

IN THE COURT OF APPEAL OF SIERRA LEONE

MISC. APP. 15/2001

BETWEEN:

HON. MR. JUSTICE M.O. TAJU-DEEN - APPLICANT

Vs

THE STATE - RESPONDENT

CORAM:

Hon. Mr. Justice A.N.B. Stronge - J.A.

Hon. Mr. Justice N.D. Alhadi - J.A.

Hon. Mr. Justice S.A. Ademosu - J.A.

T.M. Terry Esq., for the Applicant

Attorney-General & Minister of Justice for The State

RULING DELIVERED THIS 5th DAY OF JULY, 2001

ALHADI, J.A.

On the 22nd day of June, 2001 in the High Court presided over by Justice Patricia Macaulay, J.A. the Applicant herein was charged in an Indictment and convicted under the Anti-Corruption Act 2000 for corrupt acquisition of wealth and accepting a reward in the performance of his duty and sentenced on Courts 1, 2, 5 and 6 to a term of 1 year imprisonment concurrently and on Counts 3, 4, 7 and 8 was fined the sum of Le.30,000,000 or 6 months imprisonment sentence to run concurrently.

By Notice of Motion dated the 26th June 2001 the applicant applies (what is relevant at this stage) to this Honourable Court for bail pending the determination of his appeal to this court.

In the affidavit in support it is deposed to in Paragraph 7 the following:-

“That I verily believe that if bail is not granted by this Honourable Court of Appeal, there is a strong probability that the Applicant will have served his sentence to completion before his said Notice of Application for leave to appeal against his Conviction and Sentence comes up for hearing before the Court of Appeal of Sierra Leone”.

In Paragraph 4 of the Supplemental Affidavit sworn to on the same date the deponent deposed to the following:

- “4. That the additional reasons on which the applicant is seeking bail include -
- (i) The Complexity of the case
 - (ii) The impossibility of the Appeal being heard before a period of one year.
 - (iii) The desirability of the applicant having full opportunities of consulting with his legal advisers well before the hearing and final determination of his Appeal if leave to Appeal is granted”.

During the course of the hearing in court counsel for the applicant concedes that in order for the court to accede to an application for the granting of bail exceptional circumstances must be shown. He argued that the special circumstances disclose in the case are firstly a good proportion of the sentence would have been served before the appeal is finally determined. Secondly the complexity of the case, as it involves intricate question of jurisdiction of the trial court and the correct interpretation of Section 45 of the Anti-Corruption Act 200.

He relied on the following cases in support of his submission, R. v WILLIAM GREGORY 20 Cr. App. Rep. 185 where the appellant was convicted of indecent assault and was sentenced to six months imprisonment. Bail was allowed in his own recognizance of £25, he had been in custody for some weeks. The Court held there are special and peculiar circumstances in the case, and should not be taken as precedent. AKRONG AND ANOTHER v THE REPUBLIC (1992) 2 G.L.R. 244 the applicants were both convicted of assault and were each sentenced to four months imprisonment with hard labour. They filed their petition of appeal and applied for bail pending the hearing and determination of the appeal on the grounds inter alia, that as the Long Vacation was about to start at the end of July 1972, the appeal would be delayed until next October when they would have served the whole or substantial portion of their sentence. In opposing the application, Counsel for the Republic argued that in addition to proving the shortness of the sentence the applicants must prove that their appeal had a reasonable chance of success.

It was held that the appellate court would grant bail to a convicted person pending the hearing and determination of his appeal irrespective of its merits. But the court must be satisfied that the whole or a substantial portion of the sentence will be served before the appeal is heard.

In the case of R. v THEOPHILUS ADENUGA TUNWASHE W.A.C.A. (Selected Cases) Vol.1-11236. The appellant was convicted and sentenced to four years imprisonment. In his application for bail pending the hearing of an appeal made under Section 17(2) of the West African Court of Appeal Ordinance, it was said:-

“From a careful examination the reported cases it is clear -

- (1) That bail will not be granted pending appeal save in exceptional circumstances or where the hearing is likely to be unduly delayed.

- (2) In dealing with later class of cases the court will have regard not only to the length of time which must elapse before the appeal can be heard but also the length of the sentence to be appealed from, and further that these two matters will be considered in relation to one another”.

In two of the local decisions considered (Lagos State) R. v LAWRENCE where the opinion of the full court was sought of the correctness of the decision of a single judge on point of law bail was granted pending the hearing and decision of the full court. In R v RIEGELS the sentence was of 12 months imprisonment. The trial judge refused to state a case. The full court ordered him to do so, and bail was granted on July 6th 1932 in view of the fact that the full court will not be sitting until October. However in the main case there was no special circumstances as alleged and the court held it could not consider the delay of two months in relation to the sentence of four years to come within the principle in 2 above.

Counsel also relied on the case of R. v. FREDERICK NEWBURY AND BURNETT LION ELAM 23 Cr. 1 4A.R. 66. Both accused were charged and convicted of conspiracy to defraud and obtaining money by false pretences. Newbury was sentenced to two years imprisonment with hard labour and three years penal servitude (concurrently) and Elam to twelve months imprisonment with hard labour. It was argued in favour of Newbury that it is very desirable, if the appeal to be presented properly that there should be ample opportunity for consultation between the applicant and his legal advisers.

The same argument was presented in the case of Elam who was a solicitor and was in pre-eminently good position to help his legal advisers in preparing his appeal if bail is granted. The court ordered the applicants to be released, each in his own recognizance in the sum of £5,000 together with two sureties in each case in the sum of £2,500 a piece.

In the case of R. v. ALEXANDER DAVIDSON Stawarf 23 Cr. App. 68. The applicant was convicted of forgery and sentenced to twelve months imprisonment. The court ordered that the applicant be released on his own bail in the sum of £100 with two sureties in the sum of £100 each.

In R. v. WILLIAMS HARDING & ORS. 23 Cr. App. 143 also relied on the counsel in support the applicants were convicted of ware house breaking, obtaining money by false pretences and one of them being under the influence of drink whilst in charge of a motor vehicle. They were granted bail pending the hearing and determination of the appeal.

Counsel submitted finally that all the cases point out bail that will be granted to a convicted applicant where it is likely that the sentence will be served before the appeal comes up for hearing and dispose of, which in the instant case is the special circumstance considering the length of sentence and the likelihood of the record of the High Court not been prepared within shortness of time and the intervention of the Long Vacation.

The Learned Attorney-General in opposing the application dismissed the two local decisions of FRANKLYN DAVIES v. HARRIS and ZOUZOUKO DEGUI v. R. as to authorities in support of the application as no reason was giving by courts for granting bail pending the hearing and determination of the appeal. He argued that the principle enunciated in all the cases cited, is that the applicant must show unusual and exceptional circumstances for bail to be granted. That the present case is devoid of any such circumstance. That in the cases of FREDERICK NEWBURY and R. v. HARDY relied on by counsel, that the complexity of the case is another factor to be considered as a special circumstance that in the case of FREDERICK NEWBURY the offence charged was conspiracy in defraud and R. v. HARDY there were 683 exhibits involved, that in the instant case no particulars of the offences are before the court for the court to determine the complex nature of the charges. That in the case of WILLIAM GREGORY where the sentence was of six months and bail was granted it was held that

it should not be taken as a precedent. That in the case of R. v. STARKIE 24 Cr. App. R. 1, it was held that the Long Vacation by itself is no sufficient reason for allowing bail pending the hearing of the appeal.

He said that in cases of this nature where such an application is made the court should use its jurisdiction and order that the record of the proceedings in the lower court be expeditiously prepared and brought before the court for speedy hearing.

The law has been consistent in its principle that bail will not be granted pending the hearing of an appeal unless the applicant show special circumstances why bail should be granted. In all the case cited before court, bail has been consistently granted pending the hearing of the appeal in circumstances which are not very dissimilar to those in present case. But I am constrained in following those decisions due to the fact that I find the evidence in support of the application limited in scope and quantity. I would have expected evidence of how copious the manuscript of the proceedings in the lower court is and approximately how long it will take to prepare the court record. An extract of the judgment in which it is alleged the learned trial judge erred in her interpretation of Section 45 of the Anti-Corruption Act 2000; and the Particulars of the Offences charged on both counts exhibited for the court to appreciate the complex nature of the case. It is pertinent and relevant also for evidence of solicitor's inability to get access and consultation with the applicant whilst incarcerated.

In the light of these inadequacies that I find no proper case has been made for bail to be granted pending the hearing and determination of the appeal.

I will order that the record of proceedings be prepared and sent to this court within three weeks herefrom.

N.D. Alhadi

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Hon. Mr. Justice N.D. Alhadi - J.A.

A.N. Bankole Stronge

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Hon. Mr. Justice A.N. Bankole Stronge - J.A.

S.A. Ademosu

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