

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

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA**

**BEFORE HIS LORDSHIP : HON. JUSTICE Y.HALILU**

**COURT CLERKS : JANET O. ODAH & ORS**

**COURT NUMBER :HIGH COURT NO. 22**

**CASE NUMBER :SUIT NO: CR/25/2019**

**DATE :WEDNESDAY 3<sup>RD</sup> FEBRUARY, 2021**

**BETWEEN**

**COMMISSIONER OF POLICE ...COMPLAINANT/APPLICANT**

**AND**

**SUNDAY ABAYOMI ..... DEFENDANT/RESPONDENT**

## **RULING**

This Ruling is at the instance of the Defendant/Applicant who approached this Honourable Court for the following Orders;

- a. An Order of the Honourable Court admitting the Defendant/Applicant to bail pending the hearing and determination of the criminal charges against him.
- b. And for such further Order or Orders as this Honourable may deem fit to make in the circumstances.

In support of the application is a 16 paragraph affidavit deposed to by one Emmanuel A. Agabi.

It is the deposition of the Applicant as distilled from the affidavit in support of the motion that the

Defendant/Applicant was arrested on the 15<sup>th</sup> day of April, 2019 for alleged offence of conspiracy and robbery under the Robbery and Fire Arms (special provision) Act 2004.

That the Defendant was transferred from Karimo Police station to Chief Magistrate Court, Mpape Abuja and a remand warrant was issued wherein the Defendant was detained in Keffi Correctional Service facility.

It is further the averment of the Applicant that on 15<sup>th</sup> April, 2019 when the alleged offence was committed, the Defendant was at the Eastern Garden Hotel Karmo, FCT for a birthday party.

That a fight broke out which led to the broken windscreen and side mirror of highlander Jeep

belonging to one Mr.Ogbonna and he duly apologised to him and the management of the Hotel.

That he was surprised when police arrested him and took him to Karu Police station and alleged that it was offence of Armed Robbery and that he is innocent of the offence.

A written address was filed wherein the Applicant formulated a sole issue for determination to wit;

Whether the Defendant/Applicant is entitled to bail in the circumstance.

Learned counsel argued that the criteria to be followed in taking a decision on an application for bail is as follows:-

1. The nature of the charge

2. The strength of the evidence which support the charge
3. The gravity of the punishment in the event of conviction.
4. The previous criminal record of the accused; if any
5. The probability that the accused may not surrender himself for trial.
6. The likelihood of the accused interfering with witnesses.

***EYU VS THE STATE (1988)2 NWLR (Pt. 78) at Page 206.***

Learned Counsel submit that bail is a basic right of every citizen of this country based on Section 35(5) of 1999 Constitution as (amended).

Counsel contended that the Court has the discretion to grant bail even in capital offence like treason and treasonable felony. ***DOKUBO – ASARI VS FEDERAL REPUBLIC OF NIG. (2007)12 NWLR (Pt. 1048)*** at Page 329 was cited by the Learned Counsel.

Court was urged to exercise its discretion in favour of the accused person by granting him bail.

Upon service, the Prosecution filed a counter affidavit of 17 paragraph deposed to by One Francis Udofia a Police Officer attached to FCT Police Command.

It is the deposition of the Respondent that the Defendant/Applicant is a member of a notorious Armed Robbery Syndicate who have made life unbearable to the Residents of FCT, Abuja.

That the offence for which the Defendant/Applicant is charge with before this Honourable Court is not ordinary bailable and that the Defendant will commit similar offence if granted bail and that the evidence against the Defendant is material, compelling and overwhelming.

That it will be in the interest of justice to refuse the application.

A written address was filed wherein the issue whether or not this Honourable Court can exercise its discretion in favour of the Defendant/Applicant by granting him bail was formulated for determination.

Learned counsel argued that the Court cannot exercise its discretion in favour of the Defendant by granting bail because the purpose of bail is to enable

the Defendant appear and face his trial and that from look of things the Defendant would jump bail if same is granted to him.

Counsel submit that if every person accused of felony can hide under the canopy of Section 35 of the Constitution to escape lawful detention then an escape route to freedom is easily and richly made available to persons suspected to have committed serious crimes and that will not augur well for the peace, progress, prosperity of the society.

Court was urged to refuse the application.

**Court:-** I have gone through the application under consideration which seek the court's discretion in granting the Accused/Applicant bail pending the determination of the substantive case.



I must state here that by virtue of section 35(4) and 36(5) of the 1999 constitution as amended, an accused person is entitled to his unfettered liberty and is presumed innocent until proved guilty and the onus is on the prosecution to prove that an accused person is not entitled to bail. However, the presumption of innocent and the right to liberty as enshrined in section 36 (5) and 35 (4) respectively of the constitution can only be invoked where there is no prima facie evidence against the accused. It would be foolhardy to allow the accused on bail because the constitution could not have envisaged a situation where accused person of every shade could be allowed bail just at the mention of the magic words of presumption of innocence. ***ALAYA VS STATE (2007) 16 NWLR (Pt. 1061) 483 at 505 paragraph D – F.***

The main function of bail is to ensure the presence of the accused at the trial. So if there is any reason to believe that the accused is likely to jump bail, the bail will properly be refused by the court in exercise of its discretion in dealing with the application. ***SULEMAN VS COP (2008) 8 NWLR (Pt. 1089) 298.***

The accused person was charged under a capital offence. The consideration for his bail therefore falls under section 161 of ACJA. The provision of the law makes it clear that bail is not automatic. The court may release an accused/Applicant on bail upon some conditions stipulated under the law and same has received judicial pronouncements. Thus in considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

- i. Nature of the charge
  - ii. The severity of the punishment in the event of conviction.
  - iii. The strength of the evidence by which the charge is supported.
  - iv. The criminal record of the accused, if any.
  - v. The likelihood of the repetition of the offence.
  - vi. The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
  - vii. The risk that if released, the accused may interfere with witness or suppress the evidence likely to incriminate him and
  - viii. The necessity to procuring medical report
- OHIZE VS C. O. P (2014) LPELR 23012 (CA).***

From the averment contained in paragraph 10, a, b, c, d, e, f, g, h, i, j, k, l and m of the deposition of affidavit in support of the application for bail, it is obvious that the accused person is willing to face trial and will not jump bail if same is granted to him.

Defendant is hereby granted Bail on the following conditions:-

1. Produce two sureties who must be residents of Abuja with evidence of such residency.
2. Sureties shall deposit title documents of their property who must be in Wuse II, Garki, Asokoro or Maitama.
3. Defendant shall deposit his travel documents with the Registrar of this court.

4. Sureties shall make undertakings to produce Defendant in Court throughout the trial.

*Justice Y. Halilu*  
*Hon. Judge*  
*3<sup>rd</sup> February, 2021*

### **APPEARANCES**

O. UdoEsq. – for the Prosecution.

Emmanuel Okoli with Emmanuel Agabi – for the Defendant.