

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE .Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 14
CASE NUMBER : SUIT NO. CR/795/2020
DATE: : WEDNESDAY 15TH DECEMBER, 2021

BETWEEN

COMMISSIONER OF POLICE

**} COMPLAINANT
/RESPONDENT**

AND

EX – SGT AKOLO SABO DEFENDANT

} APPLICANT

RULING

The Applicant approached this Honourable Court for the following:-

1. An Order of this Honourable Court admitting the Applicant to bail pending trial on such favourable and liberal terms as this Honourable Court may deem fit to make in the circumstances of this case.
2. And for such further Order(s) that this Honourable Court may deem fit to make in the circumstances.

In support of the application, isa 12 Paragraph affidavit duly deposed to by the Applicant's wife.

It is her deposition that he has never been tried or convicted by any court or any tribunals for any criminal offence.

That he will not, if granted bail in any criminal conduct whatsoever.

That he will not jump bail, escape from justice, interfere with the course of justice, witnesses or investigation if granted bail.

That he had all along cooperated with investigation in the course of its investigation and will continue to do the same till conclusion of his trial before the court.

In compliance with the law, a written address was filed wherein learned counsel for Applicant formulated a sole issue for determination to wit;

Whether in the circumstances of this case and in the interest of justice, the Applicant is entitled to an Order of this Honourable Court admitting him to bail pending trial.

Learned counsel cited section 36(b) of the constitution of the Federal Republic of Nigeria and the cases of ***ADAMS VS ATTORNEY GENERAL OF THE FEDERATION (2007) AFWLR (Pt. 355) PAGE 429 at 445 AND ANAEKWE VS COMMISSIONER OF POLICE (1996)3 NWLR 12(Pt. 436) 332.***

Court was urged to grant the application.

On his part, learned Prosecution counsel who objected to the application for the bail of Defendant did not file any counter affidavit but maintained that

Defendant is standing trial for a capital offence and may never appear in court to stand trial.

In response, learned counsel for the Defendant maintained that law does not act in a vacuum, but on facts and that since there is no counter affidavit stating those facts, the court should discountenance such submission.

I have gone through the application under consideration which seeks the court's discretion in granting the Accused/Applicant bail pending the determination of the substantive case.

I must state here that by virtue of section 35(4) and 36(5) of the 1999 Constitution of Federal Republic of Nigeria(as amended), an accused person is entitled to his unfettered liberty and is presumed innocent until proven guilty. The onus however is on

the prosecution to prove that a Defendant charged before a court of law is not entitled to be granted Bail.

The presumption of innocence and the right to liberty as enshrined in section 36 (5) and 35 (4) respectively of the constitution can only be invoked where there is no prima facie evidence against the accused. It would be foolhardy to allow the accused on bail because the constitution could not have envisaged a situation where accused person of every shade could be allowed bail just at the mention of the magic words of presumption of innocence.

ALAYA VS STATE (2007) 16 NWLR (Pt. 1061) 483 at 505 paragraph D – F.

The main function of bail is to ensure the presence of the accused at the trial. So if there is any reason to

believe that the accused is likely to jump bail, the bail will properly be refused by the court in exercise of its discretion in dealing with the application. ***SULEMAN VS COP (2008) 8 NWLR (Pt. 1089) 298.***

The offence that the Defendant is charged with is a non-capital defence. The provision of the law makes it clear that bail is not automatic. The court may release an Accused/Applicant on bail upon some conditions stipulated under the law and some that have received judicial pronouncements. Thus in considering whether to grant or refuse bail to an accused person, the court is guided by the following factors:-

- i. Nature of the charge

- ii. The severity of the punishment in the event of conviction.
- iii. The strength of the evidence by which the charge is supported.
- iv. The criminal record of the accused, if any.
- v. The likelihood of the repetition of the offence.
- vi. The probability that the accused may not surrender himself for trial, thus not bringing himself to justice.
- vii. The risk that if released, the accused may interfere with witness or supposed the evidence likely to incriminate him and
- viii. The necessity to procure medical treatment of social report. ***OHIZE VS C O P (2014) LPELR 23012 (CA).***

From the averment contained in paragraph 7 of affidavit dwelling on the health failure of Defendant.. Defendant shall be available for trial under paragraphs 12 (a)(b)(c) and (d) of the affidavit and would not jump bail, and that he has no record of criminal investigation and shall produce credible sureties once granted bail.

As stated in the preceeding part of this ruling, attendance of court to face trial remain the reason and only reason courts usually refuse Bail.

Once an accused person's presence in court can be secured, court usually would not be hesitant in granting bail. See *COP. VS SULEIMAN*.

Above underscores the fact that bail is contractual in nature between the court and the accused person.

The aforementioned paragraphs of affidavits in support of the application which were not controverted, remain good reason why the instant application should be granted.

Accordingly, bail is hereby granted Applicant on the following terms and conditions:-

1. Applicant shall provide two sureties who must be residents of FCT with established means of livelihood.
2. Sureties shall post bond of N1 Million and write undertaking to produce the accused person in court throughout the hearing and determination of his case.

Justice Y. Halilu

*Hon. Judge
15th December, 2021*

APPEARANCES

Defendant in Court.

G.A Adeosun, Esq. holding the brief of John Ijagbemi, Esq. – for the Prosecution.

F.K Khamagam, Esq. – for the Defendant who is in court.