

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
CRIMINAL DIVISION
2025/CRI/BAL/00009**

BETWEEN

ANDRE SMITH

Applicant

AND

DIRECTOR OF PUBLIC PROSECUTION

Respondent

Before: The Honourable Madam Justice Weech-Gomez

**Appearances: Applicant Pro Se
Ms. Erica Ingraham for the Respondent**

Hearing Dates: 27th August 2025.

RULING – BAIL DECISION

Criminal Law – Bail – The Constitution – Bail Act, Chapter 103 (as amended) – Application for bail variation- conditions of bail

WEECH-GOMEZ, J.

Introduction

[1.] The Applicant is a Bahamian citizen. The Applicant is 23 years old, he is charged with the offence of **Murder contrary to section 290(1) and 291(1)(b) of the Penal Code Chapter 84.**

[2.] The Applicant's previous Application for bail dated 10th December 2024 was denied. The reason for the denial was stated by my learned brother Justice Neil Braithwaite in his written decision dated 18th March 2025.

[3.] The Respondent objects to the granting of the application, and has filed the Affidavit of Max G. Julien, Attorney in the Office of the Director of Public Prosecutions.

[4.] The Applicant has now applied for bail by the filing of an Application dated 24th June 2025, on the following grounds:

- a. he was attacked in jail on or about 18th March 2025, and he does not want to be labelled as a gang member.
- b. his mother has had two strokes and expressed that he cannot cope with being incarcerated.
- c. he is requesting bail to assist with his mother care and to prepare for his trial.

Respondent's Affidavit Evidence

[5.] The Respondent in its Affidavit in response states:

"4. The Applicant was arrested on 9th September 2024 for murder he is alleged to have committed on 2nd July 2024. The applicant filed an application for bail on 10th December 2024.

5. That the application was duly heard before a judge in the Supreme Court on 11th February 2025. Following the hearing, in a written ruling handed down on 18th March, 2025, the Judge refused the Application for Bail. The Court was also of the view that while conditions might suffice to reduce the risk of flight, no conditions could be put in place to ameliorate the risk to public order and safety. There is now produced and shown to me a copy of the Supreme Court's Ruling on Bail dated 18th March, 2025, marked and exhibited as "MGJ-2".

6. The Applicant has a previous conviction for Possession of Dangerous Drugs on 12th April, 2023, when he was granted a conditional discharge, placed on probation for six (6) months, and ordered to attend C.C.A.C. for substance abuse counselling. In default, he faced a fine of \$1,000.00 or three (3) months imprisonment. On 19th February, 2025, he was charged for breaching the Order given on 12th April, 2023, and the Court invoked the default. He was convicted and sentenced to \$1,000 or three (3) months imprisonment at B.D.O.C.S., of which he was given as time served. There is now produced and shown to me a copy of the Applicant's Criminal Records Antecedent Form stamped by the Criminal Records Office on the 6th August, 2025, marked and exhibited as "MGJ-3".

7. An eyewitness statement, from Christian Gordon, stated that on Tuesday, 2nd July, 2024, he was at home when he saw the deceased, who he knows as “Skitso or Skits”, walking past. He said he went to the street and saw Andre the Applicant walking south, who asked him if he saw Skitso. He told him, yes, indicating that he went that way. The Applicant then ran toward Malcolm Road, and the witness followed him and watched as the Applicant caught up to the deceased, who was digging in a garbage bin. The applicant, while being interviewed by Cpl. 4050 Hutchinson admitted to shooting the deceased because he was in fear for his life. There is now produced and shown to me a copy of the statement of Christian Gordon, Cpl. Hutchinson and a copy of the Record of Interview marked and exhibits as “MGJ-4”, MGJ-5” and MGJ-6”.

16. For the above reasons, the Respondent verily believes that the Applicant will be tried within a reasonable time, the Applicant is not a man of good character, the evidence against the Applicant is cogent, and there is are no conditions that can be imposed that will eliminate or diminish the risk of the Applicant interfering with witness obstructing the course of justice in relation to himself or any other person, as well as committing further offences while on bail or absconding.”

[6.] The Court is guided by the prior decision of my learned brother, Justice Braithwaite, in the earlier bail application, which sets out the applicable legal principles. Accordingly, this Court does not propose to rehash the law, but will rely on the previous decision.

[7.] The Court is obliged to rehear the application and treat it as a fresh application each time. In **The Nottingham Justices, ex parte Davies, [1981] QB 38**, Donaldson LJ explained that while previous bail decisions must not be ignored, they stand as valid findings unless overturned on appeal. On reconsideration, the court should begin from the last decision and investigate whether circumstances have changed or whether relevant factors previously unknown to the court now exist. This ensures fairness to the accused without undermining the earlier ruling. Notwithstanding this, it is the responsibility of the Crown to demonstrate, on a balance of probabilities, that the accused should not be granted bail.

[9.] In this application, the accused faces a charge of Murder, which is no doubt a very serious offence. Despite its seriousness, it remains an offence for which bail may be considered. In assessing bail, the strength of the prosecution's case is a factor, as it directly affects the risk of flight. An accused who believes there is a good chance of being acquitted is less likely to abscond than one who anticipates an almost certain conviction, particularly given the severity of the sentence attached to the offence of Murder.

[9.] However, it is accepted that the seriousness of the offence is not the sole ground for refusing bail, but is a consideration in determining the issue of bail. The constitutional right to liberty and the presumption of innocence require a defendant to remain at large unless detention before trial is necessary. Ultimately, every bail application must be assessed on its own facts and circumstances.

[10.] Upon reviewing the evidence, while the court is not to undertake a trial of the matter, I am satisfied that the evidence demonstrates a prima facie case, as an eyewitness identified the Applicant as the shooter in this case. It is also noted that there has not been an unreasonable delay.

I note the Applicant's concern regarding an alleged attack at the prison; however, no supporting evidence was provided. It is further noted that the evidence presented by the Applicant is substantially the same as that provided in his previous application, and I find no substantive change in circumstances between the ruling delivered on 18th March 2025, and the resubmission of this Application.

[11.] The Court, having regard to all the circumstances, hereby denies the Applicant's application for bail.

Dated November 2025

The Honourable Madam Justice Jeannine Weech-Gomez