



REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT MERU

HCR 16 OF 2015

REPUBLICPROSECUTOR

VRS

ISIAH GATOBU MUTHAMIA ACCUSED

RULING

Isaiah Gatobu Muthamia is facing a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. He has filed an application seeking to be released on bail pending the hearing and determination of this case. In his affidavit he deposes that he has an unqualified constitutional right to bail, because he is deemed to be innocent till proved guilty; that he will attend court as will be required of him; that he is a Kenyan citizen and resident and is not a flight risk.

CPL Japhet Musimi the Investigating Officer in this case, swore an affidavit stating that the right to bail is not absolute; that the accused went underground and closed his place of business from the date of murder till his arrest on 12/2/2015 and hence a flight risk; that the offence is still fresh in the minds of his relatives and community and they should be allowed time to heal because the offence only took place on 29/1/2015.

Under Article 49 (1) (b) of the Constitution, bail is a right but is not dissolute. It is an exercise of the court's discretion so that if there are compelling reasons to deny an accused bail, the same will not be granted. In granting bail, the court will consider whether the accused will attend the hearing, which is the primary consideration. The other considerations are: whether the accused will interfere with witnesses; the court will also consider accused's past antecedents and character; and the severity of the sentence in case of a conviction.

This court had asked for a Pre-bail Report which has been filed. I have considered the two affidavits along with the said Report. On the allegation that the accused is likely to interfere with witnesses there is no evidence availed by the Investigating Officer to prove that fact.

Although it was alleged that accused went into hiding from 29/1/2015 to the time of arrest, the Probation Report indicates that accused has no relational problems with the community including the Chief of the area and are all willing to have accused released on bond. The community report is favourable to accused's release on bond though the offence was committed recently. It is only deceased's family who are unhappy about the release but that is expected. However, there was no possible threat to Accused's life. There is no evidence that accused is a flight risk.

In the end I find no disclosed compelling reasons to deny accused bond. I hereby grant accused bond in the following terms:

1. Cash bail of KShs.100, 000/=;
2. A surety of Kshs.400, 000/=;
3. Accused to be of good conduct during the pendency of the case;
4. To attend court as will be required of him.
5. Accused should not interfere with witnesses.

In default, bond will be cancelled. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF JUNE, 2015

R. P. V.WENDOH

JUDGE

PRESENT:

Mr. Musyoka for State

Faith, Court Assistant

Mr. Mutuma for Accused

Accused, Present