



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.24 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

PETER KIBET SANG.....1ST ACCUSED

JOSPHAT BII KIPRONO.....2ND ACCUSED

PATRICK KIPROTICH BETT.....3RD ACCUSED

RULING

1. Before me are two application brought by way of Notice of Motion one dated 14th October 2019 and 17th October 2019 respectively filed by the applicants (three accused) through counsel for bail pending trial.
2. The applications were filed under Article 49 (1) (h) of the Constitution of Kenya with grounds that the applicants are not a flight risk and will attend court as and when required and they will not pose as a threat to society once released on bail. Each of the applications was filed with a supporting affidavit amplifying the grounds of the application.
3. The applications were opposed through an affidavit sworn on 14th October 2019 by Cpl. Kennedy Mugove the investigating officer, in which it was deponed that the accused persons were threatening witnesses, that the incident was fresh in the minds of deceased's family members, and that the security of the accused persons was still in danger as the neighbours were still hostile to them.
4. On the hearing date, Mr. Mutai stated that he acted for the 1st and 3rd accused persons who were responsible people with families to take care of. Counsel stated that a pre-bail report had already been filed which was favourable. Counsel stated also that the alleged threat to the accused persons' lives and allegation of interference with witnesses had no basis.
5. Ms Chepkirui for the 2nd accused person associated herself with the submissions of Mr. Mutai and added that bail was a Constitutional right. Counsel urged the court to disregard the affidavit of the investigating officer as it had no basis, and asked the court to rely on the Judiciary Bail/Bond guidelines, and the pre-bail report which recommended that the 2nd accused be released on bail. Counsel sought to rely on Nairobi High Court Criminal Case No.61 of 2012 on the proof required on prosecution allegations of existence for compelling reasons for denial of bail.
6. In response to the submissions of counsel for the accused persons, Mr. Ayodo for the State submitted that though bail was a Constitutional right, same was not absolute. Counsel added that the threats to witnesses and existing tension were supported by the pre-bail reports, and felt that these were compelling reasons for denial of bail.
7. I have considered the two applications and the submissions of counsel for the accused and the Prosecuting Counsel. I have also perused the pre-bail reports.
8. Bail is a constitutional right under Article 49 (1) (h) of the Constitution of Kenya irrespective of the nature of offence committed. However, it may be denied if there exist compelling reasons to justify such denial of bail.
9. There is no doubt that all the accused persons have fixed abodes, or place of residence. The complains of the prosecution are that they have threatened witnesses, and that their security is not guaranteed.
10. Courts have held that the primary duty to demonstrate compelling reasons for denial for bail lies with the prosecution. The State has said

that there exist compelling reasons for denial of bail herein, and in my view, section 107 of the Evidence Act (cap.80) places the burden for establishment of those compelling reasons on the State, because they are the ones who allege so and want this court to believe so.

11. I note that all the three pre-bail reports do not mention anything to do with interference or alleged threats to witnesses. Even the local chief did not allege so. In my view, the State has not established possible threats or interference with witnesses.

12. With regard to the security of the accused persons, the pre-bail reports state as follows:-

“Family members interviewed, father and brother to deceased are opposing the accused being granted bail. They say the family members are still bitter and want the accused persons to remain in custody until the case is determined.”

13. This court, in determining compelling reasons for denial of bail has a duty to consider the well-being and security of the accused persons. I note that only two family members of the deceased talked about being bitter. Though they are bitter, which is natural following the sudden death of their loved one, there is no evidence placed before this court that they are close neighbours to the accused persons. There is also no evidence that the public are also bitter. In those circumstances, though I appreciate their bitterness, I do not think that it is a compelling reason to hold the accused in custody till the case is determined and this court does not know when it will be determined.

14. I find no compelling reasons to justify denying the accused persons bail. I thus allow the application and order as follows:-

a. Each of the accused persons will be released upon signing his own bond of Kshs.400,000/- with one surety of similar amount.

b. In the alternative each will be released on payment of cash bail of Kshs.200,000/-.

c. They will not interfere with or threaten any witnesses.

d. They will attend court at every mention of the case and hearing thereof until the case is heard and finalized.

Dated and delivered at Kericho this 9th day of December 2019

George Dulu

JUDGE