**IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY**

**HOLDEN AT ABUJA**

**THIS TUESDAY, THE 28TH DAY OF MARCH, 2023**

**BEFORE: HON. JUSTICE ABUBAKAR IDRIS KUTIGI – JUDGE**

**CHARGE NO: CR/12/2019**
**MOTION NO: BW/M/342/2022**

**BETWEEN:**

**COMMISSIONER OF POLICE .....COMPLAINANT/RESPONDENT**

**AND**

1. **SAMSON MICHAEL ……. 1ST DEFENDANT/APPLICANT**
2. **JOHNSON MICHAEL**
3. **ISMAILA MUSA**

**…… DEFENDANTS/RESPONDENTS**

## RULING

By a Motion no Notice dated 26th October, 2022 and filed at the Court's Registry on 26th October, 2022, the 1st Defendant/Applicant prays for the following Relief:

1. **AN ORDER admitting Samson Michael, the 1st Defendant/Applicant to bail pending the hearing and determination of the charges against the Defendants in this matter.**

2. **And such further Order(s) as the Honourbale Court may deem fit to make in the circumstance of this suit.**

The Application is supported by a 25 paragraphs affidavit and a written address in support in which one issue was raised as arising for determination:

**"Whether in the light of the provisions of the constitution as regards the presumption of innocence under Section 36 (5) of the 1999 Constitution and Section 162 of the Administration of Criminal Justice Act, 2015, the 1st Defendant/Applicant, Samson Michael is not entitled to be admitted to bail?"**

The address then dealt with the settled principles governing grant of bail and it was contended that on the materials, the Applicant has placed or furnished cogent materials why bail should be granted.

At the hearing, learned counsel to the 1st 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.

The Complainant/Respondent filed an 11 paragraphs counter-affidavit and a brief written address in which no issue was streamlined or raised but it was contended that that the offences for which the 1st Defendant and co-defendants were charged are serious offences which carries sentence of death upon conviction. That in such a situation, bail can only be granted under **Section 161(2) of ACJA under exceptional circumstances and that in this case no such exceptional circumstances have been disclosed by Applicant to allow for grant of bail.**

It was also submitted that the contention that the Applicant did not escape from the prison facilities during the Kuje Prison Break in does not constitute exceptional circumstances and that no evidence was furnished that he had an opportunity to escape but did not escape as not all inmates had the opportunity to escape on that day.

At the hearing, counsel to the Complainant/Respondent similarly relied on the paragraphs of the counter-affidavit and adopted the submissions in the written address in praying that the court should not grant the application.

I have carefully considered the processes filed on both sides of the aisle together with the oral submissions made by counsel and the issue to be resolved is whether the 1st defendant should in the circumstances of this case be granted bail. The general principles that guides a court and the factors that the court will consider in determining whether or not to grant bail have been comprehensively set out in the briefs of learned counsel for the parties. Indeed the principles are fairly well settled. In the case of **Alaya V State (2007) 16**

**N.W.L.R (pt.1061) 483,** the Court of Appeal repeated the considerations on the following terms:

**"In the exercise of the discretion to grant bail to an accused person pending trial, the court has to consider the following:**

**(a) The nature of the charges;**

**(b) The character of the evidence;**

**(c) The severity of the punishment;**

**(d) The criminal record of the accused;**

**(e) The likelihood of repetition of the offence;**

**(f) Evidence that should applicant be granted bail, the witness for the prosecution may be interfered with or prevented from appearing to testify; and**

**(g) Whether the applicant if granted bail, would fail to attend court to face his trial: Obaseki Vs Police (1959) NRNLR149; Dantata Vs IGP (1958) NRNLR 3."**

On the authorities, it is 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 of others may be used to determine the question of bail in a particular case. See **Bamaiyi V. State (2001)8 N.W.L.R (pt.715) 270.**

Now it is stating the obvious that the 1st defendant is charge for the offence of Armed Robbery along with the co-defendants under the provisions of the Robbery and Fire Arms (special provision) Act, Cap 1211 LFN, LFN 2004 and the Penal Code.

The 1st Defendant/Applicant obviously enjoys the presumption of innocence, but these are still nonetheless serious offences with the severest of punishment. For example, the punishment for the offence under Count 2 provides that the offender shall be liable upon conviction to the sentence of death.

In the circumstances, the provision of **Section 162 of the Administration of Criminal Justice Act, (ACJA) 2015** on which learned counsel to the Applicant anchored the extant application will have no application where the charge involves an offence punishable with death.

In the light of this charge, it is the provision of **Section 161 of ACJA** that governs the situation of Applicant.

**Section 161 ACJA** provides as follows:

**(1) A suspect arrested, detained or charged with an offence punishable with death, shall be admitted to bail by a judge of the High Court, under exceptional circumstances.**

**(2) For the purpose of exercise of discretion subsection (1) of the section, "exceptional circumstances" includes:**

**(a) ill health of the applicant which shall be confirmed and certified by a qualified medical practitioner employed in a government hospital, provided that the suspect is able to prove that there are no medical facilities to take care of his illness by the authority detaining him;**

**(b) extra ordinary delay in the investigation, arraignment and prosecution for a period exceeding one year; or**

**(c) any other circumstances that the judge may, in the particular facts of the case, consider exceptional."**

The above provisions appear to me clear.

The import of the above provision is that contrary to the submissions of counsel to the Applicant, Bail is not ordinarily granted where a suspect is charged with a capital offence unless the defendant can establish circumstances which bring his case within the exceptions or exceptional circumstances provided under **2 (a), (b) and (c) above of Section 161**. The sentence used under **Section 161 (1) ACJA is "shall only be admitted to bail by a judge under exceptional circumstance."** Shall in law is a word of command which does not allow for exercise of discretion.

A defendant therefore charged with a capital offence has the burden or bounden duty under **Section 161 (1) and (2) a, b and c (supra)** to establish creditably these exceptional circumstances that would then provide both factual and legal

template or basis to allow the court judicially and judiciously determine the propriety or otherwise of granting bail in each case on its merit.

Now reading the entirety of the affidavit of 1st Defendant/Applicant, the basis or ground of his bail application is on grounds of ill-health bringing his case within the purview of **Section 161 (2) (a) and also (c) of ACJA (supra).**

In **paragraphs 9** and **10** of the affidavit in support, the Applicant averred as follows:

**"9. That the applicant informed me on 12/07/2022 at about 2 o'clock in the afternoon through telephone conversation which fact I verily believe to be true:**

**a. That he was terribly shocked during the said attack by bandits on the Kuje correctional facility.**

**b. That since the said attack, he has not been the same as the memory of the said attack keeps giving him nightmares.**

**c. That so many inmates ran away with the gunmen but he did not do so because he knows he is standing trial on allegation of armed robbery which he must answer to.**

**d. That since the incident, the Applicant is not allowed to receive any visitor even family members.**

**e. That he woke up on night and started shouting, not knowing what was happening to him. It took the intervention of fellow remaining inmates to calm him down before he regained himself.**

**10. That I know as fact that the Applicant is in urgent need of proper attention as a result of the continued nightmares that keep re-occurring to him from time to time."**

I note immediately that the above depositions were made by one Emmanuel Anjorin who states that he is a relative of the Applicant. There is nothing to indicate that he is a medical personal or an expert in that field. The contents of the above paragraphs are therefore what Applicant allegedly told him and not conclusions of a Doctor or an expert who has evaluated 1st defendant and

determined that he was indeed affected (by whatever happened) during the attack on Kuje Prison by some Gun men.

Furthermore, the entire affidavit does not really situate or disclose a clear or precise medical condition and the court is in no position to guess or speculate. As briefly alluded to already, no medical report by a confirmed and certified medical practitioner employed in a Government Hospital was attached situating this alleged **"underlying sickness."**

Most importantly, there is no report from the correctional facility showing that there is any outbreak of convid-19 in the facility or that the inmates face the threat of contracting the covid-19 virus. There is similarly nothing before me showing that the bed spaces in the facility are **"clustered"** and how this then increases the risk factors for contracting any disease in the facility.

Furthermore, there is nothing showing that the correctional facility is incapable of treating or dealing with any health challenge that the Applicant may have due to for example to lack of medical facilities or requisite medical expertise.

By the provision of **Section 161 (2) (a) of ACJA,** allusion to ill-health and for it to have practical resonance for purpose of granting bail, the Applicant must prove or show that there are no medical facilities to take care of his illness by the authority detaining him. Nothing as stated earlier was furnished to situate any ill-health of Applicant and that it could not be handled properly by the prison authorities.

In any event, the court takes judicial notice of the fact that there are qualified medical personnel in the prison and even where the ailment is beyond their capacity, there is always room for a referral to a government health institution where such facilities and expertise are available.

The point to underscore is that the allegation or complaint of ill-health is not some sort of magical wand that if presented will automatically lead to the grant of bail. The ill-health must be such that cannot be handled by the prison clinic or facilities available at the prison and this has to be creditably established.

The contention that the Applicant did not escape during the attack on Kuje as alleged is neither here nor there and does not fall within the parameters of exceptional circumstances within the remit of **Section 161 of ACJA**.

Secondly, there is no evidence before me that the Applicant indeed had an opportunity to escape which he did not take advantage of and the court, again, cannot engage in an idle exercise of guess work or speculation.

Similarly, the contention that the charge is an **"after thought and a witch hunt"** clearly has no factual basis. The prosecution has since opened its case and called two witnesses. Indeed, the present position is that the court is about to conduct a **trial within trial** to determine the question of admissibility of the statement said to have been made by Applicant. The Applicant contends that the statement was not freely or voluntarily obtained necessitating the inquest or trial within trial.

We are therefore now essentially on course to determining the culpability or otherwise of 1st Defendant and whether the charge is a witch hunt or not.

On the materials, the prosecution has done all that was reasonably required to bring the matter to the trial stage. There are therefore clearly no compelling circumstance in this case that discloses any exceptional situation to warrant the court to grant bail.

I have above taking into account the relevant guiding legal principles. I have again carefully evaluated the proof of evidence and the statements of particularly the 1st defendant where he was alleged to have confessed to the crime. I agree that the 1st defendant enjoys the constitutional presumption of innocence but the right to enjoy his personal liberty must be weighed against the corresponding need and imperative that he stands his trial for what is no doubt a grave and serious offence.

On the materials as provided by the applicant, it is clear that he has not been able to creditably establish that this case comes within the exceptions that would allow for grant of bail within the purview of **Section 161 (1) and (2) (a) (b) and (c) of ACJA 2015.** In addition, on the basis of the gravity of the offence and punishment, the character and strength of evidence, as contained in the proof of evidence, I am of the considered opinion that it would be unsafe to admit the 1st defendant to bail.

In the overall interest of justice and considering the peculiarities of the case, I will again repeat the earlier order for accelerated hearing of the case. It cannot be right or fair that cases like this drag on interminably.

I therefore once again call on all counsel in the case to act post haste, bring all witnesses and relevant materials and ensure that this matter is given the utmost attention and determined with the minimum of delay.

The application however fails and is dismissed.

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***Hon. Justice A.I. Kutigi***

***<u>Appearances:</u>***

1. ***Fidelis Ogbogbe, Esq., for the Complainant/Respondent.***

2. ***Ihite Emmanuel for the 1st Defendant/Applicant.***