



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL CASE NO. 38 OF 2017**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**CHRISTOPHER GATABUI .....ACCUSED**

**RULING ON BOND (NO 2)**

1. On the 21/11/2017 the court declined the request by accused to be released on bond and said -:

**“Applying the test, although the defence counsel dismissed the affidavit by the investigations officer as mere rhetoric and rumours, the statements therein seem to find corroboration in the probation Officer’s report. It was not controverted that the accused was attacked after the incident forcing his admission in hospital for one month. The fear of the safety of the accused is not therefore unfounded. I note that the investigations Officer alluded to possible interference with witnesses by the accused persons as his accomplices were still at large. This may not be far-fetched. The defence merely made dismissive denial of these matters without giving them any or due proportion of weight. In my view, these matters are serious and amount of compelling reasons for which a person may be denied bail or bond. But I am aware that such circumstances are only temporal. Thus the most appropriate course to take is to deny the accused bail for the moment. Accordingly, the accused’s application for bond is hereby rejected. He may, however renew this request for bail after six months or as soon as the circumstances change. The accused person shall remain in custody pending the hearing and determination of this case”.**

2. Today after the prosecution had called three witnesses, PW 1, 2 and 3, the defence renewed the application for bond saying only two witnesses remained to be called. They are the Investigating Officer and the doctor. In counsel’s opinion, there no longer exist fear of witness interference and no compelling reasons now exist to continue denying the accused the right to bond.

3. That application was never opposed by the protestor who said that at the juncture the matter had reached, he agreed that no compelling reasons exist to warrant denial of bond.

4. Right to bond under **Article 49 (1) h** is robustly enshrined and I need a compelling reason to withhold the right. Before me no bottleneck has been alleged but prosecution itself prefers no objection to the bond being granted.

5. I do agree that the change of circumstances envisaged by the judge in the earlier ruling have arisen. I consider the circumstances in this matter to invite no elaborate reasons to grant bond. I do grant to the accused bond of Kshs. 250,000 with one surety in the like sum. In the alternative, the accused may be released on cash bail of Kshs. 100,000 pending the conclusion of the matter.

**Dated, signed and delivered this 11<sup>th</sup> day of February, 2021**

**Patrick J.O Otieno**

**JUDGE**