



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 102 OF 2014

REPUBLIC.....PROSECUTOR

VERSUS

KIPKURUI TORONGEI.....ACCUSED

RULING

1. This is an oral application made in court for the accused person to be released on bond. The accused person was charged for murder contrary to section 203 as read with 204 of the penal code. It is alleged that on 18th day of August, 2014 at Kisiara village in Transmara East sub-county within Narok Conty, in the Republic of Kenya, jointly with others not before court murdered **Richard Kipngeno Sitinei**. He denies the offence. He now asks for bond.
2. The bond/bail is governed by article 49(1)(h) of our Constitution. This provision of the Constitution makes even the offence of murderailable. Previous to this constitution it was not so. However, the constitution envisages that there could compelling reasons not to grant bail. Each case to be looked at, on its own merit.
3. This provision is enshrined in the bill of rights and fundamental freedoms of the constitution of Kenya 2010. It affords rights even to the accused person.
4. It is incumbent upon the state to give reasons if any why the accused should not be released on bond. In the instance case the prosecution intimated that he had talked to his investigating officer who said that although they have not filed an affidavit on this issue, there are no compelling reasons, in their view, to deny bond.
5. I also note that there is no pre-bail assessment report from the probation department. This, although not of legal persuasion, has some validity and gives direction which way to go in the issue of bond to the accused person especially in the absence of a response from the prosecution.
6. The constitutional imperative are in favour of the accused, even if both pre-vail report and prosecution response were in place.
7. Accordingly, I hereby allow the application for bond. The accused is allowed a personal bond of kshs. 500,000 with two sureties of similar amount, the same to be approved by the Deputy Registrar of this court.
8. Upon his release the accused will be expected to attend court after every 30 days until his case is heard and determined. The first such mention to be on the 7th of December, 2014.
9. Any default on the terms of bond, the said bond will be cancelled forthwith and the sureties will be called to account in respect thereof.

Dated and delivered at KISII this 11th day of November, 2014.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Onyancha holding brief for Mogire for the applicant

Otieno for the state for the respondent

Edwin Mongare court clerk.