



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CR. APPLICATION NO. 63 OF 2015
KHALID MOHAMED ALIAPPLICANT
VERSUS
REPUBLICRESPONDENT
RULING

By way of a Notice of Motion application dated the 7th day of July, 2015 the applicant seeks an order for admission to bond on reasonable and affordable terms and conditions.

The grounds are that the applicant was arrested since the 23rd day of May, 2015 and has been detained on and off from that date.

He appeared in Court on 26th day of May, 2015 for plea and bond was not granted. He has been in custody till 6th July, 2015 when an application for bond was rejected. The hearing of the case has been fixed for 16th July, 2015. It is the contention by Counsel for the applicant that there are no compelling reasons to deny the applicant bond.

The application is opposed on the grounds that the applicant has been charged with being a member of a Terrorist group. That section 33 of the prevention of Terrorism Act allows for detention for a period of not more than ninety (90) days. The applicant had been remanded for thirty (30) days and twenty (20) days were requested. It is further submitted that the vehicle that was allegedly stolen was taken to Nairobi for forensic analysis and this may later call for the Accused further interrogations and if released he may interfere with the said investigations.

Counsel for the applicant contends that no compelling reason has been adduced to deny the Accused bond. That Witness statements supplied to the Accused have been attached to the application and the Court invited to peruse them.

Further that even if the vehicle allegedly stolen was taken to Nairobi so as to undergo forensic analysis, the Accused can be interrogated if need be while out on bond.

It is also contended that even if section 33 of the prevention of Terrorism act allows for detention for a period of not more than ninety (90) days, there ought to be reasons given and there must be an application in place but not a mere affidavit.

One of the grounds given by the prosecution for denying the Accused bond is that he is charged with Terrorism related charges. Further section 33 of the prevention of Terrorism Act allows detention of not

more than ninety (90) days and the one requested and granted is for fifty (50) days only.

Secondly, that investigations are not yet complete as the vehicle subject matter of the charge of stealing was taken to Nairobi for forensic analysis and there may be need to interrogate the Accused.

Further, that this is a public interest case and should be taken with the weight and seriousness it deserves.

Section 33(1) of the prevention of Terrorism Act provides,

“A police officer who detains a suspect may, where he has reasonable grounds to believe that the detention of the suspect beyond the period specified in section 32 is necessary

(a) produce the suspect before a Court, and

(b) Apply in writing to the Court for an extension of time for holding the suspect in custody”.

Section 33(3),

“A Court shall not hear an application for extension of time under sub section (1) (b) unless the suspect has been served with a copy of the application “.

It is the contention by the counsel for the applicant that there has been no application in writing for the extension of time and neither has the applicant been served with it as required by the Act.

There is no indication from the prosecution that the requirements of section 33 of the Act were met before the extension of detention for fifty (50) days. If there were not, and there is no reason to disbelieve the applicant then that detention was unlawful. Laws are made to be followed and adhered to.

On the issue of pending investigations the Court is informed that the applicant is no longer in police custody but has been remanded at Shimo la Tewa GK Prison. The defence has already been supplied with Witness statements and that what is remaining appears to be the results being awaited for forensic analysis on the stolen vehicle. It is the contention by the prosecution that depending on the outcome of that analysis police may need to interrogate the Accused further.

This Court finds that there is nothing that bars the police from interrogating an accused person when out on bond so long as they follow the correct procedure.

I find there are no compelling reasons to deny the Accused bond. It has not been argued that if granted bond he will abscond and will not present himself before the Court for his trial. This may be a high profile case. It has had its fair share of publicity and its in no doubt of much public concern but that should not be taken as a licence to flout the law. The Court appreciates and its aware of the threat of Terrorism to the citizen of this country. It has had a sneak review of the evidence against the Accused and I find am satisfied that there are no compelling reasons proved on a balance of probabilities against the grant of bond.

I accordingly admit the Accused to a bond of Ksh. 10 million with two sureties of similar amount. He will deposit his passport in Court. He will be reporting to the Central police station OCS three (3) days a week. Monday, Wednesday and Saturdays at 11:00 a.m.

He will not leave Mombasa County without permission of the trial Court.

Ruling delivered dated and signed this **14th** day of **July, 2015**.

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M. MUYA

JUDGE

14TH JULY, 2015

In the presence of:-

Learned Counsel for the Prosecution Miss Nandi holding brief Ogweno

Learned Counsel for the applicant/defence Mr. Asige

Court Assistant Mr. Musundi

M. MUYA – JUDGE

Miss Ogweno:

I came in late. I pray for copies of the typed proceedings.

Mr. Asige:

I have no objection to the supply of proceedings. I have objection on the 2nd limb of stay. There is no law cited. She does not advance any reason for the grant of stay. She is making an assumption. That is a total breach of the law. Its geared to defeat the order made. There are fundamental rights which are not to be played with. A formal application may be made.

Court:

Certified copies of the proceedings and ruling to be furnished to the Director of Public Prosecution and the defence. A formal application for stay to be made.

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M. MUYA

JUDGE

14TH JULY, 2015