

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Criminal Division

CR-HC-SDO-BAIL-451-2022-1

IN THE MATTER OF THE BAIL APPLICATION

OF

ELIZABETH JOSEPH

Before The Honourable Justice Lisa Ramsumair-Hinds

Date of Delivery: 20 December 2023

Appearances:

Mr. P. Ramadhar and Mr. V. Trebouhansingh for the Applicant.

Ms. S. Dougdeen-Jaglal for the State.

RULING ON BAIL APPLICATION

THE APPLICATION

1. The Applicant, Elizabeth Joseph, is jointly charged with her husband for the murder of Sylvan Sookram a/c Brama, which is alleged to have occurred on Saturday 29 October 2022.

THE STATE'S OBJECTION

2. The State filed objections on 23 July 2023 and I pause briefly to encourage the Prosecutors to review their submissions carefully before filing. These particular submissions were quite challenging to consider and I had cause to ask the Deputy DPP to file a simplified version of the proposed evidence. That aside, and even after overlooking the very many typos and grammatical errors, paragraphs 2 and 44 are rather confusing as to the grounds of objection. In addition, the submissions are rolled up in one for Ms Joseph and her co-Accused, though they are differently circumstanced.
3. As I understand the submissions, the State objects to the application and asks this Court to deny bail because there are substantial grounds for believing that the Applicant (named at caption), if released on bail, is likely to:
 - a. Fail to surrender to custody;
 - b. Commit another offence; and
 - c. Interfere with witnesses.
4. More particularly, they rely on the factors below in substantiating their first ground of objection:
 - a. The strength of the evidence against the Applicant; and
 - b. The nature and seriousness of the offence of murder.

GENERAL PRINCIPLES REGARDING BAIL APPLICATIONS

5. As it relates to the principles of general application, I adopt paragraphs 3-16 of my ruling in the Bail Application of *Mikhail Roopchand*¹ delivered on 21 June 2023.
6. It is settled that bail may be denied in three primary circumstances:
 - a. Where there are substantial grounds for believing that the accused may abscond/fail to surrender to custody;
 - b. Where the accused may commit an offence while on bail; or
 - c. Where the accused may interfere with witnesses or otherwise obstruct the course of justice.
7. Where they object, the burden is on the State to show the existence of these substantial grounds. Applicants have a constitutional right not to be denied reasonable bail without just cause.
8. The Judge exercises their discretion in considering the circumstances and context of each Applicant, bearing in mind the bias in favour of restitution of the constitutional norm of liberty. A balancing act is conducted where the evidence for and against the Applicant is considered on its face, essentially engaging in an exercise of probabilities.

¹ CR-HC-POS-BAIL-149-2022-1

Ground 1 - LIKELIHOOD OF ABSCONDING

Nature, Seriousness & Likely Punishment

9. As it relates to the applicable law regarding this ground, I rely on the principles outlined in paragraphs 17-37 of the *Mikhail Roopchand* ruling.

10. Murder is one of the most serious offences on our books and the Applicant faces either the mandatory death penalty or a lengthy term of years, if convicted. In such circumstances, facing those daunting prospects purely on the face of the charge and likely penalty, the Applicant may well have a powerful incentive to abscond. However, the nature and seriousness of the charge of murder and the severity of the likely punishment do not of themselves constitute grounds for refusal of bail. I must consider the larger clinical picture of the case, and in this regard, those two factors naturally weigh heavily in the scale against the grant of bail.

Strength of the Evidence (probability of conviction or otherwise)

11. The evidence against the Applicant is substantially based on several eyewitness accounts.

12. As I understand it from the filed submissions and the summaries provided by the Deputy DPP's and the police, the proposed evidence can be captured comprehensively in the following terms: The Deceased Sylvan Sookram a/c Brama and the co-Accused (the Applicant's husband) both worked at E-Tech, Phoenix Park Road, Savonetta, California. The Applicant did not. On Saturday 29 October 2022, the Deceased was at work. The Applicant and her husband arrived in their vehicle. Their teenaged son was with them and it was the husband's day off.

13. Both the Applicant and her husband smelled of alcohol and appeared intoxicated. As they entered, the Applicant greeted the workers, "Good evening gentlemen and one asshole." She further said that she came to meet her maker and that the Deceased had threatened to kill her. The Deceased, who had been seated on a chair underneath a tent on the site, said, "Woman, what the frick happen to you? What you want with me?" The husband said, "You cannot speak to my wife like that. I will show you something today", and pulled out an object resembling a gun. The Deceased left his position and proceeded to his vehicle in an effort to avoid the Applicant and her husband. SHE pursued him and began cursing and pushing him, saying, "Show me how I will meet my fucking maker." The Deceased did not respond, nor did he touch her.

14. The husband joined her and at this point, the Deceased, who had armed himself with an extendable baton, struck the husband. Both the Applicant and her husband held on to the Deceased and began choking/strangling him. They fell to the ground and this continued for a few minutes. Up to this time, the witnesses (other workers) kept their distance, but, as the Deceased struggled for breath, they intervened to pull the Applicant and her husband off.

15. The Applicant then ran to their vehicle and returned with a rusty cutlass and threatened to kill the Deceased, who at this time could not even stand without assistance. The husband took it from her. After putting the cutlass back in the car, he returned to the spot where the altercation took place, raised his jersey to display the object resembling a gun to the other workers and said, "Allyuh come, ah will show allyuh!" The supervisor, Mr Ronninson Amichan told them to leave and the Deceased was taken to the

Couva Health Facility. He was later transferred to the San Fernando General Hospital.

16. While waiting for medical attention at one of the health facilities, in the waiting area, the supervisor saw both the Applicant and her husband. The husband went to the bedside of the injured man saying, "You see I put you in a coma." The supervisor alerted the security and both the Applicant and her husband left. Before leaving, the husband said, "The rest of allyuh dead." Mr Amichan asked if that was a threat and he replied, "Yes, it was. Treat it like one."

17. As part of their investigation, the police made several attempts to locate both the Applicant and her husband. Eventually, on 27 November 2022, the police executed a search warrant at the home of the Applicant and her husband and found a rusty cutlass and a toy gun. They were taken into custody on that day. Interestingly, although I am told that there is CCTV footage, and although the husband admitted that he, his wife and son were present at the scene, the Applicant lied. She claimed to be at home as it was a Saturday, "a wash day" and "a study day'.

18. As to an appreciation of her role in the enterprise, I note that the Applicant was not employed to E-Tech and had no business there on that day. I observe that it was she who first assaulted the Deceased and that took place after the Deceased walked away to his vehicle. I note as well that the baton appeared to have been introduced after the husband displayed the object resembling a gun. It seems clear that both assailants were upon the Deceased at his car and the Applicant had already struck him, when he used the baton on the husband. The cause of death was hypoxic brain injury due to compression force on the neck and it appears that the

Applicant might share equally in culpability in that regard (this will matter at sentencing, even if the conviction is for a lesser offence). I also note that while the injured man was incapacitated on the ground and after she had been pulled off by a worker and taken back to her son, the Applicant attempted to escalate the violence further with the introduction of a cutlass, saying, "This hadda done today. Today ah go kill him."

19. Certainly, there is nothing before me to suggest that the Applicant made any inculpatory admissions when first taxed by the authorities. I have no other information to suggest that there is any scientific evidence connecting the Applicant to the commission of the offence, at least not at this time. There is some evidence of post-offence conduct and perhaps there may even be need for a Lucas direction as to lies.
20. Of course, detailed considerations of these issues are matters for the fact finder(s). It would be wholly improper for me to pronounce on the credibility or reliability of the eye-witness testimony in a bail application. I encourage Counsel to avoid conflating the relevant tests at different stages in the life cycle of a criminal case, to remain vigilant and guard against trespass on the remit of the fact-finder(s).
21. For my part, I have captured the proposed evidence in rather comprehensive terms above, taking care to avoid too-minute an analysis. Nevertheless, having regard to the relevant aspects of the submissions before me, the outline of the proposed evidence involving eye-witness evidence, buttressed by CCTV footage which may add clarity or at least context for the disparity in human perspective, recall and communication (some witnesses are Spanish), is rather compelling. Even if there are

successful arguments with respect to diminished responsibility or mens rea, the likely penalty is a lengthy term of years.

Character & Antecedents

22. The Applicant is 50 years old.

23. She has no previous convictions or other pending charges.

Association & Social Ties

24. An affidavit has been filed by the common law brother-in-law of the Applicant (her husband's brother) in support of Counsel's proposition that the Applicant has strong family and community ties. Both the application and the affidavit provide bare statements with very little support.

25. I am told that the Applicant has four children, three of whom are now adults. She and her common law husband, with whom she is charged, are the parents of the last child, a boy aged somewhere between 12 and 14. Indeed, it appears that this child was with the Applicant and her husband when they went to E-Tech to confront the Deceased that fateful day last year. Heavy weather was made of the parental duty and obligations of the Applicant (and her husband) and the well-being of the child. With all due respect, the proposed evidence suggests that this child's parents took him with them as they drove, perhaps under the influence of alcohol, to E-Tech to violently confront the Deceased. On the State's case, he witnessed his parents strangle a man.

26. The affidavit suggests that the Applicant will live with another relative at an address in California. Curiously, while the brother-in-law suggests that this relative will be able to provide support for the Applicant, the submissions by Counsel suggest that this particular relative is undergoing some hardship with the responsibility she undertook in caring for the Applicant's child.

27. I am told that prior to her incarceration in November of 2022, the Applicant was a watchwoman, but there are absolutely no details to support this or to attest to her ability to financially support herself.

28. Needless to say, I have reservations about the adequacy of the social ties.

29. I am afraid that there is precious little with respect to association and social ties to weigh in the balance in assessing the likely risk of absconding.

Delay in Prosecution

30. Regarding the concern with respect to delay and I take note that the Administration of Justice (Indictable Proceedings) Act, 2011 (AJIPAA) was proclaimed on 12 December 2023. It is the hope of many in the criminal justice system that delay becomes a relic of the past with the new and carefully-mapped system for sufficiency hearings, a primary feature of which is the fact that matters such as murder now come directly to the High Court. The Applicant's matter is likely to benefit from the sea change to the Criminal Division as a whole.

31. It may very well be the case that the strength of the case for the prosecution faces scrutiny sooner rather than later.

32. After objectively considering the proposed outline of the evidence for the prosecution, including an appreciation of some weaknesses/challenges, and without going into too-minute an analysis of same, I am of the view that the evidence against the Applicant is potentially cogent & strong as it relates to the Applicant's involvement in the death of the deceased.
33. Weighing all of the circumstances listed above together, I am persuaded that on a balance of probabilities, the strength of the evidence points to the likelihood of conviction and the imposition of a severe penalty. These factors provide a powerful incentive to abscond. I am of the view that there are substantial grounds for believing that, if released on recognizance, it is likely that the Applicant will fail to surrender to custody.
34. This ground of objection succeeds.

Ground 2 - LIKELIHOOD OF COMMITTING ANOTHER OFFENCE

35. At paragraph 2 of her submissions, the State Attorney objects on the ground that the Applicant is likely to commit another offence if admitted to bail.
36. In assessing whether the Applicant is likely to commit an offence if released on bail, the court should consider the character, antecedent, social ties and associations of the Applicant. As noted by Isaacs JA in ***Stephon Godfrey Davis v DPP***², "*The antecedents of an applicant for bail is an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to*

² SCCrApp. No. 108 of 2020, para 28.

commit other offences while on bail.” The court considering an application for bail, as contrasted with undertaking a trial, is entitled to consider information on previous convictions, other pending charges, unsavoury associations and comments made by the defendant or her known associates. This information assists in determining the risk posed to the interest of the public.

37. With all due respect, I quite frankly cannot see any basis for this objection. Absolutely no support has been provided.

38. This ground of objection fails.

Ground 3 - LIKELIHOOD OF INTERFERENCE WITH WITNESSES

39. At paragraph 2, the State Attorney lists the grounds of objection as sections 6(2)(a)(i) and 6(2)(a)(ii), but includes a passing reference to interference with witnesses. At paragraph 44, Counsel includes section 6(2)(a)(iii). At paragraph 45, she addresses rolled up objections against the grant of bail to both the Applicant and her husband (using plural terms) and attempts to provide a basis for this Court to find that there are substantial grounds for believing that the Applicant would interfere with witnesses, if admitted to bail.

40. Of course, the law is clear.³ A naked statement from the prosecutor that “the witnesses are known to the Applicant and so he is likely to interfere with them”, without more, is unfair to the Applicant and cannot stand

³ I rely on the principles I outlined at paragraphs 38-40 - **In the Matter of the Bail Application of Junior John CR-HC-POS-BAIL-158-2022-1.**

alone as a ground to deny bail.⁴ That is not the case here. The State suggests that witnesses have actually been threatened and therefore there is an appreciable risk of interference.

41. While I do not find the concerns for witness security to be entirely vacant, the risk does not appear to involve the actions of the Applicant herself. On the proposed evidence, though she too ended up at the Health facility where the Deceased was taken, the witness said that it was the husband who went up to the Deceased's bedside. The witness also said that when he got the security involved and the Applicant and her husband were leaving, it was the husband who threatened him. Further, the same witness observed that the Applicant was crying at the Health facility.

42. On a balance of probabilities, I do not agree with the State that there are substantial grounds for believing that the Applicant if released on bail is likely to interfere with witnesses and/or obstruct the course of public justice.

43. This ground of objection also fails.

CONCLUSION

44. In conclusion therefore, on a balance of probabilities, I find as follows:

- a) The offence charged is certainly serious and increasingly prevalent;
- b) The likely sentence in this case, in the event of conviction, is death by hanging or a lengthy term of years;

⁴ **Armbrister v Attorney General** SCCrApp No. 145 of 2011, para 17.

- c) In spite of the weaknesses/challenges, the proposed case against the Applicant is potentially cogent and strong which demonstrates a high likelihood of conviction;
- d) The evidence has already been tested and the Applicant is awaiting the filing of the Indictment;
- e) There are substantial grounds for believing that the Applicant will fail to surrender to custody when required to do so; and
- f) The adequacy and strength of the social and community ties is insufficient to abate my assessment of the appreciated risk involved in the restoration of the Applicant's liberty.

BAIL CONDITIONS

45. I am required to go one step further and consider whether the risks associated with the restoration of the Applicant's liberty can be mitigated or managed by the imposition of conditions. I regret that I am unable to see that any of the usual conditions (or combination), such as periodic reporting to the police, surrender of travel documents or even the imposition of a curfew, is likely to eliminate or adequately abate the appreciated risk of absconding. Electronic monitoring remains problematic for consideration in these applications (apparently the devices now in use can easily be cut). Even if it was more feasible with the use of a tamper-proof monitoring device, on a case-specific basis, I appreciate the risks concerning this Applicant to be significantly more than merely notional. I remain unconvinced that the attachment of bail conditions will meet my concerns. Even with bail conditions, there remains an appreciable incentive to abscond in order to escape the likely consequence of conviction. Not even the requirement of a surety/ies will ameliorate my concerns.

46. There is a countervailing interest in seeking to ensure that the course of justice is not thwarted when someone who is charged for serious offences absconds and does not attend trial.

47. In these circumstances, the State has satisfied me on a balance of probabilities that there are substantial grounds for believing that if the Applicant is granted bail, she will fail to surrender to custody. I am of the view that this risk cannot be adequately mitigated/managed with conditions.

DISPOSITION

48. Bail is refused.

Lisa Ramsumair-Hinds
Puisne Judge