



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL CASE NO. 105 OF 2013

REPUBLIC.....RESPONDENT

VS

TITUS KATHURIMA.....ACCUSED

RULING

The a Notice of Motion Application dated 12th March 2015, is brought pursuant to the provisions of Article 49 (1) (l) of the Constitution and section 124 of the Criminal Procedure Code. The accused person seeks to be admitted to bail/bond pending the hearing and determination of his case.

The gist of the application is that the applicant was arrested on 19th January 2014, for an offence of murder, and has been in custody for one year now; that the matter is likely to take a considerable period of time before finalization due to many other murder cases pending before the High Court; that if granted bail/bond, the applicant is ready and willing to abide by all the terms and conditions that may be imposed by the court and will attend court when required to do so.

The application was opposed. Mr. Musyoka Learned State Counsel sought to rely on an affidavit sworn by PC Samuel Kemboi, the investigating officer in this case. He opposed the said application for bail/bond by deposing that key prosecution witnesses are well known to the accused person; that if he is released on bail/bond, the possibility is pretty high that he will interfere with witnesses and that his detention is necessary in order to maintain confidence in the administration of justice having regard to all the relevant circumstances. He further contended that the right to bail/bond as enshrined in the Constitution is not absolute and is at the discretion of the court.

It was contended by Ms Ntaragwi for the accused person that the accused person will abide by all the bond terms; that there were no reasons as to why the accused person should be denied bond/bail; that the investigation officer had not stated the source of his information in his replying affidavit.

I have considered this application, submissions by counsel and the investigating officer's affidavit. The prime consideration in an application for bond is whether the accused will turn up for his trial. The other considerations are, that the accused will not interfere with witnesses if released; that the court will consider the accused's character and antecedents amongst other facts. Even though an arrested person has a Constitutional right to bail/bond pursuant to Article 49 (1) (h) of the Constitution, the said right is not absolute since the same provision provides that an arrested person shall not be released if there are compelling reasons. The Constitution does not define what compelling reasons are, and each case would depend on its own special circumstances.

Even though it was contended by the prosecution that prosecution witnesses were well known to the accused person and there was high possibility of the accused person interfering with them, it was not possible to ascertain the veracity of these allegations since copies of witness statements were not available. It was alleged that accused is a flight risk but there is no evidence to support that allegation.

Considering all these circumstances and facts, the prosecution has failed to demonstrate that there are compelling reasons not to grant the accused person bail/bond. The accused person may be released on cash bail of Kshs 100,000/= or with a surety of Kshs 500,000/=. The accused person is warned against interfering with prosecution witnesses, must be of good behavior when out on bond and must attend court as will be required of him failure of which the bail/bond will be cancelled. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 9 DAY OF JUNE, 2015

R. P. V. WENDOH

JUDGE

PRESENT:

Faith, Court Assistant

Mr. Mulochi for State

Mr. Ntarangwi for Accused