

**IN THE COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
CRIMINAL LAW DIVISION  
2023/CRI/bail/00173**

**BETWEEN**

**JEFFREY SHERMAN**

**Applicant**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

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

**Appearances:** Ms. Tai Pinder for the Applicant  
Ms. Jacklyn Burrows for the Respondent

**Hearing Date:** 25<sup>th</sup> February A.D. 2025

**Ruling Date:** 24<sup>th</sup> March A.D. 2025

**RULING ON BAIL**

[1.] The Applicant in this matter was arraigned in the Magistrate's Court on 28<sup>th</sup> August 2023 on charges of Attempted Murder and Possession of a Firearm with Intent to Endanger Life. The allegation is that the Applicant attacked the complainant, with whom he had been romantically involved, and that she and her family were terrified as the Applicant is alleged to have said that he was coming back to finish the job. He was granted emergency bail on 28<sup>th</sup> August 2023, but that bail was revoked in March 2024 after the Applicant's suretors asked to be removed, and a subsequent application for bail was refused on the basis that the court was satisfied that the Applicant would interfere with witnesses if released on bail. In that application, the complainant submitted an affidavit in which it was indicated that the relationship had been extremely abusive, culminating in the attempted murder, and that following the release of the Applicant on bail, he attended the church attended by the complainant on several occasions, and stared at the

complainant to the extent that it was noticed by the Pastor and other church members, who arranged for the complainant to be escorted by police officers.

[2.] The complainant further alleged that on several occasions the Applicant parked in different vehicles near the home of the Complainant's mother, causing the complainant to become paranoid. The complainant is therefore extremely fearful that she may come to harm if the Applicant is released on bail. The Applicant, who is sixty-six years old, admits attending the church, and knowing that the complainant attended the church, but denies saying that he would finish what he started. He further claims to be suffering financial hardship as a result of his incarceration, as his NIB pension has stopped, and his business is suffering. He promises not to attend that particular church, and to abide by all conditions if granted bail.

[3.] On behalf of the Applicant, it was denied that anything was said to the complainant at the church, or that there was any interference with witnesses. Counsel suggested that the Applicant did not understand that going to the church, which is his church, would constitute a breach of bail. It was emphasized that the Applicant, who is a former prison officer, was suffering hardship in prison, as he is not housed in protective custody, and that the Applicant's minor son is also suffering hardship. Emphasis was also placed on the fact that the Applicant was being monitored electronically, but that there was no evidence from Migrafill, which is responsible for electronic monitoring, or the pastor of the church to corroborate the statements of the complainant. The court was therefore asked to permit the Applicant to again be released on bail pending his trial, which is set to commence in June 2025, but which counsel suggests may not proceed.

[4.] In response, counsel for the Respondent notes that the applicant had been granted emergency bail, but the same was revoked for failures to abide by the conditions of bail, as the Applicant was prohibited from coming within 100 feet of the complainant, yet had been seen at the church on multiple occasions, as a result of which the complainant was in fear and had to be escorted from the church by security persons. It was further submitted that there was no evidence of any danger to the Applicant at the Bahamas Department of Corrections, so that his safety at that institution is not in question. The Respondent is therefore concerned that the Applicant poses a serious danger to the complainant, and will not abide by conditions, and urges that bail be refused.

### 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, involving the use of a firearm and resulting in serious injuries to the complainant. 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.

[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.] While no direct evidence has been provided that the Applicant will not appear for his trial, the Applicant is charged with attempted murder and possession of a firearm with intent to endanger life which, in considering the possible penalty which could follow a conviction, raises the issue of the likelihood of not appearing for trial.

[15.] 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.”*

[16.] 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.”

[17.] 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 Applicant is alleged to have attacked a person to whom he was well known.

[18.] 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 which endangered the complainant. Of greater concern in this case is the infractions of bail committed by the Applicant. A court in granting bail sets conditions with the object of minimizing the risk of flight and any danger to public order or the witnesses. In this particular case the court set a condition that the Applicant not come within 100 feet of the complainant. The Applicant in signing the bail bond agreed to abide by those conditions, but according to his affidavit, went to the church knowing that the complainant attended that church. In my view that amounts to a deliberate breach of bail. I have also heard the submission of counsel that there is no corroboration of the complainant's statements that the Applicant was present. Given the admitted conduct of the Applicant, it is in my view disingenuous to suggest that further corroboration is

needed. I am therefore satisfied that the Applicant deliberately breached his bail conditions, and that the fears of the complainant are well founded.

[19.] I note also the suggestion that the trial may not proceed in June 2025. In my view there is no basis for that suggestion at this, and even if the trial did not proceed, the Applicant would still not have been detained for an unreasonable period time.

## **CONCLUSION**

[20.] 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 cannot serve their purpose where an Applicant has clearly demonstrated that he will not comply with conditions.

[21.] 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 24<sup>th</sup> day of March A.D., 2025**



**Neil Brathwaite**  
**Justice**

