

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL TERRITORY  
IN THE ABUJA JUDICIAL DIVISION  
HOLDEN AT JABI –ABUJA**

**BEFORE HIS LORDSHIP: HON.JUSTICE D.Z. SENCHI  
COURT CLERKS: – T. P. SALLAH & ORS**

**COURT NUMBER: 13**

**DATE: 20/02/2020  
FCT/HC/CR/489/19**

**BETWEEN:**

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

**AND**

**ABBAS ABUBAKAR ISA .... DEFENDANT/APPLICANT**

**RULING**

The Defendant herein was arraigned on 22<sup>nd</sup> October, 2019 on charges of the commission of the offences of armed robbery under the provisions of Sections 1(2)(b) and 6(a) & (c) of the Robbery and Firearms (Special Provisions) Act, CAP. R11. Laws of the Federation of Nigeria, 2004. The Defendant pleaded not guilty to the charges. He was ordered to be remanded in prison custody. The Defendant (who is remanded in prison custody) has now filed the present application on notice under the provisions of Sections 35(1) &(4) and 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 158, 161 & 162 of the Administration of Criminal Justice Act as well as under the inherent jurisdiction of this Court praying for the following:-

1. An Order of Court admitting the Defendant/Applicant to bail pending the determination of this case.
2. And for such further or other orders as the Honourable Court may deem fit to make in the circumstance.

The grounds of the application are set out on the face of the motion paper.

In support of the application the Defendant/Applicant (hereinafter simply referred to as the Applicant) filed an Affidavit of 13 paragraphs deposed to by one Mrs. RashidaDahiru Isa, his wife. Counsel to the Applicant also filed his Written Address which he adopted as his oral arguments in support of the application.

The Complainant/Respondent did not file anything in opposition to the application for bail.

Counsel to the Applicant has formulated the following as the sole issue for the determination of the instant application for bail:-

*"Whether based on the circumstances and materials before this HonourableCourt, the Applicant has produced sufficient evidence and materials to enable the Court exercise its discretion and grant this application."*

I shall adopt the same issue in resolution of the instant application.

The facts which the Applicant relied on for his application for bail pending trial are particularly contained in paragraphs 3 – 12 of his affidavit in support of the applicationespecially paragraphs 6 – 11 reproduced hereunder as follows:-

3. That the Defendant has been in police custody since his arrest and detention and subsequent institution of this case till date and has been attending his trial without default.
4. That the Defendant/Applicant is a first time offender allegedly.
5. That the Defendant has no criminal record and will not commit any offence if granted bail by this HonourableCourt.
6. That the Defendant will not jump bail and is ready to face his trial till determination of this case.
7. That the Defendant is ready to comply with the terms of his bail and produce reliable sureties to take him on bail.
8. That the Defendant/Applicant will not interfere with evidence in this suit.

9. That it is in the interest of justice that this application is brought.

In his Written Address, Counsel to the Applicant submitted that an accused is guaranteed the right to be presumed innocent until proven guilty and is also entitled the right to bail pending trial. He relied on Sections 36(5) and 35 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). Counsel conceded however that there are statutory and procedural laws governing the grant or refusal of bail. He referred this Court to the case of **SULEIMAN V. C.O.P. (2008) 8 NWLR (PT. 1089) P. 298** on the conditions to be considered in granting or refusing bail. Counsel submitted that although the offence of armed robbery is a capital offence, the Applicant can still be granted bail no matter the charge. He contended that special circumstances may exist to warrant the grant of bail pending trial in a capital offence and this may include the prosecution's delay or failure to prepare the proof of evidence or file information against the accused. He posited that bail pending trial is a constitutional right and the burden is on the prosecution to show why the accused should not be granted bail. He submitted that the mere likelihood of the accused to jump bail should not be a ground to refuse bail where no such attempt has been made by the accused. He referred this Honourable Court to paragraphs 9 and 10 of the Applicant's affidavit and urged this Court to grant the application but not to attach suffocating conditions of bail. He submitted that it is up to the prosecution to contradict the Applicant's averment that he is a first time offender. It is further Counsel's position that the proof of evidence in this case is watery. He referred this Court to paragraphs 3 – 6 of the affidavit in support that the Applicant has been in solitary confinement since June, 2019 when he was arrested by the police and has since been behind bars till date. In conclusion, Counsel urged this Court to take cognizance of all the paragraphs of the affidavit in support of the instant application, the principles of law as well as case law, to grant the application.

The Complainant/Respondent did not file any counter affidavit to contradict the averments in the Applicant's affidavit in support of the instant application. The question is; are the averments as

contained in the Applicant's affidavit sufficient to entitle him to the grant of his application for bail pending trial?

The following have been held to be the criteria to be followed in taking a decision on an application for bail:-

- (a) The nature of the charge;
- (b) The strength of the evidence which supports the charge;
- (c) The gravity of the punishment in the event of conviction;
- (d) The previous criminal record of the accused, if any;
- (e) The probability that the accused may not surrender himself for trial;
- (f) The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;
- (g) The likelihood of further charge being brought against the accused; and
- (h) The necessity to procure medical or social report pending final disposal of the case.

See the case of ***SULEMAN V. C.O.P., PLATEAU STATE (2008) 8 NWLR (PT. 1089) P. 298 at PP. 317 – 318 paragraphs. H-B.***

In the instant case the Applicant has been arraigned on charges of having committed the offences, inter alia, of armed robbery under the provisions of **Section 1(2)(b) of the Robbery and Firearms (Special Provisions) Act, CAP. R11. Laws of the Federation of Nigeria, 2004.** Under that provision, the punishment for the offence for which the Applicant is charged is death upon conviction. The nature of the charge thus shows that the Applicant is standing trial for a capital offence. The relevant provision that guides a consideration of bail where the suspect is charged with a capital offence such as in the instant case is **Section 161 of the Administration of Criminal Justice Act, 2015.** It is not **Sections 151 and 162 of the ACJA**(under which the instant application has also been brought).

**Section 161 of the Administration of Criminal Justice Act, 2015** provides as follows:-

"161.

- (1) *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.*
- (2) *For the purpose of exercise of discretion in subsection (1) of this section, "exceptional circumstance" include:*
  - (a) *ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a Government hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;*
  - (b) *extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or*
  - (c) *any other circumstances that the Judge may, in the particular facts of the case, consider exceptional."*

In the case of **ABDULBASIT OHIZE V. COMMISSIONER OF POLICE (2014) LPELR-23012(CA)** the Court of Appeal per Akomolafe-Wilson JCA held as follows:-

*"One of the important factors the Court usually examines in the consideration of whether the applicant will be available to stand his trial is the nature of the offence and the attendant punishment prescribed. Where the offence the Accused/Applicant is standing trial is of a very serious nature, and the punishment is very high, like in capital offences, the highest punishment known to law, the Courts are slow in granting bail, except special circumstances are established. In fact Section 341(1) of the Criminal Code Cap 30, Laws of the Federation of Nigeria, 2004 specifically provided that a person charged with a capital offence should not be granted bail. The rationale of the reluctance of the Court generally, to grant bail is the factor that because of the gravity of the offence and the severity of the punishment, there is the likelihood that the accused/applicant may flee from answering the charge against*

*him. See ANAJEMBA V. F.G.N. (2004) 13 NWLR (Pt. 890) 267 at 283; ABACHA V. STATE (supra)."*

Also, in **COSY EMENIKE EZENWAFOR V. COMMISSIONER OF POLICE (2009) LPELR-4004(CA)** the Court of Appeal held that:-

*"By the provisions of Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999, there is the presumption in favour of the liberty of the subject and his innocence in criminal allegations until he has been proved and found guilty in accordance to the relevant law(s). This is irrespective of the nature or gravity of the offence with which he is charged. In any given case, the burden is on the prosecution to show that an accused person is not one that should be released on bail. Under Section 35(7) of the Constitution, bail pending trial is not usually granted where the offence with which the applicant is charged is a capital offence punishable with death."*

From the provisions of **Section 161 of the Administration of Criminal Justice Act, 2015** (ACJA) the onus rests squarely on the Applicant to show exceptional circumstance why this Court ought to exercise its discretion to grant him bail, which discretion this Court ought ordinarily not to exercise considering the capital offence for which the Applicant has been charged. This is the condition upon which this Court can exercise its discretion to grant the Applicant bail in the circumstances.

I have looked carefully through the Applicant's affidavit in support of his application for bail. There appears to be nothing in the affidavit that would constitute exceptional circumstances enough to compel this Court to grant the Applicant's application for bail which ought ordinarily not to be granted in view of the nature of offence for which the Applicant has been charged. See also **Section 35(7) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)**.

Counsel to the Applicant has however referred this Court to averments in the affidavit and has contended that delay is a ground for granting bail in a case of capital offence. In paragraphs 3 and 4

of his affidavit the Applicant had averred that he was arrested on 20<sup>th</sup> June, 2019, detained in police custody until he was charged to Court and arraigned on 21<sup>st</sup> October, 2019.

By the records of this Honourable Court, the Applicant was actually arraigned before this Court on 22<sup>nd</sup> October, 2019. And not 21<sup>st</sup> October, 2019. as alleged by him. Be that as it may, I do not consider a delay of four months between the arrest of the Applicant and his eventual arraignment in Court to be 'extraordinary delay' as to constitute exceptional circumstances for granting him bail. The minimum period of such delay must not be less than one year. See **Section 161(2)(b) of the Administration Criminal Justice Act, 2015**. The delay being complained of by the Applicant in this case cannot therefore avail him in this application.

In conclusion, I hold the view that the Applicant who is not ordinarily entitled to bail under **Section 161 of the Administration Criminal Justice Act, 2015** has not been able to establish any exceptional circumstance under which this Court may proceed to exercise its discretion to grant him bail. He is therefore not entitled to bail in the peculiar circumstances of the instant case. The application for bail pending trial ought to be refused and it is accordingly refused.

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**HON. JUSTICE D.Z. SENCHI  
(PRESIDING JUDGE)  
20/02/2020**

Defendant:- Absent.

ChidiOkafor:-For the Defendant/Applicant.

Compliant/Respondent:-Absent.

Court:- The case still stands case adjourned to 12<sup>th</sup> March, 2020 for hearing.

**Sign  
Judge  
20/02/2020**