

IN THE HIGH COURT OF JUSTICE
UYO STATE OF NIGERIA
IN THE IBADAN JUDICIAL DIVISION
HOLDEN AT IBADAN

BEFORE THE HON. JUSTICE H. U. BULAJI-YUSUFF - JUDGE
THIS FRIDAY THE 20TH DAY OF FEBRUARY, 1998

RELEASER

SUIT NO. M/19/98

MRS. OLANIYI BALOGUN APPLICANT

R. N. O.

COMMISSIONER OF POLICE ... RESPONDENT

Parties are absent.

No legal representation.

At this stage, Mr. Ushuntogun announced his appearance for the applicant.

Order is read, the applicant is granted bail on the conditions stated in the ruling.

RULING

The applicant stand charged with a two count charge of obtaining with intent to defraud the sum of One hundred and Eighty-six Thousand Naira (186,000.00) pretending and stealing the said sum under Sections 1(3) and 1(2) of the Advance fee fraud and other relevant offences Decree No. 13 of 1995 as applicable in Uyo State.

The applicant was arraigned before the Senior Magistrate who remanded him in prison custody on 13th January, 1998.

Consequently

the applicant by a summons on notice dated 14th January, 1998 and filed on the 16th January, 1998 applied to this court for an order admitting the applicant to bail and for the respondent to show cause why the applicant should not be admitted to bail and for such order or further orders as the Honourable Court may deem fit to make in the circumstances..

Mr. Ushuntogun moved the application on behalf of the applicant, under Sections 118(i) and 123 of the Criminal Procedure Law of Uyo State. The learned counsel's submissions and arguments are summarised as follows:-

- "(1) The requirements which the Court should take into consideration in dealing with an application for bail as stated in the case of Chinemelu vs. C.O.P. (1995) 4 NWLR pt. 390 Page 467 at 491 are as follows:-
 - (a) whether proper investigation of the case will be prejudiced if the accused is granted bail or

14

- 2 -
whether there is a serious risk in
the accused person's escape from
justice by jumping bail.

- (b) The nature of the offence or charge
which the accused person is facing
before the court and the risk of
his interference with the prosecu-
tion of the case.
 - (c) The strength of the case against
the accused person.
- (2) That the applicant is not in a position to
interfere with the investigation of the
case.
- (3) That bail is normally granted *ex-dabito*
justiciae, but a special circumstance may
warrant a grant of bail pending trial
irrespective of the serious nature of the
offence.
- (4) The applicant is charged with an offence under
section 1(2) and 1(3) of the Advance fee fraud
Decree No. 13, however the tribunal which is
to try the accused has not been set up in
any state, if the accused is refused bail
it is tantamount to sentencing ^{him} to detention
in perpetuity.
- (5) The common trend under the law is that an
accused should be tried speedily and it
would be derogatory to the due process of
law if the faith of the accused is tied
down to the hands of a tribunal that has not
been constituted, he cited the case of
Nwera vs. C.U.P. (1993) 6 NLR Part 229
page 333 where it was held that the delay
in filling the information and the fact that
no formal charge had been filed against
the applicant warranted a grant of bail.
- (6) There is no proof of evidence before the
court, the common principle of our law is
a presumption of innocence until a competent
court finds otherwise, he cited the case of
Ibeziaiko vs. C.U.P. (1963) 1 All NLR 61.
- (7) The applicant having placed his own materials
before the court, the onus shifted on the
respondent to show cause why the applicant
should not be admitted to bail, in this
case there is no counter affidavit denying
any of the facts deposed to in the affidavit

- 3 -

in support of this application, he said that in most cases bail was granted because there was no pauper-affidavit, he said even though there is a pauper-affidavit, the court will grant bail as it was done in (nineteen) six (supra).

He appealed that if the court is willing to grant bail, the conditions should be liberal so as to ensure the applicant perfect his conditions, he finally urged the court to grant the application.

Mr. Kabeer learned counsel for the respondent opposed the application and submitted as follows:

- (1) The mere fact that the respondent did not file a counter-affidavit does not mean that the applicant's affidavit should be taken as the whole truth, the applicant did not deny that he committed the crime for which he is being detained.
- (2) Sections 118 and 123 of the Criminal Procedure Law of Oyo state do not make the granting of bail, automatic, the only ground on which the applicant is relying is ill health, he cited the case of *Thinamelo vs. C.U.P.* and submitted that ill health is no ground for granting bail.
- (3) The court should take into consideration the amount of money involved, the court should not exercise its discretion in favour of the applicant.
- (4) If the court is inclined to granting the application, the court should invoke paragraphs 13 and 14 of the applicant's affidavit and impose stringent conditions that will ensure that the applicant turns up for his trial.

I have considered the affidavit in support of the application and the submissions of both learned counsels on this application and I find that the following facts are not in dispute.

- (1) That the offence for which the applicant is charged can only be tried by a special tribunal constituted under the Miscellaneous
- (2) That the tribunal as aforesaid has not been set up for Oyo state.
- (3) That the case file in respect of the applicant's case has not been transferred to the ministry of Justice either of Oyo

In support of this application, he said that in Ayewere's case (supra) bail was granted because there was no counter-affidavit, if there is a counter-affidavit, the court will grant bail as it was done in Chinemelu's case (supra).

He appealed that if the court is willing to grant bail, the conditions should be liberal so as to enable the applicant perfect the conditions, he finally urged the court to grant the application.

Mr. Nwaboshi learned counsel for the respondent opposed the application and submitted as follows:

- (1) The mere fact that the respondent did not file a counter-affidavit does not mean that the applicant's affidavit should be taken as the whole truth, the applicant did not deny that he committed the crime for which he is being detained.
- (2) Sections 118 and 123 of the Criminal Procedure Law of Oyo State do not make the granting of bail, automatic, the only ground on which the applicant is relying is ill health, he cited the case of Chinemelu vs. C.U.P. and submitted that ill health is no ground for granting bail.
- (3) The court should take into consideration the amount of money involved, the court should not exercise its discretion in favour of the applicant.
- (4) If the court is inclined to granting the application, the court should invoke paragraphs 13 and 14 of the applicant's affidavit and impose stringent conditions that will ensure that the applicant turns up for his trial.

I have considered the affidavit in support of the application and the submissions of both learned counsels on this application and I find that the following facts are not in dispute.

- (1) That the offence for which the applicant is charged can only be tried by a special tribunal constituted under the Miscellaneous
- (2) That the tribunal as aforesaid has not been set up for Oyo State.
- (3) That the case file in respect of the applicant's case has not been transferred to the Ministry of Justice either of Oyo

State or the Federal Ministry of Justice
which has the responsibility to prosecute
the applicant for the offence with which
he is charged.

The question for determination therefore is whether this court
^{bail}
should exercise its discretion to grant the applicant based on the
materials placed before this court.

In Chinemelu vs. C.O.P. (supra) the Court of Appeal listed the
relevant questions to be considered in this type of application as follows:

- (1) The likelihood of the applicant being
available for his trial.
- (2) The seriousness of the charge preferred
against the applicant.
- (3) The strength of the case.

The material placed before this court is a 17 paragraph affidavit,
the applicant in paragraphs 12, 13, 15 and 16 of the affidavit in support
avered
of this application that "substantial persons are ready to stand as
not
sureties for him, that if granted bail, he will jump bail and that he
is not in a position to interfere with the police investigations, all
these depositions were not denied.

There is no doubt that the offence with which the applicant is
charged is serious but it does not carry a death sentence, it is there-
fore a bailable offence.

There is no proof of evidence before me, paragraphs 7 and 8 of the
affidavit in support of the application stated that the case filed has
not even been referred to the Ministry of Justice for legal advice and
that if the ministry receives the file it will be a long time before the
applicant can be charged before a competent tribunal, it must be noted here
that it is not in dispute that such a tribunal has not been
constituted for Uyo State. In the circumstances, there is no material
before me on which I can decide the strength of the case.

It is my opinion that it is the duty of the respondent to place
materials before this court to show the strength of the case preferred
against the applicant since under our legal system an accused is
presumed innocent until the prosecution proves otherwise and the court
finds him guilty, since the respondent has failed to discharge their
duty, I hereby hold that they have failed to show cause why the

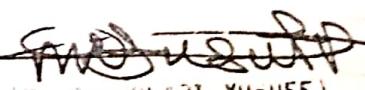
applicant should not be granted bail. The unus having sniffed on them by the applicant placing some materials before the court for my consideration see the case of Abiola vs. Federal Republic of Nigeria (1995) 1 NWLR Page 155 at 179 (c-o).

The applicant is not relying on the ground of ill health only as submitted by MR. Raheem learned counsel for the respondent, the applicant is also saying that there is no certainty as to when he may be brought to trial if at all he will be brought to trial and that there will be a substantial delay in bringing him to trial, I believe that to refuse bail in the circumstances of this case is tantamount to sentencing the applicant to an indefinite detention as submitted by the learned counsel for the applicant.

It is my view that compliance with the provisions of fair hearing within a reasonable time as guaranteed under our Constitution will not be possible in the circumstances of this case. Therefore I believe that I can exercise my discretion in favour of the applicant by granting bail on conditions that will ensure that the applicant turns up for his trial whenever it comes up before the appropriate court.

Accordingly, the applicant is hereby granted bail pending the determination of the charge before the Magistrate Court on the following conditions:

- (1) One surety in the sum of N100,000.00 (One Hundred Thousand Naira).
- (2) The surety must be a resident real property owner within Uyo State.
- (3) The surety must swear to affidavit of means.
- (4) The applicant must report to the I.P.U. in charge of his case at least once in two weeks until otherwise required.


(M. O. BULAJI-YUSUFF)

JUDGE

LVMH*