

**COMMONWEALTH OF THE BAHAMAS 2023/CRI/bail/00106/
IN THE SUPREME COURT
CRIMINAL SIDE**

BETWEEN

THE DIRECTOR OF PUBLIC PROSECUTIONS

Applicant

AND

LEONARDO BROWN

Respondent

BEFORE: The Honourable Mr. Justice Franklyn K M Williams, KC

APPEARANCES: Ms. Cashena Thompson for the Applicant

Mr. Ian Cargill for the Respondent

HEARING DATE: 10 March 2023

RULING

1. The Applicant herein applies for the revocation by way of affidavit in support thereof filed on 12 December 2022. The application was heard on 10 March 2023 per summons also filed on 12 December 2022.
2. The charge which is the subject of this application is murder contrary to s.291(1)(b) of the Penal Code, Chapter 84. This offence is alleged to have been committed on 22 February 2021. The respondent was admitted to bail thereon on 1 September 2021. The trial of that matter is scheduled for 23 September 2024.
3. The applicant concedes that the respondent has not breached the stated conditions of that bail.
4. Whilst on bail for murder, the respondent is alleged to have committed the offences of Attempted Murder and Possession of a firearm with intent by means thereof to endanger life on 17 September 2022.
5. In a ruling dated 9 February 2023, Hilton J declined the grant of bail on the 17 September 2022 charges:

“In weighing the competing interests of the parties I find that it would not be justified to grant bail to the Applicant...”
6. The applicant submits, in summary, that having been alleged to have committed the 17 September 2022 offences, one of which is similar to that of the 22 February 2021 charge, the respondent is “no longer a fit and proper candidate for bail and, ought to remain in custody”.
7. Save for acknowledging the allegation of murder and the grant of bail thereon, the respondent, simply, avers that he did not violate the conditions of bail granted for the murder charge and is “a fit and good candidate for bail”. He does not acknowledge the 17 September 2022 allegations.
8. *in limine*, counsel for the respondent takes

the point that the Court as presently constituted has no jurisdiction to hear this application as the bail on the murder charge was granted by the court differently constituted

9. The instant application is governed by the Bail Act, Chapter 103 (“the Act”) and the inherent jurisdiction of the Supreme Court to grant and revoke bail.

10. To be certain, there has always been an inherent jurisdiction in **the Supreme Court** to grant and revoke bail, and it is not personal to any judge of the Supreme Court. This principle was affirmed in the case of *Bartholomew Pinder v The Queen*, SCCrApp No.94 of 2020 pp.10 – 12, para.s 18 -26 (Barnett P)

11. Before embarking upon consideration of the instant application. I advise myself and adopt the admonition of the Court of Appeal in determining the issue that “...the nature of the inquiry whether to grant bail is not materially different from the inquiry whether to revoke bail already granted. In both instances, it is an inquiry as to whether a person who is at large pending trial should be deprived of his liberty pending trial” *Pinder* (supra)

THE LAW

12. The respondent is presumed to be innocent and may not be deprived of personal liberty save upon reasonable suspicion of having committed ...a criminal offence (Articles 20(2)(a) and 19(1)(b))

13. Parliament has set general standards for the court’s consideration when deciding the issue of bail. By Article 19(3) of the Constitution, these

standards are reasonable conditions to ensure the appearance of the accused for trial Sawyer P *Attorney General v Bradley Ferguson et al* SCCrApp No.s 57, 16, 108 and 116 of 2008.

14. The respondent is entitled to trial within a reasonable time Article 19(3) Constitution of the Bahamas

15. The Bail (Amendment) Act, 2011 states:

***“2(A) For the purpose of subsection(2)(a)(b)-
(a) without limiting the extent of a reasonable time, a period of three years from the date of arrest or detention of the person charged shall be deemed to be reasonable time;”***

16. In *Duran Neely v AG* Appeal No.29 of 2018, the Court of Appeal stated:

“17. It should be noted that section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2)(a),(b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the court is of the view that bail should be granted the accused may be granted bail.”

17. The current offences of Attempted Murder and Possession of Firearm with intent by means thereof to endanger life for which the respondent is charged allegedly occurred on 17 September 2022. The date for the trial thereof has not yet been fixed; however I am certain that the respondent

will have his trial prior to September 2025 which will place him within the three year time period accepted as being reasonable by Parliament.

18. The offence of Murder for which the respondent was charged and which is the subject charge of the present application was alleged to have been committed on 22 February 2021 is scheduled for trial 24 September 2024. Notwithstanding the 24 September 2024 scheduled trial date, I find that the respondent will have a trial within a reasonable time.

THE LIKILHOOD OF THE APPLICANT TO ABSCOND

19. There is no direct evidence before this court which indicates that the respondent, if bail is resumed, will abscond and not appear for his trial. I do note, however, the findings of the Privy Council on this issue:

“It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have an incentive to abscond or interfere with witnesses likely to give evidence.” Lord Bingham of Cornhill *Hurnam v The State* (Privy Council Appeal No.53 of 2004)

20. The respondent is charged with, in the first instance Murder and in the second, Attempted Murder and Possession of a Firearm with intent to endanger life, all very serious offences. Upon conviction, the court may impose a lengthy sentence, if convicted. Thus, the respondent may well have an incentive to abscond. I am of the belief that if bail is resumed, it is probable that the respondent will abscond and not appear to face the charge of murder for which he is before the court.

NATURE AND SERIOUSNESS OF THE OFFENCE

21. John, JA observed in *Jonathon Armbrister v The Attorney General* SCCrApp No.145 of 2011

“... The courts have also evolved, over the years, a number of considerations to be taken into account in making a decision, such as the nature of the charge and 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."

22. As indicated previously, the charge of Murder is a serious one, the likely sanction severe.

23. In *Cordero McDonald v The Attorney General* SCCrApp No.195 of 2016, Allen P explained the judge's task in relation to the evidence adduced, in this case in support of the application for revocation:

"34. It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 such as to justify the deprivation of 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."

{Emphasis mine}

24. The evidence against the respondent in support of the application for revocation of bail includes the statements of two eyewitnesses, one of whom is alleged to have been wounded during the attempted murder, the statement of the police officer, who is alleged to have removed the respondent from a vehicle and arrested him after an alleged police chase of that vehicle.

25. After a review of the evidence, which does not include a denial of allegations by the respondent, I conclude that it raises a reasonable suspicion of the commission of the 17 September 2022 offences such as to justify the revocation of bail on the 21 February 2021 charge of murder and hence the deprivation of liberty by arrest, charge and detention.

26. I am guided by the view expressed by the Court of Appeal in *AG v Bradley Ferguson* (Osadebay JA) in which it was stated that I should not assess the probative value of the evidence against the respondent:

“...- the defendant is not detained 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 detention is necessary to ensure his appearance at trial.” (emphasis provided).....

27. I accept that strength or weakness of the evidence is yet to be determined.
28. I fully understand that finding that the offences of Murder, Attempted Murder and Possession of Firearm with Intent to endanger life are serious offences is not in itself a reason for revocation of the respondent's bail.
29. I address my mind to the safety of the respondent, the public safety and protection, the prospect of interference with witnesses and the otherwise obstruction of the course of justice.
30. The allegations evidence what appears to be a targeted attack, that is, the alleged attack appear to be specific to the two witnesses. In view of this, the prospect of imperiled respondent safety (retaliation), interference with witnesses, obstruction of the course of justice, and vigilante justice are strong. I take judicial notice of the notorious fact of the high rate of murder and the growing culture of vigilantism.
31. In light of the above and the possibility of absconding, I am of the view that the risk(s) inherent cannot ***“...be effectively eliminated by the imposition of appropriate conditions.”*** (Crane-Scott JA, *Jevon Seymour v The Director of Public Prosecutions*, SCCrApp No. 115 of 2019)
32. The bail of the respondent on the 22 February 2021 charge of Murder is revoked for the following reasons:
1. The respondent has been denied bail on the 22 September 2022 charges of Attempted Murder and Possession of Firearm with Intent to endanger.
 2. The respondent's trial on the charge of Murder will be conducted within a reasonable time and therefore the consideration according to section

4(2)(a) of the Bail (Amendment) Act 2011 has not, in my view, been satisfied.

3. If bail is resumed, the respondent is likely to abscond due to the serious nature of the charges as well as the evidence against him raises a reasonable suspicion of the commission of the 17 September 2022 offences.
4. The respondent was on bail for the serious offence of Murder, when he is alleged to have committed similar and similarly serious offences of Attempted Murder and Possession of Firearm with intent to endanger.
5. The imperiled safety of the respondent is probable, he being likely to face retaliation and or vigilante justice
6. The resumption to bail of the respondent is in my view detrimental to the safety and protection of the witnesses, one of whom is alleged to have been injured in the alleged attack (gunshot).
7. The resumption to bail of the respondent would be detrimental to the protection and safety of the public which is paramount
8. The respondent would otherwise obstruct the course of justice.

Dated this 20th day of March A.D. 2023


Franklyn K M Williams, KC

Justice