

COMMONWEALTH OF THE BAHAMAS
In The Supreme Court
Criminal Division

CRI/BAIL/00238/2023

BETWEEN

LOUGENS FRANCOUER

Applicant

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

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

Appearances: Mr. Roger Minnis for the Applicant
Ms. Jacqueline Burrows for the Respondent

Hearing Date: 13 December 2023

RULING- BAIL-

Archer-Minns J

1. By Summons and Affidavit filed on 8 November 2023, the Applicant Lougens Francouer made application for admission to bail. The Applicant is charged with one (1) count of Abetment of Murder and one (1) count of Conspiracy to Commit Murder contrary to relevant provisions of The Penal Code, Chapter 84. The Respondent opposed the application and failed its Affidavit in Response dated 4 December 2023.
2. I heard the oral submissions of Counsel for the Applicant and Respondent and; read the affidavits in connection with the application.
3. Counsel for and on behalf of the Applicant primarily took issue with the Respondent's reliance on the Applicant's Antecedent Form and the notation thereon with respect to a Voluntary Bill of Indictment (VBI) served on the Applicant for the offence of Attempted Murder. The Applicant is said to have no knowledge of the same.
4. Further, whilst counsel acknowledged that there was no unreasonable delay in the prosecution of the matter, he advanced that the trial dates given to the Applicant are scheduled for the future and as such, the Applicant in the interim could be doing something more productive with his time rather than being incarcerated. In all of the circumstances of this case, counsel urged the Court to admit the Applicant to bail.
5. The Respondent contended otherwise and submitted that (i) the Applicant has pending matters for Attempted Murder and Possession of an Unlicensed Firearm/ Ammunition; (ii) the evidence upon which the prosecution intend to rely is cogent and the offences serious in nature; (iii) there is nothing peculiar about the Applicant's detention which is unjustified; (iv) given the circumstances of the offence, the Applicant is likely to commit further offences should he be granted bail and; (v) there is a need to protect the safety of the witnesses, the public and public order. In the circumstances of this case, the Applicant ought not be granted bail.
6. The issue for the Court to determine is whether the Applicant is a fit and proper candidate for admission to bail.
7. In accordance with the Constitution of The Bahamas all persons charged with an offence is presumed to be innocent until he pleads or is found guilty. The Applicant therefore, has an unalienable right to apply for admission to bail. The Bail Act gives judicial officers a discretionary power to grant or refuse bail. The Applicant has been charged with Abetment of Murder and Conspiracy to Commit Murder. The Court therefore gave consideration to Section 4 and The First Schedule of The Bail Act.

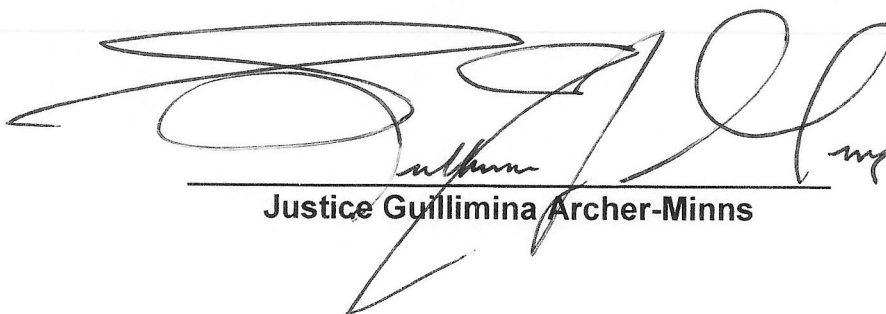
8. The Court is cognizant that the primary objective of detaining an accused person is to ensure his attendance at trial. If the accused person's attendance at trial can be reasonably ensured otherwise than by detention he should be permitted to bail. Bail is not to be withheld as a punishment.
9. In **Jeremiah Andrews vs The Director of Public Prosecution SCCrApp No. 163 of 2019** Evans JA stated at paragraph 11 "**When an accused person makes an application for bail in relation to a Part C offence, the court must consider the matters set out in Section 4(2) (a) and (c). This means that if the evidence shows that the accused has not been tried within a reasonable time he can be admitted to bail (as per (a)). In those circumstances where there has not been unreasonable delay the court must consider the matters set out in (c) i.e "all the relevant factors," including those in Part A of the First Schedule and the "primary considerations" in Section 4(2B). If after a consideration of those matters the court is of the view that bail should be granted the accused may be granted bail.**"
10. The onus is on the prosecution having regard to the Applicant's right to his presumption of innocence and liberty as afforded by The Constitution, to satisfy the Court that he ought not be granted bail. The Respondent discharges this onus by the production of evidence- bare assertions will not suffice. **Johnathan Armbrister vs The Attorney General SCCrApp No. 145 of 2011, Jeremiah Andrews (Supra), Stephon Davis vs The Director of Public Prosecutions SCCrApp No. 108 of 2021,** considered.
11. Upon review of the submissions, affidavits, The Constitution, relevant provisions of The Bail Act and authorities the Court so finds:
 - i. that it is clear the prosecution's case is one upon which circumstantial evidence is relied upon. The evidence submitted is such that in the Court's view a reasonable inference could be made as to the Applicant's likely involvement in the commission of the offence;
 - ii. the offences are serious in nature and; if the Applicant is convicted upon same there is a likelihood that the Applicant may abscond and not appear for his trial;
 - iii. the circumstances of this case are such that the Applicant if released on bail may interfere with potential prosecution witnesses. There is a subtle indication from a read of the evidence upon which the prosecution intend to rely that the Applicant is in some way associated with gang activity or other illegal activities. This therefore raises a concern for public safety and public order. The safety and

protection of potential witnesses and the public is of paramount importance;

- iv. the Applicant as per his antecedent form (which was not seriously challenged in the material aspect) was on bail for offences of Attempted Murder and Possession of an Unlicensed Firearm/ Ammunition and now finds himself charged with more serious offences of Abetment to Commit Murder and Conspiracy to Commit Murder. Notwithstanding, that the Applicant has not been convicted of any of the offences and all matters are pending, the fact that the Applicant is continuously finding himself in circumstances, whereby the evidence when gathered raises a reasonable inference of the Applicant's involvement in the same. Certainly in the Court's view this is an abuse of the bail previously granted to the Applicant and cannot be ignored. The Court is further of the view, that if granted bail there is a likelihood that the Applicant will commit other offences and;
 - v. the Applicant's trial dates are; Back-up Trial Date: 16 March, 2026 and Fixed Trial Date: 17 May, 2027. There is currently no unreasonable delay in the prosecution of the matters.
12. Having regard to the aforementioned, in the interest of public safety and public order and in an attempt to thwart' the possibility of additional offences being committed, the Court will not exercise its discretion in favor of the Applicant to admit him to bail. The Applicant is not a fit and proper candidate for admission to bail.
13. Should there be any changes in the interim; the Applicant is at liberty to reapply for admission to bail.

Bail is denied.

Dated this 14 day of February 2024.



Justice Guillimina Archer-Minns