

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CRIMINAL APPLICATION No. 0014 OF 2016

PAUL AWANDAL **APPLICANT**

VERSUS

UGANDA **RESPONDENTS**

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for bail. The applicant is indicted for the offence of Aggravated Defilement c/s 129 (3) and (4) (c) of the *Penal Code Act*. It is alleged that the applicant, a Congolese national, on or about 4th March 2016 at Nsabya Cell, Awindiri Ward in Arua District, committed an unlawful sexual act with his seventeen year old step-daughter, who is a senior four student at Arua Public Secondary School. He was on 20th June 2016, committed for trial by the High Court. He is yet to be tried and hence this application by which seeks to be released on bail pending his trial.

His application is by notice of motion under Article 23 (6) (a) and (c) and Article 28 (3) of the *Constitution of the Republic of Uganda*, and sections 14 and 15 of the *Trial on Indictments Act Cap.23*. It is dated 27th May 2016 and supported by his affidavit sworn on 7th June 2016. The main grounds of his application as stated in the notice of motion and supporting affidavit are that; the offence with which he is indicted is bailable, he has a fixed place of abode at Nsambya Cell, Awindiri Ward, Arua Hill Division in Arua District within the jurisdiction of this court, has two substantial persons willing to be his sureties, and the allegations made against him are fabricated by his former wife now cohabiting with another man.

In an affidavit in reply sworn by a one No 24034 D/Sgt Watimbo James on 11th July 2016, who claims to be the investigating officer of the case, the state is opposed to the grant of bail to the

applicant mainly on grounds that; releasing the applicant on bail will jeopardize the case as the applicant is a close relative of the victim over whom he has control.

At the hearing of the application, the applicant was represented by Mr. Samuel Odama while the state was represented by Mr. Pirimba Emmanuel, State Attorney. Counsel for the applicant, in his submissions, elaborated further the grounds stated in the motion and supporting affidavit and presented two sureties for the applicant. In his response, the learned State Attorney too elaborated further the grounds for opposing the application as contained in the affidavit in reply and added that the applicant is a Congolese national who if released on bail is likely to flee back to the Democratic Republic of Congo to escape justice. In the alternative, he prayed for stringent conditions in the event that the court is inclined to grant the applicant bail.

Whereas accused persons have a right to apply for bail by virtue of Article 23 (6) (a) and 28 (3) of the *Constitution of the Republic of Uganda*, the grant of bail is discretionary to the court (see *Uganda v Kiiza Besigye; Const. Ref No. 20 OF 2005*). By virtue of sections 14 and 15 of the *Trial on Indictments Act*, a person indicted can only be released on bail if he or she proves to the satisfaction of the court that special circumstances do exist to warrant his or her being released on bail. The circumstances which are regarded a special include grave sickness, infancy or old age, and that the state does not oppose the applicant being released on bail. The fact that the applicant has been on remand for over twelve months before committal for trial, as per article 23(6) (c) of *the Constitution*, could be an additional or alternative consideration. Proof of these circumstances though is not mandatory as courts have the discretion to grant bail even where none is proved.

The applicant has invoked the presumption of innocence under Article 28(3) of the Constitution to advance the argument that he should not be kept on remand unnecessarily without trial. In well deserving cases an accused person should indeed be granted bail if he or she fulfills the conditions for his or her release. An Applicant should not be incarcerated if he has a fixed place of abode, is unlikely to interfere with witnesses or other aspects of the investigation and trial, has sound sureties capable of guaranteeing that he will attend his trial and not abscond and otherwise comply with all other conditions set by court for his or her bail.

Bail should not be used as an opportunity to avoid trial. Court should therefore be reasonably satisfied that the accused will not abscond when granted bail. There should not be a danger of the accused interfering with the ongoing investigations, for example by concealing evidence, threatening witnesses, etc. Release of the accused on bail should not be a danger to his or her safety or public safety, or increase the risk of further offending.

In this case, considering the gravity of the accusation made against the accused, the risk of flight is very high. Under section 14 (4) of the Trial on Indictments Act, in considering whether or not the accused is likely to abscond, the court may take into account the following factors; - (a) whether the accused has a fixed abode within the jurisdiction of the court or is ordinarily resident outside Uganda; (b) whether the accused has sound securities within the jurisdiction to undertake that the accused shall comply with the conditions of his or her bail; (c) whether the accused has on a previous occasion when released on bail failed to comply with the conditions of his or her bail; and (d) whether there are other charges pending against the accused.

This court has not been furnished with any evidence to suggest that the accused has on a previous occasion been released on bail and failed to comply with the conditions of his bail and neither was there any intimation that there are other charges pending against him.

In this application, the applicant states that he has a fixed place of abode at Nsambya Cell, Awindiri Ward, Arua Hill Division in Arua District within the jurisdiction of this court. This court however has not been furnished with any details of his residential status, he being a Congolese Citizen. He stated before court that he does not possess a passport. There is no evidence as to whether he lives in his own house or a rented one, whether he has any real assets in Uganda and whether he intends to live permanently in Uganda. His trade as a tailor, is easily transferrable from one location to another. It is not the kind of employment that would establish a reasonable degree of attachment and permanence within the jurisdiction of this court. The degree of his attachment to the jurisdiction of this court is therefore in doubt. The possibility that he is only working in Uganda but retains strong attachment to the Democratic Republic of Congo has not been discounted. He therefore poses an unreasonably high flight risk.

The risk of absconding could have been assuaged by the availability of substantial sureties. The applicant indeed presented two sureties. The learned State Attorney objected to the sureties as

not being substantial. Two of the sureties claimed to be brothers of the applicant but are holders of National Identity cards of Uganda. There is nothing to satisfy court that they exercise such a degree of control or influence over the applicant as will enable them to guarantee his attendance of court whenever required. The other surety stated that she is a “mother figure” to the applicant since she has a Congolese mother and has known the applicant for over ten years. This court finds itself unable to trust any of the proposed sureties, in the absence of further details regarding their relationship, as persons capable of discharging their duty to court if the applicant is granted bail. I therefore do not find them to be substantial sureties.

Furthermore, being a step-father to the principal witness in the case, the applicant is in a position of influence over the victim. Indeed in paragraph 1 of his affidavit suggest that he was paying her school fees at Arua Public Secondary school. I am unable to agree that he does not have the capacity to jeopardize the prosecution of this case if he is released so soon after the alleged incident, before the victim is afforded time to gain a firm existence independent of the applicant.

Considering the above, the seriousness of the offence charged and the fact that the applicant was, comparatively speaking, only recently committed for trial, I am unable to exercise this Court’s discretion in favour of the Applicant. The applications for bail is accordingly rejected and dismissed. I so order.

Dated at Arua this 14th day of July, 2016.

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Stephen Mubiru
Judge.