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

THIS TUESDAY THE 14TH DAY OF DECEMBER, 2021

BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE

CHARGE NO: GWD/CR/04/2020
MOTION NO: M/3599/21

BETWEEN:

COMMISSIONER OF POLICE..... COMPLAINANT

AND

AHMED ABDULRAHMAN.....DEFENDANT

RULING

The Defendant/Applicant was arraigned on a two (2) Counts charge contrary to the provisions of **Sections 31 and 32 of the Child Rights Act 2003.**

The Defendant pleaded not guilty to the two counts on 4th February, 2021 and a bail application was subsequently filed on his behalf. The application is dated 6th December, 2021 and filed same date at the Court's Registry. The application is supported by a four (4) paragraphs affidavit and a written address in which one issue was raised as arising for the determination of the court to wit:

Whether this Honourable court is clothed with that power to exercise its discretion in favour of the Applicant taking into consideration the charge, the proof of evidence and period of time he has spent in detention without trial?

Submissions were made on settled principles governing grant of bail which forms part of the Record of Court to the effect that on the materials, 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 did not file a counter-affidavit and did not oppose the bail application. She however submitted that **she is not opposing the application for bail on the premise that the nominal Complainant appeared not interested in the matter**. She however urged the court to exercise its discretion in the grant or refusal of the bail bearing in mind the heinous nature of the offences, its prevalence and the severity of the punishment against the Defendant.

I have carefully read the processes of the Applicant and the oral submissions in amplification and it seems to me as captured by counsel to the Applicant 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.

Now in law, the principles governing the grant of or refusal of an application for bail are now fairly well settled. Counsel to the Applicant has copiously referred me to judicial authorities on the point. Indeed the judicial authorities are legion on the point. However from an 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:

1. **The nature of the charge.**
2. **The strength of the evidence put up in support of the charge.**
3. **The severity of the punishment on the event of conviction.**
4. **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.**
5. **The likelihood of the repetition of the offence.**
6. **Whether there is a real danger that he will abscond and thereby not surrender himself for trial**

7. The risk that if released, the suspect may interfere with witnesses or suppress the evidence which may be adduced to incriminate him.

See **Omodara v. State (2004) 1 N.W.L.R (pt 853) 81 at 93; Chinemele v. C.O.P (1995) 4 N.W.L.R (pt 390) 467; Danbaba v State (2000) 14 N.W.L.R (pt 687) 396; Olatunji &Anor. V Federal Republic of Nigeria (2003) 3 N.W.L.R (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 question of bail in a particular case. See **Bamayi vs. State (supra) 484**.

Now it is not in dispute that the offences of unlawful sexual intercourse and abuse of a child against the Defendant/Applicant before this court are grave and serious in nature. There is equally no doubt that the punishment for the substantive offence of the offence of Rape is severe, as on conviction, the punishment is imprisonment for life vide **Section 31 of the Child Rights Act, 2013**. The second count of sexual abuse or molestation carries a punishment of 14 years on conviction pursuant to **Section 32** of the same **Act.**

The very basis or pivot on which the extant application is predicated from the affidavit in support is that of the alleged unreasonable time it is taking for the prosecution to call its witnesses since the taking of the plea of defendant vide Paragraphs 3 a-e of the affidavit in support as follows:

"**3. That I was informed by Z.O. Umar Esq. the counsel handling this case upon his return from the Federal prison, Kuje, on 15th day of November, 2021 at about noon of the following facts which I believe same to be true as follows:**

a. That the Defendant/Applicant was arrested and have been in custody since July 2020 on the allegation of having unlawful carnal knowledge of one Miss. Wusuna Abdullahi.

b. That since the plea of the Defendant was taken in the month of February 2021, nothing has been done by the Prosecution nor a single witness taken in the case to substantiate the allegation.

c. That the case was subsequently adjourned to the month of May 2021 for definite hearing but since then up till today the prosecution have deliberately refused to pick a date for hearing the case.

d. That he at a point in time had to mobilize court staff to serve hearing notice on the Prosecution which ordinarily should have been the other way round.

e. That since the transfer of this Honourable Court from Gwagwalada to Jabi, the Prosecution has not made any effort towards picking a date or prosecuting this case."

The Complainant however did not file any counter-affidavit challenging these averments or paragraphs and they are deemed in law admitted. By the failure of the Respondent to file a counter-affidavit, they appear to have agreed or conceded that they contributed to the delay in the prosecution of the case.

Now the principle is settled that the failure to file a counter-affidavit does not translate or mean that bail will be granted as matter of course. There is absolutely no question that bail can only granted in deserving circumstances and obviously within parameters as allowed by law. See generally **Sections 161** and **162 of ACJA**.

In this case, in addition to the absence of a counter-affidavit, I have factored the fact that the prosecution is not **opposed** to the grant of the application and most importantly Counsel to the complainant submitted that the reason for their not opposing the application is based on the clear fact that the norminal complainant is not interested in the case and that they are having difficulties in getting material witnesses to prosecute the case. If that is the position, the dynamics with respect to early disposition of this case now changes and it does not appear to me fair to keep the defendant in prison in such a very fluid and uncertain situation. The point to underscore is that the defendant enjoys the constitutional presumption of innocence until the contrary is proved at trial and this trial must be conducted within a reasonable time. If the norminal complainant is not interested in the case, it begs the question why the charge was filed and how his innocence or guilt will be

determined. The defendant cannot be made to suffer in prison in such circumstance notwithstanding the offences he is charged with are serious in an atmosphere of complete lack of interest by the norminal complainant in the case.

On the whole, the disposition of the norminal complainant tilts the balance in favour of granting bail.

The Defendant is hereby granted bail in the following terms:

1. **The Defendant is hereby admitted to bail in the sum of #5,000,000 (Five Million Naira Only) with one surety in the like sum.**

2. **The surety shall be a civil/public servant not below Grade Level 10 within jurisdiction.**

3. **The surety shall provide verifiable means of identification as a civil servant; place of abode and shall also depose to an affidavit of means.**

4. **The matter is adjourned to 7th March, 2022 for hearing.**

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Hon. Justice A.I. Kutigi

<u>Appearances</u>:

1. **B. A. Jankat Esq, for the Complainant/Respondent.**

2. **Umar Esq., for the Defendant/Applicant.**