

COMMONWEALTH OF THE BAHAMAS

In The Supreme Court

Criminal Division

No. CRI/BAIL/00176/2015

BETWEEN

KHRISTEN FRANCIS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Before: Her Ladyship, The Honourable
Madam Justice Guillimina Archer-Minns

Appearances: Mr. Ian Cargill for the Applicant
Mr. Patrick Sweeting for the Respondent

RULING- BAIL

1. Khristen Francis, the Applicant (the “**Applicant**”) in these proceedings has been charged with the Murder of Drew Storr and is alleged to have intentionally and unlawfully caused his death on 28 November, 2021 while at Eleuthera, The Bahamas, contrary to section 291(1) (b) of the Penal Code, Chapter 84. The Applicant made application to the Supreme Court via Summons filed on 24 January 2022 for admission to bail.

The Applicant has previously been charged and subsequently conditionally discharged for offences of Vagrancy by the Magistrate Court in Harbour Island in January 2014 and Possession of Dangerous Drugs in March 2015. The Applicant also has a pending matter of Burglary, charged in May 2015 for which bail was granted.

3. As per the Affidavit of the Applicant filed January 24, 2022 made in support of his application for bail, the Applicant asserts therein that: (i) he would be disadvantaged in his ability to adequately prepare his Defence, and (ii) support his two children and assist his family.
4. Counsel for the Applicant further contended that (i) the Applicant has yet to receive the Voluntary Bill of Indictment, (ii) continues to maintain his innocence, (iii) has a place of abode on the island of Eleuthera, (iv) doesn't have any previous convictions only a pending matter before the Court, (v) conditions can be imposed to ensure attendance at trial and (vi) that he will not interfere with witnesses as they are all anonymous.
5. Counsel for the Respondent objected to the grant of bail for the Applicant supported by an Affidavit of Inspector Demetrius Taylor, asserting *inter alia*, (i) there is cogent evidence linking the Applicant to the crime through three anonymous eye witnesses, (ii) the Applicant's antecedents, (iii) the nature and seriousness of the current charge of Murder and (iv) that there has been no delay in the progression of the matter before the Court to date.
6. Counsel for the Respondent further contended that given the serious nature of the crime, the numerous anonymous eye witnesses on the same island who were present at the time of the alleged incident, it would not be in the interest of the public for bail to be granted.

7. Upon review of the Affidavits and consideration having been given to the oral submissions of Counsel for the Applicant and Respondent, the Court has determined that given the nature and seriousness of the charge which allegedly occurred in a populated open public space together with the number of anonymous eye witnesses all residing on the same island and given the closeness and familiarity of persons on the island, may well increase the risk of the identity of the anonymous eye witnesses being revealed and their safety put in jeopardy. The Court is of the view that given the aforementioned factors that it ought not exercise its discretion to grant the Applicant bail at this time. The reasons for the exercise of the discretion against the Applicant are given below.

Applicable Law

The Constitution

8. In our Democratic society, where we are bound by the supreme law of our land, our Constitution, the Applicant enjoys a presumption of innocence and has a right to apply for bail. 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.”**

Article 19(3) of The Constitution entitles the Applicant to a fair trial within a reasonable time and in the event that this cannot ensue, the Applicant must be granted bail unconditionally or subject to reasonable conditions.

The Bail Act (1994) (as amended) (the “Bail Act”)

9. Although the granting of bail is a discretion exercised by the courts, the Bail Act gives guidance on factors that should be considered in cases where Part C offences are before the court. Sections 4(2), 4(2A) and 4(2B) of the Act provides as follows:

(2) Notwithstanding any other provisions 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;

(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 a written statement giving 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 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 victim or victims of the alleged offence, are to be primary considerations.

10. Part A of the Bail Act states as follows:

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.

Discussion and Reasoning

The Bail Act

Trial within a Reasonable Time

11. In accordance with the Bail Act and Article 19(3) of the Constitution, if a person is charged with an offence who cannot be tried within a reasonable time, they should receive bail. However, if they can be tried within a reasonable time, the court should move on to give consideration to sections 4(2B), 4(2C) and Part A of the Act in order to make a determination as to whether an applicant is a fit and proper candidate for admission to bail (*Duran Neely v The Attorney General Appeals No. 29 of 2018*).

12. In the instant case, the Applicant was arraigned in the Magistrate's Court on 2 December, 2021 and was scheduled to appear before the Magistrate's Court for the service of the Voluntary Bill of Indictment on 20 February 2022. The Voluntary Bill of Indictment remains outstanding and the Court is unaware of the Applicant's adjourned date in respect of same. Suffice it to say, the Applicant has spent some three months on remand to date.

Previously granted bail and now charged with similar offences (Character / Antecedents)/Commit an offence while on bail

13. The character or antecedent of the person charged is a primary consideration but this factor alone does not automatically result in the release of a person on bail. The Applicant has previous convictions of Vagrancy and Possession of Dangerous Drugs for which he has been conditionally discharged. However, the Applicant was also charged in 2015 with Burglary a charge for which he was granted bail in the sum of \$8,000 which is punishable by a term of imprisonment exceeding one year and since that time has been charged with the present offence, this offence having occurred while on bail and is a factor that must be considered.

Failure to surrender to custody or appear at trial

14. Part A of the Bail Act requires the court to consider whether there are substantial grounds for believing that, if released on bail the defendant would fail to surrender to custody, appear at his trial or interfere with witnesses.
15. As stated in *Jeremiah Andrews v The Director of Public Prosecutions [1937] 2 All ER 552* the appropriate test for granting bail is whether or not a court is of the view that the applicant will or will not appear for trial.
16. In his affidavit, the Applicant avers that he will appear for trial and defend the charge. Counsel for the Respondent has asserted that the nature and seriousness of the alleged offences and given the Respondent's reliance on the anonymous eye witnesses of the same locale should not allow for bail to be granted.
17. The court has also taken into consideration the conditions in the case of *Jeremiah Andrews* which were considered together with the other factors relative to the granting of bail.

The Nature and Seriousness of the Offence and Nature and Strength of the Evidence

18. It is no doubt that the offence of Murder is a serious one; but nevertheless a bailable offence and; its nature and seriousness cannot be the sole reason to deny bail (*Jevon Seymour v D.P.P SCCRApp No 115 of 2019*).
19. Recognizing, that Bail hearings should not constitute mini trials (*Attorney General v. Bradley Ferguson et al SCCRApp Nos. 57, 106, 108, & 116 of 2008*), it is important that the court also consider the strength of the evidence. In *Cordero McDonald v. The Attorney General SCCRApp No 195 of 2016*, Allen P stated that:

“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.”

20. There is reasonable suspicion on the evidence before the Court as to the commission of the offence by the Applicant. This suspicion arises from three anonymous eyewitnesses who contend to seeing the accused, in good lighting and with no obstruction, shoot at the deceased some feet away from their position which was in an open, populated, public space and their familiarity with both the accused and deceased.

Conclusion

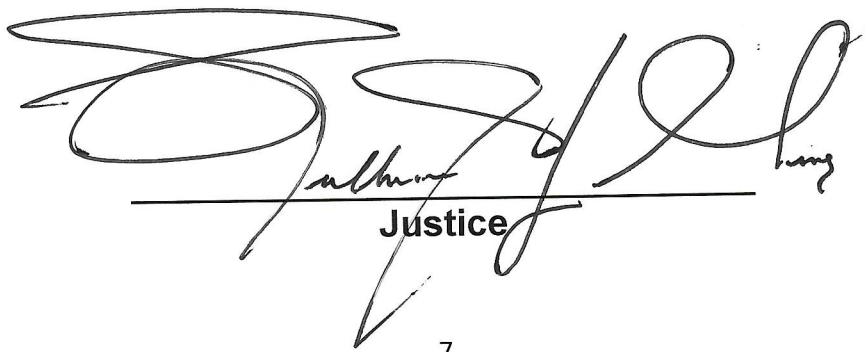
The relevant provisions of The Bail Act having been considered, together with all other relevant factors, the court is of the view that given:

- (i) the serious nature of the offence;
- (ii) the strength of the evidence against the defendant;
- (iii) the antecedent of the Applicant;
- (iv) the competing interest of the Applicant's presumption of innocence and right to his liberty with that of the public its safety and security;
- (v) the closeness of the island community and the increased risks of the identity of the anonymous witnesses being revealed and their safety put in jeopardy;
- (vi) the medical condition of the Applicant, that being a skin condition, which the Court will order that he receives the appropriate medical attention and;
- (vii) all conditions which may be imposed to minimize any risks involved with the granting of bail.

The Court is of the view that it ought not exercise its discretion in favor of the Applicant to admit him to bail at this time. The safety of the anonymous witness, the public, its safety and security are of paramount importance as well as that of the Applicant himself. Bail is denied.

Should there be any change in circumstances, in the interim the Applicant is at liberty to reapply.

Dated this 16 day of March 2022



Justice