

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

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

CRIMINAL CASE No. BVIHCV 2021/106

BETWEEN:

OLICITY MCMILLAN-LANS

Applicant

and

THE COMMISSIONER OF POLICE

Respondent

Appearances: Mr. E. Leroy Jones, Counsel for the Applicant
Ms. Patrice Hickson & Mrs. Kellee-Gai Blake-Smith, Counsel for the Respondent

2021: April 23rd, 30th

JUDGMENT

- [1] **FLOYD J:** This is an application for bail. The Applicant is 24 years old, born on 19th February, 1997. He is charged with Possession of a Controlled Drug, Being Concerned in the Supply of a Controlled Drug and Importation of a Controlled Drug, all contrary to the Drug Prevention of Misuse Act, CAP 178 (as amended). The drug involved is cocaine. The amount is approximately 453.78 KG with an estimated street value of approximately \$45,378,000.00 USD. A large quantity and a large value. The Applicant has been in custody for these offences since his arrest on 11th April, 2021. Bail was denied in Magistrate's Court on 16th April, 2021.

The Position of the Parties

- [2] The Applicant submits that he is entitled to bail. It should be granted as he is a BVI Belonger. Although born in the United States and possessing a US passport, he has resided here since the

age of 6 months. He has a residence in Tortola. He has family in Tortola, including his grandparents and a 7 months-old son. He cares for his elderly, disabled grandmother. He is a businessman, operating a trucking and landscaping business as well as apartment rental and wholesale dry goods companies. Business licences were filed to confirm the rental and wholesale companies.

- [3] An Affidavit was filed from a proposed surety, Corington Roberts. Mr. Roberts is a long-time friend of the Applicant and is willing to act on his behalf. Mr. Roberts is a businessman with interests in a barber shop and a car rental company. There is a fleet of vehicles attached to the car rental company. Business licences were filed to confirm the existence of the companies. Mr. Corington also owns real property, with Land Registry and Land Appraisal Reports being filed to confirm that.
- [4] It is submitted that the Applicant is not a flight risk. He has ties to the community and conditions can be imposed to deal with any concerns that may exist regarding potential interference with witnesses and the preservation of public order.
- [5] The Respondent relied upon an affidavit from the Investigating Officer, D/S Richard Francis, regarding the facts of the case. The Respondent describes the Applicant as a danger to interfere with the course of justice, including witnesses and the investigation, and also that he is a flight risk. He is referred to as having access to boats, although no evidence to support that was provided. Similarly, no evidence was provided to support the assertion that the Applicant is likely to interfere with the investigation, other than by a reference to the fact that other parties to the offence remain at large. The Applicant comes before this court with no criminal record. There is no indication of any previous interference with the course of justice. The Respondent refers to others assisting the Applicant to escape on land, once the boat he was in was beached. However, other than a reference to the Applicant and others transferring to a parked vehicle in an attempt to evade capture, there is no evidence of others assisting in the escape.

The Facts

- [6] The charges are serious. Police intelligence led to the locating and tracking of a vessel of interest by marine investigators. United States and British Virgin Island authorities became involved in an

air and sea pursuit of the vessel. Several bales were seen to be thrown overboard as the vessel was followed. It was eventually run aground with the occupants fleeing into a parked vehicle. That vehicle was pursued by a marine helicopter until it left the road and was abandoned. The occupants fled into the undergrowth but the Applicant was caught and arrested.

- [7] Thirteen (13) bales were recovered from the sea. They, in turn, contained several blocks of cocaine. All of this was seized. A search warrant was later executed at the residence of the Applicant. SIM Cards and cash money totaling \$2,244.00 USD were seized. The boat and the truck involved in the pursuit were retained and forensically examined by the authorities. 453.78 KG of cocaine was seized with a street value of \$45,378,000.00 USD.
- [8] The police affidavit indicated the strength of the Crown's case, although it was also noted that the substance seized had not yet been analyzed, not even field tested, apparently. Others involved in this incident remain at large and are sought by the police. The investigation is not yet complete.

The Law

- [9] Having outlined the positions of the parties, I turn now to general principles. The entitlement to bail arises from the general right to liberty and the presumption of innocence which flows from the common law and the constitution, there being no Bail Act in the Territory of the Virgin Islands. Section 15 (2) of the Virgin Islands Constitution indicates that no person shall be deprived of his or her personal liberty, save as may be authorised by law. Section 16 confirms that anyone charged with a criminal offence is to be afforded a fair hearing within a reasonable time and shall be presumed innocent.
- [10] I am guided by these authorities and considerations as well as by seminal cases such as **Devendranath Hurnam v The State, [2005] UKPC 49** which speaks to the consideration of the rights of the individual, the accused person, along with those of the community, and the administration of justice. The balancing of those considerations is further explored in another seminal case, **Thelston Brooks v The Attorney General and The Commissioner of Police, [2007] ECSC J0115-11.**

- [11] These cases and others tell us that bail considerations are multifaceted and include:
a) Whether detention is necessary to ensure that the accused will appear in court as and when required. **b)** Whether detention is necessary for the protection and safety of the public, including any witness in the proceeding. **c)** Whether detention is necessary, based on a likelihood of the commission of other offences or the interference with the administration of justice.
- [12] When making these determinations, the court will have a number of considerations including:
a) The strength of the Crown's case. **b)** The gravity of the offence. **c)** The potential for a lengthy sentence upon conviction. **d)** The Applicant's ties to the community, including family and employment. **e)** Any record of convictions for the Applicant.

Analysis

- [13] The facts in this case are serious. They include the discovery of a very large amount of a serious drug, cocaine. The street value of the drug is enormous. The drugs were found in the water, coming from a vessel that failed to stop for authorities. This led to an air and sea pursuit. During the pursuit, those involved attempted to dispose of illegal drugs. The pursuit extended to a chase on land after the boat was beached. The Applicant was eventually apprehended nearby. He is described as being seen running from the area of the vehicle and it is noted that he had abrasions to his feet, presumably from the vegetation. The Crown's case therefore has merit and it is obvious that the potential for a substantial sentence, including incarceration if convicted, exists.
- [14] The court is troubled by the failure to stop for authorities by those involved and the attempts made to evade arrest. The court is also troubled by the size and value of the drugs seized in this case. Currently, the Territory is enduring an increase in serious drug trafficking and the violence that often accompanies that. Although there is no suggestion this accused is involved in any of that violence, it is concerning.
- [15] The Applicant has ties to the community, being a resident of this Territory, a Belonger, with family close by. He enjoys the support of his family and friends. He is a self-employed businessman. He has no criminal record and nothing is given in evidence to support the assertions made by the

Respondent that the Applicant is a flight risk and likely to interfere with the investigation, except for the fact that other involved parties remain at large, the Applicant holds a US passport and part of this offence took place on a boat.

- [16] After reviewing all of the material filed and upon hearing the submissions of counsel, I am prepared to render a decision in this case. Learned Counsel for the Applicant referred this court to the recent decision of Ramdhani J. (Ag) in **Devon Bedford v The Director of Public Prosecutions BVIHCV2021/0023** wherein the Learned Justice reminded us that there is a presumption for bail and that each case and each Applicant for bail must be assessed on their own facts and merits. In that case, bail was granted despite a large amount of cocaine being seized from the Applicant with a high street value and despite the Applicant having a record for previous drug offences.
- [17] Judicial interim release requires the court to be confident that, amongst other things, the accused will neither flee nor reoffend while on bail. After reviewing all of the material filed and upon hearing the submissions of counsel, I am not persuaded that the Applicant, if released on bail, would flee the jurisdiction and fail to appear in court as required. Even considering the Crown's case and the serious nature of the charges, I do not believe the Applicant to be a flight risk, owing to his close connections to this community, his business and his family. The Respondent's submission that the Applicant has easy access to boats and therefore is a flight risk is not supported by any evidence.
- [18] Turning to the second ground, the public safety component, I must consider whether there is a substantial likelihood that the Applicant, if released, would interfere with the administration of justice or commit further crimes. Is there a serious risk of harm to public safety, including witnesses? The Respondent has submitted that the Applicant will interfere in the course of justice and the investigation if given bail. However, there is no evidence tendered to substantiate that claim. On the contrary, the Applicant has no criminal record and remains convicted of no offence, similar or otherwise. I am therefore satisfied that conditions can be crafted to ensure that the Applicant complies with bail, attends court and does not interfere with the administration of justice. The Respondent has not shown cause why the Applicant should be detained.

[19] For all of these reasons, this Application for bail is allowed. Olicity McMillan-Lans is therefore released on a recognizance of bail on the following terms:

1. There shall be one suitable surety responsible for the sum of \$200,000.00 USD.
2. The Applicant shall reside with Corington Roberts in Road Town.
3. The Applicant shall report to and sign in at the Road Town Police Station every Monday, Wednesday and Saturday between the hours of 6:00 AM and 6:00 PM, commencing on 3rd May, 2021.
4. The Applicant shall remain in his residence daily between the hours of 8:00 PM and 06:00 AM except for medical emergencies involving himself.
5. The Applicant shall present himself at the door of his residence within five (5) minutes of a Police request, made at any time when he is required to be in his residence, and ensure that Police have access to the door of his residence, to enable such bail compliance checks to be conducted.
6. The Applicant shall not contact or communicate in any way either directly or indirectly by any physical, electronic or other means with any Crown witness in this case.
7. The Applicant shall not possess or consume any non-prescription drugs and shall not possess or consume any other drugs or medication without a valid prescription issued in the name of Olicity McMillan-Lans by a licenced medical practitioner.
8. The Applicant shall not operate nor be found in any marine vessel or boat.
9. The Applicant shall remain in the Territory of the Virgin Islands.
10. The Applicant shall deposit his passports and any other travel permits or documents with the Office of the Registrar, High Court of Justice, immediately upon his release from custody.
11. The Applicant shall not apply for a passport or any other travel permits or documents.

[20] The Applicant's next appearance date is May 11, 2021 in the Magistrate's Court.

Richard G. Floyd
High Court Judge

By the Court

Registrar