IN THE SENIOR COURTS OF BELIZE

CENTRAL SESSION-BELIZE DISTRICT

IN THE HIGH COURT OF JUSTICE (CRIMINAL JURISDICTION)

CLAIM NO: 0218 of 2024 & 219 of 2024

IN THE MATTER OF ESMIN FLORES & SALOMEN COWO - PRISONERS AWAITING TRIAL FOR MURDER
AND
IN THE MATTER OF THE CONSTITUTION OF BELIZE SECTIONS 5 [5] AND 6 [2]
AND
IN THE MATTER OF SECTION 106 [1] READ ALONG WITH SECTION 117 OF THE CRIMINAL CODE, CHAPTER 101 OF THE SUBSTANTIVE LAWS OF BELIZE, REVISED EDITION 2020
AND
IN THE MATTER OF SECTION 16 OF THE CRIME CONTROL AND CRIMINAL JUSTICE ACT, CHAPTER 102 OF THE LAWS OF BELIZE, REVISED EDITION 2020
AND
IN THE MATTER OF SECTION 62 OF THE INDICTABLE PROCEDURE ACT, CHAPTER 96 OF THE LAWS OF BELIZE, REVISED 2020
AND
IN THE MATTER OF THE CRIMINIAL PROCEDURE RULE 2016 SECTIONS 2.3-2.5-2.8

Before: Honourable Justice Derick F. Sylvester

Appearances: Ms. Sherigne M. Rodriguez for the Petitioners.
Ms. Shanidi Chell-Urbina for the Respondent

2024: 19th July

BAIL- MURDER- CONSTITUTION OF BELIZE S. 5 [3] -CRIME CONTROL AND CRIMINAL JUSTICE ACT- INDICTABLE

PROCEDURE ACT- CRIMINAL PROCEDURE RULES

RULING ON PETITION FOR BAIL (MURDER)

[1] **SYLVESTER J:** Salomen Cowo and Esmin Flores, two (2) police officers (hereinafter referred to as the Petitioners) were charged for the offence of murder. The alleged offence occurred during the performance of their duties as police officers. The incident occurred on the **25th March 2023**, and were charged four (4) days after, being the **29th March 2023**. They were charged contrary to section 106 (1) read along with section 117 of the **Criminal Code**[1] Chapter 101 of the Substantive Laws of Belize, revised edition 2020.

[2] This court recognizes from the outset that the discretion to grant bail for murder must be the exception rather than the rule. That the offence of murder is one of the most serious offences known to the criminal law, that a human life is irreplaceable and ought to be treated as sacrosanct. In **Sharman Rosemond v. AG of St Lucia et al**[2], at par. 85 Edwards J, opined that this discretion to grant bail for murder must be exercised responsibly and must be weighed together with the constitutional public interest requirement, in that an accused who is charged with such a serious crime, must be tried within a reasonable time.

[3] The prosecution and the defence, in their submissions, have disagreed

[1] Cap. 101 of the Substantive Laws of Belize, Revised Ed. 2020
[2] Claim No. SLUHCV2003/0985

materially about the manner in which the court should approach its jurisdiction to grant bail for the offence of murder.

Prosecution overview:

[4] The prosecution submits, the conditions that exist at present do not warrant the court's consideration for the grant of bail and submitted the following:

i. If the accused is not tried within a reasonable time, then the court has a discretion to grant bail pursuant to section 5 (5) of the **Constitution of Belize**, **Chapter 4 of the Substantive Laws of Belize Revised Edition**.

ii. The delay has not exceeded four (4) years which is the average wait period for a trial for murder and therefore there is no unreasonable delay to ground the release on bail for the petitioners. The learning from the Court of Appeal Authority of **Linsbert Bahadur**[3] par. 32 was relied upon.

iii. The Petitioners have been on remand since 29th March 2023, approximating one (1) year and three (3) months (totalling 15 months) [*sic*], and it is possible to have the trial heard during the September 2024 session. The matter will be considered a priority listing for trial. Pursuant to the **Criminal Procedure Rules, 2016**[4], the preliminary inquiry having been completed, the file

[3] Crim. Appeal # 10 of 2016.
[4] Rule 2.3 (v)

should be with the DPP's office within fourteen (14) days of the completion of the preliminary Inquiry, which was on the 24th June 2024.

iv. Finally, the affidavit of investigating officer Sgt. Daniel Matu, wherein the statements of the witnesses were exhibited thereto, and the factual matrix, supports the Learned DPP's advice that the petitioners should be charged with the offence of murder. There was no unreasonable delay or exceptional circumstances to warrant the grant of bail.

Defence overview:

[5] The defence on the other hand has submitted the following:

I. The petitioners have been on remand for fifteen (15) months (sic), having been charged for the offence of murder on the 29th March 2023. The date for the preliminary inquiry was set for the 24th June 2024.

II. The disclosure was provided to the petitioners on the 22nd May 2024, approximately one (1) year after the incident, which is inordinate in the circumstances, taking into consideration the petitioners where charged four (4) days after the incident.

III. The Petitioners are not a flight risk, they are Belizeans with wives and children, who prior to incarceration depended heavily on them for support.

IV. A cursory look at the evidence against the petitioners on paper is not unequivocal. The officers were pursuing two (2) persons

on a motor bike, whom they requested to stop after their clothing appeared suspicious. Despite their sirens were on, they sped away. A chase ensued and they were allegedly fired upon. They returned fire and a single bullet, resulted in the death of one of the men. Bullets were recovered along the route of the chase, that did not match the police type firearm. The hands of one of the men on the motor bike appeared to have a firearm at some point in the chase pointing at the officers, the officers heard gun shots. Finally, the sound from the bike which was confirmed by the mechanic who tested the bike, indicated that the bike emitted sounds from the muffler system that sounded like gun shots.

V. The circumstances of this case at its highest points to manslaughter, and in any event the men were asked to stop by the petitioners who were pursuing them. It was a tense situation, that policemen are placed in daily and cannot always measure the use of force, especially when as in this situation they were allegedly being fired upon. Despite, the timing of the firing of shot, the facts must be looked at in the round and the whole circumstances of the incident must be examined.

[6] This court is mindful that in an application for bail, it cannot embark upon a discourse into the evidence, since it is impossible to test the evidence at this stage; the appropriate forum is at trial. However, what the court can do is to consider the nature of the evidence as presented as one of the conditions relevant to the court's decision, but not to make a detailed examination of it.

[7] The authority for the above proposition was exposited in **Hurnam v State**[5] at par. 21 wherein Lord Bingham of Cornhill, adopting the principles in the authority of **Maloupe v. District Magistrate**[6], as it relates to the approach adopted by the Magistrate in examining the nature of the evidence as a factor in considering the grant of bail, he opined as follows:

> "14. ..... He alluded to "the nature of the evidence" as a matter to be considered under section 4(2)(c), referred to the "well laid principle" that the court is not required at that stage to conduct a detailed assessment of the evidence, and cited *Maloupe* on that point. He summarised the facts alleged against the appellant and observed that the nature of the police evidence appeared to be that of an accomplice (Chetty).....".

[8] The crown's objection to bail was **solely** on the ground that the constitution prescribes that where there is a failure to be tried within a reasonable time, bail may be granted. However, delay has not been ignited, to the level to justify the grant of bail to the petitioners and therefore they should '*buy*' their constitutional time in years, prior to the court's consideration of bail to them. There was no objection by the crown on the basis of, absconding (flight risk), interference with witnesses, obstructing the course of justice or committing an offence while on bail. In an effort to deal with the focal issue in relation to this

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[5] [2005] UKPC 49
[6] [2000] MR 264

application the court will deal with its judgment in three (3) parts namely:

i. Firstly, examining the factual matrix resulting in the delay of fifteen (15) months to date, the charge and its surrounding circumstances including the nature of the evidence against the petitioners, as elicited by the crown and defence.

ii. Secondly, an analysis of the legal constitutional requirement, premised upon which bail ought to be considered in Belize for the offence of murder, that is, the section 5 (5) enshrined provision, trial within a reasonable time and exceptional circumstances, inter alia.

iii. Thirdly, the disposition of the application.

PART 1:

Factual Matrix/delay/ nature of the evidence [Exceptional circumstances]

[9] The petitioners and prosecution have examined their respective versions of the facts, and sought to give summaries, examining the nature of the evidence presented. The summaries as per the statements presented pursuant to the prosecution's duty of disclosure were that the petitioners were on patrol at about 10:45 pm on the 25th March 2023, when they encountered two persons on a bike who looked suspicious. The pillion rider was wearing a 'hoody' and appeared to have a firearm. The petitioners put on their lights on the police vehicle and requested the rider to stop. He refused and a chase ensued wherein the petitioners were fired upon, apparently by the hooded passenger on the bike. During the chase, one of the petitioners returned fire, the biker was shot,

he was taken to the hospital and pronounced dead at the hospital by a single gunshot injury.

[10] The petitioners allege that they were acting in self defence, or at a minimum negligently, as they were being fired upon, a belief they held, and honestly so. Further their reaction was commensurate with the threat of fire meted out to them, which was confirmed by the 9 mm shells collected along the way of the speed chase, which would have only come from the bike rider. Or alternatively, at its highest the circumstances may lead to manslaughter by negligence, as they were provided with an AR 15 to do night patrols and the nature of the job, cannot always warrant an immediate informed decision, but sometimes split decisions must be made. Their task of avoiding, averting and controlling crimes cannot be viewed in isolation. Hindsight is normally 20/20. Being in an actual pursuit of suspicious persons who refused to stop when told to by the police, and allegedly firing upon them were enough to justify their actions and the chase that ensued. They highlighted salient parts of the statements of officers which were proved as part of the prosecution's duty of disclosure, and are reproduced hereunder:

Statements:

i. **Detective Constable Lance Jacobs, page 2 of his Duty Report**:

Lines 3 to 5:

> "Upon nearing the intersection of Palmar Road, I heard what sounded like three gunshots coming from the direction of the motorcycles."

Lines 8 – 10:

"Once more I heard what sounded like two more shots…"

Raymon Castaneda's Statement (Police Driver):

i. He gave two written statements, on the **26th March 2023 at 2:30 pm**, his recorded statement was explicit in relation to the firearm he saw in the hooded biker's hand, prior his hand was in a suspicious position in front his legs. He then pointed and apparently shots were being fired, coming from the direction of the motorcycle pillion rider who was wearing the hoody. He heard three gunshots. However, on the 28th March 2023, at 4:32 pm he gave another statement indicating, the biker wearing the hoody had what resembled a firearm in his right hand. He was not certain as he was focused on the road. That even with the correction he has made to his statement, enough was surmised to support the assertion that the officers were responding to a reasonable belief of a perceived threat. The pertinent parts of his statement are:

ii. **Page 2 Line 17 – 20:** "…while going downhill I observed the motorcycle to the back with the passenger who was wearing…turned around on his left and pushed out his right arm to left pointing to my direction and I could see what appeared to be a short arm, firearm and I heard three to four shots followed by sparks coming from the apparent firearm."

iii. **Page 2 Lines 23 – 25:** "…I pursued them…There I heard about three-gun shots coming from the direction of the motorcycles…"

iv. **Further Statement of PC Castaneda: Page 1 Lines 5 – 7**: "…I would like to make correction and say that I am not certain if

indeed I saw a firearm in his hand because I was more focused on the road. I only saw that he was pointing on the mobile while he partially turned his body to the left."

v. **Page 1 Lines 10-12:** "The person who was...sitting as a passenger behind the driver, turned around and at the same time I heard popping sounds that sounded like gunshots, which was like three or four. I saw sparks coming from the direction of the cycle the same time I heard popping sounds."

Victor Torres' Statement (Mechanic): Lines 9-11:

i. "...I then test drove the motorcycle and could say that due to the missing silencers from both exhaust pipes the exhaust made loud popping noise, I drove it around for about 10 to 15 minutes and the popping sound could be heard all through the test drive..."

Arian Jones (Crime Scene Technician):

i. In the Report of the Crime Scene Technician, Arian Jones, Exhibit "DM9" of the Affidavit of the Investigating Officer, at page 2 of 7, she was called to photograph two 9mm expended shell casings which was along the route taken in the pursuit.

PC 1782 Luis Patt: Lines 14-16:

i. "...Whilst walking and searching on Riverside Street about 500 yards from the entrance of Palmar Village, Cpl. Navarro discovered two .9mm expended shells. I was walking along beside him when he found the 9mm shells..."

George Steven Acevedo: Page 1 Lines 19-21:

i. "...I heard, while I saw the motorcycle approach...two loud popping sound which resembled the sound from Dyandre's motorcycle...when he gears down the engine."

PC Benito Gutierrez: Page 1 Lines 4:

i. "I started to watch a movie at home...I paused the movie and went to smoke a cigarette outside. Whilst there I heard the sound of gunshots, and it was about three shots which sounded like shots from a small arm..."

ii. Page 1 Lines 12-13:

"...I heard two more shots which seemed to be fired from a heavier calibre type weapon..."

iii. Further statement page 1 line 6-7:

" I would like to state further that I was able to distinguish between the two due to my firearm training sometime in 2022..."

[11] The prosecution alleges in its submission that despite the above disclosure the petitioners face the most serious offence of murder which carries a maximum penalty of life imprisonment, if found guilty. That without getting into an assessment of the evidence, the nature of the evidence does not support a case of negligence or of officers acting within the scope of their duties. This is a case of two officers acting together from the beginning of the chase, when they both shot at the victim on Palmar Boundary Road to the shooting of the victim who was turning away from them, thus posing no threat to them, at Otro Benque Road, Orange Walk Town.

[12] The Crown further submitted an affidavit of Sgt Daniel Matu who was the investigating officer in the matter, with the attached exhibits of the statements of the following witnesses namely, two statement of PC Castenada, statement of; Miguelito Rivero, Jermaine Leiva, Yahari Villeda, Officer Lance Jacobs, George Acevedo, Dr Mario Estradabran, Adrian Jones and Sgt Erika Flowers.

[13] The crown concluded in sum that the evidence to be led at the trial of the petitioners, as per the exhibits in the Crown's affidavit could lead to the petitioners being found guilty of the offence of Murder by the tribunal of fact. Further, there is currently **no unreasonable delay** or **exceptional circumstances** that exist, that may warrant the granting of bail to the petitioners.

[14] As alluded to earlier, this court can only examine the nature of the evidence, and no further. The judge hearing this matter will be well positioned to make an informed decision on every aspect of this case. What this court observes is that there are issues of self defence, negligence, intention and other legal issues to be explored in this matter but remains for trial. The nature of the evidence suggests that the petitioners were under perceived attack while pursuing alleged suspects whom they requested to stop and failed to do so. The pursuit at 10:45 pm was in pursuance of their duty to ensure they avoid, avert and prevent crime. This court is mindful that the petitioners should not only wait to catch a suspect in the commissioning of a crime to detain, pursue and or question but where there are suspicious circumstances that

aroused the trained police senses, they have a duty to act. The law so prescribes[7]. This court, however, takes judicial notice of the fact that many murders coming before the court are committed by assailants using motorbikes as the means of transport with the pillion rider being the shooter. The pillion rider focuses on the target either while riding, or immediately alighting from the bike. Upon completion of the crime, the bike disappears, wherein the registration number, colour and other factors of the bike are easily changed. Those bikes are ideal for maneuvering between traffic and escaping sometimes undetected. The police have an arduous task and a pledged commitment not only to solving crime, but to ensuring criminals are brought to justice and the public confidence in their safety is maintained and remains their priority. A task that only the brave few, are willing, ready and able to risk their lives to undertake for others, sometimes devoid of the understanding by society, of its inherent risks to the lives of the police officers, entrusted with the duty and sometimes the lives of their families.

[15] The crown submitted and gave its commitment that this matter can be tried by the end of this year, since it can be listed at the next session of the High Court in September 2024. The preliminary inquiry was completed on the 24th June 2024, and since Rule 2.3 (v) of the Criminal Procedure Rules, 2016, mandates the Magistrate's Court shall fourteen (14) days from the date of preliminary inquiry send the case file to the Office of the Director of Public Prosecutions and the High Court. This matter shall be considered a priority for the purpose of listing it for trial.

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[7] Police Act Cap 138 s. 4, 20, 41 and 44.

[16] The Crown further submitted that even if the Magistrate's court takes twice as long to send the case file, the matter can still be listed in the September 2024 Session of the Northern District. Therefore, the application for bail is premature. That this matter can be heard by the end of the year 2024, and thus fall within the 2-3 years stipulated in the **Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System**.

PART 2:

Analysis of the legal constitutional requirement, premised upon which bail ought to be considered in Belize for the offence of murder.

[17] Historically, the common law position was that bail can be granted for murder except that it was rarely exercised, the common law therefore had jurisdiction to grant bail for murder pre or post committal. The grant of bail was therefore discretionary, and was not limited to murder but also manslaughter, forgery, rapes etc. **In R v. Spilsbury [1898] 2 QB 615** at page 620, which was quoted with approval by Lord Hamblen, in **AG of Trinidad and Tobago v. Akil Charles**[8] at par. 27 states thus:

> *'In 1898 Lord Russell of Killowen CJ summarised the position at common law in R v Spilsbury [1898] 2 QB 615 at 620 in the following terms:*

[8] [2022] UKPC 31 par. 26 et seq

"This court has, independently of statute, by the common law, jurisdiction to admit to bail. Therefore, the case ought to be looked at in this way: does the Act of Parliament, either by expressly or by necessary implication, deprive the court of that power? The law relating to this subject is well stated in 1Chitty's Criminal Law 2nd ed, p 97, as follows:

'The Court of King's Bench, or any judge thereof in vacation, not being restrained or affected by the statute 3 Edw 1, c 15 in the plenitude of that power which they enjoy at common law, may in their discretion, admit persons to bail in all cases whatsoever, though committed by justices of the peace or others, for crimes in which inferior jurisdictions would not venture to interfere, and the only exception to their discretionary authority is, where the commitment is for a contempt, or in execution. Thus they may bail for high treason, murder, manslaughter, forgery, rapes, horse stealing, libels and for all felonies and offences whatever'.

[18] That at common law, the proper test to be applied as to whether bail should be granted or refused, was whether it was probable that the defendant will appear to attend his trial. This test should be applied by reference to the following considerations, the nature of the accusation and the nature of the evidence in support of the accusation, including the severity of the punishment which the conviction will entail, whether the sureties are independent or indemnified by the accused[9].

[9] Akil Charles [2022] UKPC 31 par. 28

[19] In the authority of **Akil Charles Lord Hamblen**, agreeing with the Court of Appeal in Trinidad and Tobago, that bail for murder at common law can be granted post or pre committal opined at par. 37, thus:

> *'The Board therefore agrees with the Court of Appeal that at common law there was no existing law prohibiting the grant of bail in murder cases either pre or post committal.*

[20] In Akil Charles the issue[10] before the Privy Council was the constitutionality of a law passed by Parliament, the Bail Act 1994 section 5 (1) (first schedule) which provides that bail may not be granted to any person charged with the offence of murder. Section 5 (1) and the corresponding schedule are reproduced hereunder for ease of reference[11]:

21. Section 5 provides:

> "5.(1) Subject to subsection (2), a Court may grant bail to any person charged with any offence other than an offence listed in Part I of the First Schedule.
>
> (2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the First Schedule and has been convicted on three occasions arising out of separate transactions –
>
> (a) of any offence; or
>
> (b) of any combination of offences, listed in that Part, unless on application to a Judge he can show sufficient cause why his remand in custody is not justified."

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[10] Akil Charles [2022] UKPC 31 par. 1

[11] Par. 21 [supra]

22. The First Schedule provides:

"EXCEPTIONS TO PERSONS ENTITLED TO BAIL

PART 1

CIRCUMSTANCES IN WHICH PERSONS ARE NOT ENTITLED TO BAIL

Where a person is charged with any of the following offences:

(a) murder;

(b) treason;

(c) piracy or hijacking;

(d) any offence for which death is the penalty fixed by law.

[21] The issues canvassed before the Privy Council were whether the Bail provision was an *Existing Law* under section 6 of the constitution, and whether the Bail provision was valid because it was passed under section 13 of the Constitution. For clarity, it is important to note at this juncture that the Supreme Court of Trinidad and Tobago, bail provision does not have the trial within a reasonable time guarantee, as a precursor to the grant of bail. Section 31 of the act as reproduced in para. 41 of Akil Charles states as follows[12]:

41. The Supreme Court of Trinidad and Tobago had power to grant bail in all cases, "at any time" and whether the accused "has been committed for trial or not". As set out in section 31:

[12] Akil Charles [2022] UKPC 31 par. 41

"31. The Court or a Judge may at any time, on the petition of any accused person, order such person, whether he has been committed for trial or not, to be admitted to bail, and the recognizance of bail may, if the order so directs, be taken before any Magistrate".

[22] The Privy Council concluded that the removal of the court's discretion to grant bail was an infringement on the accused's constitutional rights, that less intrusive measures could have been used instead of a blanket refusal of bail for murder. And that there had always existed at common law a discretion to grant bail for murder, albeit it was felt otherwise, incorrectly so. Further, a fair balance must be struck between the rights of the individual and the interests of the community. Lord Hamblen stated the law succinctly, at paras. 64-66, as follows:

> 64. Since it was (wrongly) assumed that the law already prohibited bail in cases of murder, there was no consideration of whether it was necessary or appropriate to introduce such a prohibition. No concern was expressed about the courts' existing approach to the grant of bail in murder cases.
>
> 65. Even if there had been such a concern, this could have been addressed by imposing conditions on the exercise of the court's discretion rather than by removing it altogether. This was the general approach adopted in the Bail Act in section 6. Even where it was considered that a stricter approach was required, as in the case of those

with three relevant prior convictions, there remained a discretion in the court to grant bail where "sufficient cause" could be shown (section 5(2)).

66. The Board therefore concludes that less intrusive measures could have been used.

(iv) Whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.

[23] The Privy Council regarded that the 'Standardless Sweep' to deny everyone charged with the offence of murder to be denied bail, can inevitably lead to the potential for unfairness and arbitrariness and contrary to the principles of fundamental justice. That the variety of circumstances wherein the offence of murder can be committed are wide, varied and multifaceted. The position was expounded at paras. 72-74 of Akil Charles as follows:

72. A fundamental objection to a blanket prohibition of bail is that it treats all persons charged with murder indiscriminately and denies the possibility of bail whatever the circumstances and, however compelling the case for bail may be. As such it operates in an arbitrary and potentially unfair and unjust way.

73. It is obvious that the circumstances in which a murder charge may be made are many and various. As recently stated by the Board in **Boodram v Attorney General** of Trinidad and Tobago [2022] UKPC 20 at para. 30:

"The crime of murder is, of course, always very serious; but some murders are even more serious than others. The circumstances of murder cases vary across a wide range, from the terrorist who aims to overthrow a state by killing as many of its citizens as possible to the devoted partner who commits a 'mercy killing' in order to end the unbearable pain suffered by a loved one who is terminally ill…"

74. The variety of circumstances in which a murder charge can arise means that there may well be cases where none of the objectives of a prohibition of bail will be served. There is no risk of absconding; there is no risk of further offending; there is no risk of interfering with witnesses or of obstructing the course of justice. In such cases there is likely to be a very compelling case for bail, but the blanket prohibition means that bail will not be possible. Preventing differential treatment in cases with different circumstances involves what has been described as a "standardless sweep". As pointed out by the Court of Appeal of Trinidad and Tobago in **Attorney General v St Omer** Civil Appeal No. P351 of 2016 at para. 62, a "standardless sweep" has the potential to produce unfairness and arbitrariness and is contrary to principles of fundamental justice.

[24] In sum this Court finds it necessary to reproduce paras. 78- 83 of Lord Hamblem learning on the issue against having a blanket prohibition

against bail for murder. This is necessary for completeness, since during the hearing of this matter, both Counsel indicated that there was no written bail decision relating to the offence of murder, despite a list of court orders were provided to the court wherein bail was granted for murder.

78. The consequences of a prohibition on the grant of bail were considered by the Board in State of Mauritius v Khoyratty [2006] UKPC 13; [2007]1 AC 80. In that case it was held that such a prohibition infringed the separation of powers contained in section 1 of the Constitution of Mauritius. In his judgment Lord Mance explained that it would also contradict the principle of the rule of law, stating as follows at para. 36:

"...To remove the court's role - and in the process to prescribe automatic detention in custody pending trial whenever prosecuting authorities have reasonable grounds to arrest for a prescribed ...offence ...would be to introduce an entirely different scheme. ...[which] would contradict the basic democratic principles of the rule of law and the separation of judicial and executive powers which serve as a primary protection of individual liberty".

79. The importance of the right to liberty was vividly explained by Bereaux JA in his judgment in **Francis v State** of Trinidad and Tobago (2014) 86 WIR 418 at para. 276

(with which the Chief Justice and three other Justices of Appeal agreed):

"...The liberty of the subject is one of the fundamental rights which is very jealously guarded in most democracies. It is especially precious to us as a society with a colonial past and a history of slavery and indentureship, in which liberty had to be fought for or bought and for which so many of our ancestors paid with their lives. As our national anthem puts it, we, as a nation, are 'forged from the love of liberty'. As judges sworn to uphold the Constitution, we will guard it with every breath of our constitutional power."

80. Moreover, in cases such as the present the infringement of the right to liberty undermines a right specifically recognised in section 5 of the Constitution, namely the right not to be denied bail without "just cause". As explained in relation to the equivalent provision in the Canadian Constitution in **R v Pearson** [1992] 3 RCS 665 at p 689:

'Just cause' refers to the right to obtain bail. Thus, bail must not be denied unless there is 'just cause' to do so. The 'just cause' aspect ... imposes constitutional standards on the grounds under which bail is granted or denied."

81. The prohibition operates by reference to a single circumstance – the offence of which a person stands accused. That is assumed to be sufficient in itself to

constitute "just cause" regardless of other circumstances and regardless of how unjust they may show the deprivation of liberty to be.

82. The fundamental importance of the protection by law of the right of liberty was emphasised in the Board's recent decision in **Duncan and Jokhan v Attorney General** of Trinidad and Tobago [2021] UKPC 17 at para. 23:

"The protection of liberty and the security of the person by law is, by long tradition, recognised as a fundamental value in the common law and this is reflected in the Constitution. It is also recognised as a fundamental value in international human rights instruments including the European Convention on Human Rights and the International Covenant on Civil and Political Rights ('the ICCPR') with which Chapter 1 of the Constitution has a close affinity: **Minister of Home Affairs v Fisher** [1980] AC 319, 328-330. Lord Bingham summarised the position in **A v Secretary of State for the Home Department** [2004] UKHL 56; [2005] 2 AC 68 (the so-called Belmarsh case) at para. 36:

'In urging the fundamental importance of the right to personal freedom ... the appellants were able to draw on the long libertarian tradition of English law, dating back to chapter 39 of Magna Carta 1215, given effect in the ancient remedy of habeas corpus, declared in the Petition of Right 1628, upheld in a series of landmark decisions

down the centuries and embodied in the substance and procedure of the law to our own day...'

83. For all these reasons the Board accepts that very severe consequences flow from the infringement of the fundamental rights and freedoms by the Bail provision, including the undermining of the rule of law.

Constitution of Belize vis a vis the Indictable Procedure Act Cap 96

[25] The constitution of Belize provides for the protection of the fundamental rights and freedoms, life, liberty at section 3, protection of the right to personal liberty, section 5 and protection and equality before the law, section 6. These sections will be the focal constitutional consideration of the grant of bail and the exercise of the court's discretion. The apropos sections are reproduced hereunder as follows:

Section 3: Protection of Fundamental Rights and Freedoms

(3) Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely-

(a) life, liberty, security of the person, and the protection of the law;

(b).....;

(c) .....; and

(d) protection from arbitrary deprivation of property,

the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of

that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest.

Section 5 states: (1) A person shall not be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say:

(a) .....;

(b) .....;

(c) .....;

(d) .....;

(e) upon a reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law;

(3) Any person who is arrested or detained-

(a) for the purpose of bringing him before a court in execution of the order of a court; or

(b) 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 forty-eight hours after such arrest or detention.

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

(5) *If any person arrested or detained as mentioned in subsection (3) (b) of this section is not tried within a reasonable time, then without prejudice to any further proceedings that may be brought against him, he shall, unless he is released, be entitled to bail on reasonable conditions.*

Section 6.- (1) and (2) state as follows:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

(2) 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.

Indictable Procedure Act Cap 96

[26] The Indictable Procedure Act section 62 prescribes that the Court or a Judge may at any time on a petition being filed admit an accused to bail, inter alia. The section states as follows:

> 62. The court or a judge may at any time, on the petition of an accused person, order him, whether he has been committed for trial or not, to be admitted to bail, and the recognisance of bail may, if the order so directs, be taken before any magistrate or justice of the peace.

[27] The issue as to the grant of bail for murder in the Belize context, calls for a contextual and a pragmatic approach to the interpretation of section 5 (5) of the constitution. An accused who is not tried within a "**reasonable time", shall be entitled to bail on reasonable**

conditions. Since the prosecution's sole basis of objection for bail was that the reasonable time enshrined, should be approximately four (4) years as suggested in Linsbert from the Court of Appeal in Belize, (a decision I shall revert to shortly) as the average wait time for a trial in the High Court. The petitioners rebuked the approach as being inconsistent with the constitution, and its fundamental rights enshrined therein. The CCJ in the Belizean authority of **Solomon Marin v AG**[13] dealt with the court's general approach to statutory interpretation, it is a dynamic and evolutionary process being led by jurists across the region, and thus constitutional interpretation is unfolding, a continuous process of reflection, refinement, discovery and assimilation. Jamadar JCCJ exposited at paras. 27-28 as follows:

This Court's general approach to constitutional interpretation in the context of human rights.

(27) The first independent Anglo-Caribbean constitutions emerged in the 1960s. Others followed in subsequent years. All contain sovereignty and supremacy clauses, declaring Caribbean constitutionality as the repository of supreme law, values, and policy. Their interpretation and application have been a dynamic, developmental, and evolutionary process, led by jurists throughout the region and at all levels within regional courts. As with all development, this trajectory has not always been uniformed or consistent, yet some matters are now beyond

[13] [2021] CCJ 6 par. 27 et seq

dispute. However, Caribbean constitutional interpretation remains an unfolding, forever unfinished process of reflection, discovery, assimilation, refinement, and application. The Judiciary is constitutionally responsible for this task, in what are now States that avow a democratic model of organization and governance based on constitutional supremacy and paramountcy.

(28) In 2005 this court emerged in the region as an indigenous Apex Appellate Court with an explicit mandate to play 'a determinative role in the further development of Caribbean jurisprudence through the judicial process...'. This directive is thus an expression of sovereign regional will. In no area is this role of greater salience than with regard to Caribbean constitutionalism, '... a goal which Caribbean courts are best equipped to pursue'. In this mandate, the Court's role is intended to be transformative of both law and society, conceived as mutually constitutive. It is a role that is consistent with constitutional edicts throughout the Region as to the responsibility of the Judiciary.

Trial Within a Reasonable Time

[28] The CCJ Academy of Law at its Seventh Biennial Law Conference in October 2023, **Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System,** in the preamble observed that there are intolerable delays in the administration of criminal justice including unreasonably long periods spent on remand. That as a rule indictable offences should be tried

within a year and during the transitional stage trials should be held within two (2) to three (3) years. The relevant declaration is 19 and prescribes as follows:

> *19. That as a rule, trials should be held within one (1) year of the accused being charged (for indictable offences) and six (6) months (for summary offences). During the necessary transitional stage to this ideal, trials should be held within two (2) to three (3) years of the accused being charged (for indictable offences) and twelve (12) months (for summary offences)*

[29] The court notes that the petitioners were charged four (4) days after the alleged offence, being on the 29th March 2023. The investigation evidently proceeded *post haste*, yet full disclosure was only provided on the 22nd May 2024, which was almost fourteen (14) months after the offence. Neither the written submission nor the affidavit of Sgt. Daniel Matu addressed the reason/s for the delay. Delay has been said to be an anathema in the criminal justice process. In Marin's case the CCJ, albeit dealing with a nine (9) year delay between the conviction and the appellant's appeal highlighted the corrupting effect on the purity of justice. Delay must therefore be nipped in the bud, before it mushrooms, or else it can result in constitutional violations. The nascent for delays normally start ab initio in the criminal trial process.

[30] In the authority of Marin, Jamadar JCCJ in delivering the decision of the majority, in a matter emanating from Belize adumbrated as follows:

"In the delivery of justice, delay is anathema. Delay has a corrupting effect on the purity of justice. It renders its delivery increasingly valueless for parties and all too often even prejudicial. It undermines public trust and confidence in the justice sector. It corrodes the very fabric of society. Delay denies justice. Such is its toxicity. Indeed, it is constitutionally renounced in Belize. This appeal is all about delay in the delivery of criminal justice in Belize and its effects on legitimate sentences imposed on the appellant Marin. Sentenced to two (2) concurrent ten-year terms, the imposition of those sentences has been called into question because of a nine-year delay between his conviction in the High Court and the hearing and determination of his appeal. (3) The responsibility for this egregious delay lies largely at the doors of the criminal justice system in Belize. The State admits that the delay breached Marin's fundamental right to a fair hearing within a reasonable time.

[31] Further, the **Criminal Procedure Rules 2016 part 5**, mandates that disclosure must be provided to the Defence within prescribed timelines. In the case of indictable matters fourteen (14) days before the Preliminary Inquiry, and once the matter is committed to the Supreme Court fourteen (14) days before arraignment. When an accused is represented, disclosure shall be served on his attorney. The relevant sections of **CPR 2016 section 5** are as stated hereunder as follows:

"Disclosure by the Prosecution

5.1 At every First Hearing, the Prosecution must serve on the Court and Defendant a copy of the summons / charge sheet and a fact sheet outlining the nature of the case against him.

5.2 The Prosecution must then provide disclosure to the Defendant:

(iii) in the case of indictable matters:

(a) *14 days* before the Preliminary Inquiry; and

(b) once the matter has been committed to the Supreme Court, within *14 days* before the Arraignment hearing.

5.3 Disclosure means providing every Defendant with a copy of the case file, except for any material that is administrative in nature, legally privileged or that is covered by public interest immunity.

Note: where the case file has not been completed within the time limits prescribed above, police officers must submit to the prosecutor and disclose to the Defendant as much of the case file as has been prepared (partial disclosure).

5.4 (i) Where a Defendant is represented, disclosure shall be taken to have been provided when it is served on the Defendant's attorney.

[32] The prosecution has impressed upon this court both in written and oral submission that **Linsbert Bahadur Criminal Appeal no. 10 of 2016**, be accepted as the average wait time of four [4] years for a murder trial as per paragraph 32 of the judgment.

[33] The Court notes the following in relation to the authority of Linsbert, firstly, this was a judgment that was delivered on the 9th January 2018, over six (6) years and five (5) months ago. Secondly, the court was dealing with a matter wherein there were three (3) trials (Nolle Prosequi), aborted trial wherein a juror fell ill and later a hung jury. The accused was then re-indicted after the third trial. The court also noted there was no delay that can reasonably be attributed to the prosecution, the length of the delay was ten (10) years and two (2) months. Contextually, there were numerous trials during that period that were never concluded for one reason or another.

[34] The Court's reasoning in para. 32 of Linsbert Bahadur speaks to the particular facts of the case and states thus:

> "[32] The Court accepts the prosecution's position that in Belize the delay of four (4) years (first trial) is an average period to wait for a trial of murder. The first trial in September 2010 ended when the DPP entered a nolle prosequi. The appellant was tried for a second time on 17 November 2015, but the trial was aborted because a juror fell ill. This is no fault of the prosecution. Also, the third trial in February of 2016 which resulted in a hung jury cannot be blamed on the prosecution. On 18 April 2016, the DPP re-indicted the appellant which resulted in the conviction for murder and the appellant was sentenced to life imprisonment. The dates between the trials cannot be considered undue delay in Belize taking into consideration the economic conditions and the amount of prisoners awaiting trial for murder in this jurisdiction. In the opinion of the Court, there was no abuse of

the process by the prosecution and as such the ground of breach of section 6(2) of the Belize Constitution (unfair trial) has not been made out by the appellant.

[35] This court respectfully submits that the timeline, relied on by the prosecution in Bahadur, is antiquated in light of the **Needham's Point Declaration**, and the prescribed benchmark cannot be overlooked.

[36] The prosecution further submits that despite the application for bail is premature, the matter can be completed by the end of the year and thus falls within the transitionary 2–3-year period for a trial as stated in the **Needham's Point Declaration**. This court notes that the benchmark is one year for indictable trials, and the sooner all stakeholders are on board with that deadline, the shorter would be the transitionary period of 2-3 years while the benchmark is being achieved. The view of this court is that the benchmark of one year (1) must start from today, not tomorrow or overmorrow, for procrastination is the thief of time.

[37] The prosecution must be commended for their willingness to have this matter concluded before the end of the year, no doubt, appreciating the delay that has already ensued due to the failure to provide the disclosure within the prescribed time limit. The prosecution submitted the following:

"We submit that this matter can be enlisted at the next session of the High Court in September 2024. Rule 2.3 (v) of the Criminal Procedure Rules, 2016, grants the Magistrate's Court 14 days from the date of preliminary inquiry to send the case file to the Office of the Director of

Public Prosecutions and the High Court. Once the depositions are received, this matter will be considered a priority for the purpose of listing it for trial. The Crown humbly submits that even if the Magistrate's Court takes twice as long to send the case file, this matter can still be listed in the September 2024 Session of the Northern District. Therefore, the Crown humbly submits that this application is premature. We submit that at this stage, it is possible to have this matter heard by the end of this year and thus fall within the 2-3 years stipulated in ***Needham's Point Declaration on Criminal Justice Reform: Achieving a Modern Criminal Justice System.***

[38] In **Hurnam v State**[14] the Privy Council was interpreting the constitution of Mauritius, in particular section 3 (Protection of fundamental rights and freedom) and section 5 (Protection of the right to personal liberty). **Section 5 (1) (e)** of the constitution of Mauritius is *pari materia* to **section 5 (1) (e) of the Belize constitution**, in that it also has the fair trial within a reasonable time requirement. Also, **section 5 (3**) of the Mauritius constitution is in *pari materia* to section **5 (2)** of Belize and Ergo, section five (5) shall be reproduced hereunder as follows[15]:

> "5 (1) No person shall be deprived of his personal liberty save as may be authorised by law –
>
> (d) for the purpose of bringing him before a court in execution of the order of a court;
>
> (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence ...

[14] [2005] UKPC 49
[15] [2005] UKPC 49 par. 3

(3) Any person who is arrested or detained –

(a) for the purpose of bringing him before a court in execution of the order of a court;

(b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or

(c) upon reasonable suspicion of his being likely to commit breaches of the peace, and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) **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 if any person arrested or detained as mentioned in paragraph (c) is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour, then, without prejudice to any further proceedings that may be brought against him, he shall be released unconditionally."

[39] This court is alert to the fact that murder is indeed a serious offence, and that the seriousness of the offence is a factor to be taken into

consideration, since the greater the penalty the greater the likelihood that the accused may try to abscond. However, this is only one factor that should not be dealt with in isolation. In Hurnam's case the court in concluding, at para. 25 stated the lower court was correct in its consideration in dealing with the seriousness of the offence as one factor and the Supreme Court fell into error in treating the seriousness of the offence as an all but conclusive reason for refusing bail.

[40] Uppermost in the court's mind is the public interest requirement that justifies the withholding of bail for serious crimes, preservation of public peace and other public interest factors. That it is only in **exceptional circumstances** that bail shall be granted for murder. The relevant consideration albeit dealing with the constitution of Mauritius and its Bail Act, provided useful guidance as the codified principles originated from the common law and the European Court of Human Rights, whereby our Caribbean Constitutions are fashioned. Lord Bingham of Cornhill in para. 14 in Hurmam provided useful guidance on the public interest and exceptional circumstances considerations as follows:

14. .....The court referred to the public interest grounds held by the European Court to justify the withholding of bail (the danger of flight, interference with the course of justice, the prevention of crime and the preservation of public order), which it accepted as permissible grounds, but observed that there were other grounds of refusal provided in the 1999 Act which were compatible with the Constitution and could not be ignored. The court said:

"We consider that *Labonne v D.P.P. and Anor* and *Deelchand*, already cited, confused the issue by stating respectively that the grounds for refusal to release on bail are listed only in section 4(1)(a) of the Act, and that section 4(1)(d) of the Act is only a "*consideration to be weighed in the balance*" and is "*not itself a ground for refusing bail*". As stated already, all the public interest grounds for refusing bail are provided in section 4 of the Act and must be weighed in the balance by the Court in the exercise of its discretion whether to grant bail or not to a detainee, as was ultimately done in *Maloupe v The District Magistrate of Grand Port* [2000 MR 264].

In other words, it is only in exceptional circumstances that a detainee provisionally charged with a serious offence like murder, attempted murder, conspiracy to commit murder or drug trafficking will be released on bail, the more so if, as is the case with a small jurisdiction like Mauritius, the Police, the prosecuting authorities and judges and magistrates ('*judicial officers*') are fully conscious of the fact that the law and order situation is everyday deteriorating and the scourge of drug consumption and trafficking is rampant. We consider that judicial officers in Mauritius who have first-hand knowledge of the prevailing local conditions regarding law and order and organised crime should have a margin of appreciation in exercising their discretion and deciding on

the need for a detainee to be admitted to bail, taking into account all the public interest grounds for refusing bail listed in section 4 of the Act."

[41] This court therefore concludes that there are exceptional circumstances as to why the court should consider bail to the petitioners. Firstly, the delay in the hearing of the matter must be looked at in the round, the fact that the petitioners were charged four (4) days after the incident, yet there was a failure to provide disclosure in breach of the CPR 2016 prescribed time limits. Secondly, the circumstances of the offence, when viewed from a broad approach of the evidence and not an overelaborate dissection of it, can ultimately result in differing outcomes depending on interpretation of the evidence by the trier of the facts, together with the defences and possible outcome at trial. I say no more about the statements presented to this court both by the prosecution and defence. Both sides requested this court take a particular evidential view of the statements presented in an effort to determine the substantiating charge or lack thereof, this the court declines to do. Thirdly, the prosecution having committed to the completion of this matter before the end of the year 2024, is a significant fact that this court will take into consideration in its deliberations and in the exercise of its discretion to grant or not grant bail in this matter.

PART iii

Disposition of the Application.

[42] This court expresses its gratitude to the prosecution and defence who both provided precedents in relation to bail orders, wherein bail was

granted by the Supreme Court, to have an appreciation of the quantum if the court was minded granting bail to the petitioners. The list is provided hereunder:

SUIT #	NAME	STATUS	BAIL AMOUNT$
BA245 OF 2020	LINDBURGH WILLIAMS		25,000.00
BA274 OF 2019	MARCIANO CORREA		25,000.00
BA303 OF 2020	WINDELL THURTON		25,000.00
BA244 OF 2020	FILADELFIO ARRIAZA		25,000.00
BA181 OF 2020	TIONNE PAGUADA		10,000.00
	GABRIEL SALAZAR	approx. 13 months	50,000.00
314/2020	GUILLERMO DUARTE		25,000.00
379/2020	JEREMIAS GUERRA		25,000.00
374/2020	ANTHONY REYES		25,000.00
239/2020	LINDEN KELLY		25,000.00
382/2020	GUMERCINDO CAN		25,000.00
513/2019	JORDON BURNS		25,000.00
474/2020	JAIME PATNETT		30,000.00
84/2020	DARON GONZALES		10,000.00
486/2019	KAFELE SHENAR KISH		50,000.00
60/2019	KURTIS LAMB		40,000.00
282/2024	PAUL NIGEL SMITH		20,000.00
398/2023	RAHEEM DAVAAN MARSDEN		40,000.00

[43] The court having jurisdiction to grant bail for murder and being satisfied that there are exceptional circumstances to warrant the grant of bail to the petitioners, which includes but not limited to the circumstances of the offence, the delay in this matter and the submission by the prosecution that the trial would meet its end before the end of the year

2024, are factors the court took in to consideration. The court therefore orders as follows:

1. Bail is granted conditionally to **each** of the Petitioners, that is, if their trial is not concluded on or before the last sitting of the court in December 2024, or no later than 20th December 2024, whichever is sooner, on the following conditions:

I. The sum Twenty thousand dollars ($20,000.00) with two (2) sureties each in the sum of Ten thousand dollars ($10,000.00).

II. The petitioners must show up for their trial, on time, on any day set by the Supreme Court.

III. The petitioner should not interfere in any manner to obstruct the trial by communicating with the prosecution witnesses, for that purpose.

IV. The petitioners shall not depart from the jurisdiction without permission of the High Court.

V. The petitioners shall hand in all travel documents to the Registrar of the High Court.

VI. The petitioners Esmin Flores should report to the Corozol police station and Salomen Cowo should report to the Orange Walk police station, once per week, being every Friday during the hours of 6 am to 6 pm.

VII. The petitioners shall not commit any offence while on bail.

VIII. Breach of any of the above conditions, the petitioners shall be brought back before the High Court and his bail may be revoked.

Dated Monday 19th July 2024

Derick F. Sylvester
High Court Judge