



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HIGH COURT CRIMINAL CASE NO. 105 OF 2015

REPUBLICPROSECUTOR

VERSUS

EUGINE BARGETUNY.....ACCUSED

RULING

1. By a ruling dated 2/3/2017 I ordered for a further comprehensive pre-bail report on the accused person's suitably to be released on bond which has now been filed dated 3/4/2017.
2. In the said report it was indicated that efforts to interview the deceased family in compliance with the provisions of Victim Protection Act was not possible since they did not avail themselves for interview on the grounds that the death of the deceased was a painful experience that they had wished away to enable them to heal.
3. From the submissions by the prosecution it was stated that the prosecution witnesses were known to the accused and he was therefore likely to interfere with them. On behalf of the defence it was submitted that there was no evidence submitted by the prosecution of interference with witnesses.
4. It is trite law that where the only compelling evidence advanced by the prosecution to deny the accused person his/her constitutional right to bond is the possibility of interfering with witnesses, the prosecution must state the nature of the alleged interference and the relationship between the accused and the said witnesses. It is also required that the prosecution must state efforts taken to stop the said interference.
5. It is clear that the prosecution has not proved to the required standard on a balance of probability that if released on bond the accused is likely to interfere with witnesses as those witnesses have not been mentioned, there is further no evidence tendered to confirm that the prosecution witnesses are known to the accused person.
6. I therefore find and hold that the prosecution has failed to submit compelling reasons to enable me deny the accused his constitutional right to bail and therefore allow the application for bond dated 13/10/2016 and order that the accused be released on bond on the following terms:-
 - a) Bond of Kshs.1,000,000/- with one surety of similar amount.
 - b) In the alternative the accused may be released on cash bail of Kshs.500,000/-
 - c) The accused shall not during the period of his trial make contact in any manner or form whatsoever

with any of the prosecution witnesses.

DATED, SIGNED and DELIVERED at Nairobi this 26th day of April, 2017.

.....

J. WAKIAGA

JUDGE

In the presence of:-

Miss Njuguna for the State

Mr. Mathenge for the accused

Accused present

Tabitha court clerk