

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**2009/CRI/bal/No.00101**

**BETWEEN:**

**GREGORY LEON ROLLE**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**Appearances: Mr. Bjorn Ferguson and Ms. Shannon Fernander for the Applicant**

**Mr. Patrick Sweeting for the Respondent**

**Hearing Date: 17<sup>th</sup> February, 2022**

**BAIL DECISION**

**Darville Gomez, J**

**FACTUAL BACKGROUND**

1. The Applicant applied for the grant of bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit both filed on the 4<sup>th</sup> February, 2022.

2. The Respondents filed an Affidavit in Response on the 17<sup>th</sup> February, 2022.
3. The Applicant, Gregory Leon Rolle Jr. is charged with Armed Robbery contrary to Section 339(2) of the Penal Code Chapter 84. It is alleged that 'on Saturday 3<sup>rd</sup> January, 2022 while at New Providence being armed with an offensive instrument to wit: a hand gun, did rob Densel Bullard of One Hundred and Forty Dollars (\$140.00) cash and a Samsung Galaxy Note 10 valued at One Thousand Two Hundred (\$1,200.00) cash the property of Densel Bullard.'
4. The Applicant has not yet been served with the Voluntary Bill of Indictment.
5. The Applicant, is a 35 year old male. He stated in his Affidavit that he is freelance landscaper, and is the father of a 9 year old minor female child who is depending on him for financial and emotional support.
6. The Applicant provided that he was arrested by officers of the Royal Bahamas Police Force on the 26<sup>th</sup> January, 2022 and arraigned before Magistrate's Court No. 5 on the 1<sup>st</sup> February, 2022.

#### **APPLICANT'S CASE**

7. The Applicant in his Affidavit, at paragraph 13 indicated that he has no pending matters before the courts nor any previous antecedents and he is of good character.
8. The Applicant submitted that he is innocent of the charges put before him and is confident that he will be exonerated of the charge. He further submitted that he is not a flight risk, poses no risk to the safety or security of the public, and if granted bail he will abide and comply with all conditions and stipulations imposed, and will not interfere with any of the witnesses named on the Charge Sheet exhibited as "GLR2".
9. Counsel for the Applicant made submissions before the Court and assisted with supporting authorities. He submitted that the test for bail is whether the Defendant/Applicant will appear for his trial which was pronounced in **Hurnam v The State Privy Council Appeal No. 53 of 2004**. He also pointed out the Bahamian case of **Jonathan Armbrister v The Attorney General SCCrApp. No. 45 of 2011** which also discussed the probability of a Defendant appearing for trial.
10. Counsel for the Applicant averred that the Applicant has an Alibi defence.

11. The Respondent's Affidavit exhibited an Antecedent Form showing previous convictions and pending criminal charges against the Applicant. In response his Counsel pointed out that the conviction for dangerous drugs which occurred over sixteen years ago was spent (it was committed in 2005).
12. The Applicant had previous convictions for: (i) assault with a deadly weapon which occurred in 2018 and (ii) assault with a dangerous instrument which occurred in 2021. In the former case, the Applicant was fined \$500 or nine (9) months in prison and an order to compensate the virtual complainant in the sum of \$750 or three (3) months imprisonment. In the latter case, the Applicant was fined \$200 or one (1) month imprisonment and was ordered to enter a bond to keep the peace for one (1) year.
13. The Antecedent's Form also referred to the following pending offences which the Applicant had been charged:
  - (i) Armed Robbery - 17<sup>th</sup> July, 2008
  - (ii) Armed Robbery – 10<sup>th</sup> June, 2011
  - (iii) Assault – 29<sup>th</sup> September, 2021
14. Counsel for the Applicant pointed out that the Applicant had not been served with any VBI or documentation to appear before the Court on the listed pending matters and further, that given the date of those alleged offences (in particular the ones dating back to 2008 and 2011) that the Applicant's right was being infringed as had not been heard on the alleged charges within a reasonable time. He indicated that the Applicant could apply for a stay of those offences and cited the Bahamian case of ***Genear McKenzie and Director of Public Prosecutions SCCrRApp No. 124 of 2020.***

#### **RESPONDENT'S REPLY/CASE**

15. The Respondent in their Affidavit opposed the application for bail for such reasons I will now summarize.
16. The Respondent contends that there is cogent evidence linking the Applicant to the offence as the cellphone was tracked to his place of residence. The Respondent then directed the Court to Exhibit "D.T.1" of their Affidavit in Response which is the Report of D/C 4022 Farrington dated 27<sup>th</sup> January, 2022.
17. The Respondent also provided the Court with the Report of Detective Sergeant 3134 Leslie Whyte dated 26<sup>th</sup> January, 2022 where an identification parade was conducted and the Applicant was picked out by the complainant in this matter.

18. Additionally, the Respondent in support of their objection to bail exhibited the Applicant's Criminal Records Antecedent Form which showed the history of offences committed and alleged to have been committed by the Applicant. This was to demonstrate that the Applicant was not of good character which directly rebutted the Applicant's assertion that he was.
19. Counsel for the Respondent submitted that the offences which the Applicant had convictions for and in particular the assault with a deadly weapon and dangerous instrument were kindred offences to the instant offence of armed robbery and emphasized that the antecedent form is a good enough reason why bail ought to be denied. Additionally, that it was in the best interest of the public that the application for bail be denied.
20. Counsel for the Respondent responded that the alibi issue raised by Counsel for the Applicant is an issue to be dealt with at the trial and not during the bail application.

### **ISSUE**

21. The issue to be determined by this Court is whether the Applicant, Gregory Leon Rolle Jr. should be granted bail.

### **LAW**

22. Article 20(1) of the Constitution provides that:  
*"If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."*
23. And at 20 (2)(a) that:  
*"Every person who is charged with a criminal offence — (a) shall be presumed to be innocent until he is proved or has pleaded guilty;..."*
24. The abovementioned Article confer to the liberty of persons based on the presumption of innocence. This follows ones right to apply for bail regardless of a pending matter(s) before the Court.
25. According to the Bail Act, 1994 ( Amendment 37 of 2011), Section 4(2) reads:  
*"Notwithstanding any other provisions 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;*
- (b) *Is unlikely to be tried within a reasonable time; or*
- (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."*

*(2A) For the purposes of subsection 2 (a) and (b) –*

- (a) *Without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;*
- (b) *Delay which is occasioned by the act or the conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.*

*(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.*

*(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal.*

*(3A) Notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule."*

26. The Amendments to the First Schedule found at Part A outlines some factors that the Court must take into consideration when determining whether to grant bail to an Applicant/Defendant. Part A reads 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;*  
*(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."*

## **ANALYSIS**

27. The law provides that a Defendant must be tried within a reasonable time. To clear any ambiguity as to what is a reasonable time, legislation was amended deeming the period of 3 years as reasonable. However, that is not an issue or deciding factor in the instant case as the Applicant seeks bail on the Armed Robbery charge dated the 1<sup>st</sup> February, 2022.
28. It is important to point out that the onus is on the Crown to satisfy the Court that the Applicant should not be granted bail. This can be done so by the production of evidence or grounds linked to the deciding factors outlined above at paragraph 24 of this decision.
29. In the case of ***Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019*** at paragraph 65 Honourable Madam Justice of Appeal Crane- Scott in delivering the judgment stated that:
- “...it is obvious from the above paragraph that the evidence which the Crown placed before the learned judge in an effort to discharge its burden of satisfying the court that the appellant should not be granted bail was woefully deficient. Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the

applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown’s burden is only discharged by the production of such evidence.”

30. Additionally, the court at paragraph 62 highlighted that

*“Paragraph (a) of Part A of the First Schedule to the Bail Act expressly mandates a judge who is hearing a bail application to take into account whether there is evidence in the form of “substantial grounds” from which a belief can be formed (or inferred) that the applicant was, inter alia, a flight risk; a threat to public safety or public order; would interfere with witnesses or otherwise pervert the cause of justice.”*

31. The Court in ***Seymour v. DPP*** at paragraph 63 also cited the case of ***Jonathan Armbrister v. The Attorney General, SCCrApp No. 145 of 2011*** and noted:

*“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.”*  
[Emphasis mine]

32. It is also important to mention that an Applicant’s character and antecedents are primary considerations for the Court in determining the grant or refusal of bail. In the case of ***Stephen Godfrey Davis and The Director of Public Prosecutions SCCrApp. No. 108 of 2020***, in delivering the judgment of the Court, Jon Isaacs JA at paragraph 28 said:

*“The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail.”*

33. The Applicant does have previous convictions and pending charges as was gleaned from the antecedent form exhibited to the Affidavit in Response. Some of the offences listed were spent and range from June 2005 to February 2021. However, I noted that the punishment for the convictions in 2018 and 2021 were fines or, alternatively, relatively short prison sentences of less than one (1) year.

34. Additionally, to date the Applicant has not been served with a VBI for any of the remaining charges referred to in paragraph 13. In this regard, it would be unfair to take those pending charges into consideration as evidence that the applicant will re-offend although the two Armed Robbery charges are similar to the charge which the Applicant now seeks bail.

35. In the case of **Cordero McDonald v The Attorney General SCCrApp No 195 of 2016** Allen P at paragraph 34 noted that:

*“ It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 such as to justify the deprivation of 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.”*

36. Based on the evidence proffered by the Respondents I do not find that there is sufficient grounds to refuse bail. They have not proven that: (i) the Applicant/Defendant will not appear for trial if granted bail, (ii) that he will reoffend, or (iii) interfere with witnesses or (iv) obstruct the course of justice.

37. The nature and seriousness of the offence is an important consideration to take into account when making a decision whether or not to grant bail to an Applicant. John JA, in delivering the Court of Appeal judgment in the case of **Jonathan Armbrister v The Attorney General SCCrApp. No. 45 of 2011** noted:

*“The seriousness of the offence with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail.”*

38. While Armed Robbery is a violent offence, this Court must also take into consideration its weight and the fact that the offence is bailable. I do not find that it is so serious to warrant continued detention.

39. In the Court of Appeal case of **Richard Hepburn and the Attorney General SCCr.App. No.276 of 2014** Dame Allen at paragraph 5 of the judgment stated that:

*“Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the*



*tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crimes; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.”*

40. In weighing the two important competing interests, I do not find that the evidence produced suggests that the Applicant will re-offend or be a danger to society. In that regard, I am of the view that the offence is not one whereby the Applicant's freedom should be interfered with until the outcome of this matter.
41. I am of the view that the Applicant should be granted bail however strict terms and conditions must be imposed.
42. That bail is granted to the Applicant in the amount of \$30,000.00 with two or three suretors on the following conditions:
1. The Applicant is to be fitted with an Electronic Monitoring Device and must comply with the regulations for the use of such a device;
  2. The Applicant is required to sign in at the Quackoo Street Police Station on Mondays, Wednesdays, and Fridays before 6:30p.m;
  3. The Applicant is not to communicate or interfere with any of the Prosecution witnesses in this matter whether by himself or through an agent; and
  4. The Applicant must surrender his passport or travel documents (if he has any).

**Dated this 7<sup>th</sup> day of March, A. D., 2022**



**Camille Darville Gomez**  
**Justice**