

**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/256/2024**  
**DATE: : TUESDAY 28<sup>TH</sup> MAY, 2024**

**BETWEEN**

**FEDERAL REPUBLIC OF NIGERIA ..... COMPLAINANT**

**AND**

**PAUL BASSEY COBHAM ..... DEFENDANT**

# **RULING**

This Ruling is at the instance of Defendant/Applicant who vide Motion on Notice sought for the following:-

1. An Order of this Honourable Court admitting the Defendant/Applicant to bail pending his trial before this Honourable Court.
2. And for such order or further Orders this Honourable court may deem fit to make in the circumstances.

In support of the application is a 9 paragraphs affidavit deposed to by one Esther Timothy, a litigation secretary in the law firm of counsel to the Applicant.

It is her deposition in the affidavit that the Applicant have been charged before this court for the alleged offences punishable under sections 97(1), 287 and 287 of the penal code of Northern Nigeria and that the Applicant was arraigned before this court and he pleaded not guilty to the alleged offences.

Deponent stated that the Applicant is a law abiding citizen of Nigeria doing business in Abuja – FCT within the jurisdiction of this Honourable Court and that he will not jump bail if granted by this Honourable Court.

That the Applicant has a reasonable and responsible surety who reside within the jurisdiction of this court available and willing to execute bond in respect of the bail of the Applicant and that he undertakes not to commit the same or similar offences when released on bail.

That it will best serve the interest of justice if this application is granted.

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

**"Whether the Defendant/Applicant has placed enough facts before this court to warrant the grant of the Order sought in this application."**

Arguing on the above, learned counsel answered the issue in affirmative and further argued that the Applicant is entitled to the enjoyment and protection of the privileges envisaged by section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) among other provisions of the entire chapter iv of the said constitution and by extension the provisions of sections 158, 162 and 165 of the ACJA, 2015. It is clear that the allegations against the Defendant/Applicant bothers on allegations of forgery and being in possession of forged mining

exploration license punishable under sections 97(1), 287 and 287 of the penal code of Northern Nigeria, and that the allegations against the Applicant are not capital in nature. He further cited section 35(1) of the 1999 Constitution of Nigeria 1999 (as amended).

Counsel further argued that the allegation against the Applicant are serious in nature but not capital and therefore court is enjoined to exercise its discretion in favour of the Applicant to grant the bail application. That the Defendant/Applicant deposed to an oath not to jump bail and provide a credible surety to enter into a bond on his behalf. He cited ***ABACHA VS. STATE (2002) 95 LRCN 362.***

Learned counsel submits that the necessary undertakings and conditions relevant for consideration in respect to bail have been made and the Applicant further undertake to abide by the conditions this court may impose in admitting him to bail. The court is urged to exercise its discretion in favour of the Applicant.

Counsel further submits that bail is a discretionary power of the court and exercise of same must be done judicially and judiciously, it is not however intended to be a ploy to set the Applicant free for the allegation leveled against him but merely to

secure the temporary release of the Applicant from custody on bond so as to ensure his attendance in court at times that the case may come up. See the case of ***DOKUBO ASARI VS. FRN 37.2 NSCQR Page 1146 at 1156 ratio 12.***

The court is urge to resolve the sole issue formulated in favour of the Applicant.

Upon service, the prosecution filed counter affidavit of 21 paragraphs deposed to by one ***DET CHIZI ORIU*** an officer under the employment of the complainant.

It is the deposition of the Respondent that there is no truth in the depositions contained in paragraph 4(c), 5, 6, 7 and 8 of the Applicant supporting affidavit in this case and that paragraphs 1, 2 and 3 of the Applicant supporting affidavit are facts within the exclusive knowledge of the Applicant, hence the Respondent is not in the position to admit or denied same.

Respondent's further avers that the facts gathered by the operatives of the Respondent that investigated this case revealed that the Applicant had in several occasioned escape arrest from the Nigerian Police Force on reported cases and obtaining money by false pretence and had bad criminal record of antecedence, prior to his arrest by the Respondent in the same related act.

That the same Applicant is charged before the high court of Kaduna State, Judicial Division in charge No. KAH/KD/EFCC/18/24 filed by the office of the Respondent in Kaduna State and he is yet to be arraigned due to the preceding charge before this Honourable Court. Copy of the charge is hereby annexed and marked as Exhibit "EFCC 1".

Respondent avers that the charge before Kaduna court borders on obtaining money by inducement of the sum of N900,000.00 (Nine Hundred Thousand Naira) contrary to section 306 and punishable under section 307 of the penal code law of Kaduna State.

That the charge before this Honourable Court against the Defendant and with particular reference to account two on the face of the charge borders on alleged act of stealing of the aggregate sum of N11,500,000.00 (Eleven Million, Five Hundred Thousand Naira) only.

Respondent further avers that in the course of investigating this matter against the Defendant, the investigation revealed that the Defendant has no definite and direct address of contact and had no resident to be traced upon, hence if he is granted to bail, he will definitely jump bail.

That investigation revealed that the Defendant is a native of Cross – River State, Bakassi Local Government Area which is a cross over to the Republic of Cameroon and that is highly indicative of him being a flight – risk to Republic of Cameroon or France, or to his village so as to stall the trial, in the event that he is granted bail by this court.

Respondent stated further that the offence the Applicant is standing trial is prevalent in the country and he has no reputation to be maintained but rather bad criminal record of antecedence.

That the Applicant will definitely foist the prosecution of this criminal charge filed against him in the event he is granted to bail.

That at the accelerated hearing will best serve the justice of this case, which the prosecution is ready to comply.

That it is in the interest of justice, this bail application be refused.

In line with the law, Prosecution filed written address wherein sole issue was formulated for determination to wit:

**Whether the Defendant/Applicant is entitled to the discretion of this Honourable Court to be admitted to bail having regards to the material fact placed before it.**

Learned counsel while arguing the above issue, submits that this Honourable Court has discretion to grant or refuse bail considering all the material facts placed before it, however the discretionary power of this court would not be fettered by precedence, and the manner of its exercise must be guided by established principles. See the case of ***BAMAIYI VS. THE STATE (2001) 8 NWLR (Pt. 715)***.

It is the submission of the learned counsel that, in considering the bail of the Defendant/Applicant, reliance should be placed on the available evidence as contained in the proof of evidence which has disclosed substantial evidence against the accused person. Counsel cited Sections 35 and 36 of the 1999 Constitution of the Federal Republic of Nigeria.

Learned counsel further submits, that the import of Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 as regards the presumption of innocence does not avail the Defendant/Applicant an instant right to bail.

Learned counsel concludes, that he has been able to show that the Accused/Applicant has not placed sufficient material facts to convince this Honourable Court to exercise its discretion in her favour.

Learned counsel urged this Honourable Court to refuse the Accused/Applicant's application for bail and order accelerated hearing of this case.

Defendant/Applicant filed 12 paragraphs of further and better affidavit deposed to by one Esther Timothy, litigation Secretary in the law firm of counsel to the Applicant.

It is the averment of learned counsel, that paragraph 8 of the Respondent's counter affidavit is false and speculative because there was never a time the Applicant was invited by the Police in respect of any criminal case against him that he refused to honour invitation and that paragraph 9 and 10 of the Respondent's counter affidavit is presumptive and pre-emptive as the Applicant pleaded not guilty to the offence when he was arraigned before this Honourable Court.

That paragraph 13 of the Respondent's counter is false as the Defendant is residing in Barnawa, Kaduna with his family before he moved to Abuja in 2023 and paragraph 14 is also false because even though the Applicant hails from Cross-River State he was however born and raised in Makurdi, Benue State and currently has his family residing in Kaduna State.

That paragraph 15, 16 and 17 of the Respondent's Counter affidavit are false, that the Defendant does not in any matter pose a security or flight-risk to Cameron, France nor his village because the Applicant is not resident in Cross-River neither do any of his parent resides in Cross-River State, therefore granting him bail will not in any way foist the Prosecution in any way instead it will afford the Applicant the opportunity to defend the charges against him.

That it will serve the overall interest of justice if the Applicant's application is granted.

**COURT:-**

The issue of Bail is not novel in the annals of our criminal jurisprudence.

This is so because the constitution of the FRN 1999 as amended leans heavily in support of granting Bail.

There are however instances where court would be hesitant to grant such.

I have gone through the application under consideration which seeks 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 of Federal Republic of Nigeria as amended, an accused person is entitled to his unfettered liberty and is presumed innocent until proven guilty. The onus however is on the prosecution to prove that a Defendant charged before a court of law is not entitled to be granted Bail.

The presumption of innocence and the right to liberty as enshrined in sections 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 charge against the Defendant is ordinarily bailable even though bail is not automatic in view of the fact that the competing legal rights, if any, between the Prosecution and the Accused person shall be taken into account.

The court may release an Accused/Applicant on bail upon some conditions stipulated under the law and some that have 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 charges 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 procure medical treatment of social report. ***OHIZE VS C.O.P (2014) LPELR 23012 (CA).***

I have seen Exhibit "EFCC 1" i.e Charge No. KAH/KD/EFCC/18/24 filed by the Prosecution/Respondent at the High Court Kaduna, Kaduna State against the same Defendant/Applicant.

The said charge pending at the High Court Kaduna revealed that the Defendant collected N900,000.00 from one Pedro to invest in Forex which turned out to be false.

As stated from the preceding part of this ruling, unless there is/are other compelling reason, Bail of an Accused person which is constitutional, shall not be withheld. If however, there are good reason to refuse bail, the Court shall so do. In this case, accused who is being awaited to appear before High Court Kaduna is not likely to attend this court as at when once released on Bail.

This to my mind is one impediment that stands on the way.

I am on above score not inclined to granting Bail to the Accused person. I hereby Order for accelerated hearing of the case.

On the whole, Application is refused and dismissed.

***Justice Y. Halilu***  
***Hon. Judge***  
***28<sup>th</sup> May, 2024***

## **APPEARANCES**

Defendant in court.

**I.D Ilo – Iloakasia, Esq.** – for the Prosecution.

**Florence A. Ebuga, Esq.** – for the Defendant.