

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**CRI/BAL/00620/2017**

**BETWEEN**

**MIGUEL ERROL FOX**

Applicant

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

**Before: The Honourable Justice Darron Ellis**

Appearances: Tamika Roberts for the Applicant

Cephia Pinder Moss for the Respondent

Hearing Date: March 3, 2026

Ruling Date: April 28, 2026

**Bail Act Ch. 103–Bail application–Part C offence–Relevant factors under Section 4(2) and Part A of the First Schedule–Primary considerations under section 4(2B)–Whether there has been unreasonable delay–Whether the Applicant is a fit and proper candidate for bail–Risk of absconding–Public safety, public order, and witness/victim safety–Nature and strength of the the evidence.**

## RULING ON BAIL

- [1.] The Applicant, Miguel Errol Fox, is charged with one count of Attempted Murder contrary to Section 292 of the Penal Code Chapter 84.
- [2.] This is the Applicant's bail application by summons filed on 18 February 2026, supported by his affidavit sworn on the same date.
- [3.] The Applicant has pleaded not guilty and maintains his innocence. He contends that he is a fit and proper candidate for bail and undertakes to comply with any conditions the Court may impose.
- [4.] The material before the Court shows that the Applicant has been in custody since 28 November 2025, when he was arraigned.
- [5.] The Respondent opposes bail. The Crown contends that there is strong and cogent evidence against the Applicant, and asks the Court to have regard to the seriousness of the charge, the Applicant's antecedents, the separate pending attempted murder charge, the risk of absconding, public safety and order, and the safety of the complainant and other witnesses.
- [6.] The Applicant relies on an affidavit sworn in support of his application. In his affidavit, the Applicant states that he is 29 years of age, is presently in custody at the Bahamas Department of Correctional Services, and has pleaded not guilty to the charge. He says that, if granted bail, he will reside at Mandingo Alley, New Providence, and that prior to his incarceration, he was employed at Tycoon Management.
- [7.] He further states that his continued remand prejudices his ability to prepare his defence and to support his three children and family. He undertakes to comply with any conditions imposed by the Court.
- [8.] The Respondent opposes the application and relies on the affidavit of Ashton Williams, Counsel in the Office of the Director of Public Prosecutions. In this affidavit, the Respondent states that the Applicant, together with another, is charged with attempted murder, alleged to have occurred on 17 April 2025; that he was arraigned on 28 November 2025; and that a Voluntary Bill of Indictment has been filed.
- [9.] The Respondent's affidavit further sets out the Crown's case, including the complainant's identification of the Applicant in his statement and in a 12-man photographic lineup, the surveillance footage said to depict the incident, the Applicant's

arrest and interview under caution, his antecedents, and the existence of a separate pending charge of attempted murder.

[10.] The Respondent adds that Detective Constable Antonio Bethel is said to have viewed surveillance footage which depicts a male identified as the Applicant armed with a handgun and shooting the complainant. Additionally, the Applicant was arrested, interviewed under caution, and exercised his right to silence.

[11.] The Respondent highlights that the Applicant has criminal antecedents, including convictions said to involve dangerous drugs, ammunition (multiple counts), possession of a component part of a firearm, stealing by finding, and unlawful possession.

[12.] The Court was also advised that the Applicant faces a separate pending charge of attempted murder.

[13.] The Respondent further invites the Court to take judicial notice of the prevalence of gun violence and the risk of retaliation in cases involving firearm offences. Accordingly, the Respondent submits that the Applicant is not a fit and proper candidate for bail.

### **Applicant's Submissions**

[14.] Counsel for the Applicant submits that, having regard to the presumption of innocence, the Applicant's age, and all the circumstances of the case, the Applicant is a fit and proper candidate for bail. Counsel further submits that there is no evidence that the Applicant would fail to surrender, interfere with witnesses, or otherwise obstruct the course of justice, and that stringent bail conditions can adequately address any concerns the Court may have. Counsel for the Applicant submits that, having regard to all the circumstances, the Applicant is a fit and proper candidate for bail.

### **The Respondent's Submissions**

[15.] The Crown submits that this is not an appropriate case for the exercise of the Court's discretion in favour of the Applicant. Relying on the evidential matters set out in its affidavit, the Crown contends that the case against the Applicant is strong, that the charge is particularly serious, and that the Applicant's antecedents, taken together with the separate pending attempted murder charge, raise substantial concerns as to non-attendance, further offending, public safety, public order, and the safety of the complainant and other witnesses.

[16.] The Crown submits that there has been no unreasonable delay in the prosecution of this matter, and that the period of pre-trial detention is neither excessive nor unjustified.

[17.] Lastly, the Crown submits that the Applicant's antecedents and the seriousness of the present charge expose him to the prospect of a significant custodial sentence and thereby increase the risk of absconding if released.

[18.] Accordingly, the Crown submits that the Applicant is not a suitable candidate for bail at this time because:

(i) There is strong and cogent evidence that the Applicant committed the offence;

(ii) The nature and seriousness of the offence justify continued detention in the interest of public safety;

(iii) The severity of the likely penalty creates a risk of absconding;

(iv) There has been no undue delay in bringing the matter to trial.

## THE LAW

[19.] In deciding this application, the Court must apply the statutory framework outlined in Part A of the First Schedule to the **Bail Act Chapter 103 (the Bail Act)**, while recognising the presumption of innocence and the fundamental right to personal liberty, and at the same time ensuring the protection of the public and, where appropriate, the safety of any victims.

[20.] The Applicant is presumed innocent until proven guilty. Specifically, **Article 20(2)(a) of The Bahamas Constitution** 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”.**

[21.] The Court must balance that constitutional presumption and the right to liberty with the statutory considerations governing bail, including the risk of non-attendance, the risk of further offending, the risk of interference with witnesses or obstruction of justice, and the need to protect the safety of the public and, where appropriate, the safety of victims.

[22.] **Article 19(1)(d)** further states that no one shall be deprived of personal liberty except upon reasonable suspicion of his having committed or of being about to commit a criminal offence.

[23.] This application falls to be considered principally under section 4(2) of the Bail Act, Ch. 103, because the offence is classified as a Part C offence.

[24.] Section 4(2) provides, in substance, that a person charged with a Part C offence shall not be granted bail unless the Court is satisfied that:

- He has not been tried within a reasonable time.
- He should be granted bail having regard to all the relevant factors, including those specified in Part A of the First Schedule and section 4(2B).

[25.] Section 4(2B) further provides that, for the purposes of section 4(2)(c), 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, are to be primary considerations.

[26.] The Court must also have regard to the factors listed in Part A of the First Schedule, including whether there are substantial grounds for believing that, if released on bail, the defendant would:

- Fail to surrender to custody or appear for trial.
- Commit an offence while on bail.
- Interfere with witnesses or otherwise obstruct the course of justice.

[27.] The Court must also consider the nature and seriousness of the offence and the nature and strength of the evidence.

[28.] The Court is also required to consider whether the identified risks can be adequately addressed by imposing bail conditions.

[29.] The Crown bears an evidential burden to produce material capable of supporting such concerns. Bare assertions are insufficient. In that regard, the principles stated in **Jevon Seymour v Director of Public Prosecutions** SCCrApp. No. 115 of 2019 and **Jeremiah Andrews v Director of Public Prosecutions**, SCCrApp & CAIS No. 163 of 2019, are instructive.

[30.] In the Court of Appeal decision in **Jevon Seymour**, the Court determined whether the judge at first instance made a proper ruling in denying the applicant bail. At paragraph 65, *Crane-Scott, J.A.* expressed that:-

**“...Paragraph (a) of the First Schedule to the Bail Act places an evidential burden on the crown to adduce evidence (i.e. substantial grounds) which is capable of supporting a belief that the applicant for bail “would” if released on bail, fail to surrender to custody or appear at his trial; commit an offence while on bail; or interfere with witnesses or otherwise obstruct the course of justice. The Crown's burden is only discharged by the production of such evidence.”**

[31.] *Evans J.A., Jeremiah Andrews v The Director of Public Prosecutions at paragraph 26* Appeal SCCrApp No. 163 of 2019 at paragraph 26, provided further guidance, stating:

**“In order to properly assist the Court, parties are required to provide evidence which will allow the Court to determine whether the factors set out in Part A of the First Schedule to the Bail Act s 4 (2B) exist. We note that all too often the affidavits supplied by the Crown make bare assertions that there is a belief that if the Applicant is granted bail he will not appear for trial; will interfere with witnesses or will commit other crimes. These assertions are meaningless unless supported by some evidence.”**

[32.] The Court also bears in mind the guidance in **Hurnam v The State of Mauritius** [2006] 1 WLR 857, where the Court concluded that the seriousness of the offence and the severity of the likely penalty are relevant factors, but do not by themselves justify the refusal of bail without more. In **Hurnam** at paragraph 15, the Court’s approach to bail was:-

**“15. It is obvious that a person charged with a serious offence, facing a serious 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 drugs cases. 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...The seriousness of the offence and the severity of the penalty likely to be imposed on conviction may well...provide grounds for refusing bail, but they do not do so of themselves, without more: they are factors relevant to the judgment whether in all the circumstances, it is necessary to deprive the applicant of his liberty. Whether or not that is the conclusion reached, clear and explicit reasons should be given...”**

[33.] The Court also considers that the Applicant is entitled to a trial within a reasonable time. In this regard, **Article 19(3) of The Constitution of The Bahamas** states:

***“19(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 reasonable necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.”***

[34.] Furthermore, section **4(2)(A)(a)** of the **Bail Act** states:

*“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.”*

[35.] The Court further recognises that the three-year period referred to in section 4(2A)(a) is not a blanket entitlement to detain an accused for three years. As per the reasoning in **Duran Neely v The Attorney General** SCCrApp. No. 29 of 2018, where Evans JA at paragraph 17 stated:

*“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 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.”*

## ANALYSIS

[36.] I have considered the affidavit evidence, counsel's submissions, and the governing legal principles.

[37.] I begin with the presumption of innocence, which weighs in the Applicant's favour. I also take into account the matters advanced on his behalf as to his age, personal circumstances, and prospects. Those matters are relevant but not determinative.

[38.] I will first address delay. The alleged offence occurred on 17 April 2025. The Applicant was arraigned on 28 November 2025. By the hearing on 3 March 2026, he had therefore been in custody for approximately three months. On the material before me, I am not satisfied that there has been an unreasonable delay in prosecuting this matter. Nor

am I satisfied that the Applicant is unlikely to be tried within a reasonable time. Accordingly, I do not find that section 4(2)(a) is engaged.

[39.] The application therefore falls to be determined under **section 4(2)(c)**.

[40.] The present charge of **attempted murder** is plainly serious and, if proved, would attract a significant custodial penalty. That seriousness is relevant to the assessment of risk.

[41.] The Court does not conduct a mini-trial at the bail stage. As per **Jonathan Armbrister v A.G.** SCCrim App. No. 145 of 2011, where at paragraph 12, John JA states:

**“It has been established for centuries in England that the proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial, and that bail is not to be withheld merely as a punishment. The Courts have also evolved, over the years, a number of considerations to be taken into account in making the decision, such as the nature of the charge and of the evidence available in support thereof, the likely sanction in the case of conviction, the accused’s record, if any, and the likelihood of interference with witnesses...The seriousness of the offence with which the accused is charged and the penalty which is likely to entail upon conviction, has always been and continue to be an important consideration determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence invariably weighs heavily on the case against the grant of bail.”**

[42.] However, the Court may consider the apparent strength of the evidence for bail purposes. On the present material, including the complainant’s identification and the surveillance footage said to depict the incident, I am satisfied that the Crown’s case cannot fairly be described as weak.

[43.] The Applicant’s antecedents are a primary consideration under **section 4(2B)**. The convictions referred to by the Crown are not trivial. They include matters involving drugs, ammunition, and a component part of a firearm. Those antecedents are relevant to assessing public safety, public order, and the risk of further offending.

[44.] The Crown also relies on a separate pending attempted murder charge. I treat that matter only as a pending charge and not as a conviction or proof of guilt. Even so, it forms part of the overall risk picture to be considered at this interlocutory stage.

[45.] I also take into account the Crown’s concern as to the safety of the complainant and other witnesses. On the present record, that concern adds some weight to the Crown’s

position. However, I place my principal reliance on the seriousness of the charge, the apparent strength of the evidence, the Applicant's antecedents, and the public-safety and public-order considerations arising from the material before the Court.

[46.] Having regard to all the circumstances, I am satisfied that the Respondent has produced material capable of supporting substantial grounds for concern under **Part A of the First Schedule**, particularly in relation to the risk of non-attendance and the risk of further offending if the Applicant were released.

[47.] I also accept the Crown's submission that there appears to be an escalation in the seriousness of the Applicant's offending. This trend heightened concerns arising from the present allegation, viewed together with the Applicant's antecedents and the separate pending charge. Those matters raise legitimate concerns about public safety and the risk of further offences if the Applicant were to be released.

[48.] The critical question is whether the risks identified—particularly the risk of further offending—can be adequately mitigated by imposing conditions.

[49.] I have considered whether reporting conditions, sureties, or other restrictions could adequately address those risks. In the circumstances of this case, I am not satisfied that any combination of conditions would sufficiently address those risks, having regard in particular to the seriousness of the present charge, the apparent strength of the evidence, the Applicant's antecedents, and the public-safety concerns identified above.

[50.] The seriousness of the present charge, the apparent strength of the evidence, the Applicant's antecedents, and the wider public-safety and public-order concerns collectively outweigh the Applicant's claim to liberty pending trial. In all the circumstances, I am satisfied that the Applicant's release on bail would be detrimental to the protection and safety of the public.

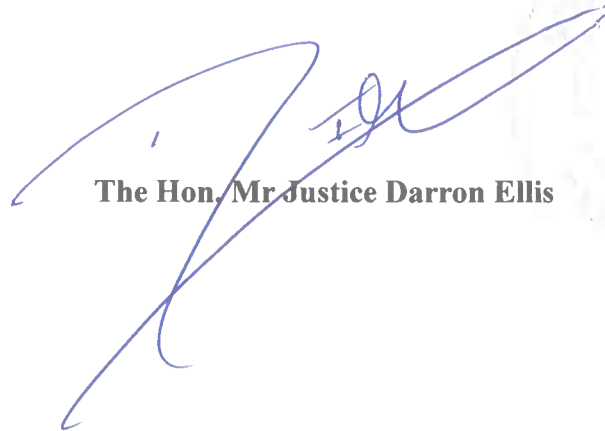
[51.] Accordingly, having considered section 4(2) of the Bail Act, the factors in Part A of the First Schedule, and the primary considerations in section 4(2B), I am not satisfied that this is an appropriate case for the grant of bail. The bail application is therefore refused.

[52.] The Applicant is denied bail for the following reasons:

- i. I am not satisfied that there has been an unreasonable delay so as to engage section 4(2)(a).

- ii. The Applicant's antecedents weigh against the grant of bail and are relevant primary considerations under section 4(2B).
- iii. Having regard to the seriousness of the present charge, the apparent strength of the evidence, the Applicant's antecedents, and the separate pending attempted murder charge as part of the overall risk assessment, I am satisfied that there is a real risk of non-attendance and further offending if the Applicant is released.
- iv. I am further satisfied that the release of the Applicant would give rise to significant public-safety and public-order concerns which conditions cannot adequately address.

Dated this 28<sup>th</sup> April A.D. 2026



**The Hon. Mr Justice Darron Ellis**