

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

ON WEDNESDAY THE 29TH DAY OF JANUARY, 2020.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/522/2019

MOTION NO: M/440/19

COMMISSIONER OF POLICE ----- COMPLAINANT/RESPONDENT

AND

ALEXANDER OJEME ----- DEFENDANT/APPLICANT

RULING

The Defendant is charged with the offence of unlawful sexual intercourse punishable under Section 31 of the Child's Right Act 2003 whereupon his counsel filed and argued a motion for his bail dated and filed on the 25/10/19.

The motion is supported by a 20 paragraph affidavit deposed to by Inemesit Inyang, a legal practitioner in the law firm of Gozie Nwadike & Co., counsel to the Defendant/Applicant, annexed is Exhibit A and a written address. Counsel relied on all the paragraphs of the affidavit and adopted the written address as his oral submissions before the court. The main prayer in this motion is for an order of court granting bail to the Defendant/Applicant pending trial.

In opposing the application, Complainant/Respondent filed a 13 paragraph Counter affidavit, deposed to by Insp. Gabriel Ocheme, a litigation clerk attached to the office of officer in charge of legal section, FCT Command, Abuja. Also annexed is a written address. Counsel to the Respondent adopted all depositions in the affidavit.

Applicant's Counsel filed a reply affidavit, which I have considered in this ruling.

I have thoroughly examined the affidavit evidence in support of the application and the written address of the learned Defendant/Applicant's Counsel. I have also examined the counter affidavit and argument put forward by the learned Complainant/Respondent's Counsel in opposing the bail application.

The issue for determination is **“whether this Court can exercise its discretion in favour of the application for bail filed by the Applicant”**

The law is trite that whether or not to grant bail to an Applicant is entirely at the discretion of the Court hearing the application having regard to materials placed before it in the affidavit in support of the application. However, such discretion must be exercised judicially and judiciously. See the case of **Olawoye V. COP (2005) LPELR-7537 (CA), Likita & 1 or V. COP (2002) 11 NWLR (Pt.777 P.145**. The law is settled on the guiding principles in the grant of bail in non-capital offence. The Court in **Dokubo Asari V. FRN (2007) 12 NWLR (Pt.1048) 320** explained that the general criteria for granting bail at the trial Court are as follows:

- a. Availability of the accused to stand trial

- b. The nature and gravity of the offence
- c. The likelihood of the accused committing offence while on bail
- d. The criminal antecedents of the accused
- e. Likelihood of the accused interfering with the cause of justice
- f. Interference with investigation. See the cases of **Ahukanna V. State (2017) LPELR-42619(CA)**, **Onwughalu V. State (2008) ALL FWLR (pt.420) 764 at 770 paras C-G**

The Court of Appeal in the case of **Uwazurike V. A.G Federation (2008) 10 NWLR (pt.1096) 444 @ 461-462 para F-C**, held that

“..... It should be noted that the factors listed above are not exhaustive in guiding any trial Court in granting or refusing bail pending trial. Also, it is not necessary that all or many of these factors must apply in any given case even one factor may be applied in a particular case to guide trial court in granting or refusing bail before it.....”

It is pertinent to state that the charge against the Defendant/Applicant is a bailable offence which ordinarily, Defendant/Applicant is entitled to bail save and except, the Court is satisfied that Defendant/Applicant would contravene any of the provisions of Section 162 of the Administration of Criminal Justice Act, 2015, which states:

“A defendant charged with an offence punishable with imprisonment for a term exceeding 3 years shall on application to Court, be released on bail except in any of the following circumstances:

- a. where there is reasonable grounds to believe that the Defendant will, where released on bail, commit another offence*
- b. Attempt to evade 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.*
- f. Undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system*

In this instant case, the Defendant is charged for a one (1) count charge under the Child's Right Act, 2003 which punishment is imprisonment for life. The Learned Respondent Counsel in his counter affidavit opposed the application for bail by the Defendant/Applicant. Respondent's Counsel submitted that granting the Defendant/Applicant bail will not be in the interest of justice due to the nature of the offence and its penalty. Indeed the seriousness of an offence and the severity of the punishment it would attract are some of the factors the Court usually consider in the exercise of its discretion to grant bail.

However, it is a constitutional requirement that every person who is charged with a criminal offence will be presumed innocent until he is proven guilty. See Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999.

In the case of **Nwede Vs. State (2018) LPELR-43787(CA) Per OGUNWUMIJU, J.C.A. in (P. 9, Para. C) held;**

"An accused person is presumed innocent until he is proved guilty because there is no question of an accused person proving his innocence before a law Court in Nigeria."

Also, in **UGBAGBE v FRN**, Unreported decision of the Court of Appeal in **CA/L/200/2016**, per **TIJJANI ABUBAKAR, JCA** aptly said that

“seriousness of a crime is a matter of law which is determined by logical deduction; that no matter how serious an alleged offence committed by an accused person appears, he is still entitled as an article of faith and a matter of right guaranteed by the Constitution entitled to be presumed innocent until proven guilty.”

Going from the above, there is nothing in the Complainant's/Respondent's Counter affidavit to show that the accused would abscond from jurisdiction or would not appear for his trial if granted bail.

It should be noted that the Defendant/Applicant's counsel averred in paragraph 7 of his affidavit in support of the motion for bail that the Defendant/Applicant was granted bail by the Magistrate Court at Mpape and that even during his administrative bail granted by the Police, the Defendant/Applicant never jumped bail and never violated any condition of the said bail. These averments by the Applicant's counsel was not denied by the Respondent in their counter affidavit neither did they put any evidence before this Honourable Court to the contrary.

Therefore, this Court would exercise its discretion in favour of the Defendant/Applicant and grant the Applicant bail. I therefore admit the Applicant to bail and order as follows;

1. That Applicant is admitted to bail, in the sum of N1,000,000.00 (One Million Naira) only with two responsible sureties each in like sum who are to depose to an affidavit of means.
2. That the 2 sureties shall be Civil Servant not less than Grade Level 14 and above, with a verifiable office and house address within the Federal Capital Territory and verification is to be carried out by the officials of this Court.
3. That both sureties should have landed property within the Court jurisdiction and the legal title document fully be verified .

Parties: Defendant absent.

Appearances: C.C. Nwadike appearing with Esemuzo Jane (Mrs) and Jimoh Ibanga for the Defendant/Applicant. Prosecution is absent.

HON. JUSTICE M. OSHO-ADEBIYI

JUDGE

29TH JANUARY, 2020