

COMMONWEALTH OF THE BAHAMAS

CASE NO. 2009 /CRI/BAIL/FP/00024

IN THE SUPREME COURT

Criminal Division

B E T W E E N

CHARLES TONY FRITZGERALD

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honorable Mr. Justice Andrew Forbes

Appearances: Mr. Sean Norvell Smith c/o Director of Public Prosecutions
Mr. Charles Tony Fitzgerald Pro se

Hearing Date: 17th June, 2025

RULING ON BAIL

FORBES, J

BACKGROUND

[1.] The Court heard the application for the admittance to bail and indicated the intention to provide the written reasons; does so now. The Applicant self-filed an application seeking consideration of the Court as to the question of bail on the 10th April, 2025. The Applicant did

not file an Affidavit in Support. Further, the Applicant indicated he resides at No.142 Limewood Lane, Freeport Grand Bahama. He notes he is currently on remand for Murder contrary to section 291(1) (b) of the Penal Code. He indicated he is scheduled to appear before the Supreme Court for Trial on the 4th October, 2027 and is presently unrepresented at this time. He further states he has no pending matters. He also stated that he is prepared to comply with any and/or all conditions should be bail be granted. He further indicated that he is married and have adult children and is a carpenter by trade and has been in custody for sixteen (16) months.

[2.] The Respondent filed an Affidavit in Opposition on 28th May 2025 and sworn by Corporal 3913 Harris Cash. He avers that he is attached the Office of Director of Public Prosecution That the Applicant was arraigned before the Court on the 26th November 2024 and pleaded not guilty and that the matter is adjourned for trial to the 4th October 2027. That there is cogent evidence against the Applicant taken from the statement of Mr. Pratt who alleged that he heard the Applicant and deceased arguing prior to hearing what he believed to be gunshots. That he later identified the Applicant from a photo lineup. Both the statement of Mr. Pratt and the photo lineup are exhibited.

[3.] Corporal Cash further avers, that the in a statement made by Constable Parker he observed and heard Corporal Cooper speak with the victim and that allegedly the victim prior to be treated and removed from the scene by Emergency personal indicated that a person he knew as "CT" shot him. And when asked if he meant Charles Fitzgerald the victim said "yeah". This statement was also exhibited. The antecedent records of the Applicant was also exhibited which evidence charges for Possession of Dangerous Drugs with intent to supply where the Applicant was convicted and fined. Possession of firearm and ammunition again where he was convicted and fined.

SUBMISSIONS

[4.] The Applicant was unable to articulate any legal position but reiterated that he didn't murder anyone and has been incarcerated for 16 months in BDCOS and that the he is a fit and proper person for bail.

[5.] The DPP emailed its submissions as already mentioned by the Court. Mr. Smith noted the serious nature of the allegations against the Applicant and whether there are any conditions this Court can impose that will restrain this Applicant from committing additional crimes. The DPP refers the Court to the comments made by the *Justice of Appeal Evans* in **Duran Neely v. The Attorney General SCCrApp. No.29 of 2018** and the comments made particularly at paragraph 19. Also, the comments made by *Justice of Appeal John* in **Johnathan Armbrister v. The**

Attorney General SCCR App. No. 145 of 2011 at paragraph 13. Mr. Smith also cites the dicta in Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016. Counsel for the DPP submits that the Applicant is an unfit person for bail. That given that his trial is scheduled to occur in February of 2027 he presumably ought to remain in pre-trial detention. Although not expressly stated clearly that's the implication.

THE LAW

[6.] The Court must now consider the rationale for the denial of bail to the Applicant and consider whether he will refuse or fail to surrender for trial.

[7.] 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.

[8.] 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 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 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.

DISCUSSION/ANALYSIS

[9.] It appears that the Respondent's submissions are that the evidence adduced is cogent and powerful and are grounds to deny the Applicant bail.

[10.] Additionally, a Judge hearing an application for the grant or denial of bail for an applicant charged with an 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.";

[11.] Thus, the question is, would this Applicant surrender for trial? The Respondent offered no evidence to suggest that he would not have in fact appeared and the Affidavit is totally 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. The concerning factor was that the trial is not scheduled until 2027 barring no set backs at the out most that means the Applicant would be in custody for more than three(3) years awaiting his trial. The comments of then Acting Justice of Appeal Evans in **Duran Neely's case** are potent 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....*"

[12.] As stated by the Court in **Stephon Davis v the DPP (supra)** there is no evidence before this Court that the Applicant will refuse to surrender. There is a concern however regarding the Applicants apparent accessibility to firearms and ammunition. There was a previous conviction for possession of firearms and ammunition. However those convictions did occur in 2009 and nothing until he most recent allegations. There are some questions as to whether the statements

made by the deceased will be admitted at trial is a question of the trial judge and the exercise of their discretion as to whether the statement overcomes the hearsay objection and complies with the exception of a dying declaration.

[13.] 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.'"

[Emphasis added].

This Court also takes note of the comments made by then *Justice of Appeal Longley* in **The Attorney General of the Commonwealth of The Bahamas v. Bradley Ferguson, Kermit Evans, Stephon Stubbs, and Kenton Deon Knowles SCCrApp. No.57, 106,108 &116**, and in particular paragraph 35, where he said as follows:

"That is not to suggest that every judge must embark on a minute examination of the evidence against an accused on a bail application. That would not be proper (see Hurnam). But whereas here no evidence is adduced linking the respondents to the crimes charged at a hearing where that issue is live, it seems to me that in order to give the accused the full measure of his rights under article 19 of the constitution there is an obligation to release him immediately, and leave it to the court hearing the case preliminarily or otherwise to decide whether in fact there is evidence to support the charge. In Hurnam, release on bail was thought proper in circumstances where the evidence against the accused consisted of accomplice evidence and had to be approached with caution. The court thought the presumption of innocence in those circumstances operated to justify immediate release pending trial...."

DISPOSITION

[14.] This Court, given the circumstances, will grant the application for bail for the current offence. This Court is fully aware of the comments *Justice of Appeal Evans* and of the *President Sir Michael Barnett* of the Court of Appeal in **Stephon Davis case (supra)**. Those comments bare repeating and are as follows:

"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."... : "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."

Therefore, the bare assertion by the Crown that the Applicant may allegedly committed an offence or an offence of the same nature is not enough for the Court to deny bail. The Court having considered the circumstances of this case and the evidence presented will accede to the Application; however, will put conditions to ensure there are no further violations.

[15.] Bail will be granted in the sum of Twenty Thousand Dollars ((\$20,000.00) with one (1) or two (2) sureties.

- (a) Applicant is to be outfitted with an Electronic Monitoring device and comply with all the conditions thereto.

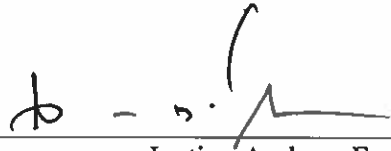
(b) That the Applicant will report to the Central Police Station (Freeport, Grand Bahama) each Wednesday & Friday by 7pm at the latest.

(c) Applicant is not to have contact with any of the Prosecution witnesses directly or indirectly whatsoever. Any violation may result in possible revocation.

(d) Applicant is to surrender all travel documents and apply should the Applicant require to travel.

(e) Parties are at liberty to reapply.

[16.] Parties aggrieved may appeal to the Court of Appeal.

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

Justice Andrew Forbes

Dated the day of , 2025