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

BEFORE THE HONOURABLE JUSTICE O. A. BOADE – JUDGE
ON FRIDAY, THE 25TH DAY OF MAY, 2012

CHARGE NO. I/2EFCC/2012

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA .... COMPLAINANT/RESPONDENT

AND

YINUSA ADEBISI .... ACCUSED/APPLICANT

Accused Person/Applicant present.
Mr. Kayode Oni for the Prosecution/Respondent.
Mrs. O. T. Tunde-Akande, holding the brief of Dr. F. A. Bello, for the Accused Person/Applicant.

RULING

By the Information filed by the prosecution on 21st March, 2012, the accused person was charged with six count offences of:

1. Conspiracy to obtain goods by false pretences contrary to section 1(3) of the Advance Fee Fraud and Other Related Offences Act.

2. Obtaining goods by false pretences contrary to section 1(3) of the Advance Fee Fraud and Other Fraud related Offences Act.

3. Stealing contrary to section 390 of the Criminal Code, Cap 38, Laws of Oyo State 2000.

4. Conspiracy to forge contrary to section 516 of the Criminal Code, Cap 38, Laws of Oyo State, 2000.

5. Forgery contrary to section 467 of the Criminal Code, Cap 38, Laws of Oyo State, 2000.

6. Uttering contrary to section 468 of the Criminal Code, Cap 38, Laws of Oyo State, 2000.

The accused person was arraigned in this court on 3rd May, 2012 and he pleaded not guilty to all the six counts of the charge against him and two others who are at large. The court then ordered that the accused person should be remanded in prison custody pending his trial. The accused person had earlier, on 2nd May, 2012, filed an application to admit him to

bail pursuant to sections 118(2), 123 and 125 of the Criminal Procedure Law, Cap 39, Laws of Oyo State of Nigeria, 2000; sections 35(4) and 36(5) of the Constitution of the Federal Republic of Nigeria, 1999; Article 7(1)(b) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap 9, Laws of the Federal Republic of Nigeria, 2004; and the inherent jurisdiction of this court.

The application is supported by an affidavit of 20 paragraphs sworn to by one Ayeni Aanu, a Legal Secretary in the Law Firm of the counsel to the accused person/applicant together with the written address. The respondent filed a counter-affidavit of 14 paragraphs sworn to by Umar Yisa, a police officer on secondment to EFCC, on 11th May, 2012 together with the written address in support of the counter-affidavit. The written addresses were adopted in court by counsel on 11th May, 2012.

In his written address, the counsel to the accused person/applicant relied on all the paragraphs of the supporting affidavit. He conceded that granting of bail pending trial in the instant case is not as a matter of grace but rests squarely on the discretion of the court which discretion must be exercised judicially and judiciously. He cited F.R.N. v. Bularn (2005) 16 NWLR (Pt. 951) 219; Dokubo Asari v. F.R.N. (2006) 11 NWLR (Pt. 991) 324 at 338. He submitted that in considering whether to grant or refuse an application for bail pending trial, the court must beer in mind certain factors such as:

(a) the evidence against the accused.

(b) the availability of the accused to stand trial.

(c) the nature and gravity of the offence.

(d) the likelihood of the accused committing another offence while on bail.

(e) the likelihood of the accused interfering with the course of justice the criminal antecedents of the accused person.

(f) the probability of the guilt.

(g) detention for the protection of the accused.

(h) the necessity to procure medical or social report pending final disposal of the case.

He submitted that it is not necessary that all or many of these factors must apply in any given case and that one factor may be applied in a particular case to guide a trial court in granting of bail pending trial before it. He cited Bamaiyi v. The State (2001) 8 NWLR (Pt. 715) 270. He argued that the onus is on the respondent in this case to show that the applicant will not come back for his trial or that he may likely commit more offences if granted bail. He cited M.K.O. Abiola v. Federal Republic of Nigeria (1995) 7 NWLR (Pt. 370) 155 at 179; Eyu v. The State (1988) 2 NWLR (Pt. 78) 602. It is submitted that this onus can only be discharged through the deposition of facts that may convince the court that the applicant is not entitled to bail. He referred to paragraphs 8, 9, 11, 12, 14, 16, 17 and 18 of the affidavit in support of this application and submitted that it is crystal clear that there is no way the applicant will interfere with the course of justice if admitted to bail and that no ground exist for believing that the accused if released would commit other or similar offence. He referred to paragraph 16 of the affidavit in support of the application and cited the case of Bolakale v. The State (2006) All FWLR 2168 at 2177. He urged the court to hold that the prosecution has not place before this court strong reasons suggesting that the applicant will not come back for his trial or that he may likely commit more offence if granted bail.

He submitted that in an application such as this the onus place on the applicant for bail is not a high one but on a balance of probability. He cited M.K.O. Abiola v. Federal Republic of Nigeria (supra); Adams v. A.G. Federation (2006) 11 NWLR (Pt. 991) 341 at 361.

On the applicant's ill-health as a special circumstance, the learned counsel referred to the facts deposed to in paragraphs 10, 13 and 15 of the affidavit in support of the application that the applicant is a very frail man and he is hypertensive and has epilepsy and depends on special local herbs from Igboho in Oyo State for his treatment which is not available in the Federal Prison, Agodi; that if he is granted bail, he would be able to see his Trado-medical specialist at Igboho to treat his hypertension and epilepsy with special herbs and attend court to stand his trial; and that he is presently going through excruciating pains and agony because of his ill health, and submitted that ill-health of the accused is a consideration weighty enough to be reckoned as special circumstances. He relied on the case of Fawehinmi v. The State (1990) 1 NWLR (Pt.127) 486. It is submitted that production of medical report is not compulsory in all cases where an accused person relied on ill-health as a special circumstance for granting of bail. He cited the case of Jimoh v. C.O.P. (2005) All FWLR 648 at 653 and submitted that the case of Abacha v. The State (2002) FWLR (Pt. 118) 1224; (2002) 5 NWLR (Pt. 761) 638 is not applicable in this case. He urged the court to hold that the applicant has shown the existence of the exceptional circumstance canvassed in paragraphs 10, 13 and 15 of the affidavit.

He submitted that it is the law that everyone is entitled to be offered access to good medical care whether he is being tried for a crime or has been convicted or is simply in detention and when in detention or custody, the responsibility of affording him access to proper medical facility rest with those in whose custody he is, invariably, the governmental authorities. And if the authorities have no access to such medical facilities as are required in treating the accused person's ill-health such as this, the court ought to grant him bail for him to have access to his trado-medical practitioner for his treatment.

The learned counsel submitted that the applicant has placed adequate and relevant materials in the application before the court to enable the court to exercise its discretionary powers in favour of the applicant. He urged the court to exercise its discretion in favour of the applicant by granting his prayer in this application.

The respondent's counsel, in his written address, summarised the facts and referred to the six count charge against the applicant, particularly the offence of obtaining benefits (money) by false pretences contrary to section 1(1) and (2) of Advance Fee Fraud and other Fraud Related Offences Act, the punishment of which is imprisonment for a term of not more than 20 years and not less thank 7 years without the option of a fine on conviction. He relied on all the paragraphs of the counter-affidavit and the proof of evidence, particularly the statements of the applicant.

The learned counsel submitted that bail is not granted as a matter of course, it is the duty of the applicant to place sufficient materials before the court upon which the court would consider his application for bail and it is after the applicant has discharged this burden before the onus could shift to the respondent. He cited the case of Abiola v. Federal Republic of Nigeria (1995) 7 NWLR (Pt. 370) 155. He submitted that this court has the discretion in non-capital offences to grant or refuse bail pending trial but this discretion must be exercised judicially and judiciously based on the materials before the court. He said that the materials before this court constitute the affidavit evidence and the proof of evidence already before the court.

It is submitted that although the discretion is not fettered by precedent, the manner of its exercise must however be guided by established principles as laid down by Superior Courts of record over the years, which have become trite. He cited the following cases:

a. Bamaiyi v. The State (2001) 8 NWLR (Pt. 698) 435
b. Abacha v. The State (2002) NWLR (Pt. 761) 638
c. Chinemelu v. C.O.P. (1995) 4 NWLR (Pt. 390) 467
d. Bamaiyi v. State (2001) 7 NWLR (Pt. 715) 411
e. Olatunji v. F.R.N. (2003) 3 NWLR (Pt. 807) 406 at 779

He referred in particular to the case of Bamaiyi v. The State (supra) at p. 470, in which the Supreme Court held that the criteria are not exhaustive and it will not be expected that all the factors will be applicable in every case and that the issue of whether the court will grant bail to an applicant will be determined by the peculiar facts of each case. The learned counsel listed the factors as follows:

1. the nature and gravity of the offence
2. the likelihood of repeating the same offence
3. the evidence against the accused/applicant
4. whether investigation has been concluded
5. the criminal antecedent of the accused person
6. tampering with the case of the prosecution
7. the ill-health of the accused/applicant

On the nature and gravity of the offence, the learned counsel referred to the offence in respect of which the applicant was charged under the Advance Fee Fraud and Other Fraud Related Offences Act and submitted that a special legislation was enacted for this type of offence to check the prevalence of this alleged offence which has desecrated our social norms and values and cited the case of F.R.N. v. Olatunji (supra). He said that the punishment for this offence upon conviction ranges from 7 to 20 years imprisonment without an option of fine. He cited the case of Ekwenugo v. Federal Republic of Nigeria (2001) 6 NWLR (Pt. 708) 171 at 190 in which the Court of Appeal held that this offence is by no means serious in view of the negative impact the offence has caused to our national psyche.

He submitted further that the court can at this stage look at the proof of evidence, especially the statements of the accused, while considering this application for bail the reason being that, at this stage, what they are asking the court to do is to see whether there is a *prima facie* case against the applicant. He conceded that the applicant is not charged for capital offences but he enjoined the court to look at the documents before it in the determination of the application for bail. He cited Bamaiyi v. State (supra). He submitted that the Abacha's case and other cases relied upon by the applicant do not help the case of the applicant and urged the court not to apply that case in favour of the applicant in respect of this application.

On the likelihood of repeating the same offence, the learned counsel referred to paragraphs 4, 5, 8, 9 and 10 of the counter-affidavit, wherein they averred that the applicant if released on bail will jeopardize the case of the respondent, and submitted that these facts as weighty as they are have not been sufficiently controverted by way of reply and should

therefore be deemed as established in keeping with the decision of the Court of Appeal in Attorney General of Ondo State v. Attorney General of Ekiti State (2001) 17 NWLR (Pt. 743) 706 at 749 to the effect that any fact not denied is deemed to be established. He also referred to the proof of evidence, particularly the statement of the accused, in this matter and urged the court to refuse this application because the defendant/applicant is most likely to jump bail.

On the evidence against the accused/applicant, he relied on paragraphs 4 and 5 of the counter-affidavit and the statements of the accused person to the effect that there is a direct evidence linking the accused persons including those at large with the crime in issue. He submitted that releasing the applicant on bail will certainly enable him to interfere with the case of the prosecution which will not be in the interest of justice in this case. He submitted that the evidence against the applicant is positive, direct and strong enough to induce him to abscond if granted bail. He relied on Omodara v. The State (2003) 1 NWLR (Pt. 853) 80 at 85.

It is submitted that investigation in respect of this alleged offence is on-going because the respondent is still looking for the two persons at large namely, Zacheaus Adeojo and David Oyelere. He therefore urged the court to refuse the application as to do otherwise will jeopardize the investigation of this case. He said that the averments contained in paragraphs 8, 9 and 10 of the counter-affidavit have not been adequately controverted by way of reply.

The learned counsel submitted that the applicant's right under section 36(4) and (5) of the 1999 Constitution is not absolute and that, contrary to the submission of learned counsel to the applicant to the effect that sections 36(4) and (5) entitles the accused person to obligatory bail and reliance on the case of F.R.N. v. Abiola (supra), that right is not absolute and that section does not imply automatic bail to the applicant. He relied on Udeh v. F.R.N. (2001) 5 NWLR (Pt. 706) at page 325-326. He said that it only means that in a criminal trial, the burden of displacing the fact that a defendant is innocent of the allegations against him is on his accusers to adduce evidence of his guilt. He cited the cases of Ibeziako v. C.O.P. (1963) 1 ANCR 61 at 63; Ekwenugo v F.R.N. (supra) 171 at p. 192.

On the criminal antecedent of the applicant, he submitted that the fact that the applicant has no criminal record and should be entitled to bail, which was said not to have been challenged by way of affidavit evidence, only exists at the imagination of the applicant and no evidence by way of document is placed before the court to support that assertion. He urged the court to disregard that argument. He is of the view that the case of F.R.N. v. Abiola (supra) and other cases relied upon in support of the fact that there is no previous criminal record of the accused are not relevant to this case.

He referred to paragraphs 3-13 of the counter-affidavit to the effect that releasing the applicant on bail will definitely affect the case of the prosecution and evidence that would be used against the applicant and the fact that the prosecution is seriously searching for the apprehension of other accused persons at large in connection with this case who are currently under investigation, and submitted that it will not be in the interest of justice to admit the applicant to bail because the applicant and others still at large will certainly interfere with the case of the prosecution if admitted to bail, moreso that the accused is being investigated for another serious offence.

On the ill-health of the applicant, he relied on paragraphs 7(a) and (b) and 11 of the counter-affidavit that the applicant has not placed sufficient materials before the court that will enable the court grant him bail on the ground of ill-health and submitted that the reliance

placed on the ill-health by the applicant is hanging in the air and he urge the court to reject same. He cited the cases of U.A.C. v. Macfoy (1962) A.C. 62 and Abacha v. State (supra) in which the Supreme Court, Per Ayoola, J.S.C., held that before an applicant can successfully rely on issue of ill-health to admit him to bail cogent evidence and material must be placed before the court by a medical doctor in that branch of medicine and not general medicine. He said that in the instant case, no single document is placed before the court that ordinarily would persuade the court to consider that application on the ground of ill-health. He urged the court to disregard the reliance placed on the ill-health of the applicant to admit him to bail. He urged the court to refuse the application for bail but instead order accelerated herein in accordance with section 19(2)(b) of the EFCC Act, 2004 as amended.

This application for bail of the applicant pending the trial of the criminal case against him was brought pursuant mainly to section 118(2) of the Criminal Procedure Law and section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999. The provision of section 118(2) of the Criminal Procedure Law gives this court the discretion either to grant or refuse the bail sought by the applicant. The discretion should, however, be exercised both judicially and judiciously based on the material facts before the court.

In exercising the discretion over the application for bail the factors that should guide this court are now well settled in plethora of cases, some of which have been highlighted in the written addresses of both counsel. I need not repeat the factors, they are well settled. See Bamaiyi v. The State (supra); Ofulue v. F.G.N. (2005) 3 NWLR, (Pt. 913) 571 at 600-601; Nwude v. F.G.N. (2004) 17 NWLR (Pt. 902) 306 at 327-328, Osakwe v. F.G.N. (2004) 14 NWLR (pt. 893) 305 at 315, Olatunji v. F.G.N. (2003) 3 NWLR (Pt. 807) 406 at 429-430.

The Information contains the six count charge against the applicant and the two others who are now at large, which have been reproduced above. The punishment for the offences ranges from 7 to 20 years of imprisonment, and the punishment can, therefore, not be said to be light, it is severe although none of the offences is a capital offence which attracts death sentence. But there is nothing on the criminal record of the accused.

Under 36(5) of the 1999 Constitution, every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. The presumption is that the applicant is innocent of the offences with which he is charged until he is proved guilty. However, I agree with the submission that the right is not absolute and that the section does not imply automatic bail to the applicant.

As to the character of the offence, it is trite law that in considering this factor I have to consider the affidavit evidence and proof of evidence in respect of the criminal charge where the Information has been filed. The availability of the proof of evidence at the hearing of application for bail will enable the court to examine the evidence available against the applicant. But where there is no proof of evidence the affidavits and the exhibits attached thereto are sufficient in the consideration of the bail application. See Faseun & Ors. v. A.G. of Federation (2008) All FWLR (Pt. 423) 1396 at 1401. In the present case the Information has been filed and the proof of evidence in respect of the criminal charge is already before this court, the counter-affidavit of the respondent is also before the court.

The summary of the facts of this case, as deposed in the affidavit in support of summons for bail, are that the applicant was at Taiken Filling Station in Iseyin and that sometime in 2011 one David Oyelere and Zaccheus Adeojo came to Taiken Filling station at Iseyin to inquire if they could rent the tank for storage of kerosene and diesel to be siphoned

anytime they needed it. That after negotiation, they agreed to pay him ₦2.00 on each litre as commission for the storage. That on 21st June, 2011 David Oyelere phoned him that they would bring the fuel the following day to the station and on 22nd June, 2011, while on his way to his farm, David Oyelere phoned him again that they were on their way to the station with the fuel. That on their arrival he met David Oyelere, Zaccheus Adeojo and one woman he later knew to be Mrs. Titilola Fatimoh discussing about bank draft and they were making calls to different people he did not know about. That after settling the things themselves, they asked him to show them the tank where they would discharge the 33,000 litres of kerosene and he showed them the tank and it was discharged. That he did not know anything about the business of kerosene between David Oyelere, Zaccheus Adeojo and Mrs. Titilola Fatimoh. That after the discharge they asked him to sign a paper as a witness that 33,000 litres of kerosene was discharged in the said tank in his presence and he signed. That he did not know anything about the price of the kerosene as he thought the three of them were business partners because of the way and manners he met them discussing in the station prior to the discharge of the kerosene in the said tank. That at about 6 p.m. David Oyelere and Zaccheus Adeojo told him that they were going to Ibadan to bring another truck carrying diesel and he should expect them by 7.15 p.m. and he called the night guard in charge of the filling station to take charge of the station as usual. That at about 11 p.m. the night guard's son by name Waheed phoned him and said David Oyelere and Zaccheus Adeojo had come back to the station and when he spoke with them on phone they told him the diesel would come the next day morning and that he should not worry where they would sleep for the night. That when he got to the station he inquired from the night guard about them and he said they had siphoned the 33,000 litres of kerosene that very night and left but promised to bring the diesel the next day. That it was on the second day Titilola Fatimoh came to the filling station to inquire about Zaccheus Adeojo and David Oyelere and he told her that they came back in the night to siphon the kerosene and he opened the tank for her to confirm and it was at that stage she said she had not been paid for the kerosene by David Oyelere and Zaccheus Adeojo. That he told her that he did not know anything about their business and all that he knew was that they would pay him for the storage of any product they keep in the tank and they could come anytime to siphon it. It was further deposed that the applicant did not conspire to commit any of the offences and that all efforts to locate Zacheus Adeojo and David Oyelere had been an exercise in futility as their cell phones had been switched off. That upon his arrest in July 2011 he was granted administrative bail by the EFCC and was asked to be reporting to the EFCC every month which he had been complying with since July, 2011 and that it was when he reported at the EFCC office in Lagos in compliance with his bail condition he was detained and was informed that he would be charged for obtaining under false pretences and stealing since he could not locate the said Zacheus Adeojo and David Oyelere. It was deposed that the applicant is a very frail man and he is hypertensive and depends on special local herbs from Igboho in Oyo State for his treatment which is not available in the Federal Prison, Agodi; that he is presently going through excruciating pains and agony because of his ill health; and that if he is granted bail, he would be able to see his Trado-medical specialist at Igboho to treat his hypertension with special herbs and attend court to stand his trial. That the EFCC had concluded their investigation and if he is released on bail the proper investigation of this case, if any, would not be prejudiced. That if he is released on bail he would not commit other or similar offence or any offence whatsoever and will attend the court punctually and regularly for his trial or at any other time that this court may need his presence. That the applicant has substantial sureties to stand for his bail if granted and would not jump bail. That the applicant had no criminal records/previous convictions and he is a responsible citizen and that it will meet the end of justice if his application is granted and the respondent would not in any way be prejudiced if this application is granted.

On their own part, the respondent deposed in the counter-affidavit that the true position is that the applicant is fully aware and deeply involved in the crime in issue and that investigation revealed that the applicant and his cohorts at large to wit; Zachaeus Adeojo and David Oyelere, had met severally and perfected their plan to commit this crime. That intelligence report revealed that the accused/applicant was in regular contact with the duo of Zachaeus Adeojo and David Oyelere at large and that they were not aware of any illness of the accused during the period he was in their cell for the purpose of his arraignment and there is no evidence before the court to support the alleged claim of the applicant's illness. That the alleged illness could be managed by the prison authority. That investigation into this case is not concluded in that they were still searching for Zachaeus Adeojo and David Oyelere at large and as soon as they are apprehended the information will be amended to bring them to justice and releasing the applicant will prejudice the case of the respondent. That they had intelligence report that the duo of Zachaeus Adeojo and David Oyelere at large had perfected plan to aid the escape of the accused to a neighbouring country where they are currently residing and accused/applicant should not be released on bail as there is no amount of surety or sureties provided by the accused/applicant that will enable him take up his trial. That it will be in the interest of justice to refuse this application.

The applicant has tried to raise the issue of his health as constituting special circumstance upon which he could be granted bail. On this issue of his health, I agree with the submission of the respondent's counsel that for an applicant to be admitted to bail on ground of ill health it must be supported by documentary evidence of the state of health of the applicant, apart from the deposition that the applicant is sick. There is no documentary evidence in support of the claim of ill health of the applicant. The applicant has, therefore, failed to establish any special circumstance on the basis of his alleged ill health.

Having considered the Information and the proof of evidence on this case and the affidavit evidence, I agree that the prosecution has established a *prima facie* case against the applicant. But having regard to the nature of the offences alleged to have been committed by the applicant, which are not capital in nature, the fact that the prosecution has established a *prima facie* case against the applicant is not enough to deny the applicant bail if it is certain that he is going to be available to face the trial in respect of the charge against him. It was deposed in the affidavit in support of the application that upon the applicant's arrest in July 2011 he was granted administrative bail by the EFCC and was asked to be reporting to the EFCC every month which he had been complying with since July, 2011. He seemed to have complied with the conditions of the bail before he was rearrested and detained after the Information on this case had been filed. I am of the view that, in the circumstance, the court can exercise its discretion to grant bail to the applicant.

In the light of the foregoing, the applicant is hereby granted bail in the sum of ₦1 million with two sureties in the same sum each. Each of the two sureties should produce evidence of having landed property of substantial value within the jurisdiction of this court and each of them should swear to an affidavit of means to be verified by the EFCC.

HON. JUSTICE O. A. BOADE
JUDGE