

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT

CRIMINAL LAW DIVISION
2021/CRI/bal/00106

BETWEEN

LEONARDO BROWN

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Madam Justice Renae McKay

Appearances: Mr. Ian Cargill for the Applicant
Mr. Donard Brown for the Respondent

Hearing Date: 13th May 2021

Ruling Date: 10th June 2021

RULING ON BAIL

Criminal - Bail

1. This ruling concerns an application for bail by the Applicant, Leonardo Brown (**the “Applicant”**). The Respondent, the Director of Public Prosecutions (**the “Respondent”**) objected to the Applicant being admitted to bail.
2. By his Affidavit in Support of Application for Bail filed the 22nd April 2021, the Applicant, a 23 year old citizen of The Bahamas stated that he was remanded after being charged with the offence of Murder contrary to section 291 (1) (b) of the Penal Code. He further stated that he had been arraigned on the 1st March, 2021 before the Chief Magistrate Joyanne Ferguson-Pratt.
3. The Applicant averred that he was innocent of his charges and as a result he had pleaded not guilty. Moreover, that his matter had been adjourned to the 31st May 2021 for the service of his Voluntary Bill of Indictment. He further averred that he had no prior convictions and no pending matters before the Court and that if he was granted bail, he would comply with the orders imposed by the Court.

4. The Applicant continued that he was the father of a one year old son who relied on him for emotional and financial support. Also, that he suffered from chest pains. He averred that if he was admitted to bail, he would have accommodations at No. 36 Dumping Ground Corner and that he would continue to seek to have gainful employment as a Construction Worker. He concluded that he was a fit and proper candidate for bail.
5. By his Supplemental Affidavit in Support of Application for Bail filed the 30th April 2021, the Applicant exhibited the Affidavit of Kevinique Culmer ("**Ms. Culmer**") dated the 18th March 2021. Ms. Culmer, who swore that she had not been coerced, threatened or paid to make a statement, averred that she and the deceased were off of Finlayson Street when they were ambushed by a lone masked gunman who had shot the deceased multiple times.
6. Thereafter, the deceased frantically ran to the inside of a house where she followed him to. She continued that the deceased had retrieved a gun from the inside of the home and had begun firing shots, accidentally shooting her as she entered the house. As a result, she screamed to the deceased that he had shot her and in response he told her to move out of his way, pushed her on the side and continued to fire shots at his attacker while the masked gunman was leaving the scene. She added that it was said that the deceased had shot his attacker.
7. The Respondent by their Affidavit in Response to Bail filed the 5th May, 2021 confirmed that the Applicant was charged with one (1) count of Murder. They averred that there was cogent evidence to support the charge based on the statement given by an anonymous witness Alpha. Alpha claimed to be in the area of Finlayson Street on the evening of the shooting and had heard gunshots. Alpha additionally stated that thereafter they hid in a nearby shortcut which allowed them to view the Applicant and another person who was holding a handgun.
8. Alpha went on to identify the Applicant in a photo line-up as the male seen escaping with another shortly after hearing the gunshots in the area of Hutchinson Street and was said to be the male seen running onto Eneas Street with a handgun in his hand. Alpha later identified the Applicant at photograph #2 on Saturday, 27th February, 2021.
9. The Respondent also relied on the statement given by the anonymous witness Beta who was in an area near to where the gunshots were heard. Beta also hid and from the place of hiding observed the Applicant and another male shooting after the deceased. Beta then stated that the Applicant and another male was seen escaping through a shortcut that lead to Eneas Street.
10. Beta added that the deceased had then walked over to other persons gathered in the area and informed them that the Applicant had shot him. Thereafter, Beta identified the

Applicant in a photographic line-up as the male seen firing a gun in the direction of the deceased and also identified the Applicant at photograph #9.

11. The Respondent concluded that having regard to the nature of the seriousness of the alleged offence, bail should not be granted, that there had been no delay in the progression of the matter and that the Applicant was not a fit and proper person for the grant of bail.

The Law

12. Section 4 of the Bail Act (as amended) (the “Act”) gives to the Court the jurisdiction to grant bail. It states as follows:

“4. (1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.”

Bail (Amendment) Act, 2011

“(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 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 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."

"4. Amendment to First Schedule of the principal Act.

The First Schedule to the principal Act is amended –

(a) by the repeal of Part A and the substitution of the following ---

"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."

13. By the **Bail (Amendment) Act, 2014**, the First Schedule was again amended to reflect another paramount consideration.

"3. Amendment to First Schedule to Ch. 103.

The First Schedule to the principal Act is amended by the addition thereto of the following factors –

"(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."

14. Thence, for the proper disposal of a bail application, the Court is required to consider the following factors: the character and antecedents of the applicant, the nature and seriousness of the offence and the strength of evidence against the Applicant, the safety of the Applicant or the safety of the public, whether the Applicant would interfere with the prosecution's witnesses, the protection of an alleged victim and whether the Applicant would fail to surrender to custody or appear at trial.

15. A separate consideration is whether the Applicant is likely to be tried within a reasonable time. As mandated, I now turn to consider the statutory factors in relation to the present application.

The character and antecedents of the applicant

16. The Applicant has no pending matters and no previous convictions before the Court.

The nature and seriousness of the offence and the strength of evidence against the Applicant

17. The Applicant is charged with Murder as he allegedly took another man's life. The offence is no doubt a serious offence. As to the nature of the offence, the Applicant allegedly fired shots at the deceased with other people around. Therefore, the nature is also serious.
18. The Respondent adduced that there were two anonymous witnesses who witnessed two men in the area the shooting occurred. One of the witnesses saw the Applicant shooting at the deceased and another saw the Applicant with a man who was shooting at the deceased. The Applicant on the other hand has provided evidence that the gunman who shot the deceased was masked.
19. The application before me is a bail application. All that is required by the Respondent is proof that there is a sufficient link between the Applicant and the commission of the offence. Based on the evidence provided by the Respondent I consider there to be a sufficient link between the Applicant and the commission of the offence.

The safety of the Applicant or the safety of the public

20. The Respondent has not contended that the safety of the Applicant or the safety of the public would be at risk.

Whether the Applicant would interfere with the prosecution's witnesses

21. The Respondent has not made any claim that the Applicant would interfere with the prosecution's witnesses.

The protection of an alleged victim

22. In the instant case, the victim is deceased. Therefore this factor cannot be taken into consideration.

Whether the Applicant would fail to surrender to custody or appear at trial

23. Although this factor was considered last, this is considered to be the most important factor. In any event, the Respondent has not made the argument that the Applicant would fail to surrender to custody or to appear for his trial.

Whether the Applicant was likely to be tried within a reasonable time

24. The Applicant has not proffered this argument in support of his bail application. However, the Respondent has noted that there has been no delay in the progression of the matter before the Court, to which I agree. The Applicant should be tried within 3 years of his arrest. As it stands, it is not foreseeable that he will not be tried within that statutory time period.

Discussion and Ruling

25. As stated above, the paramount factor for consideration during a bail application is whether the Applicant would fail to surrender to custody or to appear for his trial. This factor is paramount based on the Applicant's right to the presumption of innocence, which guarantees his right not to be deprived of his liberty and his right to be considered innocent until he has been afforded a fair hearing.
26. As such, a court should be slow to deny the Applicant bail as it should not be withheld as punishment. In furtherance of the Applicant's right to the presumption of innocence, it is the Respondent who is tasked with proving to the Court that the Applicant is not a fit and proper candidate for bail, despite the wording of the Act saying otherwise.
27. It is based on that evidence provided to the Court that a balancing exercise is conducted. In the instant case, the Respondent has satisfied me that the nature in which the offence was committed and the offence itself is a serious one. I have additionally been satisfied that there is cogent evidence against the Applicant.
28. Alternately, I have not been satisfied that the Applicant would not surrender to custody or appear for his trial, that he would interfere with any of the prosecution's witnesses or that his safety or the public safety is at risk. Likewise, the Applicant has no pending matters and no previous convictions and his victim is unfortunately deceased.
29. In consideration of the foregoing, I find that the scales have tipped in favor of the Applicant and as such, he is a fit and proper candidate to be admitted to bail. Accordingly, bail is granted to the Applicant with the following conditions:
- In the amount of \$30,000 with two (2) suretors;
 - The Applicant shall report to the Nassau Street Police Station every Monday, Wednesday, Friday and Saturday before 6:00 p.m.;
 - The Applicant shall be fitted with an Electronic Monitoring Device;

- The Applicant shall not interfere with any of the Respondent's witnesses;
- A curfew shall be imposed upon the Applicant between the hours of 9:00 p.m. to 6:00 a.m.;
- The Applicant shall surrender all of his travel documents; and
- The Applicant shall surrender himself to custody the Friday before the commencement of his trial.

Dated this 10th day of June 2021

The Hon. Madam Justice Renae McKay