IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT GUDU - ABUJA

DELIVERED ON THURSDAY THE 31ST DAY OF JANUARY, 2019.

BEFORE HIS LORDSHIP ; HON. JUSTICE MODUPE OSHO-ADEBIYI

SUIT NO. CR/25/2018

INSPECTOR GENERAL OF POLICE - - COMPLAINANT/RESPONDENT

AND

SULEIMAN SIKIRU BABATUNDE - - DEFENDANT/APPLICANT

RULING

The Defendant/Applicant was charged to Court on a two Count charge of Conspiracy and Armed Robbery and his plea taken on the 15th of January 2019. Applicant's Counsel thereafter filed an application for bail on the 15th day of January, 2019, brought pursuant to Section 158, 159, 161, & 162 of the Administration of Criminal Justice Act 2015 and Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and under the inherent jurisdiction of this Court, praying the Court for the following Orders:

1. An order admitting the Applicant/Defendant to bail pending his arraignment, trial and determination of this case by this honoroubale Court

2. And for such order or further orders as this Court may deem fit to make in the circumstances.

In support of the application, Defendant/Applicant filed a 15 paragraph affidavit, deposed to by Olawole Friday, the brother of the Defendant/Applicant; as well as a written address filed by Eneche Ekoja, Esq., In adopting the written address, Defendant/Applicant's Counsel relied on all the paragraphs of the affidavit in support and raised two issues for determination, thus:

1. Whether the continuous detention of the Applicant without the order of the Court is lawful?
2. Whether the Applicant at this time can enjoy the discretion of the Court in his favour?

On issue number one, Learned Counsel for the Applicant submitted that anybody who is arrested for any offence should be brought before a Court of competent jurisdiction within 24 hours or 48 hours depending on the radius of the Court from the scene of the alleged crime. Submitted that the Applicant has been in detention for about four months and there are Courts all over Abuja, therefore, Applicant ought to have been arraigned and his fate determined by the Court but the Police has refused to do that. Counsel urged the Court to grant the prayer in the interest of justice.

On issue number 2, Counsel submitted that the Applicant, being in detention for over four months, the Applicant at this time; can enjoy the discretion of the Court in his favour. Counsel urged the Court to exercise its discretion in favour of the Applicant/Defendant in the interest of justice having regard to the ill health of the Applicant.

In opposition, the Complainant/Respondent filed a counter affidavit of 14 paragraphs and written address. Counsel raised one issue for determination, which is, whether this Court can exercise its discretion in granting bail where no exceptional circumstance is portrayed in capital offences.

Counsel submitted that by Section 161 of the ACJA 2015, Applicant is not entitled to bail, since the offence for which he is standing trial carries a capital punishment and there is nothing in the application of the Applicant to enable him enjoy the exceptions provided in Section 161(2) of the ACJA, 2015.

Submitted that the Applicant has not put before the Court, the special circumstance to warrant the Applicant to enjoy bail. Counsel relied on Suleiman V. C.O.P Plateau State (2008) 8 NWLR (pt.1089) 298 @ 322. Counsel submitted further that the Court should take into account, the criteria or principle of law decided by the Supreme Court in Suleiman V. C.O.P Plateau State (supra); Bamaiyi V. State (2001) 8 NWLR (pt.715 @271 and Abacha V. The State (2002), 4 MJSC pg1 @pg.3

Submitted that though ill health may be a condition for the grant of bail, such ill-health, must be placed before the Court in convincing and satisfactorily proved with a medical report by a medical doctor in a government hospital. Relied on Abacha V. The State (supra) and Section 161(2)(a) of ACJA 2015.

Submitted finally that Defendant, having not exhibited any exceptional circumstances to warrant this Court exercising its discretion in his favour, is not entitled to the grant of bail and urged the Court to dismiss the application for lacking in merit, and being devoid of substance.

I have taken my time and perused meticulously the affidavit evidence in support of the application for bail by the Defendant / Applicant.

I have also perused carefully the counter – affidavit filed by the Complainant/Respondent in opposing the application for bail. I studied the written addresses filed by respective counsel in support and opposition to the application.

Therefore, the issue for determination in my opinion is "**whether the Court can grant the application for bail filed by the Defendant/Applicant before this Honourable Court".**

It is worthy to note at this early stage that, bail pending trial is a Constitutional right of an accused person; this is in line with the Constitutional provision that relates to presumption of innocence in favour of persons accused of committing Criminal offence. See Section 36 (5) of the 1999 Constitution (as amended).

In a similar vein, the grant or refusal of an application for bail is at the discretion of the Court, which like any other discretion must be exercised judicially and judiciously. See the case of Alaya V. State (2007) 16 NWLR (pt. 1061) 483. Furthermore, the law is settled that in the exercise of the discretion for bail pending trial, a Court must take into consideration some facts or conditions which will serve as a guide. The Court enumerated some of these factors in the case of OGUNSOLA & ANOR v. STATE OF LAGOS & ORS (2016) LPELR-40579(CA) where it held thus:-

".....It is beyond doubt that the criteria, as established by the Apex Court in plethora of cases, to be considered in the grant or otherwise of bail to an Applicant include:

(a) the 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) the likelihood of the accused interfering with the course of justice;

(f) the likelihood of further charge being filed;

(g) detention for the protection of the accused. See also BAMAYI v. STATE (2001) 8 NWLR (PT. 715) 270 and ABACHA v. STATE (2002) 5 NWLR (PT. 761) 638"

The Court of Appeal held in Uwazurike V. A. G. Federation (2008) 10 NWLR (pt. 1096) 444 at 461 – 462 paragraphs F – C 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 pending before it..."

Consequently, I have restricted myself to the second factor as enumerated by the Supreme Court in OGUNSOLA & ANOR v. STATE OF LAGOS & ORS (Supra), which is the nature and gravity of the offence charged. In this instant case, from the nature of the charge, it is not in doubt that the Defendant/Applicant, is charged with Criminal conspiracy and armed robbery, a capital offence.

As such, the law is trite that a person charged with a capital offence is not ordinarily entitled to bail until and unless he can show to the satisfaction of the court special or exceptional circumstances why bail is to be granted to him despite the gravity of the charge against him. See the case of Abacha V. State (2012) 5 NWLR (pt. 761) 638 at 653 – 64 paragraphs H – A.

Therefore, the question that comes to mind is, has the Applicant in this instant case, shown any special or exceptional circumstance to warrant the grant of this application?

It is pertinent to note that bail is not ordinarily granted to an accused charged with capital offence except where special circumstances genuinely exist as provided for in Section 161 of the Administration of Criminal Justice Act, 2015, which states:-

" *(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;

(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.

From the affidavit evidence of the Defendant/Applicant, there is no special or exceptional circumstance stated therein to warrant this Court to exercise its discretion in its favour. The Defendant/Applicant's Counsel informed the Court that the Defendant/Applicant is ill and it will be in the interest of justice that he be granted bail. The law is that, the address of Counsel cannot take the place of evidence. More so, there is no medical report before me to show that the Applicant is actually ill.

In that regard, although the law is trite that ill health of an Applicant in an application for bail is a special circumstance for grant of the application. However, the law did not stop there but went further to state that a mere allegation or deposition in an affidavit of ill – health will not be sufficient justification for granting the application for bail. In this regard, in the case of Abacha V. State (2002) 4 MJSC pages 1 at 3 & 4 ratio 3 & 5, the Supreme Court held that:-

"There is no general principle of law affording any accused person remanded in custody and awaiting trial, the right to a medical practitioner or medical facility of his choice, the special medical need of an accused person, whose proved state of health need special medical attention which the authority may not be able to provide is a factor that may be put before the Court for consideration in the exercise of discretion to grant bail to an accused person. Such a need should not be brought to the Court by mere assertion of the accused or by his counsel, but on satisfactory and convincing evidence"

The Supreme Court went further to state that:-

"... where it is ought to lay claim to ill health as ground for an application for bail credible medical evidence given by an expert in the branch of medicine should be made available to the Court..."

See also, the case of Fawehinmi V. State (1990) 1 NWLR (pt. 127) 486 at 496 – 497 paragraphs H – B, 498.

In this instant case, the affidavit is bereft of facts stating the ill health of the Defendant/Applicant. The Defendant/Applicant has also failed to provide a medical or doctor's report on the state of his health other than the mere statement of the Defendant/Applicant's Counsel.

To this end, I am of the humble view that the Defendant/Applicant has failed to show to the satisfaction of the Court the existence of special or exceptional circumstance as contemplated by Section 161 of the Administration of Criminal Justice Act, 2015, to warrant the exercise of the Court's discretion in his favour.

It is my considered view that the Defendant/Applicant has not made out a case for the grant of this application. In that regard, I hereby resolve the issue for determination in favour of the Complainant /Respondent against the Applicant. Bail is accordingly declined.

Parties: Defendant is absent.

Appearances: Okoro Tochukwu Prosper, Esq., for the Prosecution.

Eneche Ekoja, Esq., for the Defendant

HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
31ST JANUARY, 2019