



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. 2 OF 2018

REPUBLIC.....PROSECUTION

-VERSUS-

FRIDAY BARAZA.....ACCUSED

RULING

1. The **Accused/Applicant** filed this application dated 25th February, 2019 under Sections 356 and 357 Criminal Procedure Code, Articles 50 and 57 of the Constitution seeking an order granting him bond pending the hearing of this case.
2. The same is supported by the grounds on its face and his supporting affidavit. He has deponed that he is a serving police officer and is not a flight risk.
3. He averred that he has been in custody since 29th December, 2017, and has no intention of interfering with witnesses or absconding from court proceedings. He is ready and willing to abide by the terms and conditions to be given by the court.
4. Mr. Onyango for the accused submitted that the rights of the accused are protected under Article 50 of the Constitution, and that the accused is presumed innocent. Counsel submitted that the accused is not a flight risk as he has a home in Malava. That there was no negative report against him. Finally, he argued that the witness statements showed that all the witnesses are police officers.
5. The DPP opposed the application and filed a replying affidavit through the current Investigating Officer. He deponed that the accused is a former police officer attached to Makueni police station and is a threat to his former workmates. He had more than once issued threats to his workmates prior to the instant incident which claimed the life of the deceased and injury to two other officers.
6. The deponent states that the deceased's family is still bitter with the accused following the incident, and his life could be at risk. He has stressed much on the accused's previous death threats to the witnesses and its feared that in his position as a police officer he could harm them.
7. He pointed out that the accused is facing a charge of manslaughter arising from the same incident vide Makueni Criminal Case No.81 of 2019, which is ongoing.
8. Mrs. Owenga for the State submitted that the accused's previous conduct causes fear as to the safety of the witnesses. She prayed that the application be denied at this stage.
9. In a rejoinder, Mr. Onyango submitted that the court had not been given any compelling reasons for the denial of bond. He said the accused had not harassed or threatened anyone since his arrest. He argued that Makueni SPM's Criminal Case No. 81 of 2019 is similar to this one with the same witnesses and circumstances.

Determination

10. I have considered the application, affidavits and rival submissions. The issue for determination is whether the prosecution has satisfied this court of any compelling reasons that would make it deny the accused bond. The Applicant cited Sections 356 and 357 Criminal Procedure Code as some of the provisions he is relying on in seeking bond. These provisions are misplaced as they deal with matters where a party has filed an appeal.

11. The accused's case is a first instance matter, as this court is dealing with it in its original jurisdiction. The applicable law is therefore found in Article 49 of the Constitution. Article 49(1) (h) provides:

An arrested person has the right-

“to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released”

12. It is the Respondent’s case that there are compelling reasons for the non-release of the accused on bond. The main reason raised is that the accused is a police officer, deceased was a police officer and the witnesses are police officers. That based on the accused’s earlier threats to these witnesses, there is great fear that he may visit it on them once out on bond.

13. The Investigating Officer has also raised an issue about the deceased’s family. On checking on the information, I note from the name of the deceased that he could have been from the same region with the accused person. The fears by the prosecution concerning the witnesses who are the accused’s former colleagues and the deceased’s family could be real especially for now. This court has not been told how far the case before the Magistrate’s court has gone. The charge in the said case is manslaughter which means there is a death of a human being involved.

14. I have noted from the file that the accused was first arraigned in court on 11th January, 2018. To date, no single witness has testified. Article 50(2)(e) of the Constitution provides:

Every accused person has the right to a fair trial, which includes the right-

“to have the trial begin and conclude without unreasonable delay;

It is clear that there has been delay in hearing this case.

15. This case is scheduled for hearing on 18th July, 2019. I urge the prosecution to avail its witnesses on that day so that the matter can be fast tracked. Before those witnesses testify, I would be reluctant to grant bond to the accused person.

16. The application is disallowed for now. The court will however assess the situation once the hearing commences.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 5TH DAY OF JULY 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG’UDI

JUDGE