

COMMONWEALTH OF THE BAHAMAS

CRI/BAIL/FP/0037/2021

IN THE SUPREME COURT

Criminal Side

BETWEEN

TAMAR FORBES

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Appearances: **Mr. Tamar Forbes Pro Se.**
 Along with Mrs. Forbes-Rolle (Mother)
 Mrs. Erica Kemp on behalf of the DPP

Before: **The Honourable Justice Mr. Andrew Forbes**

Hearing Date: **14th September 2021**

DECISION

1. The Applicant filed a Court Summons on 17th August 2021 in Support of the application for the granting of bail. The Director of Public Prosecutions, the Respondent filed the Affidavit of Police Sergeant 2169 Prescott Pinder on the 6th September, 2021 in Opposition of the Grant of Bail. The Court heard legal arguments and indicated it would provide a written decision and does so now.

2. The Applicant was arraigned on the 25th June, 2020 on the charge of Murder which was alleged to have occurred on the 19th June 2020.
3. The Applicant is an unrepresented Juvenile and made representation on his behalf aided by his mother and assisted where it could by the Court. That he notes he was charged with Murder and that he is innocent of the alleged offense. And that he is prepared to abide by the conditions of the Court.
4. The Respondent's evidence as found in the Affidavit of Police Sergeant 2169 Prescott Pinder where the Applicant, a juvenile is charged with Murder; that the Applicant is charged with a serious offense and that the Applicant was on Probation for an unrelated matter in which he was ordered to be of Good Behavior, attend anger management and be on curfew from 9pm to 6am and in default, the Applicant was to serve twelve (12) months at the Bahamas Department of Corrections. Officer Pinder further avers that the Applicant made an admission to a third party as to his commission of the Murder. Lastly, the Officer states that there has been no unreasonable delay.
5. The Respondent relied upon the Court of Appeal's decision in **Steffon Davis v. Director of Public Prosecution**¹ which involved a case where a defendant was charged with murder and two (2) counts of Attempted Murder and was arraigned before the Supreme Court. He applied for bail and was denied. He then appealed that decision and the Court of Appeal overruled the decision of the Supreme Court and directed that the Defendant be granted bail.
6. One of the arguments offered in the Supreme Court by the Prosecution which found favor was that the defendant was a danger to the public. As a reason for denying bail, the Judge accepted the Prosecution's position and advanced that rationale in making the decision to deny bail. However the Court of Appeal noted at paragraph 27 of its decision that

"One of the reasons the Judge gave for the refusal of bail to the appellant was that it was in the public's interest; and that: "The release of the applicant

¹ SCCApp.108 of 2020

on bail would in my view be detrimental to the protection. And safety of the public which is paramount". The appellant argued that there was nothing before the Judge to even suggest a basis for this conclusion. I agree. The respondent was obligated to provide some evidence to support a finding that the release of the appellant on bail would somehow result in possible breaches of the peace. In the absence of such evidence, the Judge could not properly find that to be the case."²

7. As in the **Davis case** the Respondent has not provided any evidence as to their assertions that the Applicant would be a danger to the public. The Respondent has highlighted the nature of the evidence and by inference it seems to suggest that the Applicant is a danger to the community. The Court notes that there appears to be a consistency in the Respondents submissions that various Applicants are dangerous to the public interest, but provide very little by way of evidence to support the assertions.
8. The Court of Appeal in, **Jevon Seymour v. Director of Public Prosecutions**³ **JA, Isaacs** (writing for a differently constituted Board) cited at paragraph 63 the decision in **Jonathan Armbrister v. The Attorney General**⁴ whereby he stated:

*"17. It must however, be borne in mind that the onus is upon the Crown to satisfy the Court that the person ought not to be granted bail. In acknowledging that the strict rules of evidence are inherently inappropriate in deciding the issue whether bail should be refused, we sound the warning that a naked statement from the Prosecutor that "the witnesses are known to the appellant and so he is likely to interfere with them" without more, is unfair to the accused person and cannot stand alone."*⁵

9. The Applicant was arrested in 2020 and remains in custody. The proposed trial date has not yet been scheduled. The Court notes that the Respondent has not made the argument that the Applicant would fail to attend for his trial and when questioned on this omission, Counsel for the Respondent, Mrs. Erica Kemp acknowledged that they were not making that argument but solely that the Applicant would be "detrimental to the

² supra

³ SCCrApp. No 115 of 2019

⁴ SCCrApp. No. 145 of 2011

⁵ supra

protection and safety of the public which is paramount.”⁶ The Court of Appeal has in multiple cases cited the principles to be applied in bail applications with one of the most recent being, **Dennis Mather v. Director of Public Prosecutions**⁷. In that case, the **President of Court of Appeal, Mr. Justice Barnett** at paragraphs 14 to 19 highlights the principles when considering bail. These principles are:

“Before entering into the grounds of appeal it may be helpful to say a few words about bail in general. Lord Bingham of Cornhill, opened his judgment in Hurnam v The State (Mauritius) [2005] UKPC 49 with the following observation: “1. In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should 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 a whole. 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 his 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. In this appeal the Board considers the principles which should guide the courts of Mauritius in exercising their discretion to grant or withhold bail. He goes on at paragraph 4 to speak about “the tension which may exist between the rights of the individual, viewed in isolation, and the wider interests of the community as a whole”. 8 Allen, P, in Richard Hepburn and the Attorney General SCCr. App. No 276 of 2014, echoed Lord Bingham’s “tension” imagery at paragraph 5. The main consideration for a court in a bail application is whether the applicant would appear for his trial. In Attorney General v. Bradley Ferguson, et al SCCrApp. No.’s 57, 106, 108, 116 of 2008, Osadebay, JA observed as follows: “As stated by Coleridge J in Barronet’s case cited earlier the defendant is not detained in custody because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it proper that he should be tried and because the detention is necessary to ensure his appearance at trial.” In Jonathan Armbrister v The Attorney General SCCrApp. No.145 of 2011, John, JA said as follows: “12. It has been established for centuries in England that

⁶ Affidavit of Officer Anastasia Rolle paragraph 9

⁷ SCCrApp. No. 96 of 2020

the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as punishment. The courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in case of conviction, the accused's record, if any and the likelihood of interference with witnesses." The seriousness of the offence with which the applicant is charged is not of itself a ground for the refusal of bail. It is but a factor to be taken into consideration along with other factors that may arise in a particular application. Hall, J in The Commissioner of Police v Beneby [1995] BHS J. No. 17 stated: "20. ... I am surprised that Mrs. Christie objected to bail before the Magistrate on the basic ground that the offence of which the accused are charged is "serious". That never was and is not now, without more, sufficient reason for the denial of bail notwithstanding the frequency with which prosecutors chant it ritualistically or use it as a pro forma objection to bail. Most offenses before our courts nowadays are serious, and if this were a ground for the refusal of bail, the overwhelming majority of persons before the Court would be remanded in custody until trial." 9 With this starting point in mind we may now turn to consider the appeal."

10. The other issues for consideration is whether these offences are serious and whether there is cogent evidence implicating the respondent. The First Schedule, Part A of the Bail (Amendment) Act, 2011 states:

“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 purposes 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."⁸

The Final consideration to be given is the comments of the Court of Appeal in the Case of **R.B. (a Juvenile) v. The Attorney General**⁹ and the comments of **Madam Justice of Appeal Crane-Scott** at paragraphs 52 & 53 thereof which reads as follows: -

"In my judgement while not expressly mentioned in section 15(1), the general provisions of the Bail Act were clearly intended to operate in addition to or in conjunction with the special bail provisions governing the grant of bail to persons under the age of 18 years contained in the Child Protection Act..... Furthermore, none of the amendments to the Bail Act introduced in 2011 and 2014 respectively is inconsistent with the guiding principle of the paramountcy of the child's welfare contained in section 3(2) of The Child Protection Act which operates when all matters relating to a child are before the courts. Nor, in my view, has the Bail Act (as amended) expressly or impliedly repealed any of the "child-saving" measures contained in sections 111-115 of the Child Protection Act."¹⁰

The Court will exercise its discretion and grant bail to the Applicant in the following terms and conditions:

- (a) Bail will be granted in the Amount of \$20,000.00 with 1 or 2 sureties;

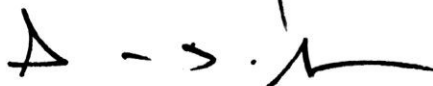
⁸ Bail Act No. 34 of 2011 First Schedule Part A.

⁹ SCCrimApp. No. 205 of 2015

¹⁰ supra

- (b)The Applicant is to be outfitted with an electronic monitoring device and placed on curfew of weekdays (9pm to 6am) and weekends (9pm to 6am);
- (c)The Applicant is required to report to the nearest Police Station to his current address, that being Lucayan Police Station Grand Bahama each Monday, Wednesday & Friday by 7pm at the latest;
- (d)The Applicant must not engage in direct or indirect attempts or contact with any of the Prosecution witnesses;
- (e)The Applicant is to secure his travel documents with the Court;
- (f) The parties are at liberty to reapply.

Given this 12th day of October, 2021

A handwritten signature in black ink, appearing to read 'A. D. Forbes', written over a horizontal line.

Mr. Andrew D. Forbes
Justice of the Supreme Court