

IN THE HIGH COURT OF SIERRA LEONE CR. APP 4/2016

BETWEEN:

BAIMBA MOIFORAY (ALIAS LAC) AND TODAY AMARA KAMARA (ALIAS G-FAK)....APPELLANTS

(S.M SESAY ESQ. M.P. MAMMY ESQ.)

AND

THE STATE.....RESPONDENTS.

(J. A. SESAY AND V. E. KABIA)

Coram:

Hon. Justice M.D Kamara J A Presiding

Hon. Justice J. B Alicu J A

Hon. Justice A I Sesay, J A

Ruling Delivered 9th June, 2020

The appellants/applicants were convicted and sentenced on the 8th September 2018 of conspiracy and murder. A sentence of term of years and death were handed down by the trial judge and thus have since been in custody.

Counsel on behalf of the convicts on the 27th September 2016 had applied by notice of motion dated 14th August 2019 for leave to file further grounds of appeal, as well as to be granted bail pending the hearing and determination of their appeal.

That they had filed an appeal on the 27th September 2016. And that the records have been settled and bounded together. Then there arose the inevitable need to file further/additional grounds of appeal. That these additional grounds intended ~~to be~~ cannot be added after the expiration of 21 days without the leave of this Court. Thus, the reason for this application. Furthermore, that the accused persons were not admitted to bail during their trial. That counsel now applies for them to be put on bail pending appeal notwithstanding the gravity of the offences they are convicted of.

The application is supported by the affidavit of Sahid Mohamed Sesay deposed to on the 14th August 2019, together with exhibits attached thereto and filed herein namely.

SMS-11 to 3 is copy of notice of appeal against conviction. SMS-21 to 3 is copy of the notice of appeal against sentence.

Counsel Sesay says he relies on the entirety of his affidavit in support, in particular paragraphs 2 to 11 of the said affidavit sworn to on 14th day of August 2019. He submitted that the issue of bail could be looked at statutorily or from the common law stance.

That S 79(10) of the Criminal Procedure Act gives this Court the inherent power to admit the accused to bail pending appeal.

Court enquired from counsel whether such jurisdiction is inherent or appellate. Counsel Sesay responded that this Court has both the inherent and appellate Jurisdiction. At this point Court required Counsel to furnish it with authorities to substantiate his stance in particular his application for bail pending appeal.

State Counsel filed an affidavit in opposition. From a careful examination of reported /unreported cases, Ibrahim Bah Vs The State 2012, Taju-Deen Vs The State 1999 and Ishaka Sylvester Menjor Vs The State 2015, it is clear that bail will not be granted pending an appeal save in exceptional circumstance or where the hearing of the appeal is likely to be unduly delayed. For the latter, that the Court should have regard not only to the length of time which must elapse before the appeal can be heard but also to the length of time of the sentence to be appealed from, and further that the two matters be considered in relations to one another.

That in the absence of Exceptional special circumstances, bail will not be allowed unless a refusal would have the result of a considerable proportion of the sentence being served before the appeal can be heard.

S 67(2) of the Court Act of 1965 gives this Court a discretion to grant bail pending appeal "if it seems fit". However, the burden is on the appellant to show that circumstance exist that make his situation unlike any other exceptional, until the appellant does so this Court will not "seem it fit" to grant bail pending appeal, especially where the offence he has been convicted of is a grave one.

It has been repeatedly stated that the Court must be cautious in granting bail pending appeal in general but in particular so when faced with an appellant who has been convicted of serious offence. That this reasoning should be kept in view when appellants face conviction for serious offences like rape, unlawful carnal knowledge and kindred sexual offences murder, treason etc.

In the M.O Taju-Deen's Case, it was held that, bail pending appeal will not be granted unless the appellant demonstrated exceptional circumstances which the court should consider and so exercise its discretion to grant in the appellant's favour.

What will amount to an exceptional circumstance is yet to be defined. In the case of Ishaka Sylvester Menjor.

Hon. Justice P. O Hamilton maintained that by the applicant submitting that he has strong/good grounds of appeal and are likely to succeed; will not by itself constitute exceptional circumstances. That the strength of grounds must be discernible prima facie; meaning that even before they are argued the grounds must suggest that some serious flaw was committed by the court below.

In the case of R v Watton, the crucial litmus for the presence of exceptional circumstances" include:

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

On the face of it, the present grounds of appeal do not seem to have such prima facie strength; though they may be good and strong grounds. They appear to be mundane and usual at best but far from being exceptional.

That notwithstanding in the interest of justice, the appellants/applicants are hereby granted leave to file additional grounds of appeal within the next two weeks.

With regards the issue of bail pending appeal, the issue of the appellants/applicants running the risk of serving the sentenced by the time the appeal is heard does not necessarily arise in this case; as they have been sentenced both to a term of years and to death, rather; the subsistence of the appeal in the least guarantee them an opportunity not to be executed /live as long as the appeal subsists save by natural means. The accused having been convicted of a grave offence of murder and no exceptional circumstance having been canvassed on their behalf to be considered by the Court but the usual run of events, bail pending appeal is refused.

The respective counsel in this matter are however encouraged to submit their arguments in the appeal within the shortest possible time. At most within one month after filing the additional grounds of appeal.

Hon. Justice M.D Kamara: .....J A

Hon. Justice J. B Aliou: .....J A I agree

Hon. Justice A I Sesay .....J A I agree