

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Criminal Division**

**CRI/BAL/00292/2018**

**BETWEEN**

**LAVARDO NEWTON**

Applicant

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

Respondent

Before: The Honourable Justice Darron Ellis

Appearances: Krystal Stuart for the Applicant

T'shura Armbrose with Tylah Murray for the Respondent

Hearing Date: 28<sup>th</sup> April, 2026

*Bail - Bail Act - Application for Bail -Section 3 Offences - Part A First Schedule- Regard to relevant factors--Primary Considerations on a bail application- Whether there has been unreasonable delay - Whether the Applicant is a fit and proper candidate for bail -Whether the Applicant should be kept in custody for public safety- Whether the Applicant should be kept in custody for the safety of the Prosecution's witnesses- Whether the Applicant will abscond-Nature and strength of the evidence against the Applicant.*

# RULING

## Introduction

[1.] The Applicant, Lavardo Newton, applies for bail in respect of one count of Unlawful Sexual Intercourse, contrary to section 16(1) of the Sexual Offences Act, Ch. 99.

[2.] The bail application was filed on 22 January 2026 and is supported by the Applicant's affidavit, sworn and filed on 17 April 2026. The Applicant has pleaded not guilty and maintains his innocence. He says that he is a fit and proper candidate for bail.

[3.] The Respondent opposes bail and relies on the affidavit of Max Julien, Assistant Counsel in the Office of the Director of Public Prosecutions.

[4.] The allegation is that, sometime in October 2025, while in the vicinity of Yellow Elder Gardens, the Applicant overpowered the complainant, held him down, and committed anal intercourse with him against his will. The complainant is said to be a juvenile and to reside in the same general community as the Applicant.

[5.] The Applicant states that he is a Bahamian citizen, is 20 years of age, having been born on 20 August 2005, and resides at Seymour Street, Yellow Elder Gardens, New Providence. He says that he was arraigned before the Magistrates' Court on 1 December 2025.

[6.] The Applicant further says that he has no previous convictions, no pending matters, is not a flight risk, and will not interfere with any witness if released on bail.

## The Applicant's Submissions

[7.] Counsel for the Applicant submits that bail should be granted. Counsel relies on the presumption of innocence, the Applicant's age, his lack of previous convictions, his Bahamian citizenship, and his asserted fixed place of residence.

[8.] Counsel submits that the Crown has produced no cogent evidence that the Applicant would fail to surrender, commit further offences, interfere with witnesses, or otherwise obstruct the course of justice. Counsel further submits that stringent and tailored bail conditions can meet any proper concern of the Court.

[9.] Counsel also submits that the Crown cannot rely on the mere assertion that its case is strong as a standalone basis for refusing bail. The Applicant remains innocent unless and until proven guilty.

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

[10.] The Crown submits that this is not an appropriate case for bail. It relies on the seriousness of the charge, the nature of the allegation, the complainant's identification of the Applicant, the alleged photographic lineup identification, and the medical report referred to in the Respondent's affidavit.

[11.] The Crown submits that the case against the Applicant is strong and that the nature of the alleged offence raises substantial concerns about public safety, the safety of the complainant, interference with witnesses, and the risk that the Applicant may fail to surrender to custody.

[12.] The Crown further invites the Court to take judicial notice of the prevalence of sexual offences in the community and to consider that the complainant, being a juvenile, resides in the same community as the Applicant.

[13.] The Crown submits that there has been no unreasonable delay in the prosecution of the matter. It also submits that the seriousness of the charge and the possibility of a substantial custodial sentence upon conviction increase the risk of absconding.

[14.] The Crown therefore submits that the Applicant is not a fit and proper candidate for bail at this time.

### **The Law**

[15.] The governing principles are found in the Constitution of The Bahamas, the Bail Act, and the applicable appellate authorities.

[16.] **Article 20(2)(a)** of the **Constitution** provides that every person charged with a criminal offence shall be presumed innocent until proven guilty or until he has pleaded guilty. That presumption applies fully to this Applicant.

[17.] **Article 19** protects the right to personal liberty. **Article 19(1)(d)** permits deprivation of liberty upon reasonable suspicion of having committed, or being about to commit, a criminal offence. **Article 19(3)**, however, requires that a person arrested or detained on such suspicion be brought before a court without undue delay and, if not tried within a reasonable time, be released either unconditionally or on reasonable conditions to secure his attendance.

[18.] **Section 4(2A)(a)** of the **Bail Act** provides that, without limiting what may constitute a reasonable time, a period of three years from the date of arrest or detention shall be deemed to be a reasonable time. That provision does not give the Crown an automatic entitlement to detain an accused person for three years.

[19.] In **Duran Neely v The Attorney General**, SCCrApp No. 29 of 2018, *Evans JA* (as he then was) explained that section 4 does not confer a blanket right to detain an accused person for three years. The Court must, in every case, consider the tension between the accused's right to liberty and the need to protect society. The three-year provision is intended to protect the accused and is not a trump card for the Crown.

[20.] In the circumstances, the Court must also apply **section 3 of the Bail Act** and **Part A of the First Schedule**. **Part A** requires the Court to consider, among other things:

a.- whether there are substantial grounds for believing that the defendant, if released on bail, would fail to surrender to custody or appear at trial;

b.- whether there are substantial grounds for believing that he would commit an offence while on bail;

c.- whether there are substantial grounds for believing that he would interfere with witnesses or otherwise obstruct the course of justice;

d.- whether he should be kept in custody for his own protection;

e.- whether there is sufficient information to make the decision required by the Act;

f.- whether he has previously been released on bail and subsequently charged with a similar or serious offence; and

g.- the nature and seriousness of the offence and the nature and strength of the evidence against him.

[21.] The burden on the Crown is an evidential one. In **Jevon Seymour v Director of Public Prosecutions**, SCCrApp No. 115 of 2019, *Crane-Scott JA* stated at paragraph 65 that paragraph (a) of Part A of the First Schedule places an evidential burden on the Crown to adduce evidence capable of supporting a belief that the applicant would, if released on bail, fail to surrender, commit an offence while on bail, or interfere with witnesses or otherwise obstruct the course of justice. That burden is discharged only by the production of such evidence.

[22.] In **Jeremiah Andrews v Director of Public Prosecutions**, SCCrApp No. 163 of 2019, *Evans JA* stated at paragraph 26 that bare assertions in Crown affidavits that an applicant will not appear for trial, will interfere with witnesses, or will commit other crimes are meaningless unless supported by evidence.

[23.] The seriousness of the offence and likely penalty are relevant considerations, but they do not automatically require refusal of bail. In **Hurnam v State of Mauritius** [2006] 1 WLR 857, the Privy Council stated that the seriousness of the offence and the severity of the penalty may provide grounds for refusing bail. Still, they do not do so of themselves, without more. They are factors relevant to whether, in all the circumstances, it is necessary to deprive the applicant of liberty. Clear and explicit reasons must be given.

[24.] Similarly, in **Jonathan Armbrister v Attorney General**, SCCrApp No. 145 of 2011, *John JA* emphasised that the proper test is whether it is probable that the defendant will appear at his trial, and that bail is not to be withheld merely as punishment. The nature of the charge, the evidence in support of it, the likely sanction upon conviction, the accused's record, and the likelihood of interference with witnesses are all relevant considerations.

[25.] Accordingly, the Court is not conducting a trial. It must not determine guilt or innocence. It must assess whether, on the material before it, there are substantial grounds for refusing bail, and whether appropriate conditions can adequately manage any identified risks.

## Analysis and Discussion

[26.] The offence of Unlawful Sexual Intercourse contrary to **section 16(1)** of the **Sexual Offences Act** is a serious sexual offence. The Court proceeds on the basis that the application falls to be determined under the Court's general discretion, having regard to the factors in Part A of the First Schedule to the Bail Act.

[27.] The Court must balance the Applicant's constitutional right to liberty and the presumption of innocence against the public interest in ensuring that accused persons attend trial, do not commit offences while on bail, do not interfere with witnesses, and do not obstruct the administration of justice.

[28.] I first consider delay. The Applicant was arraigned on 1 December 2025 and has been in custody since that date. On the material before me, he has been in custody for less than six months.

[29.] There is no evidence of prosecutorial inertia, systemic delay, or any circumstance suggesting that the matter cannot be tried within a reasonable time. Nor is there evidence that the Applicant's continued detention to date is unconstitutional by reason of delay.

[30.] I am therefore not satisfied that there has been an unreasonable delay in the prosecution of this matter. Delay does not, at this stage, provide an independent basis for granting bail.

[31.] The charge is undoubtedly serious. The allegation is that the Applicant overpowered a juvenile complainant and committed anal intercourse against his will. If proved, the offence would be grave and would expose the Applicant to the possibility of a substantial custodial sentence.

[32.] The seriousness of the charge weighs against the Applicant, particularly when considering the possible incentive to abscond. However, the authorities are clear that seriousness alone is not a sufficient basis for refusing bail. The Court must consider whether the seriousness of the offence, together with the other evidence, establishes substantial grounds for believing that the Applicant would fail to surrender, reoffend, interfere with witnesses, or obstruct justice.

[33.] The Court is further entitled to consider the nature and strength of the evidence, but must do so without conducting a mini-trial. On the Respondent's

affidavit, the Crown relies on the complainant's account, the complainant's identification of the Applicant, an alleged identification in a 12-man photographic lineup, and a medical report. On that material, I am not prepared to say that the Crown's case is weak.

[34.] However, the fact that the Crown's case is not weak does not, without more, answer the bail question. The strength of the evidence may increase the incentive to abscond. However, the Court must still determine whether there is evidence that the Applicant is likely to fail to surrender, interfere with witnesses, commit further offences, or otherwise obstruct justice, and whether conditions can sufficiently address any risk.

[35.] The Crown submits that the seriousness of the charge and the likely penalty create a risk of absconding. I accept that the potential penalty is a relevant factor.

[36.] Against that, the Applicant is a Bahamian citizen, is 20 years old, gives a fixed address in New Providence, and has no previous convictions or pending matters on the material before the Court. There is no evidence that he has previously failed to attend court, breached bail, evaded law enforcement, attempted to flee the jurisdiction, or has access to means of flight not capable of being controlled by conditions.

[37.] The Crown has not pointed to any specific conduct by this Applicant demonstrating an actual risk of absconding. The risk identified by the Crown rests principally on the seriousness of the charge and the potential penalty. Those factors are important, but in this case, they do not, without more, amount to substantial grounds for believing that the Applicant would fail to surrender.

[38.] I am satisfied that any residual risk of non-attendance can be addressed by conditions, including sureties, surrender of travel documents, reporting requirements, and electronic monitoring.

[39.] The Crown submits that the Applicant's release may pose a risk to public safety. The allegation is grave, and the Court treats it with appropriate seriousness. The Court also recognises the public interest in protecting the community from serious sexual offending.

[40.] However, the Court must be careful not to treat the allegation itself as proof of a future risk. The Applicant has no previous convictions and no pending matters on the evidence before the Court. There is no evidence of prior similar conduct,

threats, breaches of court orders, or any demonstrated pattern from which a risk of further offending can reasonably be inferred.

[41.] I therefore find that the Crown has not established substantial grounds for believing that the Applicant, if released on bail, would commit an offence while on bail. Any residual public safety concerns can be addressed through strict conditions, including curfews, electronic monitoring if required, reporting, and restrictions on contact and movement.

[42.] The Crown places particular emphasis on the complainant being a juvenile and residing in the same community as the Applicant. That is a proper matter for the Court to consider. There is, however, no evidence that the Applicant has threatened the complainant, attempted to contact him, approached any witness, caused any third party to contact a witness, or otherwise attempted to interfere with the investigation or prosecution. There is also no evidence of any prior breach of court orders.

[43.] The Court is nevertheless satisfied that the complainant's age and proximity to the Applicant justify careful and stringent protective conditions. In my judgment, the proper response is not a refusal of bail on speculative grounds, but a tightly controlled bail order prohibiting contact, direct or indirect, with the complainant and all prosecution witnesses, and restricting the Applicant from approaching the complainant's residence, school, workplace, or any place known to be frequented by him.

[44.] I am satisfied that such conditions can adequately address the risk of contact or interference with witnesses.

[45.] I take into account that the Applicant is young and has no previous convictions or pending matters on the evidence before me. These factors do not entitle him to bail as of right. Still, they are material considerations in assessing whether there are substantial grounds for believing that he would misuse his liberty.

[46.] I also take into account the Applicant's assertion of innocence. That is not evidence in answer to the charge, but it is consistent with the constitutional presumption of innocence, which remains central to the bail analysis.

[47.] The decisive question is whether conditions can adequately manage any identified risks. In my judgment, they can.

[48.] The concerns arising from the seriousness of the offence, the alleged identification evidence, the complainant's age, and the parties' residence in the same general community can be addressed by a combination of financial conditions, sureties, reporting, surrender of travel documents, electronic monitoring, and strict non-contact and exclusion-zone conditions.

[49.] I therefore find that the Crown has not discharged its evidential burden of establishing substantial grounds for believing that the Applicant, if released on bail, would fail to surrender, commit an offence while on bail, interfere with witnesses, or otherwise obstruct the course of justice.

### **Conclusion and Disposition**

[50.] Having considered the affidavits, the submissions of counsel, the relevant constitutional provisions, the Bail Act, and the authorities, I am satisfied that this is an appropriate case for the grant of bail on strict conditions.

[51.] The bail application is therefore granted on the following conditions:

a.- Bail is granted in the sum of **\$9,000.00** with one or two sureties, each to be approved by the Registrar.

b.- The Applicant shall report to the **South Street Police Station** every **Monday, Wednesday and Friday** on or before **6:30 p.m.**

c.- The Applicant shall be fitted with an **electronic monitoring device** and shall comply with all requirements of the electronic monitoring programme.

d.- The Applicant shall surrender all passports and travel documents to the Registrar or such other officer as the Court directs, and shall not apply for any replacement travel document while on bail.

e.- The Applicant shall not leave the Commonwealth of The Bahamas without the prior written permission of the Court.

f.- The Applicant shall not contact, communicate with, intimidate, threaten, harass, or interfere with the complainant or any prosecution witness, whether directly or indirectly, personally, through another person, by telephone, electronic message, social media, or any other means.

g.- The Applicant shall not go within **100 feet** of the complainant's residence, school, workplace, place of worship, or any place where he knows or reasonably ought to know the complainant is present.

h.- The Applicant shall reside at **Seymour Street, Yellow Elder Gardens, New Providence**, or such other address as may be approved in advance by the Court, and shall notify the Court and the police in writing before any change of residence.

i.-The Applicant shall attend all court dates and shall surrender to custody as and when required.

[52.] The Applicant is warned that any breach of these conditions may result in the revocation of bail and his remand into custody pending trial.

[53.] Nothing in this ruling is to be taken as a finding on the Applicant's guilt or innocence. Those matters are for trial.

Dated this 3<sup>rd</sup> day of July A.D. 2026



**The Hon. Mr. Justice Darron Ellis**