



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL CASE NO. 84 OF 2010

REPUBLIC..... RESPONDENT

VERSUS

KELVIN PASCAL..... APPLICANT

RULING

1. The applicant is charged with murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap. 63), Laws of Kenya.
2. The applicant on 6th June, 2014 filed an application for bail pending trial.
3. It is deponed that the applicant is the sole breadwinner of his family. That the applicant has been in custody for over four years. The applicant undertakes to abide by the terms and conditions of bond that this court may set.
4. The application is opposed. According to the affidavit in reply, the accused and the prosecution witnesses come from the same neighbourhood and the accused may be tempted to tamper with witnesses. That in the event of a conviction, the accused will face a death penalty, which on its own is an incentive to abscond. It is further argued that the members of public are hostile to the accused as they had assaulted him before he was rescued by the police.
5. I have considered **Section 49 (1) of the Constitution** which provides as follows:-

“An arrested person has the right to be released on bond or bail, on reasonable conditions, pending the charge or trial unless there are compelling reasons not to be released.”

6. However, the court has discretion to grant or refuse bail depending on the circumstances of each case. The court is required to take into consideration settled principles of the law when determining whether or not to grant bail pending the hearing of a criminal case or pending the hearing of an appeal. The principles to be considered by this court in determining whether or not to grant bail were set out in **Mwaura v Republic (1986) KLR 600**. The said principles include the following; the nature of the offence, the strength of the evidence, the character or behaviour of an accused and the seriousness of the punishment to be meted if the accused is found guilty. The primary underlying consideration is whether the accused will turn up at the appointed place and time for his trial. The court further held that in the exercise of its discretion, if certain exceptional circumstances personal to the accused exist which when weighed against the risk of the accused absconding, the balance will tilt in favour of granting bail. Another factor that the court will consider is whether the accused will interfere with witnesses if he is

released on bond.

7. The State has not given any compelling reasons why the Applicant should not be released on bond. Compelling reasons should not be a matter of conjecture, guesswork or speculation. Being supplied with statements of prosecution witnesses is a matter of right guaranteed by the Constitution under Article 50(2) (j). The provision for death sentence cannot be used against the Applicant as that would negate the Constitutional guarantee for bail in capital offences.

8. There are no reasons given in support of the assertion that the Applicant is likely to interfere with witnesses e.g. has the Applicant threatened or accosted any witness or tried to dissuade or compromise any witness against testifying? There is no such evidence.

9. I allow the application on condition that the Applicant should not either directly or indirectly contact any of the prosecution's witnesses. The Applicant may be released on a **Kshs. 1 Million** personal bond with one surety of a like sum.

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B. THURANIRA JADEN

Dated and delivered at Kitui this 24th day of September 2015

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B. THURANIRA JADEN

JUDGE