

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Criminal Side**  
**2016/CRI/bal/No. 00076**

**BETWEEN**

**RASHILD JOHNSON**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**BEFORE:**                    **The Honourable Madam Justice Camille Darville Gomez**

**APPEARANCES:**        **Mr Nathan Smith for the Applicant**  
                                 **Mr Denard Brown for the Respondent**

**HEARING DATES:**      **9<sup>th</sup> December, 2021**

**RULING**

**Darville Gomez, J**

1. The Applicant applied for bail by Summons and Affidavit filed on 12 November, 2021.
2. The Applicant is charged with the following offences laid out in the Charge Sheet exhibited to his Affidavit. He has not yet been served with the Voluntary Bill of Indictment.

- (i) Armed Robbery alleged to have been committed on 3 April, 2021;
  - (ii) Abetment to Attempted Murder (3 counts) alleged to have been committed on 14 April, 2021;
  - (iii) Abetment to Possession of Firearm with Intent to Endanger Life alleged to have been committed on 14 April, 2021.
3. The Applicant refers to having been arraigned on 19 April, 2020 in the Magistrates Court in relation to the following offences:
  - (i) Armed Robbery;
  - (ii) Abetment to Attempted Murder (2 counts);
  - (iii) Abetment to Possession of Firearm (2 counts)
4. Further, he refers to having a pending charge for Armed Robbery from 2015.
5. The Respondent's Affidavit at "Exhibit DS7" shows the following charges against the Applicant:
  - (i) Armed Robbery alleged to have been committed on 15 December, 2015;
  - (ii) Receiving alleged to have been committed on 15 December, 2015.
6. In relation to these charges, the Applicant is presently on bail for \$15,000 (by virtue of a Bail Bond dated 15<sup>th</sup> March, 2016) which includes twice weekly reporting to the East Street Police Station and no contact or non-interference with any witnesses.
7. The Respondent's Affidavit also exhibited at "DS8" the Voluntary Bill of Indictment evidencing that the Applicant is also charged with the following offences:
  - (i) Attempted Murder alleged to have been committed on 22<sup>nd</sup> August, 2020;
  - (ii) Possession of a Firearm with Intent to Endanger Life alleged to have been committed on 22<sup>nd</sup> August, 2020.

8. In relation to these charges, the Applicant is presently on bail for \$20,000 (by virtue of a Bail Bond dated 7<sup>th</sup> April, 2021) and has thrice weekly reporting to the East Street South Police Station, was fitted with an Electronic Monitoring Device and is not to interfere with prosecution witnesses.

9. The factors to be considered in a bail application are found in section 4(2)(c) of the Act, which reads:

**“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 ;**

**(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.**

10. Section 4 (2B) reads:

**(2B ) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the public or 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.”**

11. Finally, Part A states:

**“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.

(h) in the case of violence allegedly committed upon another by the defendant, the court's paramount consideration is the need to protect the alleged victim."

12. In the instant matter, since the issue of delay is not a factor, I do not consider it in weighing up the factors which are to be considered in determining whether I should exercise my discretion in granting bail.
13. For the purpose of deciding whether to or not to grant bail with an offence mentioned in Part C of the First Schedule (one of which is armed robbery and an offence the Applicant is charged with), the character or antecedents of the person charged, the need to protect the safety of the public or 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. I now address these in turn.
14. The Applicant who is 23 years old, single without children paints himself as a hardworking man eager to support his family and a contributing member of society.
15. However, he did admit to having previous charges for Armed Robbery, Abetment to Attempted Murder and Abetment to Possession of a Firearm with Intent to Endanger Life which charges he denies any involvement in.
16. The Court is always concerned for the safety of the victim or victims of the alleged offence however, there is nothing to suggest in the Respondent's Affidavit that there is any threat or reason to be concerned with this for the purpose of not granting bail. Further, taking into consideration that the Applicant at the date of arrest had previous charges for similar offences and there has not been anything to suggest that the victim or victims in those cases feared for their safety since the Applicant had been on bail.
17. The real concern of the Court in the instant case is the fact that at the date of arrest, the Applicant was on bail for similar serious offences.
18. In the decision of The Bahamas Court of Appeal in **Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016**, the Court stated:

**“1. The appellant was charged in the Supreme Court on 18 July 2016 with two counts of attempted murder, and two counts of possession of a firearm with intent to endanger life allegedly committed on 26 June 2016.**

**2. At the time of his arrest and charge, the appellant was on bail in respect of a pending charge of armed robbery; and as a condition of that bail, he was ordered 3 to wear an electronic monitor. Counsel noted that the appellant has no previous convictions.”**

And then went on to indicate, at paragraph 21:

**“21. Inexorably, attempted murder is considered a serious offence. The penalty for attempted murder is the same as for murder, except for the death penalty. In addition to the presence of that factor weighing against the grant of bail in this case, there is the other factor that the appellant was on bail when charged with an offence similar to that in respect of which he was already released on bail. The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice.**

**22. Notwithstanding however, the presence of the aforementioned factors in this case, the nature of the evidence against the appellant is of utmost relevance, as it is in all cases, for it underpins the reasonableness of the suspicion of the commission of the offences by the appellant, and consequently, the basis for arrest and deprivation of his liberty in relation thereto.”**

And finally, at paragraph 34:

**“...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.”**

19. In considering the relevant factors, I am aware that the Court of Appeal has also stated in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**, that:

**66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may”; or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.**

**68. If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy’s affidavit should have included the necessary evidence of his propensity for violence for the judge’s consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again, evidence for instance, of any known or suspected gang affiliation. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of his good character, strong family and community ties and the fact that he had a long and unblemished record of service within the BDF.”**

[Emphasis added]

20. The Applicant has previous charges for serious offences similar to those he stands charged with now, that is, Armed Robbery (2015) Attempted Murder (2020) and Possession of a Firearm with Intent to Endanger Life (2020).

21. The allegations in these matters are of particular concern because the Applicant in the instant case is charged with Cody Newton and in relation to the earlier charge of Armed Robbery (2015) is also charged with Cody Newton.

22. The Respondent's Affidavit provides some information about the strength of the evidence and in particular the fact that the Applicant and his co-Accused were known by face and name to both of the complainants.

23. I set out in part the Respondent's Affidavit in support of its objection to the grant of bail to the Applicant:

*(3) There is cogent evidence to support the charges against the Applicant. One of the complainants in the said matter states in his statement that on 14<sup>th</sup> April, 2021 while in the area of Pinecrest Avenue and Thatch Palm Avenue with his friend Texas Thompson, a blue Nissan Bluebird pulled in front of him where two males exited the vehicle both of whom he knows as Cody and "Shield" (the Applicant). He stated that at this time Cody produced a Black Handgun and pointed it at him where he became in fear for his life, at this time the Applicant then rushed him where he robbed him of his iPhone XR cell phone. He then saw as Cody gave chase to Texas who fled in fear for his life and shortly thereafter vehicle never left the car.*

*(4) The complainant (Knowles) on Friday, 16<sup>th</sup> April, 2021 was shown a 12 man image lineup in which he identified the Applicant in position #12 as one of the males responsible for the incident on Wednesday, 14<sup>th</sup> April, 2021.*

*(5) The evidence is also bolstered by the statements of the second complainant Mr. Texas Thompson who stated that on Wednesday, 14<sup>th</sup> April, 2021 while in the area of Pinecrest Avenue and Thatch Palm Avenue along with his friend Lamonte Knowles, a blue Nissan Bluebird pulled in front of him where three males known to him as Cody whom was in the rear passenger seat, the Applicant was in the front passenger seat and the driver a Mr Phunarge Wright was inside. He stated that suddenly the rear door opened where Cody produced a firearm and exited the vehicle and the Applicant exited the vehicle where he approached Lamonte Knowles and that in fear for his life he ran off to escape these males and subsequently heard a number of shots being discharged. He stated that he then hid himself in nearby bushes until the males left. That on his return to the yard where the incident occurred, Lamonte Knowles informed him that he was robbed of his iPhone XR cell phone by the Applicant.*



*(6) The complainant (Thompson) on Saturday, 17<sup>th</sup> April, 2021 was shown a 12 man image lineup in which he identified the Applicant in position #7 as one of the males responsible for the incident on Wednesday, 14<sup>th</sup> April, 2021.*

24. As required of the Court, the statutory considerations must be contemplated in conjunction with the facts of the Bail Application and these must be balanced with the Applicant's constitutional rights of liberty and the presumption of innocence.

25. Notwithstanding that, the Court is vested with the power to detain an accused in custody unless it is satisfied that the detention would not be justified. This involves the Court carrying out a balancing act in order to determine whether the factors weigh in favor of an accused being admitted to or denied bail.

26. If the Court were minded to grant the Applicant bail in relation to these offences it would amount to the grant of bail for the third time for similar serious offences.

27. There is not in my view any condition that could be imposed which would prevent what I view as a real threat or apprehension that the Applicant would commit further offences. This suggests that the Applicant would in fact be a danger to the safety of the public if he is admitted to bail.

28. Certainly, the fact that he is on bail for similar serious offences which includes reporting conditions, electronic monitoring device and two sureties, demonstrates that the issue is not whether he will surrender to custody or appear at his trial.

29. As stated by the Court of Appeal, again in McDonald (ibid):

**“38. The further question for the learned judge was whether there are conditions which can be imposed which would reasonably ensure the appellant's presence at his trial; the safety and protection of the public; and the safety of victims. Suffice it to say that the appellant was already on bail for another offence, he was required to have two sureties; to report to the**

Elizabeth Estates Police Station every Monday, Wednesday and Saturday before 6 pm; and was fitted with an electronic bracelet monitoring his whereabouts. The only other conditions which could reasonably be considered are a curfew, and the surrender of his passport.

39. Given these circumstances, namely the conditions to which he is already subject, and the fact that he was charged with these offences while on bail for another offence, I fail to see how the imposition of a curfew and surrender of his passport could reasonably ensure his appearance at trial; the safety, and the protection of the public, and that of the complainants.”

30. For the reasons given, this court does not accede to the Applicant's application for bail at this time.

31. His application for bail is therefore refused.

Dated this 27<sup>th</sup> day of January, 2022.



Camille Darville Gomez

Justice