

**COMMONWEALTH OF THE BAHAMAS**

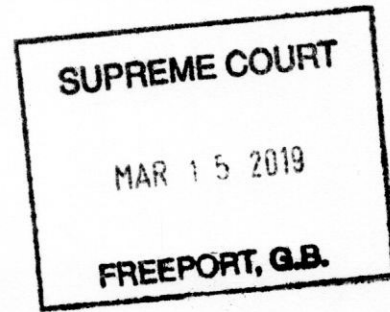
**2017/CRI/bal/FP/00015**

**IN THE SUPREME COURT**

**Criminal Side**

**BETWEEN**

**DAVID FORBES**



**Applicant**

**AND**

**THE ATTORNEY GENERAL**

**Respondent**

**DECISION**

Before: The Honourable Ms. Justice Petra Hanna-Adderley

Appearances: Mr. David Forbes Pro Se  
Mr. Trevor Kemp for the Respondent

- 1) The Applicant is a Bahamian male citizen. He is 27 years old having been born on March 9, 1992.
- 2) The Applicant is charged with Possession of a Firearm with Intent to Endanger Life and Causing Harm. If convicted the Applicant is liable to a term of imprisonment on the firearm charge to 14 years and 2 years on the causing harm charge.
- 3) The Applicant was charged on February 15, 2019 with the said offences and has been incarcerated pending this bail application.
- 4) On February 11, 2017, the Applicant was charged with Rape. On June 22, 2017 the Applicant was released on Bail by this Court in the sum of \$9,900.00 one or two sureties.

- 5) The Crown opposes this bail application on the ground that while on bail the Applicant was charged with an offence which is punishable by a term of imprisonment exceeding one year in violation of Section 4, Part A (f) of the Bail Amendment Act 2011.
- 6) The Applicant has informed the Court that on February 15, 2017 the charge of rape was reduced to indecent assault and he plead guilty to the reduced charge, was sentenced to 18 months and was released from Prison on February 14, 2018. This has been confirmed by the Attorney General's Office.
- 7) 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.
- 8) Section 4, Part A of the Bail (Amendment) Act 2011 provides as follows:

"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."

9) The Court should also consider the character and antecedents of an Applicant. The Applicant has antecedents starting from 2009 but he has no matters pending.

10) 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 are different and need an individual assessment.

11) 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) Possession of a Firearm with Intent to Endanger Life and Causing Harm are serious offences but are charges for which bail can be granted.
- (ii) The Crown has not provided the Court with copies of the Witness Statements in this matter therefore the Court cannot assess the strength of the evidence.
- (iii) Because of the nature and seriousness of the offence the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to abscond. But there is no evidence before the Court that he will abscond nor is there any evidence before the Court that he will interfere with the witnesses.
- (iv) There has been no unreasonable delay.
- (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. Although he has antecedents, he has no charges pending.
- (vi) It does not appear that the applicant should be remanded in custody for his own protection.

12) Bail is granted to the Applicant in the sum of \$7,000.00 one or two sureties on the following conditions:

- (i) The Applicant is to report to Central Police Station every Monday and

Friday by 6:00 p.m.

- (ii) The Applicant is to have no contact whatsoever of any kind with the Virtual Complainants or the other witnesses in these cases until the completion of the trial.

This: 15<sup>th</sup> day of March, 2019

  
**Petra M Hanna-Adderley**  
**Justice**