



155/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 170 OF 2013

MORINE SYOKAUAPPELLANT

VERSUS

REPUBLICRESPONDENT

RULING

1. By an application dated **8th August, 2013**, **Morine Syokau** seeks to be released on bail pending appeal with fair and favourable terms. It is premised on grounds that having been tried, convicted and sentenced to **four (4) years** imprisonment she is dissatisfied with the judgment and sentence and intends to lodge an appeal to the High Court; given the time that may be taken in hearing of the appeal, it may be rendered nugatory and that the applicant has a six (6) years old child who is of school going age and needs her attention and care.
2. **Mr. Mugu** for the applicant reiterated what was stated in the body of the application and added that it is in the interest of justice that the applicant be released on bail of Kshs. 10,000/= . Further he stated that the applicant would attend court without failure as she did in the Lower Court and it was her right to be out on bail considering the provisions of the **Constitution, Article 49 (1)**.
3. **Mr. Mwangi**, learned State Counsel strongly opposed the application. He argued that **Article 49(1)** of the **Constitution** did not apply in the instant case as the applicant had been convicted therefore she was not an accused person. He called upon the court to consider the nature of offence the applicant was convicted of and the fact that the appeal was not arguable. He called upon the court to hear the appeal on priority basis instead of releasing the applicant on bail.
4. The principles that guide the court in reaching a decision to release a convict on bail or reject the application of that nature were considered in the case of **Jivraj Shah versus Republic [1986] LLR 605**. The Court of Appeal stated thus:-

“1. The principle consideration in an application for bail pending appeal is the existence of exceptional or unusual circumstances upon which the court of Appeal can fairly conclude that it is in the interest of justice to grant bail.

2. It appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, conditions of granting bail will exist”.

5. I have carefully perused the record of appeal. The applicant was charged with the offence of

- administering poison with intent to harm contrary to **Section 236** of the **Penal Code**.
6. As correctly pointed out by the learned State Counsel, the fundamental right enshrined in **Article 49(1)(h)** of the **Constitution** is in respect of accused persons but not convicted persons who have been proven guilty. It can therefore not be applicable in the instant case.
 7. The applicant had a duty of demonstrating that there was clear evidence overlooked by the trial court which upon consideration by this court will result into her conviction being reversed. This was not done. This is a case with complex issues that ought to be determined on appeal. The appeal cannot be dismissed as one having overwhelming chance of succeeding.
 8. The issue of the applicant having a minor child cannot be said to be an exceptional circumstance that should make this court conclude that it is in the interest of justice to have her released on bail.
 9. In the result, I dismiss the application. This court is however ready to hear the appeal on priority basis.
 10. It is so ordered.

DATED, DELIVERED and SIGNED this 15th day of JANUARY, 2014.

L.N. MUTENDE

JUDGE