

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2025/CRI/BAL/04713

BETWEEN

DONALD FERGUSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honorable Mr. Justice Dale Fitzpatrick

**APPEARANCES: Mr. Eucal Bonaby, Ms. Akire Nicholls and Ms. Betty Wilson on
 behalf of the Respondent**

**Mr. Murrio Ducille KC and Mr. Brian Bastian on behalf of the
Applicant**

HEARING DATE: 23rd September 2025

DECISION DATE: 26th September 2025

**Criminal Law - Bail - Bail Act Chapter 103 – Bail Act (Section 3) First Schedule Part A
(a)(i, ii & iii) – Bail Act (Section 3) First Schedule Part A(b) - Application for Bail –
Material change in circumstance – Risk of Absconding – Risk of Reoffending - Risk to
Public Safety - Whether there has been an unreasonable delay – Whether the Applicant is a
fit and proper candidate for Bail**

DECISION

FITZPATRICK J

Introduction

[1.] Before me, the Applicant (“**Mr. Ferguson**”) applied for bail (“**the Application**”). Respective Counsel for the Applicant and the Respondent (“**the Director of Public Prosecutions**”) relied on voluminous materials inclusive of affidavit evidence and case law. Each Counsel likewise presented fulsome and articulate submissions.

[2.] At the conclusion of the hearing submissions, I provided detailed oral reasons for my decision. I indicated that my complementary written decision would be forthcoming, which I now provide.

[3.] To summate, the Application is dismissed on the following grounds:

[a.] Firstly, that this Court lacks the prerequisite jurisdiction to consider a full and fresh bail application in the absence of a material change in the Applicant’s circumstance.

[b.] Secondly, upon a full and fresh consideration of all applicable factors, the Application is denied on its merits.

[4.] My reasoning is fleshed out below.

Background

[5.] The offence presently before this Court concerns an allegation of murder said to have occurred on 16th June 2024 in Nassau. Mr. Ferguson’s original application for bail was heard by the Hon. Mr. Justice Braithwaite on 27th February 2025 and by decision dated 27th March 2025, bail was refused. Justice Braithwaite held that the Prosecution had established a prima facie case and denied bail having regard primarily to the seriousness of the charge, the risk of flight or non-attendance and the likelihood of further offences being committed should Mr. Ferguson be released.

Law & Discussion

[6.] The fundamentals of bail are very well known to the Court. These fundamentals are set out in the various cases relied on by Counsel and were addressed in their respective submissions. I do not intend to repeat those fundamentals here beyond what is detailed below and to note the Court is aware of and considered them.

No Material Change In Circumstances

[7.] The Court, during the hearing for this Application, asked Counsel for the Applicant to make submissions on what, if any, changes have occurred to the Applicant's circumstances since Justice Brathwaite's earlier ruling.

[8.] Mr. Ducille on behalf of the Applicant averred that the only change in circumstance since the hearing before Justice Brathwaite was that the Voluntary Bill of Indictment ("VBI") had been recently filed and further submitted that said filing was material.

[9.] Mr. Bonaby for the Respondent submitted that there was no new or material change in circumstances before the Court.

[10.] In my view, the filing of the VBI alone is not a material change in circumstances. The VBI represents the formalized allegation to the Court and the Applicant. However, beyond formalizing the charge, the VBI does not present any new information or circumstances not before and fully ventilated by Justice Brathwaite. The VBI provides the name of the accused, the offence charged along with the date and location. All of this VBI information was before Justice Brathwaite for the bail hearing on 27th February 2025. The VBI here did not present any new or changed circumstances different from what was before Justice Brathwaite when he was considering Mr. Ferguson's release.

[11.] Mr. Ducille and, to some extent, Mr. Bonaby submitted that this Court does not require a material change in circumstances for an accused to be heard on a new bail application. Neither Counsel provided this Court with any authority on said submission.

[12.] The Court questioned the validity of the above submission. If correct then an accused could be denied bail before one Supreme Court judge only to immediately file a "fresh" bail application, identical in every respect, before the same or another Supreme Court judge. This sequence could be repeated with an accused having hearings indefinitely until achieving the desired outcome. This represents an irrationality undermining the finality and authority of a court's decision. Further, one can easily imagine how the Supreme Court bail system would quickly be overwhelmed by a tsunami of repetitive bail hearings if there was no prerequisite to the filing of a subsequent application.

[13.] This Court takes the position that an accused who has been denied bail by a Supreme Court judge may revisit the issue of release either through appeal to the Court of Appeal on the established grounds set out by law or by subsequent application to the Supreme Court on the basis of a material change in circumstances since the prior bail hearing.

[14.] Upon a review of the materials and submissions here, this Court find that there was no material change in Mr. Ferguson's circumstances since Justice Brathwaite's decision. The Application is, on that basis, hereby dismissed.

The Merits of the Bail Application

[15.] This Court did consider the Application as a new application on the merits given the submission by Mr. Ducille and, to a lesser extent, Mr. Bonaby, that no material change in circumstances was required for this Court to do so. In other words, Counsel submitted that this Court was obligated to consider the Application on the merits.

[16.] To summate, an application for bail requires a balancing between the accused's constitutional rights to liberty conjoined with the presumption of innocence and society's interest in having criminal allegations fully and fairly ventilated through an impartial, unimpeded justice system (See: **Denero Whyms v the Director of Public Prosecutions 2023/CRI/Bal/188 at para 11**).

[17.] The presumption of innocence is at the core of our criminal justice system. It is enshrined in **Article 20(2)(a) of the Constitution**. An accused is presumed innocent of all allegations and is not required to prove anything. The allegations, including what is contained in the statements of any and all potential prosecution witnesses, are merely allegations.

[18.] Also fundamental on any request for bail is the right of every individual to not be deprived of his or her liberty, except as authorized by law enshrined in **Article 19(1)(b) of the Constitution**.

[19.] Mr. Ducille, on behalf of the Applicant, relies adamantly and appropriately on these enshrined fundamentals in support of his client's request for release.

[20.] The Applicant is charged with Murder pursuant to **Section 290(1) and 291(1)(B) of the Penal Code Chapter 84**.

[21.] As it concerns the murder charge, we have the dying declarations of the virtual complainant. One witness states that the virtual complainant identified "DJ" as the shooter. The Applicant in his police interview did acknowledge that his nickname is "DJ". Another witness provided a statement that the virtual complainant said it was "DJ, Nesha husband who shoot me". The Applicant's estranged wife's first name is Tanesha. This provides cogent identification evidence at least at this bail application stage.

[22.] The evidence further discloses opportunity. The Applicant was present at the airport at the time of the shooting, having that same morning checked in for a one-way flight to Freeport, Grand Bahama. In his police interview, the Applicant also admitted to being familiar with the so-called "Door M," an interior access point used by pilots and other authorized personnel to traverse the airport.

[23.] Finally, there is cogent evidence of motive. During his police interview, the Applicant acknowledged his desire to reunite with his estranged spouse and was aware that she was in a relationship with the virtual complainant. In addition, there is the statement from Tanesha Smith alleging that she was stalked, threatened and intimidated by The Applicant with respect to her relationship with the virtual complainant.

[24.] The Court did note that neither the firearm used in nor the white Nissan Note vehicle associated with the murder has been located. That said, this Court is satisfied that the Prosecution has presented cogent evidence of a prima facie murder case against Mr. Ferguson.

[25.] The Applicant is also charged with Conspiracy to Possess Dangerous Drugs with Intent to Supply, Conspiracy to Import Dangerous Drugs, Abetment of Importation of the Dangerous Drugs and Possession of the Dangerous Drugs with the Intent to Supply pursuant to **the Penal Code Chapter 84**.

[26.] The evidence for the extant Bahamian drug charges are: A crash landed plane where two males were seen running into the bush; 25 bales of cocaine and 1 bale of marijuana located in the abandoned plane; and an iPad linked to the Applicant that was found in the cockpit. This Court finds that to be cogent evidence presenting a prima facie case on the drug charges.

[27.] The Court has before it no material concerning Mr. Ferguson's drug trafficking and firearms charges in the United States other than the nineteen-page Sealed Indictment. The Sealed Indictment itself does provide details of the allegations. In addition, the Court takes notice that a hearing before a grand jury is a preliminary step in the American criminal justice system where the prosecution evidence is considered by a jury to determine whether there are reasonable grounds that the named crimes have been committed by the named accused. The grand jury considered the evidence against the Applicant and the others named concluding there was reasonable grounds for the case to proceed as confirmed by the Sealed Indictment filed in this Application. The Court relies on the preliminary vetting of the evidence by the grand jury, together with the particulars set out in the Sealed Indictment, to be satisfied that a prima facie case exists in respect of these charges.

[28.] In summary, this Court is mindful of Mr. Ferguson's rights as expressed in the **Constitution** and that the materials before it, including the statements of potential witnesses, are untested, unproven allegations. However, the Court is satisfied that the Prosecution has presented cogent evidence that raises a reasonable suspicion or, in other words, that establishes a prima facie case against the Applicant with respect to the local charges before this Court as well as the drug and firearms charges pending in the United States sufficient to justify his detention (See: **Cordero McDonald v. the Attorney General SCCrApp. No.195 of 2016** at para. 34). As such, this Court must next consider and review the factors applicable to his request for release on bail.

[29.] **Section 4 of the Bail Act** itemizes the factors for the Court to consider on a request for release. Below, I review the factors applicable on this Application.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would fail to surrender to custody or appear at his trial?

[30.] The Court must consider whether the Applicant is a risk of flight or, in other words, whether he is a risk to not attend court if released.

[31.] Mr. Ferguson faces very serious charges here in the Bahamas and in the United States of America. The charge before this Court is murder, which is a most serious offence that attracts a penalty of the most severe degree if conviction occurs.

[32.] Mr. Ferguson also faces other charges pending in this jurisdiction: Conspiracy to Possess Dangerous Drugs with Intent to Supply, Conspiracy to Import Dangerous Drugs, Abetment of Importation of the Dangerous Drugs and Possession of the Dangerous Drugs with the Intent to Supply. These charges arise from the discovery of twenty-five bales of cocaine and one bale of marijuana together with an iPad found in the cockpit linked to Mr. Ferguson all located in a crash-landed and recently abandoned aircraft. These are, again, serious allegations which, upon conviction, would attract a significant custodial sentence, particularly in light of Mr. Ferguson's prior conviction for similar offences in 2020.

[33.] Mr. Ferguson also has now been named in a Grand Jury Indictment issued by the United States District Court (Southern District of New York) charging him along with others for "drug trafficking" and the use and possession of firearms in furtherance of such crimes. These allegations would undoubtedly result in a significant sentence if the Applicant is convicted.

[34.] Mr. Ferguson identifies no ties to the Bahamas except the fact that he is a citizen. The Applicant is estranged from his wife, has no children, identified no other family and or assets that could bind him to the Bahamas. Moreover, the Applicant is a professional pilot providing him with a very practical means to abscond if he is so minded.

[35.] The seriousness of these several and now international charges with related risk of significant jail time upon conviction, Mr. Ferguson's lack of meaningful ties to the Bahamas and his being an experienced pilot presenting a unique facility for literal flight leaves this Court well satisfied that Mr. Ferguson is a risk of flight and not attending Court as required if released.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would commit an offence?

[36.] As noted above, Mr. Ferguson was convicted of very serious drug related offences in 2020. He stands before this Court today charged with very similar offences both here in the Bahamas and in the United States of America. He is also now facing a charge of murder before this Court.

[37.] The allegations underpinning the charges in the United States are said to span the period from May 2021 to November 2024. The murder charge before this Court arises from events said to have taken place on 16th June 2024. The events giving rise to the pending drug-related charges in the Bahamas are alleged to have occurred on 18th January 2025.

[38.] The chronology of arrests is difficult to discern from the pleadings and affidavits before me. It appears that the Applicant was questioned by police respecting the murder allegation in June, 2024 but was released. Mr. Ferguson was arrested for the Bahamian drug offences on 18th January 2025 and then, again, questioned about the 16th June 2024 murder. He was arraigned in the Magistrates Court for all charges (murder and drug related) on 21st January 2025.

[39.] It was not clear to me during the hearing of this Application whether Mr. Ferguson had been released on bail at any point and then reoffended. Initially, it appeared to me that he had and I shared that observation during the hearing for his Application without any correction from Counsel present. As I was leaving Court, Mr. Ferguson on polycom (Digital Video Software) suggested he had never been on bail.

[40.] On review of the entire file following the hearing, it appears to be correct that the Applicant was not previously on bail where he reoffended. I hereby note my error and present this as my correction.

[41.] The Applicant has not reoffended while on prior bail. That said, the Applicant was convicted of serious drug related offences in 2020. The allegations in the United States are that the Applicant was involved in a drug trafficking operation spanning from May 2021 to November 2024. The Applicant is charged with having murdered his estranged wife's boyfriend on 16th June 2024. Also, the Applicant is charged with very serious drug related offences in the Bahamas alleged to have taken place on 18th January 2025 when he was arrested and placed into custody. These convictions and allegations represent an unbroken narrative of serious criminal activity from 2020 to the present ceasing only when Mr. Ferguson was placed in custody in January, 2025. On that basis, the Court is satisfied that Mr. Ferguson will reoffend if released on bail.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would interfere with witnesses or otherwise obstruct the course of justice?

[42.] Mr. Ferguson's estranged spouse, Tanesha Smith has provided a statement in this matter alleging threats, intimidation and stalking from Mr. Ferguson. Mr. Ducille states Ms. Smith is not a compellable witness for the prosecution. For the purposes of this Application I need only note that Ms. Smith has voluntarily provided a statement to the police and she has not resiled from it. It is, therefore, evidence available for consideration on this Application. Clearly, Ms. Smith may choose to testify voluntarily and I have nothing before me to suggest the contrary. In short, Tanesha Smith is a potential witness in this matter who has provided a statement that leaves this Court satisfied that Mr. Ferguson will contact prosecution witnesses and otherwise interfere with the Respondent's efforts to prosecute if released.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would be a risk to the public?

[43.] The Court must also consider whether releasing Mr. Ferguson will put the public at risk. The murder allegations present a brazen shooting, execution style in the parking lot of this country's busiest airport. The context of the alleged murder, as it appears to me, arises from a domestic situation, namely the breakdown of Mr. Ferguson's marriage with his now-estranged wife, Tanesha Smith, embarked on a new relationship with the virtual complainant. The murder narrative depicts violent and emotionally driven conduct, involving the discharge of a firearm in a public setting, thereby posing a serious risk to any member of the public who might be present at the wrong place and time.

[44.] The Applicant has been convicted of and has pending charges here and in the United States for dangerous drugs alleging that he is part of the supply chain. This does in fact pose a serious threat to public safety with all we know about drug use, supply and related criminal activity.

[45.] Also worth noting is the firearms charge against Mr. Ferguson in the United States. Again, the Applicant is alleged to have used a firearm in the commission of a criminal offence presenting the obvious concern the public safety upon any release.

[46.] This Court is satisfied that Mr. Ferguson is a risk to public safety if released and is guided by the Court in **Tyreke Mallory v Director of Public Prosecutions SccrApp. No. 142 of 2021** at paragraphs 24 and 25 ("Tyreke Mallory").

Whether the Applicant should be kept in custody for his own protection?

[47.] The Court must also consider the protection of the Applicant and risks to his safety if released. The Court takes notice of the elevated profile Mr. Ferguson's charges, especially the murder allegation, have garnered in the Bahamian media and, by relation, the community. In addition, the Applicant's affidavit filed on this Application states that he has made arrangements to "live on another island of the Bahamas" if released "to ensure my safety". In that regard, the Court also takes notice of the prominence of retaliatory violence in the Bahamas.

[48.] Given the elevated profile of his charges, the prominence of retaliatory violence in the Bahamas and Mr. Ferguson's admission of concern for his own safety, this Court is satisfied that Mr. Ferguson's safety will be at risk if he is released.

Whether there has been an unreasonable trial delay?

[49.] The Court notes that no argument was advanced on behalf of the Applicant on the basis of any unreasonable delay in having the murder charge before this Court set for trial. Regardless, this Court has considered the issue of unreasonable delay on this Application for completeness.

[50.] The Applicant was arrested on 18th January 2025 and has remained in custody since that time. In addition to hearing this Application, the Court also held a case management hearing where trial dates were set for Mr. Ferguson's murder charge. Mr. Ferguson was offered a backup trial date on 31st August 2026 that Mr. Ducille advised was not available to him. The Court did set a backup trial date for 22nd February 2027 and a substantive trial date of 5th July 2027. These dates provide Mr. Ferguson with a trial well within the three year guideline of what constitutes a reasonable time for an accused to have a trial measured from the date of arrest as noted in the amended **Bail Act (See: Section 4(2A))**.

[51.] There is no unreasonable delay for the trial of Mr. Ferguson's murder charge. In saying this, the Court notes the obvious, namely that the *Bail Act* guideline for a reasonable time to trial is not independent authority to detain any accused for those three years.

Conclusion

[52.] The Court has considered the presumption of innocence for Mr. Ferguson along with his right not to be deprived of liberty except as authorized by law both enshrined in the **Constitution**. The Court has also considered the bail factors applicable to this Application. Unfortunately for Mr. Ferguson, when considered together, the factors and evidential risks overwhelmingly lead this Court to conclude that he should be detained, subject to consideration of whether any conditions could adequately mitigate the identified bail risks.

[53.] The available and obvious conditions, if bail was granted are: electronic monitoring; surrendering of passport; curfew; multiple sureties to supervise and ensure compliance with bail terms; and frequent reporting to the police.

[54.] It is the view of this Court that no multiplicity of conditions would suffice to address the various risks presented by Mr. Ferguson, namely his risks of absconding, committing further offenses, jeopardizing the public's safety and his own, and risk that he would interfere with crown witnesses. The risks are simply too many and too serious.

[55.] Hearing this Application on the merits and with consideration to all of the factors applicable to his request for release on bail, Mr. Ferguson is not a fit prospect for bail and his Application is dismissed.

Dated this 26th day of September A.D. 2025

Justice D. Fitzpatrick