IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON THURSDAY, THE 28TH DAY OF OCTOBER, 2021
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

CHARGE NO: FCT/HC/CR/116/2021
MOTION NO.: M/5824/2021

BETWEEN:

COMMISSIONER OF POLICE **COMPLAINANT**

AND

AYOMIDE SUNDAY **DEFENDANT**

RULING

This Ruling is in respect of an application for bail brought by the Defendant.

The Defendant/Applicant is standing trial in this Honourable Court for the offence of unlawful sexual intercourse with one Joy Austine Okim aged three contrary to the provisions of section 31(1)(2) of the Child's Rights Act, 2003.

Upon the arraignment of the Defendant/Applicant on the 15th of July, 2021, when the charge was read and explained to him, he understood the charge but denied the allegation contained therein. Subsequently, Counsel for the Defendant/Applicant orally applied for the bail of the Defendant/Applicant while the Counsel for the Complainant/Respondent

orally responded on points of law. As a superior Court of record, this Honourable Court directed the respective Counsel to come formally before the Court. The result is the motion on notice with Motion Number M/5824/2021 praying this Honourable Court for a particular relief, namely, "*An order of this Honourable Court admitting the Defendant/Applicant on bail, pending the hearing and determination of this case*"; and an omnibus relief.

The application was supported by a 7-paragraph affidavit deposed to by one Deborah Toluwalashe Ayomide, the mother of the Defendant/Applicant and a written address which the learned Counsel adopted as his oral submission in support of the application.

In the affidavit, the deponent swore that the Defendant/Applicant was accused falsely of defiling a three-year old girl subsequent upon which he was originally arraigned before the Honourable Justice Peter Kekemeke before the charge was struck out for want of diligent prosecution. She averred that the offence for which the Defendant/Applicant was charged was bailable and that since the presumption of innocence inured in favour of the Defendant/Applicant, the Court should admit the Defendant/Applicant to bail.

In the written address, learned Counsel for the Defendant/Applicant, without formulating any issue for determination, submitted that by virtue of

section 36(5) of the Constitution of the Federal Republic of Nigeria 1999, every person charged with a criminal offence was presumed innocent until they were proved guilty. To this end, therefore, he contended that the grant of bail to the Defendant/Applicant would be a recognition of his constitutionally guaranteed right to presumption of innocence. He cited the cases of ***Abdul Gafar v. The State (2008) SWRL 139 Ratio 1, 2 and 3; Musa v. COP (2004) 9 NWLR (Pt. 879) 483 at 506 and 490 Ratio 7; Johnson Odo v. COP (2004) 27 WNR 133 at 152, particularly 137 Ratio 5***.

Learned Counsel referred this Court to the provisions of section 162 of the Administration of Criminal Justice Act, 2015 where the requirements for the grant of bail were enumerated and section 35(4) (b) of the Constitution of the Federal Republic of Nigeria 1999 which provides for the bail of any person charged with a criminal offence. He therefore urged this Court to admit the Defendant/Applicant to bail.

In its response to the bail application, the Prosecution through its Counsel, Okokon Udo Esq. opposed the application for bail in his oral reply on points of law. He cited the case of ***Chinemelu v. Cop (1995) 4 NWLR (Pt. 390) 467 at 486 – 487; Ali v. The State (2012) 10 NWLR (Pt. 1309) 587; Olatunji v. FRN (2011) 12 NWLR (Pt. 807) 406***. According to him, the fact that the Prosecution did not file a counter-affidavit to the bail

application was not a cogent ground for the grant of the bail application. He enumerated the guidelines which the Supreme Court advised should be considered by the Courts before granting or refusing to grant bail. He urged the Court to refuse the application for bail as the offence for which the Defendant/Applicant was standing trial was a serious offence.

The arguments on the bail application were taken on the 12th of October, 2021 and thereafter the Court adjourned for ruling. Having listened to the arguments of Counsel on this subject, I believe the Court can safely consider this issue: "***Whether the Defendant has not satisfied the legal conditions for him to be entitled to bail***?"

I must state, by way of prefatory remarks, that bail is one of the subjects that come within the discretionary powers of the Court. And, being a matter within the Court's discretion, the court is enjoined to exercise same judicially and judiciously in such a manner that the exercise of the discretionary powers accord with good sense, reason and judgment. See ***Obi v. State (1992) 8 NWLR (Pt. 257) 76 at 81*** per Kolawole, JCA; ***Unogu v. State (2000) 11 NWLR (Pt. 677) 196 at 202*** per Nsofor, JCA; ***Danbaba v. The State (2000) 14 NWLR (Pt. 687) 396 at 405*** per Galadima JCA (as he then was). Such exercise of discretionary powers must have in view the gravity of the offence for which the Defendant is standing trial. It must also be consistent with the facts disclosed in the

affidavit in support of the application. See ***State v. Akaa (2002) 10 NWLR (Pt. 744) 157 at 171*** per Mukhtar, JCA (as he then was); ***Bamaiyi v. The State (2001) 8 NWLR (Pt. 698) 270 at 294*** per Ogwuegbu JSC; ***Jammel v. State (1996) 9 NWLR (Pt. 472) 352 at 366*** per Orah, JCA.

This position has been given statutory flavor by virtue of sections 158 to 174 of the Administration of Criminal Justice Act, 2015. Specifically, and with particular reference to the instant case and the bail application brought by the Defendant/Applicant charged herein, section 162 and 163 provide that:

Section 162:

> ***"A defendant charged with an offence punishable with imprisonment for a term exceeding three years shall, on application to the court, be released on bail except in any of the following circumstances:***
>
> ***(a) Where there is reasonable ground to believe that the defendant will, where released on bail, commit another offence;***
>
> ***(b) Attempt to evade his trial;***
>
> ***(c) Attempt to influence, interfere with, intimidate witnesses, and or interfere in the investigation of the case;***

(d) Attempt to conceal or destroy evidence

(e) Prejudice the proper investigation of the offence; or

(f) Undermine or jeopardise the objectives or the purpose or the functioning of the criminal justice administration, including the bail system."

Section 163:

"In any other circumstance other than those referred to in sections 161 and 162 of this Act, the defendant shall be entitled to bail, unless the court sees reasons to the contrary."

In ***Dokubo-Asari v. FRN (2007) 12 NWLR (Pt. 1048) 320***, the Supreme Court per Muhammad JSC (as he then was) laid down the guidelines which the courts must consider in determining whether an applicant for bail is deserving of the Court's grace in that regard. At pages 343 – 344, paras B – A of the law report, he said:

"When it comes to the issue of whether to grant or refuse bail pending trial of an accused by the trial court, the law has set out some criteria which the trial court is to consider in the exercise of its judicial discretion to arrive at a decision. Such criteria include, among others, the following:

a. The nature of the charge;

b. *The strength of the evidence which supports the charge;*
c. *The gravity of the punishment in the event of conviction;*
d. *The previous criminal record of the accused if any;*
e. *The probability that the accused may not surrender himself for trial;*
f. *The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;*
g. *The likelihood of further charge being brought against the accused;*
h. *Detention for the protection of the accused;*
i. *The probability of guilt;*
j. *The necessity to procure medical or social report pending final disposal of the case.*

These criteria are not exhaustive. Other factors not mentioned may be relevant to the determination of grant or refusal of bail to an accused. They provide the required guidelines to a trial court in the exercise of its discretion on matters of bail pending trial. Some of them may not be admissible as evidence in the main trial but they are certainly

worthy to be taken into account in an application for bail pending trial."

In the instant case, the Defendant is standing trial for the offence of unlawful sexual intercourse with a child of three years contrary to the provisions of section 31(1) and (2) of the Child's Rights Act, 2003. Section 31(2) provides that "***A person who contravenes the provision of subsection (1) of this section commits an offence of rape and is liable on conviction to life imprisonment***."

Apart from the fact that the offence is one punishable with life imprisonment, I must state that the offence of rape, especially of minors, is becoming prevalent and there is the need to contain same. Though the presumption of innocence operates in favour of the Defendant/Applicant, the Court must weigh the nature of the offence, its seriousness and adverse effects on the society on the one hand against the safety of the Defendant/Applicant himself if he is released into the same society at this point that the presumption of innocence which inures in his favour has not been established by the Court through a definite pronouncement of acquittal and discharge which is the language the ordinary man understands on the other hand. These are some of the factors the Court must consider pursuant to its discretionary powers provided for under section 163 of the Administration of Criminal Justice Act, 2015 and the

Supreme Court dictum in ***Dokubo-Asari v. FRN (2007) supra***. The seriousness of the charge and the gravity of the punishment prescribed for the offence are not lost on this Court.

Moreover, the Defendant/Applicant deposed through his deponent in paragraph 6 of the affidavit in support of the application for bail that he was arraigned before the Honourable Justice Peter Kekemeke but the charge was struck out for want of diligent prosecution. He did not attach any exhibit in the form of an enrolled order or the record of proceedings to corroborate this claim. Section 167(d) of the Evidence Act, 2011 provides that "***Evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it***." This Court has the power to advert its mind to this factor.

This is also consistent with settled judicial authorities. In ***Bamaiyi v. The State (2001) supra***, the Supreme Court per Uwaifo JSC held at pages 291 – 292 of the law report, while agreeing with the opinion of the learned trial judge, that "***The bailability of an accused depends largely upon the weight a Judge attached to one or several of the criteria open to him in any given case***."

Having considered the provisions of section 163 of the Administration of Criminal Justice Act, 2015 which unequivocally states that the Judge may still refuse to admit a Defendant to bail notwithstanding the provisions of

sections 161 and 162 of the Act, this Court is compelled, in view of the seriousness of the offenceand the gravity of the punishment prescribed for in the Act under which the Defendant is charged and the prevalence of the offence of rape, especially of minors to exercise its discretion against the Defendant.

In view of the foregoing, therefore, the application of the Defendant for bail with Motion Number M/5824/2021 dated the 9th of September, 2021 and filed on the 13th of September, 2021 is hereby refused and accordingly dismissed.

In view of the dismissal of the Defendant's application for bail, I hereby make an order for expeditious hearing of the case on the authority of ***Danbaba v. The State (2000) 14 NWLR (Pt. 687) 396 at 413*** per Oguntade JCA (as he then was)

This is the Ruling of this Court delivered today, the 28th day of October, 2021.

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
HON. JUSTICE A. H. MUSA
JUDGE
28/10/2021