IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES

GRENADA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/ 0492

IN THE MATTER OF THE CRIMINAL PROCEDURE CODE CAP 2
OF THE REVISED LAWS OF GRENADA (SECTION 49)

IN THE MATTER OF AN APPLICATION BY RUTH ALISHA JAMES
TO BE ADMITTED TO BAIL

BETWEEN:

RUTH ALISHA JAMES

Applicant

AND

COMMISSIONER OF POLICE

Respondent

Appearances:
Mr. Derick Sylvester for the Applicant
Mr. Howard Pinnock, Crown Counsel for the Respondent

2013 February 6, 12

JUDGMENT

[1] PERSAD, J: Before the court is an application by Ruth Alisha James to be admitted to bail pursuant to section 49 of the Criminal Procedure Code. Ms. James, a young lady of thirteen years has been charged with murder where it is alleged that she caused the death of Alex Gabriel.

[2] In the course of the hearing of this application a point of law arose when it became clear that the Prosecution, in seeking to object to the grant of bail submitted that they wished the Court to refuse bail on the basis of the seriousness of the offence

and the strength of the case against the accused. The learned Prosecutor having put forward these concerns also indicated (after inquiry from the court) that they were not objecting on the basis that the applicant was likely to abscond, nor were they suggesting that the applicant was likely to commit other offences while on bail or interfere with any witnesses or attempt to pervert the course of justice.

[3] These concessions having been made it was raised by the court whether the court had any jurisdiction to refuse bail in circumstances where the Prosecution was not objecting on these traditional grounds.

[4] Before dealing with this issue it is necessary to summarize the arguments put forward by Counsel for the Applicant and Counsel for the Crown.

Submissions by Counsel

[5] The applicant was represented by Mr. Sylvester who submitted to the court, that notwithstanding the charge of murder, the court had a discretion to grant bail. That in exercising the discretion the court would have regard to the age of the accused, the fact that she has no previous convictions, her ties to the community and the fact that she is being kept with adult prisoners at the Richmond Hill prison.

[6] Counsel also relied heavily on two reports. The first included a report by the Child Protection Agency which suggested that the remand at the Prison was hindering her well being and that the Applicant needed social interaction with peers and ongoing family support for rehabilitation.

[7] A second report, from the Probation Unit was also put before the Court containing useful material on a number of matters on the family background of the Applicant and other information that was assistance to the Court in resolving how it should exercise its discretion.

[8] Mr. Pinnock for the Crown, provided the Court with detailed written submissions in support of his objections. In essence, Crown Counsel sought to persuade the Court that it should exercise its discretion against granting bail having regard to a number of matters.

[9] There was no dispute that the Court did have a discretion to grant bail in cases of murder. However, it was submitted that because murder was a serious offence (arguably the most serious) coupled with the fact that if convicted the sentence would presumably be a substantial custodial sentence, such matters militated against the grant of bail.

[10] The fact that the applicant was thirteen years old, had to be weighed against the fact that this was a crime of specific intent and the Prosecution's case was a strong one. To this end, extracts of the Prosecution witness statements were relied upon by the Crown.

[11] In essence, the Crown was saying that the Court should exercise its discretion and not grant bail really because of the seriousness of the offence and the strength of the Prosecution's case. While I do not doubt for a moment that these two factors are extremely relevant matters in determining whether the Court should or should not grant bail, it must be remembered that at common law the test for whether to grant bail was primarily one of whether the person would attend upon his trial.

[12] It was against this background that the Court chose to clarify the position of the Crown as to whether it was asserting or objecting that the Applicant would not attend upon her trial. Mr. Pinnock, in his usual candid manner was very clear in saying that he was not suggesting that the Applicant would not attend upon her trial. He also indicated to the Court that he was not able to argue that the Applicant was likely to commit any other offences while on bail nor interfere with witnesses if granted bail.

[13] This concession having been made, the Court raised the issue with Counsel whether the court in the absence of material to support any of the "traditional" common law grounds of objections could still refuse to grant bail. It seems the appropriate starting point must be to examine the law governing the grant of bail in this jurisdiction.

Law Governing the grant of Bail

The law relating to the grant of bail is governed by first and foremost the Constitution of Grenada as well as sections 47 to 57 of the Criminal Procedure Code Cap. 72B Volume 4 of the 2010 Edition of the Laws of Grenada.

[14] A detailed and comprehensive analysis of the law relating to bail is to be found in the decision of Mr. Justice Brian Alleyne (as he then was) in the case of An Application of Teddy Mc Donald to be admitted to Bail.[1]

[15] From the judgment of Mr. Justice Alleyne the following propositions can be extracted:-

(a) At common law bail was discretionary in felony offences as well as in misdemeanors. Refusal or delay by any Judge or Magistrate to bail any person bailable was at common law an offence against the liberty of the subject (paragraph 6).

(b) Bail was not to be withheld as a punishment (paragraph 6).

(c) Regard must be had to the provisions of the Constitution of Grenada, in particular section 3. These provisions clearly require that the person be given the benefit of a judicial proceeding not merely an administrative

[1] Civil Suit 77 of 2000

appearance. A proper interpretation of this section gives rise to a constitutionally protected presumption in favour of bail, the onus of negativing which lies on the Crown in each case (paragraph 8-9).

(d) That section 3 of the Constitution must be read in conjunction with section 8 of the Constitution which guarantees every person charged with a criminal offence shall be (a) presumed innocent until proven guilty and…. (c) shall be given adequate time and facilities for the preparation of his defence (paragraph 10).

(e) That the antecedents of the Grenada Constitution include the European Convention for the Protection of Human Rights , the United Nations Declaration of Human Rights and the Magna Carta. In fact Article 5 of the European Convention of Human Rights is in terms almost identical to section 3 of the Constitution.

(f) The domestic law on bail is to be found in the Criminal Procedure Code.

(g) A Magistrate's (and presumably a Judge's) discretion is a judicial discretion to be exercised in accordance with the legal principles applicable.

(h) The sections must be interpreted as requiring a fair and proper procedure, free from arbitrariness and which recognizes the presumption of innocence and the fundamental right to personal liability. The interpretation must be liberal and generous and "ensure that the full benefits of the Constitutional provisions are enjoyed".

(i) This presupposes a right to be admitted to bail which can be withdrawn, after a fair and proper judicial enquiry, free from arbitrariness upon cause being shown.

[16] It follows from the propositions extracted that in order for the Crown to successfully object to bail they must displace the presumption in favour of bail by satisfying the Court that there are substantial grounds for believing that the defendant, if released on bail would (a) fail to surrender to custody (b) commit an offence on bail or (c) interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.

[17] In the case at bar, Crown Counsel in presenting his case made it clear that he was not basing his objection on the basis that the Applicant would abscond, commit other offences or interfere with witnesses. What he sought to do was encourage the court to place emphasis on factors such as the seriousness of the offence, the severity of the sentence if convicted as well as the strength of the Prosecution's case as relevant factors for the Court to consider.

[18] It is interesting to note that under the Bail Act of 1976 introduced in the United Kingdom the legislative drafters included a structure which by virtue of section 4 of that Act mandated that bail must be granted to a person accused of an offence, or remanded for inquiries or a report, or brought before the court for breach of a requirement of probation, community service, combination or curfew order if none of the exceptions specified in Schedule 1 applies."

[19] In the original 1976 version of the Act, the principal exceptions specified in the 1st Schedule included a provision at Section 2 of Part 1 that bail need not be granted if the court was satisfied that there are substantial grounds for believing that if released on bail the defendant would fail to surrender to custody, commit an offence while on bail or interfere with witnesses.

[20] Section 9 of Part 1 of the Act provided that in determining whether any of the exceptions in paragraph 2 applied, the court must have regard to the following considerations as appear to be relevant. These include the seriousness of the

offence, social background, past bail record, strength of the evidence and any other relevant consideration.

[21] The manner in which the 1976 Bail Act was structured seems to suggest that as a general rule bail should be granted unless there were substantial grounds for believing that if released on bail the defendant would fail to surrender to custody, commit an offence while on bail or interfere with witnesses.

[22] In determining whether there were substantial grounds for believing that a defendant would abscond, commit other offences or interfere with witnesses, the court could have regard to matters such as the nature and seriousness of the offence, social background, past bail record the strength of the evidence and any other relevant consideration.

[23] It follows therefore that matters such as seriousness of the offence and strength of the evidence are not in themselves a sufficient basis to refuse bail but rather, factors to be taken account of in determination of whether there were substantial grounds for believing that a defendant would abscond, commit other offences or interfere with witnesses.

[24] It is also interesting to note that the authors of the 3rd Edition of "Bail in Criminal Proceedings", Neil Corre and David Wolchover mention at paragraph 1.2.1 that the Home Office Working Party examining the question of Bail attempted in 1976 to codify in the legislation, good practice and that the statute itself could be regarded as a codification of the existing good practice.

[25] These authors go on to observe at page 35 of the 3rd Edition as follows:-

> "That it must be stressed that the aim and achievement of the Bail Act 1976 was to rationalize the bail decision by distinguishing the exceptions to the right to bail from the reasons for applying those exceptions. Although this may have been good practice before the Act it was not universally followed and was lacking in statutory authority.

> Section 18(5) of the CJA 1967 had laid down exceptions for refusing bail when dealing with offences punishable with not more than six months imprisonment, but otherwise the court had unlimited discretion. Bail would be refused for a number of reasons, such as the fact that the defendant was of no fixed abode, that he had previous convictions, that there were further police enquiries or that the alleged offence was serious."

[26] Crown Counsel relied on two cases in support of his submissions, the first was the case of Hurnam v The State 2005 UKPC 5 and second was the Queen v Payne [2003] 3 NZLR 638.

[27] In both these cases issues such as the seriousness of the offence, the strength of the case, the likelihood of conviction and the severity of the penalty were all relevant in relation to the Crown's assertion that there was a risk of flight and that the defendant in those cases might not attend upon their trial.

[28] At paragraph 15 of the judgment of Lord Justice Bingham in Hurnam v The State 2005 UKPC 5 the court made the following observations:-

> "It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drugs cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail. The Board cannot, however, accept the criticism made of the earlier decisions in Labonne (JV) and Deelchand. The judgment in Rangasamy does not adequately recognise the general right to liberty enshrined in section 5 (3) of the Constitution and reflected in section 3 of the 1999 Act. It seeks to reinstate, in part at least, the rule deliberately discarded in the 1999 Act. It puts an onus on the detainee where it should be on the party seeking to deprive him of his liberty. It elides the general right to be released on bail and the right to be released if not brought to trial within a reasonable time, which are both important rights but distinct and different rights. The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well, as pointed out at the beginning of this paragraph, provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether, in all the circumstances, it is necessary to deprive the applicant

of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given.

[29] Having concluded that in order for the Crown to succeed in its objections it must provide material upon which the Court can find that there are substantial grounds for believing that the defendant would abscond, commit other offences or interfere with witnesses, in this case the Crown has taken the position that it is not objecting on the basis that the defendant would abscond, commit other offences or interfere with witnesses.

Should this Court exercise its discretion to grant bail?

[30] It would seem that in those circumstances that the court should in the absence of the common law objections the Court should apply the presumption in favor of bail to this applicant.

[31] However before doing so there can be no doubt that a judge sitting in the High Court enjoys a discretion to grant bail despite objection by the Prosecution, and to refuse bail even though the Prosecution raise no objection[2].

[32] The proper approach therefore is for the Court to first have regard to the matters set out by Justice Alleyne in Teddy Mc Donald, appreciating the relevant constitutional and common law principles that apply. The fundamental question at the end of the day is whether there are substantial grounds for believing that the defendant would abscond, commit other offences or interfere with witnesses.

[33] Having considered the material placed before the court, I am satisfied that there are no substantial grounds for believing that this Applicant, Ms. Ruth Alisha James would fail to attend upon her trial, commit other offences or interfere with witnesses.

[2] See Corre and Wolchover "Bail in Criminal Proceedings" at page 32

[34] In coming to this conclusion this court has weighed in the balance, the seriousness of the offence, the strength of the evidence and the other matters raised by the Prosecution and having done so, the court is of the view that these factors are not sufficient in this case to displace the presumption in favor of bail.

[35] Accordingly, I am of the view that this Applicant should be admitted to bail in the circumstances of this case. I would order as follows:-

(a) Bail with a Surety in the sum of EC$ 75,000.00.

(b) The Applicant is to surrender all travel documents, and not leave the jurisdiction without the leave of the court.

(c) The Applicant is to reside at the home of Mr. & Mrs. James in Madeys, St. Patrick's.

(d) The Applicant is to be confined to this residence between 7:00 p.m. and 5:00 a.m. every day.

(e) The Applicant is to report to the Sauteurs Police Station three times a week; every Monday, Wednesday and Friday between 6:00 a.m. and 6:00 p.m.

(f) The Applicant is to report to the Probation Office in her district once per week and will undertake any programs prescribed by the Probation Officer, including Anger Management and any other counseling deemed necessary.

(g) The Applicant is to attend classes to ensure that her education is not compromised.

(h) The Applicant is to return to this Court on the 13th March for the Court to review her compliance with the terms of the Order.

[36] Finally, I would wish to express my appreciation to counsel on both sides for their assistance on the matters that needed to be ventilated in this matter.

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Rajiv Persad
High Court Judge