

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL APPEAL NO.14 OF 2018

TIMA MADI ALI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant in this case was tried and convicted of the offence of being in possession of narcotic drugs contrary to section 3(1) as read with section 3(2)(b) of the Narcotic Drugs and Psychotropic Substances Control Act No. 4 of 1994. She was sentenced to serve 5 years in prison. Being dissatisfied with the conviction and sentence, the appellant filed a petition of appeal dated 19/3/2018.

2. The Appellant has now made an application dated 10/4/2018 seeking to be released on bail pending appeal. The application is brought on the grounds that the appeal may take time and that the appellant may serve and complete the jail term before the appeal is heard and determined; that the appeal may be rendered nugatory; that the appellant has a prima facie appeal with high chances of success, and; that the applicant has a medical condition. The application is supported by an affidavit sworn by the applicant's advocate Tobias Korir. The averments in the affidavit reiterate the grounds aforesaid with an additional averment that the applicant was the sole breadwinner of her family and had young children to look after.

3. At the hearing of the application, Ms. Marubu for the applicant relied on the supporting affidavit and made brief submissions underscoring the ground that the appeal may take long to be heard and concluded. On his part, Mr Kasyoka for the respondent submitted that they did not oppose the application and only asked that the bond terms be sufficient.

4. I have considered the application, the supporting affidavit and the submissions of respective counsel. I find nothing in both the affidavit and the submissions to demonstrate that the applicant's appeal has high chances of success. There is also nothing to demonstrate that the appellant if released to bail pending appeal shall attend her appeal and prosecute the appeal expeditiously. Further, there is no evidence presented to support the medical condition of the appellant and neither was the court requested to obtain a pre bail report to support the averment that the applicant had minor children to look after.

5. In sum, I am not persuaded that the applicant should be granted bail pending appeal. The appellant should instead prepare and serve the record of appeal and take early hearing dates. The application is thus dismissed.

Orders accordingly.

Ruling delivered dated and Signed at Garsen on 19th day of November 2018.

R.LAGAT KORIR

In the presence of:

.....: Court Assistant

.....: Accused/Applicant

..... For Appellant

.....: For Respondent