

Cr. APP. 2/2015

IN THE COURT OF APPEAL OF SIERRA LEONE
CRIMINAL JURISDICTION

IN THE MATTER OF AN APPLICATION FOR BAIL PENDING THE HEARING AND DETERMINATION OF THE APPEAL PUSUANT TO SECTION 67(2) OF THE COURTS ACT NO. 31 OF 1965 AND SECTION 79(4) OF THE CRIMINAL PROCEEDURE ACT NO.32 OF 1965

ISHAKA SYLVESTER MENJOR - APPELLANT

AND

THE STATE - RESPONDENT

CORAM ;

THE HON. MR. JUSTICE P. O. HAMILTON JSC - PRESIDING

THE HON. MR. JUSTICE A. S. FOFANNAH JA

THE HON MR. JUSTICE R. S. FYNN JA

RULING

Introduction & Background

1. The appellant/applicant was convicted on the 15th of August 2015 of Unlawful Carnal Knowledge contrary to S. 6 of the Prevention of Cruelty to Children Act CAP 31 of the Laws of Sierra Leone 1960 as amended. On 2nd September 2015 he filed a notice of appeal in this court against his conviction. He has also applied by Notice of Motion dated 12th October 2015 to be granted bail pending the hearing and determination of his appeal.
2. In support of his application for bail pending appeal the appellant relies on the Affidavit in Support sworn to on the 12th of October 2015, the Supplemental Affidavit of 20th October 2015 and the Affidavit in Reply dated 30th October 2015

all of which were sworn to by his solicitor F Gerber Esq. These affidavits in brief depose to the following assertions:

3. That the accused was convicted of Unlawful Carnal Knowledge and sentenced to five years imprisonment; that he is currently incarcerated at the Kenema Correctional Centre; that he is a school boy who was on bail throughout his trial and did not breach his bail conditions; that he has good grounds of appeal which he believes will be successful but fears that if he is not granted bail he would have served a substantial part of his sentence before the conclusion of the appeal and that this will cause injustice for which he would not be compensated.
4. In his submission counsel for the appellant referred the court to R v Watton (1979) 68 Criminal Appeal R 293 as cited in Blackstone's Criminal Practice at paragraph D 24.11 under the rubric "Bail by the Court of Appeal". Counsel also provided two Botswana High Court cases to wit: Kaleba v The State 2003 (1) BLR 425 and The State v Kennedy Sphiri 1982 (1) BLR 211 which both follow the principles laid down in R v Watton.
5. The State/respondent opposed the application for bail and relied on the Affidavit in Opposition dated 23rd October 2015 and sworn to by AJM Bockarie Esq., State Counsel. The respondent referred the court to MO Taju- Deen v The State as well as to the case of Rex v Theophilus Adenuga Tunwashe 1 WACA (1930-33) case in which the common principle is that bail pending appeal will only be granted when exceptional circumstances exist.

Bail Pending Appeal

6. There is no contention that S. 67 (2) of the Courts Act of 1965 gives this court a discretion to grant bail pending appeal "if it seems fit" nor is it disputed that the burden is on the appellant to show that circumstances exist that make his situation unlike any other – exceptional. Until the applicant does so this court will not "seem it fit" to grant bail pending appeal.
7. The appellant's task is more onerous where the offence he has been convicted of is a grave one. The court must be cautious in granting bail pending appeal generally but should be particularly so when faced with an appellant who has

been convicted of a serious offence. There is no denying that rape, unlawful carnal knowledge and kindred sexual offences are serious offences and this should also be kept in view.

8. In the MO Taju Deen case this court had stated per **Alhadi JA** that “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”. The court had then followed closely the principles laid down in the Theophilus Adenuga Tunwase case. The decision of the Court of Appeal in Taju-Deen was later upheld by the Supreme Court thereby endorsing the principles which the Court of Appeal had applied.
9. The Taju-Deen decision is therefore the leading Sierra Leonean decision on the issue of bail pending appeal and this court will be guided by it in deciding the present application. Has the appellant demonstrated exceptional circumstances which the court should consider and so exercise its discretion to grant bail in the appellants favor? What will amount to exceptional circumstances?

Strong grounds of Appeal

10. The applicant has submitted that he has good grounds of appeal. However by merely stating that the “grounds of appeal are good and are likely to succeed” will not by itself constitute exceptional circumstances. The strength of the grounds must be discernible *prima facie*. This means that even before they are argued the grounds must suggest that some serious flaw was committed by the court below.
11. The grounds in the present appeal do not have such *prima facie* strength. This is not to suggest that they are not good and strong grounds (as the arguments may well reveal their strength or otherwise later). On the face, however, they appear to be mundane and usual at best far from exceptional. I will set them out in full;
 - i) That the judgment is unreasonable and cannot be supported by the evidence adduced in the trial
 - ii) That the Learned Judge erred in Law and mis- directed himself when he proceeded to convict the accused on one(1) count as per the indictment and the judgment which conviction was against the weight of the evidence

- iii) That the Learned Judge erred in law and misdirected himself when he believed the testimony of Victoria Massaquoi

12. The first and second ground on the face seem to repeat themselves a longer and shorter version of the same whilst the third ground contends with what the Honourable Trial Judge may or may not believe. On the face these grounds do not demonstrate strength which could qualify the appellant's circumstances as being "exceptional" and make this court "seem it fit" to grant bail pending appeal.

Serve Substantial part of Sentence

13. The Appellant's submissions that a substantial part of the sentence would be served before the appeal is heard and decided have not been convincing either. The relevant dates from judgment to this ruling are set out above and the whole period that has elapsed is not up to four months. The records of the court below have been settled and are already assigned to this coram. It was pointed out during the hearing of the application that the whole of the appeal records constitute no more than forty-six (46) pages and that with counsel's cooperation this court will conclude this appeal in very little time.

14. In the Taju-Deen case the sentence was imprisonment for a year as was in R v Watton. In the present case the term imposed is five (5) years which is a significantly longer term. The argument that the accused would spend a substantial portion of the term imposed held no sway with the court in those cases and it holds none in this.

Conclusion

15. When considering an application for bail pending appeal the following test set out in R v Watton is the crucial litmus for the presence of "exceptional circumstances" :

- i. Does it appear prima facie that the appeal will succeed?
- ii. Is there a risk that the sentence would have been served by the time the appeal is complete?

It is when both of these questions are answered in the affirmative that the court will be persuaded to "seem it fit" to grant bail pending the appeal.

16. In the present application the answer to both of these questions is in the negative. This application for bail pending appeal must therefore fail and this court rules accordingly.

17. The court directs that the hearing of this appeal be expedited. The court directs further that appellant's counsel files the synopsis of his arguments no later than Monday 16th November 2015 and that the respondent files his no later than 23rd November 2015. Oral Arguments if any are hereby fixed for 26th November 2015.

The Hon Mr. Justice Reginald Sydney FYNN JA.....

The Hon. Mr. Justice Patrick Omolade HAMILTON JSC

I agree.....

The Hon Mr. Justice Abdulai Sheik FOFANNAH JA

I agree.....

On 7th Day of November 2015