[10.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[11.] In considering those factors, I note that the Applicant is charged with serious offences, involving the use of a firearm. With respect to the seriousness of the offence, I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[12.] In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"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 in 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".***

[13.] I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. 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 conviction, 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 the consideration of other relevant factors disclosed in the evidence. eg the applicant's resources, family connections..***

[14.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with a number of very serious offences which, in considering the possible penalty which could follow a single conviction, raises the issue of the likelihood of not appearing for trial.

[15.] That likelihood must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 by the appellant, such as to justify the deprivation of his 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."***

[16.] In considering the cogency of the evidence, I note the following statement from the Court of Appeal in ***Stephon Davis v DPP SCCrApp. No. 20 of 2023***:

"In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74:
"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

[17.] In reviewing what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that the evidence rises to the level of a prima facie case, as the Applicant has been identified by a two witnesses as being involved in these armed robberies. That evidence is supported by the cell phone evidence of the Applicant counting money after the incident, and the recovery of the bag taken during the robbery.

[18.] With respect to the issue of public order, I note that the Applicant has been convicted for a number of offences in the past, including a firearm conviction and four counts of armed robbery. The Armed Robbery convictions are recorded as having occurred in 2020, and the Applicant received a sentence of six years imprisonment. While it is not stated when that sentence began to run, it must be the case that the Applicant had not long been released from prison when he was arrested in 2022 for the current charges on strong evidence. It must therefore be said that, notwithstanding the presumption of innocence, the Applicant clearly has a propensity. With that in mind, I am satisfied that the Applicant poses a danger to public order and safety, and that there is a serious risk of re-offending.

[19.] The tensions inherent in a bail application between the right to liberty and the need to protect the public requires the court to conduct a balancing exercise. In the instant case, while I am satisfied that there is a risk of flight, and that there is a need to protect the public and prevent re-offending, having regard to the nature and circumstances of the offence, and the antecedents of the Applicant, I am concerned in this case that the Applicant has been in custody for approximately thirty months, and, according to the Respondent, will not be tried until June 2026. The Respondent has also indicated that the Applicant has a court date of 30th January 2025.

[20.] At paragraph 17 of the Duran Neely decision cited above, the learned Evans J said the following:

> "It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown."

[21.] In my view, the relevant time periods in the instant case require the court to consider the protection of the rights of the accused as referenced in Duran Neely, and to weigh that factor in conducting the requisite balancing exercise. Having done so, it is my view that this matter is very near the stage where it can be said that the Applicant has been detained for an unreasonable period of time. However, I am extremely concerned that this Applicant, if released on bail, will re-offend. Given the nature of the offences, involving as they do the use of firearms, such re-offending, if it occurs, could have even more dire consequences.

CONCLUSION

[22.] In the circumstances of this case, given the previous convictions of the Applicant, the nature and cogency of the evidence, and the seriousness of the offences, I am not persuaded to exercise my discretion to grant bail at this time. I am satisfied that no conditions could be put in place to ameliorate the risk to public order, and that the further detention of the Applicant is necessary to preserve public order and to prevent re-offending. With respect to the length of time the Applicant has been in custody, while I am satisfied that the need to protect the public still outweighs the Applicant's right to liberty at this time, I urge the Respondent to take steps to expedite the trial of this matter. In the present circumstances however, bail is refused.

Dated this 14th day of January A.D., 2025

Neil Brathwaite
Justice