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

TR

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Honourable Justice Petra M. Hanna-Adderley
Appearances:	Mr. Stanley Rolle for the Applicant
	Mrs. Ashley Carroll for the Respondent
Hearing Date:	12 and 17 March 2026

DECISION ON BAIL

Hanna-Adderley, J

[1.] The Applicant is a Bahamian male citizen. He is 36 years old having been born on 5 September 1989.

[2.] The Applicant is charged with 1 count of Rape contrary to Section 6 (a) of the Sexual Offences Act Chapter 99 of the Statute Laws of the Commonwealth of The Bahamas.

[3.] The Applicant was arraigned before S & C Magistrate Simone Brown on the 19 December 2025. The Applicant has not been served with a Voluntary Bill of Indictment and he has not been arraigned thus far in the Supreme Court.

The Applicant

[4.] In his Affidavit filed 25 February 2026 the Applicant states, in part, that:

a. He is a construction worker specializing in metal sheeting and roofing.
b. He denies the charge and states that if he continues to languish in Prison his family suffers.
c. He has no pending matters before the Court and was last granted bail in 2019 and he obeyed all bail conditions.
d. He has a few housebreaking and stealing convictions against his name.
e. He is the father of 1 child and has great responsibility for that child.
f. He is not a flight risk.
g. He is not a menace to society or a danger to the public.
h. All of his ties are to The Bahamas alone.
i. He will not interfere with the Prosecution witnesses or do anything to obstruct justice.
j. He is innocent of the allegations and will defend the same at the appropriate time.
k. He asks that the Court sets bail in a reasonable sum under $10,000.00 so that he and his family will not suffer economic hardship and beg for bread.

The Respondent

[5.] The Respondent objects to the grant of bail and relies on the Affidavit of R/Sgt 1087 Chester Walker filed on 9 March 2026 which states, in part, that the Applicant was scheduled to be served with his Voluntary Bill of Indictment on 11 March 2026 and subsequently arraigned before the Supreme Court. That the offence for which he is charged a very serious and there is cogent evidence in this matter. That the Virtual Complainant is 64 years old and identified the Applicant as the person who entered her home and inserted his tongue into her vagina without her consent. That the Applicant has been convicted of numerous criminal offences. A list of his antecedents was exhibited to the Affidavit.

Submissions

[6.] Mr. Stanley Rolle, Counsel for the Applicant, commended the Applicant's Affidavit to the Court. He then spoke to the Respondent's Affidavit in Reply. At paragraph 4 of the Affidavit the Respondent states that the Voluntary Bill of Indictment("**the VBI**") was served on the 11 March

2026 but notwithstanding that the VBI may have been served or whether the Applicant will be served within a reasonable time, that is not a bar to the Applicant being granted bail. Mr. Rolle asked the Court to look at the prejudice the Defendant continues to face while being on remand. He referred the Court to **Hernam v The State (Mauritius)** UKPC 49 which speaks to the issue of prejudice. In this case the Applicant's child is disadvantaged due to his absence. He asked the Court to consider the hardship experienced by his family in the absence of the Applicant. He asked the Court to look at his economic stability, which he will need in order to pay for his defence.

[7.] Mr. Rolle referred the Court to paragraph 5 of the Affidavit and to the case of **Stephon Godfrey Davis v The Director of Public Prosecutions** 2014/cri/bail/00009 and submitted that in this case the weight of strong and cogent evidence simply amounts to whatever **prima facie** case can be made out, it is not proof of guilt, for the simple reason that that evidence will be scrutinized under cross-examination.

[8.] With respect to the serious nature of the charge and the severity of the punishment, which suggests that the Defendant may abscond and may not appear for trial, Mr. Rolle referred the Court to the case of **Jeremiah Andrews v The Director of Public Prosecutions** 2019/CRI/bal/No.00397 and submitted that in this particular case, the inference can be weakened by the following considerations:

(1) His ties to the Bahamas, his family ties.

(2) His economic status. He is not a Donna Vasyli.

(3) His antecedents. His antecedents stop at 2012. This suggests that he is capable of rehabilitation. On the foundation that he is innocent until proven guilty this suggests that he will not reoffend if granted bail.

(4) He is a young man who has only worked in metal sheeting. Mr. Rolle initially urged the Court not to impose an ankle monitor as a condition of bail because of the type of work he does. That the ankle monitor would present a barrier to him finding work. He will have to work hard to pay his legal fees. He asked the Court to impose stringent terms such as stringent reporting conditions and a curfew.

[9.] Mrs. Ashley Carroll, Counsel for the Crown, submits, in part, that the Applicant's

antecedents do not end at 2012. That there are many more and that his last conviction was in 2023. That the Respondent shows a propensity to commit offences. That this is the principle reason why the Crown is opposing bail. That there is strong and cogent evidence in this matter. She referred the Court to the statement of the Virtual Complainant where she states in part:

> ***"On this particular night I heard a knock on my door and I asked who is it and the person said "me". The person knocked again and the person said it's me but I thought it was my friend and I open the door. That's when he say [redacted], I tried to close the door and he pull it open. He said to me that his wife kicked him out and I said to him that has nothing to do with me, that's why he has plenty friends and family around here for. He still came inside and sat down and he started talking and I said to him I am on this run tonight. So he left and came back and pulled the door open and I asked him how he get in this house and he said "I know how to get in" he left again and came back again and said "Helen I just break up my wife house" and I said or okay. He asked me to use my phone because his phone was dead and tried to call his wife 3 or 4 times and called his mummy. He said to me "I won't lay down beside you". I told him I ine on that run. Then he pulled my blouse down and start sucking all two of my breasts and went down to my pants and took off my pants and panty. He put his tongue inside my vagina and said "oh I see why your friend don't won leave you alone, this pussy is silk". I told him to get off me I'm too old for this and he said "you don't want this, let me show you what you don't want" and then he started jicking off for about a long while. While he was on me sucking my breasts and taking off my pants I was telling him stop, I'm too old for this shit. I don't know if he cum while he was jicking off, because I saw his hand movement but wasn't trying to pay attention to him. After he finished he tried to laid down and I say boy come out my house, come out my house now and let me try sleep. When he was leaving he said "I'll come back tomorrow anno", slammed the door and left. When I looked at my phone it was 5:19 a.m., I locked my door and gone sleep. I didn't see him after that and I was tired. I didn't report it because I was scared to talk about it and told my niece TB the same morning, but after I told her I balled myself in my home and stayed there. I know him as [redacted] but I know his real name is [redacted]."***

Mrs. Carroll submits that the Virtual Complainant's Statement causes more than "mere suspicion". Mrs. Carroll also referred the Court to the case of **Stephon Godfrey Davis** (supra).

[10.] Mrs. Carroll submits that the Virtual Complainant's Statement alone provides more than a reasonable suspicion. If the Applicant is admitted to bail he will commit offences. Evidence of this is the Applicant's extensive list of antecedents. The need to protect the safety of the public must

be of primary consideration in this application. Lastly there is no condition which can prevent the Applicant from committing another offence while on bail. The offence of rape cannot be prevented by an ankle monitor or a curfew. The Applicant will be arraigned in this Court on 23 March 2026.

[11.] Mr. Rolle was asked by the Court when the Applicant was last released from Prison. He stated that it has been approximately 16 months since his release from Prison. He also pointed out that the antecedents are not in relation to rape. He urged the Court to add a monitoring device and a curfew to the conditions of release on bail to allow the Applicant to properly prepare for his defence.

Analysis and Discussion

The Law

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

[13.] 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.

[14.] 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.***

[15.] 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 Bail (Amendment) Act 2011 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

[16.] 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;

[17.] *Evans, JA* states at paragraph 17 of his Judgment in **Duran Neely v The Attorney General** SCCrApp. No.29 of 2018 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.

[18.] 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. After reading the Affidavit evidence and hearing Counsel I find that since the Applicant was arraigned before the Magistrate's Court in December 2025 and is likely to be served with his VBI and arraigned shortly thereafter, at which time he will be given a trial date by this Court within 24 months of the arraignment. There is no evidence before me that suggests that he will not stand trial within the said 3 year period. In fact, it is likely that this trial will be conducted in the early part of 2028. His time on remand has not been inordinate, unjustified or unfair at this juncture. There has been no unjust delay.

Character or Antecedents of the Applicant

[19.] According to the Affidavit evidence of the Respondent and the Request for Antecedent form attached thereto the Applicant has been in and out of prison since 2008. He has 27 convictions but he has not been convicted of any sexual offences. From his antecedents he habitually commits offences within a year or two of his release which tends to suggest that the Applicant is not of good character. The Applicant has 27 convictions in the various Magistrate's Courts for the period 29 August 2008 to 28 August 2023 as follows:

29.08.08	Unlawfully Carrying Arms	1 month Boys Industrial School
29.08.08	Stealing from a Dwelling House	3 months imprisonment
13.02.09	House Breaking	I year Imprisonment 2 years Imprisonment
21.07.09	Stealing	3 months imprisonment
05.07.11	Forgery, uttering a Forged Document, Fraud by False Pretenses	Conditional Discharge for 2 year2. In default 1 year imprisonment
08.05.12	House Breaking	6 months imprisonment

08.05.22	Stealing from a Dwelling House	Ordered to pay Compensation of $1,000.00 or 6 months imprisonment
08.11.18	Receiving	Ordered to pay Virtual Complainant $175.00or 2 months imprisonment. In addition to 3 months imprisonment
08.11.18	Receiving	Ordered to pay Virtual Complainant $175.00 or 2 months imprisonment. In addition to 3 months imprisonment
08.11.18	Receiving	Ordered to pay Virtual Complainant $175.00 or 2 months imprisonment. In addition to 3 months imprisonment
08.11.18	Receiving	3 months imprisonment in addition ordered to pay compensation of $99.75 or 1 month imprisonment
08.11.18	Receiving	3 months imprisonment in addition ordered to pay compensation of $127.50 or 2 months imprisonment
08.11.18	Receiving	3 months imprisonment in addition ordered to pay compensation of $456.50 or 2 months imprisonment
12.11.18	Receiving	3 months imprisonment
12.04.21	Causing Damage	2 years imprisonment
12.04.21	Shop Breaking	3 years imprisonment
12.04.21	Escape	1 year imprisonment
12.04.21	Resisting	3 months imprisonment
13.04.21	Shop Breaking	9 months imprisonment
13.04.21	Stealing from a Shop	9 months imprisonment

13.04.21	Possession of Dangerous Drugs	3 months imprisonment
13.04.21	Stealing	9 months imprisonment
14.04.21	House Breaking	1 year imprisonment
14.04.21	Stealing from a Dwelling House	Ordered to pay compensation of $430.00 or 6 months imprisonment
14.04.21	House Breaking	1 year imprisonment
14.04.21	Stealing from a Dwelling House	Ordered to pay compensation of $430.00 or 6 months imprisonment
28.08.23	Stealing	1 year imprisonment
28.08.23	Stealing	24 months imprisonment
28.08.23	Stealing	1 year imprisonment

Likelihood that the Applicant Will Abscond

[20.] 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.***

[21.] Similarly in **Johnathan Armbrister v The Attorney General** SCCrApp No. 145 of 2011, *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..."***

[22.] Rape is an offence serious in nature. Upon conviction for this offence the Court may impose a sentence of imprisonment for a substantial amount of years. It follows therefore that the Applicant facing this serious charge, 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** (supra) which demonstrates that bail is not to be withheld merely as punishment. There is no evidence before me which tends to show that he will abscond due to the serious natures of the offence.

[23.] In **Cordero McDonald v. The Attorney General** SCCrApp. No. 195 of 2016, Allen P., as she then was, explained the extent of the judge's task in relation to the evidence which is adduced before the Court on a bail application. *Allen P.*, explained thusly:

> ***34. It is not the duty of a judge considering a bail application to decide disputed facts or law and 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 such as to justify the deprivation of 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." [Emphasis added]***

[24.] After reviewing the evidence against the Applicant, that is, the Statement of the Virtual Complainant, the Court concludes, based on this **prima facie evidence**, that there does in fact exist a reasonable suspicion of the commission of the offence by the Applicant.

Interfering with Witnesses or Otherwise Obstructing the Course of Justice

[25.] 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."***

[26.] The Court of Appeal in the case of **Jonathan Armbrister v The Attorney General** (supra) *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.

[27.] According to the evidence of the Virtual Complainant she is known to the Applicant and he to her, he left her premises and returned and gained entry. Under these circumstances, and considering the seriousness of the offence and the penalty which attaches, this Court finds that it is probable that the Applicant may interfere with the Virtual Complainant if he is released on bail.

Nature and Seriousness of the Offence

[28.] As indicated earlier, the allegation of Rape is 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.

[29.] 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.

[30.] 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.

[31.] In the case of **Jevon Seymour v The Director of Public Prosecution** SCCrApp No. 115 of 2019, *Crane-Scott JA* at paragraphs 49 of 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: ***"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) ...;***
> ***(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)...(f)***
> ***(g) the nature and seriousness of the offence and the nature and strength of the evidence against the defendant.***

Conclusions

[32.] When deciding whether to grant or deny bail the Court has to perform a balancing act.

[33.] The Court has to consider the character and antecedents of an Applicant. The Applicant has a long list of serious antecedents.

[34.] 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.

[35.] 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) Rape is a serious offence but is an offence for which bail can be granted.

(ii) There is prima facie evidence against the Applicant, the statement of the Virtual Complainant. The Court accepts that this competing evidence of the Virtual Complaint 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 offence to justify the denial of bail.

(iii) Because of the nature and seriousness of the offence and the cogency of the evidence the Applicant will know that if he is convicted he is likely to receive a long sentence and he may be tempted to 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 I am satisfied that he is not of good character and that there is a real likelihood that he will commit an offence if put on bail again. I am not satisfied that an ankle monitor, curfew or signing in requirements will prevent the Applicant from interfering with Prosecution Witnesses or reoffending while on bail.

(vi) It does not appear that the Applicant should be remanded in custody for his own protection.

Disposition

[36.] Bail is denied at this time.

This: 19th day of March A.D. 2026

Petra M. Hanna-Adderley
Judge