COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Criminal Division
2023/CRI/BAL/00455/20212
BETWEEN:
RICHARD MCNEIL

Applicant

AND
DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before:	The Hon. Mr. Justice Loren Klein
Appearances:	Tamika Roberts and Ian Cargill for the Applicant Rashied Edgecombe for the Respondent
Hearing Date:	28 April 2026
Ruling:	Oral Ruling 5 May; Written Reasons 19 May 2026

RULING (BAIL)

KLEIN, J.

Bail Act—Application for Variation of Bail Conditions—s. 9 of the Bail Act— Part C Offences—Murder—Application for removal of EMD—Prolonged wearing of device—Whether oppressive and burdensome—Device affecting employability—Application for release of surety—Land papers deposited as security for bail—Jurisdiction to discharge surety—Considerations—Prior bail breaches—Failure to Charge Device—Delay in trial

INTRODUCTION AND BACKGROUND

1. This is an application by Richard McNeil pursuant to a summons filed 17 April 2026, supported by an affidavit of the same date, to vary the conditions of his bail. He also relies on material filed in support of his previous applications for bail and variation.

2. He was originally granted bail by the Supreme Court on 27 August 2020, subject to the following conditions: (i) $20,000.00 with two sureties; (ii) to report to the Elizabeth Police Station three times a week (Mondays, Wednesdays and Fridays) at or before 6:00 p.m.; (iii) to observe a curfew from 9 p.m. to 6:00 a.m.; (iv) to be fitted with an electronic monitoring device; and (v) not to have any contact with the witnesses.

3. He seeks the following variations: (i) a reduction of the amount from $20,000.00 to $9,500.00, and an increase in the number of sureties to three; (ii) release of his main surety (his grandmother); and (iii) removal of the electronic monitoring device ("EMD").

4. The Office of the Director of Public Prosecution ("DPP") opposes all of the sought variations. No affidavit was filed in response to the current application, but the DPP relied on its earlier affidavits, the latest of which was filed on the 29 April 2025. It appears that the applicant has tried (unsuccessfully) to have his bail conditions varied on at least two prior occasions: he was refused on 10 June 2025 by Williams J, and on 3 December 2024 by Brathwaite J.

Brief Factual Background

5. The applicant was granted bail in respect of a murder charge (a Part C offence). The underlying allegations are that he shot Don Rahming to the head at close range on 6 July 2020, after the two apparently had a series of earlier arguments and/or confrontations. The shooting happened in the area of West Street and Hospital Lane, and it appears that the deceased was an acquaintance who frequented the neighborhood.

Material in support of bail variation

6. The applicant in his affidavit states that he is 33 years old. He is seeking the release of his main surety, his grandmother, who secured his bail with her land papers, but who now needs them for personal commercial transactions. Concomitantly, he is seeking the reduction of the bail amount to $9,500.00 (i.e., below the threshold required for lodging land papers or bank guarantee as security). He is also applying for the removal of the EMD, which he says "…*is posing a problem finding gainful employment…once the device is discovered, my job is terminated*."

7. He indicates that since he was granted bail, he has "*complied with all rules and regulations of the...Court*" and attended all of his hearing dates. He also avers that he does not have any previous convictions before the Court, and neither does he have any pending matters, other than the charge that is the subject of the current application.

8. The DPP opposes the variation. The rationale for its position is unchanged from the material lodged in opposition to the earlier applications, and paragraphs 8 and 9 of the 2025 affidavit provide an example:

> "8. Contrary to paragraphs 5 and 7 of the Applicant's affidavit, he has not been complying with his bail conditions and has convictions for breach of bail. [*Antecedents exhibited*.]

> 9. The Respondent verily believes that given the cogency of the evidence and circumstances of the offence, the seriousness of the offence, the penalty attached, the antecedents of the Applicant as well as the need to protect public safety and public order, the $20,000.00 bond is necessary in mitigating the risk of the Applicant absconding, committing further offences while on bail and for the protection and safety of the public and public order."

9. As explained, this affidavit was not sworn in response to the applicant's current affidavit, but it may be noted that paragraph 8 remains apposite to paragraphs 5 and 8 of the current affidavit. Those paragraphs aver that the applicant has been complying with Court regulations and that he does not have any previous convictions, which the DPP disputes.

Parties' submissions in brief

10. In oral submissions, counsel for the applicant made three central points in support of the application for the variation of bail. Firstly, it was argued that the bail amount should be substantially reduced to facilitate the release of the principal surety—the applicant's grandmother—who had used her land papers to secure the bail. It was indicated that she now needed them returned to facilitate a loan for home repairs. The reduced amount to below $10,000.00 would enable the bail amount to be secured by job letters from suitable sureties (as opposed to lodging land papers or bank guarantee).

11. Secondly, she submitted that the EMD was creating difficulties with the applicant obtaining employment, which was creating economic hardship for the applicant, stretching back to 2020. In fact, counsel for the applicant related that the device had actually "gone off" (emitted some form of alarm) during a job interview, which resulted in the interview being abruptly terminated.

12. Finally, Ms. Roberts singled out the delay in the trial process. It was emphasized that the incident out of which the charge against the applicant arises took place since 2020. There have been several trial dates that have been missed and, although the applicant is on bail, the delay was still inordinate. Counsel contended that the wearing of the EMD over this long period and its alleged stifling effect on finding employment had contributed to making the device onerous and oppressive.

13. As noted, the prosecution objected to the request for variation. The reduction in the amount was opposed on the basis that it was necessary to deter the applicant from absconding, committing further offences while on bail, and to protect public safety. It was also argued that the applicant was charged with a very serious offence, and that this consideration militated against the variation of the bail conditions.

14. With respect to the application for the removal of the EMD and its relationship to the applicant's employment prospects, it was submitted that the applicant did not submit an employment letter to support his claim to prospective employment. Finally, the prosecution stressed that despite the averments in the affidavit, the applicant had in fact committed multiple breaches of bail conditions.

ANALYSIS AND DISCUSSION

Law and Legal Principles

15. In **Samuel Meadows v DPP** (2024/CRI/Bal/00041), 17 March 2026, I summarized the statutory provisions and legal principles relative to the consideration of bail in eight propositions. Reference can be made to that case for a full statement of those principles. I will only provide a bird's-eye-view here.

(i) Bail engages the constitutional right to personal liberty and is underpinned by the presumption of innocence (**Hurnam v The State** [2006] 3 LRC 370, **Richard Hepburn v The Attorney General,** SCCrApp276 of 2014).

(ii) Bail is granted on a discretionary basis under the Bail Act, and the applicable considerations differ depending on whether the offence is listed in Part B, Part C, or Part D of the First Schedule. For Part B offences, the Act provides that an accused "*shall*" be detained unless the court is satisfied that detention is not justified; and an accused is ineligible for bail if he served time within the preceding 5 years for conviction of another Part B offence. For Part C offences, the language of the statute is that the accused "*shall not be granted bail*" unless specified exceptions apply, including (a) where the person has not been tried in a reasonable time (presumptively 3 years) or (b) qualifies under the general Part A factors and the special factors in s. 2B. The "primary considerations" for a Part C determination are: (i) character or antecedents of the person charged; (ii) the need to protect public order or safety; and (iii) the need to protect victims (where appropriate). Part D offences are dealt with under the general discretion in section 3. The court's primary inquiry under Part A is whether there are substantial grounds for believing that, if released, the defendant would fail to surrender, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice. Other relevant statutory factors include the defendant's protection or welfare, prior absconding or breach of bail, offending while on bail, the nature and seriousness of the offence, the strength of the evidence, and the need to protect the alleged victim from further violence.

(iii) Bail is not to be withheld as punishment before trial; the proper test is the likelihood of whether or not the defendant will surrender for trial, although that is not the only consideration (**Johnathan Armbrister v The Attorney-General** SCCrApp. No. 276 of 2014; **Hurnam**).

(iv) Bail applications require the court to balance the accused's fundamental right to liberty against the countervailing interest of public safety (**Richard Hepburn; Hurnam).**

(v) Although s. 4(6) places a burden on the applicant to satisfy the court that bail should be granted, a stream of authorities state that this does not shift the burden from the Crown to justify 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) A bail application does not require the court to decide disputed facts or conduct a forensic examination of the evidence. The material before the court need only raise a reasonable suspicion or a *prima facie* case that the applicant committed the offence, sufficient to justify deprivation of liberty (**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).

(vii) There are no numerical restrictions on successive bail applications; each application must be considered on its merits. On a renewed hearing, the court must consider previous findings and whether there is any new material relevant to bail, and it retains the power to protect its process from abuse (**Darmagio Whyms**; **Richard Hepburn v The Attorney General** (No.2), SCCrim App & CAIS No. 135 of 2016; **Mackey and anor. v R** [2016] 2 BHS J No. 132).

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

Grant vs. Variation

16. In my judgment, it is also necessary to say something about the interrelationship between the principles relating to the grant and variation of bail. The grant of bail is governed by s. 4 of the Bail Act, read together with Part A of the First Schedule. Paragraph (a) of Part A requires the court to be satisfied that there are "*substantial grounds for believing*" that the defendant would commit one or more of the statutory bail risks, that is (i) fail to surrender to custody or appear at trial (abscond); (ii) commit an offence while on bail; and (iii) interfere with witnesses or otherwise obstruct the course of justice, as a basis for refusing bail. The court is to have regard, among other things, to the factors which I have set out above in considering bail.

17. The main provisions relating to the imposition of conditions and the variation of such conditions are found at s. 9 of the Act. Section 9(1), in relevant part, provides as follows:

"(1) When bail is granted to a person to whom section 3 applies, no conditions may be attached unless it is considered necessary for the purpose of preventing absconding, the commission of an offence on bail or interference with witnesses, or for the purpose of obtaining medical or other reports."

[…]

(6) Where a court has granted bail in criminal proceedings, the Court may on application—

(a) by or on behalf of the person to whom it was granted; or

(b) by the prosecutor or a police officer;

vary the conditions of bail, or in respect of bail which it has granted unconditionally, impose conditions."

18. In **The King (on the application of Shafaquat Afzal Hussain) v Crown Court at Leeds** [2023] EWHC 64 (Admin), in a claim for judicial review of the refusal of a bail variation application, the Administrative Court said that there was "*no distinction of substance*" between the "*substantial grounds*" test for bail and the "*necessary*" test for the imposition or variation of bail conditions [at 14]. In other words, the test for the variation of bail conditions must still serve the same statutory purposes in the bail regime of securing surrender, preventing offending and interference with witnesses or otherwise obstructing the course of justice.

19. The Bail Act does not draw any distinction between initial grant and variation. It is clear, however, that on an application for variation, the court is not being asked to consider bail for the first time. And so the main considerations must be whether or not there is some change in circumstances or new material which justifies the variation of previously-imposed conditions or, alternatively, the imposition of conditions (if none existed). However, as indicated, any variation of conditions must still seek to ensure that bail risks can be adequately managed by the varied conditions, and that the accused appears for his trial.

Court's application of principles to the current application

20. I have given careful consideration to the submissions of counsel and the affidavit evidence in support of and opposing the variation application, as well as the statutory factors and the legal principles which govern the grant and/or variation of bail for a person charged with Part C offences under the Bail Act. Based on those considerations and the information presently before the Court, and for the reasons that follow, I have concluded that bail should be varied to reduce the amount to that sought in the application, that the main surety should be released, and the EMD removed.

Reduction of bail amount and release of surety

21. Firstly, I am satisfied that the Court has power to vary bail arrangements in accordance with s. 9 of the Bail Act, and the relevant provisions have been set out above. This includes the power to alter the amount of bail and to substitute and/or add sureties.

22. The Act does not provide a general mechanism by which a surety may seek to be discharged from his or her obligations—with the exception of s. 12(3)(d), which provides for a surety who wishes to be discharged on the basis that there are reasonable grounds for believing that the person released on bail will not surrender to custody, to give notice to the police, which triggers a process where the person may be arrested without a warrant. In some jurisdictions, the statutory regime specifically grants a surety standing, along with the person released on bail and the prosecution, to apply for a variation of conditions of bail, including an application to dispense with any surety (see, for example, Rules of the Court of Judicature (Northern Ireland) (Revisions) 1980).

23. By contrast, section 9(6) of the Act only confers standing on the person granted bail and the prosecution to apply for a variation. It is clear, however, that on an application by the person granted bail, the court is empowered to vary the conditions, or impose conditions where bail has been granted unconditionally, including any conditions relating to sureties. But even in the absence of any direct statutory provision authorizing the release of a surety (aside from the statutory mechanism under s. 12(3)(d)), I would have been prepared to hold that the Court seized with bail has the discretion to release or discharge sureties under its inherent jurisdiction.

24. In my view, there is no proper basis to require a person to remain bound as a surety once a proper application has been made on his or her behalf and reasonable grounds have been established to the satisfaction of the Court. Of course, this assumes that any affected surety must be present or have had an opportunity to make representations. The real question for the court is whether the defendant's continued grant of bail can appropriately stand on the proposed varied terms. This is because a decision to release or dispense with a surety may trigger a reconsideration of the bail, and the court may either remand the accused, continue bail on the same terms, substitute or require additional sureties, or impose different conditions.

25. It is also important to note that the surety's role is limited to securing the attendance of the accused for trial (see s. 9(3), and **Shea v Winchester Crown Court** [2013] EWHC 1050 (Admin)), and does not extend to ensuring compliance with the other bail conditions. So as long as a suitable alternative surety or sureties can be found, who are willing to execute the bond, the Court has no particular interest in ensuring that any particular surety or sureties remain on the bond.

26. Having regard to the overall history of the applicant's attendance at court and all the circumstances of the case, the court is satisfied that the grandmother should be released as a surety, and her land papers returned. As was made clear during the hearing, however, an applicant applying for the release of a surety must accept the risk that the continuation of his bail is conditional on securing another suitable surety or sureties to cover the bail amount, or any reduced amount the court may order. If he or she fails to do so, the court may in its discretion still release the surety, but the consequence is immediate remand unless the court decides to dispense with the requirement for a surety or sureties. Therefore, the release of the surety will not take place until another suitable surety or sureties have executed the bond in relation to the bail amount or any reduced amount the court may grant.

26. In their 2025 affidavit, the prosecution asserted that the $20,000 bond was "*necessary*" to prevent the applicant from absconding and committing further offences while on bail. As explained, the role of the surety is not to prevent the commission of other breaches or offences, but only to secure attendance for trial. So far, the accused has attended for his court hearings, including the previously scheduled trial dates, and it has not been suggested that that he will fail to show up if the amount is reduced with suitable sureties. In all the circumstances, I grant the application for the reduction of the bail amount to $9,500.00, with up to three sureties. As is well known, under the current Practice Direction relating to bail, amounts of $10,000.00 or above are secured either by the deposit of land papers or a bond/letter of guarantee issued by a bank in the bail amount. Amounts below $10,000, however, may be secured by recent job letters on behalf of each of the sureties, and this is a relatively easier hurdle for applicants and their sureties to meet.

27. I will address the issue of the impact of trial delay on the application a little later. But delay is also a factor that the court may take into consideration on an application for the release of a surety. It is reasonable to suppose that, either because of their proximity or connection to the accused, persons who stand as sureties agree to accept certain financial risks and inconvenience. In the worst-case scenario, they may be exposed to forfeiture of the amount pledged. However, the financial risks accepted by a surety should not become unduly onerous or oppressive as a result of failure to bring the matter on for trial within a reasonable time. In my judgment, it is not reasonable to expect that anyone would consent to having their collateral or other financial security tied up for nearly six years while waiting for a trial to come on. In the circumstances, I accede to the application for the release of the surety, subject to the conditions already indicated.

Trial Delay

28. Secondly, this is an application for variation of bail conditions in a case where bail has been granted since 2020. What is being alleged now, is that several of the conditions have become onerous for the applicant and/or the surety with the passage of time. The date of the offence is 6 July 2020. Several trial dates have come and gone: the first trial was set for 15 April 2024; the second for 9-20 February 2026. In several of the earlier affidavits opposing bail, it was stressed that the trial date was 14 April 2024, and this was one of the reasons advanced for resisting variation on the footing that the trial date was proximate. The applicant states that he is next to appear before this Court on 22 June 2026. When he appeared on 23 March 2026, his trial was re-fixed to 22 February to 5 March 2027.

29. Further, it has to be remembered that the primary purpose of bail is to ensure that the applicant appears for trial. But there is a countervailing obligation and expectation that trial should be within a reasonable time, and there is a statutory presumption that this is three years. The grant of bail subject to conditions does not negate the obligation to bring on a trial within a reasonable time. As things currently stand, the applicant's trial is set for nearly 7 years since he is alleged to have committed the offence. In my judgment, delay is also a material change of circumstances that warrants a fresh consideration of his application for variation of the conditions.

Prior findings

30. Thirdly, I have also taken into consideration the earlier judicial orders of 10 June 2025 and 3 December 2024, refusing the application for variation on similar grounds as those in the current application. I am not bound by those rulings and, as noted, they were all decided in the context of much earlier anticipated trial dates. The situation has now changed to a 2027 projected trial date.

Prior bail breaches

31. Fourthly, although it was initially submitted that the applicant had no prior breaches of his bail conditions, it emerged (and counsel for the applicant accepted) that the applicant had a number of bail breaches, indeed some 7 counts for which he was fined. I would say that I would have expected that matter to be front and center in the applicant's affidavit seeking the variation, as there is a duty of candour in such applications.

32. However, on closer scrutiny of the violations, it emerges that the majority of these breaches relate to failure to charge the device, for which he was convicted and fined. There are no allegations of any attempts to abscond, interfere with witnesses, or commit further offences while on bail. And the applicant has appeared for all of his hearings in this matter.

33. To be sure, an applicant has a duty to abide by all of the conditions of bail, including the conditions relating to charging and maintaining his EMD. The Act treats breaches of all bail conditions as serious, as was highlighted by the Court of Appeal in **Riclaude Tassy v The DPP** (SCCrApp. No. 129 of 2022), where the Court said [25]:

> "In our judgment, it is imperative that persons on bail fully understand that the conditions on which they are released on bail must be complied with by them. Prior to the 2016 amendment, a breach of bail conditions could only result in the revocation of their bail; but by the 2016 amendment, not only can bail be revoked but they can be further punished for the breach as a criminal offence. The severity of the punishment prescribed by Parliament reflects the gravity which Parliament and the society on whose behalf it enacts laws regard a breach of bail conditions. The courts must reflect that gravity in the punishment it imposes for a breach of conditions."

34. Importantly, the Court also drew a distinction between breaches such as failing to charge a monitor and breaches of the substantive conditions [33]:

> "A sentence for the single instance of the appellant failing to charge his electronic monitor cannot be the same as the sentence for the multiple breaches of the curfew conditions found in count two. The sentence must be proportionate. In our judgment, the sentence imposed with respect to failing to charge the electronic monitoring device is unduly harsh."

35. As discussed, any breach of bail conditions is serious, but I do not think that by themselves they are determinative of the application for variation. It would take a superhuman feat of rigour

and discipline to expect that over the span of nearly six years there would not be a few lapses with respect to charging the device at some point. As indicated, there is nothing in the antecedents to suggest that as a result of the variation sought, the applicant is less likely to surrender for trial, or commit other offences while on bail, or interfere with witnesses or otherwise obstruct the course of justice.

Removal of the EMD

36. Fifthly and finally, I have given anxious consideration to the request for the removal of the EMD. The applicant argued that it interferes with his ability to obtain employment. I accept that such a device might create difficulties with obtaining certain kinds of employment. As an example, the applicant's 2025 affidavit exhibited a letter from a construction company rejecting his application for a job, even though acknowledging he had the required skills, because the construction project required security clearance and the applicant was outfitted with an EMD.

37. But I would not have been swayed by this submission alone, as I also accept that there are ways to manage the visibility of the device and prevent it transmitting at inopportune times, so as not to draw undue attention to the wearer. For example, it can be covered by appropriate clothing so that it is not conspicuous or less visible. It is also my understanding that the monitor will only sound an alert (which may take different forms, such as a voice, siren, LED, vibration or audio tones) when the device needs to be charged or in response to an offender violation, such as a zone violation.

38. That said, all bail conditions are tied to the applicant being tried in a reasonable time. It cannot have been the intention of Parliament in the Bail Act that an accused person should be saddled with wearing an EMD for an extended period of time, along with a curfew, as the price to pay for his or her freedom while waiting an unduly long time for a trial. By contrast, in the UK, the courts treat electronic monitoring with a curfew as having a penal character. Under the statutory scheme (**Criminal Justice Act 2003**), a defendant who is placed under an electronically monitored curfew is ordinarily entitled to a credit for one half of the total number of days during which the defendant was subject to the curfew, if he is later convicted and sentenced.

39. There are no similar statutory provisions here. But there is no doubt that wearing such a device over a long period, in addition to being stigmatizing, can be physically uncomfortable and psychologically burdensome. The typical device worn by monitored individuals measures some 4.72" high, is made of a very hard, enamel-like, polyurethane material, which includes some stainless steel fittings, and weighs some 9.7 ozs. (over half a pound). At 33 years' old, the applicant has been wearing the device for a little under one-half of his adult life. While a monitoring device may be a useful instrument to ensure compliance with certain bail conditions—and it may be the price that some accused persons have to pay for their "freedom"—it can never be normalized as a way of life, even for those accused of the most serious offences.

CONCLUSION AND DISPOSITION

40. In all the circumstances, the Court is satisfied that the variations sought are reasonable and proportionate and that granting them is consistent with the requirement to manage bail risks, in particular with a view to ensuring that the defendant attends for his trial. The variations are granted as follows:

(i) The bail amount is reduced from $20,000.00 to $9,500.00, with up to three sureties;

(ii) The surety seeking relief is to be released; however, this is not to take place unless and until other suitable sureties have executed the bond to meet the reduced bail amount.

(iii) I also order the removal of the EMD.

All of the other original bail conditions will remain in place.

KLEIN J

19 May 2026