

**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT GUDU - ABUJA**

**ON TUESDAY THE 20TH DAY OF OCTOBER, 2020.**

**BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE R.OSHO-ADEBIYI**

**SUIT NO. CR/10/2018**

**COMMISSIONER OF POLICE ----- CLAIMANT**

**AND**

- 1. ISRAEL OKPOBO-----DEFENDANT/APPLICANT**
- 2. ANETOR CHARLES-----DEFENDANT/APPLICANT**
- 3. FEMI EMMANUEL-----DEFENDANT**
- 4. SAMUEK OGBA-----DEFENDANT**
- 5. SUNDAY OKPOBO -----DEFENDANT**

**RULING**

The first Defendant on the 12<sup>th</sup> day of October 2020 filed a motion pursuant to Section 158, 162 to 168 (b) of the ACJA 2015 and Section 35(1) and 36(5) of the 1999 Constitution praying for an order of this Court admitting him to bail pending trial. In support of the application is an affidavit of 5 paragraphs and a written address. Counsel in the written address urged the Court to consider the facts stated in the Applicants affidavit and exercise its discretion in favour of the Applicant by granting bail to the Applicant on liberal terms.

The 2<sup>nd</sup> Defendant also filed a bail application dated the 15<sup>th</sup> day of September 2020 on the grounds that the 2<sup>nd</sup> Defendant is presumed innocent until proven guilty and that the 2<sup>nd</sup> Defendant has reliable surety. In support of the application is an affidavit of 12 paragraphs deposed to by the 2<sup>nd</sup> Applicant's brother. Also filed is a written address as argument wherein Counsel submitted that Sections 35 and 36(5) of the 1999 Constitution guarantees the right to a

person's liberty and presumption of innocence and urged the Court to admit the 2<sup>nd</sup> Defendant to bail on liberal terms.

In this case, the Prosecution did not file any counter affidavit to the applications for bail of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants despite being served with same. The Counsel also did not oppose the application for bail when the respective Counsel for both the 1<sup>st</sup> and 2<sup>nd</sup> Defendant moved their application. The inference therefore is that they are not opposed to the grant of this application.

I have considered the application together with the affidavits of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as well as the written addresses of respective Counsel. The Defendants have been charged on a two-count charge of the offence of Criminal Conspiracy and Homicide. There is no doubt that these are serious offences and bail is the right of any person accused of a crime as this is enshrined by the provision of Section 158 of the Administration of Criminal Justice Act, 2015 which provides that when a person who is suspected to have committed an offence or is accused of an offence is arrested or detained or appears or is brought before a court, he shall subject to the provisions of this part be entitled to bail. However, bail pending trial is not normally granted *ex-debitojustitia* where the offence is a capital offence, but special circumstances may exist to warrant the grant of bail. By the provision of Section 161 of the ACJA, exceptional circumstances include ill-health of the applicant, extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year and other circumstances that the judge may, in the particular facts of the case, consider exceptional.

The issue of whether or not to grant bail to an applicant is completely at the discretion of the court which must be exercised judicially and judiciously while considering certain criteria. These criteria have been provided for in Section 162 of ACJA 2015 as follows;

- (a) Where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;
- (b) Attempt to evade his trial;
- (c) Attempt to influence, interfere with, intimidate witnesses and or interfere in the investigation of the case;
- (d) Attempt to conceal or destroy evidence;
- (e) Prejudice the proper investigation of the offence; or
- (f) Undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.”

The implication of this provision is that despite the fact that the Defendants are standing trial for the offence of criminal conspiracy and culpable homicide before this Court, the court still reserves the discretion to admit or not to admit such a person to bail considering the facts and peculiar circumstances of each case.

The Court in the case OGUNBAMBO V. FRN (2013) LPELR-20551 (CA) Per Pemu JCA in P. 16 paras A-B held,

*“.....the prime consideration for remanding on bail is the likelihood of the accused’s appearing to answer the charge, the nature of the charge and the evidence supporting it, the chance of the accused committing further offences if set free, the severity of the potential punishment.....”*

Also, the court in MUSA V. COP KADUNA STATE (2014) LPELR-23475 (CA) in P. 26, para E-G Per Aboki JCA held,

*“in an application for bail pending trial, the trial Court must consider all the evidence brought before it by the*

*prosecution and the Applicant. This consideration necessarily includes the documents and statements listed in the proof of evidence as well as the affidavit evidence in support.”*

Going by this principle, this Court will consider the affidavit in support as well as examine the proof of evidence filed by the prosecution, in order to determine whether or not to grant bail to the Defendants. Most importantly, the Court will consider submissions of Defence Counsel duly corroborated by Prosecution that Defendants had earlier been granted bail by Hon. Justice Balami before the matter was transferred to this Court.

With respect to the 1<sup>st</sup> Defendant, I have taken into account the totality of all the guiding legal principles in the circumstances of this case, the affidavit of the 1<sup>st</sup> Defendant in support particularly paragraphs 4 iii to xxii) as well as the totality of the proof of evidence. I agree that the defendant has the right to the constitutional presumption of innocence, and personal liberty pending trial considering the fact that the 1<sup>st</sup> Defendant has been in custody for over three years vis a vis the proof of evidence in this case, I will therefore exercise my discretion in favour of the 1<sup>st</sup> Defendant and grant bail.

With respect to the 2<sup>nd</sup> Defendant, although the Defendant has a right to the constitutional presumption of innocence, this Court will not exercise its discretion in his favour having taken into account all the facts and proof of evidence in this case. It is not enough from the affidavit as deposed on his behalf, considering the peculiar circumstances and the nature of the charge against the defendant, that he shall not jump bail; he shall not interfere with investigations of this case or that he shall not commit any offence if released on bail or that he has reliable sureties to take him on bail. I am circumspect in granting the bail of the 2<sup>nd</sup> Defendant and his bail is hereby denied.

Consequently, I hereby order as follows;

1. Bail is hereby granted to the 1<sup>st</sup> Defendant in the sum of ₦2,000,000.00 (two million Naira) only and two sureties each in like sum, who are to depose to an affidavit of means.
2. The sureties shall be Civil Servants employed in the Federal Capital Territory on grade level 14 and above, with a verifiable office and house address within the Federal Capital Territory and verification is to be carried out by the Registrar of this Court.

**Parties:**Defendants are absent.

**Appearances:**Dickson Sofiyegha, Esq., for the 1<sup>st</sup> Defendant/Applicant. Patricia Udoh (Mrs) for the 2<sup>nd</sup> Defendant/Applicant. Prosecution absent.

**HON. JUSTICE MODUPE R. OSHO-ADEBIYI**

**JUDGE**

**20<sup>TH</sup> OCTOBER 2020**