**COMMONWEALTH OF THE BAHAMAS**
**IN THE SUPREME COURT**
**CRIMINAL LAW DIVISION**
**2025/CRI/bail/00027**

**BETWEEN**

**DAVAN BRENNEN**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

| | |
|---|---|
| **Before:** | **The Hon. Justice Neil Brathwaite** |
| **Appearances:** | **Mr. Murrio Ducille KC, Mr. Brian Bastian for the Applicant**<br>**Ms. Betty Wilson for the Respondent** |
| **Hearing Date:** | **6th October A.D. 2025** |
| **Ruling Date:** | **10th November A.D. 2025** |

# RULING ON BAIL

**[1.]** The Applicant stands charged with the offences of Murder, and Abetment of Murder, having been arraigned in the Magistrate's Court on 3rd February 2025. He is thirty-two years old and a Bahamian citizen, and was employed as a technician at ALIV prior to his incarceration. He has no previous convictions or other pending matters, and states that if denied bail he will be disadvantaged in his ability to prepare his defence and support his family, inclusive of one child. The Applicant accepts that he has previously been denied bail, but states that he has since been served with a Voluntary Bill of Indictment which he claims contains no evidence to support the charges. The affidavit in support also exhibits two references speaking to the good character of the Applicant. He therefore seeks to be released on bail pending his trial, and promises to abide by any conditions if granted bail.

**[2.]** In opposing the application, the Respondent filed the affidavit of Danielle Capron, Counsel in the Office of the Director of Public Prosecutions, which itself exhibits an affidavit of

Akire Nicholls, also Counsel in the Office of the Director of Public Prosecutions. The documents exhibited to those affidavits alleges that on 26th January 2025 Mario Brown, a reputed gang leader from the Kemp Road area, was murdered. Later that day, the Applicant, who lives in the Kemp Road area, is reported to have driven an ALIV van in a convoy of vehicles to various areas of New Providence. Portions of that journey were reportedly captured by CCTV footage. One of the areas was Finlayson Street, where men from one of the vehicles in the convoy emerged and fired a barrage of shots at young men in a yard, before the convoy left the area. Those shots resulted in the death of Philleria Sands, who was asleep in a car with her baby. The Applicant was interviewed under caution, and admitted knowing Mario Brown, and driving the van on the day in question to the areas in question, but denied being in a convoy or participating in any plan to avenge the death of Mario Brown, claiming that he was merely giving a ride to a friend who was with him, and who he claims also used the Applicant's phone to contact another male during that journey. That other male is Mario Stuart, who has also been charged with this murder, and who has had admitted being a lookout during the incident. The Applicant also stated that he did not initially know that other vehicles were following, but that his passenger told him that he knew who the other vehicles were and that they were with him.

**[3.]** Counsel on behalf of the Applicant submits that he is a person of good character, with no previous convictions or other pending matters, and that the evidence is not cogent, as the Applicant was simply in the wrong place at the wrong time. It was further submitted that while the van reportedly driven by the Applicant was seen, the Applicant himself was not seen. Counsel noted other instances where persons who were not even Bahamian citizens were granted bail and permitted to travel, so that there is no justification for the denial of bail to the Applicant, as he is not a flight risk, and has strong ties to this jurisdiction. It was further submitted that the receipt of the Voluntary Bill of Indictment since the previous refusal of bail amounted to a change in circumstances, as the Applicant is now fully aware of the weak nature of the case against him.

**[4.]** The Respondent submits that the evidence is cogent, and that the Applicant is alleged to have played a part in a retaliatory killing following the murder of a leading gang member. Notwithstanding the good character of the Applicant, it is submitted that bail should be denied in the interests of public order and safety. It was further submitted that the service of a Voluntary Bill of Indictment did not amount to a change in circumstances, with reliance placed on the decision of the learned Justice Fitzpatrick in Donald Ferguson v DPP 2025/CRI/BAL/04713. It was therefore submitted that there was no basis to arrive at a conclusion different that the one previously reached, and that bail should be refused.

## DISCUSSION

**[5.]** In my previous decision delivered on 16th April 2025, I said the following:

> **"[5.]** The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:
>
> "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 crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.
>
> 6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in Hurnam The State [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:
>
> "...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty". Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, 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..."
>
> **[6.]** At paragraph 11 she further noted that
>
> "The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public's interests 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 to remain at liberty, must give way to accommodate that interest."
>
> **[7.]** The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which states:
>
> ***"Every person who is charged with a criminal offence – (a) shall be Presumed to be innocent until he is proved or has pleaded guilty".***

**[8.]** Furthermore, Article 19(1)provides as follows:

**"19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-**
**(a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;**
**(b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
**(c) for the purpose of bringing him before a court in execution of the order of a court;**
**(d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
**(e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;**
**(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;**
**(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.**
**(2)...**
**(3) Any person who is arrested or detained in such a case as is mentioned in subparagraph (1)(c) or (d) of this Article and who is not released shall be brought without undue delay before a court; and if any person arrested or detained in such a case as is mentioned in the said subparagraph (1)(d) is not tried within a reasonable time he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon**

**reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial".**

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

**"4. (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)...**
**(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) ...**
**(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 to be primary considerations."**
**9. The factors referred to in Part A are:**
**"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.";**

**[10.]** In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

**[11.]** In considering those factors, I note that the Applicant is charged with serious offences, involving the use of firearms, and resulting in the death of what appears to be an innocent bystander. With respect to the seriousness of the offence, I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

**[12.]** In the Court of Appeal decision of ***Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011***, it was stated that:

> ***"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 in 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 the grant of bail".***

**[13.]** I note also **paragraph 30** of ***Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019*** where it states:

> ***"30. 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. eg the applicant's resources, family connections..***

**[14.]** No direct evidence has been provided that the Applicant will not appear for his trial. However, the likely penalty that could be imposed upon a conviction, in my view raises the issue of the likelihood of not appearing for trial.

**[15.]** That likelihood must be contrasted with the nature of the evidence against the Applicant. In ***Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016***, Allen P., at ***paragraph 34*** stated,

> ***"It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, 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 offences 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."***

**[16.]** In considering that evidence, I note the following statement from the Court of Appeal in ***Stephon Davis v DPP SCCrApp. No. 20 of 2023***:

"In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [11996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed."

**[17.]** In considering what has been placed before me, I am satisfied that circumstantial evidence exists upon which a prima facie case can be made out that the Applicant participated in these offences. I also note the admissions by the co-accused, and the use of the cell phone to contact that co-accused, reportedly by a passenger in the van of the Applicant. Whether it is believed that it was actually the passenger using the phone is a matter for trial, as is the issue of whether certain

admissions by the co-accused might be admissible against the Applicant as evidence in furtherance of a conspiracy, despite the rule that admissions of one defendant cannot be used against another.

## CONCLUSION

**[18.]** In considering the question of bail, the court is required to conduct a balancing exercise between the Applicant's right to liberty, and the need to protect the public. In conducting that exercise I accept that the charges in this case are extremely serious, and the evidence is sufficiently cogent, so that there is a risk of flight. However, the major concerns in this case are the danger to public safety, and the intimations that this killing of an innocent mother, and the danger to the young child and others, occurred as part of retaliation for a gang-related killing. I bear in mind the culture of retaliatory shootings that have occurred in this country, and I am therefore concerned that the Applicant poses both a danger to public order and safety, and that the Applicant himself would be in danger should he be released on bail, with further danger to the public who might be exposed to violence should the Applicant be attacked.

**[19.]** I also bear in mind the case of Dwayne Heastie v AG SCCrApp No. 261 of 2015 where the court said as follows: per Isaacs JA: "The learned judge ought to have had regard to Part A (b) of the Bail Amendment Act, to wit, whether the defendant should be kept in custody for his own protection, and concluded that in the present climate of apparent vigilantism in the country, the appellant should remain in custody for his own protection. 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. The appellant is alleged to have killed a family man of Haitian origin in an unprovoked attack where the man was seeking payment for work he had performed for the appellant. The events are of recent vintage and the emotions are quite raw. These circumstances make for a volatility which may only be defused by the continued detention of the appellant."

**[20.]** In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view those conditions would suffice to ensure the attendance of the Applicant at his trial, but they would not suffice to prevent preserve public order and safety, or to protect the safety of the Applicant."

## CONCLUSION

**[6.]** In considering the present application, I do not accept that there has been any material change in circumstances sufficient to change my views with respect to the bail application. The Voluntary Bill of Indictment has in fact been presented, and dates have been set for the trial of this matter, so that the matter is progressing. While counsel has insisted that the presentation of the VBI means that the Applicant now knows the case against him, and that the case is weak, the nature of the case was before this court on the earlier bail application, and was considered in arriving at the decision to refuse bail. It must further be again emphasized, as has been said above, that a bail application is not a trial, and the court is concerned only to ascertain whether a prima facie case exists. I am so satisfied, and remain satisfied that the Applicant should be refused bail in the interests of public order and safety, as well as the safety of the Applicant.

**[7.]** In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

**Dated this 10th day of November A.D., 2025**

**Neil Brathwaite**
**Justice**