

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2021/CRI/bal/No.00180

BETWEEN:

SHAMAR ROLLE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

**Appearances: Mr. Ian Jupp for the Applicant
Mr. Basil Cumberbatch and Ms. Royann Forbes for the
the Respondent**

Hearing Date: 13th July, 2022

BAIL DECISION

Darville Gomez, J.

FACTUAL BACKGROUND

1. The Applicant, 18 year old Shamar Rolle is charged with the offence of Murder contrary to Section 291 (1) B of the Penal Code Chapter 84. The particulars are: 'That you on Thursday 14th January, 2022, while at New Providence, did intentionally and unlawfully cause the death of Rico Melidor. The Applicant was remanded to the Bahamas Department of Correctional Services ('BDOCS') on

the 7th March, 2022 and arraigned before Senior Justice Turner on the 6th May, 2022 for the charge laid before this Court.

2. On the 10th May, 2022, the Applicant applied for Bail pursuant to section 4 of the Bail Act by way of Summons and supporting Affidavit, followed by a Supplemental Affidavit filed on the 29th June, 2022, and a Second Supplemental Affidavit filed on the 12th July, 2022. The Respondents filed an Affidavit in Response to Bail on the 23rd May, 2022 outlining various reasons why the Applicant should not be granted bail.
3. The Applicant have not yet been served with the Voluntary Bill of Indictments for the above mentioned offence.

THE APPLICANT'S CASE

4. The Applicant swore in his Affidavit that he is innocent of the charge of Murder against him and intends to vigorously defend his innocence at the Trial He admitted to having a conviction reference to a fighting incident which occurred sometime in 2021, and was ordered to do community service and attend anger management classes. . In support of his application for bail, Shamar Rolle added that he has a child on the way whom will be dependent on him for financial assistance, his financial obligation to his family and that he provides assistance to those within the community.
5. Counsel for the Applicant submitted that the Applicant is presumed innocent unless and until he is proven guilty by a Court of law. In support of Counsel's argument that the Applicant is a fit and proper person to be granted, he added that there is no evidence before the Court that the Applicant will tamper with or remove an electronic monitoring device or that he will abscond should be granted bail. He pointed out that the Applicant will appear because he is about to become a father in a few months and will have to provide for his child. In relation to the Warrant of Arrest, Defence Counsel asked the court not to consider the Crown's submission and submitted that the Applicant was a minor at the time and that the outstanding warrant is an administrative issue.
6. To rebut the Crown's claim that there is cogent evidence because an Anonymous witness saw the Applicant's face, Counsel for the Applicant submitted that there are no street lights on Pratt Alley off Rupert Dean Lane therefore, the Anonymous Witness statement that the area was lit is flawed. Defence Counsel also reminded the Court that stringent conditions can be imposed to secure the Applicant's attendance at Trial.

THE CROWN' S CASE

7. The Crown relied on its Affidavit in Response to Bail to support its objection to the grant of bail. Crown Counsel submitted that there is cogent evidence in this matter for the reason that an Anonymous witness identified the Applicant as the person he or she saw running towards the deceased Rico Melidor with a firearm. Additionally, to support their argument that the Applicant may abscond if granted bail, Crown Counsel submitted that on 28th September, 2021, S & C Magistrate McKinney issued a Warrant of Arrest against the Defendant for his absence from court relative to an Assault matter. Counsel elaborated on this point and submitted that there is no certainty that the Applicant will appear for Trial for the present matter; particularly as it is a more serious offence. Furthermore, Counsel submitted that it cannot be said that the Applicant will not tamper with, or remove the electronic monitoring device in an attempt to abscond and evade Trial. Mention was also made of the Applicant being on bail for charges of Possession of Unlicensed Firearm with the Intent to Endanger Life and that his continued detainment would be best for his own safety.
8. In response to Counsel for the Applicant's submission, Crown Counsel submitted that issues relative to the evidence in a matter are not to be considered during a bail application unless there are special circumstances which permits a Court to do so. Moreover, that the Applicant is not a fit and proper candidate for bail and the Court should exercise its discretion to deny bail.

THE ISSUE

9. The issue at hand is whether the Applicant, Shamar Rolle should be granted or refused bail.

THE LAW

10. 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."

11. 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;..."

12. 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.”

13. 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 and CONCLUSION

14. Neither Counsel directed the Court to any case law in support of their arguments for the grant or refusal of bail to the Applicant, Shamar Grant. However, I will refer to the case law I find necessary to the consideration of my decision which I will now give.
15. In objection to the grant of bail, the Crown carries the burden of satisfying the Court that the Applicant is not a fit and proper candidate to be granted bail. This position was affirmed in the First Schedule in the Bail Act as well as by the Honourable Madam Justice of Appeal Crane- Scott in ***Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019***, where she stated at paragraph 65 that:

"...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."

16. Also, 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]

17. Additionally, Paragraph 62 of the case of *Jevon Seymour v DPP* is also instructive as it relates to "substantial grounds". The court highlighted:

"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."

18. Based on the authorities noted within paragraphs 15 – 17, the Crown must provide the Court with substantial grounds for objecting to an Applicant being granted bail. The Courts have made mention of the Crown's common reasons for the objection to bail which they often reiterate from the First Schedule, Part A of the Bail Act. However, in some instances they provide no basis for their objections. In ***Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019***, Evans JA at paragraph 26 of the judgment expressed that:

" In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence."

19. Although the Board in ***Hurman v The State (Privy Council Appeal No. 53 of 2004)*** noted that there is an incentive for a Defendant to abscond or interfere

with witnesses when charged with serious offences, it is still necessary for the Crown to provide supportive evidence that the Applicant/ Defendant will commit such acts if granted bail. For example, if it is the Crown's submission that the Applicant will interfere with witnesses, provide evidence of the Applicant's attempt or will to do so and if there is reason to believe an Applicant will abscond, show the Court evidence of an attempt to do so. I concur with the judgments of my brother Evans JA and sister Crane- Scott JA that bare assertions and naked statements by the Crown in a request to deny bail will not suffice.

20. While this Court understands that the offence of Murder which the Applicant is charged before this Court is very serious in nature, the offence is still bailable. Therefore, its seriousness alone does not determine whether or not the Applicant should be granted bail. On this point, it is necessary to also reiterate the importance of Article 20 (2) (a) of the Constitution which provides 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;..."

The Article pronounces the liberty of persons based on the presumption of innocence. Therefore, the Applicant has a right to apply for bail because of the presumption of innocence.

21. As noted earlier, the Applicant admitted to a conviction relative to Part C of the First Schedule in the Bail Act which lists the primary considerations a Court must take into account when determining whether an Applicant should be granted bail. Among them are character and antecedents. Besides the conviction for assault which was as a result of fighting when the Defendant was a minor, in 2021, there are no antecedents before this Court with reference to the Applicant. In relation to that offence, the Applicant was ordered to do community services and anger management. Such consideration could weigh heavily on the applicant as it may likely indicate that he has a tendency of reoffending. However, that is not the present case at hand.

22. As it relates to the evidence brought up during the bail application, I accede to the submission of the Crown Counsel and find that I should not delve into the evidence of this case as a determining factor for the grant or refusal of bail. There are some cases which requires the Court to look to some of the evidence of a case but I do not find that necessary this instant application. I need only to focus on the relevant determining factors provided for within the Bail Act.

23. In my opinion, the Crown have failed to provide this Court with sufficient reasons and evidence to support their argument that the Applicant ought not to be granted bail. As I noted earlier, the mere assertions are not suffice for this Court

to deny the Applicant bail. I adopted the decision and principles in the case of in **Randy R. Williams and Director of Public Prosecutions SCCrApp. No. 25 of 2022**. Sir Michael Barnett, P at pronounced at paragraphs 11, 12, and 19 pronounced the following judgment:

“ 11. In my judgment a judge in denying bail must have “substantial” grounds for believing the an applicant for bail “would” not “might” or “may” abscond, interfere with witnesses or commit a crime whilst on bail.

12. There is always a possibility that an applicant for bail may abscond, interfere with witnesses or commit a crime. However, if that possibility, nay probability, was not based on evidence then it would be difficult to see how any person charged with an offence would be granted bail.

19. In my judgment, it cannot be a proper exercise of judicial discretion to deprive a person of his liberty on a speculative belief that a person may interfere with witnesses or commit a crime whilst on bail. This is particularly so where an accused has no antecedents.”

24. However, I am reminded that the nature and seriousness of the offence of Murder will always be an important consideration to take into account when deciding whether to grant or refuse bail to an Applicant. This was affirmed by the Court of Appeal in **Jonathan Armbrister v The Attorney General SCCrApp. No. 45 of 2011** where John JA expressed that:

“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.”

25. Having considered all the necessary considerations as well as the seriousness of the offences, I exercise my discretion in accordance with the Bail Act and grant bail to the Applicant in the amount of Twenty Five Thousand (\$25,000.00) with 3 sureties and stringent terms and conditions as follows:

- I. The Applicant is to be fitted with an Electronic Monitoring Device and must comply with the regulations for the use of such a device;
- II. The Applicant is required to sign in at the Grove Police Station on Mondays, Wednesdays, and Fridays before 6:00p.m until the completion of the trial;

- III. the appellant is to remain at his home John Close, off Hospital Lane between the hours of 9:00pm and 6:00am;
- IV. 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
- V. The Applicant must surrender his passport or travel documents.

Dated this 20th day of July, A. D., 2022



**Camille Darville Gomez
Justice**