

COURT OF APPEAL
ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
12TH JUNE, 1986. CA/E/7/86
CORAM:- A.I. ASEME, O. OLATAWURA, A. I. KATSINA-ALU, JJCA

WILLIAM AJEBON & ORS.APPELLANTS/APPLICANTS
V.
THE STATE RESPONDENT
IN RE:
WILLIAM AJEBON & 2 ORS. APPLICANTS

BAIL - Sentence - Where applicants are sentenced to a long term of imprisonment - It is not usual to grant bail.

BAIL - After conviction - Special circumstances that will justify bail - Will depend on particular facts of each application - And may include the nature of the offence.

BAIL - Grounds for allowing the applications - For bail after conviction - Are not sufficient - Seeing that some of the suspects are still at large.

CRIMINAL PROCEDURE - Bail - Presumption of innocence - Bail could be granted pending trial - But after conviction bail is granted only on special circumstance.

FACTS

The applicants were convicted and sentenced to various terms of imprisonment at the High Court Port Harcourt on two counts of stealing and attempted stealing. They have now in separate applications applied for bail pending the determination of their appeals to the Court of Appeal. Applicants swore to affidavits showing that records of appeal are not ready, frequent consultation with their counsel is required, they are of good character and will not jump bail. Two of the applicants stated that they did

not enjoy good health. In addition each applicant caused persons of substance to swear that they are of good character. Though medical reports were exhibited, there was no averment that their ailment cannot be treated in the prison unless they are released on bail.

They Court of Appeal had to determine whether considering the circumstances of this case, there are sufficient grounds for allowing the applications for bail.

HELD (Unanimously refusing the applications per lead ruling of **ASEME JCA**)

Bail - Presumption of innocence

1. Before trial there is always presumption of innocence in favour of the accused person and so bail could be granted pending trial. But soon after conviction this presumption disappears and gives way to the presumption in favour of a trial court that the conviction is right until it has been set aside. Bail therefore is granted only on special circumstance. (p. 1982 C)

Bail - Sentence

2. Now the applicants are sentenced to a long term of imprisonment and it is not usual to grant bail when the term is long. See Gratham 4 CAR 150. From the judgement it is apparent that one Mr. Low, a Canadian, and another principal actor in the offences for which the applicants were convicted are still at large. (p. 1982 F)

Special circumstances that will justify bail

3. Many decisions have been handed down in this court and elsewhere as to what constitute special circumstances and each application for bail will depend on its particular fact. Special circumstance may include the nature of the offence (i.e. its gravity), length of sentence passed by the lower Court on the applicants, the difficulty in the compilation of the record of appeal etc. In the case of Hardy 25 CAR 168; Hardy was convicted for offence under Larceny Act and imprisoned for twelve months. Although the Court of Appeal realized that Hardy was a man of many business activities, and the case against him being of great complication that

it would be useful if he could have access to his legal advisers in the preparation of his appeal, and also that Hardy appeared throughout his trial in the court below, it was held that none of the facts amounted to special circumstance to justify grant of bail. The application was refused. (p. 1982 H)

Bail - Grounds for allowing the applications

4. I have considered the submissions on behalf of the applicants and after due consideration in respect of the nature of the offence, the fact that some of the persons involved in the commission of the offence are still at large and the long term of the imprisonment, I am not satisfied that there are at present sufficient grounds for allowing these applications. The application of each applicant in the circumstance is hereby refused. (p. 1983 E)

ASEME JCA

The three Applicants, William Ajebon, Donald Amadi, and Frank Chizea were convicted and sentenced to various terms of imprisonment at the Port Harcourt High Court on two counts of conspiracy to commit felony i.e. stealing and attempted stealing. They have now in separate applications applied for bail pending the determination of their appeals to this court. The three applications were heard separately the same day. The first and second applicants were represented by Mr. Chike Ofodile, SAN, while the third application was represented by Mr. F.G. Peters. This ruling relates to the three applications.

In support of their applications the applicants have sworn to almost identical affidavits deposing; that the records of appeal are not ready and that there is no indication when they will be ready; that frequent consultations with their counsel is required for the successful prosecution of their appeals; that they are of good character and that they will not jump bail if granted; that refusal of bail will have the effect of considerable proportion on their sentence being served before the appeal is heard. William Ajebon and Donald Amadi further deposed that they did not enjoy good health and that break down of their health will frustrate the prosecution of their appeal.

In addition to their own affidavits each applicant has caused persons of substance to swear that the applicants are of good character.

On medical grounds both the first and second applicants have exhibited medical reports that they are suffering from one ailment or the other, but there was no averment that no treatment is available in the convict prison in which they are serving their sentences nor that their ailment cannot be treated in that prison unless they are released on bail.

On the ground that the applicants are of good character, applicants admit that no evidence was led about their good character in the court below on their behalf, but they attribute this to the fact that their counsel was not present when judgment was delivered.

Before trial there is always presumption of innocence in favour of the accused person and so bail could be granted pending trial. But soon after conviction this presumption disappears and gives way to the presumption in favour of a trial court that the conviction is right until it has been set aside. Bail therefore is granted only on special circumstance. In the instant case the conviction of the applicants are for revolting offences of conspiracy to commit felony i.e stealing and attempted stealing of Barrels of Crude oil worth about N53.6 million property of the Federal Government of Nigeria, and for which the applicants have been convicted and sentenced to various terms of imprisonment. For the first and third applicants the imprisonment is for ten years and five years respectively for the two counts, while for the second applicant the sentence is for five years on each count respectively.

Now the applicants are sentenced to a long term of imprisonment and it is not usual to grant bail when the term is long. See Gratham 4 CAR 150. From the judgement it is apparent that one Mr. Low, a Canadian, and another principal actor in the offences for which the applicants were convicted are still at large. On the ground of delay in hearing the appeal it was submitted that altogether 23 witnesses testified at the trial and that the judgment ran into 58 pages.

Many decisions have been handed down in this court and elsewhere as to what constitute special circumstances and each application for bail will depend on its particular fact. Learned counsel re-

ferred us to the decisions of this court in Duro Ajayi (1977) 1 FCA 1, Chief Afibulu (1977) 1 FCA 223. In reply Mr. Goodhead, learned principal state counsel submitted that he neither supported nor opposed the application and in support of this his rather double standard stance he cited HEWSON 25 CAR 167 at page 168 and STEWARD 23 CAR 68. B
Mr. Goodhead finally left the matter to the discretion of the court.

Special circumstance may include the nature of the offence (i.e its gravity), length of sentence passed by the lower Court on the applicants, the difficulty in the compilation of the record of appeal etc. In the case of Hardy 25 CAR 168; Hardy was convicted for offence under Larceny Act and imprisoned for twelve months. Although the Court of Appeal realized that Hardy was a man of many business activities, and the case against him being of great complication that it would be useful if he could have access to his legal advisers in the preparation of his appeal, and also that Hardy appeared throughout his trial in the court below, it was held that none of the facts amounted to special circumstance to justify grant of bail. The application was refused. C
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OLATAWURA JCA

I concur.

KATSINA-ALU JCA

I concur.