



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 110 OF 2014

WENDOHO, J

SOFIA DUKE MARSALAAPPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

RULING

SOFIA DUKE MARSALA was convicted of the offence of trafficking Narcotic Drugs contrary to section 4(a) of the Narcotic Drugs and Psychotropic Substances (Control) Act 1994 and was sentenced to serve 10 years imprisonment. She has filed Criminal Appeal case No. 110/2014 seeking to have quashed both the conviction and sentence. In the meantime, the appellant has filed an application dated 13.10.2014 asking for bail pending hearing of the appeal. The application is supported by her affidavit in which she deposes that her appeal has high chances of success since she has been advised by her advocate that the trial court contravened Regulation 16(1) (2) of the **Narcotic Drugs and Psychotropic Substances (Control) Seizure Analysis and Disposal Regulations, 2006**, in that she has not shown a sample of the exhibits; that if not released on bond, she is likely to serve a substantial part of the sentence. She also complained that she is suffering from ulcers, is a mother of 8 children and her husband is a civil servant.

Mr. Mungai, the Learned State Counsel, did not oppose the application but reserved the right to oppose the appeal when it comes up for hearing.

For the court to grant an application for bail pending appeal, it must consider the following:

1. Whether the appeal has an overwhelming chance of success (see) **Some V. Republic (1972) EA 476**.
2. That by the time the appeal is prosecuted and determined, the appellant will have served a substantial part of the sentence.

The onus lies on the applicant to demonstrate that her appeal has high chances of success. I have read the provisions of Reg 16(1) and (2) of the Narcotic Drugs and Psychotropic Substance (Control) Act (Restraint and Forfeiture) Regulations 1997 and perused the proceedings in the lower court and I am satisfied that

there is an issue of whether or not the prosecution complied with the said regulations and for that reason, the appeal may have chances of success.

I have considered the applicant's submissions that she is likely to serve a substantial part of the sentence. The applicant was sentenced to serve 10 years imprisonment on 21.8.2014. So far she has only served two months. The record of appeal is ready. I believe this appeal will be heard within 6 months once admitted and I find that the applicant will not have served a substantial part of the sentence before the appeal is heard and determined.

The other ground that the appellant relies upon is that she is unwell and has 8 children. Ill health per se can never be a ground for grant of bail pending appeal because there are facilities in the prison where the applicant can be treated. As for her family responsibilities, I believe all other prisoners have responsibilities back home and that would not be an exceptional consideration.

The above notwithstanding, having found that the appeal may have high chances of success, I hereby grant the application to release the applicant on bail. The applicant may be released on cash bail of Ksh, 50,000/ plus a surety of Ksh.150, 000/-. It is so ordered.

DATED AT MERU THIS 27TH DAY OF NOVEMBER, 2014.

R. P .V. WENDOH

JUDGE

..... **For Appellant**

..... **For Respondent**

..... **Court Assistant**