



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

HIGH COURT CRIMINAL CASE NO. 1 OF 2015

REPUBLIC RESPONDENT

VERSUS

DAVID KIPTOO KOECH..... RESPONDENT

RULING

1. The accused herein has been charged with the offence of murder contrary to **Section 203** as read with **Section 204** of the **Penal Code**. It is alleged that on the 1st day of December 2014 at Kibwang location in Nandi County, he murdered **Leah Kipchumba**.

2. On the 20th of January 2015, the accused took plea and denied having committed the offence as alleged. On the same day, Learned counsel Mr. Mbeja who held brief for Mr. Chepkwony made an oral application seeking that the accused be admitted to bond pending trial.

3. The state is opposed to the accused's application. In her submission in opposition to the application, Learned prosecuting counsel **Ms Oduor** relied on an affidavit sworn on 4th February 2015 by **PC Zablon Sikolia**, the investigating officer in this case. The state advanced three reasons in its opposition to the application.

First, the state contended that the members of the accused's community are bitter and hostile towards the accused given the circumstances under which the deceased was murdered and if released on bond, his safety may be at risk.

Secondly, that all the witnesses who are expected to testify in this matter are either neighbours or relatives of the accused and if granted bond, accused is likely to interfere with those witnesses thus circumventing the cause of justice.

Thirdly, that the accused is a flight risk as after he allegedly committed the offence, he disappeared to Kericho County and that he was only arrested on 29th December 2014; that if released on bond, he is likely to abscond.

4. On 5th February 2015, **Mr. Miyenda** holding brief for **Mr. Chepkwony** countered the above submissions made on behalf of the state by undertaking to advise his client to relocate to a different place if released on bond instead of going back to his home in order to ensure his safety. Counsel submitted that the apprehension by the state that the accused will interfere with witnesses and may abscond if granted bond can be solved by the court granting the accused bond with sureties and on condition that he will not interfere with witnesses.

5. Having considered the rival submissions by counsel for the accused and the state together with the depositions in the affidavit sworn by the investigating officer, I found it prudent to call for a pre-trial report to provide the court with relevant independent information which could assist it in reaching a fair determination of the accused's prayer that he be admitted to bond pending trial. The pre-bail report was filed on 9th March 2015.

6. It is trite that every accused person irrespective of the offence charged has a constitutional right to be admitted to bond/bail pending trial unless compelling reasons exist to deny him the enjoyment of that right. This right is predicated upon the constitutional guarantee that every accused person is presumed innocent unless and until he pleads guilty or is found guilty of the offence charged by a court of competent jurisdiction.

7. The onus of establishing the existence of compelling reasons sufficient to justify denial of bond/bail is always on the state. Though the decision on whether or not to grant bond/bail in any particular case is at the discretion of the court, the court is enjoined to exercise that discretion judiciously by taking into account several factors before exercising its discretion one way or the other.

Some of the factors which the court takes into account includes whether the accused if granted bond is likely to abscond trial; whether there is evidence that he is likely to interfere with witnesses and whether there is a possibility that his safety and personal security may be compromised.

8. In this case, the pre-bail report filed by the probation service does not vindicate the state's claim that the accused's safety might be compromised if he is granted bond as prayed. The state did not disclose the actual relationship between the accused and its witnesses and since this aspect of the matter was not covered in the pre-bail report, I find that no material has been placed before me which suggests that if admitted to bond pending trial, the accused is likely to interfere with potential witnesses. There is also no evidence to prove that the accused is a flight risk.

9. In the result, I am persuaded to find that the state has in this case not advanced compelling reasons to justify denial of the accused's constitutional right to bond pending trial. I consequently find merit in the accused's application. It is hereby allowed on the following terms:-

i). The accused will be released upon executing a personal bond of Kshs.1,000,000/- together with one surety of a similar amount.

ii). The surety will be approved by the Deputy Registrar of this court.

iii). The accused will be attending mentions before the Deputy Registrar once every two months until the case is heard and determined. It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 5th DAY of May 2015.

In the presence of:-

Appellant

Ms. Mwaniki for the state

Mr. Lesinge court clerk