

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL CASE NO.49 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

FRANCIS KIMATHI ALIAS FAISAL.....APPLICANT

RULING

[1] The accused person is charged with the offence of murder contrary to Section 203 as read with section 204 of the Penal Code CAP 63 of the Laws of Kenya. He has now sought to be released on bail/bond pending the hearing and determination of this case. The State did not seem to oppose the application for bond, save Mr. Mungai Leaned State Counsel, urged the court to call for pre-bail report for purposes of this application.

[2] According to a pre bail report filed in court on 23rd October 2017, local leaders had no issue with release of the accused person on bond. His family members were ready to help him secure bond, except they stated that they had no property which is registered land or asset which could stand surety for him. The deceased family as would naturally be expected, opposed release of the accused person on bond; they were bitter with the loss of their loved one at the hands of the accused.

[3] I have considered this application. Needless to state that, by dint of the Constitution of Kenya, 2010, all offences are bailable. More specifically, Article 49 (1) (h) thereof provides that an arrested person has the 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. There may not be a scientific measure of what exactly amounts to compelling reasons as that would depend on the circumstances of each case. Except, however, compelling reason should be a reason or reasons which is rousing, strong, interests attention, and brings conviction upon the court that the accused person should be denied bail. Flimsy reasons will not therefore do. Therefore, the standard is high for it draws from the constitutional philosophy that any restriction of rights and freedoms of persons must be sufficiently justified given the robust Bill of rights enshrined in the Constitution. I need not aver-emphasize these matters except to cite the case of **R vs. JOKTAN MAYENDE & 3 OTHERS [2013] eKLR**.

[4] Applying the test, the State did not oppose the release of the accused person on bond. Similarly, the pre bail report did not reveal any compelling reason not to release the accused person on bond. Accordingly, there being no compelling reason as required under article 49(1) (h) of the Constitution, nothing prevents this court from granting the accused bail. As such, the accused person may be released on paying cash bail of Kshs. 100,000 or upon signing of a personal bond of Kshs 200,000 with a surety of a similar amount. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of November, 2017

F. GIKONYO

JUDGE

In the presence of:

Mr. Namiti for State

M/s. Muna advocate for accused

F. GIKONYO

JUDGE