

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

CASE NO. CRI/BAIL/FP/00001/2023

Criminal Side

BETWEEN

ALEX DARICAUD

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

**Appearances: Attorneys Mr. Sean Novel Smith & Mrs. Erica Culmer-Curry
c/o Director of Public Prosecutions
Mr. Alex Daricaud Pro Se**

Hearing Date: 28th March, 2023

RULING ON BAIL

Forbes. J.

BACKGROUND

1. The Applicant filed an application seeking consideration of the Court as to the question of bail on the 6th February 2023. The Applicant stated to the Court during the hearing that he was remanded on the charge of Possession of a Firearm with Intent to Put Another in Fear (2 Counts); that he has close ties to the local area in #109 Gordon Avenue, Freeport, Grand Bahama. He also stated that he is prepared to comply with any and/or all conditions should bail be granted and that he was previously released on Bail for Murder by the Court of Appeal in February 2021.
2. The Respondent filed an affidavit in response on 24th March 2023 and sworn by Corporal 771 Anastacia Rolle. She avers that there is surveillance footage which shows the Applicant discharging a firearm in public; that during the Record of Interview the Applicant acknowledged being in the area of where the firearm was being discharged. The Affidavit exhibits an antecedent report in which the Applicant was convicted for the offence of Assault with a Dangerous Instrument on the 10th March 2022 and given a fine of One Thousand Dollars (\$1,000.00) or two (2) months at The Bahamas Department of Correction (BDOCS). The Court notes that no evidence was lead as to the nature of the instrument or whether the Applicant paid the fine or was sent to BDCOS as a result of his failure to do so. Corporal Rolle also avers that the Applicant is alleged to have gang affiliations, although when the Applicant was questioned by the Court he denied any gang affiliations. Further, that the Applicant was granted bail by the Court of Appeal on the 22nd February 2021; that the conditions were bail in the sum of Thirty Thousand Dollars (\$30,000.00) with two sureties; that the Applicant was required to be outfitted with an Electronic Monitoring Device(EMD); to report to the Central Police Station, Freeport, Grand Bahama each Monday, Wednesday & Friday before 6 pm; not to interfere with witnesses either himself or through any other person and **to remain in his home after 8pm until 6am in the morning (Emphasis added)**.
3. Corporal Rolle further avers that on the day of the alleged incident there was a public discharge of a firearm that occurred at 11pm and as such was

a violation of the Applicant's conditions of bail. She further asserts that there were further violations of curfew observed as there was exhibited several reports from Metro Security which evidenced the Applicant's Global position as determined by the EMD worn by the Applicant. It was noted that at 11:04pm on the 6th January 2023 the Applicant was said to be on Coral Road, Freeport, Grand Bahama; on the 12th December 2022 at 11:10pm the Applicant was said to be on Adventurer's Way Freeport, Grand Bahama; on the 9th December 2022 at 11:01pm the Applicant was said to be on Frobisher Drive, Freeport, Grand Bahama; on the 8th December 2022 at 11:23pm the Applicant was on Adventurer's Way, Freeport, Grand Bahama; on the 3rd December 2022 at 11:24pm the Applicant was on Columbus Drive, Freeport, Grand Bahama. It is noted that when the Applicant was initially outfitted with the EMD on the the 15th November 2021 at 11:55am the Applicant identified his home address as Gordon Avenue, Freeport Grand Bahama.

4. During the hearing when questioned by the Court about these violations of curfew the Applicant admitted the January 6th 2023 incident and indicated that he went to the local restaurant known as "Pepper Pot" to get food. As for the other incidents the Applicant suggests that the device is or was malfunctioning and as a consequence the information provided was inaccurate.
5. The Court having heard the application for bail indicated its intention to render a decision and does so now. The issue for consideration given the current facts is whether this Court should grant this Applicant bail in his pending matter?

SUBMISSIONS

6. The Applicant being unrepresented was unable to provide any submissions save to deny the allegation contained within the Affidavit filed by the DPP and to reiterate that he is innocent of the alleged crime. The Court however notes the Court of Appeal decision of **Stephon Davis and the Director of Public Prosecution SCCrApp. No. 108 of 2020.**
7. The DPP filed its submissions on the 27th March 2023 and noted the serious nature of the allegations against the Applicant and whether there any conditions this Court can impose that will restrain this Applicant from

committing additional crimes. The DPP refers the Court to the comments made by the Judge at first instance made in Stephon Davis v the Director of Public Prosecutions (supra) and the comments made at paragraph 24 by the Court of Appeal in Tyreke Mallory v. Director of Public Prosecutions SCCrApp. No.142 of 2021 where the Court adopted the comments of the Judge at first instance. Counsel for the DPP submits that the Applicant is unfit person for bail.

THE LAW

8. The Court must now consider the rational for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial.

9. *Section 4 (1) of the Bail Act provides:-*

“(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.

10. *Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provides:-*

“(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. (emphasis added)

DISCUSSION/ANALYSIS

11. It appears that the Respondent's submissions are that the Applicant has antecedents; that he has pending matters, the said matter being a murder case for which bail was given by the Court of Appeal and that the evidence adduced is cogent and powerful are grounds to deny the Applicant bail.

12. The Applicant faces a charge involving Possession of a Firearm with intent to put another in fear contrary to section 34(1) of the Firearms Act. This is an offence that has been included in Part C of the First Schedule of the Bail Act and the Bail (Amendment) Act, 2011 which states as follows:

“in Part C. by the insertion in the appropriate place of the following words -..

Attempted Murder- section 292, Ch. 84;

Possession of Firearm designed to discharge explosive matter - section 30 (1)(a), Ch. 213; Possession of Automatic Weapons- section (30)(1)(h), Ch. 213 ; Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property -- section 33, Ch. 213; Possession of Firearm with intent to commit an indictable offence --- section 34(1), Ch. 213; Possession of Dangerous Drugs with intent to supply - section 22, Ch. 228;

Any offence under any of the following sections of the Sexual Offences Act, Ch. 99:

6 (rape), 10 (sexual intercourse with a person under fourteen years), 12 (sexual intercourse with a person suffering from a mental disorder), 13 (incest) and 14 (sexual intercourse with a dependent);”

13. Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence (as stated in paragraph 10 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part C offence shall have regard to the following factors as found in Part A 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.";*

14. Thus the question is would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have in fact appeared and the Affidavit is totally devoid of any suggestion that the Applicant might not surrender for trial. They however focused on the Applicant being a safety concern to the community.

15. As stated by the Court in Stephon Davis v the DPP (supra) there is no evidence before this Court that the Applicant will refuse to surrender. However as this Court has noted events have now moved beyond the abstract, as this Applicant was already on Bail by the Court of Appeal with stringent conditions imposed, specifically curfew conditions. This Court is aware that the Applicant has admitted to violating at least on one (1) occasion his curfew condition that such breach occurred on the very evening that the alleged incident of the public discharge of a firearm is said to have occurred. Furthermore the Applicant was said to be in the general vicinity. The purpose of the curfew is to protect the Applicant from these kind of circumstances where alleged events can and do take place he or she can be accounted for. The Court also notes that while on bail given by Court of Appeal the Applicant was convicted of Assault with a Dangerous Instrument. The Court is therefore satisfied that the evidence is supportive of this Applicant flouting the very conditions

imposed by the Court of Appeal. The Court is reasonably certain that there are no conditions it can impose that will ensure the Applicant's compliance with its order.

16. The Court takes note of the comments of the Court of Appeal in **Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016** where President of Appeal Dame Anita Allen said as follows:

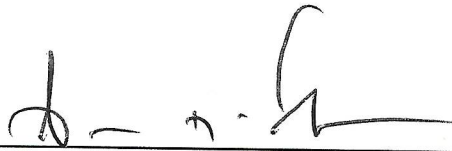
"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).

19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's right to remain at liberty is defeated by the public's interest in seeking to ensure " that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit other offences..." 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).

20. The balancing of the applicant's right to the presumption of innocence and that of the public to be protected are reflected in the above-mentioned factors recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offences: '...the character or antecedents of the person charged, the need to protect 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.'" (Emphasis added)

DISPOSITION

17. This Court given the circumstances will deny this Application.
18. Parties aggrieved may appeal to the Court of Appeal.



Justice Andrew Forbes

Dated the ²⁵ day of April 2023