COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Side

2023/CRI/bal/No. 00045

BETWEEN

KYLE JONES

Applicant

And

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE:	The Honourable Mr Senior Justice Bernard Turner
APPEARANCES:	Mr Alex Morley for the Applicant Mr Uel Johnson for the Respondent
HEARING DATE:	3 April 2023

RULING

TURNER SNR J

The applicant herein is applying for bail by way of a summons and an affidavit in support filed 15 March 2023, two days after he was charged with two counts of murder, which is alleged to have occurred on 6 March 2023.

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

> **"1. That I am 27 years old having been born on the 26th February 1996.**
>
> **2. That on Monday March 13th 2023 I was brought before Magistrates Court # 5 for two counts of Murder. A copy of the charge sheet is marked and exhibited as "KJ-1".**
>
> **3. That I am to appear in Court on the 31st of May 2023 for the service of the V.B.I.**
>
> **4. That before my remand I resided at #33 Grant Street Fox Hill.**
>
> **5. That before my remand I was employed doing auto body repair.**
>
> **6. That I have a son who is two years of age that I take care of and I have a baby on the way.**
>
> **7. That I have one pending matter involving Possession of Unlicensed Firearm before Court # I0; which is set down for a final adjournment for the 20th of March 2023.**
>
> **8. That I have no convictions on my record.**
>
> **9. That I am innocent of these offenses.**
>
> **10. That I told the police where I was located at the time of the alleged offenses.**
>
> **11. That I humbly ask the Court to grant me bail in this matter.**

12. That I solemnly swear to abide by any terms and conditions that this Honorable Court might be minded to attach to any grant of bail that may be afforded me.

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

3. The Respondent filed an affidavit in reply on 29 March 2023, which reads, in part:

"...4. That the Applicant is charged with two (2) counts of Murder contrary to section 291(1)(b) of the Penal Code, Chapter 84.

5. That the Voluntary Bill of Indictment with respect to this matter is presently being prepared. That there has been no unreasonable delay in the aforementioned matter as the incident is alleged to have occurred on the 6th of March 2023.

6. That the Applicant has on recent occasions been arrested for the offence of Possession of a Firearm and Ammunition which demonstrates his escalated propensity to commit violent offences. There is now produced and shown to me marked as Exhibit "KM-1", is a copy of the Applicant's Criminal Record's Antecedent Form.

7. That I have been reliably informed the Applicant has strong affiliations with the gang known as "Fox Hill Outlaws".

8. That the Applicant is involved in an ongoing turf war with "Fox Hill Park Boys" gang.

9. That we verily believe that should the Applicant be released on bail, there is a high likelihood that there will be retaliation.

10. That for the Applicant's own protection and for the safety of the public, the Applicant should not be released on bail.

11. That in consideration of all of the above, we ask this Honourable Court to take Judicial Notice of the number of Applicants charged with murder who when released on bail were themselves murdered, likewise, this Applicant whose identity was not hidden during the commission of this alleged crime should be kept in custody for his own safety.

12. We rely on the Affidavit of Inspector Jamal Adderley, an Operations Inspector within the Central Intelligence Bureau of the Royal Bahamas Police Force. There is now produced and shown to me marked as Exhibit "KM-2" is a copy of the Affidavit of Inspector Jamal Adderley of the Central Intelligence Bureau of the Royal Bahamas Police Force.

13. That the evidence against the Applicant is cogent, as, at the time of the offence, the Applicant was recognized by someone who is known to him, and was also later identified him during the course of police investigation which led to his arrest and being charged. There is now produced and shown to me marked as Exhibit "KM-3" is a copy of the witnesses redacted statement of identification.

14. That I verily believe that should the Applicant be released on bail, that there is a high likelihood that he or his gang members will interfere with witnesses.

15. That the charge of Murder and the severity of the penalty associated with the offence creates a higher likelihood that the Applicant may not appear at his trial.

16. That there are no conditions that can be impose that will ameliorate or eliminate the risk that the Applicant would interfere with prosecution witnesses or the general safety of the public.

17. That there is nothing peculiar about the Applicant's circumstances.

18. In these circumstances, the Respondent prays that this Honourable Court exercises its discretion and deny the application for 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. Counsel for the respondent, in relying on their filed affidavit, submitted that having regard to the pending charge for firearms related matters, for which the applicant was on bail when charged with these offences, and the information provided in an affidavit attached to the affidavit in response, detailing the applicant's alleged involvement in gang related activities in the same area where the alleged murders were committed, that the beliefs adumbrated in paragraphs 15 to 18 of the respondent's affidavit are all reasonable and borne out by the evidence of his character and the attendant circumstances.

7. 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."

8. 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."

9. A bail application is not to determine whether a person is guilty of any offence, but to determine whether any sufficient basis has been established by the prosecution to the requisite standard that he should be remanded into custody to await his trial.

10. I note that the applicant has a pending charge of Possession of a firearm, for which he was on bail when charged with these two counts of murder.

11. The respondent asserted that the intended evidence was cogent, involving an alleged eyewitness who identified the applicant from a photographic lineup. Without making any findings on same, that evidence can indeed be termed cogent.

12. That intended evidence points to the use of a firearm in a public place. Further, it is a notorious fact that one of the alleged victims was a defendant on bail for a number of alleged murders. The affidavit attached to the affidavit in support asserts the involvement of the applicant in certain organized gang activity.

13. In **Seymour** (ibid), their Lordships indicated, at paragraph 68:

> **"68. If the appellant was in fact a threat to public safety or public order; or if there was evidence of specific threats which had been made against the witnesses, Perry McHardy's affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. Such evidence might have included for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again, *evidence for instance, of any known or suspected gang affiliation*. No such evidence was placed before the learned judge and the absence of such evidence, stood in stark contrast with the evidence which the appellant had placed before the judge of his good character, strong family and**

community ties and the fact that he had a long and unblemished record of service within the BDF." [Italicized emphasis added]

14. No conclusions can be drawn on any such assertions, but they certainly, and the apparent circumstances of the instant matters the subject of this application, raises the specter of retaliatory killings, which raises the issue not only of the safety of the applicant, but also the safety of society. Indeed there is nothing to suggest that both the alleged victims were the intended targets of what can be described as a planned assassination.

15. 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."

16. 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 the 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."

17. 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.

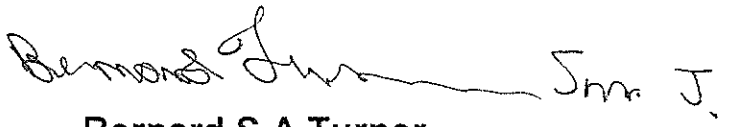
18. Having considered whether any conditions could be imposed which would prevent any witness interference, public endangerment and keep the applicant safe, I do not consider that any such condition could be imposed. The applicant lives, according to his affidavit, in the same troubled

community where the alleged murders were committed, an area where alleged murders have notoriously increased significantly.

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

20. His application for bail is therefore refused.

Dated this 12th day of April, A D 2023



Bernard S A Turner

Senior Justice