

This Ruling is at the instance of the 3rd Defendant/Applicant (BabangidaMadaki) who approached this Honourable Court for an Order admitting him to bail pending hearing and determination of the substantive Suit against him. And for such further Order as the Court may deem fit to make in the circumstances of this case.

In support of the application is a 4 paragraph affidavit duly deposed to by OneLovinaMadaki, the Elder sister to the Applicant.

It is the deposition of the Applicant that he was arrested in Panteka Market, Kaduna sometimes in August, 2017 and was taken to the Malali Police Station on the allegation of being in possession of a Vehicle suspected to be stolen.

Applicant avers that he denied the allegation vehemently and that he told the police that he did not know the two other Defendants but that his friend asked him to assist a friend of his who was coming to Kaduna from Abuja by

directing him to Panteka Market where he would deliver a Vehicle.

That it was when he drove the car with the 1st Defendant in it that the Police got him arrested and detained.

Applicant further avers that in his extra judicial statement to the Police in Malali, he stated these facts that he did not participate in any armed robbery, but when he was transferred to the State CID, Kaduna, the Police subjected him to a serious torture that caused him excruciating pains and even led to injury on his left hand and right leg.

That he has reasonable and responsible person to take him on bail and that he will not jump bail and will not commit any offence while enjoying the bail of this Honourable Court.

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

Whether from the totality of the facts of the case and especially the length of the Applicant's detention visa vis the provisions of Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Administration of Criminal Justice Act, the Applicant is entitled to have this application granted.

Arguing on the above issue, Counsel contended that Section 35 of the Constitution and Section 161(2) of the Administration of Criminal Justice Act empowered this Honourable Court to grant bail to the accuse person even in allegation of capital offence as the above cited provision made it a constitutional duty.

Learned counsel argued further that the Respondent has no reason keeping the Applicant in detention for this long. Counsel relied on *DURUGKU VS NWOKE (2015)15 NWLR (Part 1483)417 at 474 Para A – C.*

Court was finally urge to grant the Applicant bail on a reasonable terms and conditions.

Court:- Respondent did not file any counter affidavit to challenge, controvert or contradict the averments in supporting affidavit of the Applicant. Therefore, the facts deposed to in the supporting affidavit are left unchallenged.

***AGBOR VS THE POLYTECHNIC, CALABAR (2009)
LPELR 8690 (CA).***

I have gone through the application under consideration which seek the court's discretion in granting the Accused/Applicants 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 proven 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 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 his/her trial. So if there is any reason to believe that the accused is likely to jump bail, 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 arraigned for the capital offence of armed robbery and criminal conspiracy, 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. 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 social report.

OHIZE VS C O P (2014) LPELR 23012 (CA).

Indeed, application for bail pending trial is generally a matter of course unless some circumstances militate against the grant of it.

Bail pending trial is a constitutional right, the burden is on the Prosecution who opposed bail to prove that facts relied upon by the Applicant do not warrant the granting of bail.

This is because of the constitutional presumption that a person is innocent until proved guilty.

For the reason adduced from the foregoing, I am inclined to admitting to Bail.3rd Defendant/Applicant is hereby admitted to bail on the following terms and conditions:-

1. Two sureties shall be provided who must be civil servants with evidence of 1st employment and last promotion.
2. They shall be residents of Abuja with evidence of ownership of their respective homes.

*Justice Y.Halilu
Hon. Judge
17th June, 2020*

APPEARANCES

Defendant in court.

CHUKWU N.A. – for the 3rd Defendant.

Prosecution not in court and not represented.