

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
CRIMINAL LAW DIVISION  
2021/CRI/bail/00130**

**BETWEEN**

**ANTORN JOHNSON**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:                   The Hon. Justice Neil Brathwaite**

**Appearances:       Ms. Cassie Bethel for the Applicant  
                          Ms. Jacklyn Burrows with Mr. Calnan Kelly for the Respondent**

**Hearing Date:       11<sup>th</sup> February A.D. 2025**

**Ruling Date:         18<sup>th</sup> March A.D. 2025**

**RULING ON BAIL**

[1.]The Applicant is a twenty-four year old Bahamian male who was arraigned in the Magistrate’s Court on 29<sup>th</sup> April 2024 on charges of Unlawful Sexual Intercourse (4 Counts). In the affidavit in support, he claims to have no other pending matters, and no previous convictions. Prior to his incarceration, he was employed at a local restaurant, and claims to be a father of one child. He avers that if denied bail, he will be disadvantaged in his ability to prepare his defence and support his family, and promises to abide by any conditions if granted bail.

[2.]In opposing the application, the Respondent filed two affidavits sworn by Tennielle Bain, Counsel in the Office of the Director of Public Prosecutions. The documents exhibited to that affidavit allege that the Applicant contacted the complainant, who was twelve years old, via Facebook beginning in January 2023, and began a correspondence which culminated in the Applicant collecting the complainant on several occasions in June and

October 2023, and having sexual intercourse with the complainant in a vehicle and in her home. The complainant has identified the Applicant as a well as the vehicle reportedly used by him. The complainant further alleges that she was threatened by the Applicant, who showed her a picture of a firearm. It is also alleged that the Applicant lives near the complainant, and that a cousin of the Applicant appeared at the workplace of the complainant's mother, and said that his cousin was in jail for having sex with a little girl. The antecedents of the Applicant is also attached, and reveals that the Applicant was convicted of Possession of Instruments for Burglary in 2018, and three counts of Unlawful Sexual Intercourse in 2021.

[3.] Counsel on behalf of the Applicant relies on the presumption of innocence and the right to liberty, and submits that the Applicant is not a flight risk, as he has not absconded in the past while on bail for previous offences. The previous convictions of the Applicant were accepted, but it was submitted that he has paid his debt to society, and should not be doubly punished by being incarcerated pending his trial. Counsel submitted that the Applicant is not a threat to any witnesses, as he has not interfered with witnesses in the past. The court was therefore urged to conclude that the Applicant is a fit and proper candidate for bail.

[4.] In response, the Respondent submits that bail should be refused, as the Applicant has been charged with serious offences on cogent evidence, and that, having regard to the antecedents of the Applicant, he is likely to reoffend if granted bail. Counsel further suggested that there has been no unreasonable delay in the matter, as a back-up trial has been fixed for 26<sup>th</sup> July 2025, while the substantive trial date is 15<sup>th</sup> June 2026.

### LAW AND ANALYSIS

[5.] The tensions surrounding an application for bail have been considered in many cases. In **Richard Hepburn and The Attorney General SCCr. App. No 276 of 2014**, Justice of Appeal Allen opined that:

“5. Bail is increasingly becoming the most vexing, controversial and complex issue confronting free societies in every part of the world. It highlights the tension between two important but competing interests: the need of the society to be protected from persons alleged to have committed crime; and the fundamental constitutional canons, which secure freedom from arbitrary arrest and detention and serve as the bulwark against punishment before conviction.

6. Indeed, the recognition of the tension between these competing interests is reflected in the following passage from the Privy Council's decision in *Hurnam The State* [2006] LRC 370. At page 374 of the judgment Lord Bingham said inter alia:

“...the courts are routinely called upon to consider whether an unconvicted suspect or defendant shall be released on bail, subject to conditions, pending his trial. Such decisions very often raise questions of importance both to the individual suspect or defendant and to the community as whole. The interests of the individual is, of course, to remain at liberty unless or until he is convicted of crime sufficiently serious to deprive him of his liberty”. Any loss of liberty before that time, particularly if he is acquitted or never tried, will prejudice him and, in many cases, his livelihood and his family. But the community has countervailing interests, in seeking to ensure that the course of justice is not thwarted by the flight of the suspect or defendant or perverted by his interference with witnesses or evidence and that he does not take advantage of the inevitable delay before trial to commit further offences...”

[6.] At paragraph 11 she further noted that

“The general right to bail clearly requires judges on such an application, to conduct realistic assessment of the right of the accused to remain at liberty and the public’s interests as indicated by the grounds prescribed in Part A for denying bail. Ineluctably, in some circumstances, the presumption of innocence and the right of an accused to remain at liberty, must give way to accommodate that interest.”

[7.] The presumption of innocence is enshrined in Article 20(2)(a) of the Constitution of The Bahamas which 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”.*

[8.] Furthermore, Article 19(1) provides as follows:

**“19. (1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases-**

- (a) in execution of the sentence or order of a court, whether established for The Bahamas or some other country, in respect of a criminal offence of which he has been convicted or in consequence of his unfitness to plead to a criminal charge or in execution of the order of a court on the grounds of his contempt of that court or of another court or tribunal;**
- (b) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed upon him by law;**
- (c) for the purpose of bringing him before a court in execution of the order of a court;**
- (d) upon reasonable suspicion of his having committed, or of being about to commit, a criminal offence;**
- (e) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;**

**(f) for the purpose of preventing the spread of an infectious or contagious disease or in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community;**

**(g) for the purpose of preventing the unlawful entry of that person into The Bahamas or for the purpose of effecting the expulsion, extradition or other lawful removal from The Bahamas of that person or the taking of proceedings relating thereto; and, without prejudice to the generality of the foregoing, a law may, for the purposes of this subparagraph, provide that a person who is not a citizen of The Bahamas may be deprived of his liberty to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within The Bahamas or prohibiting him from being within such an area.**

**(2)...**

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

[9.] The relevant provisions of the Bail Act Chapter 103 read as follows:

**“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)...**

**(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.**

**(2A) For the purposes of subsection (2) (a) ...**

**(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;**

**(b) delay which is occasioned by the act or conduct of the accused is to be excluded from any calculation of what is considered to be a reasonable time.**

**(2B) For the purposes of subsection (2)(c), in deciding whether or not to grant bail to a person charged with an offence mentioned in Part C of the First Schedule, the character and antecedents of the person charged, the need to protect the safety of the public order and where appropriate, the need to protect the safety of the victim or victims of the alleged offence, are to be primary considerations.”**

**9. The factors referred to in Part A are:**

**“PART A**

**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.”;**

**[10.]** In an application for bail pursuant to section 4(2)(c), the court is therefore required to consider the relevant factors set out in Part A of the First Schedule, as well as the provisions of section 2B.

**[11.]** In considering those factors, I note that the Applicant is charged with serious offences. I am mindful that this is not a free-standing ground for the refusal of a bail application, yet it is an important factor that I must consider in determining whether the accused is likely to appear for trial.

[12.] In the Court of Appeal decision of *Jonathan Armbrister v The Attorney General SCCrApp. No 45 of 2011*, it was stated that:

*“The seriousness of the offence, with which the accused is charged and the penalty which it is likely to entail upon conviction, has always been, and continues to be an important consideration in determining whether bail should be granted or not. Naturally, in cases of murder and other serious offences, the seriousness of the offence should invariably weigh heavily in the scale against the grant of bail”.*

[13.] I note also paragraph 30 of *Jeremiah Andrews vs. The Director of Public Prosecutions SCCrApp No. 163 of 2019* where it states:

*“30. These authorities all confirm therefore that the seriousness of the offence, coupled with the strength of the evidence and the likely penalty which is likely to be imposed upon conviction, have always been, and continue to be important considerations in determining whether bail should be granted or not. However, these factors may give rise to an inference that the defendant may abscond. That inference can be weakened by the consideration of other relevant factors disclosed in the evidence. eg the applicant’s resources, family connections..*

[14.] The offences with which the Applicant is charged, and the possible penalty attached to those offence, are sufficient to raise the issue of the likelihood of flight, particularly as any penalty imposed is likely to be more severe having regard to the antecedents of the Applicant. That likelihood of flight must be contrasted with the nature of the evidence against the Applicant. In *Cordero McDonald v. The Attorney General SCCrApp. No. 195 of 2016*, Allen P., at *paragraph 34* stated,

*“It is not the duty of a judge considering a bail application to decide disputed facts or law. Indeed, it is not expected that on such an application a judge will conduct a forensic examination of the evidence. The judge must simply decide whether the evidence raises a reasonable suspicion of the commission of the offences by the appellant, such as to justify the deprivation of his liberty*

*by arrest, charge and detention. Having done that he must then consider the relevant factors and determine whether he ought to grant him bail.”*

[15.] In reviewing what has been placed before me, while I bear in mind that the court is not to embark on a trial of the matter on the papers, I am satisfied that the evidence rises to the level of a strong prima facie case, as it is alleged that the Applicant has been identified by the complainant, who has also identified the Applicant’s vehicle, and who has also reportedly provided telephone extracts of text conversations with the Applicant. I further consider that the cogency of the evidence again raises the likelihood that the Applicant will not appear for trial.

[16.] With respect to the issue of public order and safety, I bear in mind that the Applicant has been charged on strong evidence with an offence similar to one for which he has been imprisoned in the past. The evidence in this case alleges a course of conduct targeting a vulnerable victim. While the Applicant is entitled to the presumption of innocence, the court must bear in mind the nature and circumstances of the offences, and the previous conduct of the Applicant. I also bear in mind that the complainant in this matter is well known to the Applicant, and that there appears to be well-founded fears on the part of the complainant and her mother. I am therefore satisfied that there is a serious risk that the Applicant will interfere with witnesses.

[17.] In this case the Applicant avers in his affidavit that he has no previous convictions. This clearly in my view amounts to a failure to adhere to the duty of full and frank disclosure, as the Applicant has been twice convicted, once for the same offence with which he now stands charged. To my mind this raises firstly the issue of re-offending, as the Court is clearly entitled to conclude on the basis of past history that the Applicant would re-offend if granted bail. Furthermore, based on the failure to disclose these previous infractions, the Court could not be satisfied that the Applicant would abide by any promises to comply with bail conditions.

## CONCLUSION

[18.] In all the circumstances of this case, given the nature and cogency of the evidence, and the seriousness of the offences, I am not persuaded to exercise my discretion to grant bail at this time. I am satisfied in all the circumstances that no conditions could be put in place to ameliorate the risk to the safety of the witnesses, or to prevent re-offending, and have no confidence that the Applicant would abide by any conditions if granted bail. Bail is therefore refused.

Dated this 18<sup>th</sup> day of March A.D., 2025



**Neil Brathwaite**  
**Justice**

