

COMMONWEALTH OF THE BAHAMAS

2019/CRI/BAIL/FP/00079

IN THE SUPREME COURT

Criminal Division

BETWEEN

JEFFREY MUSGROVE

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTION

Respondent

Before: The Honourable Mr. Justice Andrew Forbes

Hearing Date: 20th May 2025

Appearances: Mr. Parkeo Deal c/o Musgrove

Mr. Sean Norvell Smith c/o Director of Public Prosecutions

DECISION

FORBES, J

BACKGROUND

[1.] A summons was filed on behalf of the Applicant on 9th May 2025 seeking bail and an Affidavit in Support was filed on the same date. The Applicant avers that he was born on the 3rd December 1973 in Nassau and is 51 Years old and a citizen of the Bahamas. He was arraigned before Deputy Chief Magistrate Mr. Charlton Smith on Wantonly Discharging a Firearm contrary to section 37 of the Firearms Act. He is to appear before the Magistrate on the 18th June 2025 and request bail for the current matter.

[2.] The Applicant further avers that he has matters pending for Attempted Murder and Abetment to Murder before the Supreme Court and Possession of a Firearm before the Magistrate's Court. He has no previous convictions and is self-employed as a mason. According to the Applicant, the facts are that he was attending a bar at the RND plaza when an individual known to him as Fingers approached him. He went to purchase cigarettes at a residence when a young man known to him as Pedio came in a vehicle, and while he was standing at the door with his back turned, he heard what he believed to be multiple gunshots. He contends that he attempted to shield himself with the residence door and observed Pedio walking away. That he and Pedio were later arrested.

[3.] He asserts that the Officer was pressuring him to implicate Pedio, and he indicates he didn't observe who fired the shots. It is his view that this was the reason why he has been charged. He asserts he wasn't aware of Pedio having a firearm, nor did he encourage or incite Pedio. Before the Magistrate, where Pedio pleaded guilty, the charges were withdrawn against his girlfriend but remained against him.

[4.] The Respondent's affidavit was filed on the 20th May 2025 and sworn by Corporal 3913 Harris Cash, who indicated that he is a Police Officer attached to the Court Liaison Section in the Office of the Director of Public Prosecutions and that this affidavit was sworn in opposition to bail for the Applicant. He avers that the Applicant was charged with Wantonly Discharging a Firearm contrary to Section 37 of the Firearms Act, where he was arraigned before the Acting Deputy Chief Magistrate Mr. Charlton Smith, where the Applicant pleaded not guilty and the charge sheet was duly exhibited. He further avers that the Applicant was already on bail for Attempted Murder, granted in September 2023, and the bond was exhibited. It is noted that the trial is scheduled to commence on the 8th September 2025. He also avers that the Applicant was on bail for Possession of an Unlicensed Firearm and Ammunition before Magistrate Charlton Smith.

[5.] He avers further that the trial had commenced on the 30th of April 2025, and two (2) witnesses for the Prosecution had already given evidence when Counsel appeared and requested an adjournment. The matter has now been adjourned to the 18th of June 2025. It was suggested that the Applicant will likely commit more offences if released on bail and is not a fit and proper person.

SUBMISSIONS

[6.] The Applicant's Counsel refers to the Constitution, noting that every person accused of an offence is considered innocent until proven guilty or has pleaded guilty. The Bail (Amendment) Act requires the Crown to establish why the Applicant should not be admitted to bail. Counsel asserts that the test to be applied is twofold, (i) whether the applicant will answer to his bail and appear for trial and (ii) whether the public interest is at risk.

[7.] The Counsel for the Applicant contends that the Crown's evidence is not cogent as the co-accused pleaded guilty and exonerated the Applicant and others. That his co-accused unequivocally indicated that the Applicant had nothing to do with the commission of the offence. Counsel cites the case of **Cordero McDonald v. The Attorney General** and the comments made by President of the Court of Appeal Allen (as she then was). The Counsel also referenced the comments made by Lord Bingham of Cornhill in **Hurnam** and the case of **Stephon Godfrey Davis**. The Counsel for the Applicant asserts that the Applicant while on bail for more serious offenses never committed any other crimes in some two (2) year period. He contends that the Applicant is a fit and proper person for bail.

[8.] The Crown, for its part, argues that the Applicant was already on bail when he committed the current offence and is likely to commit another offence while on bail. They contend that the Court's overriding duty is to protect the public from persons like the Applicant, who take advantage of the facilities to commit as many crimes as possible before being brought to justice. There has been no unreasonable delay, and the matter continues before the Magistrate on the 18th June 2025. Counsel for the Crown then referenced section 4(2A) of the Bail Act, which provides a reasonable period of three (3) years from the date of arrest or detention. Counsel then asserts that the Court must ask itself whether any conditions can be imposed to mitigate concerns about the Applicant.

[9.] Counsel then cites the Court of Appeal case of **Treyvar v. The Director of Public Prosecutions** SCCrApp. No. 139 of 2024 and specifically the comments of Justice of Appeal Turner stated at paragraph 36, where he said as follows:

"In the Court's view, in the present appeal, the appellant's alleged commission of serious offences whilst on bail and under an EMD order provides us with clear evidence that the appellant is a threat to public order and is also a relevant factor to consider pursuant to paragraph (f) of the First Schedule of the Bail Act. The combination of pending charges for violent offences and the appellant's conduct whilst on bail justifies the decision by the Judge to refuse bail and to support his continued incarceration pending trial..."

The Crown also noted the comments of Justice of Appeal John in **Jonathan Armbrister v. The Attorney General**, SCCrApp No.145 of 2011. The Crown argues that the Applicant is not a fit or proper person for bail.

LAW

[10.] The Applicant has the constitutional right to be presumed innocent of the charges in the Voluntary Bill of Indictment. Specifically, Article 20 (2)(a) of the Constitution of The Bahamas states:

20. (2) Every person who is charged with a criminal offence – (a) shall be presumed to be innocent until he is proved or has pleaded guilty

The presumption of innocence is enshrined in the Constitution of the Bahamas. A bail application is essentially an assessment between the competing interests of the Applicant and the community. The applicant's rights and safety, and the public's safety have to be weighed. The facts and circumstances of each case are different and require an individual assessment. Every fresh bail application must be considered anew.

[11.] The Bail Act Section 4(2) provides:

“4(2) Notwithstanding any other provisions of the Act or any other law, any person charged with a Part C offence 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) is unlikely to be tried within a reasonable time; or~~**
- (c) should be granted bail having regard to all the relevant factors, including those specified in Part A of the First Schedule and the “primary considerations” set out in subsection (2B).”**

[12.] Subsection 4(2A) accordingly provides:

(2A) For the purpose 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 shall be excluded from any calculation of what is considered a reasonable time.**

[13.] This matter is set for trial in the Magistrate Court, but the trial date is uncertain. However, Possession of Firearms and Ammunition continues on June 25, 2025. Therefore, the Court must go on to consider the other statutory factors to be taken into account when considering the grant of discretionary bail set out in Part A of the First Schedule to the Act, which provides as follows:

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."

[Emphasis mine]

[14.] The Court must also have regard to the primary considerations of section 4 (2B) of the Act, which provides as follows:-

"(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 of primary considerations."

[Emphasis mine]

[15.] The burden is on the Crown to demonstrate to the Court that the Applicant should not be granted bail, and the standard of proof is that of the balance of probabilities.

[16.] The Court must consider the nature and seriousness of the offence. Possession of such a firearm, coupled with its discharge, is sufficiently severe that the Applicant may face harsh penalties if found guilty. However, a bail hearing is not the forum for conducting a mini-trial. In the case of Jonathan Armbrister v A.G., SCCrim. App. No. 145 of 2011 *John, JA* states at paragraph 13:

"13. The seriousness of the offence with which the accused is charged and the penalty which is likely to entail upon conviction, has always been and continues to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily on the scale against the grant of bail."

[Emphasis mine]

[17.] The nature and seriousness of an offence do weigh heavily against the Applicant concerning the grant of bail. However, the case of Hurnam v. The State (Privy Council Appeal No.53 of 2004) as applied in Stephon Davis v. The Director of Public Prosecutions SCCrApp No. 108 of 2021 states as follows: -

16. Lord Bingham of Cornhill stated, inter alia, at paragraph 15 of *Hurnam v The State (Mauritius)* [2005] UKPC 49, as follows:

"[15] It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds to infer that the grant of bail may lead to such a result, which cannot be effectively eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail."

17. Lord Bingham went on to say, inter alia, at paragraph [16]:

"The European Court has, realistically, recognized that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending (see, for example, *Ilijkov v Bulgaria* (Application no 33977/96, 26 July 2001, unreported)), para 80, but has consistently insisted that the seriousness of the crime alleged, and the severity of the sentence faced are not, without more, compelling grounds for inferring a risk of flight ..."

[18.] Further, the Court takes note of the comments of the Court of Appeal in *Davis supra*, noting, in particular, the statements made in the headnote by the President of Appeal Sir Michael Barnett and Justice of Appeal Evans, where they commented as follows:

Per Evans, JA: A judge hearing a bail application cannot simply refuse an application for bail merely on the fact that the new offence is alleged to have been committed while the defendant was already on bail for a similar offence. There is a requirement for the judge to assess the evidence on which the crown intends to rely on the hearing of the new charge. We must recognise that every individual charged before the Court is presumed innocent until proven guilty. We walk a tight rope of having to protect the interests of society and the constitutional rights of individuals brought before the Courts. This system only works if all stakeholders do their part. As such the Crown is not at liberty to hold information to its bosom and not provide the Courts with sufficient information to make proper decisions; nor are they permitted to deprive individuals of their liberty based only on suspicion of involvement in criminal activity.....

per Barnett, P: This court has on more than one occasion repeated the principle that bail should not be denied as a punishment for a crime for which a person has not yet been convicted. This principle applies even when the crime is alleged to have been committed whilst a person was on bail. The burden is on those opposing the grant of bail to should why there are good reasons to deny bail to a person charged with an offence."

[Emphasis added.]

[19.] The primary consideration in determining whether to grant bail is whether the person will make themselves available for trial and any other court dates mandated by this Court. This consideration cannot be answered in the negative simply because the person is charged with a serious offence.

[20.] The Court must also consider whether there are conditions which can be put in place to ensure the Applicant's attendance at trial, ameliorate or eliminate any perceived risk of absconding

or witness interference (Jevon Seymour v The Director of Public Prosecutions SCCrApp. No. 115 of 2019).

[21.] The Crown also referenced section 4(2A) of the Bail Act. Although the issue of delay is not pertinent, I wish to remind the Crown of the comments of Justice Evans, Acting Justice of Appeal (as he then was) in the case *Duran Neely v. The Attorney General* SCCrApp. No. 29 of 2018, where at paragraph 17, he said as follows:

"It should be noted that Section 4 of the Bail Act does not provide the authorities with a blanket right to detain an accused person for three years. In each case the Court must consider what has been called the tension between the right of the accused to his freedom and the need to protect society. The three year period is in my view for the protection of the accused and not a trump card for the Crown. As I understand the law when an accused person makes an application for bail the Court must consider the matters set out in Section 4(2) (a), (b) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time or cannot be tried in a reasonable time he can be admitted to bail as per (a) and (b). In those circumstances where there has not been unreasonable delay the Court must consider the matters set out in (c). If after a consideration of those matters the Court is of the view that bail should be granted the accused may be granted bail..."

[Emphasis added]

DISPOSITION

[22.] In considering all the circumstances relevant to this hearing, The Court finds that the Respondent has satisfied me that this applicant ought not be granted bail pending his trial, and I hereby do not exercise this Court's discretion and deny bail for the following reasons:

- a. Wantonly Discharging a Firearm contrary to section 37 of the Firearms Act, Chapter 213; there is little evidence provided that makes any connection between the incident and the Applicant. There was evidence that another individual was also charged and has pleaded guilty, although no transcript of the proceedings in the Magistrates Court was adduced, and there was no rebuttal. However, this evidence must be vetted at trial, not in a bail application. At this point, the Court only has comments made by the Applicant, and the Applicant maintains his innocence, which is, in this Court's view, strong and cogent. The seriousness of this charge, along with the prima facie evidence advanced by the Crown, weighs heavily against the grant of bail, but there are other factors that the Court must consider.
- b. There has been no unreasonable delay thus far as the Applicant's trial was previously set for 25 February, 2025. There was no evidence on when the trial had commenced, or if it had begun, what stage of the process it was at now, whether it had been adjourned, and what date it had been adjourned to. Evidence was presented that the Possession of Firearms and Ammunition matter was commenced

and witnesses called; however, the Applicant sought an Adjournment through his newly retained Counsel, and that matter continues on 18 June 2025.

- c. No evidence before the court suggests that he might abscond. The Defendant has been in custody since his arrest on January 27, 2025.
- d. The Court is not satisfied that it can impose conditions of bail which will prevent further possible violations of criminal statutes. This applicant was on BMD and reporting conditions and still is alleged to have committed additional offences.

[23.] The bail application is denied. The Defendant is to remain remanded to the Bahamas Department of Correctional Services. Parties aggrieved by this decision may appeal within the statutory time frame.

Dated the 3rd June, 2025

A handwritten signature in black ink, appearing to read 'A. Forbes', is written over a horizontal line.

Andrew Forbes
Justice of the Supreme Court