



The applicant's Counsel, Mr. Kwizera, emphasised that bail is a matter for the discretion of Court, and relied on this Court's ruling in Byaruhanga Rugyema Jesse & Anor. Vs. Uganda, Criminal Miscellaneous Application No. 87 of 1998, as well as Immaculate Lugolobi Vs. Uganda, Miscellaneous Application No.30 of 2003 before Bamwine J.

Counsel for the respondent Mr. B. Mulindwa, State Attorney, opposed the application and gave two reasons for the objection, namely; that the case was scheduled to be fixed for hearing at the next High Court Session at Kampala, and that in any case there is no inordinate delay in trying the accused/applicant.

As both Counsel agree the legal position is now settled in view of the opinion of the Constitutional Court in Uganda (DPP) Vs. Col (Rtd) Dr. Kiiza Besigye & others, Constitutional Reference No. 20 of 2005. Bail is not automatic but rather discretionary. Hence the question for resolution is whether or not discretion should be exercised in favour of the accused/applicant.

There is no gainsaying that the right to speedy trial is very important and no suspect should be kept in custody unnecessarily. However, the offence in question is very grave, capital in nature. For this reason temptation to escape and abscond for fear of the consequences is real indeed, in case the state secures a conviction.

There are appropriate cases in which it would be unfair to keep the accused on remand if the prosecution has failed to proceed; however this is not one of them. I am far from suggesting that due to heavy workload in the Directorate of Public Prosecutions the prosecution should be treated leniently, but I must emphasize that it is vital to society that grave accusations be tried and disposed of on merit. If the accused would dishonour bail in case it were granted, this would not be possible – to determine the case on merit.

The circumstances in this case call for diligence, for the reason stated above. It is alleged that the complainant was tied with a telephone wire, his room set ablaze, and locked from inside, after he was robbed of 18,000/=. The complainant is a student.

It is unnecessary to emphasize that the applicant is presumed innocent, as is required consider in legal system. But; as already pointed out, the charge is capital in nature and the surrounding circumstances make it particularly grave. The application for bail therefore rejected. The accused/applicant shall be remanded in custody pending trial.

**J.P.M. Tabaro**

**Judge**

**8-5-2008**