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/07/2020
MOTION NO. M/6094/21

BETWEEN:

COMMISSIONER OF POLICE..... COMPLAINANT

AND

KINGSLEY ILODUBA.....DEFENDANT

RULING

The Defendant/Applicant was arraigned on a two (2) Counts charge contrary to the provisions of **Sections 1(1)(a) & (c) of the Violence Against Persons (Prohibition) Act, 2015 and Section 272 0f the Penal Code Act, Laws of the Federation of Nigeria, 2004.**

The Defendant pleaded not guilty to the two counts on the 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 filed a 5 paragraphs Counter-Affidavit and a written address in which they equally raised one issue as arising for determination to wit:

Whether from the circumstances of this case, the Defendant is entitled to bail after his arraignment

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 and in view of the heinous nature of the offences, its prevalence and severity of the punishment that bail should not be granted.

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 the 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.

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 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 1 (1)(a) & (c) of the Violence Against Persons (Prohibition) Act, 2015 and punishable under Section 1(2) 0f the same Act**. The second count of abduction carries a punishment of 10 years on conviction pursuant to **Section 273 (2)** of the Penal Code **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. Paragraphs 3 a-e are relevant 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. Sharon Aimola.

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 countered the above narrative contending that they have always been ready to prosecute the action but that the strike embarked on by the Judicial officers after arraignment of defendant which led to the closure of courts and the subsequent movement of the court from Gwagwalada Judicial Division to Jabi Judicial Division which they were not aware of impacted on the timeous prosecution of the case. They also contended that in view of proof of evidence where defendant stated that he is a serial rapist and the alarming prevalence of the

offence that it will pose great danger to the society to grant bail to the defendant. **Paragraphs 3 (a) – (i)** of the Counter-Affidavit are relevant as follows:

"3. That I was informed by Insp. Cosmas Onyebuchi of FCT Police Command and my Principal Partner, Maryam H. Aliyu Esq., counsel to the Complainant/Respondent at the conference room of our office on the 9th day of December, 2021 at about 2pm of the following facts which I verily believe to be true:

a. That the Complainant/Respondent transverse paragraph 3 (b) and (c) of the Applicant's affidavit and further avers that the court strike halted the entire case making it impossible for the Respondent to pick a date for hearing. Eventually, when a date was picked in May 2021, the prosecution was in court but was unable to provide its witness because the IPO was out of jurisdiction on official duty.

b. That the Complainant/Respondent transverse paragraph 3 (e) of the Applicant's affidavit and further avers that my principal had on several occasions made efforts after the strike was called off to pick a date for hearing of the case but it was not possible. The prosecution further avers that it was not within their knowledge that the matter had been transferred from Gwagwalada to Jabi, they were perplex when they received the hearing ntice carrying FCT High Court Jabi.

c. That the defendant is of sound mind and body as the detention has not affected his physical of (sic) emotional health as alleged in paragraphs 3(f).

d. That granting the defendant bail will be prejudicial to the prosecution case as he is of flight risk.

e. That in one of the defendant's statement written to the police he admitted that this was not the first rape case he has been involved in.

f. That in view of the medical report carried out on the Applicant, he will be a danger to be let loose in the society, putting the tendency of the reoccurrence of the offence by the Applicant into consideration.

g. That the prosecution is always ready and willing to go on with the case.

h. That the offences the Defendant/Applicant is charged with is that which is prevalent in the society.

i. That if granted bail, the Defendant/Applicant might jump bail or not even surrender himself for trial having known the gravity of the offence and punishment if convicted. "

There is no doubt or question on the powers of the court to grant bail in deserving circumstances and obviously within parameters as allowed by law. See generally **Sections 161** and **162 of ACJA**.

Indeed under **Section 162**, notwithstanding that the Applicant is standing trial for the serious offences of alleged Rape and abduction of a child 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, the facts and peculiar circumstances of each case shall determine whether or not an accused person shall be granted bail pending trial. See **Abacha Vs Hamza AI Mustapha & 2 ors. (2002) 11 NWLR (pt. 779)437 and Shagari Vs COP (2007)5 NWLR (PT. 1027) 275**.

In this case, as already highlighted the narrow point on which the application is to be decided falls within the purview of **Section 161 (2)b** with respect to whether the facts presented as to why the case has not been heard constitutes exceptional circumstances to warrant the grant of bail. With respect to the present circumstances, **Section 162 (2)b** provides thus:

"(2) for the purpose of exercise of discretion in subsection (1) of Section, "exceptional circumstances" includes:

"(b) Extraordinary delay in the investigation, arraignment and prosecution for a period exceeding one year;…"

Applying the above provision to this case, there is no dispute the defendant was arraigned on 4th February, 2021 when he took his plea and this in the court opinion suggests that investigations have been concluded. The matter was then adjourned for trial on 25th March, 2021. Unfortunately as rightly stated by the prosecution, trial could not proceed due to the nationwide strike by Judicial Staff which led to a nationwide lockdown of courts and this lasted for some months.

On the Record and after the strike ended, the matter came up on 6th July, 2021. Both the prosecution and the defence were represented but the defendant was not produced and this stalled proceedings. The matter was then adjourned to 29th July, 2021 which coincided with the period this court was transferred from Gwagwalada Judicial Division to Jabi and the court's annual vacation. The matter then came up on 9th December, 2021 and on 14th February, 2021 when the bail application was heard and ruling delivered same day and the matter was adjourned to 7th March, 2022 for hearing.

I have addressed at some length above the delay in the prosecution of this case and it is clear the delay was caused substantially by events outside the control of complainant. For example, the strike by JUSUN which shut down all courts; the change in judicial divisions and the court's annual vacation cannot be blamed on complainant.

The bottom line here is that there is no extraordinary delay in the prosecution of the case for a period exceeding one year. The fundamental basis on which the bail application is anchored is therefore fatally compromised.

Let me however further add that in considering whether or not to exercise its discretion in favour of granting bail or not, it is critical to underscore the clear points that for the court, apart from considering the affidavit in support and the nature of the offence(s), the court should also examine the nature and proof of evidence filed by the prosecution in order to determine the strength of the link and the severity of the punishment which conviction will entail. See **Bamaiyi V State**

(2001) FWLR (pt.46) 956 S.C; Musa V C.O.P (2004) 9 NWLR (pt.879) 483. See also **Abacha V Hamza Al-Mustapha & ors (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 strength of the proof of evidence, particularly the statements recorded by the victim, the witnesses listed by the prosecution and the defendant which cannot be ignored particularly the case made out with respect to the violation of the dignity of the victim. Now while I agree that the defendant 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 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.

On the materials supplied, I really have grave doubts on the provision of reasonable sureties particularly in view of the serious nature of the offence, the strength of the proof of evidence and the alarming prevalence of these offences in our clime.

On a calm view of the facts, I take the considered view particularly taking into account the prevalent nature of the offences, the severity of the punishment and as already alluded the absence of reasonable sureties and more importantly the character and strength of available evidence as contained in the proof of evidence, that it will be unsafe in the circumstances to admit the defendant/applicant to bail.

It is also not enough considering the peculiar circumstances and the nature of the charge against the defendant/applicant, as deposed on his behalf that he shall not jump bail; he shall not interfere with investigations of this case or that he shall not commit any offence if released on bail etc. His availability to stand trial is one seriously in question and this tips the balance in favour of refusing bail.

The court shall however in the interest of justice order for an **accelerated hearing**. Counsel on both sides of the aisle must therefore all act post-haste and ensure that this matter is determined in very good time and with the minimum of delay.

In summation, I have not been put in a commanding height with sufficient material facts to warrant the grant of this application. As such, I find no merit in the application of the defendant/applicant and same shall be and is hereby accordingly refused and dismissed. The defendant/applicant shall remain in custody at the Kuje Prisons for the duration of the trial of the charge preferred against him before this court.

For the avoidance of any doubt, I hereby order for **accelerated hearing** in this case.

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Hon. Justice A.I. Kutigi

Appearances:

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

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