

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

Criminal Side

2019/CRI/bal/No. 00397

BETWEEN

JEREMIAH ANDREWS

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

**BEFORE: The Honourable Mr Senior Justice Bernard
Turner**

**APPEARANCES: Mr Ian Cargill and Mr Levan Johnson for the
Applicant
Ms Janessa Murray and Ms Karine MacVean for
the Respondent**

HEARING DATES: 20 February 2023

RULING

TURNER Snr J

The applicant herein is applying for bail in respect of one count of murder, which is alleged to have occurred on 6 January 2023.

2. His affidavit in support of the application for bail, reads as follows:

“..

2. I was born on the 18th June A.D., 1993, in the Commonwealth of The Bahamas and I am 29 years of age.

3. I stand remanded on the following Charge:-

MURDER: contrary to section 291(1) (b) of the penal code, chapter 84

4. I am innocent and I pleaded not guilty and will be defending this charge at trial.

5. I was arraigned on the 23rd day of January A.D., 2023 before Chief Magistrate Mrs. Joyann Ferguson-Pratt, sitting at Magistrate's court No. 9, Nassau Street and the matter is adjourned to the 12th day of April, 2023.

6. I do not have any prior conviction(s) before the court(s) in the Commonwealth of the Bahamas.

7. I have a pending matter before the Court and I therefore state that to the best of my knowledge and belief, I have provided full disclosure in this regard.

8. Should this Honourable Court admit me bail, I will have accommodations on the Island of Sal Salvador, Bahamas.

10. I respectfully request that this Honourable court admit me to bail pending my further Court appearances. I am the father of three (3) children and assist my family both financially and emotionally and I fear that they will be disadvantaged in my absence. Further, I will not be able to adequately prepare my defence if I am further remanded.

11. Should this Honourable Court admit me to bail, I am prepared to comply with any bail conditions which may be imposed in order to ensure my attendance at my trial.

12. All of the facts and circumstances deposed to in my affidavit are within my own knowledge and belief, except for the facts and circumstances deposed to from information only, and my means of knowledge and sources of information appear on the face of this my affidavit.

That the contents of this Affidavit are true and correct to the best of my knowledge, information and belief.”

3. The Respondent objected to the application and filed an affidavit which reads, in part:

“....

4. That the Applicant, Jeremiah Andrews is 29 years old and his date of birth is the 18th of June, 1993. He is charged with Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84. There is now produced and shown to me marked as 6(Exhibit TB-Ir', a copy of the charge sheet.

5. That it is alleged that on Friday, the 6th of January 2023, the Applicant did intentionally cause the death of Takeil Tynes alias "Pumkin" by means of unlawful harm.

6. That there has been no unreasonable delay in the aforementioned matter as the incident is alleged to have occurred on the 6th of January, 2023. The Applicant appeared in court # 9 before Chief Magistrate Joyann Pratt for arraignment on the 23rd of January, 2023 and was not required to enter a plea due to the nature of the offence. The matter was adjourned to the 12th of April, 2023 for service of the voluntary Bill of Indictment.

7. That the Applicant has previous convictions for Assault (16/04/21) where he was bound over to keep the peace for a period of one (1) year or six months in prison and also ordered to compensate the virtual complainant in the sum of \$350.00; 11 counts of possession of Firearm with intent to Endanger Life (29/11/19) where the status is pending; and, Murder (23/01/23) where the status is also pending. There is now produce and shown to me marked as "Exhibit TB-2" a copy of the Applicant's Royal Bahamas Police Force Criminal Records Antecedents, Form.

8. That the Applicant now stands charged with a more serious offence, Murder. That having regard to the Applicant's previous and pending convictions along with the present charge of Murder, the Respondent has substantial grounds for believing that the Applicant will re-offend should he be released on bail.

9. That there are reasonable grounds to believe that the grant of bail may result in the public safety being at risk.

10. That the Respondent verily believes that there is cogent evidence to support the charges against the Applicant.

11. That a witness, Joseph Burrell stated that on the 6th of January, 2023 sometime around 2:30am he was in an abandoned house on Washington street south when he saw a silver colored Suzuki Swift vehicle reverse in the yard of this abandoned building and a male who he know as "JD" exited this vehicle. He then watched as "JD" tied a white shirt over his head and pulled a silver handgun put of his waist and walked in a southern direction towards Robinson Road. A short time passed when he heard the sounds of gunshots. Shortly after the gunshots stopped, he saw "JD" running back towards the car with the silver handgun in his hand and the white shirt around his head. The witness also saw when "JD" got in the backseat of the vehicle and shortly thereafter the vehicle sped off north on Washington Street. There is now produced and shown to me marked as Exhibit "TB3", a copy of the statement of Joseph Burrell.

12. That on the 6th of January, 2023, the deceased, Takeil Tynes was taken to Princess Margaret Hospital and he was pronounced dead on arrival at the hospital. The deceased died from gunshot wounds to the head and torso. There is now produced and shown to me marked as "Exhibit TB-4", a copy of the decease man's death certificate.

13. That the Applicant, when asked by D/Insp. Demetrius Taylor to participate in an identification parade or group identification, he refused to do so and the same was documented on an Identification Parade Form. There is now produced and shown to me marked as "Exhibit TB-5" a copy of the Report of D/Insp.

Demetrius Taylor and Exhibit "TB-6", a copy of the Identification parade Form respectively.

14. That on the 20th of January, 2023, a witness, Joseph Burrell was shown a 12-man photo gallery where he positively identified the Applicant in position #5 as the male he knows as "JD" whom he saw running with the gun in his hand on Washington Street. There is now produced and shown to me marked as "Exhibit TB-7" and Exhibit TB-8", a copy of the statement of the witness and the 12-man photo gallery respectively.

15. That the Applicant is known to the witness who positively identified him and because the Applicant is charged with a serious offence, that is substantial grounds for believing that he may interfere with the witness if he were admitted to bail.

16. That the Applicant is not of good character and having regard to the serious nature of the offence to which he is presently charged with and the severity of the penalty if convicted, is sufficient incentive for the Applicant to abscond or fail to appear at his trial should he be released on bail.

17. The Respondent further ask this Honourable Court to take Judicial Notice of the number of Applicants charged with murder who when released on bail are murdered; hence this Applicant whose identity was not hidden during the commission of this alleged crime should be kept in custody for his own safety.

18. That there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified.

19. In the present circumstances, the Respondent prays that this Honourable Court refuse the Applicant's application to be admitted to bail.

20. That the contents of this Affidavit are true to the best of my knowledge, information and belief.”

4. As noted, paragraph 7 of the Respondent's affidavit asserts that the applicant in fact has a previous conviction for Assault. The applicant asserted, in a further affidavit, that whereas he does have a pending matter, that he does not have any convictions, and therefore, for the purposes of this bail application, could be considered to be of 'good character'.

5. In submissions before the court, counsel on behalf of the applicant explained that the conviction, on the antecedent form exhibited to the affidavit of the respondent, was in fact a conditional discharge and therefore did not count as a conviction. The challenge for the court is that the applicant's affidavit does not address this issue at all except to say that he had no previous convictions. There is no factual information about the circumstances of the alleged conviction, except that it remains on the antecedent form, and nothing is before the court challenging the accuracy of the form.

6. 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),.....”

7. 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.”

8. Counsel for the respondent submitted that having regard to the antecedents of the applicant, that the beliefs adumbrated in paragraphs 15 to 19 of the respondent’s affidavit are all reasonable and borne out by the evidence of his character and the attendant circumstances.

9. The way in which these issues are to be treated with are laid out in the decision of The Bahamas Court of Appeal in **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. Paragraph 66 of that decision states:

“66. In the absence of evidence, merely listing the relevant factors and using expressions such as “may”; or “is likely to”; or “it is recommended” as was done in the McHardy affidavit, cannot discharge the Crown’s burden. We take this opportunity to stress once again what this Court (differently constituted) said in Armbrister, which is that that is not how the Crown’s burden on a bail application is discharged. Paragraph (a) of the First Schedule requires the production by the Crown of evidence capable of supporting a belief that the applicant for bail “would”, if released, abscond, commit new offences or interfere with witnesses. Ritualistic repetition of the Part A factors, in the absence of evidence, is unfair to the accused person and comes nowhere close to discharging that burden.”

10. Paragraph 70 concludes the review of this issue by stating:

70. Put somewhat differently and at the risk of being unduly repetitive, we are satisfied that given the presumption of innocence and the evidence of the appellant’s good character and the absence of criminal antecedents, there was no evidential basis before the judge in relation to the appellant which is capable of supporting the judge’s ultimate conclusion at paragraph 16(v) of his decision that: “in the circumstances of this Applicant and this application the need for public order and public safety is paramount”. In the absence of evidence that the appellant posed a substantial threat to the Crown’s witnesses or to public safety and public order, the judge’s decision was unreasonable and clearly wrong.”

11. A bail application is not to determine where a person is guilty of any offence, but to determine whether an applicant ought to be placed on bail, or whether there is any sufficient basis made out to determine that he should be remanded into custody to await his trial.

12. I note that according to the antecedent form, the applicant has a criminal conviction for assault, this is a contested issue, but the contest only took the form of counsel's ipsi dixit. In any event, this conviction does not approach the seriousness of an allegation of murder.

13. In addition however, the applicant also has a pending charge of eleven counts of possession of a firearm with intent to endanger life, for which he was on bail when charged with this offence. His bail for those charges seems to have been heavily litigated, with the applicant having been to the Court of Appeal twice in respect of issues related to his bail, the last time no later than June of 2022, when the applicant successfully had the Court lift his electronic monitoring for the firearms charges.

14. The respondent asserted that the intended evidence was cogent. Without making any findings on same, the evidence, while circumstantial, can indeed be termed cogent. An eye witness states that he saw the applicant exit a car on Washington Street, tie a shirt around his face and then pull out a gun and head towards Robinson Road. That witness had himself just come from King Bar on Robinson road and Washington Street. A short while later he heard several gunshots and then watched as the applicant returned running to the vehicle he got out of, after which the vehicle sped off. This witness said he saw people running from King Bar, after the shooting. The death certificate of the deceased indicates that his place of death was King Bar, Robinson Road.

15. That intended evidence points to the use of a firearm in a public place. The same witness states that he knew the applicant's brother to have been the victim of an alleged murder only a few days earlier.

16. These circumstances raise the specter of retaliatory killings, which raises the issue not only of the safety of the applicant, but also the safety of society. Both if these issues were raised by the respondent as being separate basis for refusing the applicant bail.

17. The Court of Appeal of The Bahamas, in **Dentawn Grant v DPP (No. 59 of 2022)** stated:

"25. However, it cannot be gainsaid that the Judge was fully entitled to consider the safety of the Appellant as one of the factors for her to weigh in the scale pertaining to whether or not to grant the Appellant bail based on the strength of the material provided to her by the Respondent, namely, the Appellant's car had been shot at some days before the murders took place, an event the Appellant admitted occurred in his Record of Interview with the police.

26. Part A of the First Schedule to the Bail Act states, inter alia as follows:

"The Court shall deny bail to a defendant in any of the following circumstances — (b) where the Court is satisfied that the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;"[Emphasis added]

27. 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 - and the attack days earlier on the Appellant provides such a basis the Court is obliged by the mandatory "shall", to deny bail to the Applicant. However, a caveat may be applicable here, to wit, if the Applicant is able to demonstrate to the Court that notwithstanding a finding that his life may be in danger if released on bail, he is able to minimise that risk either by relocation to another island or by remaining under house arrest, the Court ought to have regard to such conditions when deciding whether or not to grant bail.

28. In his submissions before us, Mr. Dorsett advised us that the Appellant was willing to relocate to another island if that was necessary to allay any fears that he may suffer the same fate as the alleged victims in his case. Unfortunately, this option was not placed before the Judge and canvassed in the court below; and the Judge cannot be faulted for not applying her mind to the efficacy of such a condition in the circumstances.

29. In the premises, the Judge's decision to deny bail to the Appellant on the ground that the Appellant's life may be in danger is explicable and cannot be said to be unreasonable because she has taken into account an irrelevant matter or failed to consider a relevant matter. She was entitled on that basis alone to deny him bail.”

18. Further, the Learned President, in a concurring addition to the decision of the Court stated:

“42. I also agree with the disposition by Isaacs, JA, but would like to add a comment of my own. I am also of the view that having regard to the material before the Court that this murder appears to have been in retaliation to a previous attack on the Appellant. There is not only a risk of the Appellant’s safety if granted bail, but also a risk to the public’s safety. Any retaliation against the Appellant puts members of the public at risk who may be in the area where any attack on the Appellant may take place. In the present case, the material before the Court does not suggest that the victim Brianna Grant was object of the retaliation but was shot because she was with the intended victim at the time.

43. In the circumstances, I am satisfied that in addition to the safety of the Appellant, it is also in the interest of the safety of the public that the Appellant should be denied bail.”

19. 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 only interfere with the witnesses in this matter, and endanger public safety generally, but that he would himself be at risk, a risk which further endangers the safety of the public generally.

20. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and keep the applicant safe, I note that the applicant has offered to relocate to San Salvador, so as to, presumably, reduce the risk to himself.

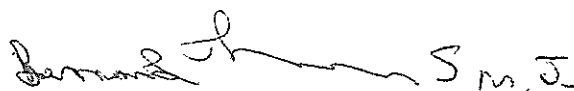
21. As noted, he had previously been electronically monitored, but it had been removed by the time of this alleged offence. The electronic monitoring device may well have further implicated him, or exonerated him, of any involvement in this alleged offence, but I do not consider that it would have, or could have, prevented the incident itself. Electronic monitoring devices are useful and effective tools for tracking persons on bail, but there is nothing which physically prevents a person from removing the device, once a decision is made to breach the conditions of a bond. Nor is the device capable of preventing the wearer from committing an offence.

22. The offered relocation to San Salvador is a possible means of protecting the applicant, but that too has its limitations; without making any particular findings, the relocation to that island may well represent a transferal of public risk from New Providence, to San Salvador.

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

24. His application for bail is therefore refused.

Dated this 27th day of February, A D 2023



**Bernard S A Turner
Senior Justice**