



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BOMET**

**CRIMINAL CASE NO. 16 OF 2019**

**REPUBLIC.....DPP**

**VERSUS**

**TITUS KIPNGENO RONO.....ACCUSED**

**RULING ON BAIL**

1. The Accused is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code Cap 63 Laws of Kenya. The particulars of the offence are that on the 9<sup>th</sup> day of June, 2019, at Kipsonoi location in Sotik Sub- County within Bomet County murdered Jasmine Cherotich Soi.

2. The Accused took plea on 2<sup>nd</sup> July, 2019 before Dulu J. and denied the charge. On the same day, learned defence counsel Mr. Ngeno requested the court to grant the Accused bond. The court deferred the decision and directed that a pre - bail report be filed. The report was subsequently filed on 18<sup>th</sup> July, 2019.

3. When the matter came up for mention before me on 11<sup>th</sup> November, 2020, learned defence counsel renewed the bond application. In his brief submissions, counsel stated that the Accused was a resident of Bomet County and would abide by any bond terms granted. On his part, Mr Waweru the learned prosecution counsel opposed the application. In his brief submissions, he stated that the pre bail report was not favourable to the Accused and urged the court to exercise its discretion and deny the Accused bond.

4. In brief response, Mr. Kadet submitted that the pre - bail report dwelt on issues not related to the instant case. He urged the court to disregard the same and exercise its discretion to grant the Accused bond.

5. The right to bail is guaranteed under Article 49(1) (h) of the Constitution. This right is however not absolute and may be curtailed where there exist compelling reasons. Section 123A of the Criminal Procedure Code sets out the parameters to guide the court in considering an application for bail. It provides thus:-

***(1) Subject to Article 49(1)(h) of the Constitution and notwithstanding section 123, in making a decision on bail and bond, the Court shall have regard to all the relevant circumstances and in particular—***

***(a) the nature or seriousness of the offence;***

***(b) the character, antecedents, associations and community ties of the accused person;***

***(c) the defendant's record in respect of the fulfilment of obligations under previous grants of bail; and;***

***(d) the strength of the evidence of his having committed the offence;***

***(2) A person who is arrested or charged with any offence shall be granted bail unless the court is satisfied that the person—***

***(a) has previously been granted bail and has failed to surrender to custody and that if released on bail (whether or not subject to conditions) it is likely that he would fail to surrender to custody;***

***(b) should be kept in custody for his own protection.***

6. The Judiciary's **Bail and Bond Policy Guidelines, March 2015** sets out judicial policy at p. 25 on bail as follows:-

*The following procedures should apply to the bail hearing:*

*(a) The Prosecution shall satisfy the Court, on a balance of probabilities, of the existence of compelling reasons that justify the denial of bail. The Prosecution must, therefore, state the reasons that in its view should persuade the court to deny the accused person bail, including the following:*

- a. That the accused person is likely to fail to attend court proceedings; or*
- b. That the accused person is likely to commit, or abet the commission of, a serious offence; or*
- c. That the exception to the right to bail stipulated under Section 123A of the Criminal Procedure Code is applicable in the circumstances; or*
- d. That the accused person is likely to endanger the safety of victims, individuals or the public; or*
- e. That the accused person is likely to interfere with witnesses or evidence; or*
- f. That the accused person is likely to endanger national security; or*
- g. That it is in the public interest to detain the accused person in custody.*

6. I am guided by the law and the relevant Guidelines as stated above. I have also considered the social inquiry report in respect of the Accused. The report states that the Accused was married to the deceased in the case. They had one child who is now in the custody of the deceased's parents. The report paints the Accused as a person given to violence and who occasionally threatens his father, members of his family and other community members with violence. That the community was fearful of his release due to his violent nature. Further, the deceased was the Accused's wife and her family was fearful of his release given that they came from the same neighbourhood.

7. From the above antecedents of the accused, I am persuaded to exercise my discretion to deny him bail at this time. He shall remain in custody pending his trial or until further orders of this court.

8. Orders accordingly.

**Ruling delivered, dated and signed at Bomet this 30<sup>th</sup> day of November, 2020.**

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**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of the Accused, Defence Counsel Mr Kadet, Mr. Mureithi for the DPP, and Kiprotich(Court Assistant).**