IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY

HOLDEN AT ABUJA

THIS TUESDAY, THE 16TH DAY OF FEBRUARY, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

SUIT NO FCT/HC/CR/12/2019
MOTION NO: GWD/M/06/2020

BETWEEN:

COMMISSIONER OF POLICE .....COMPLAINANT/RESPONDENT

AND

1. SAMSON MICHAEL
2. JOHNSON MICHAEL } **……DEFENDANTS/APPLICANTS**
3. ISMAILA MUSA

RULING

The 1st Defendant along with the other Defendants were on 8th October, 2020 arraigned before this court on a three (3) counts charge filed on 17th October, 2019 that borders on conspiracy to commit Armed Robbery and Armed Robbery under the provisions of **Section 6(b) and 1(2) a & b of the Robbery and Firearms (Special Provision) Act and Section 250 of the Penal Code.**

The charge was duly read to all the Defendants and they all pleaded not guilty.

The 1st Defendant filed an application for bail dated 9th January, 2020 and filed same date at the Court's Registry. The application is supported by a 23 paragraphs affidavit with a written address in which one issue was raised as arising for determination as follows:

"Whether in the light of the provisions of the constitution as regards the presumption of innocence under Section 36(5) of the 1999 Constitution and Section 162 of the Administration of Criminal Justice Act 2015, the 1st Defendant/Applicant is not entitled to be admitted to bail."

Submissions were then made which forms part of the Record of Court to the effect that the Applicant has on the materials supplied and or fulfilled all legal requirements that will allow the court grant the 1st Defendant bail pending the determination of the charge against him.

In opposition, the complainant filed a common or joint counter-affidavit to the application of 1st Defendant and indeed the other two defendants who similarly filed a joint bail application. A brief written address was filed in which no issue was streamlined or raised but it was contended that that the offences for which the 1st Defendant was charged are serious offences which carries sentence of death upon conviction. That in such a situation, bail can only be granted under **Section 161(2) of ACJA under exceptional circumstances and that in this case no such exceptional circumstances have been disclosed by Applicant to allow for grant of bail.**

At the hearing, counsel for the Applicant relying on the processes prayed for the grant of the application while the counsel to the complainant equally relying on the processes urged that the application be refused.

I have carefully considered the totality of the depositions in this case, the written addresses and the oral adumbration in expatiation on both sides of the aisle and the issue to be resolved is whether the 1st defendant should in the circumstances of this case be granted bail. The general principles that guides a court and the factors that the court will consider in determining whether or not to grant bail have been comprehensively set out in the briefs of learned counsel for the parties. Indeed the principles are fairly well settled. In the case of **Alaya V State (2007) 16 N.W.L.R (pt.1061) 483,** the Court of Appeal repeated the considerations on the following terms:

"In the exercise of the discretion to grant bail to an accused person pending trial, the court has to consider the following:

(a) The nature of the charges;

(b) The character of the evidence;

(c) The severity of the punishment;

(d) The criminal record of the accused;

(e) The likelihood of repetition of the offence;

(f) Evidence that should applicant be granted bail, the witness for the prosecution may be interfered with or prevented from appearing to testify; and

(g) Whether the applicant if granted bail, would fail to attend court to face his trial: Obaseki Vs Police (1959) NRNLR149; Dantata Vs IGP (1958) NRNLR 3."

On the authorities, it is 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 of others may be used to determine the question of bail in a particular case. See **Bamaiyi V. State (2001)8 N.W.L.R (pt.715) 270.**

In this case, contrary to the submissions of counsel to the 1st Defendant/Applicant, the offences Applicant is charged with are grave and serious in nature. Indeed the substantive count 2 of the charge is brought pursuant to the provision of **Section 1(2)a and b of the Robbery and Firearms (Special Provision)Act, Cap R11 LFN 2004** and the punishment under the provision is clear in these terms**:**

"The offender shall be liable upon conviction under this Act to be sentenced to death."

The punishment therefore is of the severest of punishment, that of death penalty. It is therefore not correct as submitted in the written address of counsel to the 1st Defendant that the offences Applicant was charged with does not involve a capital offence and punishment.

In the circumstances, the provision of **Section 162 of ACJA 2015** and its clear remit would not have legal resonance where the charge involves an offence punishable with death.

The relevant provision applicable to the extant scenario is that of **Section 161of ACJA** which provides clear guidelines on the issue of bail in relation to a suspect charged with a capital offence as in this case.

Section 161 of ACJA provides thus:

"(1) A suspect arrested, detained or charged with an offence punishable with death, shall be admitted to bail by a judge of the High Court, under exceptional circumstances.

(2) For the purpose of exercise of discretion subsection (1) of the section, "exceptional circumstances" includes:

(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) extra ordinary 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."

The above provisions appear to me clear.

The import of the above is that Bail is not ordinarily granted where a suspect is charged with a capital offence unless the defendant can establish circumstances which bring his case within the exceptions or exceptional circumstances provided under **2 (a), (b) and (c) above of Section 161**. The sentence used under **Section 161 (1) ACJA is "shall only be admitted to bail by a judge under exceptional circumstance."** Shall in law is a word of command which does not allow for exercise of discretion.

A defendant therefore charged with a capital offence has the burden or bounden duty under **Section 161 (1) and (2) a, b and c (supra)** to establish creditably these exceptional circumstances that would then provide both factual and legal template or basis to allow the court judicially and judiciously determine the propriety or otherwise of granting bail in each case on its merit.

Now reading the entirety of the affidavit of 1st Defendant/Applicant, the basis or ground of his bail application is on grounds of ill-health bringing his case within the purview of **Section 161 (2) (a) and also (c) of ACJA (supra).**

In paragraphs 8-10 of Applicants affidavit allusions was made to the ill-health of 1st Defendant which is said to have **"deteriorated and degenerated greatly"**

Now what is strange here is that no clear or precise medical condition was mentioned by the Applicant and the court is therefore in no position to guess or speculate as to what he really suffers from. Furthermore, no medical report by a confirmed and certified medical practitioner employed in a government hospital was attached streamlining that Applicant suffers from any illness and that he is not been taken care of in the correctional facility or that the correctional facility is not in a position to deal with the illness due to for example lack of medical facilities or requisite medical expertise.

By the provision of **Section 161 (2) (a) of ACJA,** allusion to ill-health and for it to have practical resonance for purpose of granting bail, the Applicant must prove or show that there are no medical facilities to take care of his illness by the authority detaining him. As already alluded to, there is nothing before me showing that there are no medical facilities to deal with the alleged illness of Applicant.

The court takes judicial notice of the fact that there are qualified medical personnel in the correctional facility and even where the ailment is beyond their capacity, there is always room for a referral to a government health institution where such facilities are available.

The point to underscore is that the allegation or complaint of ill-health is not some sort of magical wand that if presented will automatically lead to the grant of bail. The ill-health must be such that cannot be handled by the prison clinic or facilities available at the prison and this has to be creditably established.

The Supreme Court in **Abacha V State (2003) 3 ACLR 1 at 10**-12 stated instructively per Ayoola J.S.C as follows:

"Were it the law that an accused person remanded in custody to await trial is entitled to be granted bail pursuant to a right to have access to a medical practitioner or medical facility of his choice, hardly would any accused person remain in custody to await trial. There is no general principle of law affording that right to an accused person remanded in custody."

Again the Apex Court in **Abacha V State (supra)** held thus:

"The special medical need of an accused person, whose proven state of health needs special medical attention, which the authorities 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 the accused person. Such need is not brought before the court by the mere assertion of the accused or his counsel, but on satisfactory and convincing evidence."

On the whole, the exceptional circumstances of ill-health and or that there is an absence of medical facilities to treat the illness within the purview of **Section 161 (2) (a) of ACJA** has not been creditably established.

The contention that the charge is an **"after thought and a witch hunt"** is neither here nor there. Happily in this case, the prosecution is ready to commence the prosecution of the case as hearing is to commence on 2nd November, 2020. We are therefore now on course to determine the culpability or otherwise of 1st Defendant and whether the charge is a witch hunt or not.

On the materials, the prosecution has done all that was reasonably required to bring the matter to the trial stage. There are therefore clearly no compelling circumstance in this case that discloses any exceptional situation to warrant the court to grant bail.

I have above taking into account the relevant guiding legal principles. I have again carefully evaluated the proof of evidence and the statements of particularly the 1st defendant where he was alleged to have confessed to the crime. I agree that the 1st defendant enjoys the constitutional presumption of innocence but the right to enjoy

his personal liberty must be weighed against the corresponding need and imperative that he stands his trial for what is no doubt a grave and serious offence.

On the materials as provided by the applicant, it is clear that he has not been able to creditably establish that this case comes within the exceptions that would allow for grant of bail within the purview of **Section 161 (1) and (2) (a) (b) and (c) of ACJA 2015.** In addition, on the basis of the gravity of the offence and punishment, the character and strength of evidence, as contained in the proof of evidence, I am of the considered opinion that it would be unsafe to admit the 1st defendant to bail.

In the overall interest of justice, I hereby order for **accelerated hearing**. I call on counsel to all parties to act *post haste*, bring all witnesses and relevant materials and ensure that this matter is given the utmost attention and determined with the minimum of delay.

In the final analysis, I have not been put in a commanding height with sufficient materials facts either on grounds of law or facts to warrant the grant of this application. The application accordingly fails and it is dismissed.

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Hon. Justice A.I. Kutigi

Appearances:

1. **Fidelis Ogbogbe, Esq for the Complainant/Respondent**

2. **Ihite Emmanuel for the 1st Defendant/Applicant**

3. **Mimido P. Anundu, Esq., holding brief of Professor Agbo Madaki, Esq., for the 2nd and 3rd Defendants/Respondents**