

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CRIMINAL)**

CLAIM NO: DOMHCV 2023/0008

BETWEEN:

DESMOND ROCQUE

Applicant

and

THE CHIEF OF POLICE

Respondent

Appearances:

Ms. Zena Moore-Dyer and Mr. Wayne Norde, Counsel for the Applicant
Ms. Sherma Dalrymple, Director of Public Prosecutions, Counsel for the
Respondent

2023: February 17th, 22nd
March 24th, 31st

JUDGMENT ON BAIL APPLICATION

- [1] **FLOYD J.:** This is an application for bail. The applicant was born in the Commonwealth of Dominica on 31st December 1990. He is 32 years of age. He is charged with possession of a prohibited weapon, possession of ammunition, and converting (modifying) a prohibited weapon. After being arrested for those offences, he was charged with assaulting police, threats, and wounding. The applicant is also charged with two separate murders, for which he was on bail at the time.
- [2] The applicant made a bail application in Magistrates' Court. The learned Magistrate Laudat, declined to grant bail, and the applicant renews his application in this court.

- [3] The applicant was granted bail by the learned Justice Stephenson on 12th July 2018 for the offence of murder. A bond in the amount of \$100,000.00 with two sureties was ordered. Condition 2 (d) requires the applicant to *“lead an honest and industrious life **and be of good behaviour**”* (emphasis added).
- [4] The applicant was charged with a second murder and was again granted bail, this time by the learned Justice Roberts, on 10th July 2020. A bond in the amount of \$300,000.00 with two sureties was ordered. Condition 8 requires the applicant to *“lead an honest and industrious life **and be of good behaviour**”* (emphasis added). Condition 9 indicates that *“bail will be revoked upon breach of any of the above conditions.”*
- [5] On 27th June 2022, officers of the Commonwealth of Dominica Police Force received information that caused them to establish a presence on the roadway in Layou. At approximately 3:30 pm, a vehicle was seen approaching their position. The vehicle was directed to stop, but failed to do so. Instead, it increased speed, mounted the sidewalk, and collided with a bridge. The driver, later identified as the applicant, exited the vehicle, and fled. He was observed to take an object from under his shirt and throw it to the ground. He was apprehended, and the object was recovered. It was a loaded Glock pistol, with a magazine containing thirteen rounds of ammunition. The pistol had been modified, converting it into a prohibited weapon. The serial number on the firearm had been obliterated. The applicant was not licensed to possess firearms. He was arrested and charged accordingly.
- [6] On 29th June 2022, while in police custody, the applicant was uncooperative with police during a search of his person. He fought with two officers, injuring one and threatening to kill another. He was again arrested and further charged accordingly.
- [7] On 22nd February 2023, learned counsel for the applicant, Ms. Moore-Dyer, advised the court that, although she had filed the original application and supporting material, she would be withdrawing from the case, and passing it over to new counsel for the applicant, Mr. Norde. The hearing was adjourned to 24th March 2023. No formal application to be removed from the record was filed by Ms. Moore-Dyer.

- [8] On 24th March 2023, Mr. Norde advised the court that he was prepared to take over the case, however, he needed some additional time. That was granted, and on 27th March 2023, a supplementary affidavit from the applicant was filed.

The Position of the Parties

- [9] Learned counsel for the applicant submits that he is entitled to bail. It should be granted as he is a citizen of the Commonwealth of Dominica, having been born here. He is a farmer, cultivating the land and owning livestock. He is assisted in that occupation by his father and brothers. He also operates a registered business known as O.T.F. Farmers Crew. He has a residence in Grand Bay with his mother and father. The applicant has two young children, whom he supports. Overall, he has significant ties to the community.
- [10] The applicant is currently housed in the maximum-security section of the State Prison, and describes the conditions as inhumane and unbearable.
- [11] The applicant presents himself, in his affidavit, as a person of good character with no criminal record. However, counsel for the respondent produced a criminal record for the applicant with entries in 2012 and 2014 for wounding, battery, indecent language, threats, and intimidation. The sentences consisted of monetary penalties.
- [12] Affidavits from two proposed sureties were filed in support of the application. The applicant is well known to them. The proposed sureties also provided confirmation of assets by way of title deeds and property valuation, in order to support their positions.
- [13] Counsel for the applicant submits that there has been substantial delay in proceeding with the murder cases. The preliminary hearing in one case was postponed due to the retirement of the Magistrate seized with the matter. Disclosure remains outstanding in both cases, causing further delay. The evidence that has been provided is insufficient to prove the allegations. Disclosure also remains

outstanding for the most recent charges that the applicant faces, and there will be a substantial delay in dealing with those charges in Magistrates' Court, due to scheduling issues and case volume.

[14] The most recent affidavit from the applicant points out that a number of accused persons charged with firearms offences have been granted bail in this jurisdiction. Eight cases are listed in support of that position. Each application for bail must, however, be determined on its facts, on a case-by-case basis. The court is aware, for example, that in some of the cases tendered, State counsel did not object to the granting of bail. While not a determining factor, that is a consideration. For it indicates that the chief law enforcement officer does not have concerns about court attendance or flight by the applicant, nor the protection and safety of the public, if the applicant is released. That is not, however, the position of State counsel in this case.

[15] Learned State counsel for the respondent submits that the case for the most recent charges is complete, and disclosure has been provided. It is ready for trial. With regard to the murder charges, State counsel submits that disclosure is also complete, with the exception of the statement from a pathologist witness. Contrary to the position of the applicant, counsel for the respondent submits that there is substantial evidence to support the charges, including eyewitness statements.

[16] State counsel submits that it is not in the public interest to grant bail to the applicant, and that he should be detained.

The Law

[17] Having outlined the positions of the parties, the court turns to general principles. The entitlement to judicial interim release or bail, arises from the right to liberty and the presumption of innocence. This is entrenched at the pre-trial stage by the right not to be denied reasonable bail without just cause. In Dominica, this flows from the **Bail Act** and the constitution. **Section 1 (a)** of the **Constitution of the**

Commonwealth of Dominica, indicates that every person in Dominica is entitled to fundamental rights and freedoms including life, liberty, security of the person and the protection of the law. **Section 3 (1)** confirms that a person shall not be deprived of his personal liberty save as may be authorized by law, and **s. 3 (5)** confirms that anyone arrested or detained in relation to a criminal offence, and not tried within a reasonable time, is entitled to release, either unconditionally or upon reasonable conditions.

[18] While the full benefits of the constitution must be recognized, the right to judicial interim release is governed by the **Bail Act**¹. The provisions of that Act must be interpreted as requiring a fair and proper procedure, free from arbitrariness, which recognizes the presumption of innocence, and the fundamental right to personal liberty. This presupposes a right to be admitted to bail, which can be withdrawn, after a fair and proper judicial inquiry, upon cause being shown.

[19] **Section 4** of the **Bail Act** describes the right to bail generally. Certain restrictions are enumerated at **s. 4 (3)**. It is stated therein that a person who is charged with a serious offence, or who has been previously convicted of an offence punishable by imprisonment, is not entitled to bail as of right, and shall not be granted bail, unless that person satisfies the court that there is just cause for doing so, in all the circumstances. Offences to be considered as serious are enumerated at **s. 7**. The applicant is charged with, amongst other things, possession of a prohibited weapon, contrary to **s. 4 (1) (a)** of the **Firearms Act CHAP 15:31**, possession of ammunition, contrary to **s. 5 (3)**, and converting a firearm into a prohibited weapon, contrary to **s. 29 (1) (d)**. Although the applicant has elected trial in the Magistrates' Court for these matters, each offence is punishable by a term of imprisonment of five years or more. This places the charges into **s. 7** of the **Bail Act** for the purposes of this application. Under the terms of **s. 4 (3)** and **s. 7 (1)**, the onus shifts, and bail shall not be granted unless the applicant satisfies the court that there is just cause, and

¹ 2020 Act 20

appropriate circumstances. Reference is then made to **s. 7 (2)**, which defines appropriate circumstances.

- [20] Under **s. 6 (2)**, the court must be satisfied that the applicant will, if released, surrender into custody when required; will not commit an offence while on bail; will not interfere with witnesses; should not be kept in custody for his own protection or for the protection of the community; and that it is in the public interest to grant the applicant bail.
- [21] In the exercise of its discretion to grant or refuse a bail application, the court shall have regard to the factors set out at **s. 6 (2)**. This includes the nature and seriousness of the offence and the probable method of dealing with the defendant if convicted; the character, antecedents, associations, and community ties of the defendant; the defendant's record of complying with bail previously; the strength of the evidence against him; and the length of time the defendant would spend in custody if bail was refused.
- [22] Under **s. 4 (4)**, where bail is granted, the conditions of bail shall be reasonable.
- [23] If a court grants bail, then according to **s. 8 (2)**, it may require security from the defendant or someone on his behalf, such as a surety, to ensure her/his attendance and surrender into custody. The considerations of bail with sureties are set out at **s. 10**, and a non-exhaustive list of possible conditions of bail are set out at **s. 8 (3)** and **s. 8 (5)**.
- [24] All of this is similar to, but now supersedes, the traditional principles and considerations of bail found in case law. **Devendranath Hurnam v The State**², speaks to the consideration of the rights of the accused person, along with those of the community, and the administration of justice. **Thelston Brooks v The Attorney General and The Commissioner of Police**³ further explores the balancing of those considerations.

²[2005] UKPC 49

³[2007] ECSC J0115-11

- [25] These cases confirm that bail considerations are many, and include whether detention is necessary to ensure the defendant will appear in court when required; whether detention is necessary for the preservation of public order and the protection and safety of the public, including witnesses; and whether detention is necessary to prevent crime, based on a likelihood of the commission of other offences.
- [26] This directs the court, when making bail determinations, to have a number of considerations, including the strength of the prosecution's case; the gravity of the offence; the potential for a lengthy sentence upon conviction; the defendant's ties to the community, including family and employment; and any record of conviction. The terms of the **Bail Act** reflect all of this.
- [27] The decision of a Bail Court will also have an impact upon the administration of justice generally. The case of **R. v St. Cloud**⁴, confirms that consideration should be given to whether the detention of an accused person is necessary to maintain confidence in the administration of justice. At **para 86**, the learned Justice Wagner, as he then was, stated that public confidence in the administration of justice "*may be undermined not only if a justice declines to order the interim detention of an accused in circumstances that justify detention, but also if a justice orders detention where such a result is not justified.*"

Analysis

- [28] The court takes all of this into account, as well as the material filed and the submissions of counsel. The allegations in this case are very serious, involving as they do, firearms and ammunition. A loaded handgun was recovered from the applicant with the identifying serial number removed. When stopped by police, he fled. The police affidavits filed, indicate the applicant was under observation at all times, and was seen attempting to dispose of the loaded firearm. It was recovered

⁴[2015] 2 S.C.R. 328, 321 C.C.C. (3d) 307

and examined by police. It was determined to have been modified. Although none of the evidence has been tested in court, it appears to be substantial, and there is therefore strength to the State's case. The charges carry the potential for a significant term of imprisonment upon conviction. Contrary to the assertions of the applicant, disclosure of the State's case has now been provided.

[29] Counsel for the applicant urges the court to consider the length of time the applicant will have to wait for his case to be heard. During that time, the applicant will be remanded into custody at the State Prison, where conditions are grim. Counsel for the applicant also points to the length of time it has taken to conduct hearings into the murder charges, for which the applicant had been granted bail. While the delay in these matters is a consideration in this application, it must be balanced with other considerations.

[30] Despite the applicant's sworn assertions that he is a person without criminal record and is of good character, documents filed by the respondent indicate otherwise. The applicant has been convicted of several crimes of violence. This, combined with the serious nature of the outstanding charges, is concerning to the court.

[31] The applicant is a citizen of this country. He has a fixed address with family and children of his own. His family and friends, will offer him a place to live if released, and they are willing to act as sureties to facilitate that release. The applicant has had employment as a farmer, and operates his own business. There can be no doubt that he has ties to the community. This must, however, be balanced with other facts.

[32] A serious consideration for the court is found at **s. 6 (2) c)**, the fulfilment of the applicant's obligations under previous grants of bail. The applicant is charged with two separate murders. For those very serious matters, he was granted bail. Both of those orders contain conditions that he be of good behaviour. Indeed, the order of the learned Justice Roberts contains a further condition that bail will be revoked upon a breach of any condition. That would include the condition to be of good

behaviour. Although not convicted of the offences with which he was charged on 27th June 2022, the applicant must be taken to have failed to keep the peace and be of good behaviour, when the alleged facts are reviewed. This indicates an inability to abide by previous conditions of bail.

[33] Affidavit evidence filed, confirms a plan of release, involving the use of sureties. The applicant can return to his residence and his occupation. As noted previously, sureties are willing to pledge assets to facilitate the release of the applicant. However, all of that was before the court in 2018 and also in 2020. Yet the applicant again finds himself facing criminal charges, this time involving firearms and ammunition, and in breach of the terms of previous release orders. With charges as serious as these, the court must be satisfied that, if released, the applicant will abide by all conditions imposed.

[34] A judicial interim release application requires the court to be confident that, amongst other things, the applicant will not flee the jurisdiction and fail to attend court. He will surrender himself into custody when required. After reviewing all the material filed, and upon hearing the submissions of counsel, the court has no such concerns. However, that is not the end of it. The court must also be satisfied that the remaining considerations found in **s. 7 (2)**, will be complied with.

[35] Turning to the other enumerated grounds, the court must be satisfied that the applicant will not commit any offence while on bail. The firearm offences and the allegations of violence towards police officers, demonstrate a propensity to commit offences while on bail. Given the very serious nature of these charges, the court has grave concerns for the protection and safety of the community, should the applicant be again released on bail. In totality, the court is satisfied that it is not in the public interest to grant bail to the applicant. There are no conditions that could be crafted to satisfy those concerns. Further, to release this applicant on bail, in the face of this behaviour, and on these facts, would lead to a serious erosion in public confidence in the administration of justice.

[36] For all of these reasons, and pursuant to **s. 4 (3)**, and **s. 7**, of the **Bail Act**, the applicant has failed to show cause why he should be released. This application for judicial interim release is therefore dismissed, and the applicant is remanded into custody.

Richard G. Floyd
High Court Judge

BY THE COURT

REGISTRAR