

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON WEDNESDAY, THE 26TH DAY OF JANUARY, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/473/2021
MOTION NO.: M/9118/2021

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA

COMPLAINANT/RESPONDENT

AND

CHIZOBA NNAEMEKA

DEFENDANT/APPLICANT

RULING

This Ruling is in respect of an application for bail brought by the Defendant.

The Defendant/Applicant is standing trial in this Honourable Court for the offence of unlawful sexual intercourse with his daughter, Nnaemeka Favour, aged fourteen years, contrary to the provisions of section 1(2) and section 25(a) of the Violence Against Persons (Prohibition) Act, 2015.

Upon arraignment of the Defendant/Applicant on the 15th of December 2021 when the charge was read and explained to him, he confirmed he understood the charge but denied the allegations contained therein. Subsequently, Counsel for the Defendant applied for bail of the Defendant/Applicant while Counsel for the Complainant/Respondent had no objection. The application for bail which was made *vide* Motion on

Notice with Motion Number M/9118/2021 and brought pursuant to sections 158, 162 ,163 of the Administration of Criminal Justice Act 2015, and Section 36 of the 1999 Constitution of The Federal Republic Of Nigeria as amended with 4th alteration, particularly section 36(5) of the said Constitution, and under the inherent jurisdiction of this Honourable Court was dated and filed on the 13th of December 2021. Specifically, the application prayed this Honourable Court for the following:

- 1) AN ORDER of this Honourable Court admitting the Defendant/Applicant on bail pending the determination of the trial.***
- 2) AND FOR such further Order or other Orders as this Honourable Court may deem fit to make in the circumstance.***

In support of the application is a 16-paragraph affidavit deposed to by one Helen Nnaemeka, the wife of the Defendant/Applicant and a 21-paragraph affidavit deposed to by the Defendant/Applicant himself. Also in support of the application is a written address which the learned Counsel adopted as his oral submission in support of the application.

In the first affidavit deposed to by the named Helen Nnaemeka, the wife of the Defendant/Applicant, she averred that she is aware that the Defendant/Applicant is facing a charge punishable under section 1(2) and section 25(a) of the Violence Against Persons (Prohibition) Act, 2015 and that he was arrested and detained at NAPTIP (National Agency for Prohibition of Trafficking in Persons) cell for almost a week and that after

his release from NAPTIP office, he has always honoured subsequent invitations to NAPTIP office every time he was instructed to do so by the authority.

She also averred that sometime ago the Defendant/Applicant had an accident that affected his head which sometimes made him behave abnormally or do things without knowing the consequence. She added that his family will suffer untold hardship if the Defendant/Applicant is detained or incarcerated and that it will be in the interest of justice and overall welfare of the family if this application was granted.

In the Second affidavit which was deposed to by the Defendant/Applicant himself, he averred that he is being accused of and standing trial for an offence punishable under section 1(2) and section 25 (a) of the Violence Against Persons (Prohibition) Act, 2015. He swore that after his arrest by NAPTIP officials, he accepted all the allegations leveled against him out of fear and that he was detained for several days and later released on bail. Since then, he asserted, he has been reporting to NAPTIP office at Wuse Zone 5 once in two weeks as mandated by the NAPTIP officials and has never skipped a day he was asked to report to the NAPTIP office. He also added that he has obeyed all that he has been asked to do at all material time.

In furtherance of the facts in support of his application, he stated that he once had an accident that has affected his head and reasoning and that the alleged incident could be attributed to the accident and that he has

been undergoing head injury treatment in Living Rock Hospital and Maternity Limited, Zuba Abuja. He attached the receipts of payment for treatment, drugs and laboratory test and marked same as **Annexure A**. He swore that it had never been his intention to molest his child; and that he is the bread winner and sole provider of the family and that if he is detained or incarcerated he would not be able to provide for his family. Finally, he claimed he regretted his actions and that he has no intention of jumping bail if this application is granted.

In the written address in support of the application, learned Counsel for the Defendant/Applicant formulated one sole issue for determination, to wit: *“Whether the Defendant/Applicant has placed any material facts culminating to special or exceptional circumstances on which this application can be successfully grounded for the determination of the trial and whether the offence which the defendant standing trial is a bailable one.”*

Arguing this sole issue, learned Counsel submitted that the offence for which the Defendant/Applicant is standing trial is a bailable one and that he has placed material facts before this Court to warrant grant of the reliefs/orders sought. He referred the Court to the provisions of sections 158 and 162 of the Administration of Criminal Justice Act, 2015. Counsel adopted the definition of bail given in the case of ***OJO v. FEDERAL REPUBLIC OF NIGERIA (2006) NWLR (Pt. 982) 103 at 115*** and submitted that the main objective of bail is to ensure that the accused person presents himself on trial.

Submitting further, Counsel contended that to grant or refuse bail is a discretionary matter for which the trial judge in the exercise of his discretion must exercise judicially and judiciously. He insisted that the Court must therefore act only on evidence placed before, adding that the grounds for refusing bail must be upon facts and not on his instincts on which there is no evidence to support. It is his argument that as long as there is no material before the Court showing that the accused may likely abscond and not show up for trial, the Court may not reasonably refuse bail. Counsel cited the case of ***FRN v. Alhaji Mohammed Shetima Bulama (2005) 16 NWLR (Pt. 951) 291 at 246.***

It was further argued on behalf of the Defendant/Applicant the Court has outlined factors to be considered before bail application can be granted as in the case cited above. He then went ahead and submitted that the presumption of innocence as provided by Section 36(5) of the 1999 Constitution of the Federal Republic of Nigeria as amended with 4th alteration has been on the side of the accused or defendant as the case may be and Nigeria's apex court has enunciated this trite position of the law in a plethora of decided case in that respect. Counsel relied on one of the Supreme Court cases of ***Saidu v. State (1982) 4 SC41 (a) 69 per Oputa JSC.***

Furthermore, Counsel to the Defendant argued that the Defendant has stated in the paragraph of the affidavit in support of the motion that he has written a letter of apology and request for settlement out of court as directed by NAPTIP officials. This, he pointed out, is an indication that he

has regretted his actions. Added to this is the facts that he has been attending to invitations of NAPTIP in their office in Wuse Zone 5 despite being detained for days in their custody. He further contended that the Defendant has also been going for his normal business to ensure that the family have something on the table to eat, adding that he has a verifiable and identifiable address where he lives with the family. This, according to him, corroborates the fact that the Defendant has not been hiding and is ready to stand his trial until final determination of the charge if granted bail. Finally, learned Counsel urged the Court, from the totality of the decided cases he has commended to the Court, to grant bail to the Defendant as he is willing and ready to stand trial on the alleged offence as granting same will not be only for the interest of the family but will go a long way in helping the Defendant/Applicant in getting the resources needed to stand his trial.

Having listened to the argument of counsel on this subject, I believe the Court can safely consider this issue:

Whether the Defendant/Applicant is entitled to bail by this Court considering the circumstances of the case.

To answer this issue, I must state that bail is one of the subjects that come within the discretionary power of the Court. And being a matter within the Court's discretion, the Court is enjoined to exercise same judicially and judiciously in such manner that the exercise of the discretionary powers accord with good sense, reason, and judgement.

See the cases of ***Obi v State (1992) 8 NWLR (Pt 257) 76 at 81 per Kolawale JCA; Unogu v State (2000) 11 NWLR (Pt 677) 196 at 202 per Nsofor JCA;***

And this discretionary power of the court must have in view the gravity of the offence for which the Defendant is standing trial and it must also be consistent with the facts disclosed in the affidavit in support of the application. See the case of ***Bamaiyi v State (2001) 8 NWLR (Pt 698) 270 at 294*** and also the case of ***State v Akaa (2002) 10 NWLR (Pt 744)157 at 171*** per Muktar JCA (as he then was).

This position has been given statutory flavor by virtue of section 158 of the Administration of Criminal Justice Act 2015, and with particular reference to this instant case and the bail application brought by the Defendant/Applicant charged herein, section 162 and 163 provide that:

Section 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 jeopardise the objectives or the purpose or the functioning of the criminal justice administration, including the bail system.”**

Section 163:

“In any other circumstance other than those referred to in sections 161 and 162 of this Act, the defendant shall be entitled to bail, unless the court sees reasons to the contrary.”

In *Dasuki v. Director-General, S.S.S. (2020) 10 NWLR (Pt. 1731) 136 at 152, paras A – B*, the Court of Appeal held that **“Bail under the Nigerian law is not meant to be a mirage. By section 165(1) of the Administration of Criminal Justice Act, the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive.”**

In *Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320*, the Supreme Court per Muhammad JSC (as he then was) laid down the guidelines which the Courts must consider in determining whether an applicant for bail is

deserving of the Court's grace in that regard. At pages 343 – 344, paras B – A of the law report, he said:

“When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court is to consider in the exercise of its judicial discretion to arrive at a decision. Such criteria include, among others, the following:

- a. The nature of the charge;***
- b. The strength of the evidence which supports the charge;***
- c. The gravity of the punishment in the event of conviction;***
- d. The previous criminal record of the accused if any;***
- e. The probability that the accused may not surrender himself for trial;***
- f. The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;***
- g. The likelihood of further charge being brought against the accused;***
- h. Detention for the protection of the accused;***
- i. The probability of guilt;***
- j. The necessity to procure medical or social report pending final disposal of the case.***

These criteria are not exhaustive. Other factors not mentioned may be relevant to the determination of grant or refusal of bail to an accused. They provide the required guidelines to a trial court in the exercise of its discretion on matters of bail pending trial. Some of them may not be admissible as evidence in the main trial but they are certainly worthy to be taken into account in an application for bail pending trial.”

In this instant case the Defendant/Applicant is standing trial for the offence of unlawful sexual intercourse with his 14-year-old daughter contrary to the provisions of Section 1(2) and Section 25(a) of the Violence Against Persons (prohibition) Act 2015. Section 1(2) provides:

“A person convicted of an offence under subsection (1) of this section is liable to imprisonment for life”

Section 25(a) provides:

“A person who knowingly and willfully have carnal knowledge of another within the prohibited degree of consanguinity and affinity contained in the schedule to this act with or without the consent, commits incest and is liable on conviction to a minimum term of;

(a) 10 years imprisonment without an option of fine”

Apart from the fact that the offence is one punishable with life imprisonment, I must state that the offence of rape, especially of minors, is becoming prevalent and there is the need to contain same. Though the Defendant/Applicant deposed in his affidavit that he had once been in an accident that has affected his head and reasoning; that the alleged incident could be attributed to the injury and that he had been undergoing head injury treatment in a hospital in Zuba, there is no comprehensive medical report to convince me that the Defendant/Applicant actually has mental issues.

Further, he has stated that it had never been his intention to violate or molest his own child. I am of the view that by this deposition, the Defendant/Applicant is already putting up his defence even when the Prosecution has not opened its case. I shall not entertain this line of averment. I am not unaware that the presumption of innocence operates in favor of the Defendant/Applicant. But the Court must weigh the nature of the offence, its seriousness and the adverse effect on the Defendant's family especially the Defendant's daughter who is the victim on one hand, and against the safety of the Defendant/Applicant himself if he is released back to his family on the other hand. Besides, the seriousness of the charge and the gravity of the punishment prescribed for the offence are not lost on this Court. These are some of the factors the Court must consider pursuant to its discretionary powers provided for under section 163 of the Administration of

Criminal Justice Act, 2015 and the Supreme Court dictum in ***Dokubo-Asari v. FRN (2007) supra.***

Having considered the provisions of section 163 of the Administration of Criminal Justice Act, 2015 which unequivocally states that the Judge may still refuse to admit a Defendant to bail notwithstanding the provisions of sections 161 and 162 of the Act, this Court is compelled, in view of the seriousness of the offence, the gravity of the punishment prescribed for in the Act under which the Defendant is charged, the prevalence of the offence of rape, especially of minors and the safety of the Defendant/Applicant himself, to exercise its discretion against the Defendant/Applicant.

In view of the foregoing, therefore, the application of the Defendant for bail with Motion Number M/9118/2021 dated and filed on the 13th of December 2021 is hereby refused and accordingly dismissed.

In view of the dismissal of the Defendant's application for bail, I hereby make an order for expeditious hearing of the case on the authority of ***Danbaba v. The State (2000) 14 NWLR (Pt. 687) 396 at 413*** per Oguntade JCA (as he then was).

This is the Ruling of this Court delivered today, the 26th day of January 2022.

HON. JUSTICE A. H. MUSA
26/01/2022
JUDGE