

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CRIMINAL CASE NO. E043 OF 2021

REPUBLIC.....APPLICANT

VERSUS

JOHN MUKUYUTI MASINDERESPONDENT

RULING

The Accused, **John Mukuyuti Masinde** is facing the charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence are that on diverse dates between 27th October 2021 and 22nd November 2021 at Baraton location in Trans Nzoia County, the accused, jointly with others not before court, murdered **Baby Shennel Blessing**. When the accused was arraigned before this court, he pleaded not guilty to the charge. The prosecution opposed the applicant's application to be released on bail pending trial. The investigating officer has sworn an affidavit opposing the accused's release on bail pending trial.

Under **Article 49 (1) (h)** of the **Constitution**, every accused person is entitled to be released on bail pending trial unless there are compelling reasons. In this case, the Investigating Officer states that the Applicant had threatened the witnesses with dire consequences if he is released on bail pending trial; that the accused was a person of no fixed abode; that if the accused is released on bail pending trial, he is likely to be a flight risk and would abscond from the jurisdiction of the court. The accused through his Counsel urged that the issues placed before the court by the investigating Officer were speculative and were based on hearsay; the accused is presumed innocent at this stage of the trial. The accused had not intimidated witnesses and therefore there were no compelling reasons to persuade the court not to release the applicant on bail pending trial.

This court has carefully considered the submission made by the parties to this application. It was clear to this court that the circumstances that led to the death of the deceased militates against the accused being released on bail pending trial. There are other suspects involved who are still at large. This court agrees with the investigating Officer that the accused's release on bail pending trial may jeopardise the investigations. The fact that the accused is said to have threatened the likely prosecution witnesses is a compelling reason for this court to deny the accused bail pending trial. The accused did not challenge the assertion by the investigating officer that he is a person of no fixed abode. The main reason that is paramount to the court in determining whether or not to grant bail pending trial, is whether the accused will attend court during the date scheduled for the hearing of the case. In the present application, this court is not certain that the accused will appear before the court for trial if he is released on bail pending trial. He is a flight risk since he has no known place of abode.

In the premises therefore, this court cannot, in the prevailing circumstances narrated to the court by the investigating officer, release the accused on bail pending trial. He shall remain in custody until conclusion of the trial. It is so ordered.

DATED AT KITALE THIS 21ST DAY OF DECEMBER 2021.

L. KIMARU

JUDGE