

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT**

**CRIMINAL LAW DIVISION  
2022/CRI/bal/00279**

**BETWEEN**

**DARREN DAVIS**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before: The Hon. Madam Justice Renae McKay**

**Appearances: Mr. Ian Cargill with Mr. Kelsey Munroe for the Applicant  
Ms. Jacqueline Burrows for the Respondent**

**Hearing Date: 19<sup>th</sup> December 2022**

**Ruling Date: 20<sup>th</sup> December 2022**

**RULING ON BAIL**

**Criminal – Bail – Constitutional presumption of innocence – Bail Act – Factors to be considered – Murder - Attempted Murder – Armed Robbery – Previous Convictions – Protection of alleged victim – Protection of alleged victim – Safety of the Applicant**

1. Darren Davis (hereinafter referred to as “the Applicant”), made an application to be admitted to bail after he was arrested and charged with one count of Conspiracy to Commit Murder in respect of Jayson Whitfield (hereinafter referred to as “the deceased”), contrary to section 291(1)(b) and 89(1) of the Penal Code, Chapter 84 (“PC”). His application is opposed by the Director of Public Prosecutions (hereinafter referred to as “the Respondent”).
2. The Applicant relied on his Affidavit in Support of Application for Bail and a Supplemental Affidavit, both of which were filed 12<sup>th</sup> December, 2022. The Respondent relied on their Affidavit-In-Response filed 19<sup>th</sup> December, 2022. After considering the filed evidence and hearing the Application and Counsel for the Respondent in person, I now give my ruling with respect to the same.

3. By the Applicant's Affidavits, the Applicant, a 47 year old Bahamian citizen, was arrested and remanded to the Bahamas Department of Corrections ("BDOCs") on 5<sup>th</sup> December, 2022. He has not yet been served with his Voluntary Bill of Indictment. He averred that he has no previous convictions, no pending matters and is not a risk to the public. Prior to his incarceration, he was employed as a Police Corporal in the Royal Bahamas Police Force attached to the Magistrates Court Complex.
4. The Applicant also averred that he has been diagnosed with high blood pressure and is on a regimen of prescribed medication. He is a father of six (6) all of whom he is financially responsible for. He maintains his innocence and states that he is a fit and proper candidate for bail. He claimed that the evidence against him was weak, maintained his innocence and averred that he would not interfere with any witnesses. He added that he would abide by his obligations to the court if he was granted bail.
5. By the Respondent's Affidavit in Response, they objected to the application and relied primarily on three (3) grounds in support of their position that the Applicant was not a fit and proper candidate to be admitted to bail. In summary, they rely on the strength and cogency of the evidence, their concern for the safety of the prosecution witnesses and the Applicant's own safety.
6. In relation to the evidence upon which the Respondent relied, the Respondent averred that the threats against Tia Hall and motive for the killing of the deceased was as a result of that relationship with the said Ms. Hall. The threats which were allegedly made by the Applicant were that, "I ga fucking kill him, and kill you, history will repeat itself and I never get my hands dirty" and "I know he there and he did his homework and knows Jayson drives a government car".
7. Further, the statement of an "Anonymous" passport office worker stated that on Tuesday, 22<sup>nd</sup> November, 2022, the Applicant called inquiring about the deceased and the type of vehicle he drove, namely a black Nissan Versa government vehicle .
8. The Respondent averred that information about the deceased, including the said government assigned vehicle, photos of the deceased and a map of the deceased's address dated 1<sup>st</sup> December, 2022, were found in the trash bin of the Applicant's cell phone as was stated in the report of D/Sgt. 2421 Ernest Pratt.
9. The Respondent further averred that the Applicant and his co-accused were in communication via cell phone on the 2<sup>nd</sup> December, 2022 around 6:35 pm and that around 7:19 pm the Applicant's phone was pinged in Garden Hills.

10. To these averments regarding the contents and location of what was said to be the Applicant's phone, counsel for the Applicant submitted that there is no evidence as to ownership of the phone nor independent evidence linking the phone to the Applicant.
11. The Respondents concern for the safety of a prosecution witness was on the basis of allegedly being threatened by the Applicant.
12. The Respondent further averred that the Applicant ought to be kept in custody for his own protection as he allegedly harmed himself on the date of his arrest and then told Sgt. 3353 Brown, the officer who escorted the Applicant to the Princes Margaret Hospital ("PMH"), multiple times that he, "messed up". To this, it was submitted on behalf of the Applicant that the abrasion to his left wrist was caused by tightening of handcuffs and that the Respondents submissions ought to carry no weight because the Applicant was not placed on suicide watch while in custody at BDOCS.
13. Counsel for the Applicant also submitted that at no time did Ms. Hall indicate that she was in fear for her life and that notwithstanding the relationship that she described, she had sexual intercourse with him as recent as Thursday, 1<sup>st</sup> December, 2022, sometime after the alleged threats were made.
14. Mr. Cargill asked the Court to take judicial notice of four (4) police officers who were recently granted bail on an emergency basis.

## **Law and Analysis**

15. Bail applications and their hearings are opportunities for an accused person to exercise their constitutional rights to the presumption of innocence. Once charged with an offence, a Court is vested with the discretion to consider whether the accused should be admitted to bail per the aforementioned constitutional right or if that right should be suppressed.
16. The Bail Act, Chapter 103 (as amended) provides the statutory framework for the grant of bail for part C offences, for which Conspiracy to Commit Murder is included. *Section 4 of the Bail Act, Chapter 103* states:

*"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; 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) ... (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 to be a reasonable time.*

*(2B) For the purposes 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 and antecedents of the person charged, the need to protect the safety of the 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.”*

17. In considering my section 4(2)(c) and 2B discretion, the drafters of the Bail Act provided several factors that must be taken into consideration in order to make such a determination. These factors must be considered in conjunction with the facts of each particular case.

18. The factors are as follows:-

***“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."*

#### **STRENGTH AND COGENCY OF EVIDENCE:**

19. In *Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016*, Allen P., at paragraph 34 stated,

*"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."*

20. The Applicant maintains his innocence. In considering the evidence of the prosecution and the Applicant's response to the same regarding the lack of evidence showing ownership of the phone to provide a sufficient nexus between the Applicant and the cell phone in question, in my view this challenge is matter for trial and in keeping with the case of *Cordero McDonald*. I find that there is a strong circumstantial case against the Applicant which raises a reasonable suspicion of the Applicant's involvement in the commission of the offence.

#### **SERIOUSNESS OF THE OFFENCE**

21. Conspiracy to Commit Murder is a Part C offence and I find that offence is a very serious one for which bail in this jurisdiction is not routinely granted.

## LIKELIHOOD OF ABSCONDING

22. In the Court of Appeal decision of *Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011*, it was stated 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”.*

23. However, as Lord Bingham pointed out at **paragraph 16** of the Board’s decision 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.”*

24. In the present application, no evidence has been adduced that Applicant will abscond and it is was also not averred to nor submitted by the Respondent.

25. Therefore, I find that on the evidence before this Court, the Applicant is not a flight risk.

## WITNESS INTERFERENCE

26. The Respondent averred and submitted that they were concerned about the safety of Ms. Hall as she stated she was threatened by the Applicant. It should be noted that subsequent to the alleged threat, she continued communication and contact with the Applicant, as recent as 1<sup>st</sup> December, 2022 when they had sexual intercourse. This is also considered in light of the fact that it was not stated by the Respondent that this witness is in fear of her life and there is no evidence that contact or attempts at contact was made by the Applicant to this witness, subsequent to the alleged commission of the offence.

27. I am also mindful that mere familiarity between the witness and the Applicant is not sufficient to form a substantial ground for believing the Applicant would interfere with a witness or otherwise obstruct the course of justice.

## APPLICANT’S SAFETY

28. The Respondent averred that the Applicant was alleged to have harmed himself on the date of his arrest and exhibited a hospital form indicating a superficial abrasion on the

Applicant's left wrist. However, other than the bare assertion by the Respondent, there was no evidence was led as to the manner in which this injury was inflicted or even how they came to the conclusion that it was self-inflicted.

29. Moreover, the hospital form also indicated that both wrists were injured and I note Mr. Cargill's response that the injuries were caused by the handcuffs this. The is compounded by the unchallenged submission that the Applicant was not placed on suicide watch on his admission to BDOCS. On this basis, it would appear logical that if the Crown was aware of "self inflicted" wounds by the Applicant, then he ought to have been housed in an area consistent with that belief.
30. I am therefore not satisfied that the Respondent has adduced sufficient to justify the Applicant being kept in custody for his own protection.

#### **CHARACTER/ANTECEDENTS**

31. The Applicant has no antecedents and no pending matters before the Courts. I therefore find in my assessment pursuant to section 4(2)(B) that the Applicant is of previous good character.

#### **CONCLUSION**

32. While I note Mr. Cargill's submissions on taking judicial notice of four (4) other police officers who were granted bail, I am mindful that every case turns on its own facts that that regard must be had to the circumstances of the case and of the particular Applicant.
33. I am unaware of the circumstances of those cases and those Applicants. Therefore, I have regard to those instances only to the extent that as they were police officers prior to their arrest, they were gainfully employed and by virtue of the requirements of their employment, had no previous convictions, characteristics which they share with the Applicant.
34. There is no evidence that the Applicant would fail to surrender to custody or appear to face his trial.
35. I am mindful of the Applicant's good character, his strong family and community ties and his years of service with the Royal Bahamas Police Force. I am also mindful of the strength and cogency of the evidence and the Respondent's concern for the witness Hall.

36. In performing the relevant balancing exercise, I have considered whether there was any condition that could be imposed to ameliorate that concern and I find that an EMD coupled geographical restrictions in relation to Ms. Hall are sufficient.

37. In the circumstances, Bail is granted on the following terms and conditions:

- (a) Bail is granted in the sum of \$ 30,000.00 with 2 sureties;
- (b) The Applicant appellant is to report to the Wulff Road Police Station every Monday, Wednesday and Friday before 6pm;
- (c) The Applicant is to be fitted with an electronic monitoring device;
- (d) The Applicant is prohibited, whether in person or otherwise, from approaching, contacting or otherwise interfering with the Crown's witnesses, and in particular, Tia Madlyn Hall;
- (e) The Applicant is prohibited from coming within 200 feet of Tia Madlyn Hall; and
- (f) The Applicant is to surrender his passport and any travel documents until the conclusion of his trial.

**Dated this 20<sup>th</sup> day of December, 2022**

**The Hon. Madam Justice Renae McKay**