IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT GWAGWALADA

THIS FRIDAY, THE 17TH DAY OF JULY, 2020

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/47/19
MOTION NO: M/5696/2020

BETWEEN:

COMMISSIONER OF POLICE ..... COMPLAINANT/RESPONDENT

AND

ABUBAKAR SULE .....DEFENDANT/APPLICANT

RULING

The Defendant/Applicant was arraigned on a two (2) Counts charge contrary to the provisions of **Sections 31(1) and (2); Section 32 (2) of the Child Rights Act 2003.**

The Defendant pleaded not guilty to the two counts on 13th December, 2019 and hearing commenced without any delay on 13th February, 2020. Indeed the prosecution has already called its first witness who was cross-examined by counsel to the Defendant. The defence counsel however filed a bail application dated 24th February, 2020. In support of the application is a sixteen (16) paragraphs affidavit. A written address was filed in support in which one issue was raised as arising for determination, to wit:

Whether from the facts and circumstances of this case, the Defendant/Applicant has demonstrated sufficiently that he is entitled to be admitted to bail by this Honourable Court.

Submissions were made on settled principles governing grant of bail which forms part of the Records of Court to be effect that on the materials, the Applicant has met the legal requirements to allow for the grant of the application in his favour.

At the hearing, counsel to the Defendant/Applicant relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the Complainant/Respondent filed a six (6) paragraphs counter-affidavit and a written address in which they equally raised one issue as arising for determination to wit:

Whether the Applicant is entitled to bail based on the circumstances of the case.

Submissions were equally made on settled principles governing grant of bail which also forms part of the Records of Court and it was contended that on the materials and in view of the heinous nature of the offences, its prevalence and severity of the punishment that bail should not be granted.

At the hearing, counsel to the Respondent similarly relied on the contents of the counter-affidavit and adopted the submissions in the written address in urging the court to refuse the application.

I have carefully read the processes on both sides of the aisle and the oral submissions in amplification and it seems to me as captured by both parties that the narrow issue from the materials before the court is whether the Applicant should in the circumstances be granted bail pending the conclusion and determination of the extant criminal charge against him which as stated earlier has already commenced.

Now in law, the principles governing the grant of or refusal of an application for bail are now fairly well settled. Counsel on both sides of the aisle have copiously referred me to judicial authorities on the point. Indeed the judicial authorities are legion on the point. However from an array of these authorities, certain fundamental principles have over the years developed to guide a court in the exercise of its powers and these points or factors to consider 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 on 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. Whether there is a real danger that he will abscond and thereby not surrender himself for trial

7. 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 N.W.L.R (pt 853) 81 at 93; Chinemele v. C.O.P (1995) 4 N.W.L.R (pt 390) 467; Danbaba v State (2000) 14 N.W.L.R (pt 687) 396; Olatunji &Anor. V Federal Republic of Nigeria (2003) 3 N.W.L.R (807) 406.**

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 quantum of bail in a particular case. See **Bamayi vs. State (supra) 484**.

Now it is not in dispute that the offences of unlawful sexual inter course and abuse of a child against the Defendant/Applicant before this court are grave and serious in nature. There is equally no doubt that the punishment for the substantive offence of the offence of Rape is severe as on conviction, the punishment is imprisonment for life vide **Section 31 (2) of the Child Rights Act, 2013**. The second count of sexual abuse or molestation carries a punishment of 14 years on conviction pursuant to **Section 32 (2)** of the same **Act.**

It cannot therefore be correct as argued by counsel the Respondent that the offences are capital in nature punishable with death. The provisions of **Section 161 (1) and (2) of the Administration of Criminal Justice Act 2015 (ACJA)** referred to and the extensive submissions made on it therefore has no application in this case and shall be discountenanced.

Similarly the contention in paragraph 11 of Respondents address that **Section 36 (7) of the 1999 Constitution** (as Amended) provides that bail pending trial is not usually granted where the offence which **"the applicant is charged is a capital offence punishable to imprisonment for life"** is certainly completely incorrect. I have read the 1999 Constitution and there is absolutely no such provision containing terms as advanced by the prosecution. All **Section 36 (7) of the Constitution of the FRN 1999** (As Amended) provides is this:

"36(7) When any person is tried for any criminal offence, the court shall keep a record of the proceedings and the accused person or any person authorised by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case."

No more. Counsel certainly is not at liberty to add to clear constitutional provisions or make interpolations to achieve a particular purpose. The misrepresentation of **Section 36 (7) of the 1999 Constitution** is accordingly discountenanced.

The Applicable provision of ACJA to the extant scenario is that of Section 162 which 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."

The implication of the above provision is therefore that notwithstanding that the Applicant is standing trial for the offences of alleged Rape and sexual molestation of a child as in the instant case, the court still reserves the discretion to admit or not to admit such a person to bail. In other words, regardless of the magnitude or prevalence of the offence and the severity of the punishment, the facts and peculiar circumstances of each case shall determine whether or not an accused person shall be granted bail pending trial. See **Abacha Vs Hamza AI Mustapha & 2 ors. (2002) 11 NWLR (pt. 779)437 and Shagari Vs COP (2007)5 NWLR (PT. 1027) 275**.

Furthermore, in considering whether or not to exercise its discretion in favour of granting bail or not, it is very critical to underscore the clear points that for the court, apart from considering the affidavit in support and the nature of the offence(s), the court should also examine the nature and proof of evidence filed by the prosecution in order to determine the strength of the link and the severity of the punishment which conviction will entail. See **Bamaiyi V State (2001) FWLR (pt.46) 956 S.C; Musa V C.O.P (2004) 9 NWLR (pt.879) 483**. See also **Abacha V Hamza Al-Mustapha & ors (supra).**

I have taken into account the totality of all these guiding legal principles in the circumstances of this case, and I have carefully and cautiously examined the totality of the proof of evidence, particularly the statements recorded by the victim and the defendant. Now while I agree that the Accused person enjoy the constitutional presumption of innocence, and therefore the right to enjoy his personal liberty pending trial, this must be weighed against the corresponding and

imperative need that he is available to stand trial. This critical point has given me anxious moments, I must confess. This is a delicate balancing act which the court must exercise with due circumspection and regard to the facts of each case.

On the materials supplied, I really have grave doubts on the provision of reasonable sureties to ensure the availability of the Application to stand for his trial which as stated earlier has already even commenced in earnest and would have perhaps been concluded now but for the unavoidable dislocation caused by the COVID 19 pandemic which affected sittings of court.

I am of the considered view, particularly taking into account the prevalent nature of the offence and the severity of the punishment, the absence of reasonable sureties and more importantly the character and strength of available evidence as contained in the proof of evidence, that it will be unsafe in the circumstances to admit the accused/applicant to bail.

It is also not enough considering the peculiar circumstances and the nature of the charge against the accused/applicant, as deposed on his behalf that he shall not jump bail; he shall not interfere with investigations of this case or that he shall not commit any offence if released on bail etc. His availability to stand trial is one seriously in question and this tips the balance in favour of refusing bail.

Furthermore, as stated already, hearing has since commenced. The court will also in the interest of justice order for an accelerated hearing. Counsel on both sides of the aisle must therefore all act post-haste and ensure that this matter is determined in very good time and with the minimum of delay.

In summation, I have not been put in a commanding height with sufficient material facts to warrant the grant of this application. As such I find no merit in the application of the accused/applicant and same shall be and is hereby accordingly refused and dismissed.

The accused/applicant shall remain in custody at the Kuje Prisons for the duration of the trial of the charge preferred against him before this court.

In the overall interest of justice, I hereby order for accelerated hearing in this case.

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Hon. Justice A.I. Kutigi

Appearances:

1. **H.I.S. Bob-Manuel Esq., for the Complainant/Respondent.**

2. **Yusuf Abdullahi Esq., for the Defendant/Applicant.**