



REPUBLIC OF KENYA

High Court at Mombasa

Criminal Appeal 68 of 2012

JAEL NYABUNDEAPPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the Original Conviction and Sentence in the Criminal Case No. 386 of 2011 of the Chief Magistrate's Court at Mombasa: J. Gandani– PM)

RULING

This is an application brought under section 356 and 357 of the Criminal Procedure Code.

It seeks the orders that the appellant be admitted to bail pending appeal.

The grounds are that she was charged and convicted for the offence of being in possession of Narcotic drugs contrary to section 3(1) as read together with section 2(a) of the Narcotics drugs and Psychotropic substances control Act No. 4 of 1994.

She was Convicted on 19th September, 2011 and Sentenced to a fine of Ksh. 5,000/= in default one year and in addition imprisonment term of 5 years.

The main ground is that on mitigation she pleaded for leniency as she was Hiv positive and had been in custody for six months.

Further that the whereabouts of her seventeen (17) years old daughter are unknown and her seven (7) year old second daughter is also Hiv positive and ailing and is under the care of neighbours.

Nowhere in this application has it been argued or posited that the intended appeal has high chances of success.

The brief facts of her case is that police officers acting, on information received proceeded to the house of the appellant and upon search recovered 85 rolls of Cannabis Sativa.

There is nothing to show from the proceedings that her appeal has high chances of success.

A perusal of the proceedings in the lower court do indicate that the trial magistrate did order for a pre-bond report before granting one.

The pre-bond report was not favourable for her placement on bond. The probation officer did opine that the appellant is a pathological liar.

In her application she mentions only two daughters one aged seventeen (17) years and another aged seven(7). The probation officer in the report shows that the applicant has five children, two who are married, one who has finished form four and another form two student at Isbania Boys and Euphemic a Nursery School pupil at St. Anne Academy at their rural home.

During the interview the applicant claimed to live at Kogello in Rongo. The brother – in-law and her daughter told the probation officer that the applicant stays at Kisauni – Mombasa.

From the above the probation officer could be justified for calling the applicant a pathological liar. The story she has presented before the Court in her application and the background given by the probation officer are at great variance.

Her application is without merit and is dismissed.

Ruling dated and delivered in open Court this **30th** day of **November, 2012**.

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M. MUYA
JUDGE

In the presence of:-

The applicant
Court clerk – Musundi
Miss Luganda for the appellant.

M. MUYA
JUDGE

Mention 11th February, 2013.