



REPUBLIC OF KENYA

IN THE HIGH COURT AT MACHAKOS

CRIMINAL CASE NO. 67 OF 2015

SUSAN NDUKU KITULYA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant is the Accused Person herein and she was charged with murder contrary to section 203 as read with Section 204 of the Penal code. It is alleged that on the night of 11th -12th August 2015 at Mungala sub-location, Mumbuni location within Machakos County, she murdered James Muia Kitulya. The Applicant pleaded not guilty to the offence and subsequently filed an application by way of a Notice of Motion dated 30th October 2016 seeking to be admitted to bond/bail pending trial.

The Applicant urged her grounds for the application in the said Notice of Motion and in a supporting affidavit she filed in Court on 30th October 2016. The grounds are that the Applicant is sickly and is on medication for high blood pressure, which is not readily available at the Machakos G.K. Prison. Further, that she is a single mother of a 17-year old minor son, who has had to drop out of school as she has been unable to pay his school fees since her arrest. The Applicant averred that she has a permanent place of abode at Mumbuni location at Machakos County and is not a flight risk. In addition, that she has good antecedents, is a law abiding citizen with no previous criminal records, and is willing to abide with the terms set by the Court. Lastly, the Applicant stated that there are no compelling reasons to deny her bail/bond, and undertook not to interfere with prosecution witnesses if the orders of release on bond/bail are granted.

The Prosecution opposed the Applicant's application in a replying affidavit sworn on 7th June 2016 by CI James Mose, a police officer currently attached to Machakos Police Station and the investigating officer in this criminal case. The deponent stated that the Applicant may tamper with witnesses who are persons well known to her. It was further argued by the prosecution that considering the severity of the sentence provided by law for the offence of murder, which is the death penalty, this may be an incentive for the Applicant to abscond and is thus a compelling reason to deny him bail.

The learned Defence counsel, Mutua Makau and the learned Prosecution counsel, Ms. Mogoi Lillian, relied on the pleadings filed during the hearing of the application.

I have considered the pleadings and arguments made by the Applicant and Prosecution. The applicable law on bail/bond pending trial is Article 49 (1) (h) of the Constitution, which permits the release of any arrested person including persons charged with a capital offence on bail/bond pending trial, unless there are compelling reasons not to do so. The issue in this application therefore is whether there are compelling reasons why the Applicant should not be released on bail and if so, what are those compelling

reasons and who carries the burden of satisfying the court with regard to the existence of such reasons.

In **Republic –vs- Danson Ngunya & Another [2010] e KLR**, Makhandia J, (as he then was) stated that if the state wants the accused deprived of his right to be released on bond, then the State must satisfy the court that it would not be in the interest of justice to make an order granting bail/bond.

I note that the prosecution has not given any particulars as to the witnesses likely to be interfered with by the Applicant, and the details of their relationship and/or proximity. It is also a cardinal right of an accused person under the Constitution that they are presumed innocent until proved guilty, and the fact that the sentence meted on the Applicant will be severe in the event that she is found guilty does not affect her right to be granted bail on account of the presumption of innocence.

I therefore find that no compelling reason exists to deny the Applicant bail/bond at this stage, and the Applicant's Notice of Motion dated 30th October 2015 is allowed.

I accordingly admit the Applicant to bail/bond pending trial on the following terms:

1. The Applicant shall execute a bond of Kshs. 350,000/=, and provide one surety of similar sum.
2. The surety for the Applicant shall be approved by the Deputy Registrar of this court.
3. The Applicant shall attend mentions before the Deputy Registrar of the High Court, Machakos once every month until her case is heard and determined.
4. The Applicant shall not have any contact with, or in any other manner interfere with the prosecution witnesses in this case.
5. The Applicant shall be required to attend court for the remainder of the trial without fail.
6. In default of orders 1, 2, 3, and 4 hereinabove, the Applicant's bond shall be cancelled immediately and their sureties called to account.

It is so ordered.

DATED AT MACHAKOS THIS 3RD AUGUST 2016.

P. NYAMWEYA

JUDGE