

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CRIMINAL REVISION NO 76 OF 2018

REPUBLIC.....APPLICANT

VERSUS

RONALD CHERUIYOT YEGON.....RESPONDENT

RULING

The respondent was charged with the offence of defilement C.S 8 (10 as read with Section 84(4) of the Sexual Offences Act No 3 of 2006 in Cr. Case No. 32 of 2018.

The particulars being that on the 28th day of July 2018 within Bomet County, intentionally unlawfully caused his penis to penetrate the vagina of MCL a child aged 17 years.

When the case was mentioned for plea, the prosecutor told the court that there was likelihood of interference by Accused of witnesses. The court called for a pre bond report.

Upon receipt of that report the court noted that though the report was not favourable it did not raise any compelling reasons and proceeded to grant the accused an bond of Kshs.100,000/= with on surety of similar amount. It is this grant of bail that the state calls for revision.

Article 49 (1) (h) of the Constitution provides that an accused person has the right to be released on bond unless there are compelling reasons not to.

The learned trial magistrate did not find any compelling reasons. The pre-bond report is not in itself binding on the court. If there are fears of the accused interfering with witnesses he can be warned by the court. If the court is satisfied that there are attempts or likelihood of interference, it can cancel the bond. The matter does not have to be brought before the High Court but applications can still be made before the lower court with the investigating officer being required to swear an affidavit as to the allegations and if need be being called upon to be cross-examined on the contents of his affidavit. I find no good grounds to interfere with the orders of the learned trial magistrate grant of bond. The original file to be transmitted to the court for hearing and determination.

Mention on 22/1/2019 before the Trial Magistrate.

M. MU YA

JUDGE

18/12/2018

Ruling delivered and dated this 18/12/2018 in the presence of Miss Kariuki for the state.

Mr. Koech (absent)

M. MU YA

JUDGE

18/12/2018