IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GWAGWALADA

THIS THURSDAY THE 30TH DAY OF JANUARY, 2020.

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI -- JUDGE

CHARGE NO: CR/151/2020
MOTION NO: GWD/M/22/2020
BETWEEN:

FEDERAL REPUBLIC OF NIGERIA ....COMPLAINANT/RESPONDENT

AND

1. **MOHAMMED BELLO ADOKE ....DEFENDANT/APPLICANT**
2. **ALIYU ABUBAKAR**
3. **RASKY GBINIGIE**
4. **MALABU OIL AND GAS LIMITED**
5. **NIGERIA AGIP EXPLORATION LIMITED**
6. **SHELL NIGERIA ULTRA DEEP LIMITED**
7. **SHELL NIGERIA EXPLORATION PRODUCTION COMPANY LIMITED**

DEFENDANTS/ RESPONDENTS (2–7)

RULING

The 1st Defendant/Applicant filed an application for bail dated 22nd January, 2020 and filed same date in the Court's Registry praying for the following orders:

1. **An Order of this Honourable Court admitting the Applicant to bail on Self Recognizance, being a former Attorney General of the Federation, and Minister of Justice, pending the hearing and final determination of the charges preferred against the Applicant herein by the Complainant.**

   OR

An Order of this Honourable Court admitting the Applicant to bail on such favourable and liberal terms as this Honourable Court may deem fit to make in the circumstances of this case, pending the hearing and final determination of the charge preferred against the Applicant herein by the Complainant.

2. **And for such further or other orders as this Honourable Court may deem fit to make in the circumstances of this application.**

The Grounds for the application are as follows:

1. **That the Applicant was a former Attorney General of the Federation and Minister of Justice of the Federal Republic of Nigeria, from 16th April, 2010 to 29th April, 2015.**

2. **That he has his family and business resident and situate here in Nigeria.**

3. **That the Applicant has complicated health issues which necessitated his movement to Dubai, UAE, for treatment, from where he was illegally arrested and detained by the INTERPOL in their facilities from 11th November, 2019 till 19th December, 2019, and subsequently held in the Complainant's Detention facility since 19th December, 2019 till his arraignment today 22nd January.**

4. **That the Applicant is presumed innocent under Section 36 of the Constitution of the Federal Republic of Nigeria 1999, as altered, until proven guilty.**

5. **That the continued witch-hunt of the Applicant by the Complainant/Respondent, despite the above stated facts is out of political vendetta.**

6. **That the Applicant is innocent of the chares preferred against him and he has no previous criminal record against him.**

The application is supported by a 6 paragraphs affidavit with eleven (11) annexures attached and marked as **Exhibits MA – MA10.**

A written address was filed in support of the application in which one issue was raised as arising for determination as follows:

Whether in the interest of justice and the circumstances of this case, the Applicant is not entitled to be granted the reliefs sought from this Honourable Court in exercise of its undoubted discretion.

The address which forms part of the Record of Court, then dealt with the settled principles governing the grant of bail and that in this case, the 1st defendant has on the materials satisfied the necessary legal requirements to entitle him to the grant of bail pending the hearing and determination of the charge preferred against him.

In opposition, the Complainant filed an 11 paragraphs counter-affidavit with two (2) annexures marked as **EF1 – EF2**. A written address was equally filed in support in which one issue was equally raised as arising for determination to wit:

"Whether or not the 1st Defendant/Applicant has placed sufficient material before the court to enable it exercise its powers and discretion in his favour as prayed."

The address which also forms part of the Record of Court equally dealt with the settled principles governing grant of bail applications and it was contended that in the extant case, the 1st Defendant/Applicant has not placed sufficient materials to enable the court exercise its discretion and grant the Applicant bail.

The 1st Defendant/Applicant then filed a further affidavit of 12 paragraphs with two (2) annexures marked as **Exhibits MA 11 and MA 12** in response to the counter-affidavit of complainant.

At the hearing, counsel on either side of the divide relied on the processes filed and adopted the submissions in their addresses and each in turn urged the grant of the application for bail and on the other side that the application be refused.

I have carefully considered the submissions and all the processes filed on both sides of the aisle and the narrow issue to be resolved is whether the court should in the circumstances exercise its discretion and grant the 1st Defendant/Applicant bail.

Now as rightly alluded to by counsel on both sides, the question of whether to grant bail is unquestionably a matter entirely at the discretion of the court hearing the application having regard to the materials placed before it in support. However such discretion must be exercised judicially and judiciously. See **Olawoye V C.O.P (2006) All FWLR (pt.309) 1483 at 1485; Omisore V State (2005) 12 NWLR (pt.940) 591 at 594.**

The point to add here as enunciated by the Apex Court in **Abacha V State (2002) 5 NWLR (pt.761) 638 at 653** is that in a matter of discretion, previous decisions can only offer broad guidelines. Each exercise of discretion must necessarily depend on the facts of each case. See also **Olatunji V FRN (2003) 3 NWLR (pt.807) 406 at 429**. This point must be indeed underscored to emphasise the centrality of the peculiar facts of each case as the determining factor(s) in the grant or refusal of bail in any given case.

Now because of the contested positions advanced in this case, it fundamental to at the outset situate the legal and foundational basis for power to grant and or refuse bail. **Section 162 of the Administration of Justice Act 2015 (ACJA)** provides as follows:

"162: A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall, on application to the court, be released on bail except in any of the following circumstances:

(a) where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;

(b) attempt to evade his trial;

(c) attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;

(d) attempt to conceal or destroy evidence;

(e) prejudice the proper investigation of the offence; or

(f) **undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system."** See also the provisions of **Sections 158, 165 and 167 of ACJA 2015.**

Furthermore **Order 4 Rule 4 of the Federal Capital Territory Administration of Criminal Justice Rules 2019 (ACJR)** provides thus:

"Bail

Subject to the provisions of the ACJA or any other law, every arrested suspect or detainee is entitled to bail.

4. A prosecutor who opposes the grant of bail shall specify the cogent and convincing reason(s) or exception(s) to the general right to bail on which the prosecutor relies."

Under the purview of the above provisions, a defendant shall ordinarily be entitled to bail to underscore the importance of the presumption of innocence he or she enjoys, except of course circumstances as streamlined within the exceptions (a) – (f) are established. The word used in Section 162 above is shall which is a word of command. It denotes an obligation and gives no room to discretion. It imposes a duty even though sometimes it is construed as merely permissive. See **Bakoghi V Chief of Naval Staff (2004) 15 NWLR (pt.896) 268 at 291**. On the authorities, the onus to precisely and clearly establish any of these exceptions or circumstances to prevent grant of bail is on the prosecution. See **Ibrahim V FRN (2016) LPELR – 141934 (CA).** Where therefore any of the circumstances above is established, bail may then be refused. Paragraph (f) above in addition makes it abundantly clear that bail may be refused where the court considers that the applicant will undermine or jeopardize the objectives or the purpose of the Criminal Justice Administration including the bail system. And one of the key objectives of ACJA 2015 is to ensure that the system of Administration of Criminal Justice in Nigeria runs efficiently in the pursuit of the objectives of speedy dispensation of justice, protection of the society from crime and protection of the rights and interest of the suspect, the defendant and the victim.

Another important law guiding the application for bail can be situated within the purview of **Section 35(1) (c) and Section 35(4) of the 1999 Constitution**. In essence, these sections deal with the right of an individual to personal liberty, and also deals with the exceptions to this right. The right to personal liberty is by no means an absolute right. It is qualified when the restriction is carried out in the exercise of a judicial enquiry or where there is a reasonable suspicion that a felony was committed or where it is necessary to prevent an offence from being committed.

In law, the principles governing the grant of bail are now fairly well settled. The judicial authorities are also legion on the point. However, from an array of these authorities, certain fundamental factors have over the years been developed to guide a court in the exercise of its powers and these include:

1. The nature of the charge.

2. The strength of the evidence put up in support of the charge.

3. The severity of the punishment in the event of conviction.

4. The record of convictions, if any, of the suspect; a suspect with a long record of convictions will generally not be admitted to bail unless the judge has a real doubt as to his guilt.

5. The likelihood of the repetition of the offence.

6. The likelihood of further charge being brought against the Accused.

7. Whether there is a real danger that he will abscond and thereby not surrender himself for trial

8. The risk that if released, the suspect may interfere with witnesses or suppress the evidence which may be adduced to incriminate him.

See **Omodara v. State (2004) 1 NWLR (pt 853) 81 at 93; Chinemele v. C.O.P (1995) 4 NWLR (pt 390) 467; Danbaba v State (2000) 14 NWLR (pt 687) 396; Olatunji & Anor. V Federal Republic of Nigeria (2003) 3 NWLR (807) 406** and **Bamaiyi V State (2001) 8 NWLR (Pt.715) 270.**

Generally the above are some of the factors that a court usually takes into consideration in the exercise of its discretion to grant or refuse bail. On the authorities, it is also not expected that all the above listed criteria will be relevant in every case and they are also not exhaustive and any one of these criteria or in combination with others may be used to determine the question of bail in a particular case. See **Bamaiyi vs. State (supra) 484**.

Thus, the fundamental objectives or purpose or the functioning of the Criminal Justice System Administration with respect to bail pending trial is one in which if there are good reasons to believe or strongly suspect that a defendant will jump bail or interfere with witnesses or indeed where the proper functioning of the Criminal Justice System will be undermined, the court in the exercise of its discretion will refuse bail. See **Akano V FRN (2006) 12 WRN 111 at 128.**

Where any of these exceptions is streamlined and raised by the prosecution, the duty of the court will be to judicially and judiciously examine the materials placed before it to determine whether such exception(s) to predicate a refusal of bail has been made out.

Now in this case, it appears to me clear from the bundle of materials placed before me that though the nature of the charges the 2nd Defendant/Applicant is facing are indeed sufficiently serious but they are nonetheless such that entitles him to bail under extant provisions of ACJA and the Constitution (supra) except of course as stated earlier, circumstances are established by evidence and on the materials why bail should be refused.

As rightly submitted by counsel to the Applicant, the 1999 Constitution vide **Section 36 (5)** presumes the Applicant innocent until the contrary is proved at trial. This is an important constitutional provision that underpins the very basis of our criminal justice system. The salutary objective of bail and a very important one at that is simply to ensure the attendance of the defendant at the trial of the charge preferred against him. It is therefore important to emphasise the point that the power to grant bail should not to be exercised as if the punishment before the trial is being imposed. No.

Now from the materials before the court particularly the counter-affidavit of the complainant, the essence or basis of the objection to the grant of bail will appear to be predicated on the following broad grounds:

1. That the complainant is conducting several criminal investigations in which the 1st Defendant has been implicated and that charges have been filed against 1st defendant in respect of some of the cases.

2. That the process of EFCC conducting interviews and recording statement from 1st defendant is still ongoing and has not been completed yet given the several other cases being investigated in which the 1st defendant features.

3. That the 1st defendant is a "man of influence" and will tamper with the investigations and witnesses and that investigations have not been concluded.

4. That the 1st defendant did not on his own volition return to the country to face the charges against him and would likely "jump bail" and may not be available to stand his trial.

I take the grounds together in no particular order.

Now with respect to the contention that investigations are still being conducted in several cases involving the 1st defendant, it is important to state that those cases are clearly not matters before me. The un-streamlined or unascertained nature of these alleged complaints cannot really be relevant in the context of this charge and the court cannot engage in an idle exercise of speculations. The point to perhaps reiterate is that in exercising its discretionary power(s), in matters of bail, a court or judge is bound to examine only the evidence before him without considering any extraneous matter. See **Bamaiyi V. State (supra)**. With respect to the extant charge however, it is instructive to state that the practice as I understand it is that generally before the prosecution brings a person accused of having committed an offence to court, investigations into such alleged criminal act(s) ought to have been concluded and the prosecution must have been satisfied that there is a prima facie case against the Accused person. The filing of this action together with all necessary accompanying processes, including list of witnesses, documents to be

used at trial and the proof of evidence all suggests that investigation has been concluded.

If the unclear position of the complainant is taken that investigations are somehow still been conducted in this case and other cases, then it would mean or be reasonable to believe that the 1st Defendant/Applicant will be kept in prison or the correctional services unit for an uncertain and indeterminate time before this trial is concluded since investigations are still going on. The fundamental presumption of innocence which enures in his favour until the charge is determined cannot be fettered in such unclear circumstances. The court clearly is not persuaded that further investigations are still being conducted in this case predicated precisely on the materials they provided.

With respect to the allegation that the 1st defendant is a man of influence and will tamper with witnesses and or that witnesses would be intimidated by 1st defendant from coming forward to cooperate with EFCC with regard to ongoing investigations, there is clearly nothing put forward by complainant to situate these rather bare and sterile averments. The court cannot again, act on bare speculations as a basis to refuse bail. The contention is discountenanced without much ado. In any event, the 1st defendant/applicant has averred in the affidavit in support of his application that he would not interfere with the course of investigations and justice if granted bail.

Finally on the point that the Applicant is a "flight risk" and may not be available to stand his trial, the complainant has here attached **Exhibits EF1 and EF2** showing that the 1st defendant was arrested by the Interpol in Dubai and handed over to the complainant but the 1st defendant has countered that he was in Dubai (U.A.E) to attend to his serious health challenges when he was allegedly illegally arrested and detained. That he voluntarily left Nigeria to pursue a Masters Degree programme at the Netherlands and was equally prepared to return voluntarily. Similar challenged assertions were made with respect to the health challenges of Applicant.

Notwithstanding these contested assertions, the critical point to underscore at the risk of sounding prolix is that any concern(s) of the complainant on the question of availability of 1st defendant to stand his trial must be situated within the clear

construct of the constitutional presumption of innocence which is fundamental: I incline to the view that a fair approach to resolving such a knotty legal challenge is that the right of the 1st Defendant to enjoy his right to personal liberty pending when the charge preferred against him is determined should be weighed against the corresponding imperative that he is ultimately available to stand his trial. This is a delicate balancing act.

If there are proved facts showing conclusively that the 1st Defendant will attempt to jump bail or make himself unavailable to stand trial, thereby obstructing the cause of justice, this should then tilt the balance in favour of refusing bail notwithstanding the importance of his personal liberty. In such circumstances, the court will be acting within its undoubted discretion to refuse bail and being a criminal trial, the court would order for accelerated hearing as far as reasonably practicable. See **Bamaiyi V State (supra).**

If on the other hand, there are no proved facts, to completely and conclusively preclude the grant of bail as in this case, the criminal justice system has placed or created inbuilt mechanisms or safeguards by allowing for the grant of bail on terms or conditions which would as much as possible ensure the availability of the Accused person to face his trial. Here the provisions of **Order 4 Rules 6, 7 and 8 of the Federal Capital Territory Administration of Criminal Justice Rules 2019** has further amplified the provisions of **Sections 165 and 167 of ACJA 2015** as it has now precisely streamlined or identified some of the terms or conditions, which though not exhaustive, that may be imposed by Court to secure and ensure the attendance of the defendant at his trial.

Both the extant provisions of the **ACJA 2015 and the ACJR 2019 (supra)** emphasise that the terms or conditions of bail **"shall not be excessive"** all to underscore the twin points that bail should not be lightly refused and further that it must not be granted to create the impression that the defendant is being punished before his guilt or innocence is finally determined after trial. The interest of the criminal justice system is for that **trial** to hold to ventilate the charges raised and determine the guilt or otherwise of the defendant with the very minimum of delay.

On the whole, I incline to the view that because of the importance of the fundamental presumption of innocence and in the peculiar circumstances of this

case, that bail should be granted the Applicant and that he should ordinarily not be imprisoned before his guilt or otherwise is determined at trial. The essence of the criminal justice system is targeted at reducing crime and ensuring that those who are guilty of offences are made to face adequate sentencing **after trial** in order to maintain an orderly and sane society. The grant of bail in itself is not inconsistent with these objectives and therefore unless there is a proven intention by the defendant to use any instrument or even the instrumentality of the judicial system to compromise the effective functioning of the criminal justice system, bail must not be refused.

In **Ohanefe Ibori & Anor V FRN & ors (2009) 3 NWLR (pt.1127) 94 at 106**, the Court of Appeal per Oredola JCA held as follows:

"It is to be realised that an accused person who jumps bail does so at his own peril. Hence the risk or strong likelihood that an accused person may likely jump bail should not be used as a sole bulwark for denial of bail or basis for imposing suffocating bail conditions against such an accused person, until the occurrence of such an untoward development. Thus, if an offence is readily bailable, it is both legal and logical that the conditions for bail attached thereto, must be such as will engender positive utilization of the said bail to the fullest extent whenever it is granted…"

His lordship further held that:

"…In this Country – Nigeria, we operate a system which recognises the presumption of innocence of an accused person as constitutionally entrenched provisions. Thus, no matter how seemingly serious, grave, heinous, or unconscionable an alleged offence or offences committed by an accused person might look, he is still entitled to that presumption as an article of faith and a matter of right guaranteed by the Constitution…"

I cannot add anything more to this instructive dictum.

Accordingly, bail is granted Applicant on the following conditions/terms as follows:

1. **Bail is granted to the 1st defendant in the sum of N50, 000, 000.00 (Fifty Million Naira) with one surety in like sum.**

2. **The surety must be a proven and responsible Nigerian Citizen who must be resident within the jurisdiction of this court.**

3. **The surety must depose to an affidavit of means and produce evidence of Tax Payment for the past three (3) years, which must have been recently verified by the Federal Inland Revenue Service (FIRS), Abuja.**

4. **The surety must deposit an original Statutory Certificate of Occupancy of a landed property within the FCT with the Registrar of this Court.**

5. **The 1st Defendant shall submit all his passports including any Nigerian, Diplomatic or Foreign with the Registrar of this Court.**

6. **The 1st Defendant shall execute a recognizance or a written undertaking not to interfere directly or indirectly with the Prosecution Witnesses and Proceedings in this case and shall appear throughout the duration of this trial.**

7. **The Surety and 1st Defendant shall jointly execute a written undertaking that the 1st Defendant would not interfere directly or indirectly with the Prosecution Witnesses and the Proceedings and that he would be available all through the trial.**

Any breach of these terms and conditions would lead to an automatic revocation of the bail herein granted. The Court Orders for accelerated hearing of the charge which shall be held from day to day as far as reasonably practicable until the conclusion of the trial.

…………………………
Hon. Justice A.I. Kutigi

Appearances:

1. **Mr. Bala Sanga Esq. and Mr. Offem I. Uket for the Complainant/Respondent.**

2. **Chief Kanu Agabi SAN, Paul Erikoro SAN, Chief Mike Ozekhome SAN, Solomon Umoh SAN, A.T. Kehinde SAN, with Benson Igbanoi Esq., Blessing Eyee (Miss), Godwin Iyinbo, Esq., Oluchi Uche (Miss), O.S. Kehinde Esq., Ahmed Bage Esq., Emmanuel Ekong Esq. and Santos Enejah Esq. for the 1st Defendant/Applicant.**

3. **Chief Wole Olanipekun SAN, Chief Akin Olujimi SAN, A.U. Mustapha SAN, Olalekan Ojo SAN, with A.O. Dada Esq., Ahmed F. Yusuf Esq., Angi Sahadat Esq., Alamsola Olujimi Esq., Olukayode Ariwoola jnr., Ossy Ehikoya Esq., Damilola Mustapha Esq., Mayowa Oluwabiyi Esq., Hakeemat Shittu Esq., Olajide Salami Esq., Abdulrafiu O. Muritala Esq., and Mayosore S. Quachi for the 2nd Defendant/Applicant.**

4. **Anthony George Ikoli SAN, Mahmud Abubakar Magaji SAN, with Adeyemi Shekauni-Lawal Esq., Chima Obih Esq., M.M. Grema Esq., Affis Matanmi Esq., and Zahrah Bello Issa Esq. for the 3rd Defendant/Applicant.**

5. **J.A. Achimugu Esq., for the 4th Defendant/Respondent with S.O. Atabor Esq. and I.O. Enagbonma Esq.**

6. **Joe-Kyari Gadzama SAN, Mohammed Mongonu Esq., Joke Aliu Esq., Dindam Killi Esq., Akinlabi Akingbade Esq., Hamid Abdul-Kareem Esq., Inyene Robert Esq., with Madu Joe-Kyari Gadzama Esq., Amazing Ikpala Esq., Pelumi Adewumi Esq., and Adedamola A. Seriki for the 5th Defendant/Respondent.**

7. **AVM Ibrahim Shafi'i Esq., with Godswill Iwuajoku, Babatunde Ige and Favour Ime for the 6th and 7th Defendants/Respondents.**