



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 30 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

ABDUL SHIRAZ CHAUDRY.....ACCUSED

RULING

Abdul Shiraz Chaudry, the accused, is charged with the murder of Saima Ali Kassam contrary to section 203 as read with section 204 of the Penal Code. The murder is alleged to have been committed on 6th February 2015 at Boss and Joy Apartments along Suswa Road Parklands. He has denied committing this offence.

By a Notice of Motion 4th May 2016 and filed in court on 19th May 2016 by M/s Omondi Tunya & Company Advocates on behalf of the accused, the accused is seeking to be admitted to bail pending the hearing and determination of this case. The grounds in support of the application are found on the face of it and in the supporting affidavit sworn by the accused. Mr. Tunya told the court that the accused has a fixed abode at Nairobi South C where he lives with his parents; that the accused has a constitutional right to bail unless there are compelling reasons; that the law presumes the accused innocent until the contrary is proved; that the accused suffered mental disturbance after the death of his wife and wandered about until he was arrested 21 days later and that the accused was not running away. The accused has reiterated the same grounds in his supporting affidavit.

Mr. Tunya urged the court to allow the application and admit the accused to bail pending the hearing and determination of this case. He told the court that the cardinal consideration in a bail application is whether an accused person will attend court once released on bail; that the accused was arrested within Parklands and his intention was not to abscond; that the accused is still not well mentally and requires care which he cannot get while in custody and that the prosecution has not advanced any compelling reasons to warrant denial of bail. Mr. Tunya asked this court to ignore the judgment from the Kadhis court and the notes allegedly made by the accused person threatening witnesses attached to the Replying affidavit because they are not certified as true copies.

The application is opposed. The prosecution counsel is relying on the Replying Affidavit and a further affidavit both sworn by CPL Samson Owaga. The grounds in opposition are that the right to bail is not absolute and can be denied where compelling reasons exist; that the accused disappeared after committing the offence; that there is strong evidence against the accused; that the accused has intimidated two witnesses in this case; that one of the children was present during the time of murder and was traumatized and that the accused may visit the children causing more trauma to them; that if the accused is released before securing the evidence of witnesses this may jeopardize the prosecution case and that the accused is facing another case before the Chief Magistrate Kibera on obtaining by false pretences (**Criminal Case No. 2324 of 2014**) and the surety in that case is threatening to withdraw. Ms Macharia urged the court to

decline to grant this application.

I have considered this application and the grounds in support of it and in opposition as well as the documents attached to this application. The document marked "SO1" is purported to be a judgement from the Kadhi's Court in Children's Case No. 1 of 2015. It grants custody of the two children S aged 11 years and S aged 4 years to the maternal grandparents. The other documents marked "SO2" and "SO3" are said to be threatening notes to two of the prosecution witnesses. Threat to witnesses, especially when issued by the accused persons, is a very serious matter because it is intended to subvert justice. The problem I am having with the alleged threat and the judgement from the Kadhi is that they are not certified as true copies. This court cannot verify their authenticity and in my view Mr. Tunya was right in raising issue with the documents. I wonder why police never found it necessary to record statements from the alleged threatened witnesses! I however find no dispute that the children are with the maternal grandparents.

It is true that an accused person is presumed innocent until evidence proves otherwise and the strength of evidence against him can only be tested after the same has been presented and its veracity tested in court. But it is also true that the court must balance the rights of all the parties before it by ensuring that they all benefit from a fair trial. Having said this, I am not persuaded that the prosecution has presented compelling reasons to make me decline this application. In setting terms and conditions of bail this court will ensure that the accused attends court for his trial and does not in any manner subvert justice. I will and do hereby allow this application and admit the accused to bail on the following terms:

- (i) He shall execute a bond of Kshs 1,000,000 shillings with two sureties of similar amount each.
- (ii) In the alternative he shall deposit cash bail of Kshs 500,000.
- (iii) He shall attend monthly mentions before the deputy registrar until this case is heard and determined or until ordered otherwise. The 1st such mention shall be on 19th September 2016.
- (iv) He shall also deposit his passport with the Registrar of this Court until further orders of this court if this becomes necessary.
- (v) The accused shall not contact the children unless the guardians, the maternal grandparents, have consented to the same or unless a court of law has ordered such visit care being taken to protect the children.

Orders shall issue accordingly.

Dated, signed and delivered this 18th day of August 2016.

S. N. MUTUKU

JUDGE

In the presence of:

Ms Macharia for the prosecution

Mr. Tunya for the accused

Mr. Abdul Shiraz Chaudry the accused

Mr. Daniel Ngumbi court clerk