



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAKURU**

**CRIMINAL CASE NO. E030 OF 2020**

**REPUBLIC.....PROSECUTOR**

**-VERSUS-**

**AMOS KIPCHIRCHIR.....ACCUSED**

**RULING**

1. This is a ruling on application for bond made by the accused's Advocate on 16<sup>th</sup> December, 2020. The application is made pursuant to **Article 49 (h) of the Constitution**.

2. **Mr. Murunga** submitted that the prosecution have made attempts to deny accused bond through affidavit signed by the investigating officer. He submitted that the affidavit do not show particular reasons why the accused be denied bond. He submitted that the accused went on his own to Mogotio Police Station and it is not true that he has no employment.

3. He submitted that the accused is a boda boda operator in Mogotio town and he is married with a wife and a child aged 6 months. He urged court to admit accused to bond.

4. In response the state counsel **Ms. Rita Rotich** opposed bond and relied on affidavit sworn by the investigating officer dated 5<sup>th</sup> November, 2020 in which he averred that accused has no fixed aboard and has no employment and submitted that **Mr. Murunga** has not produced any document to show that the accused is a boda boda operator. She submitted that accused is a flight risk and has no fixed place of aboard. She stated that the accused went into hiding after commission of the offence and members of public wanted to lynch him. She submitted that he is likely to abscond if released on bond.

5. In a rejoinder, **Mr. Murunga** submitted that it is not true that accused went into hiding but he presented himself at Mogotio Police Station and it is not true that members of public wanted to lynch him.

6. He submitted that the incident occurred at Mogotio and its not true that he run to Mogotio. He concluded that under Article 50 of the Constitution, the accused is presumed innocent until proven guilty.

7. I have considered submissions by defence counsel and state counsel. I have also perused probation officer's report dated 24<sup>th</sup> February, 2021. The probation officer indicated that the accused comes from the same locality with the victim.

8. He goes further to say there is a possibility of interference with victim. This confirm that the accused's place of residence and his family is known. The family and in particular the uncle interviewed by probation officer is mentioned in the probation officer's report.

9. The state counsel never cited interference with the witnesses as ground to deny bond. In my view, the state counsel has not demonstrated compelling reasons to deny accused bond.

10. I also note that probation officer cited security of accused at the time of preparing the report. That was in October 2020. He indicated that it was not safe for him to be released at the time as members of public could retaliate. From his report releasing accused on bond at time was not safe.

11. It is now about 8 months since the report was done by probation officer. I do not think 8 months after the incident, the life of the accused would be endangered if released.

12. From the foregoing I find that there are no compelling reasons to deny the accused bond 8 months after the incident. I therefore allow bond and order that accused may be released on bond of Kshs.1 million with one surety of a similar amount.

**RULING DATED, SIGNED AND DELIVERED VIA ZOOM AT NAKURU THIS 9TH DAY OF JUNE, 2021.**

**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Schola/Jeniffer - Court Assistant

Murunga for accused

Rita for State