

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL CASE NO. E001 OF 2025

REPUBLIC.....

.....PROSECUTOR

=VERSUS=

MUSTAPHA RAMADHAN.....

ACCUSED

RULING

1. The Learned Defence Counsel renewed his application for the Accused Person to be released on reasonable bond or bail pending the trial of his case.
2. This court called for another Pre-bail Report which was filed on 22nd April, 2026.
3. I have considered the submissions by both parties and I have also perused the Pre-bail Report filed on behalf of the Accused Person.

4. The Learned Defence Counsel relied on the Sarah Cohen case where the court said that it is only when cogent evidence is adduced that an Accused can be denied bond.
5. The Prosecution Counsel and the Learned Counsel watching brief for the family of the victim urged the court to take the evidence of the victim's mother before considering whether the Accused Person should be granted bond.
6. Every Accused Person has a right to be released on reasonable bond unless there are compelling reasons not to grant the same.
7. Every Accused Person is presumed innocent until proved guilty.
8. In the current case, the application for bail was deferred until crucial witnesses had testified.
9. The mother of the victim is a crucial witness.
10. The Pre-bail Report states that the home environment was not yet changed and it is apparent that it is for the Accused Person's own safety that he should stay in remand.
11. Upon a thorough re-evaluation of the application for bond as renewed by the Learned Defence Counsel, and having given due consideration to the submissions from both the Prosecution and the Learned Counsel holding a watching brief

for the victim's family, as well as a careful examination of the updated Pre-bail Report filed on 22nd April, 2026, this court renders its final decision.

12. The legal framework governing this matter is firmly anchored in the Constitution of Kenya, 2010. Article 49(1)(h) unequivocally provides that an arrested person has the right "to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released."
13. This right is not an absolute or unfettered grant, but one that serves as the lodestar of pre-trial liberty, predicated on the cornerstone principle enshrined in Article 50(2)(a) that every accused person is presumed innocent until proven guilty.
14. The jurisprudence from our courts has consistently affirmed that the burden of demonstrating the existence of compelling reasons to deny this fundamental right rests squarely on the prosecution or the party opposing bail.
15. The defence relied heavily on the decision in Sarah Wairimu Kamotho's case, which underscores the principle that cogent evidence must be adduced before an accused can be deprived of bail.

16. Indeed, the phrase 'compelling reasons' denotes reasons that are forceful and convincing, such that bail should not be denied on flimsy grounds but only on real and cogent grounds that meet the high standard set in the Constitution.
17. It is on this very standard that this court has anchored its deliberation. The court has previously deferred the determination of this application, indicating that a vital fulcrum upon which this decision would balance is the testimony of the victim's mother, who is a crucial witness.
18. The court takes judicial notice that in cases of a serious nature, the relationship between the accused and potential witnesses, and the potential impact on their testimony, forms a legitimate factor in the bail calculus.
19. In the instant case, the court has taken the extraordinary step of calling for a second Pre-bail Report, which was filed on 22nd April, 2026.
20. This report is not merely a perfunctory document but it is an investigative tool that provides the court with a sociological and psychological snapshot of the accused's environment and the prevailing community sentiments.

21. The report clearly and unambiguously states that the home environment has not yet changed and, critically, that it is for the Accused Person's own safety that he should remain in remand custody.
22. This finding is of paramount importance. The primary duty of this court is not only to safeguard the rights of the accused under the law but also to ensure his physical safety and the preservation of his life.
23. Releasing an accused person into an environment that is demonstrably hostile, where his safety cannot be guaranteed, would be an abdication of the court's protective role.
24. The prebail report does not merely suggest potential conflict but points to a present and unaltered threat to the accused's safety, making it impossible for this court to fashion conditions that would adequately protect him outside of a custodial environment.
25. Furthermore, the court has considered the nature of the proceedings and the stage of the trial.
26. The Prosecution and the watching brief have urged the court to consider the evidence of the victim's mother, a crucial witness.

27. The principle of protecting the integrity of the judicial process is a compelling reason to deny bail.
28. The court in the Sarah Wairimu Cohen case similarly emphasized the importance of protecting witnesses and the integrity of the criminal justice system, denying bail where a likelihood of witness interference was demonstrated.
29. In the current case, the Pre-bail Report's indication of a volatile home environment, juxtaposed with the fact that the victim's mother is yet to testify, creates a compounded risk.
30. The potential for undue influence, pressure, or even volatile confrontation is high. While the defence cites the principle that cogent evidence is required to deny bail, this court finds that the Pre-bail Report, the submissions regarding the crucial nature of the forthcoming witness, and the court's prior order deferring bail until after her testimony collectively constitute precisely the kind of cogent and compelling evidence the law requires.
31. Consequently, having balanced the hallowed constitutional right to bail against the compelling reasons presented to this court, namely, the explicit finding of the Pre-bail Report that the accused's safety is at risk and that the home environment

is unchanged, coupled with the necessity to protect the integrity of the trial and the security of a crucial witness who is yet to testify, this court finds that the reasons to deny bail are forceful, convincing, and meet the high constitutional threshold.

32. The application for bail is therefore dismissed. The Accused Person, Mustapha Ramadhan, shall remain remanded in custody.

33. However, to ensure that this decision does not result in an indefinite deprivation of liberty pending trial, the court hereby orders that the trial of this case be expedited with immediate effect.

Dated, signed and delivered this 28th day of April, 2026 in open court at Voi High Court.

**ASENATH ONGERI
JUDGE**

In the presence of:-

Court Assistant: Millicent/Eghwa

Prosecutor: Mr. Ngigi

Mr. Motuka for the Accused Person

The Accused Person

ORIGINAL