



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL CASE NO. 5 OF 2018

IBRAHIM MUGO KAIRU ACCUSED

VERSUS

REPUBLIC PROSECUTOR

RULING

1. The accused has filed a notice of motion dated 22nd February, 2018 seeking to be released on bail or bond pending trial. The said motion is brought under Article 49 (1)(h) of the Constitution.

2. It was accused's case that he qualifies for the orders sought since he is presumed innocent till proven guilty and that he has a fixed abode and is not likely to abscond. He stated in his affidavit in support of his application that if he continues to be in detention, his electronic shop is likely to close down and he will lose his source of livelihood and those depending on the shop as a source of employment are likely to be rendered unemployed. He further stated that he is sickly and needs to seek proper medical care and attention.

3. The prosecution had no opposition to the application and this court directed the Machakos County Probation Officer to file a pre bail report on the accused which report was prepared and filed.

4. A reading of the report reveals that the accused has no business and has no health issues as alleged. The community however are not uncomfortable with him being released on bond. It was reported that his partner is one of the witnesses and that in the event he is to interfere, he still would do so even if he is not released on bond since she often visits him in remand. The pre bail report is in favour of release of the accused on bond.

5. Article 49 (1) (h) of the Constitution under which the accused has brought his application provides for terms of granting bail and bond. It provides that an accused person has a right to be released on bond or bail on reasonable conditions pending a charge or trial, unless there are compelling reasons not to be released. It is noteworthy that the duty to prove such compelling reasons lies with the prosecution. In the case at hand, the prosecution has not opposed the application but in my view, that does not negate this court's discretion to consider whether or not it is necessary to grant the prayer for bail and or bond.

6. I have carefully considered the circumstances of this case and find that there is no indication that the accused is a flight risk or is likely to interfere with the witnesses. In the circumstances, I allow the application on the following terms:

a) The accused shall be released on a bond of KShs. 1 Million with one surety of like sum.

b) The accused shall not threaten or in whatever manner interfere with witness (es) and shall attend court without fail whenever required to do so.

c) The accused shall not leave this court's jurisdiction without this court's prior permission.

d) The accused shall attend court during the hearing and mention dates without fail until the final determination of the case or until further orders.

e) In default to abide by these terms of bond, the bond shall stand cancelled and his surety called to account.

It so ordered.

Dated and delivered at Machakos this 14th day of August, 2018.

D.K. KEMEI

JUDGE

In the presence of:-

Ojiambo - for the Accused

Saoli - for the state

Josephine - Court Assistant