



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CRIMINAL CASE NO. 18 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

M M G.....ACCUSED

RULING ON BAIL

1. The accused **M M G** is charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code** the particulars of which are that on the 12th day of April 2017 in South C Lang'ata within Nairobi County murdered **BABY V.J.**

2. He pleaded not guilty to the said charges and in exercise of his constitutional rights under **Article 49 (1) (h)** moved the court to be released on bail pending the hearing and determination of this case.

3. The prosecution by an affidavit sworn on 13th June 2018 by the investigating officer in this matter CPL. Joseph Chirchir advanced the following issues as being compelling enough to enable the court deny the Appellant his constitutional right to bail:-

a. The accused is aware of the weight and/or strength of the prosecution case against him having been served with prosecution witnesses' statements.

b. There is a high possibility of the accused escaping if released on bond based on what the accused indicated in the course of investigations as per his annexed statement.

c. The accused faces another offence of causing grievous harm contrary to Section 234 of the Penal Code at Kibera Law Courts in Criminal Case No. 3841 of 2016 in respect to one A.C. who was their house help and that having been arraigned in court to answer the said charge the accused absconded and a warrant of his arrest issued which is still in force.

d. After the commission of this offence the accused escaped and had to be lured back by his brother for him to be arrested and charged.

e. While at Mathare Mental Hospital intelligence report was received that the accused was preparing to escape and leave the country and that this was further confirmed through the analysis of his mobile phone data.

f. Based on the Digital and Cellular Examination Forensic Report, the conduct of the accused and the way the crime was committed there was a high likelihood of the accused interfering and intimidating the prosecution witnesses who are his family members and the house help and or the accused absconding if released on bail.

4. In compliance with Bail and Bond Policy Guidelines the court called for pre-bail report dated 14/6/2018 in which the following were outlined therein:-

a. At the time of the commission of the offence the Applicant operated a mobile accessories and electronic repairs shop with his wife E.N. and together they had two children including the deceased. At the time of the interview the Applicant who appeared withdrawn stated that he had been on medication for severe depression.

b. On the Victim Impact Statement:- the deceased aged two years at the time of this demise was the accused second born and that sometime in October 2017 the offender started behaving very strangely leading him to stab their house help. The wife feels that she may not be safe if the offender is released on bail.

c. On recommendation it was stated that it was not safe to recommend the release of the accused on bail at this stage.

5. I have taken into account the submissions by Mr. Rombo for the accused person and those of Ms. Mwaniki for the state and the affidavit sworn by the investigating officer in this matter. It is clear from the information availed to court that the victim was a child of the Applicant and that most of the intended prosecution witnesses are closely related to the Applicant and if released on bond the Applicant is likely to be in constant contact with them which I find to be compelling reason enough. This court has had an opportunity to state the effect of the said relationship in the case of **REP. V CHRISTOPHER MULEI MUTUA NRB CRIMINAL CASE NO. 7 OF 2016** as follows:-

“Given the close relationship between the accused person and the possible prosecution witnesses it is clear to my mind that if released on bond the accused will be in contact with the said witnesses either physically or emotionally having taken into account the provisions of Section 10 (1) (b) of the Victim Protection Act 2014 I am satisfied that there are adequate compelling reasons advanced by the state.”

6. From the information availed by the prosecution I am satisfied that the state has advanced adequate compelling reasons to enable me at this stage in time deny the accused his right to bail. Whereas the same is presumed to be innocent I am of the considered view and hold that it will not be in the best interest of justice to release him at this stage as the most vital prosecution witnesses will be his wife and their minor child. The accused also still requires constant monitoring which can only be done when the same is in custody.

7. The accused shall therefore remain in remand custody but is at liberty to review the application for bond once his wife, child and their house help have testified. The same shall continue with medication and treatment for severe depression while in remand prison and if need be access be granted to his personal doctor to attend to him at the said facility and it is so ordered.

Dated, delivered and signed at Nairobi this 17th day of October, 2018.

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J. WAKIAGA

JUDGE

In the presence of:-

Miss Mwaniki for the State

Mr. Masara for Rombo for the Accused

Accused person present

Court clerk Karwitha