



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL CASE NO. E023 OF 2020

REPUBLIC.....PROSECUTOR

VERSUS

KEVIN NJOROGE MUNGAL.....ACCUSED

RULING

1. The Applicant faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which are that on the night of 19th/20th August, 2020 around Northern Bypass within Zimmerman Area Kasarani sub-county in Nairobi jointly with another not before the court murdered **MARY WANJIRU MWANGI**.

2. He pleaded not guilty to the said charges and by an affidavit sworn by **CPL. FREDRICK MUTURI**, the prosecution opposed his release on bond, on the ground that immediately after the commission of the offence, the accused and his accomplice were involved in an exchange with the police as they tried to apprehend them.

3. It was deponed that after being apprehended, a toy pistol, was recovered from the scene of crime and that the accomplice of the accused is yet to be arrested, raising the possibility of the applicant interfering with the effort to arrest him. It was further contended that prior to the commission of the offence, the applicant and his accomplice had threatened some potential witnesses with pistols and should he be released on bond, he was likely to influence, intimidate or otherwise interfere with those witnesses.

4. It was further contended that the applicant had no known fixed place of abode or place of gainful employment, and was therefore a flight risk, who will not be easily traced, should he abscond from the jurisdiction of the court.

5. In reply to the said affidavit, the applicant on 6/10/2020 swore an affidavit in which he deposed that he had corporate with the investigating officers since his arrest, and intended to do so, should he be released on bond. He further denied ever threatening the prosecution witnesses.

SUBMISSIONS

6. At the hearing hereof, Mr. Naulikha, for the state submitted that the accused had no fixed place of abode and that immediately upon the commission of the offence, his accomplice took off with a pistol and had not been arrested at the time of the application. It was contended that the right to bail did not supersede the right of the victim under Article 26 of the Constitution.

7. On behalf of the accused, Mr. Wakaba, submitted that the circumstances under which the applicant was arrested were issues best left for the trial court, as there had not been any evidence adduced before this court at the stage of the application for bail. It was submitted that there were no evidence on the allegations that there was an accomplice of the accused, who was being investigated, since the accused had been charged alone. It was contended that the allegation that the applicant will interfere with witnesses or likely to abscond were not supported by evidence.

DETERMINATION

8. Bail/Bond is a constitutional right of every accused person which may only be denied under Article 49(1)(h) where there are compelling reasons advanced by the State, to the satisfaction of the court. What constitutes compelling reasons are now well settled in Kenya to include:

i. The nature of charge.

ii. The strength of the evidence which supports the charge.

- iii. The gravity of the punishment in the event of conviction.*
- iv. The previous criminal record of the accused if any.*
- v. The probability that the accused may not surrender himself for trial.*
- vi. The likelihood of the accused interfering with witnesses or that he may suppress any evidence such as incriminating him.*
- vii. Likelihood of further charges being brought against the accused.*
- viii. The probability of a finding of guilt.*
- ix. Detention for the protection of the accused.*
- x. The necessity to procure a medical or social report pending the disposal of the case.*
- xi. Accused persons own safety, security and protection – REPUBLIC V KIMUNYA.*
- xii. If the accused person is likely to pose public danger by being released on bail.*
- xiii. If by releasing the accused on bail public confidence in the administration of justice will be dismissed.*
- xiv. The character antecedents, associations and community ties of the accused person.”*

9. In this matter the prosecution has placed before me the following issues, which I consider to be compelling reasons enough to enable me deny the accused his constitutional right to bail; that at the commission of the offence the accused had an accomplice who is yet to be arrested. The charge sheet presented to court clearly confirms that the offence was committed together with another not before the court. It would therefore be in the best interest of justice that the accused be kept in custody at this stage, until his accomplice is arrested, when he shall be at liberty to renew his application for bond.

10. There is also the issue of the accused persons fixed place of abode which was raised by the investigating officer in his affidavit opposing bail which the applicant did not respond to and in the absence of any evidence confirming that the same has a fixed place of abode, I am of the considered opinion and find that the same is an adequate compelling reason proved by the prosecution.

11. I am therefore satisfied that there are enough compelling reasons advanced by the prosecution to enable me deny the accused his right to bond at this stage which I hereby do.

12. The Applicant shall remain in custody until his accomplice is arrested and charged, which must be done within the next sixty (60) days from the date herein, failure of which the applicant shall be at liberty to renew his application for bond for consideration and it is ordered.

13. In the meantime, the probation officer to prepare and submit to court pre-bail report which shall be considered when the said application is filed.

Dated, Signed and Delivered at Nairobi This 11th Day of November, 2020 Through Microsoft Teams.

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J. WAKIAGA

JUDGE