

**IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL LAW DIVISION
2025/CRI/bail/00021**

BETWEEN

DONALD FERGUSON JR

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Hon. Justice Neil Brathwaite

Appearances: Ms. Tonique Lewis for the Applicant
Ms. Jacklyn Burrows for the Respondent

Hearing Date: 27th February A.D. 2025

Ruling Date: 27th March A.D. 2025

RULING ON BAIL

[1.] The Applicant in this matter was arraigned in the Magistrate's Court on 21st January 2025 on charges of Murder, Conspiracy to Possess Dangerous Drugs with Intent to Supply (2 counts), Conspiracy to Import Dangerous Drugs (2 counts), Abetment of Importation of Dangerous Drugs (2 counts), and Possession of Dangerous Drugs with Intent to Supply. The allegations are that the Applicant murdered Giovanni Rolle on 16th June 2024, and that the Applicant was engaged in a conspiracy between 1st October 2024 and 6th December 2024, that culminated in the importation of a large quantity of Indian Hemp and Cocaine that was imported into the Commonwealth of the Bahamas. The Applicant is also alleged to have been found in possession of a quantity of Indian Hemp during a search of his home on 18th January 2025.

[2.] In his affidavit in support, the Applicant states that he is twenty-six years, and was employed as a pilot prior to his arrest. The Applicant had initially been arrested on 16th

June 2024 and questioned in relation to the murder of Giovanni Rolle, denying any involvement. He was eventually released, and was again arrested on 18th January 2025 on drug related matters, and was again questioned in relation to the murder, again denying involvement. The Applicant states that he has no previous convictions or pending matters, and suggests that he may have been charged with the murder following intense pressure from the family of the deceased. The Applicant denies being a flight risk, or a threat to witnesses, and promises to abide by any conditions if granted bail.

- [3.] The Respondent relies on the affidavit of Calnan Kelly, Counsel in the Office of the Director of Public Prosecutions. The evidence in that affidavit alleges that on 16th June 2024 gunshots were heard at the Lynden Pindling International Airport, after which the victim was found suffering from gunshot injuries. He is alleged to have told a witness that “this DJ, Nesha husband who shot me bey, please tell my kids, my daughter and my son, I love them.” A statement was recorded from Tanisha Smith, the estranged wife of the Applicant, who confirmed that she was in a relationship with the deceased, and alleged that the Applicant had threatened her on numerous occasions to leave the deceased alone, and had also harassed her after their breakup in various ways.
- [4.] With respect to the conspiracy and importation charges, the evidence as revealed in the affidavit in response is that on 6th December 2024 at about 2am police officers at Spring Point, Acklins, saw an aircraft make two low passes at the airport before crash landing on the runway. Officers approached the site, and saw two men running away into dark bushes. The aircraft was searched, and twenty five bales of suspected cocaine and one bale of suspected marijuana were recovered. Also found in the cockpit of the aircraft was a cell phone and an iPad. The iPad contained information connected to the Applicant, and appears to have belonged to him. The affidavit in response also exhibits the antecedents of the Applicant, which reveals that he was convicted in 2020 of Importation of Dangerous Drugs, Conspiracy to Import Dangerous Drugs, and Conspiracy to Possess Dangerous Drugs with Intent to Supply.
- [5.] Counsel on behalf of the Applicant strenuously attacked the cogency of the evidence, and embarked on a minute examination of that evidence to demonstrate that the Applicant could not have committed the offence of murder, as it was submitted it is impossible for the Applicant to have gotten from the location of the killing to the location where he was arrested shortly after the murder in the allotted time frame. The absence of any evidence from the many security cameras, and the failure to verify by means of those cameras, the movements of the Applicant were cited as evidence of the poor nature of the investigation. It was further submitted that the Applicant was interviewed the day after the incident and was released, and was arrested again months later and charged, with no

apparent new information and, it is submitted, that the authorities succumbed to pressure from the family of the deceased and charged the Applicant on little evidence following a shoddy investigation.

[6.] With respect to the conspiracy and importation charges, it is submitted that the finding of the iPad of the Applicant on the aircraft is not enough to prove guilt, as others had access to the plane, and it was a plane sometimes flown by the Applicant. Again, it is contended that the evidence is not cogent. The Applicant also faces another charge of Possession of Dangerous Drugs with Intent to Supply, but is suggested that this charge is simply a question of overkill, as it appears to be based on the finding of a small quantity of suspected marijuana which was separated into two packages, raising the statutory presumption, but having no regard to the actual amount.

[7.] The Applicant relies on the presumption of innocence and the right to liberty, and cites the case of *Stephon Davis v DPP SCCrApp 108 of 2021*, as authority for the proposition that an applicant cannot be denied bail simply on the basis of having been charged with another offence while on bail. *Randy Williams v DPP SCCrApp 25 of 2022* was also cited, with counsel submitting that there must be evidence to support a suggestion that the Applicant would abscond or interfere with witnesses, and no such evidence exists in this case. Further, it was submitted that the Applicant had been released following his initial arrest, and had not fled. The court was therefore urged to release the Applicant on bail pending trial.

[8.] In response, counsel for the Respondent seeks to distinguish the case of *Stephon Davis* on the basis that the evidence in that case was considered to be insufficient, while the evidence in this case is cogent, as there is evidence of a dying declaration, as well as evidence of motive and opportunity. With respect to the drug charges, it is submitted that the finding of the iPad in the cockpit of the aircraft is extremely probative. Counsel objected to the forensic examination of the evidence undertaken on behalf of the Applicant, and submitted that such an analysis was not appropriate for a bail application. The court was therefore urged to consider the evidence sufficient to raise the inference of flight, which is made more alarming by the fact that the Applicant is a pilot. The fact that the Applicant had been at liberty following the initial arrest was deemed irrelevant, as the Applicant had not been charged and was not in any legal jeopardy. The Respondent therefore objects to bail on the basis of the risk that the Applicant will abscond, as well as the risk that the Applicant will reoffend, having regard to his previous convictions.

LAW AND ANALYSIS

[9.] 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...”

[10.] 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.”

[11.] 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”.

[12.] 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”.

[13.] 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.”;

[14.] 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.

[15.] In considering those factors, I note that the Applicant is charged with serious offences, involving the use of a firearm and resulting in the death of the victim. With respect to the seriousness of the offence, 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.

[16.] 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”.

[17.] 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..

[18.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with murder which, in considering the possible penalty which could follow a conviction, raises the issue of the likelihood of not appearing for trial. I note also that the major drug charges are proceeding indictably, and are therefore liable to attract heavier sentences if the Applicant is convicted than those usually imposed summarily, thereby increasing the incentive to flee.

[19.] That likelihood 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.”

[20.] In considering the cogency of the evidence, I note the following statement from the Court of Appeal in Stephon Davis v DPP SCCrApp. No. 20 of 2023:

“In our view "strong and cogent evidence" is not the critical factor on a bail application. The judge is only required to evaluate whether the witness statements show a case that is plausible on its face. To put it another way, there must be some evidence before the court capable of establishing the guilt of the appellant. In essence, the test is prima facie evidence, comparable to what is required at the end of the prosecution's case in a criminal trial. We can find a useful summary of the strength of the evidence required at the end of the prosecution's case in the headnote to the Privy Council's decision in Ellis Taibo [1996] 48 WIR 74:

"On a submission of no case to answer, the criterion to be applied by the trial judge is whether there is material on which a jury could, without irrationality, be satisfied of guilt; if there is, the judge is required to allow the trial to proceed.”

[21.] In considering what has been placed before me, I am satisfied that the evidence rises to the level of a prima facie case, as the deceased in this matter is alleged to have named the Applicant as the person who inflicted the fatal injuries. That evidence is to some extent strengthened by the evidence of motive from the estranged wife. I note also that the finding of the Applicant's iPad in the cock pit of the aircraft in which a large quantity of dangerous drugs were found, in circumstances where the Applicant is a pilot who sometimes flew that craft, is sufficient to raise the inference that the Applicant was flying the plane. Whether that inference is in fact drawn, and whether the evidence on the murder charge is considered to show that it was impossible for the Applicant to have committed the murder, are matters for trial. Despite counsel's valiant attempt to discredit that evidence, it is my view that such an examination of the evidence is not appropriate for a bail application.

[22.] In considering the question of bail, the court is required to conduct a balancing act between the right of the Applicant to liberty and the need to protect the public. While there is no evidence that the Applicant in this case poses a danger to the public at large, the Applicant is charged on cogent evidence with engaging in an attack at the gateway to the country. Of greater concern in this case is the fact that the Applicant is a pilot, who therefore has skills which might be utilized in fleeing. I also do not accept the fact that the Applicant did not flee following his initial arrest supports an inference that he will not flee, as at that time the Applicant was not facing the very serious charges he now faces.


[23.] I further note that the Applicant has a previous conviction for drug trafficking offences, and is now again charged with further similar offences, allegedly committed on two separate occasions. While I note the submission that the charge of Possession with Intent to Supply is an over reach, it is my view that the statutory presumption of an Intent to Supply provides a prima facie basis for the charge. In these circumstances, I am satisfied that if released on bail, the Applicant will reoffend.

CONCLUSION

[24.] In considering whether conditions could be imposed to ensure the attendance of the Applicant at trial and to minimize the risk of reoffending, and interfering with witnesses, I am mindful of the usual conditions which include reporting, electronic monitoring device ("EMD"), and curfew. In my view, conditions would not suffice in the instant case, as they would not serve to prevent reoffending, nor would they ensure the attendance at trial of a person with the skill set of the Applicant who decides to flee.

[25.] In the circumstances and having regard to the foregoing reasons I find that the Applicant is not a fit and proper candidate to be admitted to bail. Bail is therefore denied.

Dated this 27th day of March A.D., 2025


Neil Brathwaite
Justice