

**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. 24**  
**CASE NUMBER : CHARGE NO: CR/26/16**  
**DATE: : THURSDAY 6<sup>TH</sup> FEBRUARY, 2020**

**BETWEEN:**

**COMMISSIONER OF POLICE ..... COMPLAINANT/RESPONDENT**

**AND**

**1. BABANGIDA SULE AGED 35 YRS    DEFENDANTS/APPLICANTS**  
**2. SAMUEL EMMANUEL AGED 34 YRS    }**

# RULING

The Defendants Applicant approached this Honourable Court vide a motion on notice seeking for an Order admitting them to bail pending trial and for such further Order or Orders as the Court may deem fit to make in the circumstance.

In support of the application is a 4 paragraph affidavit duly deposed to by one grace Antai, a litigation secretary in the law firm of the Applicants.

It is the deposition of the Applicants that both 1<sup>st</sup> and 2<sup>nd</sup> Defendants are married with children.

That the 2<sup>nd</sup> Defendant only knows the 1<sup>st</sup> Defendant as the good Samaritan who assisted him with car jack when his car had a flat tyre at Obajana Lokoja, sometime in 2014;

That on the 4<sup>th</sup> September, 2016 at about 4pm, the 1<sup>st</sup> Defendant had just dropped off a passenger at Gudu, Abuja while the 2<sup>nd</sup> Defendant was returning from work, when they bumped into each other, opposite Gudu Market, Abuja and were overjoyed to see each other again after a long time;

That as they stood exchanging pleasantries, they heard a lady screaming “thief, thief” behind them;

That later when the Police intervened, the 1<sup>st</sup> Defendant tried to show them his car a Carina II vehicle with Reg. NO. CN 55 RBC which was parked a few metres away at a filling station where he intended to buy fuel afterwards but the Police did not believe him;

That the Police confiscated the Carina II vehicle with Reg. No. CN 55 RBC which the 1<sup>st</sup> Defendant was using that day and took it to the Police station along with the Defendants/Applicants;

That the above described car belongs to Abdullahi Shaibu the 1<sup>st</sup> Defendant's brother, who later presented the particulars of the vehicle to the police but they still refused to release it.

That the Defendants/Applicants spent about 8 months in SAR custody before they were charged to Court and stood trial before **Justice Talba** at High Court Gudu.

A written address was filed wherein, a sole issue was formulated for determination to wit; whether the Applicants have placed sufficient materials before this Honourable Court to enable the court exercise her discretion in favour of the Applicant.

Learned counsel submit that, it is trite law in our criminal procedure that certain conditions or factors may be considered by a court in granting or refusing application for bail and that these factors include the following:-

- a. The evidence available against the accused

- b. Availability of the accused to stand trial
- c. The likelihood of the accused committing another offence while on bail.
- d. The likelihood of the accused interfering with the cause of justice.
- e. The criminal antecedent of the accused person.
- f. The likelihood of further charge being brought against the accused. ***ADAMS & ORS VS ATTORNEY GENERAL OF FEDERATION (2006) LPELR 7713 (CA).***

Learned counsel submit that, section 162(2)(C) of Administration of Criminal Justice Act vest the court with wide latitude in determining bail even in capital offences.

Learned counsel urge the court to grant the accused persons bail in the overriding interest of justice.

The Prosecution did not file counter affidavit but replied on points of law.

It is the submission of the Prosecution that the application under consideration isn't one that could be granted on the strength of section 35(6) 1999 Constitution as bail is the discretion of the court and not absolute. Learned counsel contended that this court is functus officio as Hon. Justice Talba J. determined the application already hence an abuse of court process.

Court:-I have gone through the paragraphs of affidavits in support of the application for Bail and the reply on point of law by the Prosecution in opposition to the Bail application.

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 innocence 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 shred 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, then 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, 2015. The provision of the law makes it clear that bail is not automatic. The court may release an accused/Applicant for 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 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 procure medical treatment of social report. ***OHIZE VS C O P (2014) LPELR 23012 (CA).***

From the averments contained in paragraph (4), J, K, L, M, N, O, P, Q, R and S of the affidavit in support of the application for bail, it is obvious that the accused persons are willing to face trial and will not jump bail if same is granted them.

The argument of learned Prosecution counsel that similar application was made before my learned brother and

therefore same cannot be presented before me is a complete misconception of the law and or argument tainted and carefully canvassed to deprive Applicant Bail.

Defendants are hereby granted Bail on the following conditions:-

- a. Produce two reasonable sureties who must be Director in Federal Civil Service or two responsible citizens who must be residents of FCT with evidence of ownership of their houses.
- b. Post bond to produce Defendants in court always.

*Justice Y. Halilu*  
*Hon. Judge*  
*6<sup>th</sup> February, 2020*

## **APPEARANCES**

Defendants in court

Prof. Agbo J. Madaki – for the Defendants.

Prosecution counsel not in court.