

**BETWEEN**

**LATARIANO MACKEY**

**Applicant**

**AND**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**Respondent**

**Before:** Her Ladyship, The Honourable Madam  
Justice Guillimina Archer- Minns

**Appearances:** Latariano Mackey Pro se  
Ms. Janet Munnings for the Respondent

**Hearing Date:** 28 February, 2024

**RULING- BAIL-**

## Archer-Minns J

1. The Applicant Latariano Mackey (D.O.B: 30<sup>th</sup> January, 2004) hereinafter referred to as the **Applicant**, has made application for admission to bail. He has been charged with offences for Attempted Murder, Attempted Armed Robbery, Conspiracy to Commit Armed Robbery and Possession of an Unlicensed Firearm contrary to relevant provisions of The Penal Code, Chapter 84. The Applicant appeared in the application Pro se.
2. The Applicant submitted inter alia:
  - i. the current offences are first time charges;
  - ii. he has no previous convictions;
  - iii. being imprisoned is inhumane, he is being oppressed and is in fear for his life;
  - iv. his family relies on him financially and;
  - v. he will attend all court dates if granted bail.

In all of the circumstances of this case, he is a fit and proper person for admission to bail.

3. The Respondent opposed the Applicant's application for admission to bail. Counsel contended that:
  - i. reliance was placed on the Affidavit in Response filed on 19 February, 2024;
  - ii. the evidence is cogent;
  - iii. the offences were committed whilst the Applicant was on bail for another Armed Robbery charge and;
  - iv. there are no conditions which could be imposed to prevent the Applicant from committing another offence if granted bail.

In all of the circumstances the Applicant is not a fit and proper candidate for admission to bail.

4. The Court heard the submissions of the Applicant and Respondent and read the Affidavit in Response of the Respondent.
5. The issue for the Court to determine is whether the Applicant in the circumstances of this case, is a fit and proper candidate for admission to bail.

## The Law

6. The Constitution of The Bahamas affords to all persons charged with a criminal offence a presumption of innocence and the unalienable right to apply for bail. **The Bail Act** gives judicial officers a discretionary power to admit or not admit an Applicant to bail. Given the nature of the charges with which the Applicant has

been charged, the Court had regard to the relevant provisions of **The Bail Act particularly Section 4 and The First Schedule of The Act.**

7. The Applicant before the Court makes application for admission to bail in relation to the charges in VBI No. 17/1/2023 of Attempted Murder, Attempted Armed Robbery, Conspiracy to Commit Armed Robbery and Possession of an Unlicensed Firearm which offences allegedly occurred on 4 October, 2022. Additionally, the Applicant has another pending matter with similar offences in VBI No. 103/4/2022 with two (2) counts of Armed Robbery allegedly committed on 11 December, 2021. The Applicant clearly was on bail for these alleged offences at the time of the commission of the offences for which he now seeks admission to bail.
8. The Court further notes from the antecedent of the Applicant that he also has a pending matter before Magistrate Court No. 2 dated 23 February 2023 for Possession of a Firearm with intent to Endanger Life, Possession of Unlicensed Firearm and Possession of Ammunition. Evidently, the Applicant was on bail for multiple offences at the time of the commission of the current offences the subject of the application.
9. **In Richard Hepburn vs The Attorney General SCCrApp No. 176 of 2014** Allen P stated **“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 a crime and the fundamental constitutional cannon; which secure freedom from arbitrary arrest and detention and serves as the bulwark against punishment before convictions.”**
10. As stated by the Court of Appeal in **Cordero McDonald vs Attorney General SCCrApp No 195 of 2016**; the nature of the evidence against the Applicant is of utmost relevance when considering a bail application. The Court therefore had regard to the statements of the virtual complainant, PC 3907 Horace Albury, Arthur William Munnings and Delbert Knowles eyewitness of the incident and the purported Record of Interview of the Applicant. On this evidence, the Court is satisfied as to the sufficiency of the evidence raising a reasonable suspicion of the commission of the offences by the Applicant.
11. Whilst the Court fully appreciates that the bail application is not one for a forensic review of the evidence to be relied upon, it does assist the Court in determining whether the intended evidence is cogent and in consideration of all other relevant factors considered, bail should or should not be granted to the Applicant. In the circumstances of the case, the Court is of the view that the intended evidence is neither tenuous or weak.

12. The evidence clearly indicates the manner in which the offences were committed. No doubt the Applicant has a presumption to innocence and a fundamental right to his liberty although not an absolute right. The right of the Applicant is to be considered alongside the competing interests of the public, its safety and security and public order. Given the evidence as to the conduct of the Applicant, it is the Court's view that it was one which exhibited a total disregard for law and order. It was an affront to public safety and order and ultimately put the lives and safety of persons under a serious risk of death or grievous bodily harm which cannot be ignored by the Court. **Stephon Davis vs The Director of Public Prosecutions SCCrApp No. 20 of 2023** considered.

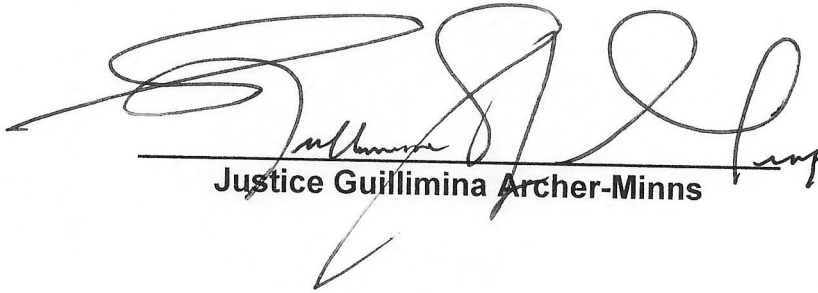
### Conclusion

13. The Court gave consideration to the Constitution, the relevant provisions of The Bail Act, the submissions of the Applicant and Respondent, the relevant authorities and the following factors:
- i. the strength of the evidence against the Applicant;
  - ii. the seriousness of the charges;
  - iii. the pending matters concerning the Applicant;
  - iv. the Applicant being on bail for similar offences at the time of the commission of the alleged offences, the subject of the application;
  - v. the competing interests of the Applicant and his presumption of innocence and right to his liberty with the rights of the public, its safety and security and;
  - vi. bail conditions which could be imposed to minimize the risks involved with admitting the Applicant to bail.

Consideration having been given to all of the aforementioned factors, the Court is further of the view that the Applicant was previously on bail for multiple offences (similar in nature) at the time of the commission of the current charges. The evidence is cogent and reasonably indicates the Applicant's commission of the same. The conduct of the Applicant had a total disregard for public safety and order as well as the fact that he was at the time already on bail for two separate matters. In the circumstances, there are no conditions which could be imposed by the Court to minimize the risk involved with the Applicant committing additional offences or to safe guard the public/ public order if bail was to be granted. Bail is therefore denied.

The Applicant is to continue his remand in custody at this time. Should there be any change in circumstances in the interim, the Applicant is at liberty to reapply.

Dated this 13 day of March 2024.



Justice Guillimina Archer-Minns