

**EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CASE NO.: ANUHCv2024/0496

BETWEEN:

TREVON FRANCIS- APPLICANT

-and-

COMMISSIONER OF POLICE-1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTIONS-2ND RESPONDENT

Appearances:

Mr. Daniel Lawrence for the Applicant
Mrs. Shannon Jones-Gittens for the Respondent

2024: December 20th
2025: January 28th, February 3rd

RULING ON BAIL APPLICATION OF AN APPELLANT

- [1] **Bakre J.:** The applicant, Trevon Francis, filed an application to be admitted to bail pending the determination of his appeal pursuant to section 10c of the Bail Act. The applicant was convicted on the 1st day of March 2018 for an offence of wounding with intent to murder in a joint enterprise, shooting with intent to murder one Shelton Hunte and also possession of a firearm with intent to injure. He was sentenced to (24) Twenty Four years for wounding with intent to murder, (24) Twenty four years for Shooting with Intent to murder and (10) Ten years for possession of a firearm with intent to injure. All sentences were to run concurrently. The applicant has now spent over ten years in prison.
- [2] The applicant instructed his counsel to file a notice of appeal in 2020. Upon the filing of the notice of appeal, the appellant/applicant was unable to cover the cost of the transcript for the appeal, and thus the appeal could not be heard. The applicant applied to the Court of appeal for a waiver of the cost of the transcript which was granted to be provided within (14) fourteen days but the High court has not been able to produce the transcript for the reason that there was no budget for it, thus the appeal has been further adjourned until the transcript is produced.

- [3] The applicant has now brought this application that he should be granted bail pending the determination of his appeal. Applicant has predicated his application for bail pending appeal on the ground that there is a serious likelihood of success and that he should be released in the meantime since the appeal process is being delayed based on the inability of the High Court to produce the transcript for the appeal.
- [4] The applicant, in moving the application relied on Section 10 of the Eastern Caribbean Supreme Court Act and Section 10c of the Bail Act which states that the High Court in all criminal proceedings shall exercise its powers with the Criminal procedure Act and other laws in force in Antigua and Barbuda. Section 10 of the Bail Act states:-
- “The high court may exercise the following powers regarding bail-
- (a) Grant bail to a person who was committed for trial of an indictable offence after as investigation has been conducted by a magistrate under section 22(c) of the Magistrate’s code of procedure Act Cap 255; No 19. 11 bail Act 2019.
 - (b) Grant bail to a person who is charged with an offence referred to in section 8 if that person can demonstrate to the court why bail should be granted;
 - (c) Grant bail to a person who has been convicted of an offence if that person can demonstrate to the court why bail should be granted;
 - (d) Vary the conditions of bail previously granted to a defendant; and
 - (e) Grant bail to a person who was previously denied bail.
- The applicant stated that by virtue of Section 10c, this court is vested with the jurisdiction to grant this application.
- [5] At the hearing of the application, the Respondent opposed the application on the ground that the High Court has no jurisdiction to grant bail pending an appeal after sentence. The respondent argued that once the High court convicted and sentenced the applicant, it became *functus officio*. It was stated further that once the applicant has filed the Notice of appeal, the Court of Appeal become seized of the matter and the High Court is divested of all powers of proceedings relating to the matter. Counsel argued that the provision of Section 10 of the Bail Act only envisages bail pending sentence after conviction.
- [6] The applicant filed his submission on 16th January where he argued that the court has the jurisdiction to grant the application. Counsel argued that in this situation where the applicant’s appeal could not go on and his appeal has a likelihood of success; it is an appropriate circumstance to grant the bail application.

- [7] It is the position of the applicant that the section relied on is the appropriate provision for the High Court to grant bail pending appeal and that it is only when bail has been refused by the High court that the applicant may now go to the Court of Appeal. Applicant relied on section 17 of the Bail Act which states that ;-
- (1) a defendant who is denied bail may appeal the decision-
 - (a) The High court if bail was denied in the magistrate's court; or
 - (b) The Court of appeal if bail was denied in the High court."
- The applicant argued that haven't not been denied bail by the High court, the defendant could not just go to the Court of Appeal.
- [8] On the part of the Respondent, a submission was filed on the 17th day of January 2025 wherein arguments were made on why the application should be refused.
- [9] It is the position of Respondent counsel that Section 10c of the Bail Act relied on by the applicant refers basically to the grant of bail after conviction but before sentencing. Counsel stated that the provision to grant bail after an appeal initiated is found in section 46 of the Eastern Caribbean Supreme Court Act. It says ;-
46. (1) An appellant who is not admitted to bail shall, pending the determination of his appeal, be treated in like manner as prisoners awaiting trial. Court.
- (2) The Court of Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.
- Section 46 (2) according to the Respondent, is the provision that gives the court of appeal the right to grant a bail application.
- [10] In the consideration of this application, this court formulates two particular issues for determination. The first is the issue whether this court being a trial court has jurisdiction to consider a bail application of a convict already sentenced and already on appeal. The second issue would be that where the court determines that it has such jurisdiction, what then would be the considerations and does this applicant meet the requirement for a bail pending an appeal.
- [11] I have considered the application as moved and also considered the argument in opposition to the application. In the course of the argument, this court pointed out the provisions of section 46 of the Eastern Caribbean Supreme court Act Cap 143 and raised the query why in Section 46(1) the provision refers to "an appellant who is not admitted to bail". The court stated that it is an elementary rule of interpretation that a preceding section in a statute is read in context with the following ne. if Section

46(1) refers to an appellant who was refused bail, and Section 46(2) now provides for the jurisdiction to grant bail in the Court of Appeal, then it means that the provision Section 46(2) envisages that such an appellant referred to must have requested for bail in a lower court and refused prior to applying under Section 46(2) which gives the court of Appeal the jurisdiction to consider a bail application of an appellant.

[12] In response to this query, the learned acting DPP stated that the appellant envisaged in the provisions of Section 46 (1) is an applicant who had applied for bail in the magistrate court and refused. Counsel stated that the magistrate's code of procedure Act Cap 255 allows for an appellant who had been refused bail in the magistrate court to apply to the Court of appeal and as such the appellant referred to in Section 46(1) would not be a convict that has been sentenced at the High court.

[13] With the greatest respect to the DPP, it is clear that she has not averted her mind to the provisions of Section 17 of the Bail Act where there is now a statutory provision for bail application. Section 17 states:-

(1) a defendant who is denied bail may appeal the decision-

(a) the High court if bail was denied in the magistrate's court; or

(b) the Court of appeal if bail was denied in the High court."

This means the right of appeal when bail is now denied at the magistrate court is vested in the High Court. Assuming that the DPP was right that prior to the Bail Act, there was a direct application for bail from the magistrate court straight to the Court of Appeal, the provision of Section 17 of the Bail Act has amended that position and an applicant for bail refused at the magistrate court would only be entitled to apply for bail at the High court upon being refused. Invariably, an appellant may only have been refused an application for bail at the High Court to go to the court of appeal and not directly from the magistrate court.

[14] The learned DPP has also urged on this court the position of the English court as stated in the 1984 edition of **Archbold Pleading, Evidence and Practice**. Counsel relied on paragraph 221 at page 78 and asserted that where sentence of imprisonment has been passed, there is no power in that court to admit to bail pending appeal. Contrary to this position, this court relying on the 1993 edition of the same text **Archbold Pleading, Evidence and Practice** see that in the English court, the crown court has jurisdiction to grant bail pending appeal in certain circumstances. The text at paragraph 3-177, 7-139 and 7-191 is explicit on the issue that the high court has the powers to grant bail notwithstanding that the matter is on appeal.

- [15] The position of the English courts notwithstanding, where as in this instance, there are laws of Antigua and Barbuda which gives such powers to the High court, then the position of the extant law of Antigua and Barbuda shall prevail and there shall be no recourse to the English procedure.
- [16] In my respectful view, by virtue of the consideration of the Eastern Caribbean Supreme Court Act Cap 143, Criminal Procedure Act and the Bail Act, the jurisdiction of the High Court to consider the bail of a convict is extant. I am unable to see in any of these laws any provision that prohibits the High Court from considering the bail application of a convict who has been sentenced pending his appeal in certain circumstances. In my view, the combined effect of Section 46(1) and (2) of the Eastern Caribbean Supreme Court Act and section 17 (1) (a) and (b) of the Bail Act make it abundantly clear that an appellant who applies for bail at the Court of appeal would have been first been refused at the High court. The provisions make no distinction between a convict that has been sentenced and one awaiting sentence.
- [17] Having answered the first leg of the application in the affirmative, the court would now consider if this application can be granted considering the circumstances of the applicant.
- [18] It is clear on all authorities that the grant of bail pending appeal unlike in other circumstances is based on a more stringent requirement. The applicant is expected to show an exceptional circumstance which would drive the court to conclusion that justice can only be done by grant of bail. See **R. vs. Watton 68 criminal appeal Report 297**. It is usually granted where it appears prima facie that the appeal is likely to be successful or where there is a risk that the sentence would have been served by the time the appeal is heard. See **Archbold Pleading, Evidence and Practice (39th edition) paragraph 882**. In all, it is the position of the law that applications for bail pending appeal are not treated lightly and will only be granted where exceptional circumstances exist. See **R v. Fitzgerald (1924) 17 Criminal Appeals Report 147**.
- [19] In this case, the applicant's position is that he has a great prospect of success on his appeal. It was argued that the applicant was convicted on the doctrine of joint enterprise, however he did not collude with or embarked on a joint criminal enterprise with the co-accused Shelton Hunte rather he would have been a victim of the co-accused if he had not defended himself from him when he was chased and shot at by the co-accused three times and that one Judith Wynter was injured by the co-accused.

- [20] He said he was arrested and charged with wounding with intent to kill Judith Wynter via joint enterprise. He was charged solely for shooting with intent to murder Shelton Hunte and also possession of firearm with intent to injure. He wishes to deny all these allegations in his appeal and claims he should not have been convicted and sentenced for these offences.
- [21] The applicant claims that he has been in prison for a cumulative period of (11) eleven years having been remanded on the 23rd day of August 2013. Counsel to the applicant relied on the case of **R v. Jogee (2016) UKSC 8**.
- [22] It was further argued that the inability of the high court in Antigua to comply with the order of the court of appeal to make available the transcript of the records in order to facilitate the appeal is also a ground to be considered in this application as this has prevented the hearing of the applicants appeal.
- [23] The application for the court to produce the transcript was granted by the court of appeal on the 21st of November 2024 towards the end of 2024, the position of the high Court as at that time was that they had no budget to cover the exercise. This in my view would not amount to a position that the High court would not ever be in a position to comply with this order of the Court of appeal before the next opportunity for the appeal to be heard. The reason given by the high court is only temporary.
- [24] Also, the applicant was convicted and sentenced on three counts, one of which is the issue of joint enterprise upon which the case of the applicant on appeal is predicated, assuming without conceding that the ground of appeal on the joint enterprise succeeds at the appellate court, the applicant would still have to serve the terms on other charges. It was stated that he was sentenced to (24) twenty four years imprisonment for two counts of wounding with intent and sentenced to (10) Ten years for the third count of possession of firearms. It is only one of the first two charges that is in relation to Joint enterprise and thus assuming that the appeal succeeds in relation to Joint enterprise, the accused having spent (11) years in prison would still spend another (13) years in fulfillment of the sentence passed on the other charge.
- [25] I have stated earlier that the condition for the grant of a bail pending appeal is stringent and should not be taken lightly. It is my view that this is not a situation of where this court would grant bail pending appeal to the applicant in view of the reasons set above. I see no special circumstance to warrant the grant of this application for bail pending an appeal in this circumstance.

[26] This application for bail pending appeal is thus refused on the ground that there is no likelihood that the applicants sentence would have been spent by the time his appeal in respect of the sentence would finish. I also do not see the special circumstance in this regard to warrant a grant of this application for bail pending appeal.

[27] This application is thus dismissed.

Tunde A. Bakre

High Court Judge



By the Court

Registrar