

**IN THE SUPREME COURT
Criminal Division
2018/CRI/bal/FP/00143**



B E T W E E N

AARON JERMIKO BRAYNEN

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

DECISION

Before: The Honourable Mrs. Justice Petra Hanna-Adderley

Appearances: Mr. K. Brian Hanna for the Applicant
Mrs. Sheanda Cooper-Rolle for the Respondent

- 1) The Applicant is a Bahamian male citizen. He is 18 years old having been born on October 26, 2000. He was 17 at the time of this incident.
- 2) The Applicant is charged with 2 counts of Attempted Armed Robbery and 1 count Causing Harm.
- 3) The Applicant was remanded to the Bahamas Department of Corrections on October 10, 2018.
- 4) The Applicant professes his innocence. That he was catching a ride with the co-accused on the night in question. That while he was at the scene at which a party was taking place he did not commit the alleged offences. One of his co-accused has been admitted to bail.

- 5) The Applicant has never been charged with any offence, that is, he has no previous convictions and has no matters pending.
- 6) Mr. K. Brian Hanna submitted that the Virtual Complainants are employed by the G. B. Shipyard and that it is highly unlikely that they will be in the jurisdiction in 2021 to give evidence in this trial. Mr. Hanna however had no evidence of this.
- 7) The Respondent submits that the Applicant should not be granted bail. The Respondent relies on the Affidavit of Woman Corporal 2700 Miriam McDonald filed herein on November 15, 2018 which states, in part, that the Applicant and others attempted to rob Eduardo Mendosa and Jorge Vivanco and caused harm to Luis Agreda. That the Applicant along with another received injuries. That the Applicant admits to being at the scene at the time but he denies that he was there to rob the occupants. The Applicant has no antecedents. That there has been no unreasonable delay in this matter.
- 8) Mrs. Sharanda Cooper-Rolle Counsel for the Crown submitted that the evidence is strong against the Applicant. There has been no unreasonable delay. The Pre Trial Review is set for June 2020. The Applicant has been served with his VBI. He should be denied bail.
- 9) In his Record of Interview conducted on October 10, 2018 he stated that he was getting a ride to get some clothes and shoes he had left at his Godmother's house. The driver of the car that he was in stopped by a house in Sea Horse Village to get some money that was owed to him. An altercation broke out between the driver and the occupants of the house. He got pulled through the front door. He ended up getting stabbed several times. He did not go there to rob anybody.
- 10) The onus is upon the Crown to satisfy the Court that the applicant ought not be granted bail and that the standard is on a balance of probabilities.
- 11) Articles 19(3) and 20(1) and (2) of the Constitution of the Bahamas guarantee the presumption of innocence and the general right to liberty to the individual.
- 12) Section 4, Part A of the Bail (Amendment) Act 2011:
"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."

- 13) In **Hurnam v the State (2005) UKPC 49** Lord Bingham of Cornhill stated inter alia; **"The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify deriving 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 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".**

14) John JA (as he then was) stated, inter alia, in **Armbrister v The Attorney General** SCCrApp No. 145 of 2011, that: **"indubitably, the right to bail in article 19(3), trumps the sufficiency of any of the prescribed grounds in Part A which might ordinarily negate the grant of bail", and "the strict rules of evidence are inherently inappropriate in deciding the issue whether bail ought to be refused..."**

15) In **Donna Vasyli v The Attorney General**, SCCrimApp & CAIS No. 82 of 2015 the President of the Court Appeal Justice Allen, as she then was, stated in that judgment that bail is an informal application and is not an opportunity for the Court to determine guilt or innocence, further that the Court in exercising its inherent discretion must do so judiciously. Justice Allen further stated that before any determination is made the Judge should look at the charge, the evidence and any reasonable conditions which could be applied. That Justice Conteh in that judgment said that the seriousness of the offence is only a factor and is not determinative of whether bail should be granted and that pre-trial detention should not be treated as the norm and those seeking to deprive liberty should show why pre-trial detention is warranted.

16) Evans, JA states in his Judgment in **Duran Neely** SCCr. App. No. 29 of 2018 that:

"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. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2)(a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be

admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail."

17)The Court has to consider the character and antecedents of an Applicant. The Applicant has none and he has no other matters pending.

18)The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the applicant and the community. The facts and circumstances of each case is different and needs an individual assessment.

19)In considering all the circumstances relevant to this hearing I find that the Respondent has not satisfied me that this applicant ought not to be granted bail pending his trial and in the interest of justice I exercise my discretion and will grant bail for the following reasons:

- (i) Attempted Armed robbery and causing harm are serious offences but are offences for which bail can be granted.
- (ii) From the evidence adduced so far, none of the Witnesses identified the Applicant as one of the robbers. He signed his Record of Interview and it was witnessed by his mother Margo Braynen but he falls just short of implicating himself. The statements of the Witnesses and the Applicant must be vetted at trial not in a bail application.
- (iii) Because of the nature and seriousness of the offences the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to abscond. The Applicant is a Bahamian and has ties to the community. There is no evidence before the Court to suggest that he might abscond. There is no evidence before this Court that he will interfere with the witnesses.
- (iv) There is the issue of unreasonable delay. While there is no evidence

that the Crown dragged its feet in bringing this matter on for trial, the trial is set for less than one month short of 3 years hence.

- (v) There is no evidence before the Court that there is a real likelihood that he will commit an offence if put on bail again.
- (vi) It does not appear that the applicant should be remanded in custody for his own protection.

20) Bail is granted to the Applicant in the sum of \$12,000.00 CASH or real property one, two or three Sureties on the following conditions:

- (i) The Applicant is to be fitted with an ankle monitor.
- (ii) The Applicant is subjected to a curfew from between the hours of 9:00 p.m. and 6:00 a.m.
- (iii) The Applicant is to report to Central Police Station every Friday by 6:00 p.m.
- (iv) The Applicant is not to contact or interfere with any of the Crown's witnesses either by himself or through his agents.

This: 6th day of May, 2018


Petra M. Hanna-Adderley
Justice