



**REPUBLIC OF KENYA**

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

**CRIMINAL CASE NO.15 OF 2019**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**DAVID MBATIA CHEGE.....ACCUSED**

**RULING ON BAIL**

1. The accused person herein stands charged with murder.

2. His counsel Mr. Letepa on 13<sup>th</sup> June 2019 made an oral application for bail on the grounds that the accused is the sole bread winner of his family, and he is not a flight risk as he had been released on police cash bail of kshs.10,000/- and had honoured the terms of that bail and that the prosecution had no compelling reasons for denial of bail. Counsel submitted that the fact that the accused comes from Embu County and not Kericho County should not be a reason to deny him bail – as his ordinary residence and sub-location are known.

3. The Prosecution Counsel Mr. Barasa stated that it was not true that accused was initially charged with a traffic offence, and that under Article 157 of the Constitution the authority to charge people with criminal offences was vested in the Director of Public Prosecutions, not the investigating officer of a case. Counsel said also that presently the investigating officer had not been given time to file an affidavit to show whether there were compelling reasons for denial of bail. Counsel felt that bail applications could be considered at any stage of the criminal case and as such the application be deferred.

4. On request of both counsel, I ordered that the affidavit of the investigating officer and the pre-bail report be filed within 14 days, and fixed ruling for the bail application on 8<sup>th</sup> July 2019.

5. As at this morning, I have seen the pre-bail report filed on 5<sup>th</sup> July 2019 by the Probation Officer, Kericho Joel O. Nyaribo. I have not seen the affidavit of the investigating officer.

6. The pre-bail report states as follows:

*“The offence was committed last year and the accused has been reporting to Sotik Police Station as was required of him once every month without fail. The company where he has been working is ready and willing to stand surety for him. We recommend that the court gives him bond. However, the discretion is on the honourable court.”*

7. I have not seen the affidavit of the investigating officer to indicate whether or not there are any compelling reasons to justify denial of bail.

8. Under Article 49 of the Constitution, every arrested person has a right to be released on bail or bond on reasonable terms unless there are compelling reasons to justify denial of bail or bond. The relevant part of the Article states as follows:

*“49 (1) Every arrested person has the right-*

*(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”*

9. Courts have held that the primary duty to demonstrate such compelling reasons for denial of bail or bond lies with the prosecution. The prosecution has not given any such reasons from the investigating officer or any other government officer.

10. In those circumstances, I find no reason to deny the accused person bail.

11. Consequently, I allow the application and order as follows:-

**(i) The accused will be released on signing his own bond of kshs.200,000/- and one surety of similar amount.**

**(ii) In the alternative, he will be released on payment of cash bail of kshs.300,000/-.**

**(iii) He will not interfere with prosecution witnesses.**

**(iv) He will attend every mention of the case and hearing until the case is finalized.**

**Dated and delivered at Kericho this 8<sup>th</sup> day of July 2019.**

**George Dulu**

**JUDGE**