

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 THURSDAY THE
18TH OF AUGUST, 2016.

CHARGE NO: B/104M/2016

BETWEEN:

COMMISSIONER OF POLICE í í í íCOMPLAINANT/RESPONDENT

AND

IFEANYI AKALUGWU í í í í í í í í í í í 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 **IFEANYI AKALUGWU** 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 Exhibit "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.
- e. The likelihood of repetition of the offence.

On the likelihood of the Applicant being available to face his trial, he stated 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.**

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 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 offence 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 **Bolakale v. State (supra) Ratio 7.**

We further submit my Lord that the continuous detention of the Accused/Applicant on holden charge based on the false allegation as contained in the supporting Affidavit, is a clear manifestation of use and abuse of power by the Police officers. The circumstances upon 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. We submit my Lord that all we are ordering my Lord to do is to grant a temporary release to the accused/applicant pending when the trial commences.

We commend the authority of **Suleman v. Commissioner of Police, Plateau state (2008) 21 WRN Ratio 4** to my Lord. In that case, the Apex Court has this to say **“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 last only for the period of the trial. It stops on conviction of the accused. It also stops on acquittal of the accused”.**

Finally, we know as earlier stated that this Honourable Court has the unfettered discretion to grant bail in cases of this nature. We urge my Lord to admit the Accused/Applicant to bail.

We beg to submit.