



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 49 OF 2014

LESIT, J.

REPUBLIC.....PROSECUTOR

-VERSUS -

JUDITH KANANA.....ACCUSED

RULING

1. The accused is facing a charge of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**.
2. The accused filed a Notice of Motion dated 13th October 2014. She seeks to be released on bail pending her trial.
3. The grounds for the application are on the face of the application and are four namely:

1. **That the applicant has fixed abode and is not flight risk.**
2. **That the applicant has never and has no intention of interfering with the witnesses in this matter.**
3. **That the applicant is ready to even report to the nearest police station once a month if granted bail.**
4. **That the applicant is ready to comply with any condition given by this court if granted bail.**

4. The application is supported by an affidavit sworn by the accused in which she deposes that she will not interfere with the witnesses. The accused deposes further that she is ready to abide by any terms court may direct even that of reporting to the nearest police station.
5. Mrs. Onunga for the State opposed the application. Counsel submitted that the accused strangled a child of a next door neighbour. Learned Prosecution Counsel urged that the accused was a flight risk as no fixed abode has been demonstrated and that if she absconded it would be impossible to trace her.
6. Mrs. Rawal for the accused urged court to accept accused averments on the supporting affidavit in which she deposes that she does not wish to disappear.
7. I have considered the application by the accused and the objection by the prosecution.
8. The essences of granting bail pending the trial of an accused person is to enable them enjoy the right to bail. That right is not absolute. There are several principles the court must apply to satisfy itself whether the accused should be released on bail.
9. The court in **Nganga vs. Republic 1985 KLR 451** set the principles to be borne in mind while considering bail as follows:

“ 1. **The court, in exercising its discretion to grant bail to an accused person under section 123(1) or (3) of the Criminal Procedure Code (cap 75), should consider the following factors:**

(a) In principle, because for the presumption that a person charged with a criminal offence is innocent until his guilt is proved, an accused person who has not been tried should be granted bail unless it is shown by the prosecution that there are substantial grounds for believing that:

(i)The accused will fail to turn up at his trial or to surrender to custody;

(ii)The accused may commit further offences; or

(iii)He will obstruct the course of justice.

2. a.)The primary consideration in deciding whether or not to grant bail to an accused person is whether the accused is likely to attend trial. In making this consideration, the court must consider;

i. The nature of the charge or offence and the seriousness of the punishment to be awarded if the applicant is found guilty;

ii. The strength of the prosecution case;

iii. The character and antecedents of the accused;

iv. The likelihood of the accused interfering with prosecution witnesses.

Where more than one person are jointly charged with a criminal offence, the case of each accused person must be examined on its own facts and this applies also to an application for bail in which each accused person's application is to be considered on its own facts, circumstances and merit."

10.The State has raised an issue about the risk of the accused disappearing and not being traced for reason she has not shown where she intends to live if granted bail. That is a pertinent issue. Where the accused intends to live if released on bail should be well demonstrated within the application for bail. That has not been shown or even alluded to. Her home background or area is totally unknown. I agree with the State that it is a concern to grant bail when that important detail is omitted by an applicant.

11.Equally important is the fact the accused should be able to demonstrate the economic activity she plans to engage in order to fend for her. Alternatively she should demonstrate how she intends to cater for her basic needs. That is not demonstrated either.

12.Equally important is the fact that the accused should demonstrate some family ties that would give an assurance that there would be good reason preventing the accused from absconding. No ties are alluded to in her affidavit and none are demonstrated.

13.The State has submitted that the accused was a next door neighbor and is alleged to have strangled the deceased. The covering report shows that the accused was in fact the house keeper employed to take care of the deceased. It is therefore a concern that needs to be addressed where the accused comes from, how she intends to fend herself and where she intends to live. The prosecution's submission that the accused is a flight risk is not without a good reason.

14.I find there are compelling reasons not to grant the accused person bail. The accused application is therefore declined

DATED AT NAIROBI THIS 28TH DAY OF MAY, 2015.

LESITT, J

JUDGE