

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CRIMINAL CASE NO. 68 OF 2018

REPUBLIC.....DIRECTOR OF PUBLIC PROSECUTIONS

VERSUS

MUSTAFA RAMADHAN ALIETH.....ACCUSED

RULING

1. Mustafa Ramadhan Alieth is charged with murder contrary to section 203 of the Penal Code, Cap 63, Laws of Kenya, as read with section 204 of the Penal Code. The particulars of the offence allege that on 17th day of October 2018 at Ekama B Village, Mayoni Sub-Location of Matungu Sub-County in Kakamega County, he murdered Nipha Matendechere alias Nipha Nasimiyu alias Jennifer Atwoli. He pleaded not guilty to the charge on 12th November 2018.

2. He applied, through Ms Oduor, his defence counsel, to be admitted to bail. The state did not object to the release of the accused person on bail, but asked the court to call for a pre-bail report before bail could be considered. Whereupon the court ordered the Probation Department to file a pre-bail report on him.

3. Pre-trial bail is a constitutional right available for all criminal offences by virtue of Article 49 of the Constitution of Kenya, 2010. The right is, however, not an absolute right. It is available at the discretion of the court to be granted based on the circumstances of each case. Article 49 of the Constitution of Kenya, 2010, states that a court may admit an accused person on reasonable bail terms, and that bail may be denied where there exist compelling reasons. Section 123 of the Criminal Procedure Code has similar provisions.

4. The principles for determining applications were set out in *Nganga vs. Republic* (1985) KLR 451 and *Mazrui vs. Republic* (1985) KLR 279. As a general principle, an accused person should be admitted to bail unless it is shown by the prosecution that there exist grounds for denying the same. The general principle is underpinned by the presumption of innocence. It will usually be denied where it is shown that (a) the accused will fail to turn up at his trial or to surrender to custody, or (b) the accused may commit further offences, or (c) he will obstruct the course of justice and (d) the accused would lose more by absconding. It will also be denied if it would not be favourable for the accused to go back to his own community without risk to his own life or limb.

5. The Probation Department has complied with the directions mentioned in paragraph 2 here above, by filing the requisite report, dated 7th December 2018. I have perused through the said a pre-bail report. The report is generally favourable, although the father of the victim is not in favour of his being admitted to bail. However, I have considered the general circumstances of the matter as stated in the probation report and the prosecution file of evidence, as against the principles stated in Article 49 of the Constitution and in *Nganga vs. Republic* (supra) and *Mazrui vs. Republic* (supra) on grant of bail, and I am satisfied that this case meets the threshold for grant of bail.

6. I shall accordingly order that the accused person herein be realised on bail pending trial upon his executing a bond of Kshs. 700, 000.00 with two sureties of like amount.

DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 24TH DAY DECEMBER 2018

W MUSYOKA

JUDGE