

CR.APP 5&6/2020

IN THE COURT OF APPEAL OF SIERRA LEONE
(CRIMINAL DIVISION)

IN THE MATTER OF AN APPLICATION FOR BAIL PENDING THE HEARING
AND DETERMINATION OF THE APPEAL PURSUANT TO ORDER 67 (2) OF
THE COURTS ACT NO. 31 OF 1965

BETWEEN:

ALFRED PALO CONTEH

- APPELLANT/APPLICANT

AND

THE STATE

- RESPONDENT

CORAM:

THE HON. MR. JUSTICE A. I. SESAY JA - PRESIDING

THE HON. MS. JUSTICE F. B. ALHADI JA

THE HON. MRS. JUSTICE T. BARNETT J

RULING DELIVERED THIS 14th DAY OF AUGUST 2020

Introduction and Background

On the 15th day of July 2020 the Appellant/Applicant filed a Notice of Motion dated the 14th day of July 2020 seeking the following Orders:

1. That the Court do grant bail to Major (Rtd) Alfred Palo Conteh, the Applicant herein, pending the hearing and determination of his Appeal to the Court of Appeal pursuant to Section 67 (2) of the Courts Act No. 31 of 1965.

2. Any further or other order/s that the Court may deem fit and just.

The application was supported by the Affidavit of Major (Rtd) Alfred Palo Conteh sworn to on the 14th day of July 2020 together with four exhibits attached thereto. They include:

- 1) Exhibit "APC 1" which is a copy of the Magisterial charge sheet in the Preliminary Investigation conducted in the Magistrate Court;
- 2) Exhibit "APC 2" which is a copy of an Indictment dated 31st May 2020;
- 3) Exhibit "APC 3" which is a copy of the Conviction Certificate which is undated and unsigned by the Master and Registrar of the High Court;
- 4) Exhibit "APC 4" which is a copy of the Notice of Appeal filed against the aforementioned conviction and sentence.

On the 28th day of July 2020 the Respondent filed and swore to an Affidavit in Opposition.

On the 4th day of August 2020 the Applicant/Appellant filed an Affidavit in Reply sworn to on the 3rd day of August 2020.

SUMMARY OF SUBMISSIONS MADE BY COUNSEL FOR THE APPLICANT/APPELLANT

The Applicant's solicitor relied on the entire affidavit and argued that the two grounds that formed the basis of the appeal are summary offences. The Application was eventually made pursuant to Section 67 (2) of the Courts Act No 31 of 1965. He argued that the Applicant was a first time offender and that the Applicant has good grounds with good prospect of success. According to him, the Respondent has nothing to lose if the application is granted.

Reliance was also made on the written and oral submission cited by the Applicant's solicitor, Dr. A. O. Conteh. He further argued that the

Applicant may have served his sentence before the appeal is heard. Counsel also referenced Section 79 of the Criminal Procedure Act No 32 of 1965 and the notable cases of Taju – Deen v The State; and Mustapha Amara v The State Cr.App 4/13.

The Applicant filed an Affidavit in Reply sworn to on the 3rd day of August 2020. Counsel for the Applicant relied on the content of the said Affidavit in Reply. Counsel for the Applicant, argued that discretion cannot be circumscribed or restrict the discretion of the Court. Mr. Joseph Kamara for the Applicant referred the Court to the said case of Mustapha Amara v The State Cr. App 4/13 where bail was granted pending appeal. He argued that the Applicant having served 5 months in custody, is itself a substantial period served already. According to him, it is only after the expiration of the first 12 months that the next twelve months will be considered.

In respect of the psychological impact the Applicant may suffer if granted bail pending an appeal as advanced by Counsel for the Applicant, Counsel Mr. Joseph Kamara had this to say: "let us out and we will not complain." He further submitted that there is no commitment on the part of the State to bring out the records of the Court trial; which will trigger the appeal and as such he asked that the Applicant be put on bail pending appeal.

SUMMARY OF SUBMISSIONS MADE BY COUNSEL FOR THE RESPONDENT

The Respondent filed an affidavit in opposition sworn to on the 28th day of July 2020. Counsel relied on the entirety of the said affidavit, especially paragraph 6 to 11 and also referred the Court to the case of Ishaka Sylvester Menjor v The State. In arguing his case, Counsel for the Respondent submitted that Section 67 (2) of the Courts Act aforesaid gives the Court discretion which must be exercised judiciously and in doing so, the Court cannot shut its eyes on the fact that the Applicant is not a trial Applicant as he had been convicted

and sentenced. He further submitted that if the Applicant is to succeed, he must show that unusual/exceptional circumstances exist.

Counsel further advanced that the Applicant having served 5 months out of 24 months, does not mean that he has served a substantial portion of his sentence to warrant him being put on bail pending appeal. Reference was made to the case of Rex v Theophilus Adenuga Tunwashi.

THE LAW

Section 67 (2) of the Courts Act No. 31 of 1965 states that:

"the Court of Appeal or the Court before whom he was convicted may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal."

In the leading Sierra Leonean case of: Honourable Mr. Justice M.O. Taju-Deen v The State [2001] (unreported) The Hon. Mr. Justice N. D. Alhadi J.A. stated that, "the law has been consistent in its principle that bail will not be granted pending the hearing of an appeal unless the Appellant show special circumstances why bail should be granted." The decision of the Court of Appeal in the Taju-Deen case was later upheld by the Supreme Court thereby endorsing the principles which the Court of Appeal had applied contrary to what learned counsel JF Kamara for the applicant submitted.

There is therefore no question whether a convict can be released on bail. Counsel for the State submitted that the recognized and well established test when considering whether or not to grant bail pending appeal, is whether there are exceptional and unusual circumstances.

What then are exceptional and unusual circumstances? It is the view of the Court that the expression 'exceptional and unusual circumstances' in the context of application for bail pending appeal

means circumstances where on the other hand, it appears prima facie that the appeal is likely to be successful or on the other hand, where there is a risk that the sentence will have been served by the time the appeal is heard. Obviously, the burden to prove exceptional circumstances, warranting the Applicant to be put on bail pending appeal; unlike in an application in a trial Court where the burden to show that the interest of justice militates against granting bail is on the State. This is because before conviction, a person is presumed innocent whereas upon conviction, there is no presumption of innocence.

The Court had then followed closely the principles laid down in the R v Tunwashe case of [1935] 2 WACA which is also summarized as thus: "that bail will not be granted pending an appeal save in exceptional circumstances or where the hearing of the appeal is likely to be unduly delayed" and

"that in dealing with the latter case the Court will regard not only in the length of time which must elapse before the appeal can be heard but also to the length of the sentence to be appealed from and further these two matters will be considered in relation to one another."

ANALYSIS AND FINDINGS

The Court has closely examined the said Notice of Motion and its affidavit in support, the affidavit in opposition, the reply; and the oral submissions of Counsel. The question that therefore follows is: firstly, whether the Applicant/Appellant has shown any special/exceptional circumstance/s that would deem it fit for this tribunal to grant bail pending appeal?

Leading Counsel for the Applicant/Appellant, Dr. A. O. Conleh argued that exhibit "APC 4" which is the Notice of Appeal manifests

arguable ground and good success of appeal; especially when one takes into consideration the time between the pronouncement of the judgment and the date of hearing the appeal.

According to the Respondent's solicitor, the Applicant has not satisfied this important requirement. Also, there must be *prima facie* good grounds of appeal to warrant a grant of bail pending appeal.

The Court does not think that expressing the view that the grounds of appeal are good and are likely to succeed will on its own constitute special/exceptional circumstances. As the Hon. Mr. Justice P.O. Hamilton JSC pointed out in Ishaka Sylvester Menjor v The State [2015] (unreported), "the strength of the grounds must be discernable *prima facie*. That is, even before they are argued, the grounds must suggest that some serious flaw was committed by the court below." From the facts and evidence before this court, nothing has been exhibited that springs up in our faces to show that there has been a breach of the law by the lower court. There nothing to suggest that the sentences handed down were illegal or wrong in principle.

This is not to suggest that the arguments articulated are not strong and good grounds; but on the face of it they are not exceptional from other previous cases to be considered or deem fit to grant bail. We have no doubt that the grounds and strength of them will be built on for arguments in the determination of the appeal.

Secondly, would the Applicant/Appellant have served a substantial part of his sentence by the time the appeal is heard? Counsel for the Applicant/Appellant submitted that his client has already served 5 months in custody and which is of itself, a substantial period of time. He said that it is only after the expiration of the first 12 months that the next 12 months will be considered.

Judging from the expeditiousness of the trial in the High Court, the tribunal is confident that a considerable proportion of the sentence will not be served before the appeal is heard. Furthermore, as

pointed out in the case of Ibrahim Bah v The State [2012] (unreported), Mr. Justice Browne-Marke said that "the manner in which appeals are heard by the Court of Appeal since 2004 means that unless there is a delay on the part of Counsel on both sides, or a member of the tribunal is absent, an appeal should only be heard on two days: the first day for the tribunal to give directions for the filing of synopsis by either side; and on the 2nd day, for the oral hearing during which Counsel on either side may add to the written submissions."

Also, in the Taju-Deen case, the sentence was for a year; whilst in this case, it is 24 months which is significantly longer. Therefore, the argument that the Applicant/Appellant would have spent a substantial portion of term imprisoned is not convincing.

Furthermore, the Court does not think that Counsel for the Applicant/Appellant should dismiss or overlook the suggestion that being released on bail pending appeal; and the possibility of the appeal becoming unsuccessful, the trauma that could cause. Such an eventuality could have more damaging, psychological and emotional impact on the Applicant/Appellant and his family. On the other hand, per Browne-Marke JSC (*supra*) 'that fact that an Appellant has remained in custody pending his appeal could induce or incline a Court, in the event that it dismisses his appeal, to exercise mercy and reduce such an Appellant's sentence.'

The Court should also not lose sight of the fact that Mr. Conteh has been convicted and is serving a sentence of the court. Counsel may argue that the offences are summary; but they do not take away the seriousness of them. We have to take into account the fact that the Applicant/Appellant is a trained former military officer, of the rank of a Major. He was not only convicted with the offence of having a loaded gun in his possession in a public place; but he was convicted on the basis on having kept a greater number of small arms than was specified on his licence. These are relevant

- considerations that are serious and cannot be swept under the carpet;

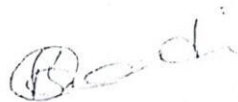
Conclusion.

It is all of the above that must be taken into account in deciding whether bail pending appeal should be granted. The Court has carefully looked into the issues raised and the arguments for and against and decided that the application ought to be dismissed. The Court is not convinced that there are special/exceptional circumstances that have been shown to warrant bail being granted. The application is therefore Dismissed.

FURTHER ORDERS

1. The Court directs that the Records be prepared and cause same to be put before the Chief Justice for assignment within 7 days from today's Ruling.
2. The Applicant/Appellant, Alfred Palo Conteh should be permitted to have 2 (Two) hours of exercise a day.
3. Alfred Palo Conteh should be allowed to see his fiancé and son twice a week. They should have access to see him at the Special Court premises.
4. He should have access to personal books and magazines to read.
5. He should have medical attention/access to a doctor as and when needed.
6. He should have access to his legal counsel (one at a time).


The Honourable Mr. Justice A. I. Sesay, Justice of Appeal PRESIDENT


The Honourable Ms. Justice F. B. Alhadi, Justice of Appeal

A handwritten signature in black ink, appearing to read 'T. Barnett', written in a cursive style.

The Honourable Mrs. Justice T. Barnett , Judge of the High Court