

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT
(CIVIL)

SUIT NO: NEVHCV2014/0035

BETWEEN:

Gillermo Santana – Applicant

and

The Director of Public Prosecutions - Respondents

APPEARANCES:

Mr. Denzil Hinds for the Applicant.

Mr. O'Neil Simpson- Crown Counsel, Director of Public Prosecution Chambers for the Respondents.

DECISION

2014: April 8
2014: April 15
(Oral Decision given)

(Written reasons given May 9)

[1] WILLIAMS, J. (Ag): By a Notice of Application for Bail filed on the 27th March 2014 supported by an Affidavit sworn to by the Applicant of the same date, the Applicant applied to the Court for an Order that he be admitted to Bail on such terms and conditions as the Court may deem just. The Applicant was charged for the offence of wounding with Intent to cause grievous bodily harm contrary to

Section 17 of the Offences Against the Person Act Chapter 4:21 of the Revised Edition 2002 of the Laws of the Federation.

- [2] I refused Bail on the 15th of April 2014 and informed the Parties that I would be providing my reasons in writing at a later date: I now state my reasons.

GROUND OF THE APPLICATION

- [3] The Applicant was arrested on the 24th February 2014, and was charged on the 28th February 2014 with the offence of Wounding with Intent to cause Grievous Bodily harm, and that he had been in custody since the date of his arrest.

The Applicant through his solicitor had applied for Bail before the Magistrate's Court at Charlestown on the 4th March, 2014 and the said application was refused.

He further indicated that he posed no danger to the society, had no criminal record, posed no flight risk and was not likely to abscond if granted bail with conditions.

BACKGROUND INFORMATION

- [4] The Applicant stated in his Affidavit in Support of the Notice of Application for Bail that he is fifty-five (55) years old and was born in the Dominican Republic

although his father James Christopher now deceased was a National of St. Kitts and Nevis.

[5] The Applicant stated that he moved to the Federation of St. Kitts and Nevis in 1989 and has resided there continuously for the past 24 years.

[6] The First application for Bail was denied on the ground that

(a.) the Applicant was a flight risk as he was not a native of the Federation, and is a native of the Dominican Republic.

(b.) That the Applicant was likely to commit another offence while on bail

(c.) That the Applicant would interfere with the witnesses bearing in mind the seriousness of the charge.

[7] The Solicitor for the Applicant stated further that prior to the applicant's arrest; he was gainfully self-employed as an owner and operator of a passenger bus for the past five years and had no previous convictions.

[8] The Affidavit of Leon Michael, Police Constable No. 624 of the Royal St.

Christopher and Nevis Police Force was filed on behalf of the Respondents on the 3rd April 2014. In that Affidavit, Police Constable Michael stated that on the 24th February 2014 the Police received a report of an incident of Grievous Bodily harm and the Applicant was identified as the offender and was subsequently charged.

[9] Counsel for the Applicant in his submissions relied on the case of **Jasper Qvist vs. The Commissioner of Police and The Superintendent of Prisons Claim. No.**

NEVHCV2012/0136 in support of his contention that the seriousness of the offence and being a Non-National were not grounds for refusal of Bail.

Counsel for the Applicant contended that the social ties of the Applicant were sufficient and significant enough to deter him from absconding from the Jurisdiction. The Applicant had been in St. Kitts and Nevis from 1989 and had three children and a Partner.

Counsel also cited the case of Thelston Brookes vs. The Attorney General et al¹ in support of his contention that the seriousness of the offence was not a sufficient ground by itself to refuse Bail. Counsel also submitted that the contention that the Applicant was likely to interfere with witnesses was false and that it was the Virtual Complainant who had been the aggressor and the Applicant had reacted in self-defence. He also urged the Court to consider the presumption of Innocence in the Applicant's favour and to admit the Applicant to Bail with the imposition of strict conditions which the Court may consider appropriate.

[10] Learned Crown Counsel in the Director of Public Prosecution's chambers strenuously objected to Bail being granted to the Applicant. He submitted that there was no Constitutional or absolute right to Bail and referred to the **Bail Act of St. Kitts and Nevis No. 18 of 2012** and the circumstances that informed his objection to Bail. Accordingly he contended that the test was whether there were

¹ Claim No. AXA HCR 2006/0089

good and substantial grounds that were made out for the granting of Bail; and submitted that all circumstances must be brought to bear and not singularly.

Counsel argued that the Court should consider the Nature and Seriousness of the offence and the aggravating circumstances whereby the Applicant unleashed an unprovoked attack on the Virtual Complainant at his home, and then proceeded to a public park where he inflicted multiple wounds on the Virtual Complainant.

Learned Crown Counsel further contended that the Nature of the offence and the place where the offence took place is significant; and that the Defence of Self-Defence was not available to the Applicant who was the aggressor in the circumstances. He also submitted that the safety of the society was paramount and that there had been multiple threats by the Applicant which had preceded the attack on the Virtual Complainant.

Counsel urged the Court to consider that there was a real and conscious fear that further injury could be done if the Applicant was released on Bail; coupled with the possibility that the Applicant remained a flight risk.

THE LAW

[11] Section 10 of the **St. Kitts and Nevis Constitution** provides that:

1. If any person is charged with a criminal offence, then unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an Independent and Impartial court established by Law.

2. Every person who is charged with a criminal offence shall be presumed to be innocent until he is proven guilty or has pleaded guilty.

[12] Also Section 5 of the Constitution which provides for the protection of the right of Personal Liberty states inter alia that:

3. Any person who is arrested or detained upon reasonable suspicion of his having committed or being about to commit, a criminal offence under any law and who is not released shall be brought before a Court without undue delay, and in any case not later than seventy two hours after his arrest or detention.

4. Where any person is brought before a Court in execution of the Order of the Court in any proceedings or upon suspicion of his having committed or being about to commit a criminal offence, he shall not be thereafter further held in custody in connection with those proceedings or that offence save upon an Order of the Court.

5. If any person arrested or detained as mentioned in subsection (3) (6) is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial and such conditions may include bail so long as it is not excessive.

These Constitutional provisions which are mentioned effectively provide all persons charged with a criminal offence to be presumed innocent and should be tried within a reasonable time; and released pending his trial **unless the Court orders otherwise.**

[13] **The St. Kitts and Nevis Bail Act 2012** under Section 4 (2) (a) sets out the circumstances in which bail may be denied to a defendant charged with an offence which is punishable by Imprisonment. The Section provides “that it shall be within the discretion of the Court to deny bail to the defendant in the following circumstances:

(a.) where the Court is satisfied that there are substantial grounds for believing that the defendant if released on bail would

(i.) fail to surrender to custody

(ii.) commit an offence while on bail; or

(iii) Interfere with witnesses or otherwise obstruct the course of Justice whether in relation to himself or any other person.

Further under Section 4 (3) the Act provides that “In the exercise of its discretion under subsection (2), the Court may consider the following:

(a) The Nature and seriousness of the offence or default and the probable method of dealing with the Defendant for it;

(b) The character, antecedents, associations and social ties of the Defendant

- (c) The Defendant's record with respect to the fulfilment of his obligations under previous grants of Bail in Criminal Proceedings
- (d) Except in the case of a Defendant whose case is adjourned for Inquiries or a report, the strength of the Evidence of his having committed the offence or having failed to surrender to custody and
- (e) Any other factor which appears to be relevant.

[14] In the Privy Counsel case Hurnam vs. State of Mauritius [2005] UKPC 49-

Lord Bingham of Cornhill stated inter alia that "The Interest of the Individual is of course to remain at liberty **unless or until** he is convicted of a crime sufficiently serious to justify depriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried will inevitable prejudice him and in many cases, his livelihood and his family. But the community has a countervailing interest in seeking to ensure that the course of Justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage if the inevitable delay before trial to commit further offences."

[15] Also in the case of Maloupe vs District Magistrate of Grand Port [2000] MR 264

Balancy J in giving Judgment said " The wording of Section 4(1) of the Bail Act 1999 of the State of Mauritius (similar to Section 4(2) of the Bail Act No. 18 of

2012 of St. Kitts and Nevis) makes it clear that release on Bail at pre-trial stage is the release upon conditions designed to ensure that the suspect;

1. Appears for his Trial, if he is eventually prosecuted
2. In case he happens to be the author of the offence of which he is suspected does no further harm to the society whilst being at large; and
3. He does not interfere with the course of Justice should he be so minded.

The rationale of the Law of Bail at pre-trial stage is accordingly that a person should normally be released on Bail if the imposition of the conditions reduces the risks referred to above- (i.e.) risk of absconding, risk to the Administration of Justice, risk to society to such an extent that they become negligible having regard to the weight which the presumption of Innocence should carry in the balance. When the imposition of the above conditions is considered to be unlikely to make any of the risks negligible, then Bail is refused.”

[16] Also in **Labonne vs. The Director of Public Prosecutions [2005] SCJ 38**, it was reiterated by the Court that the nature of the Evidence was one of the considerations relevant to the Court’s decision, but the Court should not make a detailed examination of it. The Court explained that “The seriousness of the offence or the likelihood of the suspect being charged with a serious offence is obviously a consideration to be weighed in the balance and not by itself a ground for refusing bail.”

[17] The Court further adumbrated that the function of the law is to reconcile.

“On the one hand the need to safeguard the necessary respect for the liberty of the citizen viewed in the context of the presumption of Innocence and, on the other hand, the need to ensure that society and the Administration of Justice are reasonably protected against serious risks which might materialise in the event that the detainee is really the criminal which he is suspected to be.”

[18] The statutory test for refusal of Bail in St. Kitts and Nevis is not simply whether the Defendant will turn up for his trial, but also whether there are “ Substantial grounds for believing that one or more of the statutory exceptions to Bail apply, that is if the Defendant will either fail to surrender to custody, commit further offences whilst out on Bail, interfere with witnesses or otherwise obstruct the course of Justice.

The Respondents have argued in this case that the Applicant is likely to interfere with witnesses in this case in particular the Virtual Complainant where there is a history of tension and bad blood which preceded the attack.

Of particular significance to the issue of interference of witnesses is the locus of the attack on the Virtual Complainant.

According to the Affidavit of Police Constable Leon Michael the Applicant attacked the Virtual Complainant in his home and the attack continued into a public park near to the Virtual Complainant’s home. The Virtual Complainant had to defend himself by throwing stones at the Applicant and this resulted in the hospitalization of the Virtual Complainant.

The Respondents also argue that the Applicant is not a native of St. Kitts and Nevis, but a native of the Dominican Republic and should be considered a flight risk, coupled with his antecedents and brushes with the Law in other Foreign Jurisdictions.

[19] The past history with the Virtual Complainant and the character of the Applicant are crucial to the Court's analysis of this Application and I note in particular the Affidavit evidence of Police Constable Leon Michael at paragraph 4 where he stated that in his investigations of the matter, it was revealed that the Applicant had proceeded to the home of the Virtual Complainant with a machete in hand and threatened to chop off the head of the Virtual Complainant. The Applicant attacked the Virtual Complainant who fled the location having sustained multiple blows to his right hand and head. The Applicant pursued the Virtual Complainant to a public facility where he continued the attack on the Virtual Complainant. The Virtual Complainant sought to defend himself by attempting to disarm the Applicant by throwing stones at him. The Applicant then proceeded to bite the Virtual Complainant and continued chopping him, inflicting multiple wounds to his head and face.

Further to this and according to the Affidavit Evidence of the Respondents the Applicant also threatened the partner of the Virtual Complainant with the machete when she tried to interfere in the fracas.

The Court therefore finds that the Respondents have provided substantial grounds for the Court to believe that the Applicant would interfere with witnesses and commit further offences if released on Bail at this time.

CONCLUSION

[20] Having considered the principle enunciated and the test established by the Bail Act No. 18 of 2012. I am satisfied that the Respondents have provided substantial grounds for the Court to believe that the statutory exceptions to Bail created by Section 4 (2) (a) applies. Accordingly the Application for Bail by the Applicant, Gillermo Santana is dismissed with liberty to reapply within a period of four months. There will be no order as to costs on this application.

Lorraine Williams
High Court Judge (ag)