



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO.38 OF 2017

REPUBLIC.....PROSECUTOR

Versus

CHRISTOPHER GATABUI.....ACCUSED

RULING

Bail: Constitutional philosophy; restriction of rights be sufficiently justified

[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 has opposed his release on bond claiming that there are compelling reasons. According to an affidavit filed in court by the investigating officer on 20th June 2017, the offence took place on 27th November 2016 and since then there has been so much hostility on the ground which puts the life of the accused at risk should he be released on bond. He further deposed that after arrest of the accused, enraged members of the public seriously assaulted him occasioning him serious injuries for which he was admitted at Nyambene District for a month. He averred further that his accomplices were at large and he is likely to conspire with them and undermine the prosecution's case if released on bail. Consequently, he urged the court to reject the accused's application.

[2] Mr. Thangicia, counsel for the accused person deposed in a Replying Affidavit filed in court on 29th June 2017 inter alia that; (1) the right to bail was absolute unless there were compelling reasons; (2) the averments in the affidavit by the Investigations Officer were mere rhetoric and rumours with no basis; and (3) the alleged danger to the accused person was not exactly disclosed.

[3] A pre bail report filed in court on 16th June 2017 recorded that the accused person did not have a criminal record. However, it states that the accused had been accosted by a mob after the incident, thus, occasioning him serious injuries for which he was admitted in hospital for a month. Some of those interviewed including the family of the victim opposed his release on bail. Some said that this is because the incident was still fresh and people may want to take revenge. As for the family of the deceased, it is out of sheer bitterness and agony for their loss. The area chief was said to be of a similar opinion.

DETERMINATION

[4] 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. Thus, 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**.

[5] Applying the test, although the defence counsel dismissed the affidavit by the investigations officer as mere rhetoric and rumours, the statements therein seems to find corroboration in the probation officer's report. It was not controverted that the accused was attacked after the incident forcing his admission in hospital for one month. The fear of the safety of the accused is not therefore unfounded. I note that the Investigations Officer alluded to possible interference with witnesses by the accused persons as his accomplices were still at large. This may not be far-fetched. The defence merely made dismissive denial of these matters without giving them any or due proportion of weight. In my view, these matters are serious and amount to compelling reasons for which a person may be denied bail or bond. But, I am aware that such circumstances are only temporal, thus, the most appropriate course to take is to deny the accused bail for the moment. Accordingly the accused's application for bond is hereby rejected. He may, however, new his request for bail after six months or as soon as the circumstances change. The accused person shall remain in custody pending the hearing and determination of this case.

Dated, signed and delivered in open court at Meru this 21th day of November, 2017

F. GIKONYO

JUDGE

In the presence of:

M/s. Namiti for State

M/s.Thangicia for accused – absent

Accused present – I understand Kimeru

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F. GIKONYO

JUDGE