

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Criminal Division

CRI/BAL/00030/2025

BETWEEN

STCHERBATCHEFF (nee Davis) BARBARA LYNN a.k.a. BARBARA VIVIAN MURPHY

Applicant

Vs.

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Before: The Honourable Justice Darron Ellis

Appearances: Murio Ducille with Bryan Bastian for the Applicant

Daniel Dorsett for the Respondent

Hearing Date: 18th August, 2026

RULING

Criminal law — Bail — Variation of bail conditions — Extradition proceedings — Risk of absconding — Temporary departure from New Providence — Proportionality — Electronic monitoring.

The Applicant sought a one-day variation of a bail condition restricting her to New Providence, so she could travel by boat to Green Cay, in the vicinity of Rose Island, to attend the funeral/memorial observance of a friend. The Applicant is on bail pending

extradition proceedings and remained subject to \$150,000 cash bail, electronic monitoring, surrender of travel documents, reporting requirements, a curfew, and the geographical restriction. The Respondent opposed the application, contending that the Applicant remained a flight risk and that sea travel created an additional opportunity to abscond.

Held: The application was granted on a strictly limited basis. The Court's previous finding that the Applicant presented a flight risk remained undisturbed. Having regard to the limited purpose and duration of the proposed journey, the proximity of the destination to New Providence, the identification of the vessel operator, the continued operation of electronic monitoring throughout The Bahamas, and the other existing bail conditions, the Court was satisfied that the temporary variation did not materially increase the risk of absconding beyond that which the existing bail conditions were designed to manage.

Authorities considered: **Khan v Government of the United States of America** [2009] EWHC 2677 (Admin); [2010] 1 Ex LR 323; **Swedish Judicial Authority v Serwin** [2017] EWHC 3459 (Admin); **Richard v McNeil** /CRI/BAL/00455/2012; **In The King (on the application of Shafaquat Afzal Hussain) v Crown Court at Leeds** [2023] EWHC 64 (Admin)

ELLIS J

Introduction and Background

[1.] By Summons dated 5 August 2026, the Applicant, Barbara Vivian Murphy, applied for a further variation of the conditions on which she is admitted to bail pending the determination of extradition proceedings.

[2.] On 18 August 2026, having heard the parties, I granted the Applicant's application for a limited variation of her bail conditions and made the order set out below. I now give my reasons in writing.

[3.] The application is narrow. The Applicant seeks permission, on Sunday, 23 August 2026 only, to travel by boat from New Providence to Green Cay in the vicinity of Rose Island, between 9:00 a.m. and 5:30 p.m., to attend the funeral/memorial observance of a friend.

[4.] The Applicant is presently prohibited from leaving New Providence. She is also subject to electronic monitoring and other bail conditions. The proposed journey cannot lawfully be undertaken without an order varying the geographical restriction.

[5.] The Respondent opposes the application on the ground that the Applicant remains a substantial flight risk and that travel by sea would increase the opportunity for her to abscond.

[6.] The Applicant is the subject of extradition proceedings arising from allegations concerning the removal of her young son from Switzerland. The requesting State seeks her return in connection with allegations described as kidnapping or child stealing. This ruling does not determine the merits of those allegations or the extradition request.

[7.] The Respondent relies, for the purpose of assessing flight risk, on the Applicant's United States and British citizenship, her connections outside The Bahamas, the circumstances underlying the Swiss proceedings, information concerning a purported Mexican diplomatic passport containing allegedly forged information, and her asserted financial means and international connections. Those matters are not findings made by this Court. They are relevant only to the risk assessment required on this application.

[8.] On 2 April 2025, the Applicant was granted bail on medical grounds in the sum of \$150,000 cash, subject to conditions including electronic monitoring, surrender of travel documents, reporting requirements, a curfew, and a restriction against leaving New Providence.

[9.] On 9 June 2026, this Court considered an earlier application to vary those conditions. The Court declined to remove the electronic-monitoring requirement or reduce the cash bail, having remained concerned about the Applicant's potential risk of flight.

[10.] The Court nevertheless varied the reporting requirement from three days each week to Mondays and Fridays before 6:00 p.m. It also varied the curfew so that the Applicant was required to be at her approved residence by midnight. The requirements for electronic monitoring, surrender of travel documents, and remaining within New Providence continued.

[11.] The present application is made against the background of the Court's earlier conclusion that the risk of flight had not disappeared and continued to justify substantial safeguards.

Submissions and Evidence of the Parties

The Applicant

[12.] The Applicant relies upon her Affidavit sworn on 5 August 2026, in which she seeks a temporary variation of her bail conditions to enable her to attend the funeral of her late friend, Elizabeth Prince, at Green Cay near Rose Island on 23 August 2026. She deposes that she has complied with all conditions of her bail since her release, has significant ties to the jurisdiction and the support of her family, has no previous convictions or other pending matters, and is not a flight risk. She undertakes to continue complying with the remaining conditions and to resume full compliance upon her return to New Providence. Counsel submitted that the application is for a limited and compassionate purpose and that, having regard to the Applicant's compliance with bail and the safeguards which remain in place, the temporary variation would not materially increase the risk of absconding. Counsel highlights that Green Cay is roughly three miles from the northern coast of New Providence and that if the Applicant wanted to abscond via boat, she could have done so already.

The Respondent

[13.] The Respondent relies principally upon the Second Supplemental Affidavit-in-Response of Davina Pinder sworn on 17 August 2026 and opposes the variation on the basis that the Applicant continues to present a substantial flight risk. The Respondent relies upon the Applicant's foreign citizenship and international connections, the nature of the extradition proceedings, her financial means and the other circumstances previously placed before the Court. Particular concern is raised by the proposed travel by boat outside New Providence, which the Respondent contends would increase the Applicant's opportunity to abscond and may affect the effectiveness of her electronic monitoring. Counsel therefore submitted that the existing geographical restriction remains necessary and should not be relaxed, notwithstanding the compassionate purpose for which the variation is sought.

[14.] Particular emphasis is placed on the fact that the proposed journey is by boat. The Respondent submits that this would materially increase the opportunity for flight and raises concern that exposure to water might impair the Applicant's electronic-monitoring device. The Respondent submits that the restriction should remain unaltered and that the Applicant may participate remotely if facilities permit.

The Proposed Journey

[15.] The Applicant wishes to attend the funeral / memorial observance of a friend on 23 August 2026. The intended destination is an uninhabited cay identified as Green Cay in the vicinity of Rose Island, roughly three miles offshore from New Providence and accessible by boat.

[16.] There has been some uncertainty in the description of the proposed destination. The Respondent's affidavit refers to "Green Turtle Cay near Rose Island" and points out that Green Turtle Cay is in the Abacos, at a materially greater distance from New Providence. The Respondent also identifies a Green Cay in the vicinity of Rose Island.

[17.] The application should be determined by reference to the actual journey proposed, not the imprecise use of a place name. I proceed on the basis that the Applicant seeks permission to travel to Green Cay in the vicinity of Rose Island, and not to Green Turtle Cay in the Abacos. The order will be framed accordingly.

Applicable Principles

[18.] **Section 9(6)** of the **Bail Act** expressly empowers a court which has granted bail, on the application of the person granted bail, the prosecutor, or a police officer, to vary the conditions of that bail or, where bail was granted unconditionally, to impose conditions. **Section 9 (6)** provides:

“(6) Where a court has granted bail in criminal proceedings, the Court may on application—

- (a) by or on behalf of the person to whom it was granted; or
- (b) by the prosecutor or a police officer;
vary the conditions of bail, or in respect of bail which it has granted unconditionally, impose conditions.”

[19.] In exercising that discretion, the Court must have regard to the statutory purposes for which conditions of bail may be imposed and consider whether the condition sought to be varied remains necessary to address the relevant risk. In the present case, the relevant risk is that of absconding. With respect to bail conditions, **Section 9(1)** of the **Bail Act**, provides as follows:

“(1) When bail is granted to a person to whom section 3 applies, no conditions may be attached unless it is considered necessary for the purpose of preventing

absconding, the commission of an offence on bail or interference with witnesses, or for the purpose of obtaining medical or other reports”

[20.] Further guidance is found in **Richard v McNeil** CRJ/ BAL/ 00455 /2012, where *Klein J* in considering a bail variation application, stated at paragraph 18:

“**In The King (on the application of Shafaquat Afzal Hussain) v Crown Court at Leeds** [2023] EWHC 64 (Admin), in a claim for judicial review of the refusal of a bail variation application, the Administrative Court said that there was “no distinction of substance” between the “substantial grounds” test for bail and the “necessary” test for the imposition or variation of bail conditions [at 14]. In other words, the test for the variation of bail conditions must still serve the same statutory purposes in the bail regime of securing surrender, preventing offending and interference with witnesses or otherwise obstructing the course of justice.”

[21.] Bail conditions are protective, not punitive. Their purpose is to manage identifiable risks and, in particular here, to secure the Applicant’s attendance before the Court and prevent absconding.

[22.] A bail condition should be no more restrictive than is reasonably necessary to manage the risk for which it was imposed. Equally, a proposed relaxation must be refused if it would materially undermine a condition which remains necessary to secure attendance and protect the administration of justice.

[23.] In extradition proceedings, the relevant inquiry is whether there are substantial grounds for believing that the requested person will fail to attend the extradition hearing or subsequent proceedings. In **Khan v Government of the United States of America** [2009] EWHC 2677 (Admin); [2010] 1 Ex LR 323, the English Administrative Court considered the strength and consequences of the underlying case, the requested person’s access to resources, foreign nationality and passport facilities, and whether proposed bail conditions could adequately control the risk. The decision is not binding upon this Court, but its focus on the practical incentive and ability to abscond is persuasive.

[24.] In **Swedish Judicial Authority v Serwin** [2017] EWHC 3459 (Admin), the English Administrative Court treated the seriousness of the allegations, cross-border connections and access to assets as material to the assessment of flight risk in extradition bail. That decision, too, is persuasive only.

[25.] The present application is not a fresh bail application. It seeks a temporary, confined exception to an existing geographical restriction. The question is whether the proposed journey—considering its purpose, duration, destination, means of

travel, and the safeguards that remain in force—creates a material additional risk that the Applicant will not attend court.

Legal Analysis

[26.] I accept that the Applicant's pending extradition proceedings and the matters identified by the Respondent justify continued vigilance. The existing conditions, including the restriction against leaving New Providence, were imposed for a proper purpose. Nothing in this ruling detracts from the Court's earlier conclusion that substantial safeguards remain appropriate.

[27.] The Applicant does not seek unrestricted inter-island travel, permission to reside elsewhere, removal of electronic monitoring, return of travel documents, reduction of cash bail, or a general suspension of the geographical restriction. The application concerns a single journey, on one specified date, during specified hours, for the defined purpose of attending a funeral or memorial observance.

[28.] I accept that the proposed sea travel is relevant. The Court must consider it realistically, however, and in its proper context. The fact that the Applicant would board a boat does not, without more, establish that she would abscond. The relevant question is whether this authorised and controlled excursion would materially increase the pre-existing risk of absconding.

[29.] During the hearing, the Court received further information not contained in the Respondent's affidavit. The Court was informed that the Applicant proposes to travel aboard a vessel operated by John Paul Roberts of Sea Plane Safaris. That information provides a measure of certainty concerning the proposed transportation and the person responsible for the vessel.

[30.] The Court was also informed that the Applicant's electronic-monitoring device can monitor her movements throughout The Bahamas. Thus, her temporary departure from the landmass of New Providence would not, without more, cause electronic monitoring to cease.

[31.] These matters are significant. The Court's task is not to decide that the Applicant presents no risk of flight. Consistently with the earlier ruling, I remain satisfied that such a risk exists and that the existing conditions of bail remain necessary. The narrower question is whether this particular journey, for a defined compassionate purpose and a strictly limited period, creates an unacceptable additional risk which those conditions cannot adequately manage.

[32.] I am not satisfied that it does. The destination is a nearby cay in the vicinity of Rose Island. The excursion is time-limited. The Court has been provided with the identity of the proposed vessel operator. The Applicant will remain subject to electronic monitoring throughout The Bahamas, and all other bail conditions remain in force.

[33.] I also take into account the Applicant's submission that the proposed use of a vessel does not, of itself, create an opportunity to abscond that is wholly new. That submission cannot be determinative: the restriction against leaving New Providence remains a material safeguard. However, when considered with the substantial cash bail, surrender of travel documents, electronic monitoring, the consequences of breach, and the tightly confined terms of the proposed variation, I am not satisfied that this particular excursion materially increases the existing risk of absconding.

[34.] The purpose of the journey is specific and limited. The Applicant seeks to attend the funeral or memorial observance of a friend. She does not seek a general relaxation of her movements or permission to travel freely within The Bahamas.

[35.] I have considered whether remote participation is a sufficient answer. Although it may be practicable in some circumstances, it does not displace the need to assess the particular variation sought. On the evidence and information before me, a tightly drawn variation is a proportionate means of accommodating the request without materially compromising the objective of securing the Applicant's attendance before the Court.

Conclusion

[36.] The application is granted, but only to the limited extent set out below. This decision does not revisit or diminish the Court's previous assessment of flight risk. Save for the temporary variation expressly ordered, every existing condition of bail remains in full force and effect.

Order

[37.] The Applicant's bail is varied for Sunday, 23 August 2026 only, as follows:

- I. The condition restricting the Applicant to New Providence is varied solely to permit her to travel by boat from New Providence to Green

Cay in the vicinity of Rose Island, for the purpose of attending the funeral / memorial observance identified in this ruling.

- II. The permission is effective only between 9:00 a.m. and 5:30 p.m. on 23 August 2026. The Applicant shall return to New Providence no later than 5:30 p.m. that day.
- III. The Applicant shall remain subject to electronic monitoring throughout the excursion. She shall keep the monitoring device worn and functional and comply with all operational directions applicable to it.
- IV. The Applicant shall travel directly to and from Green Cay in the vicinity of Rose Island and shall not, during the period of this variation, travel to or disembark upon any other island or cay. For the avoidance of doubt, this order does not authorise travel to Green Turtle Cay in the Abacos or outside The Bahamas.
- V. All other conditions of the Applicant's bail remain in full force and effect, including the \$150,000 cash bail, surrender of travel documents, reporting on Mondays and Fridays before 6:00 p.m., the curfew, and every other existing restriction.

[38.] This is a limited accommodation within the existing bail regime. It creates no entitlement to further travel outside New Providence and does not amount to a reassessment or diminution of the Court's finding as to flight risk. Any departure from the terms of this order may constitute a breach of bail and may result in the revocation of bail.

Dated this 19th day of August 2026.

The Hon. Mr Justice Darron Ellis
Justice of the Supreme Court