



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL CASE NO. 115 OF 2015

MARGARET WANJIRU BETHAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The accused faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code, the particulars of which were that on 9th day of March, 2014 at Kihingo location within Kiambu County murdered DANIEL NJUGUNA MBURU. On 7/1/2015 she pleaded not guilty to the said charges.
2. By a chamber summons application under Sections 123(1) (3), 124 of CPC and Article 49(h) of the Constitution of Kenya 2010 the accused sought an order to be released on bail pending the hearing and determination of the case which application was supported by the Applicant's sworn affidavit allegedly sworn before Ramesh K. Patel on 26th day of January, 2016 in which she deponed that she is a single mother residing in Nairobi and has a child with special needs who is under the care and attention of the mother of the accused.
3. In opposition to the said application the state through SGT PHILIP OSODO filed a replying affidavit in which it was stated that the deceased and the accused person were living together in a come-we-stay relationship together with their 14 years old child with special needs. It was deponed that the accused person disappeared immediately after the alleged murder on 9th March, 2014 and was arrested on 22nd December, 2015 at Kiganjo Gatundu Town within Kiambu County following a tip off from an informer.
4. It was contended that considering the conduct of the accused person immediately after the incident there is a real risk of the accused person absconding bail if released pending hearing, it was further deponed that the accused person knows the prosecution witnesses and is aware of where they reside are therefore there is a possibility that if released on bond she could inflict genuine fear and anxiety in the potential prosecution witnesses.
5. In compliance with the requirements of the bail and bond policy guidelines, the court ordered for a pre-bail report in which it was stated that the family of the victim is not opposed to the accused being released on bail but under close supervision and that the mother of the accused is willing to stand surety for her.
6. Under Article 49(1) (h) all accused persons are now entitled to be released on bail or bond unless

- there are compelling reason for the same not being released which compelling reason must be demonstrated to court by the prosecution.
7. Article 50(2) of the Constitution places a rebuttable presumption of the law that every accused person has right to be presumed innocent until the contrary is proved at a trial conducted in free and fair manner. At this stage, therefore the accused person before the court is presumed innocent and must be treated by the court, the prosecution and society at large including the family of the victim as such.
 8. In the matter before me, the only compelling reason advanced by the prosecution is the conduct of the accused person before her arrest and subsequent appearance in court which conduct must be balanced against the Constitutional rights of the accused person aforesaid.
 9. I therefore find that there are no compelling reasons placed before the court to enable me deny the accused person her Constitutional Rights to bail at this stage noting that it was the duty of the State to arrest the accused person once an allegation of a commission of offence had been made against her and not for the accused who is presumed innocent to voluntarily hand over herself to the police against her wish.
 10. Having found that there are no compelling reasons, the next issue for determination is what constitutes reasonable bail terms in this particular case. The accused person is alleged to have murdered a man she was living with as husband and wife in a family which is a fundamental right under Article 45(1) of the Constitution which provides that the family is the natural and fundamental unit of society and the necessary basis of social order and shall enjoy the recognition and protection of the State.
 11. In granting bail terms herein the court must therefore take into account the nature of the alleged crime and its impact on society and to ensure that the accused person attends trial. The accused person shall therefore be released on bond on the following terms:-
 - a. Bond of Kshs.500,000 with two sureties of similar amount.
 - b. Not to be in touch with any of the prosecution witness during the period of this trial.
 - c. Not to go to the home area of the deceased for whatever reason.
 - d. Upon her release to report to the Area Chief of Kiganjo location of Kiambu District immediately and to be reporting to the said chief every last Thursday of the month until final determination of this case.

DATED, SIGNED and DELIVERED at Nairobi this 3rd day of March, 2016

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J. WAKIAGA

JUDGE

In the presence of:-

Mr. Mwenda for the State

Mr. Ratemo for Mr. Muchiri for the accused

Accused present

Tabitha court clerk