



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 98 OF 2013

CHRISPINUS NATEMENYA KHAKALIAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The accused **Chrispinus Natemenya Khakali** is charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The victim of the offence is said to be one **Rose Makhungu** his wife of eight years. The accused took plea on 13th November 2013 and denied the charge and was remanded in custody. He has now applied to be released on bail pending his trial.

In his application dated 25th November, 2013 and which was prosecuted before me on 26th May 2014, he states that he has a constitutional right to bail, is desirous of going back to his employment and parental responsibilities and shall in no way interfere with witnesses.

The application is contested by the State through the Replying Affidavit of **No. 46295 Cpl. Gideon Mugambi** and the submissions of **Ms. Matiru**, the learned prosecution counsel. **Ms. Matiru** relied on paragraphs 3, 4 and 5 of the Replying affidavit to submit that the applicant was likely to interfere with witnesses who include his only child and relatives; and, that the prosecution's case against the applicant was very strong given that he confessed to having killed his wife and that he was arrested at the scene of crime by neighbours who answered the distress call. **Ms Matiru** submitted that the Rules of confession were duly complied with and that the applicant was likely to be convicted. She expressed a fear that the likelihood of conviction would make the accused abscond.

Defence counsel **Mr. Wanyanga** pleaded with the court to release the accused to enable him return to his employment and take care of his children. He argued that he was entitled to bail under the constitution.

I have considered the rival affidavits and submissions. **Article 49 (i) (h) of the Constitution** on which the application is grounded provides that *“an arrested person has a right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.....”*

In this particular case the applicant is alleged to have killed his wife in the presence of his children one of whom is listed as a prosecution witness. The prosecution has urged the court not to release the applicant for fear that he will interfere with witnesses who are his relatives. In my view, such a fear cannot be far-fetched. It is in the interests of justice that the testimony of the witnesses and in particular the minor witness who stands in a vulnerable position be safeguarded.

The second reason which has been argued in support of denial of bail is that the evidence against the accused is overwhelming and likely to lead to a conviction. Such evidence is said to include a confession by the accused. I have perused the witness statements to which my attention was drawn. While I must hasten to add that the said statements including the confession are yet to be tested at trial, they support the averments of the state that two of witnesses are indeed closely related to the accused and one was an eye witness. This further raises the possibility of interference.

In the circumstances of this case, and for the reasons outlined above, I exercise my discretion to deny the applicant bail.

He shall remain in custody pending the expeditious conclusion of his trial.

Ruling delivered and signed at Nairobi this **16th** day of **June**, 2014

R.LAGAT-KORIR

JUDGE

In the presence of:-

..... :Court clerk
..... :Applicant/Accused
..... :Counsel for the Applicant/Accused
..... :Counsel for the Respondent