COMMONWEALTH OF THE BAHAMAS **2025/CRI/BAIL/FP/00035**

IN THE SUPREME COURT

Criminal Division

B E T W E E N

T.P. (A JUVENILE)

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	**The Honourable Mr. Andrew Forbes**
Appearances:	**Attorney Mr. Sean Norvell Smith; c/o Director of Public Prosecutions**
	Attorney Mr. Ernie Wallace c/o Applicant
Hearing Date:	**10th June, 2025**

DECISION ON BAIL

FORBES, J

INTRODUCTION

[1.] This Application is for the admittance of bail made by way of Summons and an Affidavit in Support filed on the 28th May, 2025.

AFFIDAVIT EVIDENCE

[2.] This Applicant is a Bahamian male citizen. He lives in Freeport, Grand Bahama.

[3.] The Applicant is charged with the following offence:

a. Murder contrary to section 290(1) & 291(1)(b) of the Penal Code

[4.] The Applicant was arraigned and remanded to the Bahamas Department of Correctional Services on May 27, 2025, before Magistrate Uel Johnson.

[5.] The Applicant asserts his innocence and further states that he has no previous breaches of bail, and he is willing to comply with any conditions the Court imposes.

[6.] The Applicant asserts that he has no intention of absconding and will not interfere with the Prosecution witnesses. Finally, the Applicant asserts that he is a fit and proper candidate for bail and was born on 5th December 2007, making him seventeen (17) years old.

[7.] The Crown relies on the Affidavit of Corporal 3913 Harris Cash of the Royal Bahamas Police Force. Corporal 3913 Cash stated that there is cogent evidence against the Applicant, to which he exhibited the Record of Interview made by the Applicant as well as a statement of Ms. Darjee Parker, the cousin of the Applicant.

[8.] Corporal Cash stated that the Applicant, when interviewed, admitted to stabbing the deceased. Also, the statement of Ms. Parker, who indicated she observed the Applicant and the

deceased in a fight, and followed the deceased with an apparent stab wound to his abdomen, and retrieved a knife from the Applicant. The strength of the evidence is strong and cogent; the Applicant is not a fit and proper person for bail.

SUBMISSIONS

[9.] Mr. Ernie Wallace, Counsel for the Applicant, submits, in part, that:

a. Every person accused of an offence is innocent until proven guilty or pleads guilty under the Constitution of The Bahamas;
b. That when considering whether to grant bail, the test to be applied is whether the Applicant will appear at trial and whether the public interest is at risk (see **Hubbard v Police**);
c. That it is not disputed that the charges are serious and that the strength of the evidence may add to the weight of the prosecution's argument that the Applicant may abscond, the seriousness of an offence in itself is not a ground for refusal (see **Hurnam v The State (Mauritius)**; **Commissioner of Police v Beneby**);
d. That the Applicant has not breached any bail conditions and that there is no evidence that he will interfere with witnesses, nor obstruct the course of justice.
e. That the Applicant intends to rely upon self-defence when the matter proceeds to trial.

[10.] Mr. Sean Norvell-Smith, Counsel for the Respondent, submits, in part, that:

a. That the primary purpose of detention of an accused charged with an offence is to ensure his attendance at trial; however, the Court is mandated to take into consideration whether, if released, the accused would interfere with witnesses (see **Johnathan Armbrister v The Attorney General** SCCrApp. No. 145 of 2011);
b. That at the time of this offence, the Applicant was on bail for a severe offence and that if released on bail, he will commit further crimes;
c. That the a judge cannot simply refuse an application for bail merely because he is alleged to have committed a new similar offence while on bail; however, the crown must put before the court the evidence which raises a reasonable suspicion of the commission of the crimes to deprive the Applicant of his liberty (see **Stephon Davis v DPP** SCCrApp. 108 of 2021;);
d. That the judge is only required to evaluate whether the witness statements show a case that is plausible on its face, of establishing the guilt of the appellant (see **Donovan Collie v DPP** SCCrApp. 132 of 2023); and

ISSUE

[11.] The issue for the Court to determine is whether the Applicant is a fit and proper person for bail under Section 4 (2A) of the Bail Act ("the Act").

LAW

[12.] The Court must now consider the rationale for denying bail to the Applicant and determine whether he will refuse or fail to surrender for trial.

[13.] Section 4 (1) of the Bail Act provides:-

> ***"(1) Notwithstanding any other enactment, where any person is charged with an offence mentioned in Part B of the First Schedule, the Court shall order that that person shall be detained in custody for the purpose of being dealt with according to law, unless the Court is of the opinion that his detention is not justified, in which case, the Court may make an order for the release, on bail, of that person and shall include in the record a statement giving the reasons for the order of release on bail: Provided that, where a person has been charged with an offence mentioned in Part B of the First Schedule after having been previously convicted of an offence mentioned in that Part, and his imprisonment on that conviction ceased within the last five years, then the Court shall order that that person shall be detained in custody.***

[14.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 provides:-

> ***(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. is unlikely to be tried within a reasonable ti1nc; or***
> ***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 purpose of subsection (2) (a) and (b) ---***
> ***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; delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered a reasonable time.***
> ***(2B) For the purpose 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 or antecedents of the person charged, the need to protect the safety of the public or 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.***
> ***(3) Notwithstanding any other enactment, an application for bail by a person who has been convicted and sentenced to a term of imprisonment in respect of any offence mentioned in Part D of the First Schedule shall lie to the Supreme Court or the Court of Appeal. (3A) notwithstanding section 3 or any other law, the Magistrates Court shall not have jurisdiction for the grant of bail in respect of any person charged with an offence mentioned in Part C or Part D of the First Schedule.***
>
> ***PART C (Section 4(3)) Kidnapping — section 282, Ch. 84; Conspiracy to commit Kidnapping — sections 282 and 89(1), Ch. 84; Murder — section 291, Ch. 84; Conspiracy to commit Murder — sections 291 and 89(1), Ch. 84; Abetment to Murder — sections 86 and 307, Ch. 84; Armed Robbery — section 339(2), Ch. 84; Attempted Murder – section 292, Ch. 84; Conspiracy to commit Armed Robbery — sections 339(2) and 89(1), Ch. 84; Abetment to Armed Robbery —***

sections 86 and 339, Ch. 84; Treason — section 389, Ch. 84; Conspiracy to commit Treason — sections 389 and 89(1), Ch. 84. Possession of Firearm designed to discharge explosive matter section 30(1)(a), Ch. 213; Possession of Automatic Weapons - section (30)(l)(b), Ch. 213; Possession of Firearm or Ammunition with intent to endanger life or cause serious injury to property - section 33, Ch. 213; Possession of Firearm with intent to commit an indictable offence section 34(1), Ch. 213; Possession of Dangerous Drugs with intent to supply - section 22, Ch 228; Any offence under any of the following sections of the Sexual Offences Act, Ch. 99: 6 (rape), 10 (sexual intercourse with a person under fourteen years), 12 (sexual intercourse with a person suffering from a mental disorder), 13 (incest) and 14 (sexual intercourse with a dependent);"

DISCUSSION AND ANALYSIS

[15.] It appears that the Respondent's arguments are that the Applicant has a very serious matter. Crown also contends that the evidence adduced is cogent and powerful and for the aforementioned reasons are good grounds to deny the Applicant bail.

[16.] The Applicant faces a charge of Murder contrary to section 291(b) of the Penal Code which reads as follows:

"291. (1) Notwithstanding any other law to the contrary— (b) every person convicted of murder to whom paragraph (a) does not apply— (i) shall be sentenced to imprisonment for life;....."

[17.] Sections 4(2) and (3) of the Bail (Amendment) Act, 2011 permits the grant of bail to those charged with a Part C offence (as stated in paragraph 9 above). Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with a Part C offence shall have regard to the following factors as found in Part A of the Bail (Amendment) Act, 2011:-

"***(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;

(b) whether he is in custody in pursuance of the sentence of a Court or any authority acting under the Defence Act;

(c) whether there is sufficient information for the purposes of taking the decisions required by this Part or otherwise by this Act;

(d) whether having been released on bail in or in connection with the proceedings for the offence, he is arrested pursuant to section 12;

(e) 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;

(f) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.";

[18.] Thus, the question is, would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have appeared, and the Affidavit is devoid of any suggestion that the Applicant might not surrender for trial. They, however, focused on the Applicant being a safety concern to the community, and the evidence against the Applicant being robust and cogent. The Court takes note of the comments of the Court of Appeal in **Cordero McDonald v. The Attorney General** SCCrApp. No. 195 of 2016 where, then, *President of Appeal Dame Anita Allen* said as follows:

> ***"18. As noted in Richard Hepburn v The Attorney General SCCrApp. 276 of 2014, there is a constitutional right to bail afforded by articles 19(3) and 20(2) (a) of the Constitution; and in as much as the right pursuant to article 19(3) is not triggered since there is no element of unreasonable delay in this case, consequently this application is grounded in the provisions of article 20(2) (a).***
> ***19. In that regard, the appellant is presumed innocent and has a right to bail, unless after a realistic assessment by the judge of the matters prescribed above, the appellant's right to remain at liberty is defeated by the public's interest 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 other offences..." 8 (per Lord Bingham in Hurnam v The State [2006] 3 LRC 370, at 374).***
> ***20. The balancing of the applicant's right to the presumption of innocence and that of the public to be protected are reflected in the above-mentioned factors recognized and prescribed by the Bail Act as matters to be weighed against the grant of bail, and, in so far as they are relevant to the particular application for bail, they must, as previously noted, be assessed by the judge before exercising the discretion. Indeed, section 2B prescribes that in relation to Part C offences: '...the character or antecedents of the person charged, the need to protect the public or 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.'"***

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[20.] The Court also considered the comments made by the Applicant's counsel, noting that the Respondent was essentially arguing that the Applicant should be denied bail because of the serious nature of the offence. The Court observed that the Respondent is not contending that the Applicant will abscond or interfere with witnesses; they claim that the offence is serious. The Court notes the comments of then Acting Justice of Appeal Evans (as he then was) in **Duran Neely's** case, where at paragraph 18 he cited the remarks of Justice of Appeal John Isaacs in the Johnathan Armbrister case regarding the seriousness of the offence. He added, however, the following commentary; *"It is accepted however that the severity of an offence is not a free standing ground for the refusal of a bail application but it is a consideration in determining whether the accused is likely to appear for trial....*

[21.] The Court notes that Counsel for the Applicant asserts the issue of self-defence, and that is a matter which will be taken into consideration by the jury should the matter proceed to trial. The Court notes that the Police and the Magistrate failed to act in the best interest of the Applicant and failed to consider the provisions of the Child Protection Act, Chapter 132 of the Statute Laws of the Bahamas. The Court reminds both the Police and Magistrates of their obligations, as well as the comments by the Court of Appeal in the case of **R.B. (A Juvenile) v. The Attorney General** SCCrApp. No. 205 of 2015, specifically the comments of Madam Justice of Appeal Crane-Scott, especially paragraphs 45 to 49, which read as follows:

"45.It is unclear whether the police officers in charge of the station where the Appellant was brought following his arrest ever adverted to the statutory obligation imposed under section 112(1) of the Child Protection Act, inter alia, to enquire into the possibility of the Appellant's release on bail. There is also nothing in the record which suggests that police made a conscious decision not to release the Appellant from detention under subsection 112(1) of the Act because for example, the police considered that his detention was necessary in his interest to remove him from associating with known criminals; or that his release would defeat the ends of justice.

46. What is very clear from the record, however, is that notwithstanding his status as a "child", the Appellant was not released from police custody following his apprehension as envisaged by section 112(1) of the Child Protection Act. Furthermore, having not been released under subsection (1), the Appellant, who was then still a "child" of 15 years, was not detained by police in a "juvenile correction centre" before he was taken before the Chief Magistrate in apparent breach of section 112(2) of the Act.

47. Thereafter, it appears the learned Chief Magistrate declined to consider the issue of bail for the Appellant and informed him of his right to apply to the Supreme Court for bail. She also remanded him into the custody of the Bahamas Department of Correctional Services at the adult remand centre at Fox Hill Prison pending issuance of a Voluntary Bill of Indictment in the Supreme Court.

48. The Appellant's remand to the adult remand center at Fox Hill Prison points yet again to another possible breach of the Appellant's right under section 113 of the Child Protection Act to be remanded to a "juvenile correction centre", including his right under Article 37(c) of the Child Rights Convention as a "child" who is deprived of his liberty to be separated from adults unless it is considered in his best interest not to do so.

49. Section 113(1) of the Child Protection Act provides in effect that a "child" who appears before a court and who is not released on bail is to be remanded by the court to a "juvenile correction centre." A court may only remand or commit a "child" over the age of 14 years to an adult correction centre if the Court, based on sworn information, certifies that the child: (i) is so unruly a character that the child cannot safely be so committed; or (ii) is so depraved that the child is not a fit person to be detained in a "juvenile correction centre". There is nothing in the record which suggests that the Appellant was certified by the Chief Magistrate to be such a child, and this raises the very real possibility of a further breach of the Appellant's rights...."

[Emphasis added]

[23.] The Court will note, however, in the **R.B.** case, the Appellant was charged with Armed Robbery, whereas in the current case, the Applicant is accused of Murder. The Child Protection Act, specifically section 112 (1) (c) (i), does not extend the right to either the Police or the Magistrate to release a juvenile where the offence is that of homicide. Therefore, they could not be faulted for detaining the Applicant; however, no consideration was given as to where he would be remanded to, and the Statute makes provisions for where and how juveniles are to be detained. It is incumbent upon the Courts to exercise oversight in that regard. Again, this court points to the comments of Madam Justice of Appeal Crane Scott specifically [paragraphs 48 & 49], see emphasised above.

DISPOSITION

[24.] The Court will accede to the Application with the following conditions:

a. The Applicant will be granted bail of fifteen thousand dollars ($15,000.00) with one or two sureties.
b. The Applicant will be outfitted with an electronic monitoring device (EMD) and comply with all conditions thereto.
c. The Applicant will be required to be placed on curfew from 10 pm to 5 am each day. Also report to the Central Police Station, Freeport, Grand Bahama, each Monday and Friday before 7 pm at the latest.
d. The Applicant must not leave the Island of Grand Bahama without the prior approval of this Court; failure to obtain approval could result in possible revocation.
e. The Applicant is not to interfere with either directly or indirectly with any of the prosecution witnesses while this case is ongoing.
f. Parties are at liberty to reapply.

[25.] Any party so aggrieved may file an appeal.

Dated the 17th June, 2025

Andrew Forbes
Justice of the Supreme Court