

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
2015/CRI/bal/FP/00131**

IN THE MATTER of the Bail (Amendment) Act 2011

BETWEEN

SHEMAR MOSS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Justice Petra M. Hanna-Adderley
Appearances: Ms. Cassie Bethel for the Applicant
Mr. Sean N. Smith for the Respondent
Hearing Date: On the Papers

**DECISION ON BAIL
(on the Papers)**

Hanna-Adderley, J

- 1) The Applicant is a Bahamian male citizen. He is 24 years old having been born on 10 November 2000.
- 2) The Applicant is charged with 1 count of Armed Robbery contrary to Section 339 (2) of the Penal Code, Chapter 84 of the Statute Laws of the Commonwealth of the Bahamas and 1 count of Rape contrary to Section 6 (A) of the Sexual Offences Act Chapter 99 of the said Statute Laws of the Commonwealth of The Bahamas.

- 3) The Applicant was arraigned on 24 January 2025 before Senior Magistrate LaQuay Laing, Court No. 3, Freeport, Grand Bahama and remanded to the Bahamas Department of Corrections. His matter was adjourned to the 5 June 2025.

The Applicant

- 4) In his Affidavit sworn on 27 May 2025 filed 13 June 2025 the Applicant states, in part, that:
- a. He has no previous convictions before the Courts in the Commonwealth of The Bahamas.
 - b. He does have matters pending before the Court in the Commonwealth of The Bahamas.
 - c. Attached to his Affidavit is an Affidavit of withdrawal from Othnell Clarke concerning a Statement made at Central Police Station, Freeport, Grand Bahama.
 - d. Should this Honorable Court admit him to bail he will have accommodation at Victoria Inn, Victoria Lane, in Freeport, Grand Bahama.
 - e. Prior to being detained, he worked at J.B.'s Auto Mechanic Shop in Grand Bahama.
 - f. He is a Bahamian.
 - g. He respectfully asks to be admitted to bail for the reason that he will be disadvantaged in his ability to support himself, his 2 children and his family.
 - h. That he is a fit and proper candidate for bail.

Affidavit of Othnell Clarke

- 5) In his Affidavit Mr. Clarke states as follows:

"1. Personal Details

I am Othnell Clarke, born on the 9 of August 1975 and currently residing in the island of Grand Bahama.

2. Purpose of this Affidavit

This affidavit is made in relation to case No. 2015/CRL/BAL/FP/00131 involving the Defendants Shemar Moss and Steffon Moss and it is being directed to the Department of Public Prosecutions, Freeport, Grand Bahama.

3. Statement made at Central Police Station

I previously provided a statement two officers of the royal Bahamas police force at the central police station Freeport Grand Bahama in relation to the above captioned matter

4. Retraction of Statement

Upon further reflection I hereby declare that I am unable to confirm the events described in the statement I made concerning the incident in question, including any allegations involving either Shemar Moss or Steffon Moss.

5. Withdrawal of Statement

As such, I **formally retract** my earlier statement in its entirety and request that it no longer be relied upon in any way in connection with the aforementioned matter.

6. Declaration of Truth

I make this affidavit of my own free will and volition, without coercion or undue influence, and affirm that the information provided herein is true and correct to the best of my knowledge and belief."

The Affidavit is notarized by Mr. Sidney McIntosh, Sr. a Justice of the Peace for the Commonwealth of the Bahamas and the backing sheet bears the name and endorsement of the Applicant's attorneys.

- 6) While the Affidavit is concerning in that Mr. Clarke does not explain why only some 7 months after the alleged incident he is "unable to confirm the events described in the Statement" that he made to the Police, the Court accepts it as a withdrawal of that Statement. The Court must now consider whether the Applicant is a fit and proper

candidate for bail upon considering other evidence which may or may not rise to the level of cogent evidence, and upon consideration of the other factors set out in Sections 3, 4, 5 and 6, Parts A and C of the Schedule of the Bail (Amendment) Act 2011 (**"the Act"**).

Evidence of the Virtual Complainant ("VC")

7) The evidence of the VC is, in part:

I saw Steffon sleeping on a bed across from me and Shemar Moss approached me in the bed and asked me if he could bongie me. I was lying on my stomach because he was trying to have anal sex with me and he kept saying "let me bongie you, let me bongie you", then Shemar pulled out the black handle kitchen knife and told me to shut the F up and stop talking. So I shut up and stopped taking. He took my Iphone from me. I beg him to give it back to me. He kept asking for the code and demanded that I give the code to my phone. All this time I was still in bed. I was in fear for my life when Shemar pull a knife out on me. I do remember going out with a black lace panty on. But while laying in the bed I didn't have any underwear on. I don't know where it is now . I was still laying on my stomach and I was wearing a tampon and Shemar took it out of my vagina and had sexual intercourse with me. He penetrated my vagina and I felt bad and uncomfortable. I begged him to stop. I asked him to stop multiple times. I said please don't do this to me. Shemar told me to shut the F up and take it. He slap me on my mouth, but it wasn't a hard slap. I don't know if he was wearing a condom or if he ejaculated. Shemar got off me and told me to get out of the room. He told me to leave and he said you ain't getting this phone back, carry your ass." I ran out of the room and went to Bell Channel...

The Respondent

8) The Respondent objects to the grant of bail and relies on the Affidavit of Cpl. 3913 Harris Cash filed on 5 August 2025 which states, in part:

- a. That on the 26 June 2025 the Applicant was arraigned in the Supreme Court before the Honourable Justice Andrew Forbes on the charge of Rape contrary to Section 6A of the Sexual Offences Act Chapter 99 and Armed Robbery contrary to section 339(2) of the Penal Code Chapter 84. A copy of the

- Voluntary Bill of Indictment is attached to the said Affidavit.
- b. That the trial date is set for 27 July 2026 through 7 August 2026.
 - c. That there is cogent evidence against the Applicant mainly the Complainant and an eyewitness Othnell Clarke. Attached to the said affidavit are their Statements made to the Police.
 - d. That at the time of the commission of the alleged offences, the Applicant was on bail for the offences of murder and attempted murder, which was granted by Justice Andrew Forbes on the 1 November 2022. That on 4 October 2022 the Applicant was arraigned in the Supreme Court before Justice Andrew Forbes on the aforementioned charges, to which he pleaded not guilty. He was re-arraigned before Justice Andrew Forbes on 20 May 2025 where he again pleaded not guilty to the charges. A trial date has been set for 12 April 2027 to 23 April 2027. A copy of the Voluntary Bill of Indictment is attached to the said Affidavit.
 - e. That on 5 June 2023, the Applicant was arraigned before Acting Deputy Chief Magistrate Charlton Smith on the charge of Robbery with Violence. This matter remains pending before the Magistrate Court. A copy of the Magistrate Court docket is attached to the said Affidavit. On 31 August 2023 the Applicant was granted bail by this Court. A copy of the Bail Bond is attached to the said Affidavit.
 - f. That, contrary to his statement in paragraph 1 of his said Affidavit, the Applicant has antecedents. A copy of the Applicant's antecedents is attached to the said Affidavit and consists of the following:
 - i. 12.03.19 Possession of an Unlicensed Firearm;
 - ii. 12.03.19 Possession of Ammunition;
 - iii. 28.01.21 Fighting.

Submissions

- 9) Mr. Sean N. Smith, Counsel for the Crown, submits, in part, that the issue to be determined is whether or not the Applicant is a fit and proper person for bail,

having regard to the factors listed in the Bail Act as amended. He referred the Court to Section 4(2) and Part A of the First Schedule and Section 4 (2B) of the Act and submits that the test as pronounced by the Court of Appeal in a gamut of their recent judgments is whether the Crown has produced evidence that shows that the Applicant if released on bail would not appear for trial, commit an offence on bail or interfere with prosecution witnesses.

- 10) That as the Applicant is charged with Part C offences as outlined in the Act, and the need to protect the safety of the VC is to be a primary consideration of the Court in determining whether to grant bail.
- 11) That the Court is also mandated to consider the nature and seriousness of the offence and the nature and strength of the evidence. There can be no doubt that Rape and Armed Robbery are very serious offences.
- 12) It is submitted, that when the Applicant was arraigned before Justice Andrew Forbes on 26 June 2025, on Rape and Armed Robbery, he was already on Bail for the offences of Murder and Attempted Murder.
- 13) Thus, the Respondent further submits that if granted bail, it is likely that the Applicant will commit another offence while on bail.
- 14) It is submitted that it is the Court's overriding duty to protect the public from persons like the Applicant who may take advantage of the bail facilities to commit as many crimes as they can before they are finally brought to justice.
- 15) It is further submitted, that there has been no unreasonable delay in this matter as the trial is set to commence on 27 July 2026, before Justice Andrew Forbes.
- 16) The Respondent contends that Section 4(2A) of the aforementioned Act

provides that a reasonable time is a period of three (3) years from the date of arrest or detention of the person charged.

- 17) Having considered the relevant factors, the Court must then ask itself whether there are any conditions that can be imposed that may mitigate these concerns. It is submitted that there none.
- 18) Further, in support of the Respondent's submissions, the Crown relies on the case of ***Duran Neely vs. Attorney General SCCrApp. No.29 of 2018***. In that judgment, the Honourable ***Justice Evans*** stated in ***paragraph 19*** that ***"it is important that the court hearing the application review the evidence available at the hearing. It is a well-accepted principle that the serious nature of a charge and the cogency of the evidence is a material consideration when determining the proper exercise of the discretion to grant bail."***
- 19) Additionally, in the case of ***Jonathan Armbrister vs. The Attorney General SCCrApp No. 145 of 2011*** the Honourable ***Justice John*** stated at paragraph 13 ***"The seriousness of the offence with which the accused is charged and the penalty which it 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 in the scale against bail."***
- 20) Further, in the case of ***Cordero McDonald vs. The Attorney General SCCrApp. No. 195 of 2016*** the Honourable Justice ***Dame Anita Allen***, then President of the Court of Appeal stated at paragraph 34:

"it is not the duty of the judge considering a bail application to

decide disputed facts or law . Indeed, it is not expected that on such an application the 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 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."

21) Finally, the Crown relies on the case of **Treyvar Taylor SCCrApp. No. 139 of 2024**. In this case, the appellant was charged with Armed Robbery, Receiving, and Possession of a forged Currency Note, while on bail for the offences of Murder and Attempted Murder. In dismissing the Appellant's application for bail the Honourable Mr. Justice Turner JA stated at paragraph 36 ***"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."***

22) That having regard to the aforementioned, it is submitted that the evidence in this matter raises a reasonable suspicion of the commission of the offences by the Applicant to justify the deprivation of his liberty pending the outcome of his trial.

23) In her Response to Mr. Smith, Ms. Cassie Bethel, Counsel for the Applicant submits that, having regard to all of the circumstances of the case, the issue is whether the Applicant is a fit and proper candidate for bail. She referred the Court to Section 4 of the Act, and submits that s.4(2)(a) which deals with the unreasonableness

time and s. 4(2)(c) which requires the court to perform a balancing exercise having regard to the First Schedule relevant factors are alternative routes to the grant of bail. That the unreasonableness (or otherwise) of time that has elapsed since the applicant was charged is not a factor for this court to consider in the exercise of its discretion in determining whether or not bail ought to be granted.

24) In support of this submission, the Applicant relies on the Court of Appeal decision in ***Damargio Whymys vs. The Director of Public Prosecutions SCCrApp No. 148 of 2019***, where at paragraph 45 it states:

45. As we see it, the fact that there has been no unreasonable delay

in the matter proceeding to trial can never be placed in the scales against an applicant for bail and weighed together with all the relevant factors to be taken into account when a judge is exercising the statutory discretion under section 4(2)(c) whether to admit an applicant to pre-trial bail for a Part C offence. If it were otherwise, an applicant for bail who is otherwise a suitable candidate for bail, might find himself wrongfully kept on remand simply because there has been no unreasonable delay in the progress

of his matter to trial. This would be unfair to the applicant and clearly

wrong. The two discretions are separate and distinct and should not

be conflated. Depending on the evidence, they may both arise for consideration in the same application, but a "finding" that there has been no unreasonable delay ought never to be taken into account

as "a relevant factor" when a judge is exercising his or her discretion

under section 4(2)(c).

25) Ms. Bethel then referred the Court to the First Schedule of the Act, Part A and submits that the section sets out the relevant factors to be considered by the Court. That there are no substantial grounds for believing that if admitted to bail, the Applicant would fail to appear to face his trial.

26) That while she accepts that the nature and strength of the evidence, along with the seriousness of the offence are factors for the Court to consider as they give rise to an inference of flight, she further submits that that inference may be rebutted by other evidence placed before the Court.

27) In support of these submissions the Applicant relies on the case of ***Jeremiah Andrews vs. The Director of Public Prosecutions*** SCCrApp No. 168 of 2019 at paragraph 30 where it stated:

"These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. E.g the applicant's resources, family connections, employment status, good character and absence of antecedents."

28) That to rebut the inference of flight, we rely on paragraphs 11, 12 and 13(a) (though they are inadvertently labeled 1, 2 and 3(a) in the Applicant's Affidavit.

More specifically, he is a Bahamian male with two (2) children for whom he supports, while the Applicant is not a man of substantial means, prior to his incarceration he was gainfully employed at J.B.'s Mechanic Shop.

29)It is further submitted that there is no evidence that the Applicant will interfere with any prosecution witness nor otherwise obstruct the course of justice.

30)The Applicant submits that the Affidavit of Othneil Clarke affects the quality of the evidence upon which the Prosecution intends to rely. Notwithstanding that this is a prosecution witness, it is submitted that there is no property in a witness.

31)It is further submitted that the term interference with a witness involves interference with a witness by unlawful means, such as violence, bribery, threats or improper pressure. Consequently, there is no evidence that Mr. Clarke has made a complaint relative to this.

32)It is submitted that there is no evidence that the Applicant should be kept in custody for his own protection nor is he in custody under a sentence of a Court.

33)In response to paragraph 10 of the Respondent's Affidavit, we note the Applicant's Antecedent form which indicates previous convictions and the Applicant's paragraph 7 where it is averred that he has pending matters. In response to this, it is submitted that we rely on the Court of Appeal decision in ***Dennis Mather vs. The Director of Public Prosecutions SCCrApp No. 96 of 2020.***

34)In ***Mather***, the Crown produced a Criminal Records Antecedent Form which showed that the appellant had been convicted of possession of an unlicensed shotgun and possession of ammunition in 2011; and of fighting in 2008. There were four matters listed as, "PENDING": Assault with a Deadly Weapon and Shop breaking that were alleged to have occurred in 2016, Murder in 2018 and

Possession of a Firearm and of ammunition in 2019.

35)At paragraph 49 of *Mather*, their Lordships stated that, *"the fact that a person has been charged with one offence while he stands accused of having committed an earlier offence cannot provide support for a conclusion that a propensity to commit offences has been disclosed should the person be admitted to bail"*.

36)Notwithstanding the Appellant's previous convictions (for offences similar to this present Applicant) and pending matters, the Court of Appeal, having balanced the relevant factors and considering whether conditions may be imposed to ameliorate their concerns found that the Court below erred in refusing to grant bail and went on to grant bail on stringent conditions.

37)Further, we rely on the Court of Appeal Decision in ***Shaquille Culmer vs. The Director of Public Prosecutions*** SCCrApp No. 98 of 2020, an Appellant who had pending matters for serious offences including murder when he applied for bail. In this decision, Their Lordships opined that the fact that while on bail, the Appellant was compliant in that he in fact attended his court hearings, was evidence which supported the Appellant's case that he is not a flight risk.

38)We submit that this Applicant has no charge or conviction of violation of bail conditions, there is no revocation application pending and there is no evidence that he has been non-compliant in any way.

39)In the circumstances, we submit that when the Court performs the necessary balancing Act, the factors weigh in favour of the grant of bail with appropriate conditions.

40)In these circumstances, the Applicant prays that this Honourable Court accedes to the Application for the grant of bail and admit the Applicant to bail for the said offences.

Analysis and Discussion

41)The onus is upon the Crown to satisfy the Court that the Applicant ought not be granted bail and that the standard is on a balance of probabilities.

42)Articles 19(1)(a) and 20(2)(a) of the Constitution of The Bahamas guarantee that an individual is presumed innocent until he is proved or has pleaded guilty and the general right to liberty to the individual. Although personal liberty is guaranteed the law authorizes the taking away of that personal liberty upon reasonable suspicion of a person having committed a crime.

43)In **Hurnam v The State** (*supra*) Lord Bingham of Cornhill stated, inter alia;

The interest of the individual is of course to remain at liberty, unless or until he is convicted of a crime sufficiently serious to justify deriving him of his liberty. Any loss of liberty before that time, particularly if he is acquitted or never tried, will inevitably prejudice him and, in many cases, his livelihood and family. But the community has a countervailing 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 further offences.

44)Parliament has set general standards for the Court's consideration when deciding the issue of bail. So far as is applicable in the instant case the Act at Section 4 (2) 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 purposes of subsection (2) (a) and (b)-

(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 of primary considerations.

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.*

Trial within a Reasonable Time

45)Section 3(2) (A) (a) of the Act provides:

2(A) For the purpose of subsection (2)(a) and (b)— (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;

46)Evans, JA states at paragraph 17 of his Judgment in **Duran Neely v The Attorney General** (supra) that:

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.

47)Section 4(2) (a) of the Act requires the Court to consider whether there has been such unreasonable delay as would justify the Applicant being admitted to bail because his right to a fair trial is threatened. The trial date has been set for 12 April 2027 through 23 April 2027. The Applicant was charged in January of 2025, filed his bail application on 12 March 2025 and filed this bail application on 20 June 2025. His time on remand has not been inordinate, unjustified or unfair at this time. There has been no unjust delay.

Character or Antecedents of the Applicant

48)According to the Affidavit evidence the Applicant has 3 convictions, Possession of an Unlicensed Firearm and possession of Ammunition 6 years ago and fighting 5 years ago. The possession of an unlicensed firearm and ammunition are serious offences which tend to suggest that the Applicant is not of good character.

Likelihood that the Applicant Will Abscond

49) In **Hurnam v The State** (supra) Lord Bingham of Cornhill stated, inter alia;

It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have an incentive to abscond or interfere with witnesses likely to give evidence.

50) Similarly in **Johnathan Armbrister v The Attorney General** (supra), John JA (as he then was) stated inter alia: *"indubitably, the right to bail in article 19(3), trumps the sufficiency of any of the prescribed grounds in Part A which might ordinarily negate the grant of bail"*, and he went on to say: *"the strict rules of evidence are inherently inappropriate in deciding the issue whether bail ought to be refused..."*

51) Armed Robbery and Rape are offences serious in nature. Upon conviction for these offences the Court may impose a sentence of imprisonment for a substantial amount of years. It follows therefore that the Applicant facing these serious charges, for which he is liable to a severe penalty, if convicted, has an incentive to abscond and not appear for trial. However, though the Court takes note that the Applicant is charged with a serious offence, the Court is cognizant that he is innocent until proven guilty. As a result of this the Court adopts the view held in the case of **Jonathan Armbrister** which demonstrates that bail is not to be withheld merely as punishment.

52) Counsel for the Crown referred the Court to paragraph 34 in **Cordero McDonald v. The Attorney General** (supra), and the Judgment of Allen P., as she then was, where she explained the extent of the judge's task in relation to the evidence which is adduced before the Court on a bail application. The Court concludes, based on the prima facie evidence adduced by the Virtual Complainant in her Statement to the Police, that there does in fact exist a reasonable suspicion of the

commission of the offences by the Applicant.

Interfering with Witnesses or Otherwise Obstructing the Course of Justice

53) While it is true that the Board did express the view that the seriousness of the offence and the severity of the penalty may be an incentive to interfere with witnesses, the Board in the case of *Hurnam (supra)* also expressed the view that there must be reasonable grounds to infer that there is a likelihood of interference with witnesses or obstruction of the course of justice. In this regard, Lord Bingham stated: "... ***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.***"

54) The Court of Appeal in the case of **Jonathan Armbrister v The Attorney General** (*supra*), another case relied upon by the Crown, John JA at paragraph 11 stated:

11. A good starting point in reviewing the principles applicable where an appellant has been charged but not yet put on trial is the statement of Lord Bingham of Cornhill in Hurnam v The State (Supra) where he said at paragraph 1: "In Mauritius, as elsewhere, the courts are routinely called upon to consider whether an unconvicted suspect or defendant should be released on bail, subject to conditions, pending trial... But the community has a countervailing 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 further offences.

55)According to the evidence of the Virtual Complainant she is known to the Applicant.

The Virtual Complainant states in her Statement to the Police that she had had a sexual relationship with the brother of the Applicant, Steffon Moss, who is charged with Abatement of the Rape herein, and that she had known the Applicant for about 2 years. The VC stated in her Statement that the Applicant was armed with and threatened her with a knife and a knife and cellphone was recovered at the scene. Under these circumstances, this Court finds that it is probable that the Applicant may interfere with the prosecution witnesses if he is released on bail.

Nature and Seriousness of the Offence

56)As indicated earlier, the allegations of Armed Robbery and Rape are serious in nature. In the event that the Applicant is convicted of these offences there is a possibility that the maximum sentences may be imposed. The seriousness of the offence and the severity of the punishment may be viewed as an incentive for the Applicant to abscond and not return for his trial in the event that he is released on bail.

57)This Court accepts that the hearing of a bail application is not the appropriate place for assessing or determining the strength or weaknesses of the evidence that the Prosecution proposes to present at trial. The Court of Appeal expressed this view in the case of the **A.G. v Bradley Ferguson** SCCrApp Nos. 57,106,108,116 of 2008 Osadebay JA as he then was, said at page 61 of the Judgment:

It seems to me that the learned judge erred in relying on his assessment of the probative value of the evidence against the respondent to grant him bail. That is for the jury at the trial. As stated by Coleridge J. in Barronet's case earlier- the defendant is not detained because of his guilt but because there are sufficient probable grounds for the charge against him, so as to make it

proper that he should be tried and because the detention is necessary to ensure his appearance at trial.

58) This Court is guided by the Judgment of the Court of Appeal, and this Court therefore makes no findings on the probative value of the Witness Statement laid before it. This Court accepts that it is not the duty of a judge, during bail applications, to decide disputes of evidence as was seen in **Richard Hepburn v The Attorney General** SCCRAPP & CAIS No. 276 of 2014. This Court also accepts that whether the evidence against the Applicant is strong or weak is yet to be determined.

59) In the case of **Jevon Seymour v The Director of Public Prosecution** SCCrApp No. 115 of 2019, Crane-Scott JA at paragraphs 49 of the Judgment stated:

49. As Lord Bingham pointed out at paragraph 16 of the Board's decision in Hurnam, while recognizing that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding or re-offending, the European Court of Human Rights 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.'

The Court cannot ignore however, the provisions of Section 4 (2) Part A of the First Schedule of the Bail (Amendment) Act 2011 which states at subparagraph f that in considering whether to grant bail to a defendant, the court shall have regard to: ***"(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;"*** In this case the Applicant was on bail for murder and attempted murder at the time that he was charged with these

offences, which is a breach of this provision of the Act.

60)The Court also found instructive the Bail Judgment of Grant-Thompson, SJ in **Cristan Johnson v The Director of Public Prosecutions** 2024/CRI/bal/00029.

Conclusions

61)When deciding whether to grant or deny bail the Court has to perform a balancing act.

62)The Court has to consider the character and antecedents of an Applicant. The Applicant has serious antecedents and was on bail for murder and attempted murder when charged with the current offences.

63)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 facts and circumstances of each case is different and needs an individual assessment.

64)In considering all the circumstances relevant to this hearing, I find that the Respondent has satisfied me that this Applicant ought not to be granted bail pending his trial and in the interest of justice, I exercise my discretion and refuse the grant bail at this time for the following reasons:

- (i) Armed Robbery and rape are serious offences but they are offences for which bail can be granted.
- (ii) There is prima facie evidence against the Applicant. A knife and cellphone were recovered at the scene. The Court accepts that this competing evidence must however be vetted at trial not in a bail application but I also accept that the evidence raises a reasonable suspicion of the commission of the offences by the Applicant to justify the denial of bail.

- (iii) Because of the nature and seriousness of the offence and the cogency of the prima facie evidence the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to abscond and that he may interfere with the witnesses.
- (iv) There is no evidence before me that there has been any unreasonable delay in this case.
- (v) Due to the fact that the Applicant has antecedents of a serious nature and was on bail for serious charges when charged in this matter, I am satisfied that there is a real likelihood that he will commit an offence if put on bail again.
- (vi) It does not appear that the Applicant should be remanded in custody for his own protection or to protect the public order.

Disposition

65) Bail is denied at this time.

This: 28th day of August A.D. 2025


Petra M. Hanna-Adderley
Judge

