

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2025/CRI/BAL/04713

BETWEEN

DONALD FERGUSON

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

BEFORE: The Honorable Mr. Justice Dale Fitzpatrick

APPEARANCES: Ms. Jacklyn Burrows on behalf of the Respondent
Ms. Ciji Smith-Curry on behalf of the Applicant

HEARING DATE: 7th July 2026

DECISION DATE: 14th July 2026

Criminal Law - Bail - Bail Act Chapter 103 – Bail Act (Section 3) First Schedule Part A
(a)(i, ii & iii) – Bail Act (Section 3) First Schedule Part A(b) - Application for Bail –
Material change in circumstance – Risk of Absconding – Risk of Reoffending - Risk to
Public Safety - Whether there has been an unreasonable delay – Whether the Applicant is a
fit and proper candidate for Bail

DECISION

FITZPATRICK J

Introduction

[1.] The Applicant, Donald Ferguson appeared before me on July 7, 2026 seeking bail (the “Application”). Respective Counsel for the Applicant and the Respondent (the “DPP”) relied on written materials inclusive of affidavit evidence. Each Counsel likewise presented fulsome submissions during the hearing.

[2.] At the conclusion of the Application hearing, I reserved advising that my decision would be forthcoming, which I now provide.

[3.] To summate, the Application is dismissed on the following grounds:

[a.] Firstly, that this Court has the prerequisite jurisdiction to consider a full and fresh bail application given the material change in the Applicant’s circumstances, which I address below.

[b.] Secondly, upon a full and fresh consideration of all applicable factors, the Application is denied on its merits.

[4.] My reasoning is detailed below.

Background

[5.] The offence presently before this Court concerns an allegation of murder said to have occurred on 16th June 2024 at about 5:50 a.m. at the Lynden Pindling International Airport (“LPIA”).

[6.] Mr. Ferguson’s original application for bail was heard by the Hon. Mr. Justice Braithwaite on 27th February 2025. By decision dated 27th March 2025, bail was refused. Justice Braithwaite held that the Prosecution had established a prima facie case and denied bail having regard primarily to the seriousness of the charge, the risk of flight or non-attendance and the likelihood of further offences being committed should Mr. Ferguson be released.

[7.] Mr. Ferguson brought a subsequent bail application which was heard by me on 23rd September, 2025. My decision dated 26th September, 2025, refused bail based on Mr. Ferguson’s risks of absconding, committing further offenses, jeopardizing the public’s safety and his own, and risk that he would interfere with crown witnesses.

Law & Discussion

[8.] The fundamentals of bail are very well known to the Court. These fundamentals are set out in the various decisions regularly quoted to the Court. I do not intend to repeat those fundamentals here beyond what is detailed below and to note that the Court is aware of and considered them.

Material Change In Circumstances

[9.] Ms. Smith-Curry argued there were the following material changes since the last bail hearing for the Court to consider:

- i. That the Applicant has retained new counsel who is available for an earlier trial date. The Court does not consider this a material change impacting the Applicant's bail position for two reasons. One, the trial dates already scheduled at the time of the prior bail decision did not present any unreasonable delay. Mr. Ferguson was arrested on January 18, 2025 for the murder charge before this Court. Mr. Ferguson was previously given a back up trial date of February 22, 2027 and a substantive date of July 5, 2027. My prior decision noted that there was then no unreasonable delay in bringing Mr. Ferguson's charge to trial. Clearly, the availability of Mr. Ferguson's new counsel for an even earlier trial date does not alter my prior finding of no unreasonable delay here. Regardless, the Court scheduled an earlier trial date of September 28, 2026 for Mr. Ferguson based on his current lawyer's availability while also maintaining the existing dates.
- ii. That the Applicant had a pending charge of Possession of Dangerous Drugs with Intent to Supply (file 1-25-007184) at the time of my prior decision, which is now resolved. Mr. Ferguson had a trial of this matter before the Magistrate's Court on February 5, 2026. He was found guilty of the lesser offence of Possession of Dangerous Drugs and sentenced to a conditional discharge, including probation for one year. I accept that this is a material change since my previous decision.
- iii. That the Applicant has not been presented with any process seeking his extradition to the United States in relation to the extant nineteen-page Indictment in that country charging Mr. Ferguson along with several others for drug trafficking and firearms charges. Mr. Ferguson notes the delay in commencing any such extradition proceedings as being a material change. The Court understands the essence of Mr. Ferguson's submission to be that the delay in bringing extradition proceedings reflects a lack of merit or cogency with respect to the allegations against him. There is nothing other than the absence of any extradition process to support this. The Indictment charges remain active against Mr. Ferguson. The substance of the allegations set forth in the Indictment involve a criminal group organized to transport illegal and dangerous drugs, namely cocaine, through the Bahamas and into the United States. The Indictment names thirteen (13) accused persons, including high ranking members of the Royal Bahamas Police Force and Royal Bahamas Defence Force. Any delay in commencing extradition proceedings against Mr. Ferguson could flow from the complexity of prosecuting an international crime with multiple accused. The suggestion that the delay evidences a diminished case against Mr. Ferguson is entirely speculative and is not accepted as material change for this bail application. There is no information before me that the stated delay in process has impacted Mr. Ferguson's ability to obtain a timely trial in the United States for these charges.

- iv. That the Applicant has not been served with a Voluntary Bill of Indictment (“VBI”) respecting his pending charges of Conspiracy to Possess Dangerous Drugs with Intent to Supply, Conspiracy to Import Dangerous Drugs, Abetment of Importation of Dangerous Drugs and Possession of Dangerous Drugs with the Intent to Supply (file 1-24-157946). Mr. Ferguson notes that he was arrested for these charges on January 21, 2025. Again, the Court understands the essence of Mr. Ferguson’s submission to be that the delay in serving the VBI reflects a lack of merit or cogency with respect to the allegations against him and also imperils his right to a trial within a reasonable time. The DPP in their materials advise that the delay in presenting the VBI has been awaiting the forensics results confirming the materials seized in relation to these charges are in fact illegal drugs, namely seven hundred and sixty two (762) pounds of cocaine and twenty five (25) pounds of marijuana. It is not disputed that this jurisdiction lacks adequate testing facilities such that evidence is regularly submitted to facilities outside of the Bahamas for analysis. This is a reasonable explanation albeit an unfortunate state of affairs. The VBI is scheduled to be served August 20, 2026. The larger point is that the DPP is continuing in its efforts to prosecute these charges. The Court expects that the VBI will be served on August 20, 2026 and that a trial date will be set thereafter. While noting that seventeen (17) months have passed from the date of arrest, the Court is not presently able to comment on the reasonableness of the trial date for this charge pending a date being scheduled. In other words, the delay to date is not sufficient for the Court to find unreasonable delay and a related material change in circumstances. The suggestion that the delay in serving the VBI evidences a diminished case against Mr. Ferguson is entirely speculative and is not accepted as material change for this bail Application.
- v. That the Applicant has now presented alibi evidence, namely the Affidavit of Roberto Thompson sworn by November 25, 2025. The allegation against Mr. Ferguson is that he drove a white Nissan Note into a parking lot at the LPIA to a location beside where the victim had parked his vehicle. The driver of the white Nisan Note is alleged to have then shot the victim and drove away. This shooting occurred at approximately 5:50 a.m. on June 16, 2024. Mr. Thompson’s Affidavit states that he came upon and had a conversation with Mr. Ferguson at the top of the escalator leading from the public security screening inside LPIA at approximately 6:00 a.m. on June 16, 2024. Mr. Thompson’s evidence, if presented at trial and accepted by the trier, would seem to provide an alibi for Mr. Ferguson. The Court accepts this evidence as a material change since the last bail hearing.
- vi. That the conditions at the Bahamas Department of Corrections (“BDOCs”) where Mr. Ferguson is held are grave, inadequate, unhealthy and inhumane. The Court does not have any evidence or details before it to determine that the conditions at BDOCs have changed since the last bail hearing for Mr. Ferguson ten (10) months ago. As such, this is not accepted as material change for this bail Application.

[10.] Given the finding that there has been some material change in Mr. Ferguson’s circumstances since this Court’s prior bail decision, the merits of the present Application are addressed below.

The Merits of the Bail Application

[11.] To summate, an application for bail requires a balancing between the accused's constitutional rights to liberty conjoined with the presumption of innocence and society's interest in having criminal allegations fully and fairly ventilated through an impartial, unimpeded justice system (See: *Denero Whymys v the Director of Public Prosecutions* 2023/CRI/Bal/188 at para 11).

[12.] The presumption of innocence is at the core of our criminal justice system. It is enshrined in Article 20(2)(a) of the *Constitution*. An accused is presumed innocent of all allegations and is not required to prove anything. The accusations, including what is contained in the statements of any and all potential prosecution witnesses, are merely allegations.

[13.] Also fundamental on any request for bail is the right of every individual to not be deprived of his or her liberty, except as authorized by law enshrined in Article 19(1)(b) of the *Constitution*.

[14.] The Applicant stands before this Court charged with Murder pursuant to Section 290(1) and 291(1)(B) of the Penal Code.

[15.] As it concerns the murder charge, we have the dying declarations of the virtual complainant on June 16, 2024. One witness states that the virtual complainant identified "DJ" as the shooter. The Applicant in his Record of Interview ("ROI") did acknowledge that his nickname is "DJ". Another witness provided a statement that the virtual complainant said it was "DJ, Nesha husband who shoot me". The Applicant's estranged wife's first name is Tanesha who was then in a relationship with the virtual complainant. This provides cogent identification evidence at least at this bail Application stage.

[16.] The evidence further discloses opportunity.

[17.] The Applicant was present at the airport at the time of the shooting, having that same morning checked in for a one-way flight to Freeport, Grand Bahama. He checked in for that flight around 5:30 a.m. The virtual complainant was shot in proximity approximately twenty (20) minutes later.

[18.] In his ROI, the Applicant also admitted to being familiar with the so-called "Door M," an interior access point used by pilots and other authorized personnel to traverse the airport. During this Application hearing, the Applicant directed the Court to the report of Superintendent Robinson dated January 20, 2025 that states, among other things, that Door M was broken such that anyone could gain access to the related passageway by manually opening that door. It is worth noting that Superintendent Robinson's report was before the Court for the prior bail hearing. In any event, the Court accepts that a door that anyone could open significantly broadens opportunity. However, the Applicant's opportunity is not thereby diminished on June 16, 2024 when he was present at LPIA at the time of the shooting.

[19.] The Court accepts that the evidence of opportunity against the Applicant is now challenged by the Affidavit of Mr. Thompson. The DPP submits that Mr. Thompson will need to attend at trial to present evidence and it will be up to the trier whether any alibi is confirmed. The DPP also

argues that the strength of the purported alibi is diluted by the fact that this alibi was not raised by Mr. Ferguson following his arrest on January 21, 2025 prior to December, 2025 when Mr. Thompson's affidavit was presented, including during the Applicant's ROI or the two prior bail hearings.

[20.] Finally, there is evidence of motive. During his ROI, the Applicant acknowledged his desire to reunite with his estranged spouse and was aware that she was in a relationship with the virtual complainant. In addition, there is the statement from the Applicant's spouse, Tanesha Smith alleging that she was stalked, threatened and intimidated by the Applicant with respect to her relationship with the virtual complainant.

[21.] The Court notes that neither the firearm used in nor the white Nissan Note vehicle associated with the murder has been located. There has been no video surveillance presented to the Court showing the Applicant in relation to these allegations despite the entire narrative occurring in a parking lot at and inside the terminal for the LPIA where extensive camera coverage would be expected. The Court also is advised that the Applicant's hands were swabbed for analysis following his arrest, including for gunshot residue, and that the forensic report remains outstanding,

[22.] The Court is satisfied that the DPP has presented cogent evidence of a prima facie murder case against Mr. Ferguson. It is far from a certain case especially with consideration to the possible alibi evidence that may be presented at trial. However, there is a prima face case presented.

[23.] The Applicant has other pending charges in addition to the one count of murder. He remains charged with Conspiracy to Possess Dangerous Drugs with Intent to Supply, Conspiracy to Import Dangerous Drugs, Abetment of Importation of the Dangerous Drugs and Possession of the Dangerous Drugs with the Intent to Supply (file 1-24-157946). His Application seeks bail for these charges also.

[24.] The evidence for the extant Bahamian drug charges includes: A crash landed plane where two males were seen running into the bush; seven hundred and sixty two (762) pounds of cocaine and twenty five (25) pounds of marijuana worth an estimated fifteen million dollars (\$15,000,000.00) located in the abandoned plane; and an iPad linked to the Applicant that was found in the cockpit of the abandoned plane. This Court finds that to be cogent evidence presenting a prima facie case on these very serious drug charges.

[25.] The Court has before it no material concerning Mr. Ferguson's drug trafficking and firearms charges in the United States other than the nineteen-page Indictment. The Indictment itself does provide details of the allegations. In addition, the Court takes notice that a hearing before a grand jury is a preliminary step in the American criminal justice system where the prosecution evidence is considered by a jury to determine whether there are reasonable grounds that the named crimes have been committed by the named accused. The grand jury considered the evidence against the Applicant and the others named concluding there was reasonable grounds for the case to proceed as confirmed by the Indictment. The Court relies on the preliminary vetting of the evidence by the grand jury, together with the particulars set out in the Indictment, to be satisfied

that a prima facie case exists in respect of these charges. As noted above, these charges remain active.

[26.] In summary, this Court is mindful of Mr. Ferguson's rights as expressed in the *Constitution* and that the materials filed by the DPP, including the statements of potential witnesses, are untested, unproven allegations. However, the Court is satisfied that the Prosecution has presented cogent evidence that raises a reasonable suspicion or, in other words, that establishes a prima facie case against the Applicant with respect to the local charges pending before this Court for which the Applicant seeks bail (See: *Cordero McDonald v. the Attorney General* SCCrApp. No.195 of 2016 at para. 34). As such, this Court must next consider and review the factors applicable to Mr. Ferguson's request for release on bail.

[27.] Section 4 of the *Bail Act* itemizes the factors for the Court to consider on a request for release. Below, I review the factors applicable on this Application.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would fail to surrender to custody or appear at his trial?

[28.] The Court must consider whether the Applicant is a risk of flight or, in other words, whether he is a risk to not attend court if released.

[29.] Mr. Ferguson faces very serious charges here in the Bahamas and in the United States of America.

[30.] The murder charge before this Court is a most serious offence that attracts a penalty of the most severe degree if conviction occurs. Mr. Ferguson also has drug related charges pending in this jurisdiction, as detailed above. These are, again, serious allegations which, upon conviction, would attract a significant custodial sentence.

[31.] Mr. Ferguson also has been named in a Grand Jury Indictment issued by the United States District Court (Southern District of New York) charging him along with others for "drug trafficking" and the use and possession of firearms in furtherance of such crimes. These allegations would undoubtedly result in a significant sentence if the Applicant is convicted.

[32.] Mr. Ferguson identifies no specific ties to the Bahamas except the fact that he is a citizen. His materials say generically that he has family in the Bahamas to assist him although the Court is aware that his mother has attended at hearings, including this bail Application. The Applicant is estranged from his wife, has no children, identified no specific family or assets that could bind him to the Bahamas. At its highest, the Court finds that the Applicant has limited ties to this jurisdiction.

[33.] Moreover, the Applicant is a professional pilot providing him with a very practical means to abscond if he is so minded. The Applicant says that he will surrender his pilot license, passport and related documents. However, surrendering documents does not neutralize the Applicant's ability to abscond should he be able to secure a plane unauthorized or otherwise.

[34.] The seriousness of these several and now international charges with related risk of significant jail time upon conviction, Mr. Ferguson's limited ties to the Bahamas and his being an

experienced pilot presenting a unique facility for literal flight leaves this Court satisfied that Mr. Ferguson is a risk of flight and not attending Court as required if released.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would commit an offence?

[35.] Mr. Ferguson faced charges before the Magistrate's Court in 2020 of Conspiracy to Import Dangerous Drugs, Conspiracy to Possess Dangerous Drugs with Intent to Supply and Importation of Dangerous Drugs with Intent to Supply. He was convicted and fined \$2,000.00 or eighteen months in prison on default. The Criminal Records Antecedent Form confirming this conviction is noted as "Expunged". The Court relies on section 6(2) of the *Rehabilitation of Offenders Act* in that regard.

[36.] The Applicant has now been found guilty for one count of Possession of Dangerous Drugs on February 5, 2026 (file 1-25-007184). The narrative for this charge was the police finding seven (7) grams of marijuana in the glove compartment of a vehicle associated with the Applicant. The events supporting the guilty finding in February, 2026 for the drug offence arises from events on January 18, 2025. This is the second time the Applicant has been found guilty of a drug related offence.

[37.] The Applicant was convicted of serious drug related offences in 2020. The allegations in the United States are that the Applicant was involved in a drug trafficking operation spanning from May 2021 to November 2024. The Applicant is charged with having murdered his estranged wife's boyfriend on 16th June 2024. Also, the Applicant is charged with very serious drug related offences in the Bahamas alleged to have taken place on 4th December 2025. Mr. Ferguson was found guilty another drug related offence in 2026 based on events on January 18, 2025 when he was arrested and placed into custody. His conviction, guilty finding and extant allegations represent an unbroken narrative of serious criminal activity from 2020 to January 18, 2025 ceasing only when Mr. Ferguson was placed in custody on that latter date. On that basis, the Court is satisfied that Mr. Ferguson presents a substantial risk to reoffend if released on bail.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would interfere with witnesses or otherwise obstruct the course of justice?

[38.] Mr. Ferguson's estranged spouse, Tanesha Smith has provided a statement in this matter alleging threats, intimidation and stalking from Mr. Ferguson. Ms. Smith is not a compellable witness for the prosecution. For the purposes of this Application I need only note that Ms. Smith has voluntarily provided a statement to the police and she has not to date resiled from it. It is, therefore, evidence available for consideration on this Application. Clearly, Ms. Smith may choose to testify voluntarily and I have nothing before me to suggest the contrary. In short, Tanesha Smith is a potential witness in this matter who has provided a statement that leaves this Court satisfied that Mr. Ferguson presents a substantial risk to contact prosecution witnesses and otherwise interfere with the Respondent's efforts to prosecute if released.

Whether there are substantial grounds for believing that the Applicant, if released on bail, would be a risk to the public?

[39.] The Court must also consider whether releasing Mr. Ferguson will put the public at risk. The murder allegations present a brazen shooting, execution style in the parking lot of this country's busiest airport. The context of the alleged murder, as it appears to me, arises from a domestic situation, namely the breakdown of Mr. Ferguson's marriage with his now-estranged wife, Tanesha Smith, embarked on a new relationship with the virtual complainant. The murder narrative depicts violent and emotionally driven conduct, involving the discharge of a firearm in a public setting, thereby posing a serious risk to any member of the public who might be present at the wrong place and time.

[40.] The Applicant has been convicted of drug related offences and has pending charges here and in the United States for dangerous drugs alleging that he is part of the supply chain. This does in fact pose a serious threat to public safety with all we know about drug use, supply and related criminal activity often including use of firearms.

[41.] Also worth noting is the firearms charge against Mr. Ferguson in the United States. Again, the Applicant is alleged to have used a firearm in the commission of a criminal offence presenting the obvious concern to the public safety upon any release.

[42.] This Court is satisfied that Mr. Ferguson is a risk to public safety if released (see: *Tyreke Mallory v Director of Public Prosecutions SccrApp*. No. 142 of 2021 at paragraphs 24 and 25).

Whether the Applicant should be kept in custody for his own protection?

[43.] The Court must also consider the protection of the Applicant and risks to his safety if released. The Court takes notice of the elevated profile Mr. Ferguson's charges, especially the murder allegation, have garnered in the Bahamian media and, by relation, the community. In addition, the Applicant's affidavit filed on his prior application states that he has made arrangements to "live on another island of the Bahamas" if released "to ensure my safety". The Applicant did not resile from or otherwise address this in the materials filed for the present Application. In that regard, the Court also takes notice of the prominence of retaliatory violence in the Bahamas.

[44.] Given the elevated profile of his charges, the prominence of retaliatory violence in the Bahamas and Mr. Ferguson's past admission of concern for his own safety, this Court is satisfied that Mr. Ferguson's safety will be at risk if he is released.

Whether there has been an unreasonable trial delay?

[45.] The Court notes that no argument was advanced on behalf of the Applicant on the basis of any unreasonable delay in having the murder charge before this Court set for trial. The Applicant simply notes that he has new counsel who is available for an earlier trial. It is worth noting that the Applicant's current counsel is recently hired and for that reason has not attended for any case management to previously seek an earlier trial date.

[46.] The Applicant was arrested on 18th January 2025 and has remained in custody since that time. The Court held a case management hearing where trial dates were set for Mr. Ferguson's murder charge. Mr. Ferguson was offered a backup trial date for 31st August 2026 that he then

counsel advised was not available to him. The Court did set a backup trial date for 22nd February 2027 and a substantive trial date of 5th July 2027. These dates provide Mr. Ferguson with a trial well within the three year guideline of what constitutes a reasonable time for an accused to have a trial measured from the date of arrest as noted in the amended *Bail Act* (see: section 4(2A)). As noted above, the Court at the hearing of the present bail application scheduled yet another trial for Mr. Ferguson set to commence on September 28, 2026.

[47.] There is no unreasonable delay for the trial of Mr. Ferguson's murder charge. In saying this, the Court notes the obvious, namely that the *Bail Act* guideline for a reasonable time to trial is not independent authority to detain any accused for those three years.

Conclusion

[48.] The Court has considered the presumption of innocence for Mr. Ferguson along with his right not to be deprived of liberty except as authorized by law both enshrined in the *Constitution*. The Court has also considered the bail factors applicable to this Application. The Court has considered the material changes in Mr. Ferguson's circumstances since his last bail hearing in September, 2025. Unfortunately for Mr. Ferguson, when considered together, the factors and evidential risks continue to lead this Court to conclude that he should be detained, subject to consideration of whether any conditions could adequately mitigate the identified bail risks.

[49.] The available and obvious conditions, if bail was granted are: electronic monitoring; surrendering of passport and other documents; curfew or even house arrest with limited exceptions; multiple sureties to supervise and ensure compliance with bail terms; and frequent reporting to the police.

[50.] It remains the view of this Court that no multiplicity of conditions would suffice to address the various risks presented by Mr. Ferguson, namely his risks of absconding, committing further offenses, jeopardizing the public's safety and his own, and risk that he would interfere with crown witnesses. The risks remain too many and too serious.

[51.] Hearing this Application on the merits and with consideration to all of the factors applicable to his request for release on bail, Mr. Ferguson is not a fit prospect for bail and his Application is dismissed.

Dated this 14th day of July A.D. 2026

Justice D. Fitzpatrick