

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. 14
CASE NUMBER : CHARGE NO: CR/33/2019
DATE: : TUESDAY 30TH APRIL, 2024

BETWEEN:

COMMISSIONER OF POLICECOMPLAINANT

AND

SHERIF CALIPH DEFENDANT

RULING

The Applicant approached this Honourable Court vide a Motion on Notice dated 1st February, 2021 praying the court for the following Orders;

1. An Order of this Honourable Court admitting the Defendant/Applicant to bail pending the hearing and determination of the criminal charged against him.
2. And for such further order or further Orders as this Honourable Court may deem fit to make in the circumstance.

The grounds upon which this application is brought are:-

- i. The offences the Defendant/Applicant is alleged to have committed are bailable by this court although not as a matter of course.
- ii. The Defendant/Applicant is presumed innocent under the constitution particularly section 36(5) until proven guilty.
- iii. The Defendant/Applicant has been in custody since 17th day of July, 2019 and is anxious to have this matter expeditiously heard and concluded.

- iv. The Defendant/Applicant shall not jump bail and shall promptly respond to attend this Honourable Court to defend himself against the charge made against him.
- v. The Defendant/Applicant if granted bail, shall not prejudice investigations of the alleged offence contained in the Charge as such investigations are deemed complete by reason of this charge.
- vi. The Defendant/Applicant if granted bail will not commit any other offence.
- vii. The Defendant/Applicant is willing to provide a surety and meet other conditions as may be liberally directed by this Honourable Court.
- viii. The Defendant/Applicant is a law abiding citizen and has no criminal record and could be admitted to bail on the most liberal terms.

In support of the application is a 17 paragraphs affidavit duly deposed to by Emmanuel A. Agabi, counsel to the Defendant/Applicant in this matter.

It is the deposition of the Applicant that he was arrested on the 16th day of July, 2019 for alleged offence of Armed Robbery

contrary to the Robbery and fire arms (special provision) Act, 2004.

That the Defendant/Applicant was detained in Kogi State Police Command for a day and was subsequently transferred to FCT Command Abuja on 17th of July, 2019.

That the Applicant without being arraigned before any court, was transferred to Nigeria correctional service Keffi by a remand order received from Chief magistrate Court Life Camp Abuja and has since been in their custody till date.

That the Defendant/Applicant is a married man with a very young family, the sole bread winner of his home and that he has not had the privilege of seeing his child let alone being there to provide all necessary fatherly care while the child will need to grow with in life and that the Defendant/Applicant is a law abiding citizen without any criminal record and is willing to be present to stand his trial if granted bail.

That the Defendant/Applicant further avers that he never robbed the nominal complainant in this case or any other person either with gun, a knife or any other weapon that he only purchased (Toyota Rav4) car from one Mr. Eric in March, 2019 and Mr. Eric assured him that the car belonged to him.

That Mr. Eric then provided the original papers of the car and all the vehicle particulars of the said car all in a bid to make the Defendant/Applicant fully convinced as to the ownership of the car and that he proceeded to purchase the car from the said Mr. Eric.

That at the point of registering the car, It was discovered that the car has originally been registered in the name of some other person.

That on getting to the police command Kogi State he narrated his stories to the police officers, and then at the instance of the police officers put a call across Mr. Eric who then promised to come the next day.

That instead of waiting Mr. Eric to come, the police moved him to Abuja and that he was surprised to be informed by the police that he was being arrested for an alleged offence of Armed Robbery which happened at area 11 Garki, Abuja.

That it will be in the interest of justice and fair hearing to grant this application so as to avail the Defendant/Applicant the opportunity and adequate facility to prepare for his trial as is the requirements of the constitution.

In line with the procedure, written address was filed, wherein sole issue was formulated for determination to wit;

Whether from the circumstances surrounding this case and the totality of proof of evidence in support of this case, the court would not exercise its discretion in favour of the Defendant/Applicant and grant the Defendant/Applicant Bail pending the trial of this case.

Arguing on the above issue, it is the submission of the learned counsel that the criteria to be followed in taking a decision on an application for bail is laid down in the case of ***EYU VS. THE STATE (1988) 2 NWLR (Pt. 78) at Page 206.***

It is further the submission of learned counsel that bail is the discretion of the court. The requirement of the law is that discretion must be exercised judicially and judiciously. He added that, it is so because the liberty of the Applicant stands or falls by the decision of the court as the court exercise that discretion. He cited ***ALAYA VS. STATE (2007) 16 NWLR (Pt. 1061) Page 487.***

Learned counsel submits further that the discretion of this Honourable Court is not fettered and it is urged that it be exercised in the Defendant/Applicant's favour.

The court is urge to grant the Defendant/Applicant bail so that he may continue to enjoy these constitutionally guaranteed rights and adequately prepare for his trial.

Upon service, the prosecution filed a counter affidavit of 18 paragraphs deposed to by one Philib Tumba a litigation clerk attached to legal section, FCT Police Command, Abuja.

It is the deposition of the Respondent that the Defendant/Applicant was arraigned on two count charge viz: conspiracy and Armed Robbery punishable under section 1(2)(b) of the Robbery and fire Arms Act Cap R11, LFN 2004 and the above mentioned offences are punishable with death sentence and other punishment ranging from 15 to 20 years imprisonment.

That there is overwhelming evidence attached to the charge and that if the Defendant/Applicant is released on bail by this court, he will jump bail and commit another offence.

That considering the facts and circumstances of this case that the Defendant/Applicant will intimidate the vital witnesses in this case especially the victim's family and interfere with the trial by destroying evidence.

That it will be in the interest of justice for this court to refuse the Applicant's application for bail.

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

Whether or not this Honourable Court can exercise its discretion in favour of the Defendant/Applicant by granting him bail.

Learned counsel argued that the purpose of bail is to enable a Defendant to appear at his trial and there are number of criteria or consideration to be taken into account in deciding a bail application. ***BAIMAYI VS. STATE (2001) 8 NWLR (Pt. 715) was cited.***

Learned counsel submits that the charge in this case is a serious one which by virtue of section 224 of the penal code carries sentence to life imprisonment upon successful prosecution and that this Honourable Court is informed in their counter affidavit that the proof of evidence supporting this charge is over whelming. ***BAIMAYI VS. STATE (Supra) was cited.***

Learned counsel further submits that there is high possibility that the Defendant/Applicant will jump bail, intimidate vital witnesses

and render the efforts of the court and that of the prosecution to nullity.

In conclusion, learned counsel submits further that it has been held that the prosecution is the eye of the Honourable Court as far as issues relating to bail of the accused is concerned. ***ALH. OTUNBA GANI ADAMS & ORS. VS. AGF (2006) 11 NWLR (Pt. 991334) was cited.***

The Court is urged to dismiss the bail application on behalf of the Defendant/Applicant for lacking in merit.

COURT:-

I have carefully considered the averments in the parties' affidavits and legal arguments of respective counsel.

The grant or otherwise of an application for bail pending trial involves an exercise of the court's discretion which discretion must be exercised judicially and judiciously based on the materials placed before the court.

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 innocence 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 paragraphs 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.***

In the case at hand, the accused person is charged with conspiracy and armed Robbery and others now at large. The consideration for his bail therefore falls under section 161 of Administration of Criminal Justice Act (ACJA) 2015. The provision of law makes it clear that bail is not automatic. Thus in

considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

1. Nature of the charge.
2. The severity of the punishment in the event of conviction.
3. The strength of the evidence by which the charge is supported.
4. The criminal record of the accused, if any
5. The likelihood of the repetition of the offence.
6. The probability that the accused may not surrender himself for trial, thus not bring himself to justice.
7. The risk that if released, the accused may interfere with witness or suppress the evidence likely to incriminate him and
8. The necessity to procuring medical report ***OHIZE VS. COP (2014) LPELR 23012 (CA).***

Defendant/Applicant averred in its affidavit in support of application that he had never robbed the nominal complainant but only purchased a (Toyota Rav 4) car from one Mr. Eric and he

inquired from Mr. Eric regarding the genuinity of the car which Mr. Eric assured him that the car belonged to him that he was only selling the car because of some family challenges which he was facing, and that he was detained in Kogi State Police Command and subsequently transferred to FCT Police Command Abuja, later transferred to Nigerian Correctional Service Keffi by a remand order received from a Chief Magistrate Court Life Camp Abuja till date. He averred also that he is a married man and the sole bread winner of his home and that his wife was nursing their very first baby who was less than one year before he was arrested.

As against these, the prosecution did aver that the Applicant was arraigned on two count charge viz: conspiracy and Armed Robbery punishable under section 1(2) (b) of the Robbery and firearms Act Cap. R11 LFN, 2004 and punishable with death sentence and other punishment ranging from 15 to 20 years imprisonment. That the accused was arrested in possession of the car. If the Applicant is granted bail, he will jump bail and escape justice. He will also interfere with the ongoing investigation as well as trial by intimidating witnesses.

Putting all these into consideration particularly those with whom the Applicant has been charged are currently at large and that the Applicant was arrested in possession of the car, it does appear to me that there is a serious link between the Applicant and the alleged offence and there is strong likelihood he will jump bail if granted one. There is also likelihood he will interfere with further investigation.

In the light of these and taking particular cognizance of the fact that the offence with which the Applicant is charged are Conspiracy and Armed Robbery, the court is minded in the exercise of its discretion not to grant this application. The application is refused and accordingly dismissed.

In view of the fact that the Applicant has been in detention since 2019 to date, accelerated hearing is hereby ordered.

Justice Y. Halilu
Hon. Judge
30th April, 2024

APPEARANCES

Defendant in Court.

Emmanuel Agabi, Esq. – for the Defendant.

Prosecution sent a letter for adjournment.