COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Law Division
2026/CRI/BAL/153
BETWEEN:

AMALIA CHARLTON, AKA "MALIA"

Applicant

AND
DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Justice Loren Klein
Appearances:	Mr. Mark Penn
	Mr. Basil Cumberbatch for the Respondent
Hearing Date:	24 March 2026
Ruling:	30 March 2026

RULING (BAIL)

KLEIN, J.

Bail—Bail Act—Part C Offence—Cogency of evidence supporting charges—Gaps in witness timelines—Alleged weakness of case against applicant—Threat to public safety and security—Indiscriminate firing of weapon—Witness intimidation—Whether conditional discharge for drugs offences to be taken into consideration on application for bail

INTRODUCTION AND BACKGROUND

1. This is an application for bail under the Bail Act ("the Act") by a 23-year old female charged in January of this year with two counts of attempted murder and two counts of possession of a firearm with intent to endanger life.

2. The application was commenced by an electronic application filed 16 February 2026. The Office of the Director of Public Prosecutions ("DPP") responded with an affidavit opposing bail on 16 March 2026, and the matter was initially listed before me for hearing on 17 March 2026. The hearing on the 17 March 2026 was adjourned to 24 March 2026 at the request of counsel for the applicant (which was not objected to by the DPP) to allow her to file affidavit evidence. Her affidavit in response to the DPP's affidavit and in support of her bail application was filed on 23 March 2026.

3. The applicant was represented before me by Mark Penn, and Basil Cumberbatch appeared on behalf of the DPP. I am grateful to counsel for their submissions.

Brief factual background

4. The allegations underlying the applicant's arrest and detention are that the applicant fired three shots at a car driven by a woman against whom she apparently bore a grudge. At the time of the incident, a young child (said to be the driver's goddaughter) was a passenger in the car.

Material in support of bail

5. The applicant in her affidavit states that she is 23, and was arraigned and remanded on 13 January 2026 to the Bahamas Department of Corrections ("BDOCs") for the alleged offences. She also states that she has a sick mother and minor siblings, whom she helps to take care of, which she says constitutes significant ties to the community. Her main attack on the prosecution's affidavit opposing the grant of bail is that the evidence against her is "*weak*" and is said to be "*neither compelling nor is it cogent*". The main grounds of her application are captured at paragraphs 18-20 of her affidavit as follows:

> "18. That there is and has not been proved no immediate connection, no correlation between the VC or any witness in this matter (*sic*). There is no likelihood of their paths crossing or the applicant interfering with the witnesses; therefore, the assertion is a blanket assertion and without more should fail.
>
> 19. That the respondents have not proven a *prima facie* case to further deny the deprivation of freedom of the applicant to the contrary, the evidence provided is tenuous and weak.
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> 20. In the circumstances, and in light of the tenuous and weak nature of the Respondent's case the Applicant humbly requests that this Honourable Court exercises its discretion and grant the Applicant bail with reasonable conditions further, if given the opportunity, that she would show up at all times when so desired to prove her innocence in this matter."

6. The applicant rejects the theory advanced by the prosecution that the possible motive for the incident was the applicant's displeasure or furor over the virtual complainant allegedly laughing at her when she was allegedly slapped by a male with whom she had some sort of confrontation at the 2026 New Year's Day Junkanoo Parade. She states that this theory is untrue, but proffers that "*…there exists a vendetta by the VC against the Applicant based on the Applicant taking a female companion from her and since this has happened the VC has had extreme hostility towards the applicant*."

7. In their affidavit, the DPP says that bail should be refused for the reasons summarized at paragraph 26 as follows:

"a. The seriousness of the offences with which the Applicant is charged and the likely penalty, if convicted, serve as considerable motivation for the Applicant to abscond.

b. The seriousness of the offence with which the Applicant is charged and the likely penalty upon conviction, increase the likelihood that the Applicant will interfere with witnesses or otherwise obstruct the course of justice.

c. There is an increased likelihood of the Applicant committing offences while on bail, considering the fact that she was very recently charged and convicted of other criminal offences, suggesting a pattern of criminal behaviour.

d. There has been no delay in this matter and there is no objective reason to conclude that the same will not be tried within a reasonable time.

e. The grant of bail to the Applicant poses significant danger to public order and safety in light of the *prima facie* evidence of the Applicant's commission of violent offences as well as the present culture of retaliatory shootings and murders.

f. There being cogent evidence in respect of the Applicant's commission of violent offences increases the likelihood of the Applicant, herself, becoming the target of retaliatory shootings which in turn endangers members of the public and thus, pose a considerable threat to public safety and public order."

Parties Submissions in brief

8. In oral submissions, Mr. Penn attacked the evidence relied on by the DPP to prefer charges against the applicant and which constitute the foundation for the deprivation of her liberty. He submitted that there are serious discrepancies in the evidence of two of the witnesses as to the timeline of the alleged incident, which raises doubts as to whether the vehicle said to be used in the shooting could have been at the location where the alleged offence was committed.

9. Secondly, he submitted that the prosecution's reliance on the seriousness of the offence as providing an incentive for either absconding or interfering with witnesses—what I will refer to as the **Hurnam** principles, derived from the Privy Council case of **Hurnam v The State** [2006] 3 LRC 370—are overblown. He further contended that the risks of absconding or witness interference identified in **Hurnam** only apply to the extent that they cannot be eliminated by the imposition of appropriate conditions and, in this regard, the applicant is willing to comply with any "reasonable" conditions ordered by the Court, should bail be granted.

10. In **Hurnam**, the Privy Council stated (at para. 15):

"It is obvious that a person charged with a serious offence, facing a severe penalty if convicted, may well have a powerful incentive to abscond or interfere with witnesses likely to give evidence against him, and this risk will often be particularly great in drug cases. Where there are reasonable grounds

> to infer that the grant of bail may lead to such a result, which cannot effectively be eliminated by the imposition of appropriate conditions, they will afford good grounds for refusing bail."

11. Lastly, it was submitted that the offences of possession of dangerous drugs and possession with intent to supply, which were said to have been reduced to simple possession before the magistrate, does not translate into a propensity for violence. Therefore, the prosecution's assertion that the current charges represent a "*steady progression and escalation of criminal behaviour*" is a "*fallacy, a flaw in reasoning and at best a misconception by the Respondent*." These were said to be broad and sweeping statements which are unsupported by any empirical evidence. In any event, he contended that as the applicant was given a conditional discharge, once she complied with the conditions (as apparently she had) her record must be considered "unblemished".

12. Mr. Cumberbatch for the prosecution highlighted the fact that the virtual complainant is known to the Applicant and there is bad blood between them, so witness interference is probable. In this regard, he submitted that the **Hurnam** risks applied with greater force in this jurisdiction, considering the smaller population. He further submitted that the evidence against the applicant was eye-witness evidence by someone who knew her and was cogent and compelling, which clearly met the threshold of a *prima facie* case sufficient for the deprivation of liberty. In any event, he explained that it was not unusual for there to be discrepancies in timelines in evidence that is otherwise credible, but that in any event this was a matter for the jury at trial (see **Cordero McDonald v The Attorney General,** SCCrApp. No. 195 of 2016).

13. He also submitted that as a child was a passenger in the vehicle when the incident occurred, the alleged indiscriminate shooting at the vehicle shows a blatant disregard for public safety, behavior which the applicant might be inclined to repeat if released on bail. This was said to be particularly worrisome as statistics produced from the Central Detective Unit ("CDU") of the Royal Bahamas Police Force, dated 4 May 2023, indicate that during the period 25 September 2017 to 5 March 2023 there were a total of 12 murder victims who were caught in the crossfire of targeted shooting at other persons.

14. Finally, he submitted that the applicant had prior convictions, and the fact that she was given a conditional discharge does not expunge her criminal antecedents for the purposes of a bail application. This is because the Rehabilitation of Offenders Act does not prevent the admission of evidence relating to a person's previous convictions or the circumstances ancillary thereto in any criminal proceedings, which includes a bail application.

ANALYSIS AND DISCUSSION

15. In **Samuel Meadows v DPP**, (2024/CRI/BAL/00041), 17 March 2026 ("*Samuel Meadows*"), I summarized the statutory provisions and legal principles relative to the consideration of bail in eight propositions, which may be distilled here as follows:

(i) Bail engages the Constitutional right to personal liberty, which can only be deprived by lawful authority and which is underpinned by the presumption of innocence (art. 19, 20; **Hurnam v The State** [2006] 3 LRC 370, **Richard Hepburn v The Attorney General,** SCCrApp276 of 2014 ("Richard Hepburn");

(ii) Bail is granted on a discretionary basis subject to the considerations set out in the Bail Act ("the Act"), which differ depending on whether the accused is charged with an offence set out in Part "B", Part "C", or Part "D" of the First Schedule (s. 3(1)). For Part B offences (which include manslaughter, causing grievous bodily harm and robbery) the Act provides that the accused "*shall*" be detained, unless the court is satisfied that his detention is not justified; and the accused is not eligible for bail if he served time within the preceding 5 years for conviction of another Part B offence. For Part C offences (offences such as murder, kidnapping, armed robbery, treason and certain firearms offences), the accused "*shall not be granted bail*" unless certain exceptions apply: they have not been tried in a reasonable time (presumptively 3 years under s. 4(2)A); or they qualify based on a consideration of the general Part A factors and the s. 2B special factors (character or antecedents of the person charged; need to protect public order or safety; need to protect victims (where appropriate). Part D offences, which include mainly firearms offences, are dealt with under the general s. 3 discretion to grant bail. The primary consideration under Part A that the court is to have regard to is "*whether there are substantial grounds for believing*" that the defendant, if released 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. Additionally, the court is to have regard to other salient factors, which include: whether the defendant should be kept in custody for his own protection or welfare (if a child or young person); whether he has absconded or breached his bail conditions; whether he offends while on bail; the nature and seriousness of the offence and the strength of the evidence against the defendant; and the need to protect the alleged victim from any further violence.

(iii) The proper test for whether bail should be granted or refused is the probability of the defendant surrendering for trial; bail is not withheld as punishment for a person on pre-trial detention: **Johnathan Armbrister v The Attorney-General** SCCrApp. No. 276 of 2014). However, it is not the sole consideration (see **Hurnam**).

(iv) Bail applications require the court to balance the competing interests of fundamental rights relating to the personal liberty of the alleged offender and the

countervailing interest of public safety: **Richard Hepburn** [5-8]; **Hurnam**, at 364, per Bingham LJ.

(v) Although s. 4(6) imposes a burden on the "*applicant to satisfy the court that bail should be granted*", a stream of authorities has held that this cannot shift the burden of proof (such as it is) from the Crown to satisfy the court why bail should not be granted (**Vasyli v The Attorney General** [2015] 1 BHS J, No. 86; **Jevon Seymour v DPP**, No. 115 of 2019; **Hurnam**.

(vi) An application for bail does not require the court to decide disputed facts or conduct a forensic examination of the evidence (see **Cordero McDonald v The Attorney General,** SCCrApp No. 195 of 2016; **Stephon Davis v DPP**, SCCrApp. No. 20 of 2023; **Damargio Whyms v DPP**, SCCrApp. No. 148 of 2019). The case before the court must simply raise a reasonable suspicion or a *prima facie* case, that the applicant committed the offence, such as to justify the deprivation of his liberty.

(vii) Seventh, there are no numerical restrictions on the ability of an applicant to make successive applications for bail, which must all be considered on the merits (see **Darmagio Whyms***;* **Richard Hepburn v The Attorney General** (No.2), SCCrim App & CAIS No. 135 of 2016 ("*Hepburn*"), **Mackey and anor. v R** [2016] 2 BHS J No. 132 ("*Mackey*"). However, on a hearing afresh, the Court must have regard to the previous findings and whether there is any new material relevant to the grant of bail, and retains the rights to protect its process from abuse.

(viii) On a bail application, the Court may consider material or "evidence" that would not normally be admissible, including hearsay evidence and informal sources (see, **Alcott Fox v DPP**, SCCrApp. No. 119 of 20203; **Attorney-General v Bradley Ferguson et. al**., SCCRApp. Nos. 57, 106, 116 of 2008.

<u>Court's Application of Principles to current application</u>

16. The applicant is charged with a Part C Offence (attempted murder), so there is a presumption against the grant of bail unless she can come either within 4(2)(a)—not being tried within a reasonable time—or there are factors under 4(2)(c) and Part A which the Court considers justify the grant of bail.

17. It was common ground between the parties that the applicant cannot come within 4(2)(a). She has been remanded in custody for a relatively short time—although any deprivation of liberty is significant—and at this point there is nothing to suggest that she would not be tried within the

statutorily deemed reasonable time. Therefore, there must be factors under 4(2)(c) and Part A which the Court considers justify the grant of bail.

18. I have given careful consideration to the submissions of the parties and the affidavit evidence, the statutory considerations and the legal principles which govern the grant of bail for a person charged with Part C offences. I am of the opinion that the applicant should be granted bail subject to the imposition of the conditions specified below. I have come to this conclusion for the following brief reasons.

Seriousness of offences

19. I accept that the applicant is charged with a very serious offence, but as pointed out repeatedly in the cases, this is not by itself a reason to deny bail. It is only one factor to be taken into consideration: **The Commissioner of Police v Beneby** [1995] BHS J. No. 17; **Dennis Mather v DPP**, SCCr. App. No 96 of 2020 Mather. In the current circumstances, I do not think the seriousness of the alleged offences alone justify the refusal of bail.

Incentive to interfere with witnesses or abscond

20. Counsel for the applicant argued strenuously that there was no evidence that the applicant would interfere with the virtual complainant or other witnesses. In this regard, I was referred to **Mather,** where the Court of Appeal examined the issue of witness interference. Isaacs JA said:

> "31. The possibility that an applicant for bail may attempt to pervert or obstruct the course of justice by interfering with witnesses who are to give evidence for the Prosecution at his trial, that is, seeking to dissuade a witness from testifying, or by suborning perjury, is one of the most important factors a court must take into consideration in a bail application. Indeed, if one of the conditions of bail is that he is not to interfere with the Prosecution's witnesses and he is found to have done so, section 12A of the Bail (Amendment) Act, 2026 [now 12A of the Bail Act] makes that an offence punishable by a fine or imprisonment or both. It is notable that in the face of the Prosecution's allegations of witness interference, there has been no prosecution brought against the appellant under section 12A of the Bail (Amendment) Act, 2016. The English Crown Prosecution Service notes under the rubric "Witness Intimidation":
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> > 'Such offences go to the heart of the administration of justice. If there is sufficient evidence of witness intimidation the public interest requires that normally such cases should be prosecuted.'
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> […]
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> 40. [T]he term 'interference with a witness' involves…interference with a witness by unlawful means, such as violence, bribery, threats, or improper pressure. It must be remembered that there is no property in a witness, to wit, just because the Prosecution has taken a statement from a witness

> and are likely to call them to give evidence does not prevent the Defence from taking a statement from the same witness."

21. In **Mather**, the Court of Appeal held that the mere assertion in an affidavit that the appellant had contact with the witnesses did not amount to witness interference so as to justify the judge's finding of that fact and to refuse bail, *inter alia*, on the basis that he might do so again. The Court of Appeal also rejected the finding that the appellant's familiarity with and living in proximity to the witnesses was a sufficient basis to deny bail, having regard to the **Hurnam** principles.

22. Defence counsel rightly points out that there is no evidence before the Court that the applicant has interfered with any witness. That is true. But I remind myself that I do not require evidence of actual interference. Part A of the First Schedule ((a)(iii)) simply requires the Court to be satisfied that there are "substantial grounds" for believing that the applicant will interfere with witnesses.

23. In the current circumstances, it appears that there is also some familiarity between the virtual complainant and the applicant, and that there may be some personal contretemps between them. However, without more, the allegations of potential witness interference or absconding do not constitute substantial grounds for the denial of bail. As I pointed out in the **Meadows** decision, while the court is involved in evaluating risk as part of its consideration of bail and not concerned with finding guilt, there has to be some evidential basis on which it evaluates and assesses those risks.

24. Mr. Cumberbatch stressed that the **Hurnam** principles, stated in a case which arose on appeal from Mauritius with a population several times larger than the Bahamas, should apply with even greater force in a country with a smaller population. I did not find any merit in that suggestion. Firstly, the Privy Council was only stating general legal principles for consideration in bail applications in drug or like cases, which did not necessarily depend on demographics. Secondly, such general principles cannot be elevated into a rule of law, such as to justify the automatic inference of reasonable or substantial grounds for believing an accused would abscond or interfere with witnesses in every case involving serious offences and possible severe penalties. In fact, the Privy Council specifically stated that the principle only applies where there were "*reasonable grounds*" to infer that the grant of bail would lead to such risks, and where such risks could not be eliminated by the imposition of conditions.

Antecedents

25. I accept the criticism of counsel for the applicant that to label the applicant's behaviour as suggestive of a trend towards serious criminality based only on the prior drug conviction and the

current charges is a bit of an overreach. It is an opinion which is not based on logic or any sound rationalization. A drugs offence does not automatically translate into a violent offence, and there does not seem to be any connection between the two. Further, one cannot rule out the possibility that an individual might make a complete turnaround in their life, either of their own volition or through counselling and/or social intervention.

26. But Mr. Cumberbatch is right to point out that the applicant's previous conviction for drugs is not irrelevant to her application for bail, notwithstanding her conditional discharge (see **Mather,** para. 46, where the Court of Appeal held that the Supreme Court proceeding on an assumption that an appellant's previous convictions were spent in accordance with the Rehabilitation of Offender's Act gave him a windfall in a bail application, but was based on an erroneous presumption, as the Act did not preclude such convictions from being considered in "*any criminal proceedings before a court*" (s.6(2)(a)).

27. In the instant case, the applicant was given a conditional discharge, but placed on probation and ordered to attend drug counselling for six months, in default of which she was to serve one month for each count (possession of dangerous drugs and possession of dangerous drugs with intent to supply). It is also noted that the applicant's criminal records antecedent form does not indicate that the charges were reduced to simple possession, despite the applicant's indication of this.

Threat to public safety

28. The DDP has also averred that the applicant poses a threat to public safety because of the possibility that she would re-engage in gun violence, having regard to the charges and the alleged indiscriminate use of a firearm. I note the statistics relied on by the DPP with respect to persons who have been killed by indiscriminate shooting, and it is a matter of great concern. But there is nothing pointing to the applicant in particular that would allow the Court to infer that there are substantial grounds for believing that the applicant has a propensity for the use of firearms which might manifest again if released on bail, such as previous convictions involving firearms offences. In **Meadows**, I accepted that earlier guns and ammunition offences could indicate a familiarity with and ability to access weapons which, when coupled with a murder-with-a-firearm allegation, might suggest substantial grounds for refusing bail based on a perceived threat to public safety. But these are not the allegations here. The court cannot toss a coin to speculate as to whether or not the applicant poses a threat to public safety simply based on the current charges.

29. I also note in this regard that it is alleged that the Applicant is a member of a street gang ("Crack Nation"). The prosecution argues that having regard to "*the high rate of murder, and in particular, the culture of retaliatory shootings and murders which has developed in The Bahamas involving death and harm to innocent members of the public, the applicant should be kept in custody in the interest of public safety and public order*."

30. There can be no doubt that these may be very relevant factors to be taken into consideration, where there is evidence or other material before the court to create substantial grounds for believing that violence might be perpetrated based on gang-affiliation or retaliation. However, both the prosecution and the applicant suggested that the motive for the incident is likely personal—although there is a difference in opinion as to what that reason might be. There is no suggestion that the incident was gang affiliated, at least none that has been brought to the attention of the court. I therefore do not find that the alleged gang membership by itself provides substantial grounds to infer that the application may be a threat to public safety.

No cogent evidence

31. I reject the allegations of the applicant as to the lack of cogency of the evidence and the alleged weaknesses in the prosecution's evidence as reasons in support of the grant of bail, although it is to be appreciated that the burden of proof always remains on the prosecution to satisfy the court that bail should be refused (**Vasyli v The Attorney General** [2015] 1 BHSJ, No. 86).

32. In **Stephan Davis v DPP** (No. 108 of 2020), the Court of Appeal stated that the question of the sufficiency of the prosecution's evidence is a matter for the jury, and there only needed to be a *prima facie* case or reasonable suspicion to justifying detention on charges. There the Court said:

> "33. However, where the case against the accused person is supported by statements of eyewitnesses or purported confessions that tend to suggest the applicant for bail may be involved in the offence charged, a judge may conclude that the evidence against the appellant is cogent.
>
> 34. Alleged inconsistencies in the evidence of the witnesses and the recanting of statements and what weight may be attached to the evidence of such inconsistent or recanting witnesses are within the province of the jury; and does not call for an evaluation by the judge."

33. I reiterate that this is only one factor to be taken into consideration and the mere fact that there is a *prima facie* case against the appellant does not negate the grant of bail, as the presumption of innocence still applies.

CONCLUSION AND DISPOSITION

34. In all the circumstances of this case, the application for bail succeeds and bail is granted subject to the conditions specified below:

(i) Bail granted in the sum of $15,000.00 with three suretors;
(ii) The applicant is not to interfere with any of the witnesses, either personally or through an agent;

(iii) The applicant is to report to the Police Station nearest to her home address each Monday, Wednesday and Friday at or before 6:30 p.m.; and

(iv) The applicant is to be fitted with an electronic monitoring device.

35. A breach of any of these conditions will render the applicant liable to being remanded and to proceedings for the revocation of bail.

KLEIN J.

31 March 2026