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

THIS TUESDAY, 16TH DAY OF NOVEMBER, 2021.
BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: CR/865/2020
MOTION NO: M/198/2021

BETWEEN:

COMMISSIONER OF POLICE .....COMPLAINANT/RESPONDANT

AND

ABBAH AWAL .....DEFENDANT/APPLICANT

RULING

The Defendant/Applicant was arraigned on a one (1) count charge contrary to the provision of **Section 221 of the Penal Code**.

The Defendant pleaded not guilty to the sole count on the 2nd March, 2021 and hearing commenced afterward on the 23rd September 2021. Indeed the prosecution has already called its first witness (PW1) who was cross-examined by counsel to the Defendant/Applicant. The Defence counsel however filed a bail application dated 15th June, 2021 and filed in the court Registry on the 12th July, 2021. In support of the application is a fifteen (15) paragraphs affidavit. A written address was filed in support in which no issue was raised or streamlined as arising for the determination of the court, but submissions were made on settled principles governing grant of bail which forms part of the Record of Court and it was contended that 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 twenty (20) paragraphs counter–affidavit and a written address in which they raised one issue as arising for determination to wit:

Whether the Defendant/Applicant has satisfied the mandatory requirements provided in section 161 of the ACJA 2015 to be entitled to a grant of bail pending the determination of the charge against him.

Submissions were equally made on settled principles governing grant of bail which also forms part of the Record of Court and it was contended that on the materials exceptional circumstances has not been disclosed by Applicant to warrant the grant of Bail particularly in view of the heinous nature of the offence, and severity of the punishment upon conviction.

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 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 hearing 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 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:

a) The nature of the charge;
b) The strength of the evidence put up in support of the charge;
c) The severity of the punishment on the event of conviction

d) 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;
e) The likelihood of the repetition of the offence;
f) Whether there is real danger that he will abscond and thereby not surrender himself for trial; aid interfere with witness or suppress the evidence which may adduces to incriminate him.

See the following cases. **Omodara v State (2004) I NWLR (pt. 853) 81 at 93; Chinemele v C.O.P (1995)4 NWLR (pt. 390) 467; Danbaba v State. (2000) 14 NWLR (pt. 687) 396; Olatunji & Anor V Fed. Rep. of Nig. (2003) 3 NWLR (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 **Bamaiyi V State (supra).**

Now it is not, in dispute that the offence of culpable homicide punishable with death against the Defendant/Applicant before this court is grave and serious in nature. There is equally no doubt that the punishment for the offence is death on conviction. See **Section 221 of the Penal Code Law**.

I have considered the provisions of **Section 161 (1) and (2) (a-c) of ACJA** which provides thus:

"(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" 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) 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."

The implication of the above provision is therefore that notwithstanding that a person is standing trial for an offence of armed robbery 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 (death sentence) the facts and peculiar circumstances of each case shall determine whether or not an accused person shall be granted bail pending trial. **See Shagari V. C.O.P (2007)5 N.W.L.R (pt.1027)275 and Abacha V. Hamza Al-Mustapha & 2Ors (2002)11 N.W.L.R (pt.779)437.**

In this case from the affidavit in support, the application is essentially anchored on grounds of ill-health vide paragraphs 7-9 of the affidavit in support as follows:

"7. That the Defendant is suffering from severe appendicitis pains and pile and which regular treatment (sic) which cannot be provided in custody.

8. That since the arrest of Defendant for the past month, he had no access to medical facilities despite his recurrent complaints.

9. That the Defendant have not been able to take any medication since his arrest."

These bare averments were challenged by the Prosecution. Now beyond these bare challenged assertions, nothing concrete was put forward by Applicant to situate the exceptional situation or circumstances of his health condition as provided for under **Section 161 (2) (a) of ACJA**. No Medical Report from a Government hospital or indeed a medical report from a qualified medical practitioner situating the seriousness of the health condition of the Applicant. There is similarly nothing provided showing that the health challenges allegedly faced by Applicant is such

that cannot be taken care of by the correctional authority where he is been kept during his trial.

I take judicial notice of the fact that there are doctors attached to the correctional facility to take care of health challenges of inmates and where the ill-health is one beyond their capacity, the practice is that the inmate is referred to a medical facility better suited to deal with the health situation. These facilities exist in the FCT.

The bare and empty assertions that Applicant suffers from severe appendicitis and pile and that the correctional facility is not adequately equipped will therefore not suffice in the circumstances.

In any event neither the deponent to the affidavit, a Litigation Secretary or Barr. Ayam Michael who supplied the information with respect to the alleged serious ill-health of Applicant is a certified or qualified medical practitioner. The averments with respect to the alleged serious ill-health of Applicant clearly has not been creditably established. The point stands compromised.

Let me however add that in considering whether or not to exercise its discretion in favour of granting bail or not, it is very critical for the court, apart from considering the affidavit in support, to also examine the proof of evidence filed by the prosecution in order to determine the strength of the link. This assertion has judicial backing in the case of **Musa V. C.O.P (2004)9 N.W.L.R (pt.879).** See also **Abacha V. Hamza Al Mustapha & 2Ors (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 proposed witnesses and the defendant. Now while I agree that the defendant/applicant 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 his 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.

The import of the above is that bail is not ordinarily granted where a person is charged with capital offence unless the defendant/applicant can establish

circumstances which bring his case within the exceptions or exceptional circumstances provided under **2(a), (b) and (c) of Section 161 of ACJA.**

On the materials, I have carefully gone through the entirety of the 15 paragraphs affidavit and I cannot situate facts that falls within the exceptions as provided for under **Section 161 of ACJA,** that would allow for grant of bail. Counsel for the defendant/applicant unfortunately did not address his mind to this provision at all. Finally under **Section 161 (2) (c) of ACJA**, the Defendant/Applicant has not disclosed on the facts and materials any compelling circumstances that the court considers exceptional to warrant the court to grant bail. In addition, on the basis of severity 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 defendant/applicant to bail.

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

In the final analysis, I have not been put in commanding height with sufficient materials either on ground 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. **Chinyere Moneme, for the Complainant/Respondent.**

2. **Michael Ayam, Esq. for the Defendant/Applicant.**