COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00314/2015

BETWEEN

DOMINIQUE DEON ROLLE

a.k.a "BUNGLES"

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before:	Her Ladyship, The Honourable Madam Justice Guillimina Archer-Minns
Appearances:	Mr. Damien White for the Applicant Mr. Timothy Bailey the Respondent
Hearing Date:	10 August 2022

RULING - BAIL

Archer-Minns J

1. Dominique Rolle, the Applicant (the "**Applicant**", D.O.B. 18/07/1996) to these proceedings has been charged being concerned together with others with the Murders of Akeem Davis and Lavonne Dawkins and the Attempted Murders of Shakeem Campbell (Virtual Complainant "VC") and Deshawn Rogers having occurred on 14 May, 2021. He has made application for admission to bail via Summons and Affidavit filed 27June, 2022.

2. The Applicant was convicted in 2018 for Stealing and ordered to pay a $500 fine, Receiving in 2020 and fined $500. He also has matters pending for Attempted Murder and Attempted Armed Robbery in 2016 and was granted Bail in in the amount of $20,000.00.He was also charged with two (2) counts of Possession of a Firearm With Intent to Endanger Life and Ammunition. He was granted Bail for the same in the amount of $9,500 in 2020. His antecedent also reflects a charge for Assault with a Deadly Weapon in 2021.

Submissions

3. The Applicant asserts in his aforementioned Affidavits the following:

    i. he is 25 years of age and a Bahamian citizen;
    ii. he pleaded not guilty and will be defending charges at trial;
    iii. he has a previous conviction and a pending matter;
    iv. he was employed as an Electrical Engineer prior to his remand;
    v. he will be disadvantaged in his ability to properly prepare his defence and also disadvantaged in supporting his two year old son, his family and himself.
    vi. he will dutifully report to court when required and abide by all conditions if granted bail.

4. Counsel for the Applicant further contended via oral submissions that notwithstanding that the Crown advanced that these charges are Part C offences and as such more likely that the Applicant will abscond, placed reliance on the case of ***Dennis Mather v The Director of Public Prosecutions SCCrApp. No. 96 of 2020*** wherein the central test as emphasized by Sir Michael Bartlett was whether the Applicant would appear to trial. Bail is a right to the Applicant and it is the Crown's duty to prove that they should not be granted bail and in this instance there is nothing in their Affidavit that demonstrates that the Defendant would not appear for his trial or any other hearings. He asserted that conditions

could be imposed to ensure the Applicant's attendance at trial including being outfitted with an Electronic Monitoring Device (EMD) and the surrender of travel documents.

5. Counsel further contended that the Applicant is clothed with a presumption of innocence and even though charged with a serious offence, the applicant in the aforementioned authority was also charged with a serious offence but nevertheless granted bail and is now working and appearing to Court on each required occasion.

6. It was asserted that the statements relied upon by the Crown are mere allegations and the identification evidence in particular given of the Applicant can only be properly tested at trial and not during a bail application.

In all of the circumstances of this case, the Applicant ought to be granted bail.

7. Counsel for the Respondent objected to the granting of bail supported by Affidavits filed on 11 August, 2022 by Attorney Levan Johnson asserting inter alia,

i. there has been no unreasonable delay in this matter as it has a backup trial date of the 24 February, 2024.

ii. there is cogent evidence linking the Applicant to the respective crime through the Virtual Complainant, Shakeem Campbell ("**VC**") who states that the Applicant was the driver of the car from which shots were fired into the crowd and that he was able to identify him because he is known and familiar with him.

iii. the Applicant's continued detention will ensure his attendance at trial and prevent him from absconding. Further detention also means that the Applicant will be protected against any retaliatory and revenge activity towards him in relation to the alleged murder of the deceased;

8. The Crown agreed that there is no information to show via the Affidavit that the Applicant will abscond save that the charges concerning this Applicant are serious and that the evidence of Shakeem Campbell, the virtual complainant details the actions of the Applicant which indicates he was a participating party of a joint enterprise. Further, in the interest of public safety given the current happenings in our community, the Court ought to take into consideration all of the circumstances of this case and so find that the Applicant is not a fit and proper candidate for admission to bail.

9. Upon review of the affidavits and submissions of Counsel, this Court has determined that given the nature and the seriousness of the charges, the strength of the evidence upon which the prosecution intends to rely, the threat to public safety and for the Applicant's own safety, particularly where joint enterprise and gang retaliatory activity are involved, the Applicant having been granted bail twice previously, this Court is of the view that it ought not exercise its discretion to grant the Applicant admission to bail at this time. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

The Constitution of The Bahamas

10. Article 20 (2) (a) of the Constitution states that: "**Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty**." The Applicant (who has been charged with the aforementioned offences) enjoys the presumption of innocence and has a right to apply for bail. Article 19(3) also entitles an Applicant to a fair trial in a reasonable time and when this is not possible, the Applicant must be granted bail unconditionally or subject to reasonable conditions.

The Bail Act (1994) (as amended) (the "Bail Act", the "Act")

11. The granting of bail is a discretion exercised by the courts as provided by the Act which gives guidance on factors that should be considered in cases where Part C offences such as in this instant case are before the court. Sections 4(2), 4(2A), 4(2B) and Part A of the First Schedule provide the factors for consideration and those that are applicable to this matter are detailed below :

    a. **has the person charged been tried within a reasonable time**? The discretionary period being within three (3) years of being arrested, if not they should be granted Bail;**(Section 4(2), 4(2A)).**

    b. **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;(Section 4(2B)).**

    c. **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; (First Schedule Part A (b)).

d. **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; (First Schedule Part A (f)).**

e. **the nature and seriousness of the offence and the nature and strength of the evidence against the defendant; (First Schedule Part A (g)).**

Discussion and Reasoning

A. Tried in a reasonable time.

12. This Applicant has his first scheduled trial date for February 2024 and it is currently on a trajectory to be tried within the time period which is regarded as reasonable period in accordance with the Bail Act. ***Richard Hepburn v Attorney General [2015] 1 BHS J. No. 18***, wherein it states,

> *"The length of time an accused has spent or might spend in pretrial detention is part of the mix of factors ordinarily taken into account by the court in determining the grant or refusal of bail,* ***having regard to all the other relevant circumstances of a particular case****." [Emphasis added]*

B. Character or antecedents of the person charged. The need to protect the safety of the public or public order. The need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations

13. The Court notes that the Applicant has an antecedent for offences which are not of a similar nature to those with which the Applicant is currently concerned. However, he is alleged to be a part of a gang from evidence previously presented on a bail application before the Court with respect to these charges. Appreciating that these are mere allegations, there is nevertheless great concern regarding the propensity to commit additional crimes by this Applicant.

14. The offences with which the Applicant has been charged are very serious in nature and given the circumstances of the same, the Court is of the view that it ought to have regard not only to the safety and well being of the Applicant but also that of the prosecution witnesses and the public at large.

15. The area in which the events are said to have occurred that being Third Street, The Grove, is also a hotspot for crime, which makes this even more concerning. In**Tyreke Mallory v Director of Public Prosecutions 142 of 2021** (January 2022) where the issue went beyond, ***"whether the appellant will appear for his trial but turns on whether he is a threat to society*** **(emphasis added)** the court stated at paragraph 33:

> ***"Therefore, in weighing the presumption of innocence given to the Applicant with the need to protect the public order and the public safety the Court is of the opinion that the need for public safety and public order is of highest importance and in the present circumstances cannot be ignored (emphasis added)".***

C. 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.

16. There has been significant intel that suggest the Applicant is a member of a rival gang and that this present matter stems from what is believed to be retaliatory actions. The Applicant was on bail when these matters allegedly occurred. The Court notes that and is very mindful of the remarks espoused by Police Commissioner Fernander as recent as August 2022 that, "**55 percent of murder victims for the year were on bail".**

17. This Court takes the position as highlighted by the case of ***Dentawn Grant v The Director of Public Prosecutions SCCrApp No. 59 of 2022***, where Issacs JA provided that,

> "Once there is a basis for the Court to **conclude that an accused person's life may be in danger if he is released on bail.....the Court is obliged by the mandatory "shall", to deny bail to the Applicant**".

18. There is great concern for the safety of the Applicant having regard to retaliatory attacks and the increased number of killings that occur of those granted bail, particularly, where evidence is provided that raises this concern.

D. 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; (First Schedule Part A (f)).

19. The Applicant is charged with two counts of Murder and Attempted Murder and was previously granted bail forAttempted Murder and Attempted Armed Robbery in 2016and two (2) counts of Possession of a Firearm with Intent to Endanger Life and Ammunition in 2020. In instances where the applicant is on bail and is subsequently charged with offences, the court stated in **Tyreke Mallory supra**, that where the evidence was determined to be "cogent and cannot be said to be very weak or non-existent..... this supports the findings by the trial judge that **there is a reasonable basis for the Crown's allegation that the appellant is a threat having regard to the fact that the present offence was committed whilst he was on bail (emphasis added)**....having regard to his antecedents and the fact that he was arrested for the current offence while on bail there is a reasonable basis to perceive him as a threat to society. Further, the evidence, in my view, 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 pending trial."

20. In***Cordero McDonald v The Attorney-General SCCrApp. No. 195 of 2016,***

> "An additional consideration to the seriousness of the offence is the fact that the **appellant was on bail when he was charged with the offence of attempted murder (emphasis added)**. The existence of these factors would support a finding of substantial grounds for believing that the applicant would fail to surrender to custody or appear at his trial; or commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice".

E. The nature and seriousness of the offence and the nature and strength of the evidence against the defendant.

21. No doubt the nature of the offence and the strength of the evidence attached thereto are "**material considerations when determining the proper exercise of the discretion to grant bail**" (***Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019, para 24***) and in ***Jonathan Armbrister v Attorney General,SCCrApp No. 145 of 2011, John, JA*** observed 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."

22. The Court fully appreciating that bail hearings should not constitute mini trial, was mindful of what was stated in ***Attorney General v. Bradley Ferguson et al SCCrApp Nos. 57, 106, 108 & 116 of 2008 that***,

> "it is not the duty of a judge considering a bail application to decide disputed facts or law, **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 [she] ought to grant him bail" (***Cordero McDonald supra***).

23. This Court finds on the evidence that was adduced that there is reasonable suspicion of the commission of the offences such as to justify the deprivation of liberty by arrest, charge, and detention of the Applicant together with its consideration of all other appropriate factors. The Respondent has provided sufficient evidence through its Affidavits, oral submissions and supporting documents and not simply mere assertions as highlighted in ***Dennis Mather supra*** that assists this Court in exercising its discretion.

Conclusion

24. The relevant provisions of The Bail Act having been considered, together with the Affidavits of both Counsel and their respective submissions, the Court so finds that unreasonable delay is not a current issue and therefore gave consideration to the following factors:

i. the serious nature of the offences;

ii. the strength of the evidence against the Applicant;

iii. the antecedent of the Applicant;

iv. the competing interest of the Applicant as to his presumption of innocence and right to his liberty with the rights of the public, its safety and security;

v. the safety of the Applicant, prosecution witnesses and the public at large as well as the familiarity of the witness with the Applicant;

vi. bail conditions which could be imposed to minimize the risks involved with granting bail;

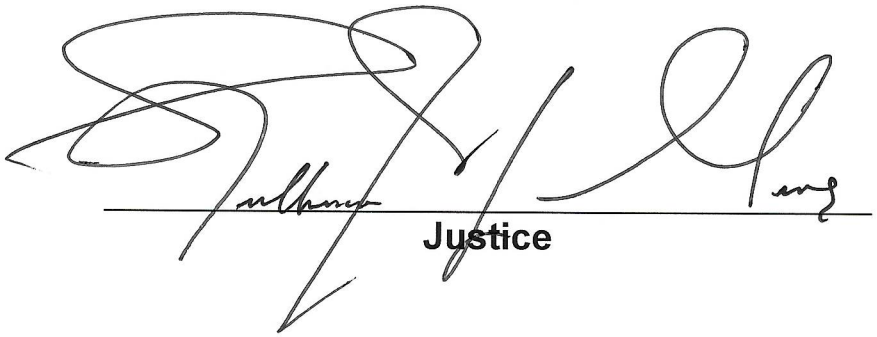
vii. the Court's previous decision delivered 2 February 2022.

25. The Court having given consideration to all of the aforementioned factors is of the view that the Applicant should remain incarcerated at this time for the safety

and protection of the witnesses and the Applicant himself. The court is cognizant of the fact that the incident occurred in a hot spot for crime and there is a strong possibility of retaliatory attacks either upon the witnesses and or the Applicant particularly given the current climate in our communities regarding retaliatory killings of persons accused of murder or other violent crimes who were granted bail. Consideration was also given to conditions which the Court may impose that would minimize the risks involved with the granting of bail and have found none that would sufficiently or effectively safeguard the prosecution witnesses or the Applicant. Bail is therefore denied.

26. The Court remains fortified in its position as indicated in its Ruling of 2 February 2022, the appropriate consideration having been given and there being no apparent change in circumstances in this new application before the court.

Dated this 31 day of August 2022.



Justice