



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 49 OF 2013

REPUBLICRESPONDENT

versus

ALEX MWANZIA MUTANGILI.....APPLICANT

RULING

1. Alex Mwanzia Mutangili the applicant (accused) filed an application dated 8th July 2014 seeking to be released on bail pending trial pursuant to the provisions of Article 49(1)(h) of the constitution.
2. In support of the application the applicant deposed an affidavit stating that; He is the sole breadwinner of his two (2) daughters aged six and three (3) years respectively; he comes from Mbenuu village, Nzambani sub-location, Nthongoni Location, Mtito-Andei division, Kibwezi district, Makueni county; he has been in custody for the last 10 months; if released on bail he will abide by the terms that will be imposed by the court; he will not interfere with witnesses and will attend court as required.
3. In response thereto the state opposed the application. No. 75523 P.C. Julius Omondi deposed that there were enough reasons to believe that the applicant had a hand in the deceased's death, if granted bail he will target witnesses who are his relatives which will interfere with the smooth proceedings of the court since some of the witnesses are his relatives. The likelihood of interference with witnesses was compelling reason to have him denied bail; The sentence to be imposed of death penalty was an incentive for the applicant to abscond.

The application was canvassed by way of written submissions that I have taken into consideration.

4. Bail is a constitutional right but if there are compelling reasons requiring the accused persons incarceration then it may be denied. The primary consideration of granting bail is whether the accused will turn up for trial. However there are other factors to be considered when considering whether or not to release an accused person on bail as stated in the case cited – **Alhaji Majahid Dokubo – Asari v Federal Republic of Nigeria S.C. 208/2006** where the court stated that the criteria to be considered include:-

- **The nature of the charge;**
- **The strength of evidence which supports the charge;**
- **The gravity of punishment in event of conviction;**
- **The previous criminal record of the accused if any;**

- **The probability that the accused may not surrender himself for trial;**
 - **The likelihood of the accused interfering with witnesses or may suppress any evidence that may incriminate him;**
 - **The likelihood or further charge being brought against the accused.**
 - **The probability of guilt;**
 - **Detention for the protection of the accused;**
 - **The necessity to procure medical or social report pending final disposal of the case.**
5. The accused is charged with murder which is a serious offence. In case of a conviction the accused will be sentenced to death. Other than the averment that the kind of sentence to be imposed in event of a conviction is severe such that if released it would be an incentive for the accused to abscond, there is nothing to suggest that he has the propensity to abscond.
 6. It has been stated that the accused person is related to the witnesses who will testify therefore he may target them. This allegation is denied. It is submitted that in fact he is related by blood to some of the witnesses.

Some of them reside in the same home with him. At this stage no evidence has been adduced to enable the court to gauge the strength of evidence to support the charge.

The mental assessment report reveals that the accused previously had symptoms of auditory hallucinations and memory lapses. The deceased was his wife. This is a person who may need protection and could be a danger to persons who may testify against him.

7. In the premises releasing such a person on bail prior to witnesses who reside in the same home with him testifying may be prejudicial to the prosecution case. This indeed is a compelling reason that calls upon the court to deny him bail.
8. Consequently I decline to grant the application. The same is dismissed.
9. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 26th day of MAY 2015.

L.N. MUTENDE

JUDGE