IN THE HIGH COURT OF JUSTICE
IN THE BENIN JUDICIAL DIVISION
HOLDEN AT BENIN CITY
BEFORE HIS LORDSHIP, HON.JUSTICE P.A.AKHIHIERO,
JUDGE, ON WEDNESDAY THE
31ST OF AUGUST, 2016.

CHARGE NO: B/107M/2016

BETWEEN:

COMMISSIONER OF POLICE é é é é .....COMPLAINANT/RESPONDENT

AND

SMART IRORERE é é é é é é é é é é é ACCUSED/APPLICANT

RULING

This is a ruling on a Summons to admit to Bail brought pursuant to sections 118(1) and 123 of the Criminal Procedure Act, Laws of the Federation of Nigeria 2004 and section 35 and 36(5) of the 1999 constitution of the Federal Republic of Nigeria as amended and under the inherent jurisdiction of this Court.

The application is praying the Court for an order granting bail to the Accused/Applicant, SMART IRORERE who was remanded at Benin Prisons, Sapele Road, Benin City on the 14th day of July 2016 in charge No. MEG/204C/2016 pending trial at the High Court.

Moving the application, the learned counsel for the Applicant, S.C.Ogoke Esq. relied on a 44 paragraph affidavit deposed to by the Applicant and an

affidavit of urgency deposed to by one Sunny Imafidon. Also attached to this application are Exhibits 'A' and 'B' which are the order of remand and a PDP membership card respectively. He informed the Court that he was adopting his Written Address as his arguments in this application.

The learned Counsel submitted that an application for bail pending trial is entirely at the Court's discretion which discretion is to be exercised judicially and judiciously. For this position he relied on the case of *Jimoh v. C.O.P. (2007) 5 ACLR at page 272 particularly at 274 Ratio 1.*

He also referred the Court to the case of: *Suleman vs. C.O.P. 2008 5 MJSC pg 90 at 92 Ratio 2,*where the Supreme Court stated the conditions or factors to be considered in granting bail as follows:

a. The likelihood of the Applicant being available to face his trial;
b. The seriousness of the charge preferred against the Applicant;
c. The strength of the evidence against the Applicant;
d. The criminal record of the Applicant; and
e. The likelihood of repetition of the offence.

On the likelihood of the Applicant being available to face his trial, he submitted that the Applicant in paragraph 39 of his affidavit, stated that he will not jump bail but attend court punctually and religiously to face his trial.

He posited that the purpose of bail is to ensure the presence of the Accused at the trial and relied on the case of: *Suleman vs. Commissioner of Police (2008) 21 WRN Ratio 6.*

Furthermore, he referred the Court to paragraph 41 of the affidavit in support of the summons where he stated that he is ready to provide a reliable, responsible and traceable surety to the satisfaction of this court.

Counsel submitted that where there is an assurance that the Accused/Applicant is in position to produce men of substance who will ensure his appearance at his trial his application for bail pending trial ought not to be refused. For this proposition, he cited the case of: *Ariyo v. Commissioner of Police (1998) vol. 1 ACLR page 525 particularly at 525 Ratio 3.*

He submitted that the offences alleged against the accused/applicant are Conspiracy and unlawfully representing themselves as members of a prohibited secret cult known as Eiye cult confraternity. He stated that the offences are felonies and he urged the Court to exercise its discretion to grant bail to the Applicant as same is not a capital offence.

On the criminal record of the Applicant, Counsel maintained that the Applicant has stated in paragraph 35 of his Affidavit that he has never been involved in any criminal activities. He submitted that the Applicant has no past criminal record.

He argued that by virtue of S.36 (5) of the 1999 constitution (As Amended), the Applicant is presumed innocent however serious the offence may be, and relied on *Bolakale v. State (supra) Ratio 7.*

He further submitted that the continuous detention of the Applicant on a holden charge based on the false allegation in the supporting Affidavit is a clear manifestation of the use and abuse of power by Police officers. He argued that the circumstances under which the accused persons were arrested and charged to court have been clearly narrated in the supporting affidavit to this summons particularly in paragraphs 5, 6, 7, 8, 9, 10, 11, 16, 17, 18 and 24. He urged the Court to grant a temporary release to the applicant pending when the trial commences.

He referred the Court to the dictum of the Supreme Court in the case of: *Suleman v. Commissioner of Police, Plateau state (2008) 21 WRN Ratio 4 thus:*

> *"The right of bail, a constitutional right, is contractual in nature. The effect of granting bail is not to set the accused free for all times in the criminal process but to release him from the custody of the law and to entrust him to appear at his trial at a specific time and place. The object of bail pending trial is to grant pre-trial freedom to an accused whose appearance in court can be compared by a financial sanction in form of money bail. The freedom is temporary in that it lasts only for the period of the trial. It stops on conviction of the accused. It also stops on acquittal of the accused".*

Finally, he urged the Court to admit the Accused/Applicant to bail.

Opposing the application, the learned State Counsel, William Usman Esq. relied on a 13 paragraphs counter- affidavit with two exhibits.He also relied on his Written Address which he adopted as his arguments in this application.

He submitted that in an application for bail pending trial, the court has an unfettered discretion to grant or refuse bail but in the exercise of such discretion, the court is always guided by the following factors:

1. The nature of the charge;
2. The severity of the punishment;

3. The character of the evidence;

4. The criminal record of the accused; and

5. The likelihood of the repetition of the offence (among others).

For this, he relied on the case of: *ANI V. STATE (2001)17 NWLR (Pt 742) 411BAMAYI V THE STATE (2001) 2 ACLR Pg 472 at 472 R. 12*

On the nature of the offences and the severity of the punishment, Counsel submitted that the charges against the applicants are conspiracy and cultism. He informed the Court that these are offences are now prevalent in the society.

On the character of the evidence, he submitted that the evidence against the applicants is strong. He said that at the close of the police investigation, a prima facie case of Conspiracy and Cultism was made out against the applicant and, if he is he granted bail, he would not come to take his trial. He said that the applicant made a confessional statement. He submitted that a confessional statement is enough to sustain conviction and relied on the case of **DANKIDI V STATE (2014) LPELR-23812.**

Counsel referred to the dictum of the Court of Appeal *in EVERISTUS OGBEMUDIA V. COP (2001) 2 ACLR ratio 3 thus:*

> "the likelihood of an accused who has committed an offence escaping from justice is very high."

He therefore urged the court to be very cautious in granting bail.

On the prevalence of the offences charged, Counsel emphasised that the offences charged are now a menace to the society and still persists in spite of the concerted efforts of the state to curb them. He urged the Court to take notice of the fact of their prevalence and refuse this application, as was done in the case of *THE STATE V FELIX (1979) LRN 308.*

He submitted that by virtue of the aforementioned factors, the applicant will be induced to flee from justice if the court exercises its discretion in his favour.

He finally urged the Court to refuse the application.

Having carefully considered the affidavit evidence, the submission of both counsel and the judicial authorities cited, the issue for determination is whether the Applicant has placed before the court sufficient facts to enable it grant the application. It is settled law that the grant or refusal of an application for bail is at the discretion of the Court. Like all other discretions it must be exercised judicially and judiciously, taking cognisance of the facts before it. See*: Ogbonna Vs FRN (2011) 12 NWLR (PT. 1260) Pg. 100 @ 104.*

The major factor the Court is called upon to determine in an application for bail pending trial is whether the accused will be available to stand his trial. In the recent case of: *AKANO VS. FEDERAL REPUBLIC OF NIGERIA* (2016) 10 NWLR (Pt.1519) 17 at 19, the Court of Appeal, Ibadan Division, posited that:

> *"It is a proper and useful test, whether bail should be granted or refused, to consider the probability that the accused will appear in court to take his trial. In that regard, it is proper to consider the nature of the offence, the nature of the evidence in support and the severity of the punishment which conviction will entail".*

Thus the three main factors are:

1. The nature of the offence;
2. The nature of the evidence; and
3. The severity of the punishment upon conviction.

On the nature of the offence, it is a notorious fact that cultism has assumed a pandemic dimension in our society. I take judicial notice of the fact that more than fifty per cent of the bail applications in this Court are for cultism related offences. Although not a capital offence, cultism has assumed an alarming dimension. I am in agreement with the learned counsel for the respondent that cultism has become a menace to the society.

Coming to the nature of the evidence against the Applicant, I am of the view that the evidence against him is quite strong. He made a confessional statement which was annexed as Exhibit B to the Respondent's Counter-Affidavit. In Exhibit B, the Applicant admitted that he is a member of the "Eiye Secrete Cult" and that he was initiated into the cult on the 10th of November,2014 by one Abubakar.He added that his cult name is Lekeleke. A confessional statement without more is sufficient to ground conviction. See:
Achabua V The State (1976) 12 SC 63 at 68. Also, *in Ogbhemhe vs. C.O.P. (2000) 19 W.R.N. 46 at 50-51*, Akaahs JCA warned that:

"…the likelihood of an accused who has actually committed the offence escaping from justice is very high".

I am of the view that the strength of the evidence is such that the Applicant may be tempted to flee from justice if admitted to bail.

On the last factor which is: the severity of the punishment upon conviction, I am of the view that although the punishment is not the highest known to law, the punishment of twenty one years imprisonment on conviction is severe enough to make a suspect to jump bail.

Consequently, from the foregoing, it is my firm view that this is not a proper case where I can exercise my discretion in favour of the Applicant. The application to admit the Applicant to bail is hereby refused.

P.A.AKHIHIERO
JUDGE
31/08/16

COUNSEL:

S.C.OGOKE.ESQ……..APPLICANT

DIRECTOR OF PUBLIC PROSECUTIONS……RESPONDENT