



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.32 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

MUSA KIPNGETICH MELI.....ACCUSED

RULING

1. Before me is an application brought by way of Notice of Motion dated 4th March 2019 for bail pending the hearing and determination of the case.

2. The application is grounded on the affidavit sworn on 4th March 2019 by W. K. Ngenoh the counsel for the accused, in which it is deponed that the accused is presumed innocent, that he is willing to abide by conditions issued by the court, and that he is not a flight risk, and that he is undergoing blood pressure and diabetes medication.

3. At the hearing of the application Mr. Ngenoh for the accused submitted that there were no compelling reasons to justify the accused being denied his constitutional right to be granted bail. Counsel added that a pre-bail report filed by the Probation officer Kericho was favourable to the accused, who was a person of good standing and being a sick man, the prison authorities could not provide adequately for his medical treatment.

4. On the affidavit by PC Otieno the Investigating Officer, counsel submitted that the affidavit did not indicate that accused was likely to interfere with witnesses who had not yet testified. According to counsel, the key witnesses had already testified in court.

5. In response, Ms Keli the Prosecuting Counsel opposed the application for bail and relied on the affidavit of PC Vincent Otieno the Investigating Officer. Counsel submitted that the accused was an influential person in the village and was likely to interfere with witnesses. Though five (5) witnesses had already testified, counsel stated that she had received information that a bonded witness had been threatened, which was the reason why that witness had not attended court to testify. As that witness was a crucial witness, counsel felt that the accused should not be released on bail until that witness testified. Counsel also stated that this was a new matter, there was still bad blood and hostilities, and the security of the accused was thus at stake, if released on bond.

6. In response to the Prosecuting Counsel's submissions, Mr. Ngenoh for the accused submitted that there were no compelling reasons demonstrated by the State in opposition to the bail application, and that the accused was presumed innocent until proved guilty, and should be released on bail.

7. This is an application for bail pending trial. Under Article 49 of the Constitution every arrested person has the right to be released on bail or bond on reasonable terms, provided that there are no compelling reasons to deny him or her bail. The relevant provisions of Article 49 states as follows:-

“49 (1) An arrested person has the right-

(h) to be released on bond or bail, on reasonable conditions, pending charge or trial, unless there are compelling reasons not to be released.

8. I have considered the application, the submissions of counsel for the accused and the Prosecuting Counsel, and perused the pre-bail report filed by the Probation Officer dated 24th September 2018, and the affidavit of the Investigating Officer P. C. Otieno dated 10th April 2019.

9. Counsel for the accused has emphasized that the accused suffers from hypertension and diabetes. However, both the pre-bail report filed by the Probation Officer, and the affidavit sworn by the investigating officer raise a concern on family emotions still being high in the deceased's family.

10. In my view, in the circumstances of this case where the offence is alleged to have taken place last year which is fairly recent, the existing animosity is a compelling reason to deny the accused bail at this stage.

11. The Prosecuting Counsel has suggested that after one remaining key witness testifies then there would be no likelihood of the accused interfering with witnesses. In the circumstances, I will decline to grant bail at this stage, but the Prosecuting counsel has to call that witness at the next hearing date, and once that witness testifies, then the bail application can be revived, even if informally.

12. As for now, the request for bail by the accused is declined.

Dated this 27th day of May 2019.

George Dulu

JUDGE