

**IN THE HIGH COURT OF JUSTICE OF THE FEDERAL CAPITAL TERRITORY**

**IN THE ABUJA JUDICIAL DIVISION**

**HOLDEN AT MAITAMA, ABUJA**

**BEFORE HIS LORDSHIP: HON. JUSTICE H. MU'AZU**

**ON TUESDAY 30<sup>th</sup> DAY OF MARCH, 2021**

**SUIT NO: FCT/HC/CR/1067/2020**

**BETWEEN:**

**COMMISSIONER OF POLICE ..... CLAIMANT/  
RESPONDENT.**

**AND**

**CHINEDU ANUKA ..... DEFENDANT/  
APPLICANT.**

**RULING**

The Applicant in this matter filed before the Court a Summons for bail brought pursuant to Section 158, 162 and 165n (1) of the ACJA 2015 Section 6 (1) & 6 (a) & (b), 35 (1) & 36 (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and under the inherent jurisdiction of this Honourable Court.

The Applicant seeks the following:-

- (1) An order of this Court admitting the Defendant/Applicant to bail pending the hearing and/or determination of the case in charge **NO: CR/1067/2020** before this Court.

- (2) And for such further or other orders as this Court deem fit and proper to make in the circumstances.

The Grounds upon which the Application is made are:-

- (a) Though the alledged offences is not a capital offence the Court can on its discretion admit the Applicant to bail.
- (b) The Defendant/Applicant enjoys the presumption of innocence until proven guilty.
- (c) The Defendant/Applicant requires adequate time and facilities for preparation of his defence.
- (d) The Defendant/Applicant has suffered physical, psychological, emotional torture and blackmail upon arrest/detention at the police facilities in Abuja, this has contributed to his detoriorating health.
- (e) That it is only this Court that has power and competence to grant bail at this instance.
- (f) It will be in the overall interest of justice to admit the Defendant/Applicant to bail pending trail.

The Application is supported by a 2 paragraph affidavit deposed to by the Applicants mother Ngozi Anuka.

The facts distilled from the Affidavit in support are that the Applicant has been in a relationship with the alleged victim who is described as imbecilic. That his relative has produced a child (son) who is now in foster care. That provision has been made for the upkeep of the child and settlement talks are ongoing. That the Applicant is ready to stand trial and will not jump bail, commit any offence, conceal or destroy any evidence, interfere or intimidate witnesses or in any way jeopardise investigation.

The Learned Counsel for the Applicant Evan E. Duru Esq filed a Written Address where a sole issue for determination was formulated. i.e.

“can the Defendant/Applicant be admitted to bail by this Court having regard to the charge and affidavit evidence in support of the application.”

The Learned Counsel argued that grant of bail is entirely at the discretion of the Court. For this relied on the authority in **MUNIR V. FEDERAL REPUBLIC OF NIGERIA (2008) LPELR – 4693 (CA) p.21** where it was held that the Court is enjoined to exercise such discretion judicial and judiciously.

Learned Counsel further argued that the Applicant is presumed innocent by Section 36 (5) of the constitution.

Also the Applicant have undertaken not to do anything to jeopardise the trial of the case as provided under Section 162 of ACJA.

The Learned Counsel has also relied on plathora cases to support his argument that the word “shall” in Section 158 of ACJA denote obligation or command.

The Learned Counsel submitted that the function of bail is to ensure the presece of the Defendant at trial and that it will be in the interest of justice to grant the Applicant bail.

In oppositionto the application, a 19 paragraph Counter affidavit deposed to by one Inspector Philip Tambe was filed by the Respondent. In it the Respondent denied the averments on the supporting affidavit and maintained that, there was as relationship between the Applicant and the victim, that the victim was an imbicile and unable to give consent. That the Applicant had jump bail in the past and is likely to do the same. That the offence for which the Applicant is before the Court carries upon conviction a sentence of upto life imprisonment. Respondent urge the Court to refuse the Applicant as granting bail will not be in the interest of justice.

The Respondent filed a Written Address signed by SP B. G. Ensniles Esq where a sole issue are formulated which is:

“Whether the Defendant/Applicant has placed Sufficient materials before this Court upon which the Court can exercise its discretion in his favour.”

Learned Cousel argued that Section 162 of ACJA does not impose upon the Court, an obligation to grant bail but situating

the determination as to grant bail firmly within the discretionary powers of the Court.

Learned Counsel further argued that it is the responsibility of the Applicant. In bail application to place some material before the Court upon which the Court can exercise its discretion.

Learned Counsel relied on authority in **ABIOLA V. FRN** and **ANI V. STATE**.

Learned Counsel submitted that given the weighty and serious nature of the evidence as in the proof of evidence, the Court should order for accelerated hearing instead of grant of bail with the possibility of the Applicant jumping bail.

Learned Counsel finally urged the Court to refuse the application.

I have carefully considered the Applicants summons for bail with the supporting affidavit and the Written Address of Counsel on the one part and the Counter affidavit and address of Counsel for the Respondent and the other part.

The Applicant is standing trial for the offence of rape contrary to Section 283 of the Penal Code stated earlier. Under Section 162 of the Administration of Criminal Justice Acts 2015, the Court has been given a discretion to grant bail to a person so charged only upon exceptional circumstances. In Section 162 of the Act it is provided that a person charged with the offence punishable with imprisonment for a term exceeding three years (as in this case) may be released on bail except there is

reasonable ground to believe he will commit another offence if granted bail or attempt to evade his trial or attempt to intimidate or interfere with witnesses or attempt to conceal or destroy evidences or prejudice proper investigation of the offence. Here, although the Respondent opposed the application it has not in doing so placed before the Court sufficient evidence.

Here, although the Respondent opposed the application it has not in doing so placed before the Court sufficient evidence showing that the Defendant can and or will do any of the above infractions. And is it is evident from the charge and accompanying documents that investigation into the case is concluded.

In the light of the forgoing and placing reliance on Sections 158, 159 and 163 of the Administration of Criminal Justice Act and consistent with the provision of Section 36 (5) of the Constitution which states that the Defendant is presumed innocent until proven guilty, the Court will exercise its discretion to grant this application while ensuring the attendances of the Respondent in his trial.

Accordingly, the application succeeds. And it is hereby ordered as follows:-

- (1) Bail is granted to the Defendant pending determination of the case in the sum of ₦2,000,000.00 and one surety in like sum.
- (2) The surety must be resident within the jurisdiction of the Court.

- (3) Surety must be holder of title of developed landed property within the jurisdiction of the Court.
- (4) The address and title to be confirmed by the Registrar of the Court.

Pending compliance with the bail condition the Defendant is to be remanded in a correctional center.

**SIGNED**  
**HON. JUDGE**  
**30/3/2021.**

**LEGAL REPRESENTATIONS**

- (1) B. G. Emenike for the Applicant.
- (2) Evans Duru for the Defendant.