

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 23RD OF FEBRUARY, 2023
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE. R. OSHO-ADEBIYI
SUIT NO. CR/221/2018

FEDERAL REPUBLIC OF NIGERIA ----- COMPLAINANT
AND

1. SHITU AHMED TATA ----- DEFENDANTS
2. MUSA ALIYU MAILAFIYA

RULING

Having listened to the learned counsel for the defendants make his bail application for the 1st defendant, having also read the accompany affidavit, likewise the counter affidavit of the prosecution opposing the application. The issue for determination is:

“Whether Applicant has been able to convince the court to exercise its discretion in his favour”.

It is worthy of note that, bail pending trial is a Constitutional right of an accused person this is in line with the Constitutional provision that relates to presumption of innocence in favour of persons accused of committing Criminal offence. **Section 36 (5) of the 1999 Constitution (As Amended)**. In a similar vein, the grant or refusal of an application for bail is at the discretion of the Court, which like any other discretion must be exercised judicially and judiciously as held in the case of **Alaya V. State (2007) 16 NWLR (pt. 1061) 483**. Furthermore, the law is settled that in the exercise of the discretion for bail pending trial, a Court must take into consideration some facts or conditions which will serve as a guide. The Supreme Court enumerated some of these factors in the case of **Suleiman V. C.O. P Plateau State (2008) 8 NWLR (pt. 1089) 98 at 317 – 318, paragraphs H – C**, where it was held thus:-

“... the criteria to be followed in taking a decision on application for bail as laid down by this Court includes:

- i. The nature of the charge*
- ii. The strength of the evidence which support the charge;*
- iii. The gravity of the punishment in the event of conviction;*
- iv. The previous Criminal record of the accused if any;*

- v. *The probability that the accused may not surrender himself for trial*
- vi. *The likelihood of the accused interfering with the witness or may suppress any evidence that may in- criminate him.*
- vii. *The likelihood of further charge being brought against the accused and;*
- viii. *The necessity to procure medical or social report pending final disposal of the case.”*

The Court of Appeal held in **Uwazurike V. A. G. Federation (2008) 10 NWLR (pt. 1096) 444 at 461 – 462 paragraphs F – C** that: -

“... It should be noted that the factors listed above are not exhaustive in guiding any trial Court in granting or refusing bail pending trial. Also it is not necessary that all or many of these factors must apply in any given case even one factor may be applied in a particular case to guide trial Court in granting or refusing bail pending before it...”

It is pertinent to state that the Applicant is alleged to have committed a six count charge of false pretence. The punishment for these offences as stipulated under **Section 1 (3) of the Advance Fee Fraud and Other Fraud Related Offences Act, 2006** is an offence liable on conviction to imprisonment for a term of not more than 20 years and not less than seven years without the option of a fine, which ordinarily, Defendant/Applicant is entitled to bail save and except, the Court is satisfied that Defendant/Applicant would contravene any of the provisions of **Section 162 of the Administration of Criminal Justice Act, 2015**, which states:

“A defendant charged with an offence punishable with imprisonment for a term exceeding 3 years shall on application to Court, be released on bail except in any of the following circumstances;

- a. *where there is reasonable grounds to believe that the Defendant will, where released on bail, commit another offence*
- b. *Attempt to evade 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.*

f. Undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, including the bail system

In this instant case, the learned Respondent Counsel in his counter affidavit opposed the application for bail by the 1st Defendant/Applicant. Respondent's Counsel submitted that justice in criminal trial is not only in the interest of the 1st Defendant. That the interest of Nigeria as a nation is larger than any individual citizen whose liberty is at stake by reason of allegation of crime. He urged the court to refuse bail and grant accelerated hearing of the charge. Indeed, the seriousness of an offence and the severity of the punishment it would attract are some of the factors the Court usually consider in the exercise of its discretion to grant bail. However, it is a constitutional requirement that every person who is charged with a criminal offence will be presumed innocent until he is proven guilty as provided under **Section 36 (5) of the Constitution of the Federal Republic of Nigeria, 1999**. In the case of **Nwede Vs. State (2018) LPELR-43787(CA) Per OGUNWUMIJU, J.C.A. in (P. 9, Para. C) held;**

"An accused person is presumed innocent until he is proved guilty because there is no question of an accused person proving his innocence before a law Court in Nigeria."

Also, in **UGBAGBE v FRN, Unreported decision of the Court of Appeal in CA/L/200/2016, per TIJJANI ABUBAKAR, JCA** aptly said that

"seriousness of a crime is a matter of law which is determined by logical deduction; that no matter how serious an alleged offence committed by an accused person appears, he is still entitled as an article of faith and a matter of right guaranteed by the Constitution entitled to be presumed innocent until proven guilty."

Going from the above, it should be noted that the Defendant/Applicant's counsel averred in paragraph 5 (a-d) of his affidavit in support of the motion for bail that he will not jump bail, he will present himself for trial every day the trial is fixed, he is ready to produce reliable sureties and if granted bail would not impede, truncate, influence or interfere with the prosecution of this case.

Therefore, this Court would exercise its discretion in favour of the 1st Defendant/Applicant and grant the Applicant bail. I therefore admit the Applicant to bail on the following conditions;

1. That Applicant/1st Defendant is admitted to bail, in the sum of N20,000,000.00 (Twenty Million Naira) only with two responsible sureties each in like sum who are to depose to an affidavit of means.
2. That the 2 sureties shall be blood relations of the 1st Defendant with strict proof thereof, sureties must be Civil Servants not less than Grade Level 14 and above, with a verifiable office and house address within the Federal Capital Territory and verification is to be carried out by the officials of Economic and financial Crimes Commission and this Honourable Court.
3. That both sureties should have landed property within the Court jurisdiction and the legal title document (Certificate of occupancy) fully verified.
4. That the 1st Defendant/Applicant will never leave the protective border of Federal Capital Territory with no permission of this Honourable court pending the determination of this suit.

Parties: The two (2) defendants absent.

Appearance: L. P. Aso appearing with Elizabeth Alabi (Mrs.) for the prosecution. Ishaka Mudi Dikko, (SAN) appearing with Yvonne Chukwuani for the defendants.

**HON. JUSTICE M. OSHO-ADEBIYI
JUDGE
23RD FEBRUARY, 2023**