

**COMMONWEALTH OF THE BAHAMAS**

**2021**

**IN THE SUPREME COURT**

**CRI/BAL/00213**

**CRIMINAL DIVISION**

**BETWEEN**

**BRAHEEM CHARLTON**

Applicant

V

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

**BEFORE: The Honourable Madam Mrs. Justice Cheryl Grant-Thompson**

**APPEARANCES: Mr. Ian Cargill, Counsel for the Applicant**

**Mr. Bradford McKenzie along with Chemeka Gibbs, Counsel for the Office of the Director of Public Prosecutions for the Respondent**

**HEARING DATES: 4<sup>th</sup> January 2023, 16<sup>th</sup> January 2023; 1 March, 2023**

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**BAIL JUDGMENT**

*Bail - Bail Act - Application for Bail –Bahamian-Ties to Community-Whether applicant is a fit and proper candidate for bail*

## **GRANT-THOMPSON, J**

1. The Applicant, thirty (30) year old, Braheem Charlton (D.O.B. 24 March, 1993) is seeking bail in relation to the charges of Murder (1count), Attempted Murder(3 counts), Murder (1 count) and Attempted Murder (1 count) and Armed Robbery and Receiving (1count).
2. The Applicant's Summons for bail was supported by an Affidavit citing similar information, inter alia, that:
  - a. The Applicant is a Bahamian citizen;
  - b. The Applicant was arrested, charged and arraigned before the Learned Chief Magistrate Court. The matter was transferred to Acting CJ Turner on 25 February, 2022;
  - c. The Applicant is not a threat to anyone;
  - d. The Applicant is not a flight risk and undertakes to present himself before the Court on such day as may be set for the trial of his matter. The Applicant intend to comply with any order which the Court may make, he needs to adequately prepare his defence, to give emotional and financial support to his two young children;
  - e. If granted bail the Applicant will reside wherever the Court deems fit and proper in the circumstances;
  - f. The Applicant undertakes to comply with any conditions that the Court may deem fit in the circumstances. The Applicant is financially able to commit to any fines or conditions imposed; and
  - g. The Applicant is charged alone, he has no prior convictions, no pending matters, nor does he lack gainful employment- he works at, "All Things Landscaping"
3. The Respondent objected to Bail. They submitted by Affidavit that:
  - a) The matter is a serious PART C (Section 4(3) Bail Act, Chapter 103 offence;

- b) The offences occurred respectively on the 11 July, 2021 and on 14 August, 2021, there is a strong cogent evidence (which evidence was laid out);
- c) There has been no change in circumstances since he was last denied bail by Snr Justice Turner;
- d) There was considerable violence used in these cases and the strong possibility of interference with witnesses; and
- e) There has under the circumstances been no unreasonable delay. He will be before the Court on the 24 March, 2023. He has a pretrial review date on the 4 April, 2023 and second Trial scheduled for the 31 July, 2023 for second trial.

4. In the case of **Jevon Seymour v The Director of Public Prosecution** SCCrApp No. 115 of 2019, Crane-Scott JA observed at paragraph 50 of Judgment:

*50. We are satisfied that even if the learned judge found (as he could) that the Crown's evidence was "cogent" and was prepared to infer (as he did) that given the nature and seriousness of the offences and the likely penalty, that appellant might have a powerful incentive to abscond, that is not the end of the matter. Such a "finding" is not in itself a reason for denying an applicant bail. Accordingly, if the learned judge concluded that the appellant might be tempted to abscond, in the proper exercise of his discretion, he ought also to have proceeded to consider whether that risk could nonetheless be effectively eliminated by the imposition of appropriate conditions."*

5. The decision of **Jevon Seymour** is a reminder that bail which is a Constitutional right should be granted in cases where it is likely the Applicant will appear for trial based on the serious nature of the charge, the alleged cogency of the evidence; there has been no unreasonable delay and in the public interest the Crown has raised a reasonable concern. Further, if I am of the view that the Applicant will abscond and not appear for his trial. I

must then take into consideration whether that risk could be effectively eliminated by the imposition of strict and appropriate conditions.

6. The Applicant according to his Criminal Antecedents Form does have previous convictions which is according to law mean that he cannot be deemed to be of good character. Further, the Applicant is scheduled to appear before Senior Justice Bernard Turner regarding Case #1-21-102774 on 24<sup>th</sup>, March, 2023. As it relates to VBI #241/10/2021 the trial is scheduled for the 4<sup>th</sup> April, 2023. A backup trial date with respect to VBI#231/9/2021 is set for the 31<sup>st</sup>, July, 2023 before my sister Justice Archer-Minns.
7. I due to find that there is not any unreasonable delay nor a substantive change of circumstances since the Applicant was previously denied bail on the 1<sup>st</sup> December, 2021, 14<sup>th</sup> February, 2022, and 26<sup>th</sup> July, 2022 before my brother the Honourable Senior Justice Bernard Turner.
8. This is a matter in which I am satisfied there are no strict conditions that will suffice to ensure his attendance at trial due. Further the Applicant has trials for other serious allegations levied against him which are imminent.
9. Having read the Affidavits, and having considered the oral submissions of Counsel for Applicant and Respondent. I am of the view that the Applicant will **NOT** appear for his trial on the dates scheduled. I am further of the view that there are no conditions available to this court to ameliorate that concern. Notwithstanding that he has ties to The Bahamas, I refuse him bail. There are serious offences with high penalties if convicted; this will prove an incentive to abscond. I am also concerned, preserve and protect public safety.
10. I therefore exercise my discretion **not to grant to the Applicant bail** for the following reasons:
  - a. **The Applicant will likely be tried within the three (3) year period that Parliament has determined to be reasonable. As**

**a result of the Applicant being tried within a three (3) year period there is no unreasonable delay;**

**b. The Applicant has pending matters for allegations of Murder and Attempted Murder in which the trial dates are schedule to take place within a matter of months;**

**c. I am not satisfied that if granted bail the Applicant would return for trial; and**

**d. I am of the view that there are no conditions that can be implemented to ensure the Applicants return for trial.**

11. Bail is therefore refused for the reasons stated above.

12. I promised to put my reasons in writing this I now do.

**DATED this 7<sup>th</sup> day of February A.D., 2023.**

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**The Honourable Madam Justice Mrs. Cheryl Grant-Thompson**