REPUBLIC OF TRINIDAD AND TOBAGO

CR-HC-POS-BAIL-171-2022-1 / CR S037/2011

IN THE HIGH COURT OF JUSTICE

PORT OF SPAIN

IN THE MATTER OF

THE BAIL ACT, CHAP.4:60, as amended

Between

MARVIN MATHURA

Applicant

V

THE STATE

Respondent

Before the Honourable Madame Justice Tricia Hudlin-Cooper

Date of Delivery January 30th 2025

Appearances:

Ms Taterani Seecharan and Ms Melissa Prime for the Respondent

Mr Wayne Sturge for the Applicant

BACKGROUND

1. The applicant was charged with murder and has applied for bail. This is the applicant's second application for bail as the first application had been denied by another Judge of the High Court. This Court raised with Counsel for the applicant the requirements under the **Bail (Amendment) Act** 2024

which came into force after his first application and prior to the date of filing this current application.

2. Counsel for the applicant has sought and obtained the court's leave to file submissions in support of his position that s.5(2)(a) of the **Bail (Amendment) Act** does not apply to his client and those who are caught by s.5(5) of the **Bail (Amendment) Act**.
3. The State has submitted that the applicant is subject to subsection 5(2)(a) of the **Bail (Amendment) Act** and has filed its arguments for the Court's consideration.
4. This judgement is the court's decision on those submissions.

THE APPLICANT'S SUBMISSIONS

5. Counsel for the Applicant has submitted that there is no requirement for him to show exceptional circumstances pursuant to s.5 (2)(a) of the **Bail (Amendment) Act 2024**.

6. The applicant's Counsel has filed submissions in which he contends that s. 5(5) of the **Bail (Amendment) Act** creates an entitlement for one to apply for bail on account of the effluxion of time and subsection 5(5) is clear that there is no requirement for the applicant to show exceptional circumstances or satisfy any statutory burden.

7. The applicant's Counsel further contends that the court in assessing the application under s.5(5) of the **Bail (Amendment) Act** must apply the conditions which existed under the legislation before the amendment and which appear in s. 6 of the **Bail Act Chapter 4.60**.

8. The applicant relied on the case of ***Woolmington v DPP***[1] and submitted that the applicant who is charged with a criminal offence bears no legal burden except where statute expressly creates one. Counsel for the applicant also submitted that in this case s. 5 (8) makes it clear that only

[1] (1935) JELR 87229 (HL)

the applicants caught by s.5 (2) (a), 5 (3) and 5 (4) bear a legal burden and not the applicant under s.5 (5).

9. Counsel for Applicant also contended that unlike s. 5(3) and 5(4) of the Bail (Amendment) Act, the words 'unless he can show exceptional circumstances' does not appear at the end of s.5(5), therefore when one applies the legal maxim *Expresio Unius Est Exclusio Alterius*, subsection 5 is different from the rest of the s.5 and has conditions of its own, which do not require the applicant to show exceptional circumstances.

STATE'S SUBMISSION

10. The State submitted that the court should apply the literal rule in understanding the meaning of the statute. The State relied on the dicta of Chief Justice Tindal in **The Sussex Peerage[2] case** to support its submission that the words of the statute are precise and unambiguous.

11. The State has submitted that s.5 (5) of the **Bail (Amendment) Act** does not present an exception to the requirement under s.5(2)(a) of the **Bail (Amendment) Act** since s.5 (2) (a) states the condition which must be met by an applicant for bail, who is on a charge of murder.

12. The State further submitted that the effluxion of time referred to in s. 5(5) of the **Bail (Amendment) Act**, allows the applicant to apply for bail but does not guarantee the grant of bail to the applicant. The applicant must satisfy the requirement of s.5 (2) (a) by showing exceptional circumstances before the judicial officer can exercise the discretion to admit the applicant to bail.

13. The State relied on the case of ***Pepper vs Hart[3]*** and further submitted that the court should interpret the statute so as to give effect to the intent of

[2] [1844] 11 Clark and Finnelly 85, 8 ER 1034
[3] [1993] AC 593

parliament. The State cited the Hansard of the 1st of July 2024 and the comments of the Attorney General in piloting the **Bail (Amendment) Bill**. The state referenced inter alia the Attorney General's comment that the proposed amendment was to give effect to the judgement of the Privy Council in the case of **Akili Charles**[4] and to establish guidelines to assist the judiciary with respect to the exercise of its discretion to grant bail.

14. The State further submitted that the interpretation favoured by the applicant should not be followed since it would lead to an absurdity.

15. The State also advanced the argument that the applicant having already been denied bail on the basis that he was likely to interfere with the course of justice, the applicant cannot now simply rely on the effluxion of time in his subsequent application, to justify the change of circumstances or to satisfy the requirement of exceptional circumstances.

The issues for determination

16. Having reviewed the submissions this court has determined the following to be the key issues for resolution:
    a. What is the interpretation to be given to s.5 (2) (a) of the **Bail (Amendment) Act** 2024?
    b. What is the correct interpretation of s.5 (5) of the **Bail (Amendment) Act** when compared with s. 5(3), s.5(4) and 5 (8)?
    c. Does the applicant have to meet the requirements in s.5 (2)(a) for his bail application?

History of applications for bail in Murder Cases

17. Before advancing further it may be appropriate to chart a brief history of applications for bail in murder cases, in this jurisdiction.

[4] [2022] UKPC 31

18. In our jurisdiction, murder was by law one of the offences for which there was no bail. Once persons were charged for murder they remained incarcerated until the determination of the matter. With the increasing crime rate and the rising spate of murders, there was and is a backlog of murder accused persons awaiting the completion of preliminary enquiries or, those who are awaiting their trials. Those matters number in the hundreds, therefore it takes many years before the matters are completed.

19. Bail was governed by s.5 of the **Bail Act Chapter 4:60** (the old Act) which reads:

> *5 (1) Subject to subsection (2), a court may grant bail to any person charged with an offence other than an offence listed in Part 1 of the first schedule.*
> *(2) A Court shall not grant bail to a person who is charged with an offence listed in Part II of the first schedule and has been convicted on three occasions arising out of separate transactions-*
> *a) of any offence, or*
> *b) of any combination of offences*
> *listed in that Part, unless on application to a Judge he can show sufficient cause why his remand in custody is not justified*
> *3) In calculating the three prior convictions referred to subsection (2), only those convictions recorded within the last ten years shall be taken into account.*
>
> The Bail Act chapter 4:60 reads:
>
> *FIRST SCHEDULE*
>
> *EXCEPTIONS TO PERSONS ENTITLED OT BAIL*
>
> *PART 1*
>
> *CIRCUMSTANCES IN WHICH PERSONS ARE NOT ENTITLED TO BAIL*
>
> *Where a person is charged with any of the following offences:*
>
> *a) murder*
> *b) treason*
> *c) piracy or hijacking;*
> *d) any offence for which death is the penalty fixed by law.*

20. S.6 of the **Bail Act Ch4:60** laid down conditions under which a court may refuse the grant of bail to an applicant. S.6 (2) (a) reads:

> *Where the offence or one of the offences of which the defendant is accused in the proceedings is punishable with imprisonment, it shall be within the discretion of the court to deny bail to the defendant in the following circumstances:*
>
> *(a) Where the Court is satisfied that there are substantial for believing that the defendant if released on bail would*
>
> *(i) fail to surrender to custody*
>
> *(ii) commit an offence while on bail; or*
>
> (iii) *interfere with witnesses or otherwise obstruct the court of justice, whether in relation to himself or any other person.*

21. S.6 (2) of **The Bail Act** consists of other subsections all of which speak to circumstances in which the court would deny bail to the applicant. S.6(3) of **The Bail Act** guides the court's discretion and reads:

> *(3) In the exercise of its discretion under subsection (2)(a) the Court may consider the following:*
>
> *(a) the nature and seriousness of the offence or default and the probable method of dealing with the defendant for it;*
>
> *(b) the character, antecedents, associations and social ties of the defendant; (c) the defendant's record with respect to the fulfilment of his obligations under previous grants of bail in criminal proceedings;*
>
> *(d) except in the case of a defendant whose case is adjourned for inquiries or a report; the strength of the evidence of his having committed the offence or having failed to surrender to custody; and*
>
> *(e) any other factor which appears to be relevant.*

22. In the Civil Appeal of **Akili Charles v The Attorney General of Trinidad and Tobago**[5] the appellant challenged the constitutionality of the Bail Act. In the judgement delivered by the Chief Justice, the Appeal Court found that s. 5 and Part 1 of the First schedule of the Bail Act 1994 were unconstitutional, in so far as their effect was to remove the jurisdiction of the High Court Judge to grant bail for persons charged with the offence of murder.

23. On appeal to the Privy Council, The Attorney General argued before the Board that:

> *"The main public policy concerns behind the Bail Act were the reduction of the risk of public safety posed by repeat offenders and a concern about the courts being too willing to grant bail to people who then committed further crimes…The Attorney General drew attention to the fact that the rate of murder and violent crime at the time of the Bail Act was very high…"*

24. The Privy Council accepted the submissions of the Attorney General and stated that:

> *'These objectives are sufficiently important to justify the limitation of a fundamental right and in particular the right to liberty'*

The Privy Council however further stated at para 63 and 65:

> *63. It is the Attorney General's own case that it had never been the practice to grant bail in cases of murder whether before or after committal"*
>
> *Given that practice it is difficult to see why there was a need to remove any discretion to grant bail and impose a legal prohibition …*

[5] Civ Appeal No. CA S 046 of 2021

65. Even if there had been such a concern, this could have addressed by imposed conditions on the exercise of the Court's discretion rather than by removing it altogether…

25. The Privy Council also stated that the prohibition of bail under the Bail Act constituted a contravention of the basic democratic principle of the rule of law and the protection of liberty. The Board opined at paragraph 80:

> *'Moreover in cases such as the present the infringement of the right to liberty undermines a right specifically recognized in s.5 of the constitution, namely the right not to be denied bail without just cause'.*

26. The Privy Council referred to the equivalent provision in the Canadian Constitution and cited the case of **R v Pearson**[6] in which it was stated that 'just cause' referred to the right to obtain bail. Therefore the 'just cause' aspect, imposed constitutional standards on the grounds under which bail was granted or denied.

27. The Privy Council found the provision in the Bail Act which prohibited an application for bail was an infringement of the fundamental rights and freedoms from which very severe consequences flowed including undermining the rule of law. The bail provision was ruled by the Board to be disproportionate and '*not reasonably justifiable in a society that has proper respect for the rights and freedoms of the individual*.'

28. Consequent upon this decision, several persons charged with murder applied to the courts for bail under the old law as it stood without amendment.

[6] (1992) 3 RCS 665

The Bail (Amendment) Act 2024

29. **Act. No 11 of 2024 The Bail (Amendment) Act** introduced changes to the existing **Bail Act**. The first schedule was amended to remove murder as non bailable offence. S. 5 of the old Bail Act was repealed and replaced with a new s.5. It is against the interpretation of this section that the applicant complains.

The Law and Analysis

30. S.5 of the **Bail (Amendment) Act 2024** reads:

> *5 (1) A Magistrate may grant bail to a person charged with a summary offence.*
>
> *(2) Subject to subsection (3),(4),(5) and (6) a Judge or Master may grant bail to a person who is charged with-*
>
> > *(a)the offence of murder before, on or after the commencement of the Bail (Amendment) Act 2024, where he can show exceptional circumstances to justify the granting of bail;*
> >
> > *(b) an indictable offence, except an offence listed in Part I of the First Schedule; or*
> >
> > *(c) an offence triable either way.*
>
> *(3) A Judge or Master may not grant bail to a person who on or after the commencement of the Bail (Amendment) Act, 2024 is charged with an offence specified in Part II of the First Schedule and has–*
>
> > *(a) a previous conviction for an offence punishable with imprisonment for ten years or more; or*
> >
> > *(b) a pending charge for an offence listed in that Part,*
> >
> > *unless he can show sufficient cause why his remand in custody is not justified.*

(4) A Judge or Master may not grant bail to a person who on or after the commencement of the Bail (Amendment) Act, 2024 is charged with an offence–

(a) under section 6 of the Firearms Act and the person has a pending charge for possession of a firearm, ammunition or prohibited weapon; or

(b) listed in Part II of the First Schedule, except an offence under section 6 of the Firearms Act, where the prosecution informs the Court that the person or any other person involved in the commission of the offence used or had in his possession a firearm, imitation firearm or a prohibited weapon during the commission of the offence,

unless he can show exceptional circumstances to justify the granting of bail.

(5) Where a person is charged with the offence of murder or an offence mentioned in subsections (3) or (4) and brought before the Court but no evidence has been taken within one hundred and eighty days of the reading of the charge or where evidence has been taken but the trial is not completed within one year from the date of the reading of the charge, that person may apply to a Judge or Master for bail.

(6) In calculating prior convictions referred to in this section, only those convictions recorded within the last ten years shall be taken into account.

(7) For the purpose of this section, a conviction includes a conviction imposed by a court of competent jurisdiction in any

foreign jurisdiction for a similar or materially similar offence to–

(a) the offence of murder; or

(b) an offence listed in Part I or Part II of the First Schedule. 284 No. 11 Bail (Amendment) 2024

(8) For the purpose of subsections (2)(a), (3), and (4), the accused person shall have the burden, on a balance of probabilities, of satisfying the Judge or Master of the existence of exceptional circumstances or sufficient cause, as the case may be, to justify the granting of bail.

Interpretation of S.5(2) of the Bail (Amendment) Act

31. Under the old s.5, murder remained in the schedule as one of a list of offences for which no bail was allowed. S.5 of the old Act governed the issue of bail and no section in that Act, spoke to bail for murder because of the prohibition which existed in the statute. With the repeal and replacement of the old s.5, murder was no longer an offence classified as non-bailable

This court now turns to consider the first issue of the interpretation of s.5(2) of the **Bail (Amendment) Act**.

The Literal Rule

32. Whenever a court is tasked with interpreting statute, the starting point is always the words of statute. The words should be given their ordinary meaning within the context of the statute.

As Lord Reid stated in **Pinner v Everett**[7]

" In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be

[7] (1969)1WLR 1266 at pg 1273

supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase."

33. In **Bennion on Statutory Interpretation** sixth edition (6 edn) at page 781 it states:

"The literal meaning, at least of a modern Act, is to be treated as pre-eminent when construing the enactments contained in the Act. In general, the weight to be attached to the literal meaning is far greater than applies to any other interpretation criterion"

34. The literal rule requires the court to apply only the ordinary plain text meaning of the words of statute. The words are to be given their grammatical meaning in the context of the statute unless in so doing it leads to uncertainty or inconsistency.

35. In applying the literal meaning, s.5(2) sets out all the categories of persons to whom the Judge or Master may grant bail.

I. S.5(2)(a) allows for the grant of bail to persons charged with murder.

II. S.5(2)(b) allows for the grant of bail to persons charged with an indictable offence and

III. S.5(2)(c) allows for the grant of bail to persons charged with an offence triable either way.

36. S.5 (2)(a) for the first time expressly included murder as one of the offences for which someone may be admitted to bail. S.5 (2) (a) reinstated the right of a murder accused to apply for bail and therefore corrected the constitutional infringement of the old law.

37. In applying the literal meaning of the words of the statute in s.5(2)(a) of the **Bail (Amendment) Act** the Judge or Master is empowered to grant bail to

a person who is charged with the offence of murder before, on or after the commencement of the **Bail (Amendment) Act**, where the person applying *can show exceptional circumstances* to justify the grant of bail.

38. S.5(2)(a) also plainly states that '*subject to subsection (3),(4),(5) and (6)* a Judge or Master may grant bail to a person charged with the offence of murder where that person can show exceptional circumstances to justify the granting of bail.

39. Where a person accused of murder is also caught by the other subsections in the new s.5, of the **Bail (Amendment) Act**, such a person may still apply for bail. Therefore, a murder accused who may fall into the provisions of subsections (3),(4),(5) and (6) because of his antecedents, is not estopped from applying for bail.

40. In s.5(2)(a) the judicial officer's exercise of the discretion to grant bail to persons charged with murder, is not automatic. The judicial officer's discretion to grant bail to a person charged with murder can operate only in favour of the applicant where, the applicant shows exceptional circumstances to justify the granting of bail.

41. That stipulation in s.5(2)(a) underscores the fact that each case for murder is different and every person charged is different. Therefore, every bail applicant on a murder charge, now has the opportunity to show the judicial officer the exceptional circumstances which makes his particular case one in which, he ought to be admitted to bail.

42. This interpretation is consonant with the learning in the Privy Council decision of **Akili Charles** where the Board, in denouncing the blanket

prohibition of bail to persons charged with murder, stated at paras 72 and 74:

> 72. *'A fundamental objection to a blanket prohibition of bail is that it treats all persons charged with murder indiscriminately and denies the possibility of bail whatever the circumstances and however compelling the case for bail may be. As such it operates in an arbitrary and potentially unfair and unjust way…*
>
> *74. The variety of circumstances in which a murder charge can arise means that there may well be cases where none of the objectives of prohibition of bail will be serve There is no risk of absconding; there is no risk of further offending; there is no risk of interfering with witnesses or of obstructing the course of justice. In such cases there is likely to be a very compelling case for bail, but the blanket prohibition means that bail will not be possible. Preventing different treatment in cases with different circumstances involves what has been described as a 'standardless sweep'… a 'standardless sweep' has the potential to produce unfairness and arbitrariness and is contrary to principles of fundamental justice"*

43. Additionally, in the Privy Council decision of **Akili Charles**, the Board had urged that instead of a blanket prohibition the legislature could have

> *'imposed conditions on the exercise of the court's discretion'*

44. S.5(2)(a) in keeping with the guidance given by the Privy Council introduces a condition precedent for the first time in legislation to treat with all applicants for bail on a murder charge. All applicants for bail who have been charged for murder bear the same burden, namely, each applicant has to show exceptional circumstances to justify the grant of bail.

45. In keeping with the recommendation of the Privy Council in **Akili Charles**, s.5 (2)(a) allows every applicant for bail on a murder charge to have his case evaluated by the same standard regardless of the other subsections into which he may fall. This would serve to avoid the 'standardless sweep' complained of by the Privy Council.

46. In all of s.5, the only subsection which expressly speaks of a court granting bail in s.5(2)(a). S.5(2) (a) is the only section which speaks to bail whilst on a charge of murder and therefore it is the **ONLY** section under which one can apply for bail, if one has been charged with murder.

47. S.5(2)(a) is the only section which guides the judicial officer with respect to the requirement which must be met by an applicant for bail who is also on a charge of murder.

48. This Court therefore finds that s.5 (2) (a) is both the avenue for all murder bail applications and the filter through which all such applications must be assessed.

Interpretation to be given to s.5 (5) in light of s.5(3), s.5 (4) and s.5 (8).

This court now turns to consider the interpretation of s.5(5) in light of s.5(3), 5(4) and 5(8).

49. The applicant has argued that although he accepts that s.5 (2)(a) creates the condition precedent, s.5(5) stands separate and distinct from the requirement in s.5 (2)(a).

50. Counsel for the applicant further contends that unlike with s. 5(3) and s.5 (4), the statute did not expressly state at the end of s.5 (5) *'unless he can show exceptional circumstances to justify the granting of bail'*. On account of that, counsel for the applicant submitted that there is no stipulation for an applicant who qualifies under s.5(5), to meet the requirement in s.5(2)(a).

Comparison of s. 5 (3) and s. 5 (4) of the Bail (Amendment) Act.

51. In applying the literal rule to s.5(3) of the **Bail (Amendment) Act**, it addresses a person who may have a previous conviction for an offence punishable with imprisonment for ten years or more, or who may have a pending charge for an offence listed in Part II of the schedule. According to s.5(3) such a person may not be admitted to bail unless he can show *sufficient cause* why his continued detention is not justified. This section establishes that the presumption is not in favour of the grant of bail to such persons, but they are not precluded from applying. Once they do apply for bail, they are required by virtue of this very section to show *sufficient cause* before they can be admitted to bail.

52. In applying the literal rule to s.5(4) of the **Bail (Amendment) Act** a person may have been charged under s.(6) of the Firearms Act and they may have matters pending under the Firearms Act or may have been charged with an offence listed in Part II of the schedule, such a person does not lose his right to apply for bail. The section clearly states that the presumption is against the grant of bail to such a person. That person however, is still entitled to apply for bail and may only be admitted to bail if he can *show exceptional circumstances* to justify the grant of bail.

53. If the words '*unless he can show sufficient cause'* and '*unless he can show exceptional circumstances'* did not appear at the end of s.5(3) and 5(4) respectively, the legislation would have in effect added two categories of persons to Part I of the Schedule who may be not entitled to bail.

54. If those words are removed from each of those subsections, persons in those two categories would be in the very position complained of in ***Akili Charles***. Statute would also have repeated the very grave constitutional

error, which the Court of Appeal and the Privy Council corrected in the **Akili Charles** judgement. The right to apply for bail would have been extinguished and the constitutional right of the citizen would have again been infringed.

55. Therefore, although the presumption operates against the grant of bail for persons in the categories expressed in s.5(3) and s.5(4), the inclusion of those words at the end of these sections ensures that the right of such persons to petition the court for bail, remains inviolate. Those words preserve their opportunity to have their cases brought before a court where they may be able to show exceptional circumstances which justify them being admitted to bail. This is in keeping with their constitutional right to liberty.

56. When however, the persons who falls into s.5(3) and s.5(4) are also persons who have been charged for murder, then s.5(2)(a) is applicable. S.5(2)(a) would operate to guide the judicial officer who is assessing their application for bail because where they are charged for murder in addition to falling within the categories in s.5(3) and s.5(4), they like all other persons charged for murder must then show that there are exceptional circumstances to justify admitting them to bail.

57. So, the requirements of s.5(3) and s.5(4) operate when persons in those sections have been charged only for the offences stated therein. When however, persons who fall under s.5(3) and 5(4) are also persons who have been charged for murder, they are required to apply for bail under s.5(2)(a) and satisfy the court of exceptional circumstances which warrant the grant of bail to them.

58. That situation is markedly different from what pertains in section 5(5) of the **Bail (Amendment) Act**. In interpreting s.5 (5), this court must start

with the literal rule. The plain text of s.5 (5) speaks about a person who is charged for murder or an offence under s.5(3) or 5(4) and they either-:

a. Have been brought before the court and no evidence has been taken in 180 days of the reading of the charge. Or
b. Evidence has been taken but the trial is not completed within one year from the date of the reading of the charge.

59. Therefore in s.5(5) of the **Bail (Amendment) Act** it contemplates two different streams of persons:

a. ***A person who has been charged for murder*** *and falls into either of the two categories of*

i. He has been charged for murder and having been brought before the court, and no evidence has taken in 180 days or

ii. A person has been charged for murder and where evidence has been taken but his trial has not been completed within one year of the charge having been read.

b. ***A person who falls into either into s.5(3) or 5(4) and***

i. having been brought before the court, and no evidence has taken in 180 days or

ii. where evidence has been taken but his trial has not been completed within one year of the charge having been read to them.

60. The addition of the words '*unless he can show exceptional circumstances'* is not necessary at the end of s.5(5). That is because the legislation had already set stipulations for each group and there was no need to repeat the requirement.

61. Plainly put, if persons wished to apply for bail and fell into the category of persons under s.5(3) and s.5(4) and they *also* did not have evidence taken in their matter for 180 days or their matter was not completed within a year as stated in s.5(5), then those persons must return to, s.5(3) and s,5(4) which

already clearly states that they are not to be admitted to bail unless they can show '*sufficient cause'* or '*exceptional circumstances'* respectively. That requirement is expressly stated in those sections and repetition adds nothing to its efficacy.

62. S.5(5) expands the category of persons who may apply under s.5(3) and s.5 (4).

63. If however, persons were charged for *murder* and wished to apply for bail but they also fall into either category of:

    i. *having been brought before the court, and no evidence has taken in 180 days or*
    ii. *where evidence has been taken but his trial has not been completed within one year of the charge having been read.*

    they are governed by s.5(2)(a). S.5(5) makes persons accused of murder or person who fall under s.5(3) or s.5(4) eligible to apply for bail. Nothing in s.5(3) or s.5(4) addresses whether they may be granted bail or what standard should be applied by the judicial officer, in evaluating their application. S.5(2) (a) is the **only** place in the statute which speaks to the grant of bail where someone is charged for murder.

64. Therefore, there was no new category of persons created in s.5(5) who would have been left without an avenue to apply for bail in contravention of their constitutional right to liberty. The words "unless you can show *'exceptional circumstances'* or *'unless he can show sufficient cause'* as it appears in s.5(3) and 5(4) were not warranted at the end of s.5(5) and adds nothing neither does their absence subtract from the plain meaning of the section.

65. Therefore, when one carefully examines it, s. 5(8) referred only to those subsections where the accused would have a burden when he applies for bail.

    a. Those sections are:

i. *S.5 (2)(a) where the accused is charged for murder*
ii. *S.5(3) where he has a previous conviction for an offence which carried a sentence of ten years or more, or a pending charge and*
iii. *S.5(4) where he has been charged under the Firearms Act.*

S.5(8) expressly identifies s.5 (2)(a), 5(3) and 5(4) and specifically creates a legal burden for those persons who fall into those sections.

66. S. 5(8) is also in keeping with the requirement in the case of **Woolmington v DPP**[8] which establishes that a person who has been charged with a criminal offence only bears a legal burden if one is expressly created by statute. S.5(5) only makes one eligible to apply for bail, but is not the vehicle for the application. There was no need to repeat the condition the applicant must satisfy at the end of s.5(5) and no need to include s.5(5) in the section which creates the legal burden. Therefore, no mention was made or could be made of s.5(5) in s.5(8).

67. Counsel for the applicant has indicated that the legal maxim *Expressio Unius Est Exclusio Alterius* applies because the words '*unless he can show sufficient cause'* or *'unless he can show exceptional circumstances'*, does not appear at the end of s.5(5) as it does in s.5(3).

Does Expressio Unius Est Exclusio Alterius apply?

68. *Expressio Unius Est Exclusio Alterius* is an aspect of another legal maxim *Expressium facit cessare tacitum*. *Expressium facit cessare tacitum* means no inference is proper if it goes against the express words Parliament has used. As stated by Lord Dunedin in **Whiteman v Sadler**[9]

'*Express enactment shuts the door to further implication'*

[8] (1935) JELR 87229 (HL)
[9] (1910) AC S 14

69. In **Benion on Statutory Interpretation**, 6 edn page 1123, it speaks of the application of the maxim *expressium facit* in this way:

> *'The application of this maxim arises where a provision (A) may or may not give rise to an implication and elsewhere another provision (B) contains an express statement to the contrary effect. The maxim suggests that the express statement in B extinguishes the possibility of finding an implication on the same point in A. Provision A may be in the same Act as provision B, or in a different Act.'*

70. The author in Benion stated that the chief application of the *expressium facit* rule lies in the *expressio unius* rule.

71. The maxim **expressio unius est exclusio alterius** means to express one thing is to exclude another. As stated in Benion this rule has the following application:

> *'it is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless these mentioned merely as examples, or ex abundanti cautela or for some other sufficient reason, the rest are taken to be excluded from the proposition.*
>
> *In particular the expression unius principle is applied where a formula which may or may not include a certain class is accompanied by words of extension or exception naming only some members of that class. The remaining members of the class are then taken to be excluded from these words'*

72. Additionally, the maxim *expressio unius* applies where it is not outweighed by other interpretative factors.

73. In the Bail (Amendment) Act this maxim would be of dubious application to s.(3) and s.5(4). S.(3) and s.5(4) treat with two different sets of offenders. The offender in s.5(3) is charged with an offence listed in Part II of the First

Schedule and on account of his antecedents, already has a conviction for an offence punishable with imprisonment for ten years or more, or, he may have a pending charge for an offence listed in Part II of the First Schedule.

74. The offender in s.5(4) is charged under s.6 of the Firearms Act and also has a pending charge for possession of Firearm, ammunition or prohibited weapon, or, the offender may be charged with an offence listed in Part II of the First Schedule.

75. The persons referred to in both sections may belong to the same class of persons generally referred to as offenders, but they are in two completely different categories. The person in s.5(3) has a criminal record and the person in s.5(4) only has matters pending against him. They, therefore belong to two distinct classes.

76. S.5(5) then, widens the scope of opportunity within which each class of offender in s.5(3) and s.5(4) as to who may apply for bail. It adds to each class of offender in those sections, two additional categories. The offender in s.5(3) who has a prior conviction and the offender in s.5(4) who has charges pending, may also be in one or both of the additional categories in s.5(5), where he *also* may not have had evidence led in 180 days of his charges being read or his trial has not been completed one year after it had begun.

77. The persons directly affected by s.5(3) are distinct from the persons affected by s.5(4) and vice versa. Although offenders may fall into both categories on account of their criminal history, s.5(3) and s.5(4) are independent of each other and in no way does s.5(3) operate to limit the class of persons referred to in s.5(4) and vice versa, neither does s.5(5) operate to exclude any offender caught in either of those two sections.

78. The *expressio unius* rule would have found relevance if the statute was differently worded. By way of example, if s.5(3) stated

> *'A Judge or Master may not grant bail to a person who is charged with possession of firearm or any offence under Part II of the first schedule.'*

In such a case, applying the *expressio unius* rule, only persons who fell into ***those express categories*** would be affected and no one else. But the statute is worded differently. Each section deals distinctly with each group.

79. Therefore, contrary to the operation of the maxim *expressio unius* which closes of a class of persons and limits it to only those expressly mentioned, S.5(5) widens the class of persons referred to in s.5(3) and s.5(4) by expressly providing in statute, an avenue where those persons can still exercise their constitutional right to liberty by applying for bail.

80. If the *expressio unius* rule is applied as suggested by counsel for the applicant, it would mitigate against the right of persons caught by s.5(3) and s.5(4) and lead to injustice. In such a circumstance, established precedent cautions against the use of the rule. In **Coloquhon v Brooks**[10] Lord Justice Lopes stated:

> '*the exclusio is often the result of inadvertence or accident and the maxim* ***ought not to be applied where its application having regard to the subject matter to which it is applied, leads to inconsistency or injustice'*** *(emphasis added)*

81. Clearly, this legal maxim is not applicable in this scenario since the statute is dealing with different circumstances where an applicant may be eligible to apply for bail. The maxim is misplaced in so far as it is being used to interpret s.5(5).

82. If s.5(5) is read separately from the rest of s. 5 in the **Bail (Amendment) Act** it may appear as though s.5(5) is exempt from the other requirements appearing in the section.

[10] (1887) 19 QBD 400 at 406

83. Lord Reid in the case of **Maunsell v Ollins**[11] in speaking about rules of constructions stated:

> *"They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions, or pointers. Not infrequently one "rule" points in one direction. In each case we must look at all the relevant circumstances and decide as a matter of judgement what weight to attach to any particular rule"*

This court has therefore also relied on other legal canons and maxims which aid in interpretation.

A passage is best understood by what preceedes and what follows it

84. In the text **Understanding Statutes** by VCRAC Crabbe, the author states:

> '*that a maxim is an attempt to capture an essential principle of a rule of law and the maxim only becomes reliable when its application has been tested by cases brought before the courts.'*

85. There is a legal maxim which states that a passage is best interpreted by reference to what precedes and what follows it. This means that an Act of Parliament should be read as a whole and that every part of it should be taken into account.

86. In addressing why it is important to read the whole of an Act in the case of **Inland Revenue Commissions v Hinchy**[12] at page 766, Lord Reid stated

> "*because one assumes that in drafting one clause of a Bill the draftsman had in mind the language and substance of other*

[11] [1975] AC 373
[12] [1960] AC 748

clauses and attributes to Parliament a comprehension of the whole Act."

87. Viscount Simmons echoed similar sentiments in the case of **Attorney General v Ernest Augustus (Prince) of Hanover**[13] at page 463 when he stated:

> *'It must often be difficult to say that any terms are unclear and unambiguous until they have been read in their proper context. It means only that the elementary rule must be observed that one should not profess to understand any part of a statute or any other document before he has read the whole of it'*

88. It would be improper to read s.5(5) without reference to the whole of s.5 because to do so would be to rob oneself of the true meaning of the enactment.

89. As the author in **Understanding Statutes**, VC RAC Crabbe supra stated at page 182:

> *'Every piece of legislation has its own legislative scheme. Each word in an Act is intended to bear a particular meaning. If a section of an Act appears to be obscure its true meaning can only be ascertained by reference to what precedes it as well as to what follows it…The words of an act of Parliament cannot be read in isolation'*

90. This court therefore finds that the argument made by the applicant that the requirement to show exceptional circumstances is not repeated at the end of s.5(5) as it is at the end of s.5(3) and s.5(4) and on account of that, s.5(5) is exempted from that requirement, must fail, if one reads the entire s.5 carefully and as a whole.

[13] [1957] AC 436

The Mischief Rule

91. Additionally, the court has had regard to the canon of interpretation referred to as the Purposive Approach or the Mischief Rule. This rule allows the court to look at the purpose of legislation in order to understand the context within which it was created.

92. Lord Griffith in **Pepper v Hart**[14] stated

> *'the days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts must adopt a purposive approach, which seeks to give effect to the true purpose of the legislation. The courts must adopt a purposive approach which seeks to give effect to the true purpose of the legislation'*

93. The House of Lords in the decision in **R (Quintavalle) v Secretary of State for Health**[15] indicated what the approach of the Courts should be interpretation. Lord Bingham of Cornhill stated

> *'Every statute other than a pure consolidating statute is, often all, enacted to make some change or address some problem or remove some blemish or effect some improvement in the national life. The court's task within the permissible bounds of interpretation is to give effect to parliament's purpose'*

94. Lord Steyn in the said case of **R (Quintavalle)** supra cited Hand J in **Cabell v Markham** who explained the merits of the purposive interpretation when he stated:

> *'Of course it is true that the words used, even in their literal sense, are primary and ordinarily the most reliable source of interpreting the meaning of any writing: be it statute, contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence*

[14] [1993] 1 ALL ER 42
[15] [2003] 2 WLR 692

not to make a fortress out of a dictionary*; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.' (emphasis added)*

95. If therefore the interpretation is, as advanced by the applicant, that s.5(5) of the **Bail (Amendment) Act** does create an exemption, the court would be careless in its interpretation exercise if the court did not adhere to the learning of established precedent and seek the purpose for which this law was created.

HANSARD

96. Assuming that the applicant's interpretation is correct and the literal meaning is not clear, the courts are allowed to look at Parliament's intent. This court has done so, in this exercise of statutory interpretation.

97. In the **Hansard of July 1st 2024**, the Attorney General in introducing the Bail (Amendment) Bill made a statement about the reasons for the amendment. The Attorney General cited six reasons that the Bail Act was being amended. He stated inter alia: The amendment is being introduced to

> '*To give Masters of the High Court the jurisdiction to grant bail for the offence of murder…*
>
> *Secondly to provide that a person charged with the offence of murder may be granted bail, if he can show that there are exceptional circumstances why that bail should be granted.*
>
> *This assists Madam Speaker and gives support and guidelines for the exercise of proper judicial discretion, applying the guidance delivered by the Board in Akili Charles. Recommending that instead of an absolute ban on Bail imposed by the impugn legislation, Parliament could instead of impose conditions on the exercise of the Court's discretion…'*

98. The Attorney General also stated

> *'this Government is of the view, Madam Speaker, that it is necessary for Parliament to introduce conditions to guide the exercise of the court's discretion in the grant of bail to persons charged with serious offences by requiring such persons to show sufficient cause or that exceptional circumstances exists to justify the court granting bail to them and these measures are particularly critical in assessing recidivism'*

99. It is clear from reading the Hansard, that Parliament intended that persons charged with serious offences, of which murder is one, should be required to satisfy a court, that exceptional circumstances exist to warrant the granting of bail.

100. The applicant had also argued that on account of his construction that s.5 created an exemption. When an applicant is before the court pursuant to that section, the standard that must be applied to his application is as pertained under the old law where the courts considered s.6. S.6 remains part of the existing law of the Bail Act. If one follows that argument to its logical conclusion, there would in statute exist two separate and parallel systems for assessing bail for persons charged with murder. One system which creates a legal burden on the applicant and another system where, on account of the effluxion of time, the applicant bears no burden.

101. In **Heydon's**[16] case, the Baron of Exchequer laid down the rule, and stated

> *"That for the sure and true interpretation of all statutes in general, (be they penal or beneficial, restrictive or enlarging of the common law), four things to be discerned and considered. 1) What was the common law before the making of the Act? 2) What was the mischief*

[16] (1584) 3 Co. Rep 7a: 76 ER 637

and defect for which the common law did not provide? 3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth, 4) The true reason for the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy and to suppress the subtle inventions and evasions for the continuance of the mischief and pro privato commodo (meaning for private benefit) and add force and life to the cure and remedy, according to the true intent of the makers of the Act pro bono publico (meaning for the benefit of the public)."

102. It could not be the intent of Parliament to establish two divergent standards to guide the exercise of the Court's discretion on the same issue, that is, whether a person should be admitted to bail when charged with murder.

103. The court in assessing an application for bail where a person is charged for murder must not be invited to adopt an interpretation which allows for the application of dual standards to a singular issue. That would mean that two applicants, who petition the court on the same issue, would be judged according to separate standards. This could not be fair.

104. If the standard under s. 6 is to be applied, that standard simply requires **the court to satisfy itself** that there are substantial grounds for believing that if released on bail, the applicant may act in manner prohibited by s.6. S.5 of the **Bail (Amendment) Act** however, introduces a different standard, which is, that **the applicant is required to show the court** that there are *exceptional circumstances* to admit him to bail.

105. The standard under s.6 is markedly different from the standard to be applied under s.5. The *exceptional circumstances* which the applicant under s.5 is required to show, connotes something more than the ordinary or even

if it is ordinary, it is occurring to an exceptional degree[17]. The exceptional circumstance must be real, it must be something personally or intimately affecting the applicant, extant and happening at a level which takes it beyond the ordinary. The applicant under s.6 bears no such burden. The applicant under s.6 is not tasked with a statutory burden to show or demonstrate anything, before the judicial officer can exercise his discretion. That interpretation and the duality it occasions in the statute could not be the true intent of the legislation.

PRESUMPTION AGAINST ABSURDITY

106. This court is also keenly aware that there is a presumption in statutory interpretation which states that Parliament does not intend absurd results. It is called *the presumption against absurdity*. Courts are not encouraged to give a construction to the statute which would introduce conflict, uncertainty and confusion.

107. In the case of **R (on the application of Edison First Paver Ltd) v Central Valuation Officer**[18] Lord Millett said:

> '*The courts will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable, or absurd; or unworkable or impractical; or merely inconvenient; or anomalous or illogical; or futile or pointless. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it.*'

108. Even where the application of a maxim of interpretation would run counter to the aims of the legislation courts are cautioned against applying it. In **Understanding Statutes** by VCR Crabbe it states:

[17] S v Peterson (A717/07) [2008] ZAWCHC 11 and Mazibuko and Another v S 2010 (1) SACR 433 (KZP)
[18] [2003] UKHL 20

'The maxim of exclusio unius would not apply where its application would defeat the intention of the legislation and permit the very mischief which the statute was designed to prevent'

109. This was also stated in the Southern Rhodesia case of **R v Barington**[19] where Chief Justice Beadle stated:

'To make it an offence to offer gold for sale and not also make it an offence to offer to buy gold would … appear to be most illogical because to do this is to encourage the very mischief which the act is designed to stop'

110. If Parliament intended that all persons charged with serious offences, are to bear the burden to satisfy a court of exceptional circumstances to warrant them being admitted to bail, why then would Parliament create a subsection in the said legislation, which allows the vast majority of offenders in the same category, to evade the requirement?

111. Given the backlog in the criminal justice system where hundreds of persons are awaiting trials for murder, it would mean that the vast majority of applicants for bail who are on a charge for murder, would be eligible to apply under s.5(5). If the applicant's interpretation is correct, they would have no requirement to satisfy a court of anything except the effluxion of time. Therefore, the vast majority would escape the law created by Parliament to assist in addressing recidivism and the majority would also avoid the statutory requirement and therefore the very teeth of the legislation would be dulled in chasm of evasion. Such an interpretation could not be the intention of Parliament nor the purpose of legislation.

Fraud on the Act

112. In **Benion on Statutory Interpretation 6edn** at page 906 states:

[19] 1969 (4) SA 179 RAD

'The Courts have frequently held that a construction is to be preferred that prevents evasion of the intention evinced by Parliament to provide an effective remedy for the mischief against which the enactment is directed when deliberately embarked upon such evasion is judicially described as a fraud on the Act'

113. At page 907 in **Benion** it further states:

'*To prevent evasion the courts turns away from a construction that would allow the subject (a) to do what Parliament has indicated by the Act it considers mischievous and (b) to refrain from doing what Parliament has indicated it considers desirable. Either of those construction may qualify as what is termed a fraud on a statute'*

114. This court believes that a construction of s.5(5) which enables it to operate outside of the expressed requirement of s.5(2)(a) was not the intention of Parliament. Such an interpretation would encourage circumvention of the statutory requirement and would be a fraud on the Statute. This Court must spurn such an interpretation.

115. If the Court is being invited to act in accordance with the construction given by the applicant, it would mean that the Court is being invited to act in a manner contrary to the stated law, a manner that is inimical to the purpose of the legislation and the manner which would be arbitrary and unfair to the litigants before it. Every court, in the exercise of their constitutional power, must decline such an invitation.

116. This court has determined the correct interpretation of s. 5(5) is that it establishes a category of persons who may be eligible to apply for bail. Once an applicant is so eligible and he's on a charge of murder, he must apply under s. 5(2)(a) **AND** he is required to show exceptional circumstances. That burden which he shoulders must be discharged according to the standard set in the s. 5(8).

117. The Court is further buttressed in the correctness of this interpretation when one looks at the exchange in the Hansard between the Attorney General and an opposition Senator, Mr Sadam Hosein. The conversation between them is recorded as follows in the Hansard :

> ***"Madam Chairman****: Member for Barataria/San Juan. Mr. Hosein: Yeah. I just want to seek clarification from the hon. Attorney on a particular matter. AG procedurally, I just want to be very clear with the intent of the legislation here. Now, a person who is charged with the offence of murder will now have to show exceptional circumstances before the Judge entertains the application for bail. But then when we look—*
>
> ***Sen. Armour SC:*** *No, that is not correct. Not before the Judge entertains it on the application—*
>
> ***Mr. Hosein****: He has to show exceptional circumstances.*
>
> ***Sen. Armour SC****: Not before he makes an application.*
>
> ***Mr. Hosein:*** *And that is within 180 days. If the 180 days expires then does he have to show exceptional circumstances also?*
>
> ***Sen. Armour SC****: Give me one minute, let me consult with—the answer to that is, yes.*
>
> ***Mr. Hosein:*** *So during the 180 days and after 180 days, he still has to show exceptional circumstances.*
>
> ***Sen. Armour SC****: Yes.*
>
> ***Mr. Hosein****: So then, I remembered when we did the 2019 amendment where there was a denial of bail for the 120 days. Within that period, you have to show exceptional circumstances, but after the 120 days has expired, you no longer had to show exceptional circumstances and the person could make the application for bail before a Judge. Now I thought that was the intent of putting the time limit period of the 180 days.*

***Sen. Armour SC**: The 120 days will apply and even if it expires you still have to make the application and satisfy the Judge of exceptional circumstances. And I rely on paragraph 92 of the Akili Charles Privy Council Judgement which reads: "The nature and seriousness of the offence charged and the likely penalty, if convicted, will always be major considerations in the decision whether or not to grant bail. However, they cannot be the only, determinative and overriding considerations in every case of murder so as to entirely preclude the exercise of judicial discretion, which is also concerned with other factors like the risk of flight or re-offending." So the point is it remains the judicial discretion, you will have to make the application and it would be for the Judge in her or his discretion to determine.*

***Mr. Hosein**: So just to be clear also for the record. We are preserving the right of a person to still apply for bail within the 180 days.*

***Sen. Armour SC**: Correct. Mr. Hosein: Yes.*

118. The answers of the Attorney General make it pallucidly clear that it was the intention of Parliament that all applicants for bail who have been charged with murder, including those eligible under s.5(5,) must meet the requirements of s. 5(2)(a) and show exceptional circumstances.

119. This Court therefore finds that the applicants submission on the interpretation of s.5(5) must fail.

Does the applicant have to show exceptional circumstances

120. The applicant before this court had previously applied for bail and was refused. In the applicant's first application for bail, the court denied the applicant's bail on the basis that the applicant would interfere with the course of justice.

121. In keeping with the statutory requirement under s. 5(2)(a) as interpreted by this court the applicant in this application would be required to show exceptional circumstances on a balance of probabilities to justify being admitted to bail.

122. In the Privy Council decision of **Keros Martin and ors v Director of Public Prosecutions of Trinidad and Tobago**[20] delivered on the 14th of January 2025, the Board opined at para 44

> *'Further as the Attorney General accepted, it is open to persons in the position of the appellants who had bail applications refused by the High Court before the 2024 Act came into force, to make a further application under the 2024 Act and to seek to show "exceptional circumstances" There is no need to show a change of circumstances before doing so. The 2024 Act creates a new and different regime governing the grant of bail in murder cases'*

123. Consonant with the learning in **Keros Martin** supra, the applicant before this court has a right to renew his application since his bail had been denied before the enactment of the 2024 **Bail (Amendment) Act**.

124. Consequently, the old requirement that an applicant who has had a previous application for bail denied is required to show a change of circumstances, is no longer applicable. The applicant must now comply with the requirements under the new regime introduced by the **Bail (Amendment) Act 2024**, which requires the applicant to show exceptional circumstances.

125. The applicant in these submissions had predominantly challenged the interpretation to be afforded to s.5(2)(a) and 5(5) of the **Bail (Amendment)**

[20] [2025] UKPC 2 Privy Council Appeal No 0105 of 2023

Act of the legislation and had not previously filed submissions showing exceptional circumstances.

126. In light of this Court's ruling, the applicant would be allowed time to place those submissions before this court or to withdraw the application before this court and file a fresh application for bail if he so desires.

127. The new application would be placed before whichever Court is rostered to hear bail applications at the time of the applicant's filing

And I so rule
The Honourable Madame Justice Tricia Hudlin-Cooper
Judge