

**IN THE HIGH COURT OF FEDERAL CAPITAL TERRITORY,
HOLDEN AT APO, ABUJA.**

**ON THURSDAY THE 6TH DAY OF OCTOBER 2021
BEFORE HIS LORDSHIP:**

**HON. JUSTICE FRANCES ERHUVWU MESSIRI.
(JUDGE.)**

SUIT.NO. FCT/ HC/CR/010/2021

BETWEEN

COMMISSIONER OF POLICE-----

COMPLAINANT

AND

MOHAMMED BELLO -----

DEFENDANT

}
}

[RULING.]

The defendant Mohammed Bello is charged before this honourable court is standing trial on a two-count charge of conspiring to commit murder and the substantive offence of culpable homicide punishable with death

contrary to section 221 of the penal code law LFN, 1990. The defendant was arraigned on the 1/3/2021 ,plea was taken case was adjourned for trial.

Learned counsel for the defendant has now applied to this honourable court to admit the defendant to bail pending the hearing and final determination of the charge preferred against the defendant/applicant.

Attached to the application for bail is a6-paragraphs affidavit deposed to by one favour Azubuike on the 13th day of July 2021 and written address in support of the application for bail wherein a sole issue was distilled for resolution to wit

“Whethergiven the facts of this case and Applicable laws the applicant is entitled to the reliefs sought”

Learned counsel for the defendant urged this honourable court to exercise his jurisdiction judicially and judiciously and grant bail to the defendant who is presumed innocent he relied on section 36(5) of the 1999 constitution and the case of OBEKPA V C.O.P.(1980) I NCR 113 AT 117.

Listing they various ingredients to consider learned counsel submits that the nature and gravity of the offence charged notwithstanding ,the charge still has to be proved beyond reasonable doubt and started that at

this stage defendant is innocent until proven guilty. He submits that there is no prima facie case against the defendant and no proof of evidence attached to the charge, he added that the defendant is willing to stand his trial and has no history of previous conviction nor will he commit any other offence or interfere with the course of justice. Learned Counsel for the defendant submits further that the defendant's life is not threatened in any way and therefore urge court to admit the defendant to bail on most liberal terms.

On his part the prosecution filed a 14 paragraphs counter affidavit in opposition to the application to admit the defendant to bail ,the counter affidavit is deposed to by one inspector Philip Tumba on the 20/09/2021 and filed on the 21/09/2021.

Counsel for the prosecution B.G. Emenike filed a written address in support of the counter affidavit where he distilled a lone issue for resolution by this honourable court to wit whether having regards to the circumstances of this case the applicant is entitled to the favourable exercise of the courts discretion to grant him bail pending the determination of the case.

*Learned counsel submits that in line with section 161 of the ACJA 2015, for capital offences Bail is not granted as of right but premised on exceptional circumstances relying on the case of **BAMAIYI V. STATE 2001 5 NWLR***

***PART 715** prosecuting counsel submits that the applicant having not placed any special circumstance before this honourable court and considering the nature of the offence the Applicant is not entitled to the discretion sought and therefore urge this honourable Court to discountenance the application*

*"It is true that bail pending trial is not granted as a matter of course where the applicant for bail is charged with a capital offence punishable with death, but special circumstances may arise in any particular case to warrant the exercise of discretion by any High Court trying such an accused person to release him on bail pending his trial - see **ATIKU V. THE STATE (2002) 4 NWLR (PT.757) 265, & THE STATE V. AKA A (2002) 10 NWLR (PT 774) 157.***

*Hear what the court of appeal said with regards to the grant or refusal of bail in capital offences in the case of **MUHAMMED SANI ABACHA VS. THE STATE (2002) 5***

NWLR (PT. 761) 638." PER OSEJI ,J.C.A (AS HE THEN WAS)

(PP. 7 PARAS. C)

"In the instant case, one of the several charges against the Applicant is that of murder which is a capital offence. By law an accused person charged with a capital offence is not ordinarily admitted to bail as a matter of course. This means that beyond the general criteria to guide a Judge in the exercise of his discretionary powers in deciding whether or not to grant bail to an accused person. In capital offences there is the extra need for special or extra ordinary circumstances to be established before admittance to bail could be a possibility".

Equipped with the above principle , this court is guided generally by the general criteria dealt with extensively by learned counsel for the defendant/applicant in his written, but as argued by prosecuting counsel special circumstances must exist before this honourable court can and will exercise its discretion in favour of the Applicant whois before this honourable court for murder a capital offence.

Indeed, the applicant has not shown any special circumstance that exist in this case which will warrant this honourable court to exercise its discretion in favour of the defendant/applicant

Seeing that the applicant has been arraigned with plea already taken, this court deems it prudent to refuse this application for bail and order accelerated hearing instead.

In the circumstance this bail application is hereby refused and accordingly dismissed

HON JUSTICE F. E. MESSIRI .

(HON. JUDGE)