



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 45 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

JAMES KAMAU JANE.....ACCUSED

RULING

James Kamu Jane, herein the accused, has approached this court by way of a Notice of Motion dated 7th December 2015. He is seeking the orders of this court admitting him to bail pending the hearing and determination of this case. The accused is charged with murder contrary to section 203 as read with section 204 of the Penal Code. It is alleged that he murdered one Josehp Kirobi Wambui on 1st of April 2015 at Matopeni Village Ruiru in Kiambu County.

The application is anchored on Articles 49 (1) (h) and 50 (2) (a) and (b) of the Constitution of Kenya 2010. The grounds in support of the application are found on the face of the application and on the supporting affidavit sworn on 7th December 2015. In the said affidavit and the oral submissions made in court by Mr. Saenyi, advocate, the accused is basically stating that the law allows him to be released on bail/bond pending the hearing and determination of his case unless there are compelling reasons not to; that the prosecution has not advanced any compelling reasons; that the seriousness of the offence or the harsh penalty for the offence of murder are not compelling reasons; that the accused is presumed innocent until the contrary is proved and that the accused is willing to abide by the terms and conditions of bond/bail that this court will deem fit to set.

The application is opposed. The prosecution filed a replying affidavit sworn by Police Constable Josphat Wafula, the investigating officer. From the depositions of this affidavit and the oral submissions by Ms Macharia, the prosecution counsel, the accused is a flight risk because he went into hiding after committing the offence and that the accused knows the seriousness of the offence and this may motivate him to abscond. Ms Macharia asked the court to decline the application and stated that the prosecution will expeditiously conclude the case against the accused.

I have considered the application, the depositions contained in the supporting affidavit and replying affidavit as well as the oral submissions from the opposing sides. Bail is a right that is available to all accused persons irrespective of the offence. It is not an absolute right and can be denied where there exists compelling reasons. There are various decisions by the High Court that the seriousness of the offence or the harsh penalty upon conviction of an accused person are not compelling reasons. I take the view that each case presents unique circumstances and must be considered individually taking into account those circumstances. Seriousness of the offence, strong evidence against an accused person and the harsh penalty upon conviction could as well be compelling reasons if it is shown that there is risk of the accused person absconding for fear of the likelihood that he may be found guilty.

My careful reading and consideration of the matter before me, specifically the replying affidavit of PC Josphat Wafula, shows that the prosecution does not have serious grounds for opposing this application. This court has not been supplied with persuading grounds to make a finding of existing compelling reasons to decline this application. Save for deposing that the evidence against the accused is strong, that the offence is serious and that the penalty for murder is harsh, the investigating officer has not shown any reasons why he thinks these facts will make the accused jump bail. He has not presented facts, specifically why he states that the accused went into hiding and the efforts if any the police made to track him, to support the allegation that the accused went into hiding after the offence was committed. I bear in mind that the paramount consideration in granting bail is whether the accused person will attend the trial until the same is heard and determined. Courts normally set terms and conditions of bail in a bid to ensure the attendance of the accused. In view of this, I hereby allow this application on the following terms:

- a. That the accused person shall be released on bond of Kenya Shillings One Million (Kshs 1,000,000) with one surety to similar amount.
- b. The accused shall, in the alternative deposit cash bail of Kenya Shillings Five Hundred Thousand (Kshs 500,000) with the Court.
- c. The accused shall attend court when required to do so, failing which his bond shall stand cancelled and he shall be remanded in custody until this case is heard and finalized.

Orders shall issue accordingly.

Dated, signed and delivered in open court this 23rd of February 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Macharia, prosecution counsel

Mr. Saenyi, advocate for the accused

Mr. James Kamau Jane, the accused

Mr. Daniel Ngumbi, court clerk