IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

2014/CRI/BAL/00084

Between

GLENARDO JOHNSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Honourable Madam Justice Guillimina Archer-Minns
Appearances:	Mr. Glenardo Johnson, *pro se* Mr. Basil Cumberbatch for the Respondent
Hearing Date(s):	13 August 2025

DECISION ON BAIL

CRIMINAL LAW – BAIL – THE CONSTITUTION – BAIL ACT, CHAPTER 103 – APPLICATION FOR ADMISSION TO BAIL – MURDER CONTRARY TO SECTIONS 290(1) AND 291(1)(b) OF THE PENAL CODE, CHAPTER 84 – WHETHER THE APPLICANT IS A FIT AND PROPER CANDIDATE FOR ADMISSION TO BAIL AT THIS TIME

Archer-Minns J:

Introduction

[1.] Glenardo Johnson (D.O.B: 8 April 1996), the Applicant named herein, is a 29-year-old Bahamian citizen who has been arrested, charged, and is currently remanded at The Bahamas Department of Correctional Services in reference to VBI No. 34/01/2024. It is alleged that the Applicant murdered Giovanni Lafleur (the "deceased") on 4 October 2022 (the "murder offence").

[2.] The Applicant initially applied for admission to bail for the murder offence before the Court and was denied admission to bail by a written ruling dated 2 August 2023 (the "First Bail Application"). This application was made by way of The Bahamas Department of Correctional Services Bail Request Forms dated 3 April 2023. The Respondent opposed the application by way of the Affidavit of Inspector Jermaine Toote, Administrative Inspector attached to the Central Intelligence Bureau of the Royal Bahamas Police Force, dated and filed on 3 July 2023 (the "Toote Affidavit"), and the Affidavit of Carmen Brown, Counsel and Attorney-at-Law attached to the Respondent's Office, dated and filed on 4 July 2023 (the "Brown Affidavit").

[3.] The Applicant made another application for admission to bail for the murder offence and was denied admission to bail by the Honourable Mr. Justice Neil Braithwaite ("Braithwaite J") by way of a written ruling dated 21 January 2025 (the "Second Bail Application"). The application was made by way of a Summons dated 15 November 2024. The Summons was supported by an Affidavit sworn by the Applicant dated 14 November 2024 (the "Johnson Affidavit"). The Respondent opposed the application by way of the Affidavit of Tylah Murray, Counsel and Attorney-at-Law attached to the Respondent's Office, dated and filed on 2 December 2024 (the "Murray Affidavit"). The Murray Affidavit exhibited, among other things, the Brown Affidavit.

[4.] The Applicant has moved the Court on a third application for admission to bail for the murder offence by way of The Bahamas Department of Correctional Services Bail Request Form dated 23 April 2025 (the "present application").

[5.] The Respondent has opposed the present application and relied upon its previous affidavit evidence, namely, the Toote Affidavit, the Brown Affidavit, and the Murray Affidavit.

[6.] On 13 August 2025, the Court heard the parties on the present application, reviewed the Respondent's respective affidavit evidence, and promised to deliver its decision on the present application on 17 September 2025. This ruling serves as the Court's decision on the present application. For reasons which will be detailed below, the Court is satisfied that the Applicant is not a fit and proper candidate for admission to bail at this time. The present application is hereby refused. The Applicant is to continue his remand at The Bahamas Department of Correctional Services pending his trial date and/or any date preliminary thereto. The Respondent is hereby ordered to expedite the Applicant's trial with haste to ensure that the Applicant's trial for the murder offence proceeds no later than the first quarter of 2026. If the Respondent fails to have the Applicant's trial for the murder offence heard no later than the first quarter of 2026 and/or should the Applicant's circumstances change in the interim, the Applicant is at liberty to make an application to the Court for reconsideration of admission to bail.

The Applicant's Submissions

[7.] The Applicant, through his oral submissions, advanced, in part, that –

i. he has been incarcerated since 2 December 2022;
ii. he has been at The Bahamas Department of Correctional Services for 2 years and 9 months;
iii. he has no previous or pending matters;
iv. the murder offence is his only pending matter before the Court, and that he is innocent;
v. he was to work from 7:00 am on the date the murder offence occurred, and the deceased was killed at 9:00 am;
vi. he cannot be two places at the same time;
vii. his former employer now has Alzheimer's disease;
viii. he has seen the camera footage, and the person who killed the deceased is taller than him and does not have his build;
ix. he does not drive;
x. he catches the bus;
xi. he was out east, particularly Queen's Road, from 7:30 am on the date the murder offence occurred;
xii. he was incarcerated before for a similar offence for which he was exonerated;
xiii. he was convicted of murder and spent seven years in jail for something he did not do;
xiv. he has been trapped again for something he did not do, and he has to be released to prove his innocence;
xv. the prosecution has contradictory evidence, namely, that the anonymous witness stated that he entered the bus on Robinson Road and the juvenile witness stated that no one entered the bus;
xvi. he was picked out on an identification parade for something he did not do;
xvii. Robinson Road has CCTV cameras, which could prove whether or not he entered the bus;
xviii. everyone knows who killed the deaceased;
xix. Dirty South killed the deceased;
xx. to prove his innocence, he gave the police his cellular phone; and
xxi. he also lives ten houses down on Key West Street, and CCTV cameras are all along Key West Street.

The Respondent's Affidavit Evidence

[8.] The Respondent, in the Toote Affidavit, averred, in part, that –

i. the Applicant has been under surveillance by the Central Intelligence Bureau of the Royal Bahamas Police Force (the "Bureau") since 2012, when he was charged for an unrelated murder offence;

ii. the Bureau conducted inquiries with a view to establishing the Applicant's role, association and/or allegiance to any illegal gangs;
iii. since 2012, the Bureau has established that the Applicant is a member of the Mad Ass and Tiger Nation gangs, wherein he functions as a shooter/hitman;
iv. the Applicant is known by the street name, Cock Eye;
v. the Applicant's present charge for the murder offence and relating to the deceased, who is a senior lieutenant of the Fire and Theft gang of Nassau Village; and
vi. the Applicant is presently housed in cell four (4) of the G-Block, which is an area of The Bahamas Department of Correctional Services designated for members of the Tiger Nation gang.

[9.] The Respondent, through the Brown Affidavit, advanced, in part, that –

i. the Applicant appeared before Chief Magistrate Joyann Ferguson Pratt (as she then was) on 2 December 2022 in regard to the murder offence. The Chief Magistrate remanded the Applicant;
ii. the Applicant was previously convicted of murder, which was quashed on 6 December 2019 for failing to follow the Judges' Rules in regards to a juvenile interview;
iii. the Applicant is now accused upon reasonable suspicion of committing the murder offence to which the evidence is cogent. On 4 October 2022, at approximately 9:15 am, an anonymous witness entered the bus driven by the deceased. The witness sat behind the deceased. The witness observed when a male passenger wearing a dark coloured outfit, a grey hat and a lime green construction vest entered the bus. The witness recognized the Applicant's face because the Applicant was a regular commuter on that bus. The Applicant then sat at the back of the bus. The Applicant requested that the deceased stop the bus on the side of the road near Florida Court. The Applicant then walked to the front of the bus, produced a firearm, pointed it in the direction of the deceased and discharged it several times. The Applicant then exited the bus and walked north on Florida Court as if nothing had occurred. The witness also stated that when the Applicant, wearing a lime green construction vest, entered the bus, he got a good look at his face and recognized him as having taken the same route previously. The witness had the Applicant in his or her view for 5 to 10 seconds when the Applicant first entered the bus. The witness got a good look at the Applicant a second time when he was exiting the bus and before he put on his COVID-19 mask to disguise himself. There was nothing blocking the witness' view of the Applicant, and he was only 3 to 4 feet away from the Applicant. The last time the witness observed the Applicant was a week prior. On 29 November 2022, the witness went to CID, where he identified the Applicant at position No. 5 as the person he observed shoot the deceased on 4 October 2022;

iv. Francis Adderley, the Applicant's employer, stated that he could not account for the Applicant before 12:00 pm on 4 October 2022;

v. Latoy Moxey, a passenger on a Route 15A bus, reported hearing gunshots. He then observed a tall male about 6'0" to 6'2" walking on the street to the left of the bus. This male was wearing a lime green construction vest with dark clothing;

vi. Corporal 3827 Sawyer reported that on 28 November 2022, he went to the residence of the Applicant and collected one lime green construction vest from the Applicant's closet;

vii. Assistant Superintendent Altida Bowles conducted an identification parade with the Applicant standing in position No. 5 on 29 November 2022. The anonymous witness identified the Applicant at position No. 5 as the shooter of the deceased, shot on 4 October 2022;

viii. Sergeant 2688 Brian Coakley visited Shells Crafty Store on the morning of 4 October 2022 and collected video footage which showed a teal and blue bus stopped at the junction of Florida Court and Robinson Road. Moments later, he observed a male wearing a dark coloured outfit, a green fluorescent vest, and a hat exit the bus and travel north onto Florida Court. Sergeant 2688 Brian Coakley also conducted a Record of Interview where the Applicant at answer 8 stated, "I was to work from 7:30 am that morning";

ix. the need to protect the safety of the public or public order is a primary consideration in relation to bail. When the Applicant appeared before Chief Magistrate Joyann Ferguson-Pratt on 2 December 2022 in regard to the murder offence, he stated that, "I am in fear of my life. That man was a gang member, and his stepdad is a prison officer." The Applicant also stated that the deceased was the leader of the Fire and Theft gang. Therefore, the Applicant, if admitted to bail, may put unsuspecting citizens at risk by his mere presence;

x. the need to protect the Applicant's life by keeping him in custody for his own protection is a primary consideration of the Court. The Applicant stated that, "I am in fear of my life. That man was a gang member, and his stepdad is a prison officer." Based on the Applicant's own words, the need to keep him in custody for his own protection is a primary concern for the Court;

xi. the nature of the offence for which the Applicant is charged, the cogency of the evidence against the Applicant and the likely sentence he may receive if convicted give the Applicant an incentive to flee this jurisdiction. Also, if the Applicant is fitted with a monitoring device, the Court has no assurance that he will not tamper with it or completely remove it. The Applicant was previously subject to conditions and is now back before the Court. There is nothing peculiar about the Applicant's situation which suggests his continued detention is unjustified; and

xii. murder is a serious offence, and it is only in exceptional circumstances that a murder suspect is admitted to bail, the more so in Nassau because of its small jurisdiction, "the police, the prosecution authorities and

judges and magistrates are fully conscious of the fact that the law and order situation is everyday deteriorating ..." "We consider that judicial officers in Mauritius who have first-hand knowledge of the prevailing local conditions regarding law and order and organized crime should have a margin of appreciation in exercising their discretion and deciding on the need for a detainee to be admitted to bail..."

[10.] The Respondent, through the Murray Affidavit, advanced, in part, that –

i. the Respondent relies on the Ruling of Her Ladyship, The Honourable Madam Justice Guillimina Archer-Minns in Glenardo Johnson v Director of Public Prosecutions CRI/BAL/00084/2014 dated 2 August 2023, in which the Applicant's previous application for admission to bail was denied;

ii. the Applicant at paragraph 3 of his Affidavit stated that he has been on remand for 23 months thus far for the murder offence, and the trial is set to begin on 19 January 2027;

iii. the Respondent relies on section 4(2A)(a) of the Bail Act, Chapter 103, which states, "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.";

iv. the Applicant was arrested on Monday, 28 November 2022. It is currently 24 months later. The Applicant's detention is still within the 3-year marker of a reasonable time;

v. to ensure that the Applicant is tried within a reasonable time at the Applicant's next case management date on 19 February 2025, the Respondent will request that the Court give the Applicant an earlier trial date or interpose the Applicant's matter with another matter one in the 2025 calendar year;

vi. the Respondent further submits that if the Applicant is unable to be tried within 3 years from his arrest, a period of more than 3 years is considered unreasonable depending on the facts of each case. According to the Honourable Sir Michael Barnett JA in Kyle Farrington v Director of Public Prosecutions SCCrApp No. 80 of 2019, at paragraph 61, where he stated, "I respectfully agree with the views of Allen P in Richard Hepburn, where she said at paragraph 23: However, when one considers the authorities and indeed the wording of section 4(2A)(a), it is clear that what is a reasonable time must be determined on a case by case basis and without regard to the hard and fast rules or mathematical formulae;

vii. there is nothing peculiar about the Applicant's circumstances that would suggest that his continued detention is unjustified;

viii. the Applicant be kept in custody for his own safety and the safety of the public, considering the seriousness of the offence; and

ix. the Applicant for the above reasons is not a fit and proper candidate for admission to bail and, in the circumstances, should not be admitted to bail.

Issue

[11.] The issue that the Court must determine relative to the present application is whether the Applicant is a fit and proper candidate for admission to bail at this time.

Law and Discussion

[12.] As indicated, this is the Applicant's third application for admission to bail for the murder offence. Having that in mind, the Court takes judicial notice of the pronouncements made by The Bahamas Court of Appeal in **Michael Renaldo Mackey v Regina SCCrApp No. 288 of 2015; Edward Anwar Johnson v Regina SCCrApp No. 289 of 2015,** wherein The Bahamas Court of Appeal provided the Court with guidance on its role and duty in successive applications for admission to bail made by an accused person. As such, the Court, while considering the present application anew on its merits, has also given consideration and deference to the findings of fact made by the Court and Braithwaite J through their respective written rulings.

[13.] Bail refers to the right of the accused person to be released from custody pending trial and/or any date preliminary thereto, provided there are no substantial grounds existing for why such accused person ought not to be admitted to bail. The accused person, if admitted to bail by the Court, undertakes to appear for trial and/or any date preliminary thereto and to comply with all conditions (if any) that the Court may think fit and appropriate to impose, having regard to all of the circumstances of the particular case. Bail is not guaranteed. The grant or refusal of bail is within the sole discretion of the Court. However, such discretion must be exercised judiciously and not capriciously. The rule of law and administration of justice demand so. Bail is also not absolute. An accused person, at any time before or during his trial, is subject to having his bail revoked and/or the conditions (if any) relative thereto varied where there is sufficient and cogent cause for such revocation and/or variation.

[14.] The Court in **Ralph Joseph v The Director of Public Prosecutions 2023/CRI/BAL/00135** made the following observations regarding bail at paragraphs 12 and 13 –

> [12.] **Notwithstanding the public's perception regarding bail and the efforts of those who attempt to abuse or take advantage of the bail process, bail is not an exercise in futility. Bail is a difficult balancing exercise, which involves two important, but competing interests, namely, the accused person's fundamental constitutional rights and freedoms to the presumption of innocence and the protection from arbitrary arrest and detention, and the need of society to be protected from the criminal element: see Articles 19 (1) and (3) and 20 (2)(a) of the Constitution of the Commonwealth of The Bahamas.**
>
> [13.] The tension regarding bail was highlighted by *Allen P* in The Bahamas Court of Appeal decision of **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 276 of 2014.** *Allen P* at paragraphs 5 and 9 – 11 of the decision adumbrated as follows –

5. **Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed a crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction**.

9. Accordingly, bail is the right of a person charged with a criminal offence to be released from custody on his undertaking to appear for his trial at a specified time, and to comply with any conditions that the court may think fit to impose.

10. **The relevant law on bail is found in articles 19(3), 20(2)(a) and 28 of the Constitution, and in sections 3, and 4 of the Bail Act 1994, as amended ("the Act"). It is immediately apparent from the reading of those provisions that two distinct rights to bail are given, namely, a general right to an un-convicted person to be released on bail unless there is sufficient reason (Part A of the Schedule) not to grant it; and the absolute right of such a person to be released on bail if his constitutional time guarantee is breached or is likely to be breached**.

11. **The general right to bail clearly requires judges on such an application, to conduct a realistic assessment of the right of the accused to remain at liberty and the public's interest as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused person to remain at liberty, must give way to accommodate that interest**.

[Emphasis added]

[15.] The relevant law on bail is found in the Constitution of the Commonwealth of The Bahamas, the Bail Act, Chapter 103 and the common law. The Court had and continues to have the inherent jurisdiction to grant or refuse an accused person's admission to bail, even those charged with the most heinous offences. Notwithstanding, Parliament, in its wisdom, through sections 4(2) (2A) and (2B) of the Bail Act, Chapter 103, has provided the Court with guidelines it ought to consider before deciding whether to grant or refuse an accused person's admission to bail. The Applicant has moved the Court for admission to bail on the present application in relation to the offence of Murder. Murder is listed in Part C of the First Schedule of the Bail Act, Chapter

103. The Court, in determining the present application, had regard to the aforementioned provisions of the Bail Act, Chapter 103, which provides (insofar as relevant to the present application) as follows –

> 4. (2) **Notwithstanding any 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) repealed
> (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 whether the court makes an order for the release, on bail, of that person it shall include in the record a written statement giving reasons for the order of the release on bail.**
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> (2A) 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;**
> (b) 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 consideration.**
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> **Part A (of the First Schedule)**
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> **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) ...

(iii) **Interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other witness;**

(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) ...

(d) ...

(e) ...

(f) ...

(g) **the nature and seriousness of the offence and the nature and strength of the evidence against the defendant**; and

(h) ...

[Emphasis added]

[16.] The Court is cognizant that bail ought not to be withheld as pre-trial punishment, as the accused person has not yet been convicted of the offence (s) for which said accused person stands charged. Moreover, the Court is mindful that an accused person ought not to be kept in custody *ad infinitum* pending his trial and any date preliminary thereto. In refusing to admit an accused person to bail, the Court must have substantial grounds that the accused person, if admitted to bail, will abscond to avoid being punished if he is found guilty at his trial, interfere with witnesses, commit further offence while on bail, or otherwise seek to pervert the course of justice.

[17.] It need hardly be said that the burden rests on the Respondent, having regard to the Applicant's fundamental constitutional rights and freedoms, to satisfy the Court that the Applicant ought not to be admitted to bail. This burden is only discharged with the production of sufficient and cogent evidence. Naked, bare, or ritualistic affidavit averments by the Respondent without more are meaningless or fundamentally unfair to the Applicant and cannot stand: **see Johnathan Ambrister v The Attorney General SCCrApp No. 145 of 2011 and Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019**.

Tried within a reasonable time

[18.] It is the grundnorm of any democratic society that has an abiding respect for the rule of law, the administration of justice and the fundamental constitutional rights and freedoms of individuals that an accused person, who no doubt is cloaked with the presumption of innocence and the protection from arbitrary arrest and detention, ought to be afforded a fair hearing within a reasonable time. Time begins to run from the date of arrest or detention of the accused person. Justice, whether it be for the accused person, the victim, or society at large, demands that an accused person charged with a criminal offence, especially a serious criminal offence such as Murder, is tried within a reasonable time. It cannot be gainsaid that justice delayed is justice denied. The Court, as the sentinel of the fundamental constitutional rights and freedoms of

individuals in The Bahamas, even those charged with the most heinous criminal offences, jealously guards such fundamental constitutional rights and freedoms to ensure that they have not been, are being, or are likely to be violated. However, it must be understood that what amounts to a reasonable time varies and requires a case-by-case assessment. This is particularly true, provided the normal trajectory that it would take to get an accused person to trial from the point of arrest and detention in The Bahamas. Trials in the Supreme Court are being set some years ahead (even with the addition of additional criminal courts). This is the blunt reality of the state of affairs of the criminal justice system in The Bahamas.

[19.] Without limiting the extent of a reasonable time, Parliament has fixed, through section 4(2A)(a) of the Bail Act, Chapter 103, three years to be deemed a reasonable time within which a matter ought to proceed to trial. This statutory period is not a hard and fast rule or mathematical formula. It is a marker and not a limitation of what is deemed a reasonable time. Depending on the circumstances of each case, a reasonable time may be more, or indeed less, than three years. Section 4(2A) (a) of the Bail Act, Chapter 103, was interpreted by The Bahamas Court of Appeal in **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 276 of 2014**. In that decision, *Allen P* at paragraphs 23 – 27 adumbrated –

> 23. However, when one considers the authorities and indeed the wording of section 4(2A), it is clear that what is a reasonable time must be determined on a case by case basis and without regard to the hard and fast rules or mathematical formulae. Consequently, the deeming provision of section 4(2A) must be construed as a marker and not a limitation of what is a reasonable time, and the Court must still consider whether, in all of the circumstances, the time which has elapsed or will elapse between arrest and trial, is unreasonable.
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> 24. As noted, an applicant under section 4(2) (a) or (b) must, imprimis, raise the presumption of unreasonable delay by establishing that the lapse in time in the circumstances is inordinate. This must be rebutted by the State in demonstrating that there is a reasonable explanation for the delay for example, that the delay was caused by a lack of judicial and other resources; by systemic delays and backlogs; by the complexity of the trial; by the number of witnesses to be called, or the availability of crucial witnesses; or that the delay was caused by the conduct of the accused.
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> 25. The Court must balance the matters advanced by both sides and determine whether there has been, or is likely to be unreasonable delay in bringing the applicant to trial. Consequently, depending on the circumstances, a reasonable time may be more, or indeed less, than three years.
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> 26. In our view, simply offering the June 2017 trial date was not sufficient to demonstrate that the appellant was not likely to be tried within a reasonable time.
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> 27. Similarly, the evidence proffered by the respondent that the trial date was set for 2017 because of the backlog, or simply asserting that the matter was moving at a pace and there was no unreasonable delay thus far, would not have been

sufficient to rebut the presumption, had the appellant succeeded in raising it. In these circumstances, we do not find that the appellant's right pursuant to article 19(3) and section 4(2)(a) and (b) of the Bail Act was triggered.

[20.] In the Judicial Committee of His Majesty's Privy Council decision of **Herbert Bell v The Director of Public Prosecutions [1985] AC 937**, a decision emanating from the Commonwealth of Jamaica and which was referenced by The Bahamas Court of Appeal in **Richard Hepburn v The Attorney General SCCrApp & CAIS No. 276 of 2014**, *Lord Templeman*, writing for the Board, provided guidance for the Court when balancing the fundamental constitutional right and freedom of the accused person to be tried within a reasonable time against the public interest. At page 953 of that decision, *Lord Templeman* enumerated –

> Their Lordships accept the submission of the respondents that, in giving effect to the rights granted by sections 13 and 20 of the Constitution of Jamaica, the courts of Jamaica must balance the fundamental right of the individual to a fair hearing within a reasonable time against the public interest in the attainment of justice in the context of the prevailing system of legal administration and the prevailing economic, social and cultural conditions to be found in Jamaica. The administration of justice in Jamaica is faced with a problem, not unknown in other countries, of disparity between the demand for legal services and the supply of legal services. Delays are inevitable. The solution is not necessarily to be found in an increase in the supply of legal services by the appointment of additional judges, the creation of new courts and the qualification of additional lawyers. Expansion of legal services necessarily depends on the financial resources available for that purpose. Moreover, an injudicious attempt to expand an existing system of courts, judges, and practitioners could lead to the deterioration in the quality of justice administered and to the conviction of the innocent and the acquittal of the guilty. The task of considering these problems falls on the legislature of Jamaica, mindful of the provisions of the Constitution and mindful of the advice tendered from time to time by the judiciary, the prosecution service, and the legal profession of Jamaica. The task of deciding whether and what periods of delay explicable by the burdens imposed on the courts by the weight of criminal causes suffice to contravene the rights of particular accused to a fair hearing within a reasonable time falls upon the courts of Jamaica and, in particular, on the members of the Court of Appeal who have extensive knowledge and experiences of conditions in Jamaica.

[21.] *Evans JA (Actg.) (as he then was)* in The Bahamas Court of Appeal decision of **Duran Neely v The Attorney General SCCrApp No. 29 of 2018** at paragraph 17 provided the following caution –

> 17. 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 person 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.

[22.] The Bahamas Court of Appeal decision of **Kyle Farrington v The Director of Public Prosecutions SCCrApp No. 80 of 2019** lends helpful assistance to the Court in determining the present application and considering whether the Applicant can be tried within a reasonable time. In that decision, The Bahamas Court of Appeal admitted the appellant, an accused person charged jointly with the offences of murder, stealing and receiving, to bail where he would have been incarcerated for 3 ½ years if he was denied admission to bail and further remanded until his trial. *Barnett JA (as he then was)* at paragraph 119 adjudged –

> 119. It is a grave matter to deprive a person, presumed innocent, of his liberty for a period of 3 ½ years awaiting trial. **Without undermining the safety of the public and/or facilitating a person to gainsay the system by schemes, the courts must protect a person's right to personal liberty.**
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> [Emphasis added]

[23.] The Applicant advanced, through his oral submissions, that he has been incarcerated at The Bahamas Department of Correctional Services since 2 December 2022. The Applicant further advanced that he has been at The Bahamas Department of Correctional Services for 2 years and 9 months. It is to be noted, from the Murray Affidavit, that the Applicant was arrested for the murder offence on 28 November 2022. The Applicant was formally charged and remanded for the murder offence on 2 December 2022. The Applicant has a Backup Trial Date and Fixed Trial Date in relation to the murder offence for 29 June 2026 and 25 January 2027, respectively. Mathematically speaking, the Applicant has been incarcerated for 2 years, 9 months, and 21 days from the date of his arrest for the murder offence and 2 years, 9 months and 16 days from the date he was formally charged and remanded for the murder offence. If the Applicant were to remain in custody pending his Backup Trial Date and/or Fixed Trial Date, the Applicant would be incarcerated for 3 years, 7 months, and 2 days, and/or 4 years, 1 month and 29 days, respectively.

[24.] The Applicant appeared before the Court on 19 February 2025 for Case Management, which revealed that the Applicant's matter for the murder offence is moving in the normal trajectory for matters of this kind. In reference to the Applicant's matter for the murder offence, the Court notes that the pathologist's report remains outstanding. The Court takes judicial notice of the restraints and mass volume of matters facing the Rand Morgue at the Princess Margaret, Nassau, The Bahamas and its sole pathologist, Dr. Caryn Sands. Moreover, at the present moment, the Respondent seeks to rely on the evidence of an anonymous witness to link the Applicant to the commission of the murder offence. It is from the testimony of this anonymous witness that the prosecution's case against the Applicant may stand or fall. The Court notes that no application has been made, as yet, by the prosecution for a witness anonymity order. Even so, the Court takes judicial notice that despite the aggressive efforts being made, the courts in The Bahamas, at the

present moment, do not have the facilities to accommodate anonymous witnesses in criminal proceedings.

[25.] Notably, while having regard to the State (which also includes the courts in The Bahamas), its institutional facilities and the restraints thereof, the Court is also mindful that the fundamental constitutional rights and freedoms of accused persons should not be at the mercy of inefficiency. The fundamental constitutional right and freedom of an accused to be afforded a fair hearing within a reasonable time demands urgency and the provision of adequate resources. The administration of justice demands nothing more and nothing less. However, in determining whether an accused person's fundamental constitutional right and freedom to be afforded a fair hearing within a reasonable time has been, is being, or is likely to be infringed, the Court must also have regard to the economic realities and local conditions. It is a difficult but necessary balancing exercise. Once more, this is the blunt reality facing the criminal justice system in The Bahamas. Likewise, it is also incumbent on the prosecution to ensure that each criminal matter before the courts in The Bahamas is managed with due expedition and care.

[26.] Having regard to the relevant law, all the circumstances of the present application, and while mindful of the fast-approaching three-year marker period fixed by statute, which is not a hard and fast rule but rather a guideline as each case must be determine on its own set of circumstances, the Court is satisfied, at this time, that the Applicant is likely to be afforded a fair trial within a reasonable time. The Court urges the Respondent to expedite the Applicant's matter for the murder offence, so that it can be heard no later than the first quarter of 2026.

Seriousness of the offence and likelihood to abscond

[27.] It is now well-recognized that the seriousness of the offence, while a material consideration, is not a stand-alone factor for the Court to consider when deciding whether to grant or refuse an accused person's admission to bail. The seriousness of the offence factor is now coupled with several other factors, namely, the strength and cogency of the evidence, the penalty likely to be imposed upon conviction, and the likelihood of the accused person absconding before trial. *Evans JA (as he then was)* in The Bahamas Court of Appeal decision of **Jeremiah Andrews v The Director of Public Prosecutions SCCrApp No. 163 of 2019**, at paragraph 30 set forth the following observation –

> 30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the penalty 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 consideration of other relevant factors disclosed in evidence, e.g., the applicant's resources, family connection, employment status, good character and absence of antecedents.

[28.] The Applicant stands charged with Murder. Murder is a profoundly serious offence. It is regarded as the ultimate offence against the person. Murder demonstrates, on the part of the particular offender, a wilful and blatant disregard for human life. The murder offence involved the use of a firearm and occurred on a public bus during the peak hours of the morning, while the deceased, a public bus driver, was performing his duties. The manner in which the murder offence was carried out can only be described as callous and calculating. Offences such as Murder have grave implications on the economic stability, social development, national security, and health care system in the Commonwealth Caribbean, including The Bahamas. Regionally, The Bahamas and the wider Commonwealth Caribbean continue to grapple with the influx of homicides, with firearms being the predominant weapon of choice.

[29.] Naturally, in cases involving murder, the seriousness of the offence weighs heavily against the grant of admission to bail: **see Johnathan Ambrister v The Attorney General SCCrApp No 145 of 2011**. However, while murder is regarded as a profoundly serious offence, it is not within itself a sufficient reason to refuse bail, given the law as it currently stands. The Court cannot refuse bail solely because an accused person has been charged with murder (not convicted of murder) without more convincing reasons to do so. Each case must be determined on its own facts and merits.

[30.] While no direct evidence has been led by the Respondent to demonstrate that the Applicant would not appear for his trial, the possible penalty which may be imposed upon the Applicant should he be convicted of the murder offence raises the reasonable inference of the likelihood of the Applicant not appearing for his trial. The Court, having regard to all the circumstances of the present application, is not satisfied that the inference may be weakened.

Strength and cogency of the evidence

[31.] The Court has a limited role in an application for admission to bail, that is, to determine whether there has been produced sufficient evidence, by the Respondent, to link the Applicant to the commission of the offence for which he is seeking admission to bail. The Court hearing an application for admission to bail is not to weigh up the evidence that may be adduced in a trial. Applications for admission to bail are not forums for mini-trials. Any potential challenges to the evidence tendered are best reserved for trial. The Court's duty in an application for admission to bail was adeptly summarized by *Allen P* in The Bahamas Court of Appeal decision of **Cordero McDonald v The Attorney General SCCrApp No. 195 of 2016**. At paragraph 34 of that decision, *Allen P* expounded –

> 34. It is not the duty of the judge considering a bail application to decide disputed facts or law. It is not expected that on such an application a 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 offence by the appellant, such as 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.

[32.] Having reviewed the evidence placed before the Court, the Court is satisfied that the evidence raises a *prima facie* case against the Applicant, which links him to the commission of the murder offence, such as to justify the deprivation of his liberty by arrest, charge and detention. The Applicant was identified by an anonymous witness as the individual wearing a dark coloured outfit, a grey hat and a lime green construction vest who shot and killed the deceased on 4 October 2022. The Applicant's employer, Francis Adderley, cannot account for the Applicant during the time the murder offence occurred. Latoy Moxey, a passenger on a Route 15A bus, reported hearing gunshots. He then observed a tall male about 6'0" to 6'2" walking on the street to the left of the bus. This male was wearing a lime green construction vest with dark clothing. Corporal 3827 Sawyer reported that on 28 November 2022, he went to the residence of the Applicant and collected one lime green construction vest from the Applicant's closet. Sergeant 2688 Brian Coakley visited Shells Crafty Store on the morning of 4 October 2022 and collected video footage which showed a teal and blue bus stopped at the junction of Florida Court and Robinson Road. Moments later, he observed a male wearing a dark coloured outfit, a green fluorescent vest, and a hat exit the bus and travel north onto Florida Court. Sergeant 2688 Brian Coakley also conducted a Record of Interview where the Applicant at answer 8 stated, "I was to work from 7:30 am that morning".

[33.] The Applicant, through his oral submission, advanced, *inter alia,* that he is innocent, he has an alibi, his employer now has Alzheimer's disease, the anonymous witness is lying, and that he has seen the camera footage, and the person who killed the deceased is taller than him and does not have his build. In the Court's view, these are matters that must be properly ventilated and tested at trial, not on an application for admission to bail.

Interference with the safety of witnesses

[34.] There has been no direct evidence led by the Respondent to demonstrate that the Applicant would interfere with the safety of any of the prosecution's witnesses. The latter is rightfully so, as the predominant prosecution witness, at this time, is an anonymous witness. Notwithstanding that the anonymous witness may reside or frequent in the same close-knit community as the Applicant and word of mouth may get around to his or her identity, the Court is satisfied, at this time, that the identity of the anonymous witness is not at risk. In any event, the Court is satisfied that there are adequate measures that could be implemented to ensure the safety of the anonymous witness.

Character and antecedents

[35.] The Bahamas Court of Appeal, in the decision **Stephon Godfrey Davis v The Director of Public Prosecutions SCCrApp No. 108 of 2020,** highlighted the importance of the character and antecedent history of an accused person on an application for admission to bail. *Isaacs JA (as he then was)* at paragraph 28 of that decision, explained –

28. The antecedents of an application for bail are an important factor to be taken into account by a court considering the application. This record may provide a barometer for the likelihood of the applicant to commit other offences while on bail. Although a court is obliged to have regard to the antecedents of an application for bail, little weight should be given to offences that are trivial …

[36.] In The Bahamas Court of Appeal decision of **Dwayne Heastie v The Attorney General SCCrApp No. 261 of 2015**, *Isaacs JA (as he then was),* at paragraph 38, made the following observation –

38. When courts are considering the grant of bail for persons charged with murder, judicial notice may be taken of the number of persons who have been charged with murder and released on bail who have themselves become victims of homicide.

[37.] *Crane-Scott JA* in The Bahamas Court of Appeal decision of **Jevon Seymour v The Director of Public Prosecutions SCCrApp No. 115 of 2019** provided the Court with non-exhaustive examples for when considering whether an accused person, on an application for admission to bail, would be deemed a threat to public safety and public order if admitted to bail. At paragraph 68 of that decision, *Crane-Scott JA* espoused –

68. If the appellant was in fact a threat to public safety or public order, or if there was evidence of specific threats which had been made against witnesses, Perry McHardy's Affidavit should have included the necessary evidence of his propensity for violence for the judge's consideration. **Such evidence might have included, for example, any prior convictions (if any) for similar offences; or evidence of pending charges for violent or firearm offences; or again, evidence, for instance, of any known or suspected gang affiliation.** No such evidence was placed before the learned judge, and the absence of such evidence stood in stark contrast with the evidence which the appellant had placed before the judge of good character, strong family and community ties and the fact that he had a long and unblemished record of service within the RBDF.

[Emphasis added]

[38.] The Court notes, from the Brown Affidavit, that the Applicant was previously convicted of murder, which was quashed on 6 December 2019 for failing to follow the Judges' Rules in regards to a juvenile interview. Apart from the murder offence, the Applicant has no previous convictions or pending matters before any court in the Commonwealth of The Bahamas. Therefore, for the purposes of the present application, the Applicant is deemed to be a person of good character.

[39.] The Respondent, through the Brown Affidavit, advanced that the Applicant is not a fit and proper candidate for admission to bail at this time. The Respondent advanced that there is a need to protect public safety and public order. The Toote Affidavit advanced that the Central Intelligence Bureau of the Royal Bahamas Police Force has established that the Applicant is an alleged member of the Mad Ass and Tiger Nation gangs, wherein he functions as a shooter/hitman. The Applicant is known by the street name, Cock Eye. Further, the deceased was allegedly a senior lieutenant of the Fire and Theft gang of Nassau Village. Additionally, the Applicant is presently housed in cell four (4) of the G-Block, which is an area of The Bahamas Department of Correctional Services designated for members of the Tiger Nation gang. The Respondent urged the Court not to admit the Applicant to bail, contending that if the Applicant is admitted to bail, he may put unsuspecting citizens at risk by his mere presence.

[40.] The Respondent, through the Brown Affidavit, ultimately advanced that the Applicant ought to be kept in custody for his own safety and protection. The Respondent relies on a purported statement made by the Applicant when he was formally charged for the murder offence before Chief Magistrate Joyann Ferguson-Pratt (as she then was) on 2 December 2022. The Applicant purportedly stated that "I am in fear of my life. That man was a gang member, and his stepdad is a prison officer." The Applicant also stated that the deceased was the leader of the Fire and Theft gang. The Applicant, through his oral submissions on the present application, stated that "Everyone knows who killed the deceased. Dirty South killed the deceased."

[41.] The Applicant, on the other hand, maintains his innocence and denies committing the murder offence. The Applicant also advanced that he is being incarcerated for something he did not do and that he needs to be admitted to bail to prove his innocence.

[42.] The Court is satisfied that the present application goes beyond whether the Applicant would appear for his trial or would be tried within a reasonable time for the murder offence, but turns to whether he would be considered a threat to public safety and public order, and whether the Applicant should be kept in custody for his own safety and protection. Taking all of this into consideration, the Court is reasonably satisfied that the Applicant, if admitted to bail, would pose a grave threat to public safety and public order. Further, the Court is reasonably satisfied that the Applicant should be further remanded for his own safety and protection. The Court cannot ignore the manner in which the deceased met his demise, as well as the reliable evidence linking the Applicant to gang affiliation. The Court also cannot turn a blind eye to reliable evidence that the Applicant is accused of murdering the deceased, a purported and former lieutenant of a rival gang.

[43.] The Court takes judicial notice of the notorious fact that many accused persons charged with murder and subsequently admitted to bail themselves become victims of murder. The murder offence potentially has some linkage to gang activity. The possibility of retaliation is gravely heightened. The Court further takes judicial notice of the heightened number of unintended targets who become victims of homicide due to retaliatory killings. The murder offence already occurred on a public bus during the peak hours of the morning. The Court has an overriding duty to protect

public safety and public order. Public safety and public order are paramount. Public safety and public order outweigh the Applicant's right to the presumption of innocence and the protection from arbitrary arrest and detention. The Court simply cannot risk public safety and public order by admitting the Applicant to bail. The Applicant, if admitted to bail by the Court, may not only jeopardize his own life, but the lives of members of the public, who may find themselves as unintended targets of an attack by others on the life of the Applicant.

[44.] The Court is not satisfied that any effective conditions could be imposed, at this time, to assuage its concerns regarding the Applicant's own safety and protection, and the Applicant being a threat to public safety and public order, if he is admitted to bail.

Conclusion

[45.] The Court, having regard to the foregoing reasons, and all the circumstances of the present application, makes the following orders, that –

i. the Applicant is not a fit and proper candidate for admission to bail at this time;
ii. the present application is hereby refused;
iii. the Applicant is to continue his remand at The Bahamas Department of Correctional Services pending his trial and/or any date preliminary thereto;
iv. the Respondent is to expedite the Applicant's trial for the murder offence with haste to ensure that the Applicant's trial proceeds no later than the first quarter of 2026; and
v. should the Respondent fail to have the Applicant's trial for the murder offence heard no later than the first quarter of 2026, and/or should the Applicant's circumstances change in the interim, the Applicant is at liberty to make an application to the Court for reconsideration of admission to bail.

Dated this 17th day of September 2025

GUILLIMINA ARCHER-MINNS
Justice
Supreme Court of The Bahamas