IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA- ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S. U. BATURE

COURT CLERKS: **JAMILA OMEKE & ORS**

COURT NUMBER: **HIGH COURT NO. 34**

CASE NUMBER: **SUIT NO. FCT/HC/CR/4898/2020**

DATE: **9th MARCH, 2020**

BETWEEN:

COMMISSIONER OF POLICE ……COMPLAINANT/RESPONDENT

AND

FRIDAY EBUTE……ACCUSED/APPLICANT

Appearance
J. E Moses Esq with Christopher Ebute Esq for the Applicant.

RULING

This ruling is sequel to an application for bail pending arraignment, brought by way of motion on Notice with motion No. M/4898/2020 dated 3rd of February, 2020 and filed same day by senator, Ameh Ebute (CON), learned counsel to the Applicant, praying the Court for the following orders:-

(a) An order of this Honourable Court admitting the Applicant to bail pending arraignment of the Applicant Friday Ebute or when a formal charge is brought against him before a competent court in accordance with the provisions of the Administration of Criminal justice Act and the Constitution of the Federal Republic of Nigeria.

(b) Any other order (s) as this Honourable Court may consider expedient to make in the peculiar circumstances of the case.

The Application which is brought pursuant to Section 162 of the Administration of Criminal Justice Act and Section 35 (1), 36 (5) of the 1999 Constitution (as amended) and under the inherent jurisdiction of this Honourable Court, is supported by an Affidavit of 19 paragraphs deposed by one Christopher Ebute Esq, a legal practitioner practicing in the law Chambers of Ameh Ebute and Associates, solicitors to the Applicant.

Two annextures are attached therein and marked Exhibits A and B respectively, as well as a written address in support of the Application dated 3rd February, 2020.

From the Court's record, the Respondent was duly served with all processes in this suit including hearing notice which was acknowledged by the Respondents, as received, signed and dated 17/2/2020.

However, the prosecution did not appear on the last sitting which was the day fixed for hearing of this application, and have not filed any process challenging this Application.

Therefore, this court shall more to consider this application on the materials placed before the court by the Applicant.

In the written address of the Applicant, a sole issue for determination is formulated thus:-

"Whether or not the Defendant/Applicant merits the grant of bail pending the arraignment of the Applicant before a court of competent jurisdiction?

In arguing the issue, learned Applicant's counsel submitted in the written address that this is an application for bail pending arraignment and that such application is authorized by Section 162 of the Administration of criminal justice Act, 2015 and Section 35 and 36 of the 1999 Constitution FRN (as amended).

That in the instant case the Applicant has not been charged with any offence, and that his case for bail is even stronger than that of a person who is already charged with an offence.

Reference was made to the provisions of Section 35 (1) and 36 (5) of the 1999 CFRN (as amended).

That presently the Applicant has not even been informed of the criminal offence he has committed other than the fact that he lost his daughter on the 23rd of November, 2019. That on this fact, the Applicant was simply bundled and detained in the SARS detention centre from the 23rd of November, 2019 and transferred from the SARS Detention Centre to Keffi prison on the 29 January, 2020. That his transfer to Keffi prison without being charged with any Criminal offence before any court of competent jurisdiction is an indication that he is being held in police detention in adfinitum, and same is therefore unconstitutional and a serious breach of the Constitution as well as Section 162 ACJA 2015.

Reliance was also placed on the case of ALIYU VS STATE (2007) 16 NWLR (PT. 1061) 483 at 500, paragraph F-G, 501 10-502, G-B.

The learned counsel further submits that all the exceptions contained in paragraphs A-F of Section 162 of ACJA are in applicable to the Applicant. That the special circumstances in this application entitles the Applicant to the exercise of the courts discretion in his favour.

It is submitted that the fact that for over 2 months no Criminal charge has been framed against the Applicant and no proof evidence has been served on him and the fact that the defendant Applicant was not in Abuja when the daughter died at the AMAC Clinic Abuja, go to show that the conduct of the police investigation is shrouded in secrecy and raises doubts as to the culpability of the Applicant.

It is submitted that while this application is not strictly an application for the Enforcement of the fundamental Human Rights of the Applicant, the grant of this Application for Bail pending Arraignment will go a long way in halting both present and future breaches of the Applicant's fundamental Rights.

The court is then urged to grant the Application in the interest of justice and in accordance with the provisions of the constitution as well as ACJ Act 2015.

Now, for the purposes of bail under our Criminal justice system, there are three types of bail, bail by the police pending investigation, bail pending trial and Bail pending appeal.

The present application is brought pursuant to the extant provisions of the 1999 Constitution (as amended) as well as Section 162 of the Administration of Criminal justice Act 2015.

Section 162 of the ACJA guides the court in exercise of its discretion in cases where a suspect is charged with an offence exceeding three years imprisonment.

In the instance case, the learned Applicant's counsel has pointed out in the written address that the Applicant has not been charged with any offence and has been in detention at SARS detention Centre since the 24th of November, 2019.

From the averments contained in the Applicant's supporting Affidavit particularly paragraphs 4, 5 & 6 therefore it is averred that the Applicant was detained at Durumi Police Station on allegation by his compound neighbors that he was the one who killed his own daughter. That subsequently, he was then taken to Abuja command C. I. D for further investigation and later detained at the SARS detention Centre.

The Applicant in his supporting Affidavit had clearly denied the said allegation and it is averred in paragraph 8 thereof that on the 22nd /23rd November, 2019, the day Ochanya Ebute died, the Applicant was on duty in Lafia, Nasarawa State.

In paragraph 10, it is stated that on the 23rd of November, 2019 prior to the death of the child AMAC Clinic had diagnosed the said Ochanya Ebute with typhoid fever and high malaria. That the clinic report is annexed as Exhibit A herein.

It is however averred in paragraph 12 thereof that the Abuja Command C. I. D purportedly conducted an autopsy on Ochanya on 20th December, 2019, the

result of which was not made available to the father of Ochanya nor to any relation to the Applicant till the time of filing of this application.

In paragraph 14,it is averred thus:-

"That the Defendant/Applicant told me and I verily believe him that he Disciplined his daughter Ochanya Ebute now deceased with a few strokes of the cane at her back in August, 2019, and that could not have caused the death of Ochanya."

It is also averred in paragraph 15 that despite requests for the post mortem report made to C.I.D Command Headquarters, the Respondent has not granted access to the Applicant to the said post mortem report to enable him prepare adequately for his defence as required by Section 36 (6) (b) of the 1999 CFRN of Nigeria.

It is also averred in the supporting Affidavit that the Applicant who is a civil servant may lose his job if he doesn't return to work.

Now by the provision of Section 35 (1) of the CFRN, every person is entitled to his personal liberty same in the cases provided in the same Constitution. This includes where a person is reasonably suspected to have committed an offence.

However, even at that, the Constitution clearly states that such detention or deprivation of liberty should not exceed 48 hours. By Section 35 (5) of the CFRN (as amended) that reasonable period is to be 2 days or 48 hours as the case may be.

Therefore, where the Respondent is alleged to have violated these Constitutional provisions, it must show that its actions are justified, for example where there is an order of the court justifying the said detention.

In the instant case, I've considered the fact that the prosecution has not challenged this application nor filed any counter Affidavit.

Therefore, the question to ask here is whether in the circumstances, the Applicant has made out a case for the grant of this Application?

It is not in doubt that every person charged with committing a criminal offence is presumed innocent until the contrary is proved. See Section 36 (5) of the 1999 constitution (as amended); AMADU VS STATE LPELR-46077 (CA) ; ADEBESING VS STATE (2010) LPELR – 4996 (CA).

Section 161 (1) of the ACJA is provides:-

"A suspect arrested, detained or charged with an offence punishable with death shall only be admitted to bail by a judge of the High Court under exceptional circumstances".

In this case, it is stated in the supporting Affidavit that the Applicant has not been charged with any offence nor brought before any court of competent jurisdiction on the allegation against him.

The Applicant who is said to be in detention has denied the allegation of killing his daughter.

Now, although the facts deposed clearly show that the fundamental Rights of the Applicant may have been breached, it is unfortunate that the Respondents have not appeared in this application and the court is left with some answered questions.

A prominent one is on the Autopsy report which is mentioned in the Affidavit of the applicant it is apparent that the applicant is alleged to have committed a serious offence, a capital offence which is not ordinarily bailable.

Furthermore, I am afraid that because of the nature of the allegation against the Applicant, and having thoroughly considered the Affidavit of the Applicant, I am not satisfied that this court ought to exercise its discretion in favour of the Applicant pending arraignment. I so hold.

As the learned Applicant's counsel stated in his written address, this Application is not strictly an application for enforcement of the fundamental Rights of the Applicant.

Therefore, in my humble view the present application which is seeking for bail pending Arraignment should be clearly distinguished with an application for Enforcement of fundamental Rights which is sue generis and is regulated by a special procedure.

Therefore, I am not satisfied that the Applicant has made out a case to be entitled to the grant of this Application. Consequently this application fails and it is refused.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE

19/02/2020

Applicant's Counsel: We most commend my lord for the Ruling even though it is not in our favour.