



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 113 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

HKNACCUSED

RULING

1. The Applicant **HKN** was charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**, the particulars of which were that on the night of 6th and 7th day of July 2013 in Eastleigh Section 1 within Nairobi County murdered **JOSEPH NJOROGE KAMAU**.

2. He pleaded not guilty to the charges and by a Notice of Motion filed on 10th July 2014 sought to be granted bail pending the hearing and determination of the cause. It was supported by his own affidavit in which he deposed that before his arrest, he was a construction worker within Nairobi County and had been in custody since 7th July 2013. He stated that on 7th November 2013 he was assessed by the doctor who recommended that he required a monthly antipsychotic injection and regular follow-up which he could not do while in remand custody.

3. The court ordered for a Pre-bail report which was presented in court on 30/1/2019, in which it was stated that the accused was not in good health having been admitted to Mathari Mental Hospital due to poly substance abuse of alcohol and *miraa*, which culminated to schizophrenia which had been treated on many occasions. It was indicated that his siblings and or relatives have not visited him since they believed he eliminated their father and were very bitter with him and were not willing to associate with him. The family feared that if released he could eliminate them as he did to their father.

SUBMISSIONS

4. It was submitted by Mr. Naulikha for the State that there were compelling reasons to deny the accused bond as none of the relatives was willing to associate with him. It was contended the he was a flight risk and his safety was not guaranteed. On his behalf Ms. Chepkorir submitted that he had been in custody for six years and was sickly in need of medical attention.

DETERMINATION

5. Bond is a constitutional right of every accused person under **Article 49 (1) (h)**, which can only be limited where there are compelling reasons to be advanced by the prosecution. What constitutes compelling reasons has been documented by the Judiciary in **Bail and Bond Policy Guidelines** at 4.9 as follows:-

- a) The nature of the charge or offence and the seriousness of the punishment to be meted if the accused person is found guilty.*
- b) The strength of the prosecution case.*
- c) The character and antecedents of the accused person.*
- d) The failure of the accused person to observe bail or bond terms.*
- e) The likelihood of interfering with witnesses.*
- f) The need to protect the victim or victims of the crime.*

g) The relationship between the accused person and the potential witnesses.

h) The best interest of child offenders.

i) Whether the accused person is a flight risk.

j) Whether the accused person is gainfully employed.

k) Public order, peace and security.

l) Protection of the accused persons.

6. In this cause the Pre-bail report confirms that the accused is single without any fixed place of abode, having been charged with the alleged murder of his father. His relatives are not willing to accommodate or associate with him thereby exposing him. His own safety is not guaranteed should he be released on bond. Whereas the same has submitted that he is in need of medical attention, there is no indication that the same cannot be secured within the confinement of the remand custody. From the material presented before court, he is likely to be a flight risk.

7. I am therefore satisfied that there is adequate compelling reasons presented before the court to enable me deny the accused the enjoyment of his constitutional right to bail which I hereby do. The accused shall remain in custody during the period of his trial but shall be given adequate medical attention at the remand facilities and a report thereon presented to the Deputy Registrar of this court once after every sixty (60) days during the period of his trial and it is so ordered.

Dated, delivered and signed at Nairobi this 17th day of July, 2019.

J. WAKIAGA

JUDGE

In the presence of:-

Mr. Naulikha for the State

Ms. Kali for Mrs. Kinyori for the accused

Accused present

Court Assistant: Karwitha