

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

CRIMINAL LAW DIVISION

2014/CRI/BAL/00068

BETWEEN

GODFREY DION MINNIS

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Senior Justice Bernard Turner

Appearances: Mr. David Cash for the Applicant

Mr. Kenny Thompson for the Respondent

Hearing Date: 10 May 2023

RULING

TURNER Snr J

The applicant herein applied for bail, by way of a summons, supported by an affidavit, both filed 18 April 2023, in respect of charges of murder and armed robbery, which is alleged to have occurred on 21 March 2022.

2. The affidavit asserts that:

- (i) the Applicant is a Bahamian citizen;
- (ii) that he was charged with Murder and Armed Robbery;
- (iii) that there is a pending matter before McKay J.;
- (iv) if granted bail, he would reside at #49 Rupert Dean Lane;
- (vi) he was employed at Tropix Landscaping;
- (vii) he is not a flight risk;
- (viii) he has one previous conviction;
- (viii) evidence against him is weak;
- (ix) he has a three year old daughter who depends on him financially and emotionally and
- (x) he maintains his innocence.

3. The affidavit in response indicated that:

- (i) the Applicant was charged with Murder and Armed Robbery;

- (ii) there is strong evidence against the applicant as a witness saw him discharge bullets at the deceased and took the deceased's bike;
- (iii) there is no unreasonable delay in proceeding to trial;
- (iv) there is nothing peculiar about the Application's situation which suggest his continued detention is unjustified;
- (v) it is in the public's best interest that the Application be denied bail;
- (vi) it is not likely that the Applicant would surrender to custody, if granted bail.

4. Having regard to the issues for a court to consider on an application for bail, section 4(2) of the Bail Act states:

"4. (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 ;

(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),....."

5. Sub-section 4(2B), reads:

"(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."

6. The First Schedule Part A of the Act outlines the relevant factors that the Court must consider in an application for bail. Part A of the First Schedule states:

“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);

(d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;

(e);

(f);

(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant;”

7. There is an evidential burden on the Respondent to prove that the Applicant would fail to surrender to custody, appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was observed in the Court of Appeal decision

of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. There, the Court was tasked with determining whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 of the judgment, Crane-Scott, J.A. stated:

“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence (emphasis added).”

8. In **Jeremiah Andrews v The Director of Public Prosecutions Appeal No. 163 of 2019**, Evans JA expressed the following, at paragraph 26:

“In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence (emphasis added).”

9. The Privy Council, in **Hurnam v. State of Mauritius [2006] 1 WLR 857** stated at paragraph 15:

“15. It is obvious that a person charged with a serious offence, facing a serious penalty if convicted, may well

have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail....The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...(emphasis added)”

10. **Cordero McDonald v. The Attorney General SCCrApp No 195 of 2016** clarified the extent of a judge's task in relation to the evidence which is adduced at a bail application, per Allen P.:

“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 added).”

11. According to the Applicant's affidavit, he states that he is not a flight risk and will abide to all obligations of the Court if granted bail. He states that he has a 3 years old daughter who is financially and emotionally dependent on him and that he maintains his innocence. He also states that

the evidence against him is weak and he acknowledges that he has a previous conviction for causing damage, for which he was sentenced to six months imprisonment.

12. The Applicant's affidavit also acknowledges that he had a pending matter (murder) for which he was on bail at the time that he is alleged to have committed this offence.

13. The statements provided in support of the present affidavit, and previous affidavits filed in support of previous objections to bail indicate that while being pursued in relation to this matter, the Applicant removed the Electronic Monitoring Device monitoring his compliance with his then conditions for bail.

14. This provides clear evidence of his disposition in respect of his likelihood of surrendering into custody or appearing to take his trial. He has proven by his own actions that he is a flight risk.

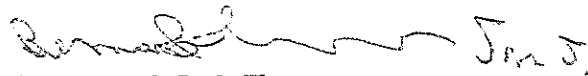
15. I find from all of the circumstances in respect of these allegations, and the circumstances of the applicant, and considering the provisions of the Bail Act, that the Respondent has placed sufficient information before the court as to cause me to conclude that there is a substantial risk that if released on bail, the applicant would not appear to take his trial.

16. I have considered whether any conditions could be imposed which would prevent the applicant from failing to appear to take his trial. Clearly the applicant cannot be effectively monitored by an Electronic Monitoring Device and I do not see what other alternatives can be deployed to ensure his attendance.

17. In these circumstances, I find that the Respondent has satisfied me that the Applicant ought to continue to be detained in custody.

18. His application for bail is therefore refused.

Dated this 16th day of May, A D 2023

A handwritten signature in black ink, appearing to read "Bernard S A Turner".

Bernard S A Turner

Senior Justice