COMMONWEALTH OF THE BAHAMAS

CRI/BAIL/FP/00116/2018

IN THE SUPREME COURT

Criminal Side

BETWEEN

JAYCEE JEFFREY SIMMONS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Honorable Mr. Justice Andrew Forbes
Appearances:	Attorney Mrs. Ashley Carroll c/o Director of Public Prosecutions
	Attorney Mr. Demeko Rolle c/o Jaycee Jeffery Simmons
Hearing Date:	4th October 2022

RULING

Forbes. J.

1. The Applicant has filed an application seeking consideration of the court as to the question of bail and in support of this application filed an Affidavit on the 6th May 2022.

   The Applicant avers that he is a citizen of the Commonwealth of the Bahamas; that he resides in Pinedale Eight Mile Rock, Grand Bahama;

   That he was born on 22nd February 1998, and that he is employed at FPS Construction.

   He further avers that he has been charged with one (1) count of Murder and two (2) counts of Attempted Murder;

   That he is innocent of the charges and is of the belief that he is being set up.

   He states that he has no previous convictions however, the Court will speak to this averment momentarily.

   He also states that he is expecting the birth of a child in May 2022.

2. The Respondent filed an affidavit in response dated 19th August 2022, and sworn by Sergeant 2169 Prescott Pinder, who avers that he is the Liaison

Officer of the Director of Public Prosecutions and that he seeks to rely also on the Affidavit of ASP Nicolas Johnson, which was exhibited.

He avers that the Applicant was charged on the 8th December, 2021 for one (1) count of Murder and two (2) counts of Attempted Murder, which stemmed from a shooting that happened at Platinum Lounge, Eight Mile Rock on 26th October 2021 and refers to the Voluntary Bill of Indictment exhibited.

He avers that the evidence against the applicant is cogent, as the applicant was identified by Curtis Missick as the shooter and the statement of Curtis Missick is exhibited.

Officer Pinder further avers that the applicant was seen by his female friend, Denae Munroe leaving his home moments before the shooting occurred, wearing the same clothing the shooter is described as wearing.

That Ms. Munroe also spoke to how enraged the applicant was when he left Platinum Lounge a few minutes before the shooting occurred. The statement of Ms. Munroe is likewise exhibited.

Officer Pinder also noted that the applicant has previous convictions for Causing Harm and exhibited the antecedents of the Applicant.

Officer Pinder avers that the Applicant is not a fit and proper person for bail.

3. The Applicant's Counsel has argued that notwithstanding the allegations, the Applicant has denied the allegations and maintains his innocence.

In support, Counsel for the Applicant cites the Court of Appeal's decision of ***Johnathan Armbrister v. The Attorney General SCCrApp. No. 145 of 2011*** and referred the Court to paragraph 12 thereof.

Counsel for the Applicant suggested that the statements contained in the Respondent's affidavit are matters which have been untested and are issues left to the Jury.

It was suggested that the eye witness may have cause to invent these events, and should the matter proceed to trial, these are questions for the Jury to wrestle with.

The Court notes that neither the Applicant's Counsel nor Counsel for the Respondent saw it as prudent to provide the Court with written submissions, but rather spoke extemporaneously at the hearing.

It is always advisable for Counsel to provide written submissions and authorities so that there can be no mistake as to the principles Counsel are seeking to rely upon.

The crux of the Respondent's submissions is that, the Applicant is a person of bad character because of previous convictions and possible involvement with gangs and that the offence is of such a heinous nature, that it's an affront to public safety.

In this regard, the Respondent sought to rely on ***Stephon Davis and the Director of Public Prosecution SCCrApp No. 108 of 2020,*** where Davis was charged with one (1) count of Murder and two (2) counts of Attempted Murder.

He appeared before a Judge of the Supreme Court and was denied bail on the basis that Davis was a threat to public safety as one of the grounds.

On Appeal, the Court of Appel addressed each of these arguments. At paragraph 9, the Court said as follows:

> ***"9. On my reading of the appellant's case, it does not appear that he was applying for bail on the basis of undue delay in bringing his case on for trial.***
>
> ***On a reading of the Judge's 6 assessment of the respondent's case, the only real reason for their objection to bail being granted to the appellant, was the cogency of the evidence."***

4. The Court of Appeal in ***Davis*** cited ***Vasyli v. The Attorney General (2015) 1 BHS.J. No 86,*** where Allen P said: -

"12. On a true construction of section 4 (2) and paragraph (a) (i) of Part A of the Bail Act, and notwithstanding the 2014 Amendment, I am still of the view that bail may only be denied if the State is able to demonstrate that there are substantial grounds for believing that the applicant would not surrender to custody or appear for trial. In assessing whether there are substantial grounds for such belief, the court shall also have regard to the nature and seriousness of the offence and the nature and strength of the evidence against an applicant as prescribed in paragraph (g) of Part A." [Emphasis added]

5. Taking the Respondent's case at its highest, the Respondent has not provided any evidence to this Court that the Applicant will not attend for his trial.

   Furthermore the evidence provided is scant and underwhelming and truly did not assist this Court in arriving at the decision it was tasked with.

6. There have been multiple decisions by the Court of Appeal which have established what criteria a Court ought to consider, when the issue of bail is being reviewed.

   In the Court of Appeal's decision of ***Dennis Mather and the Director of Public Prosecution SCCrApp 96 of 2020,*** the Court of Appeal at paragraph 16 cited a number of cases as the starting point.

   "16. 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."*

17. *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 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 Law

7. The Applicant faces charges involving one count of Murder and two counts of Attempted Murder. These latter two counts appear to have been omitted from the Affidavit of Officer Pinder. These are offences that have been included in Part C of the First Schedule of the Bail Act Par C States inter alia as follows:

> ***"PART C (Section 4(3) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to***

Armed Robbery — sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84."

8. Section 4(2) and (3) of Bail (Amendment) Act, 2011 permits the grant bail to those charged with a Part C offence. Sections 4(2) and (3) state:-

"(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;

(b) is unlikely to be tried within a reasonable ti1nc; 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 purpose 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 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."

9. In considering whether to grant bail to a defendant who has been charged with a Part C offence, the court shall have regard to the following factors (as found in Section 4 of the Bail (Amendment) Act 2011)—

> ***(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.";

10. In light of the above, the Court must now consider the rational for the denial or grant of bail to the Applicant and also consider whether there is evidence that the Applicant will refuse or fail to surrender for trial.

Counsel for the Respondent has submitted that the Applicant's antecedents shows that he is potentially involved with gangs and that the evidence adduced is cogent and powerful and should be grounds to deny the Applicant bail.

11. The Respondent however offers no evidence to suggest that he would not in fact appear for trial and the Affidavit in support of their submission to deny bail is totally devoid of any suggestion that the Applicant might not surrender for trial.

The Respondent however focused on the Applicant's antecedents, which appear to simple drug offences and Causing Harm offences in 2016 and 2017, although the antecedent report does not indicate whether the Causing Harm Offences were related to either section 135 of the Penal Code or Section 266 of the Penal Code.

The only antecedent which might give the Court pause is the conviction in 2017 for Causing Harm as the Applicant was sentenced to four months at BDOCS.

However, the Respondent did not establish which provision of the Penal Code was violated leading to his charge and subsequent conviction. Clearly the drug offences are nonviolent.

The Court would nonetheless again note that no evidence was offered as to what section of the Penal Code the Applicant was charged for the offences related to Causing Harm and the Court at this point cannot offer any comments.

Justice of Appeal Isaacs in **Stephon Davis v. Director of Public Prosecutions SCCrApp. No. 108 of 2020** said the following: -

> ***"28. 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. Although a court is obliged to have regard to the antecedents of an applicant for bail, little weight should be given to offences that are as trivial as vagrancy. That offence is committed merely by being found to have contravened section 3 of the Vagrancy Act. It is essentially a victimless crime and may be committed by persons who are merely in a penurious state."***

This Court would likewise contend that simple possession of drug offences albeit serious, given both the local direction and international considerations that drugs use is more a disease of an addiction and should be decriminalized.

The Court has to give consideration to the allegation that the Applicant has some gang affiliation as exhibited to the Affidavit of Officer Pinder.

In the exhibited Affidavit of ASP Johnson, he avers at paragraph 3, that in September 2021, the Applicant was the alleged shooter of a Nike gang member Drexton Belony.

The Court would note that Mr. Belony himself was shot and killed by Officers in December 2021.

At paragraph 7, Officer Pinder avers that the alleged victim in the Applicant's current charges himself has gang affiliations and may have been targeted by the Applicant.

The Court also notes in the exhibits found in the Affidavit of Officer Pinder, the statement of Curtis Missick who never gives any indication of knowledge that there was some previous altercation between them, and Mr. Missick in fact said he had not seen the person before.

Further in the statement of Ms. Munroe, the female companion of the Applicant, on the evening in question she does not state any belief or suspicion that the Applicant is involved with any gang.

She does however acknowledge that the Applicant does post things about killing or gang affiliated songs on his WhatsApp status first thing in the morning and all day.

The final issue raised by Counsel for the Respondent was the seriousness of the offense and the cogency of the evidence. In this regard, this Court will note the statement of the Court of Appeal in **Davis (above),** where in the headnote, the Court of Appeal said as follows: -

> ***"No substantial grounds have been disclosed in this case to support a conclusion that the appellant would abscond and not appear for trial. As stated in Hurnam "the seriousness of the crime alleged and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..." it follows that there must be shown, substantial grounds for believing that the applicant would not surrender to custody or appear for trial. There is no evidence to suggest that the appellant would not appear for his trial. The Judge is required to consider whether there are conditions that may be imposed that would, as far as possible, ensure that the appellant appear for his trial. It is only the severity of the charge and the inference of flight in the instance where no form of bail condition could mitigate or minimize that flight that can support the Judge's refusal of bail."***

12. Likewise as in **Davis,** in the instant case before the Court, there is no evidence before this Court that the Applicant will refuse to surrender. Therefore, as to ensure his attendance, the Court is prepared to consider stringent conditions which are stated below:-

DISPOSITION

a). The Court will accede to the Applicant's bail application and grant bail in the Sum of thirty Thousand Dollars ($30,000.00) with one (1) or two (2) sureties,

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b). The Applicant to be outfitted with an electronic monitoring device and must comply with all conditions established related to the wearing and maintenance of device.

The Court will impose a further condition of the device that the Applicant is to be placed on curfew on weekdays by 9 p.m. to 5 a.m. and weekends by 10 p.m. to 5 a.m.

c). The Applicant is to have no direct or indirect contact with any witnesses involved with this case; and

d). The Applicant is required to report to the Eight Mile Rock Police Station, Grand Bahamas each Monday & Friday by 6 p.m. at the latest.

Parties are liberty to reapply.

Parties aggrieved may appeal to the Court of Appeal.

Dated the 1st Day of November 2022

Justice Andrew Forbes