IN THE APPELATE DIVISION OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
HOLDEN AT JABI, ABUJA

BEFORE THEIR LORDSHIPS:

1. **HON. JUSTICE ABUBAKAR IDRIS KUTIGI – PRESIDING JUDGE**
2. **HON. JUSTICE JUDE O. ONWUEGBUZIE -- JUDGE**

THIS THURSDAY, THE 21ST DAY OF OCTOBER, 2021

APPEAL NO: FCT/HC/CRA/22/21
SUIT NO: CR/01/2021
MOTION NO:M/218/2021

BETWEEN:

MOHAMMED NURA ABUBAKAR.....APPELLANT/APPLICANT

AND

INSPECTOR GENERAL OF POLICE.....RESPONDENT/RESPONDENT

RULING

By a motion on notice dated 27th September, 2021 and filed same date at the Court's Registry, the Appellant/Applicant prays for the following reliefs:

1. **An order admitting the Applicant/Appellant to bail in the most liberal term(s) pending the hearing and determination of his appeal.**

2. **And such further order or orders as this Honourable Court may deem fit to make in the circumstances.**

The grounds upon which the application is brought are as follows:

i. **The conviction of the Appellant/Applicant is Manifestly contestable in that the Appellant was not afforded fair hearing at the trial court.**

ii. **The conviction of the Appellant was actuated by inducement.**
iii. **The conviction of the appellant is unreasonable and cannot be supported having regard to the evidence and record of proceedings.**
iv. **There was manifest miscarriage of justice.**
v. **The Trial Magistrate lacked the jurisdiction to entertain the FIR as constituted.**
vi. **The Appellant/Applicant's health has deteriorated since his detention and his health has continued to deteriorate being a hypertensive patient and to refuse the application will jeopardize the appellant's health.**
vii. **The Appellant/Applicant is a first-time offender.**
viii. **The Appellant may have served the sentence before his appeal is heard.**

The application is supported by a 28 paragraphs affidavit; a 10 paragraphs affidavit of urgency and a written address. In the address, one issue was raised as arising for determination to wit:

Whether or not this Honourable Court has the discretionary power to admit the Appellant/Applicant to bail the address then dealt with the very well settled principles governing grant of a post judgment bail application and it was contended that on the facts supplied by Applicant, he has met all necessary legal requirement to allow the court grant the bail application in favour of Applicant.

The Respondent was duly served with the motion on notice on 28th September, 2021 together with hearing notice and when the matter came up on 29th September, 2021, we considered that the application was not ripe for hearing and adjourned the application for hearing on 11th October, 2021 and ordered that hearing notice be served on Respondent.

By proof of service filed by the bailiff of court, the Respondent was served hearing notice on 29th September, 2021. The Respondent did not however appear in court or file any counter-affidavit in opposition to the application.

At the hearing, counsel to the Appellant/Applicant relied on the unchallenged affidavit in support of the application and adopted the submissions contained in the written address in urging the court to grant the application.

We have here carefully considered the processes and submissions made by counsel to the Applicant. The narrow issue which calls for the most circumspect of considerations relates to the grant of a post conviction bail application.

We have earlier stated that the Respondent did not file any counter-affidavit so the facts in the Applicant's affidavit should be taken as true since it is unchallenged. See **Nwosu V. Imo State Environmental Sanitation Authority (1990)2 N.W.L.R (pt.135)688 at 721 at 735.** We are however quick to add that although this is the general rule, it is equally true to say that the court is not in all circumstances bound to accept as true, evidence that is uncontradicted where such evidence is wilfully or corruptly false, incredible, improbable or sharply falls below the standard expected in a particular case. **See NEKA BBB Manufacturing Co. Ltd V. ACB Ltd (2004)2 N.W.L.R (pt.858)521 at 550, 551.**

We have duly considered the unchallenged affidavit filed on behalf of the Applicant vis-a-vis the principles governing the grant of applications of this nature. We must quickly at the onset underscore the point that there is a distinction between bail pending trial and bail pending appeal. Indeed the circumstances for bail vary in both situations. This is largely due to the fact that before conviction, there is a presumption of innocence. After conviction, the convict, save under exceptional circumstances has no right of bail. The grant of bail post-conviction while also discretionary is not granted as a matter of course or on whimsical or no ground at all. Indeed bail after conviction is viewed with extreme seriousness and unless the Applicant has satisfied the court that there are special and exceptional circumstances why it should be granted, the court does not grant it as a matter of course. And although each case must be treated according to its facts and circumstances, it is the denotation of special circumstances that informs and guides the exercise of the discretion of court. See **Obi V. State (supra)**

There are however now fairly settled principles by the superior courts streamlining principles that should guide the grant of a post-conviction bail, these include:

1. **That the Applicant has in fact lodged an appeal to the Court of Appeal which is pending.**

2. **The applicant has complied with the conditions of appeal imposed and this will show the seriousness of his application.**

3. **If the Applicant was granted bail during the trial, he has not attempted or tried to jump bail.**

4. **That the admission of an appellant to bail pending the determination of his appeal is at the discretion of the court.**

5. **That bail will not be granted pending an appeal save in exceptional circumstances or where the hearing of the appeal is likely to be unduly delayed.**

6. **That in dealing with the latter class of case, the court will have regard not only to the length of time that will elapse before the appeal can be heard but also the length of time of the sentence to be appealed from and that these two matters will be considered in relation to one another and;**

7. **In the absence of special circumstances, bail will not be allowed unless a refusal will have the result of a considerable proportion of the sentence being served before the appeal can be heard.**

See **Caleb Ojo V. FRN (2006) 9 NWLR (pt.984)103 at 116-117D-C.** See also **State V. Jamal (1996)9 N.W.L.R (pt.473)384 at 39-400 and Enebeli V. Chief of Naval Staff (2000)9 N.W.L.R (pt.671)119 at 126 paras C-E.**

The issue to address is whether the extant case or application falls within any of the acceptable criteria for the grant of the post conviction bail.

In addressing this issue, let us give a brief background facts of the matter as it would give us both factual and legal template in addressing the issues raised by this application.

From the records of proceedings vide **Exhibit B,** the Applicant was arraigned on 24th August, 2021 for the offence of concealing stolen property contrary to **Section 319 of the Penal Code.** See the **FIR** vide **Exhibit A.**

The record shows that he was not represented by Counsel, does not understand English but Hausa and an interpreter was provided and that he admitted to the offence and was convicted and sentenced on the same day to two years imprisonment.

The Applicant dissatisfied with the decision filed an appeal against the judgment vide Notice of Appeal attached as **Exhibit D.**

From the file/Records of court which this court is at liberty to peruse, the Record of proceedings have already been compiled and transmitted for the purposes of the Appeal. See **Famudoh V. Aboro (1991)9 N.W.L.R (pt.214)210 at 229 Para E; Onagoruwa V. Adeniji (1993)5 N.W.L.R (pt.293)317 at 331 G-H.**

This court is accordingly now fully clothed with jurisdiction to entertain the extant application following the transmission of the records and entering of the appeal notwithstanding that there is no indication that a similar application was first filed at the lower court.

Now flowing from the affidavit in support, the application is anchored on essentially 4 grounds:

1. Ill health of the Applicant

2. That the conviction is contestable and cannot be supported in that the Appellant was not given a fair hearing.

3. The Trial Magistrate lacked the jurisdiction to entertain the FIR.

4. That the Appellant may have served the sentence before his appeal is heard.

We have here considered the facts related to the alleged serious ill-health of the Applicant. The case made out vide paragraphs 3xvi, xvii and xviii is that the Applicant is hypertensive; which was worsened since he was arrested in April, 2021and also that he suffers from severe diarrhea. The Respondent may have not

filed a counter affidavit but beyond the bare assertions, nothing concrete was put forward by Applicant, for example, a 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 serving his imprisonment.

We 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.

The bare and empty assertions that the Applicant is hypertensive and suffers from serious diarrhea and that the correctional facility is not adequately equipped will therefore not suffice in the circumstances.

We note that in the affidavit, it was averred that attempts were made to get a medical report from the correctional centre without success but there is nothing in the affidavit to situate how these attempts were made. There is nothing attached showing that any letter was written for example and the response received. If these were done, it will enhance the credibility of the narrative made.

Now with respect to the complaints made in the Notice of appeal, we have looked at the grounds and we note that serious and arguable issues were indeed raised by the Applicant bothering on the jurisdiction of the court to entertain the action and the fairness and justice of the conviction and sentence. On the authorities, where an appeal raises important points of law is a special or exceptional circumstance to grant post conviction bail. See **Obi V. The State (1992)8 N.W.L.R (pt.257)76.**

Furthermore in law, if there is a real doubt at the correctness of the conviction on point of law, it constitutes a special circumstances for which bail should be granted to applicant pending the determination of the Appeal. In **Fawehinmi V. The State (1990)1 N.W.L.R 486 at 498, Awogu J.C.A** stated thus:

"Where a sentence is manifestly contestable as to whether or not it is a sentence known to law, it constitutes a special circumstances for which bail

should be granted to an applicant pending the determination of the issue on appeal."

Furthermore and as earlier alluded to, apart from the filing of the Notice of Appeal, the Records made up of the proceedings and relevant documents relating to the case have already similarly been compiled and transmitted to this court all in good time and within the time frame allowed by the applicable rules which serves as a strong indicator that the Applicant is serious in pursuing his appeal with diligence. The extant application for bail is therefore not a time buying mechanism or tool. The immediate and quick compilation and transmission of the records inures in favour of the Applicant.

Similarly, it is equally noted that on the materials supplied, the convict is a family man, a bread winner with a young family of a wife and four children and aged parents who all depend on him. He is equally a first offender with no criminal history or record of bad behaviour of any kind. See **Buwai V. State (2004)AII FWLR (pt.227)540.** We presume that the Applicant will continue to maintain this good stance in respect of any bail terms this court may decide to impose as he awaits the determination of his appeal.

Again, one of the principal grounds for this application is the contention that the appeal may be delayed and the real possibility of the Applicant serving a substantial part of his sentence. As stated earlier, the convict was sentenced to two years imprisonment. The convict has however been in detention since April 2021. It is to be noted that the computation of one year is much less on the prison calendar. It cannot be denied that despite creative measures being taken to reduce case load, that our courts apart from the numerous cases they treat on a daily basis are equally inundated with a backlog of appeals all deserving attention. The issue of congestion of pending cases and appeals are matters of common knowledge in this jurisdiction. See **Caleb Ojo V. FRN (supra).**

The case made out that the convict may have served a considerable proportion of the sentence before the appeal is heard and disposed off finally has merit taking cognizance of the unfortunate peculiarities of the situation. Record of Appeal may have been complied, but Briefs of Argument on both sides are yet to be filed. These processes have to be filed before we talk of hearing and a final determination. All these may take some considerable time. A review of the

authorities show that such a situation amounts to exceptional and unusual circumstances to allow for grant of a post-conviction bail. See **R.V. Tunwashe (1935)2 WACA 236, Muri V. I.G.P (1957) N.R.N.L.R.S;** See **State V. Jaminal (1996)9 N.W.L.R (pt.473)384; Ligali V. Queen (1959) SCNLR 14; Emebele V. Chief of Naval Staff (2000)9 N.W.L.R (pt.671)119.**

As we round up on this point, we find it apposite to refer to the illuminating pronouncement of the cerebral jurist Hon. Justice Ibrahim Tanko Muhammed J.C.A (as he then was) in **Caleb Ojo V. FRN (supra)103** as follows:

"…it is not unusual to find supervening circumstances which will delay the hearing of the appeal to its logical conclusion. If an appeal on a no case submission could take two years before final determination, I do not think it should surprise anyone if an appeal which is decided on its full merit takes the same or even longer period before its final determination. I think it is known to all concerned on this appeal that the machinery of justice is not propelled by a single person or institution and none can claim perfection. There must be allowance to accommodate failures. The failure of one of the persons involved on the whole process will adversely affect the remaining persons or institutions."

We have here carefully considered this ground on the possibility of the applicant serving the entire sentence before his appeal is heard. If the application is refused, it is really difficult to say when the appeal will be heard and the possibility that he would have served a considerable proportion of his sentence before the appeal can be determined is for us real. We are therefore inclined to admit the applicant to bail pending the determination of the appeal. See also **Madike V. the State (1992)8 N.W.L.R (pt.257)85**

We are of the view that the facts addressed above are potent enough and enures in favour of Applicant to provide for exceptional circumstances to warrant the grant of this application. As stated at the beginning, the Respondent did not oppose or challenge the extant application. Accordingly, we grant the application. The Applicant is admitted to bail on the following terms:

1. **The sum of ₦500,000 (Five Hundred Thousand Naira) with one surety in the like sum.**

2. **The surety must be resident within the FCT and swear to an affidavit of means and provide verifiable evidence of his residence in the F.C.T**

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Hon. Justice A.I. Kutigi	***Hon. Justice J.O. Onwuegbuzie***
(Presiding Judge)	***(Hon. Judge)***

Appearances:

1. ***M. Abdullahi, Esq., with Gerald Ajoku, Esq., and F.S. Goyin Esq., for the Appellant/Applicant.***