

COMMONWEALTH OF THE BAHAMAS

2019/CRI/ba/FP/00015

IN THE SUPREME COURT

Criminal Side

BETWEEN

JEZREEL MALONE



Applicant

AND

THE ATTORNEY GENERAL

Respondent

DECISION

Before: The Honourable Ms. Justice Petra Hanna-Adderley

Appearances: Mr. Carlson Shurland for the Applicant
Mr. Trevor Kemp for the Respondent

- 1) The Applicant is a Bahamian female citizen. She is 23 years old having been born on September 13, 1995.
- 2) The Applicant is charged with one count of Arson of a Building.
- 3) The Applicant was arrested on February 27, 2019 and on March 5, 2019 bail was not granted by Deputy Chief Stipendiary and Circuit Magistrate Debbye Ferguson because she lacked the jurisdiction to do so. Her trial is adjourned to May 1, 2019 for the commencement of a Preliminary Inquiry.
- 4) The Applicant asserts her innocence and verily believes that she will be vindicated of the charge laid against her.
- 5) At the time of her arrest she was employed as Call Agent and she verily believes that if released on bail she will still have employment as such.

- 6) In her Affidavit filed in support of this bail application on March 5th, 2019, she stated, inter alia, that she resides at her residence, at Number 82 Carissa Avenue, Grand Bahama. That she is a person of good character; that she is not violent and that she is not a person who will endanger the public's safety if granted bail. That she cooperated with the Police in their investigations. That she is approximately 2 months pregnant and that the conditions at the Bahamas Department of Correctional Services are unhygienic, degrading and inhumane. Her Affidavit thereafter embodies the Submissions as to the law made by Mr. Shurland which I turn to now.
- 7) Mr. Shurland asks the Court to consider the factors set out in Part A of the Bail Amendment Act 2011 which are, whether the Applicant will fail to surrender to custody or appear at his trial; commit an offense while on bail or interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person. That with respect to failing to surrender to custody and appearing at her trial, Mr. Shurland submitted that she is a Bahamian, with substantial ties to The Bahamas. That she has no financial means or desire to abscond. That the Court has the ability to put conditions in place to mitigate any concerns the Court may have that she may abscond.
- 8) Mr. Shurland then refers the Court to the guidelines in the Bail Act, whether the Applicant will commit an offense while on bail and he submitted that there is no evidence presented to the Court to show that she will commit an offence, re-offend, if placed on bail. Another factor is whether the Applicant will interfere with witnesses or otherwise obstruct the course of justice. Mr. Shurland submitted that the majority of witnesses in the case are police officers, therefore it is highly improbable that she would interfere with any of them. Mr. Shurland directed the Court's attention to the fact that the Court must consider the nature and seriousness of the offense, along with the nature and strength of the evidence against the Defendant. And he submitted that if the Court were to rely heavily on the seriousness of the offense, no individual would be granted bail.
- 9) Mr. Shurland submitted that nothing in Mr. Kemp's Affidavit, which I will turn to

shortly, supports the claim that the Applicant will not surrender to custody. She has ties to The Bahamas. She is a Bahamian citizen; she is married; her parents reside in The Bahamas; and she has no antecedents. That there is no relevance to the Crown's claim that she would interfere with the witnesses. That there is no evidence that she might immigrate, and the Court can impose reporting conditions if that is a concern. She is presumed innocent until proven guilty and bail ought not to be used as a form of punishment. You cannot trump the constitutional right, Mr. Shurland argued, to be presumed innocent until proven guilty. He submitted that that is why you are permitted to enter a plea and that is why there is a trial.

10) Mr. Shurland argued that if one can be guaranteed a trial within a reasonable time, for example five months, this Applicant would be in the first trimester of her pregnancy. He pointed out the Crown's Affidavit and the contention there that she is employed and he submitted that this is evidence of a tie to the community. He referred the Court to paragraph 7 of the Affidavit, where the Crown advances an argument that she would abscond, and he submitted that there is no basis for the assertion that she would abscond. He asked the Court to grant bail and stated that what happened was unfortunate for the storeowners. That the Applicant was going through some emotional strain, she snapped for a minute. That she has a history of cutting herself. That she needs help.

11) Mr. Kemp referred the Court to the Affidavit of Sergeant 2169 Prescott Pinder, filed on March 7th, 2019. The Crown opposes this application for bail. Officer Pinder states that the Applicant deliberately set fire to the building in question and he refers the Court to her statement under caution. That the motive was that a female working at the Mall was alleged to have been having an affair with the Applicant's husband, Donte Malone. As pointed out previously by Mr. Shurland, the Affidavit states that the Applicant is employed at Itel BTO Smart Solutions as a Call Worker and has been so employed for five months. That Applicant had the ability and financial means to abscond from the jurisdiction. That her alleged action caused very dire circumstances to the ownership, tenants, and employees of Britannia Mini Mall, therefore the Applicant's personal safety may be at risk if

she is released on bail. That the building consists of 13 establishments that were completely destroyed. That once arrested she was requested to participate in an identification parade and she declined on the advice of her attorney to do so. That the Applicant had to be detained by a shop attendant and various Bahamas Immigration officers as she attempted to flee the scene as she started the fire. Mr. Kemp stated that this is a very difficult situation for all concerned. Mr. Kemp pointed out that the prison is not a hotel; that she will not be comfortable. But he did indicate that he was not aware that she was pregnant.

12) In his response Mr. Shurland responded that "jail will not protect you from someone who wants to get you". He also argued that if persons are threatening the Applicant, they should be charged with threats of harm. He reiterated that Mr. Kemp has brought nothing of relevance to the Court and he asked the Court to give the Applicant bail on reasonable terms.

13) Mr. Kemp then asked the Court, if it was to consider granting bail, to have the Applicant turn her travel documents over to the Court and make it a condition that she receives counseling, conditions which Mr. Shurland raised no objection to.

14) 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 depriving 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".

15) In the Court of Appeal ruling in **Armbrister v The Attorney General** SCCrApp No. 145 of 2011, John JA (as he then was) stated inter alia;

"...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...”

16) I now turn to the ruling in **Donna Vasyli v The Attorney General**. President of the Court Appeal Justice Allen 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.

17) 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.

18) 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.

19) 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."

20) The Court has to consider the character and antecedents of an Applicant. The Applicant has no antecedents and nothing pending.

21) 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.

22) 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) Arson is a serious offence but one for which bail can be granted.
- (ii) There is strong evidence against the Applicant. She on March 27, 2019, confesses to the crime, but on the next day, March 28, 2019, she recanted this confession to an extent; she states that she cannot recall or was not sure of the events of the that day, that she seemed to have been in a daze. But these are statements that must be vetted at trial and not in the bail application.
- (iii) Because of the nature and seriousness of the offence and the cogency of the evidence the Applicant will know that if she is convicted she is likely to receive a long sentence and she may be tempted to abscond. But there is no evidence before the Court that she will abscond nor is there any evidence before the

Court that she 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 she 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.

23) Bail is granted to the Applicant in the sum of \$25,000.00 one or two sureties, Cash or real property on the following conditions:

- (i) The Applicant is to report to Central Police Station every Monday, Wednesday and Friday by 6:00.
- (ii) The Applicant is to submit to an assessment at the Dire Ward of the Rand Memorial Hospital and Counselling at the Department of Social Services.
- (iii) The Applicant shall surrender her travel documents to the Supreme Court for the with.

This: 8th day of March, 2019


Petra M Hanna-Adderley
Justice