

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

CRI/bal/00055/2024

B E T W E E N

ETHEN FRANCIS

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Madam Justice Renae McKay

Appearances: Applicant appeared Pro Se
Ms. Tylah Murray for the Respondent

Hearing Dates: 16th July, 2025

BAIL DECISION

[1.] The Applicant, Ethen Francis (**“the Applicant”**) made an application to be admitted to bail on 22nd May, 2025. The Applicant is charged with one count of murder contrary to section 291(1) (b) of the Penal Code, Chapter 84 and one count of attempted murder contrary to section 292 of the Penal Code, Chapter 84.

[2.] The Applicant said that he is a fit and proper candidate for bail. He also maintained his innocence.

[3.] The bail application is opposed by the Director of Public Prosecutions (**“the Respondent”**). The Respondent relied on the Affidavit in Response filed on 28th March, 2024 and the Supplemental Affidavit in Response filed on 8th April, 2024.

[4.] By the Respondent's Affidavit they objected to the bail stating that the Applicant is not a fit and proper candidate for bail. They relied on the previous bail decision of 30th April, 2024 by Williams J., which was subsequently denied, stating that there has been no change in circumstances.

[5.] The Respondent also avers that there is strong and cogent evidence to support the refusal of bail for the Applicant. They say that the statement of witness herein positively established the Applicant's involvement in the matter. The witness also positively identified the Applicant as the man that attempted to kill him on Sunday, 30th July, 2023.

[6.] The Respondent further said that the Applicant ought to be denied bail as it is likely that he would fail to comply with bail conditions and has sufficient incentive to abscond. The Respondent also raised public safety and order concerns against the applicant.

Law & Analysis

[7.] The power to grant bail is found in the **Bail (Amendment) Act, Chapter 103, Section 4(2)** provides the statutory framework for the grant of bail for part C:-

“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) 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.”

[8.] The **First Schedule Part A of the Bail (Amendment) Act** outlines the relevant factors that the Court must consider in an application for bail which provides:-

“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.”

[9.] There is an evidential burden on the Respondent to prove that the Applicant would fail to surrender to custody, appear at trial, commit an offence while on bail or interfere with witnesses or otherwise obstruct the course of justice. This was highlighted in the Court of Appeal decision of **Jevon Seymour v Director of Public Prosecutions, No. 115 of 2019**. The Court was tasked with determining whether the judge at first instance made a proper ruling on denying the applicant bail. At paragraph 65 of the judgment, Crane-Scott, J.A. stated:

“...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.”

[10.] I do find that the evidence adduced before this Court as contained in the witness statements attached to the Respondent’s Affidavit, is strong and cogent and capable of raising a reasonable suspicion of the Applicant’s involvement in this offence. On the evidence of anonymous witness statement, the witness stated that the male known to him for a number of years was walking towards him and as he was about 5-6 feet away from him, the Applicant lifted his shirt to reveal a silver handgun. This witness also gave a thorough account of the events which unfolded as alleged, as well as positively identified the Applicant from a 12 man photo lineup.

[11.] Taking into consideration the length of time that the witness suggests that they had the Applicant in their view strengthens the cogency of the evidence. There is no doubt that this observation of the Applicant was more than a fleeting glance.

[12.] The Court also wishes to highlight the Privy Council’s approach to bail as enunciated by Lord Bingham in **Hurnam v. State of Mauritius [2006] 1 WLR 857** at paragraph 15:

“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...

[13.] While the Respondent alleged that the Applicant is a flight risk and is likely to abscond. I do not find on the facts and evidence adduced that the Applicant is a flight risk and is likely to abscond.

[14.] However, I do agree with the Respondent that there is a public safety and order concern which must be at the forefront of the Court's reasoning. The alleged incident occurred on a Sunday sometime around 10:00am in a residential area. The incident began on a public street with possible bystanders and then continued through a track road which is likely to have been frequented by persons living in the area. No regard was had for the public during the commission of the alleged offence.

[15.] As such I am of the view that there is a strong possibility that the Applicant would commit further and similar offences if admitted to bail. The Court has at its forefront, public safety and witness interference. I take judicial notice of the current influx of crime and criminal activity in this jurisdiction.

[16.] Given the Court's finding of the Applicant being a threat to public safety and order and having regard to witness interference, I am of the view that the release of the Applicant on bail could be detrimental to the protection and safety of the public and that of the witness.

[17.] In the circumstances and having regard to the foregoing reasons, I find that the Applicant is not a fit and proper candidate for bail. Accordingly, the Applicant's application for bail is denied.

Dated the 16th day of July, 2025

Renae McKay
The Honourable Madam Justice