



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.29 OF 2016**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**JAPHET BIL.....ACCUSED**

**RULING ON BAIL**

1. In this part heard Criminal Case, the defence counsel Mr. Nyadimo has made an oral application for bail pending trial. In response, the Assistant Director of Public Prosecutions Mr. Ayodo has relied on the pre-bail report filed by the Probation Officer, Kericho.

2. Under Article 49 of the Constitution of Kenya 2010, every arrested person has a right to be released on bond/bail provided there are no compelling reasons to justify the denial of bail. The relevant provisions of the Constitution state as follows:

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

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

*(d) A person shall not be remanded in custody for an offence, if the offence is punishable by a fine only or by imprisonment for not more than six months.”*

3. Courts have held that the primary obligation of demonstrating the compelling reasons for denial of bail lies with the prosecution.

4. In the present case where the accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code, the Prosecution relies on the pre-bail report which was filed by the Probation Officer, Kericho on 13<sup>th</sup> February 2019.

5. The said pre-bail report concludes as follows:

*“Your Lordship, this is a first offender. He prays for bond and is willing to attend court as will be directed. He wishes to be out on bond so that he gets a chance to provide for his family. His family members are willing to bail him out. The deceased’s family objects to his request for release on bond. They would rather have him in custody until the matter is concluded. The area chief does not object to his release on bond. He says he has a fixed abode and lives well with the rest of the villagers.*

*Your Lordship, in view of the aforesaid, the court may consider the accused person for release on bond.”*

6. From the above pre-bail report, relied upon, by the prosecution. It is clear that the prosecution has not indicated any compelling reasons for denying the accused bail. The deceased’s family however, prefer that the accused remains in custody until the case is concluded. They do not give any reason for their stand however.

7. Considering all the facts and circumstances of the case placed before me in this application, and the fact that an accused person is presumed innocent until proved guilty, in my view there is no justification for this court to deny him bail.

8. Having said as above, neither the defence nor the prosecution has told the court any conditions for the grant of bond or bail – in order to guide the court in releasing the accused.

9. In the circumstances of this case, I order as follows:

1. The accused will be released on his signing bond of kshs.300,000/- with one surety of similar amount.
2. In the alternative, he can be released on his paying cash bail of kshs.500,000/-.
3. He will not interfere with witnesses.
4. He will attend every mention of the case and hearing, until the case is finalized.

Dated at Kericho this 26<sup>th</sup> day of June 2019.

George Dulu

JUDGE