

IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA

IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)

CLAIM NO: DOMHCV 2024/0213

IN THE MATTER OF THE BAIL ACT, NO 20 OF 2020, SECTIONS 4(3) AND 4(4), AND SECTIONS 7(1)
AND 7(2)

AND

IN THE MATTER OF AN APPLICATION BY JONATHAN LEHRER THAT BAIL BE GRANTED HIM WITH
OR WITHOUT CONDITION

BETWEEN:

JONATHAN LEHRER	-	Claimant/Respondent
V		
THE CHIEF OF POLICE	-	1 st Defendant/1 st Applicant
DIRECTOR OF PUBLIC PROSECUTIONS	-	2 nd Defendant/2 nd Applicant

[Application to revoke bail]

APPEARANCES:

Mr Andrew Pilgrim, K.C, with Mr Lennox Lawrence and Ms Jodie Luke, of Platinum Chambers and Mr Wayne Norde, of Norde and Lambert for the Claimant/Respondent
Mr Thomas Astaphan, K.C, with State Attorneys Ms Daina Matthew, Ms Marie-Louise Pierre Louis and Mr Kevin Julien for the Defendants/Applicants

2024: December 11th, 16th

RULING

Background

1. **COLIN WILLIAMS J:** This was an application by the Chief of Police and the Director of Public Prosecutions in the Commonwealth of Dominica to have the bail that was recently granted to Mr Jonathan Lehrer revoked.
2. On Tuesday the 26th of November 2024, the Claimant/Respondent, Mr Jonathan Lehrer, was granted bail with multiple conditions.¹ He is still in custody at the State Prison.

¹ See the judgment of the 26th of November 2024, DOMHCV: 2024/0213

3. On Thursday the 28th of November 2024, two days after bail was made available to the Claimant/Respondent, the Order was filed on the Court's portal.
4. The following afternoon, that is on Friday the 29th of November 2024, at 4:24 pm, the Defendants/Applicants, the Chief of Police (1st Defendant/Applicant), and the Director of Public Prosecutions (2nd Defendant/Applicant), filed what they termed: "Notice of Application to Revoke Bail"² supported by an affidavit from the Assistant Police Commissioner, (APC), Mr Jeffrey James, of the Commonwealth of Dominica Police Force.
5. An Amended Notice of Application to Revoke Bail was filed by the Defendants/Applicants on Monday the 9th of December 2024.³ A further Amended Notice of Application to Revoke Bail along with a Supplemental Affidavit on behalf of the Defendants/Applicants from APC James were filed on the afternoon of Tuesday the 10th of December 2024.⁴ The substance of the Application from the Defendants/Applicants remains the same – they are seeking: "A revocation of bail granted... on the 26th day of November 2024 at the High Court..."⁵

6. According to the Defendants/Applicants notice:

"The grounds (sic) on which it is contended that the decision on bail be revoked are as follows:

1. Confidential reliable intelligence has reached the First and Second Applicants that the Respondent has a plan in place that, upon his release on bail, he will promptly illegally and surreptitiously leave the Commonwealth of Dominica through a non-official port of departure so as not to be detected by Immigration and Border Control Authorities with the intention never to return to the Commonwealth of Dominica notwithstanding the Terms & Conditions of his bail."
7. No other reason was given to revoke the bail granted to the Claimant/Respondent. The sole reason for this application to revoke bail, was the Defendants/Applicants belief, based on what was said to them by someone, that there was a plan by the Claimant/Respondent to leave the Commonwealth of Dominica when he fulfills the conditions to leave the State Prison on bail.

The allegations

8. The Affidavit from APC James, filed in support of the application from the Defendants/Applicants, is dated the 29th of November 2024.

² Since it was uploaded to the ECSC portal after hours on a weekend, it bears a filing date and time of (Monday) 2nd December 2024 at 8:30 am

³ At 8:30 am

⁴ At 14:37 and 14:34 respectively

⁵ See Amended Notice of Application to Revoke Bail, page 2

9. APC James's 15-paragraph Affidavit explained that:

- On Wednesday the 27th of November 2024 he was in the company of the Chief Intelligence Officer of the Dominica Police Force when “certain reliable confidential information” was received. He and the Chief Intelligence Officer went to the Dominica State Prison and “commenced an intelligence gathering investigation.”⁶
- At the prison, the police officers (APC James and the Chief Intelligence Officer) spoke with two prison inmates whom the APC said were “two trusted, confidential informants” whose identity he cannot disclose.⁷
- The first informant told the police that “a currently serving prison officer is on the ‘payroll’” of the Claimant/Respondent.⁸ The prison officer is paid to do “favours” for the Claimant/Respondent which “are all illicit and in breach of the prison rules.”⁹ The first informant stated that out of fear for his life he would not reveal the name of the prison officer.¹⁰
- The first informant told the police that the prison officer assisted the Claimant/Respondent “in procuring and keeping in his [Mr Lehrer’s] cell, eight cellular phones, four power banks (chargers) and a hacksaw blade all while Jonathan Lehrer was in the security Cell Block of the State Prison.”¹¹ The first informant went on to tell the police that raids of the Claimant/Respondent’s cell “on the 15th and 25th of October 2024 uncovered those contraband items in his cell.”¹²
- The second informant told the police officers that “the same prison officer” referred to by the other inmate, “conspired” with the Claimant/Respondent “for the prison officer to make copies of the keys to the security area (block) to give to Johnathan Lehrer to assist him in escaping from the prison. This plot was thwarted by the Prison authorities.”¹³
- The second informant told the police, when he spoke to them on the 27th of November 2024, that after the Claimant/Respondent was granted bail the previous day, (the 26th of November 2024), the prison officer and the

⁶ Paragraph 4 of ACP James’ affidavit

⁷ Paragraph 5

⁸ Paragraph 6

⁹ Paragraph 7

¹⁰ Paragraph 8

¹¹ Paragraph 9

¹² Paragraph 10

¹³ Paragraph 11

Claimant/Respondent “plotted that upon his release from the State Prison on bail, the prison officer will assist Jonathan Lehrer to depart Dominica illegally and surreptitiously via a go-fast vessel from a non-border controlled port.”¹⁴

- He (APC James) believed that there was a “coordinated effort” between the Claimant/Respondent “and the prison officer to defy the bail conditions and in breach of the law.”¹⁵

10. According to the Assistant Police Commissioner, the Minister of National Security informed him that “it is in the best interests of justice, the public interest and National Security, that the bail be revoked” as the Minister said the information from the jail house informants “proves that he [the Claimant/Respondent] is a flight risk which cannot be mitigated by any conditions imposed by the Court on the grant of bail.”¹⁶
11. APC James’s supplemental affidavit dated the 10th of December 2024 confirmed that what he said in the principal affidavit was true and that the affidavit was being filed in support of the Amended Application.¹⁷

Opposition to the application

12. On the 5th of December 2024, counsel for the Claimant/Respondent filed a ‘Notice of Opposition to Respondents’ Application to Revoke Bail.’ Then on the 10th of December 2024 a ‘Notice of Opposition to Respondents’ Amended Application to Revoke Bail’ was filed.¹⁸ The Notice of Opposition to the Amended Application added two additional ground to the original Notice that was filed.
13. Twelve grounds in opposition to the application were listed in the Notice from the Claimant/Respondent. The impediments to the application identified by the Claimant/Respondent were:
 - 1) Procedural:
 - a. The original notice and the (first) Amended notice were improperly intituled by the Defendants/Applicants. The heading referred to “a non-existent matter and should be struck out with costs.”¹⁹
 - b. The application was being made under the **Bail Act**²⁰ and no such procedure is provided for in the **Act** or the **Bail Rules**.²¹

¹⁴ Paragraph 12

¹⁵ Paragraph 14

¹⁶ Paragraph 15

¹⁷ Paragraph 4 of the Supplemental Affidavit

¹⁸ At 8:30 am

¹⁹ Ground 1

²⁰ Act No 20 of 2020

²¹ Eastern Caribbean Supreme Court (Bail) Rules, Statutory Instrument No: 2 of 2023

- 2) Non-compliance with the **Bail Act**:
 - a. Dominica's statute does not make any provision for the State or its agents to apply for a revocation. It was therefore "irreparably bad in law and a nullity."²²
 - b. It was a "disguised appeal" but the **Bail Act** "does not provide for a right of appeal, review reversal or revocation of the decision... to grant bail."²³

- 3) Contrary to the Constitutional presumption of innocence:²⁴
 - a. The Defendants/Applicants disregarded the **Eastern Caribbean Supreme Court (Bail) Rules**.
 - b. The application was ultra vires the **Eastern Caribbean Supreme Court (Bail) Rules** and the **Bail Act**.²⁵

- 4) Unreliability of the affiant ACP James:
 - a. The deponent relied on untested, unreliable, "information clothed as intelligence" without further investigation. The deponent was influenced by "executive overreach" which "otherwise offends the separation of powers principle enshrined in the Constitution."²⁶
 - b. The deponent had previously displayed a capacity to use his affidavits as "a colourable device to sidestep the patently false and misleading evidence provided to him to the Court."²⁷

- 5) Abuse of process:
 - a. ACP James' affidavit was "scandalous, highly improper and based on inadmissible hearsay which is pejorative, prejudicial and otherwise of no probative value."²⁸
 - b. The Affidavit of ACP James was an indictment on the Ministry of National Security and in fact "raises substantial questions of the failure of the Ministry of Justice to make the State Prison and the inmates therein safe and secure."²⁹
 - c. The affidavit in support of the application "offends settled principles on the law, national security and the public interest."³⁰
 - d. The application reduced the Court "to a circus of sensation, speculation, hearsay and rumours."³¹

²² Ground 2

²³ Ground 3

²⁴ Ground 4

²⁵ Ground 5

²⁶ Ground 6, 6.1 and 6.4

²⁷ Ground 7, 7.1, 7.2, 7.3) and 7.4

²⁸ Ground 8, 8.1, 8.2, 8.3, 8.4, 8.5, and 8.6

²⁹ Ground 9, 9.1, 9.2 and 9.3

³⁰ Ground 10.1, 10.2 and 10.3

³¹ Ground 11

14. The Claimant/Respondent stated that:

“In all the circumstances the Amended Notice of Application is totally devoid of merit and should be dismissed with costs fit for King’s Counsel and two juniors.”³²

15. The Defendants/Applicants Counsel, Mr Thomas Astaphan, K.C, noted that there was no affidavit from the Claimant/Respondent refuting what APC James deposed to. He questioned whether the Claimant/Respondent ought not to be deemed to be accepting the allegations as outlined by APC James. Counsel also opined that the grounds as outlined by the Claimant/Respondent in their Notices of Objection were not in conformity with the **Civil Procedure Rules (Revised Edition) 2023**.

Jurisdiction

16. Mr Astaphan, K.C, pointed out that the High Court had an inherent jurisdiction to consider revoking the bail of an accused person. Learned King’s Counsel referred to the decision of the Bahamian Court of Appeal in **Bartholomew Pinder v The Queen**.³³ It was held that:

“...there has always been an inherent jurisdiction in the Supreme Court to grant and revoke bail.”³⁴

“...there was ample jurisdiction in a judge of the Supreme Court to revoke bail granted by that court.”³⁵

17. It is useful to have an appreciation of the facts in **Pinder**. The Appellant, (Pinder), was convicted for drugs offences; he was also charged with murder. He was given bail pending appeal on the drugs offences and bail on the murder charge. A condition of bail was that he surrenders his travel documents. The bail order also recited that any breach would render him liable to further remand. He was subsequently arrested in Jamaica and returned to the Bahamas. He was brought to court for a revocation of bail on a summons that recited a particular section of the Bahamian bail legislation that was not applicable. His bail was nevertheless revoked by a Judge. Pinder appealed, challenging the lack of jurisdiction to hear the application to revoke bail. It was in those circumstances the Appellate Court referred to the “inherent jurisdiction” of the Supreme Court to revoke bail.

18. It is important to note that in **Pinder’s** case there was an actual breach by the Appellant of the bail condition that restricted overseas travel.

³² Ground 12

³³ SCCr App No. 94 of 2020

³⁴ Paragraph 22

³⁵ Paragraph 26

Hearsay

19. Counsel for the Defendants/Applicants in addressing the complaint in the Notice of Objection to Respondents' Amended Application to Revoke Bail, that:

“The Affidavit in Support of Amended Application sworn by Joeffrey James, Assistant Police Commissioner is scandalous, highly improper and based on inadmissible hearsay which is pejorative, highly prejudicial and otherwise of no probative value, and should otherwise be dismissed in its entirety.”³⁶

20. Learned King's Counsel for the Defendants/Applicants pointed to the dicta from several decisions referred to in **Pinder**:

Pinder:³⁷ “It has been accepted for years that the strict rules of evidence do not apply to bail applications and that hearsay evidence may be relied upon.

Attorney-General v Ferguson et al:³⁸ “A bail application is an informal inquiry and no strict rules of evidence are to be applied.”

Huey Gowdie v R:³⁹ “...the court may receive information which would not normally be receivable at a trial, including hearsay evidence.”

21. Notably, in **Pinder**, reference was made to a judicial opinion in **Toni Sweeting v Commissioner of Police**,⁴⁰ where it was stated that the informality in bail applications may be acceptable in Magistrate's Court, where the strict rules of evidence may be relaxed:

“But in the Supreme Court, it is expected that the rules of evidence, including the rule against hearsay evidence, would be observed.”⁴¹

ECSC (Bail) Rules

22. Towards the end of 2023, the **Eastern Caribbean Supreme Court (Bail) Rules** was Gazetted in the Commonwealth of Dominica.⁴² This bit of subsidiary legislation was made under section 17 of the **Supreme Court Order Act**.⁴³ The **Rules** came “into effect in the Member States and Territories of the Eastern Caribbean Supreme Court on the 31st day of December, 2023.”⁴⁴

³⁶ Ground 8

³⁷ Paragraph 28

³⁸ As above

³⁹ [2012] JMCA Crim

⁴⁰ MCCr App No. 133 of 2013

⁴¹ Dissenting judgment of Conteh, JA, at paragraph 32

⁴² On the 21st of December 2023

⁴³ Chapter 4:01

⁴⁴ See Rule 1. (2)

23. It may be noted in passing that the coming into force of the **Rules** was a natural and evolutionary step in relation to bail in the Eastern Caribbean Supreme Court jurisdiction. The **Rules** appear to merge and build on two other developments:

- 1) The **Practice Direction for Indigent or Unrepresented Persons**.⁴⁵
- 2) The removal from the **Civil Procedure Rules (Revised Edition) 2023** of the former Part 58 in the **Civil Procedure Rules 2000** which dealt with Bail Applications.

24. Of particular importance however, are the 'Overarching principles'⁴⁶ of the **Rules**:

"In considering bail, the court shall have regard to the following overarching principles –

- (a) that a person accused of committing an offence is presumed innocent until proven guilty;
- (b) the right to liberty enjoyed by every person under the Constitution in each Member State and Territory;
- (c) that bail must not be unreasonably withheld and cogent reasons must be shown for keeping a person accused of committing an offence in custody; and
- (d) that where there are factors militating against the grant of bail, the court must first consider what conditions can be imposed to mitigate, minimise or eliminate the likelihood of these factors."

25. The letter and spirit of the **(Bail) Rules** are to guard and protect the liberty of the subject. Even where there are concerns favouring a refusal of bail, it is incumbent on a judicial officer to creatively fashion measures to address those concerns and facilitate the fundamental rights of the citizenry.

Confidential informants

26. The bare assertion by a deponent that an individual is considered to be a 'confidential informant' does not bind a judicial officer to accept that view without more.

27. All that APC James discloses is that the "two trusted, confidential informants" are inmates at the State Prison.

⁴⁵ No 4 of 2020, made pursuant to Rule 4.2(2) of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000

⁴⁶ See Rule 3

28. Mr Astaphan, K.C, suggested that the information they provided to ACP James must be true, because while the affiant did not provide any information about the (alleged) informants, the Claimant/Respondent in the Notice of Opposition stated:

“The entire Affidavit is based on concealed information allegedly provided by prisoners who are incarcerated on multiple charges of murder and other major crimes,”⁴⁷

29. The Defendants/Applicants Counsel noted that since they never named the offences the informants faced, and the Claimant/Respondent referred to the informants being charged with murder and major crimes, that was indicative of the Claimant/Respondent knowing what was reported to be true, as the Claimant/Respondent seemed to know who made the report. Nothing turns on that, as the limited number of individuals on the secure block where the Claimant/Respondent is housed and is locked away for twenty two and a half hours a day must be at the State Prison for serious offences, not for petty offences.

30. A number of issues were not addressed by the Defendants/Applicants in relation to the sources that APC James termed confidential informants:

- Was any initial suitability screening done in relation to the individuals?
- If an initial suitability screening was done, when last was their suitability reviewed?
- What charges do these informants currently face?
- What other charges have they previously faced?
- How long have they been in prison?
- How did the informants acquire the information/knowledge?
- What rewards or concessions have been given to the informants for providing the information?
- What steps have been taken to verify their information?

31. The International Association of Chiefs of Police in a publicly available manual,⁴⁸ detail who is a confidential informant; how confidential informants are assessed, managed (handled), used, compensated and reviewed.

32. It is clear that the designation confidential informant is reserved for an individual who operates in a particular relationship with an agency and not merely someone who may have provided information in circumstances which they prefer to keep private. For example, a person providing a tip to an officer does not fall into the category of being a confidential informant. The source may provide the information discretely, or secretly, or the source may desire

⁴⁷ Paragraph 8.1

⁴⁸ Confidential Informants, Law Enforcement Policy Center, International Association of Chiefs of Police, December 2020

anonymity. But because the source has a reasonable expectation of confidentiality that does not, *ipso facto*, qualify the individual as being a “confidential informant.”

33. Mr Astaphan, K.C, referred to the case of **Arawak Trust Company Limited v Michael Holden (The Inspector of Banks and Trust Companies)**,⁴⁹ to bolster his submission on privileged and confidential information. Counsel pointed to an extract from Sir Vincent Floissac, CJ, who said:

“That public interest is the public interest of the nation or the public service that departments and organs of central and municipal governments, the police force and statutory boards, authorities and entities should be in positions adequately, efficiently and effectively to perform their statutory and public duties, functions and responsibilities. This means that information essential to such performance should be transmissible with immunity from disclosure of its source and destination without fear and danger of harassment, intimidation or involvement in litigation.”

34. There can be no disagreement with the principles enunciated by Chief Justice Floissac. However, it is difficult to attach public interest immunity to the two inmates on the maximum security block of the State Prison. How can those inmates who are on remand at the prison for undisclosed offences, for an undisclosed period of time, and who, in prison lingo, may be called ‘a snitch,’ be placed in the same position of trust as those professionals to whom immunity is attached by virtue of their employment to enable them to “efficiently and effectively perform their statutory duties and public duties and responsibilities”?

Flight Risk

35. The Defendants/Applicants have once again raised the issue of the Claimant/Respondent being a flight risk.
36. The case of **Pienaar v The State**⁵⁰ is instructive. The appellant, A South African citizen, was charged in Namibia with multiple counts of fraud. He was denied bail on two occasions on the basis that he would abscond. His appeal was allowed. It was held that:

“Any court seised with the problem of whether or not to release a detainee on bail had to approach the matter from the perspective that freedom was a precious right protected by the Constitution. Such freedom should only be lawfully curtailed if the interest of justice so required.... Where a bail application was refused and the appellant went on to make another bail application, adducing new and relevant evidence, that evidence had to be considered in conjunction with all the facts placed before the court in the previous application, and not separately.”⁵¹

⁴⁹ British Virgin Islands Civil Appeal No. 2 of 1994

⁵⁰ [2011] 2 LRC 121; [2010] NAHC 135

⁵¹ At page 122 (the headnote)

37. The Appellate Court in **Pienaar**, referred approvingly to the decision in the **State v Du Plessis**,⁵² where the Judge addressed the opinion of the investigating officer in bail applications:

“The opinion of the investigating officer on questions such as whether or not it is likely that the accused will abscond or interfere with State witnesses or with the investigation... should carry some weight.... However, it is obvious that the Court is the final arbiter on the question of whether bail is to be granted or not and may not allow the mere *ipse dixit* of either the Prosecutor-General or the investigating officer or both, to be substituted for the Court’s discretion.”⁵³

38. Any evaluation of flight risk, the public interest, or the interest of justice is solely and exclusively in the province of the judicial officer. The opinion of others can never supplant the proper exercise of judicial discretion.

Assessment

39. This Application for Revocation of Bail cannot be viewed in isolation from what transpired previously in this matter.
40. As recently as the 19th of November 2024, APC James swore to an affidavit filed on behalf of the Defendants/Applicants, in opposition to bail being granted to the Claimant/Respondent. In that affidavit, Officer James spoke of being informed of a number of things by the Superintendent of Prisons with regard to the Claimant/Respondent.⁵⁴ He referred to a search of the cell of the Claimant/Respondent on the 6th day of November 2024 and the search turned up nineteen bottles of water, which had been given to the Claimant/Respondent to consume because of his health condition.
41. In APC James’s earlier affidavit opposing bail,⁵⁵ which he made after speaking with the Superintendent of Prisons, several occurrences the officer said the two prisoners told him about were absent:
- Nothing was mentioned of any other searches of the Claimant/Respondent’s cell, in particular on the 15th and 25th of October 2024.
 - Nothing was mentioned of any contraband, inclusive of eight cellular phones, four power banks and a hacksaw blade, being discovered in the Claimant/Respondent’s cell.

⁵² [1992] NR 74 (HC)

⁵³ At page 83

⁵⁴ Paragraphs 17 and 18 of the affidavit sworn to on the 19th of November 2024

⁵⁵ Filed on the 19th of November 2024

- Nothing was said about the prison authorities thwarting any escape plot between the Claimant/Respondent and a prison officer.

42. The obvious queries that arise include:

- 1) If recent multiple searches of the Claimant/Respondent cell turned up contraband items and the authorities thwarted an escape plot, would the Superintendent of Prisons not know about them? Indeed, if the Claimant/Respondent was considered that dangerous and searches of his cell was being done at least every two weeks, would the Superintendent of Prisons not know this?
- 2) If it was true that the authorities discovered contraband, in particular multiple communication devices, and an escape plot thwarted, would the Superintendent of Prisons not tell APC James about them, just as the Superintendent informed the APC about the search turning up the bottles of water (which were given to the Claimant/Respondent by the authorities)?
- 3) If indeed the Superintendent knew of contraband being found and thwarting an escape plot and he informed the APC, would the APC not have disclosed such significant information in his affidavit a few days earlier opposing bail?

43. It was noticeable that Assistant Police Commissioner James stated that the first informant “would not reveal the name of that prison officer because he is fearful for his life, as he had no doubt that he would be harmed if it came out that he had identified that officer.”⁵⁶ The obvious inference is, Officer James did not know which prison officer was implicated. However, when Officer James spoke with the second informant, in the presence of the Chief Intelligence Officer, the second informant told him about “the same prison officer referred to” by the first informant.⁵⁷ How could APC James know that it was the same prison officer unless the prison officer was identified to him?

44. It is accepted that if the police did in fact receive such information, given the fact that the Claimant/Respondent was located in a secure area, the prison officers having access to him would be known.

45. APC James deposed that on the 26th of November 2024, he was told by his “long-standing, credible, confidential informants” that a particular prison officer –

- i. was corrupt;
- ii. was being paid to breach the prison rules and regulations;
- iii. was smuggling items into the prison;

⁵⁶ Paragraph 8 of his affidavit

⁵⁷ Paragraph 11 of his affidavit

- iv. was involved in a significant security breach by copying keys to the security area (block); and
 - v. was plotting the escape of prisoners.
46. Although the APC received this “credible, confidential” information, why, then, was no action taken against this officer? How come this person who is so corrupt and is undermining security at the prison is allowed to continue to work at the institution?
47. Nowhere in APC James’s affidavit did he indicate that he spoke with the Superintendent of Prisons regarding crucial and critical information he obtained from the prisoners.
48. Officer James said that he believed that after bail was given to the Claimant/Respondent on the 26th of November 2024, Mr Lehrer was engaged in a plot to leave “illegally and surreptitiously” by boat “from a non-border controlled port.” This begs a question, as there was no prohibition placed on the Claimant/Respondent leaving the country: why would he have to exit through the back-door, jump over the fence, go through the bushes and various obstacles when he had the keys to the front door through which he could exit and return?
49. At the time of granting bail to the Claimant/Respondent, due consideration was given to whether Mr Lehrer would leave the jurisdiction and not answer to his bail; that evaluation determined that he would answer to his bail.
50. The determination of whether or not the Claimant/Respondent was a flight risk and whether or not adequate measures could be put in place to mitigate any risk were judicially considered and explained in the decisions of the 18th of April 2024 and the 26th of November 2024. After careful scrutiny and application of the principles it was determined that the interests of justice and the public interest favoured the granting of bail. In any event, extremely severe conditions were imposed on the Claimant/Respondent to mitigate any flight risk; those conditions were over and above what have been imposed on other persons in Dominica who have been granted bail for similar offences.

Is revocation possible?

51. Among the matters addressed in the **Bail Act** are the general conditions for bail, sureties, forfeiture of and release of surety, and absconding and breach of bail conditions. According to the legislation, the prosecution’s right to appeal a bail decision is to the High Court, against a Magistrate’s decision to grant bail “to a person who is charged with or convicted of an offence punishable by a term of imprisonment of 3 years or more....”⁵⁸
52. The authority to revoke bail depends on whether or not the person who was released on bail fails to surrender to custody of a court or disregards the Court’s order.
53. The bail order in relation to the Claimant/Respondent was pellucid:

⁵⁸ Section 21(1)

“If the Claimant breaches any condition of his bail, or if he is charged with any offence anywhere which has a prescribed penalty of at least two years imprisonment, then his recognizance becomes liable to be forfeited and his bail may be revoked.”⁵⁹

54. A consideration of revocation of bail arises only if the Claimant/Respondent –

- (i) breaches a condition of his bail; or
- (ii) if he commits an offence which has a prescribed penalty of at least two years imprisonment.

55. Even if the Claimant/Respondent breaches a condition of bail, or if he commits an offence that has a prescribed penalty of at least two years imprisonment, revocation of his bail is not automatic, nor mandatory.

56. It was noted in the case of **Pinder**, (the case which was submitted by the Defendants/Applicants):

“It is not simply a factual inquiry whether the accused has breached conditions already imposed. There may be reasons for the breach. Furthermore, rather than revoke bail a judge could continue the bail on different conditions.”⁶⁰

57. When an accused person who is on bail is alleged to have breached a term or condition of bail granted by a Judge, the procedure is that the individual must be brought back before a Judge; that Judge, after receiving evidence detailing the breach, would hear representations from the individual as to whether there was any reasonable cause or any mitigating circumstances for failing to comply with the bail order. The Judge would then assess the seriousness of the transgression and impose an appropriate penalty, if needed. Among the measures that a Judge dealing with a breach of a bail condition may order are:

- (i) a reprimand;
- (ii) grant bail on the same conditions (that is, bail to continue as is);
- (iii) grant bail on different conditions;
- (iv) forfeit some of the recognizance;
- (v) forfeit all of the recognizance;
- (vi) revoke bail; or
- (vii) revoke bail and forfeit the recognizance.

58. The Judge has a graduated scale of penalties for breaches of bail conditions, with revocation of bail being the ultimate sanction and reserved for the most egregious and contemptuous circumstances. Revocation of bail is not the first option, since the considerations, particularly for an un-convicted individual, are in favour of the liberty of the subject.

⁵⁹ At condition 15) of the bail order

⁶⁰ Paragraph 35

59. Mr Astaphan, K.C, agreed that whenever there is a breach of bail conditions, there were “a whole range” of options which may be considered rather than revocation of bail.

60. The Claimant/Respondent did nothing to trigger the revocation of his bail:

- he did not breach any of the conditions of bail;
- he did not commit any offence punishable with two or more years imprisonment.

Credibility check

61. The factual circumstances between Tuesday the 26th of November 2024 and Friday the 29th of November 2024 which lead to this application were:

- 1) The Claimant/Respondent obtained bail from the High Court on Tuesday.
- 2) The affiant, APC James and another senior police officer visited the State Prison the following day, on Wednesday, and spoke with two inmates. The prisoners told the police, among other things, that a prison officer is on the Claimant/Respondent’s payroll and the prison officer was in a conspiracy with the Claimant/Respondent to escape prison and leave the country.
- 3) No investigation was done to verify the accuracy of the information, not even the Superintendent of Prisons was spoken to even though much of the information concerned the safety and security of the institution the Superintendent ran.
- 4) The information received from the inmates was communicated to the Defendants/Applicants.
- 5) APC James swore to an affidavit on the Friday to commence this revocation application. He relied on the uninvestigated information he received.

62. The ground upon which the application rested was that the Defendants/Applicants received: “Confidential reliable intelligence....”⁶¹ That claim needed to be disaggregated and analyzed. Looking at the operative words in reverse order:

- i. Intelligence – This is merely information. It is not evidence. It is trite that information and evidence are qualitatively, two separate and distinct things. Information, however, can be used to gather evidence.

⁶¹ See the Amended Notice of Application to Revoke Bail cited at note 5 above

- ii. Reliable - Affixing the quality of reliability to information would require that information to be checked, tested, investigated, and determined to be true. Nothing was done to ascertain the veracity of the information that was received. The information in this case remained unverified.
- iii. Confidential – This indicates how the information received was being treated, in that the source of the information did not want to be identified.

63. The ground of the Defendants/Applicants application may therefore well have commenced with the words:

“Unverified information from sources who wish to remain anonymous....”

64. The formulation of the ground as being “Unverified information from sources who wish to remain anonymous,” although surrendering the economy words of the original three words (confidential reliable intelligence), heightened the accuracy as to what the Defendants/Applicants in fact grounded their application on.
65. Mr Astaphan, K.C, disagreed that the application was frivolous. Learned King’s Counsel felt that there was a duty on the State to bring the information to the Court’s attention. This was so, he felt, because if indeed what the Defendants/Applicants said they feared would happen did in fact happen, without the Defendants/Applicants bringing the information to the Court’s attention, the Defendants/Applicants could then reasonably be chastised for inaction.
66. As impressive as Counsel’s reasoning and submission were, reluctantly, they cannot be accepted as being applicable to the circumstances of this case. There can never be any justification for engaging the Court in rumour-mongering.
67. The first thing that APC James and the Defendants/Applicants ought to have done, after speaking with the inmates, was to properly investigate the information that was received. That was not done. The basic inquiry would include speaking with the suspects, a principle which remains the foundation of fairness in the Criminal Justice System. Had they opted to do so, they may well have found out whether or not there was any merit in the report, or be able to determine whether such an engagement with the Claimant/Respondent and the prison officer served as a sufficient deterrent.
68. Even if APC James and the Defendants/Applicants did not want to engage either the Superintendent of Prisons or the suspects in their inquiries, then, an alternative option was for them to put in place a proper surveillance and monitoring mechanism to prevent the occurrence they were fearful of.
69. The narrative of Assistant Police Commissioner James about the existence of any reliable informants lacked credibility and was unpersuasive.

70. The Application by the Chief of Police and the Director of Public Prosecutions for the revocation of bail granted to the Claimant/Respondent, Mr Jonathan Lehrer, fails. The application had no merit.

Costs

71. Mr Lawrence on behalf of the Claimant/Respondent stated that the costs ought to be \$7,500.00.

72. Mr Astaphan, K.C, posited that costs may only be awarded on a statutory basis or a rules basis. Learned King's Counsel noted that neither the **Bail Act**, nor the **Bail Rules** provide for costs. He was of the view that there was no inherent jurisdiction to award costs.

73. Mr Lawrence, in responding to the Learned Senior's contention, noted that the Defendants/Applicants sought to invoke the same inherent jurisdiction of the Court in moving the Application.

74. The Claimant/Respondent first raised the subject of costs at a Case Management Meeting on Monday the 9th of December 2024. Counsel Lawrence invited junior counsel for the Defendants/Applicants to withdraw the application and avoid any issue of costs. Mr Lawrence at that time said to the opposite side that the Defendants/Claimants application:

- a) was patently weak;
- b) had no legal basis to ground it: and
- c) was doomed to fail.

75. Counsel for the Defendants/Applicants at the Case Management Meeting declined to do withdraw the application as Mr Lawrence requested; counsel for the Defendants/Applicant indicated that they were pursuing the matter.

76. When Mr Lawrence filed the Notice of Opposition to Respondents' Amended Application to Revoke Bail, he explicitly included a reference to "costs fit for King's Counsel and two juniors."⁶²

77. The Defendants/Applicants must pay the Claimant/Respondent costs, because:

- 1) The Claimant/Respondent did not breach any condition of bail, which may trigger a review of the terms of his bail. (It must be noted that the Claimant/Respondent is still an inmate at the State Prison).
- 2) Even if the Claimant/Respondent had in fact left the State Prison on bail and then breached a term of his bail, revocation of his bail is the last and ultimate option reserved for the most egregious transgression, as it is well settled that sanctions for a breach of a bail condition must be rational,

⁶² Ground 12

reasonable and proportionate. (The bail order clearly stated that if there was a breach of the conditions, the “recognizance becomes liable to be forfeited and his bail may be revoked.”⁶³ The first option is not revocation, but consideration of a forfeiture of the recognizance.)

- 3) It is for a Court to deal with any individual who breached any of the terms of its order and not for any party to initiate proceedings against the individual on the basis of what that party feared.
- 4) The issues of flight risk and public interest were already considered and settled in the Judgment and Order of the 26th of November 2024. It was therefore an abuse of the Court’s process to seek to re-litigate a point which was already decided (and more so, one which was pronounced upon just three days earlier.)
- 5) The application had no prospect of success. There was no statutory or evidential basis to support the Defendants/Claimants application.
- 6) The Defendants/Claimants insisted on proceeding with the application even after it was pointed out to them that the application was inherently weak and baseless, and lacking in legal and evidential veracity.
- 7) The Defendants/Applicants conduct lacked justification and was unreasonable and oppressive.

Order

78. It is Ordered that:

- 1) The Application for the revocation of bail granted to the Claimant/Respondent, Jonathan Lehrer, on the 26th day of November 2024, is denied.
- 2) The Application by the Defendants/Applicants is unmeritorious.
- 3) The Defendants/Applicants must pay costs of \$7,500.00 to the Claimant/Respondent by Monday the 13th of January 2025.
- 4) A failure by the Defendant/Applicants to pay the awarded costs by the stipulated date of Monday the 13th of January 2025 would attract the appropriate rate of interest.

⁶³ See note 59 above

79. The Court Office shall have carriage of the order.

**Colin Williams
Judge**

By The Court

Registrar