

**IN THE COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**CRIMINAL LAW DIVISION**  
**2024/CRI/bail/00270**

**BETWEEN**

**JOHN GOMEZ PENA**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:** The Hon. Justice Neil Brathwaite

**Appearances:** Ms. LaShona Knowles for the Applicant  
Ms. Kristin Butler-Beneby for the Respondent

**Hearing Date:** 29<sup>th</sup> January A.D. 2025

**Ruling Date:** 4<sup>th</sup> March A.D. 2025

**RULING ON BAIL**

- [1.] The Applicant seeks to be released on bail after having been arraigned in the Magistrate's Court on 11<sup>th</sup> December 2024 on charges of Conspiracy to Possess Dangerous Drugs with Intent to Supply (2 counts), and Conspiracy to Import Dangerous Drugs (2 counts). He states that he is thirty nine years old, and a father of one. The Applicant avers that he is not a flight risk, and promises to appear in court to defend the allegations. He also promises to abide by any conditions, and states that he is a fit and proper candidate for bail.
- [2.] In seeking to oppose the application, the Respondent filed the affidavit of Calnan Kelly, Counsel in the Office of the Director of Public Prosecutions, to which are exhibited a number of documents. The affidavit indicates that the Applicant is a citizen of Colombia who entered this country as a visitor on 16<sup>th</sup> October 2024, and was granted leave to remain until 15<sup>th</sup> December 2024.

[3.] On behalf of the Applicant it is submitted that the Applicant is not a flight risk, and that he poses no risk to the community as he has no previous convictions or other pending matters. Counsel therefore relied on the presumption of innocence, and urged the court to release the Applicant on bail pending his trial.

[4.] In response, counsel for the Respondent notes that these are serious charges for which the penalty is severe, raising the likelihood of absconding. Counsel further notes that the Applicant has no ties to this country and no status in this country, and has a daughter who resides out of this country, providing further incentive to flee. It is therefore submitted that the Applicant is not a fit and proper candidate for bail.

### LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

“5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.”

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council’s decision in **Hurnam The State [2006] LRC 370**. At page 374 of the judgment Lord Bingham said inter alia:

“...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty”. Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences...”

[6.] At paragraph 11 she further noted that

“The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public’s interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest.”

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:

*“Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty”.*

[8.] Furthermore, Article 19(1) provides as follows:

**“19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-**

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;**
- (b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
- (c) for the purpose of bringing him before a court in execution of the order of a court;**
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;**
- (f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;**
- (g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph,**



provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.

(2)...

(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) 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”.

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

“4. (2) Notwithstanding any other provision of this Act or any other law, any person charged with an offence mentioned in Part C of the First Schedule, shall not be granted bail unless the Supreme Court or the Court of Appeal is satisfied that the person charged

(a) has not been tried within a reasonable time;

(b)...

(c) should be granted bail having regard to all the relevant factors including those specified in Part A of the First Schedule and subsection (2B), and where the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving the reasons for the order of the release on bail.

(2A) For the purposes of subsection (2) (a) ...

(a) without limiting the extent of a reasonable time, a period of three years from the date of the arrest or detention of the person charged shall be deemed to be a reasonable time;

(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.

(2B) For the purposes of subsection (2)(c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character and antecedents of the person charged, the need to protect the safety of the public order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.”

9. The factors referred to in Part A are:

“PART A

In considering whether to grant bail to a defendant, the court shall have regard to the following factors—

(a) whether there are substantial grounds for believing that the defendant, if released on bail, would-

- (i) fail to surrender to custody or appear at his trial;
- (ii) commit an offence while on bail; or
- (iii) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
- (b) whether the defendant should be kept in custody for his own protection or, where he is a child or young person, for his own welfare;
- (c) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;
- (d) whether there is sufficient information for the purpose of taking the decisions required by this Part or otherwise by this Act;
- (e) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;
- (f) whether having been released on bail previously, he is charged subsequently either with an offence similar to that in respect of which he was so released or with an offence which is punishable by a term of imprisonment exceeding one year;
- (g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.”;

[10.] In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

[11.] A factor at paragraph (g) of the First Schedule is the nature and strength of the evidence against the defendant. In **Cordero McDonald v. The Attorney General** SCCrApp. No. 195 of 2016, Allen P., at paragraph 34 stated,

“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty by arrest, charge and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”

[12.] The court in considering the question of bail must therefore first be satisfied that there is sufficient evidence to raise a reasonable suspicion that the Applicant committed the offences with which he is charged, so as to justify the detention of the Applicant. In the normal course of events, the Crown would seek to satisfy the Court on this point by placing before the Court at least some of the statements or reports indicating the nature of the evidence. In the instant case, all that has been placed before the Court are bare statements of the particulars of the offence. While I do not go so far as to say that no evidence exists, as I do not know what other evidence the prosecution may possess, I am

constrained to say that the affidavit in response does not reveal a sufficient basis to conclude that the evidence in that affidavit raises a reasonable suspicion that the Applicant has committed any offence. In these circumstances, it would in my view be unreasonable to deny bail.

## CONCLUSION

[13.] In the circumstances of this case, bail is granted in the amount of \$50,000.00 cash bond. The Applicant is to be fitted with an ankle monitor, and is permitted to leave the jurisdiction of the Commonwealth of the Bahamas, but must be physically present for each hearing with respect to his matter unless otherwise excused by the Court. The Applicant is not to interfere with the witnesses either personally or through an agent. Any breach of these conditions will render the Applicant liable to remand.

**Dated this 4<sup>th</sup> day of March A.D., 2025**



**Neil Brathwaite  
Justice**

