

PERTINENT CONSIDERATIONS IN GRANTING BAIL APPLICATIONS IN THE MAGISTRATE COURTS

Justice Musa Danladi Abubakar, NPOM¹

1.0. INTRODUCTION

The concept of bail is a very important one which cannot be taken with levity in the Nigerian corpus juris bearing in mind the adversarial nature of our criminal justice system. This is because though a person is accused or alleged to have committed a crime, the law presumes the person innocent until proven guilty.² This is why in court, the person who is alleged to have committed a crime is called the “**accused person**” and not a criminal contrary to what is obtainable in countries that practiced the inquisitorial system e.g the Niger Republic (where a person charged with a crime is presumed to be guilty until his innocence is established).

The English legal system which is adopted in Nigeria by virtue of our historical linkage provides that a dock should be at the right hand of a judge. A right hand by our human nature is a good hand, hence a person accused of any criminal offence will always appear in the right hand (good hand) of a trial judge and enjoys the protection of the court until his guilt is established through credible evidence before the court. This is so because the court still presumes the accused person innocent until proven guilty. Proof in criminal cases is beyond reasonable doubt and if there exist any doubt in the case it would be resolved in favour of the accused person.³

¹ Judge of the High Court of Katsina State.

² Section 36(5) of the Constitution of the federal republic of Nigeria 1999 (as amended), OLUNIKE V FRN (2016) ALL FWLR (PT.865) at 63, AKEEM V F R N (2017) ALL FWLR (PT. 872) at 1522.

³ Section 135(1) of the Evidence Act 2011, NJOKU V STATE (2013) 2 NWLR (PT. 1339) pg 548

Bail is a right having its offshoot from the right to personal liberty, right to presumption of innocence, right to fair trial and right to freedom of movement of all persons in Nigeria as guaranteed under the constitution⁴. According to Eko,⁵ the fair hearing or fair trial is an insurance for the preservation and protection of the personal liberty guaranteed. The right of personal liberty loses its meaning and force unless fair trial is guaranteed. Contained in the fair trial as a guarantee, is the presumption of innocence of the person accused of a criminal offence⁶. The two rights are so interwoven and are co-terminus as the existence of one enhances the other. It is a right every person under the constitution is entitled to.

On the premise of the above, it is asserted that bail is a constitutional right. There is no place in the Constitution⁷ wherein it is expressly stated that a person arrested for an offence is entitled to bail. The conundrum still remains: is bail a constitutional right? If the answer is in the positive, why is the law on bail emphatic on the principle that bail is granted at the discretion of the court?.

In the dictum of their Lordships in the cases of *Bamaiyi v. State*⁸ and *Asari v. FRN*⁹, made it clear that the court in dealing with personal liberty, the court has to balance the interest of the individual citizen against that of the larger society.

Under the constitution, an accused person who has been arrested on the allegation of having committed an offence must be charged to court within

⁴ Section 35(1), 36(5), 36(6) (b) and 38 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),

⁵ Eko, E. *The Law of Bail* 2nd ed. (Ibadan: Life gate Press & Publishing Limited, 2005) p. 1.

⁶ 36(5) of the Constitution (supra)

⁷ Lo. cit.

⁸ (2001) 4 SCNJ 103

⁹ (2007) ALL FWLR (pt 375) pg. 588

24 hours or within 48 hours when the court is beyond 40 kilometers radius or release him or her on bail pending investigation depending on the nature of the offence.¹⁰

Having said this, it can be seen that bail is a right of every accused person alleged to have committed an offence although, several factors must be taken into consideration before an accused person can be granted bail depending on the nature of an offence which determines the Magistrates' Courts jurisdiction.

2.0. DEFINITION OF KEY CONCEPTS:

The key concepts being defined will give a deeper understanding of the topic under consideration.

2.1. DEFINITION AND CREATION OF MAGISTRATE COURT IN NIGERIA

A Magistrate according to the Black's Law Dictionary is a judicial officer with strictly limited jurisdiction and authority, often on the local level and often restricted to criminal cases.¹¹ A Magistrate Court on the other is an inferior court created usually by the state law which is manned by a Magistrate as defined above.

Magistrate Courts in Nigeria are created by Statute, usually called the Magistrates Courts' Laws of various states. A good example of an establishing law of magistracy is the Criminal Procedure Code of the Northern Nigeria.¹² While in the Southern part of Nigeria by various state

¹⁰ Section 35(4) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

¹¹ Bryan A. Garner Tenth Edition, Thomson Reuters pg.1094

¹² Section 6 (1) of the Criminal Procedure Code established the Magistrate Court in the Northern Nigeria with different grades.

laws e.g the Criminal Procedure Law of Lagos State.¹³ Some states in the Northern part of Nigeria have enacted their own Criminal Procedure Laws e.g Kano, Kaduna and Katsina State. Worthy of note is the fact that Magistrate Courts in Nigeria are Courts of Summary criminal jurisdiction. Also, in the Northern part of Nigeria Magistrate Court do have their civil jurisdiction.

The Magistrate Courts in Nigeria are categorized into grades and cadre for the purpose of indicating and separating their jurisdiction in indictable and non-indictable offences which are triable by the Magistrate Courts of divergent grades, save for that of the Magistrate Courts in Lagos State, pursuant to the provision of Section 1¹⁴ which established the Magistrate Court in Lagos State while abolishing the cadres and grades as contained in the old laws of Lagos State¹⁵ and created a single Magistrate Court with jurisdiction over the entire state.

The grades and cadres of the Magistrate Court as enshrined in the laws establishing the Magistrate Court in each state except that of Lagos State, gives a hierarchical order of the Magistracy and jurisdiction to try and impose punishment. These grades of Magistrates' Court, their Jurisdiction over offences and the penalties they can impose are in variance from one state to another.

The Magistrates' Court in the Southern States cannot assume jurisdiction to try an offender for an indictable offence until the Court satisfies itself that:

- a. The consent of the prosecutor if he is a law officer is obtained;

¹³ Section 1 of the Magistrate Court Law 2009 of Lagos State established the Magistrate Court in Lagos State. Which by legal Notice dated the 16th day of January, 2010, the then Governor of Lagos State, Babatunde Raji Fashola, (SAN) signed into law the new Magistrates' Court Law 2009.

¹⁴ Magistrate Court Law 2009 of Lagos State

¹⁵ Section 93 (1) ,(2) and (4) and 94 of the Magistrates' Courts Law, 2009, Lagos State.

b. The consent of the offender to be tried by the Magistrate's Court¹⁶.

The trial of an offender for an indictable offence by a Magistrate Court without his consent shall be void ab initio, but a trial shall remain valid so long as consent is given at any time by the offender before his defence in Court¹⁷.

Indictable offence as a term was placed before the Supreme Court for interpretation in the case of **Amaechi v. Independent National Electoral Commission**¹⁸ as an offence triable on information whether or not under the express provisions of Section 304(1) of the Criminal Procedure Ordinance. The provision of the Criminal Procedure Act¹⁹ further explains what an indictable offence means. It explains that indictable offence is any offence:

- i. Which on conviction may be punished by a term of imprisonment exceeding two years; or
- ii. Which on conviction may be punished by imposition of a fine exceeding four hundred naira, not being an offence declared by the law creating it to be punishable on summary conviction.

However for the purpose of the topic under consideration, we shall be concentrating on the pertinent issues that bothers on bail before the Magistrate Court in its criminal jurisdiction in Nigeria.

¹⁶ Section 304 (1 and 2) Criminal Procedure Act Cap C41 LFN 2004.

¹⁷ Section 304 (3) Criminal Procedure Act, Cap C41 LFN 2004.

¹⁸ (2008) All FWLR (part 407) 1.

¹⁹ Section 2 Criminal Procedure Act, Cap C41 LFN 2004.

2.2. DEFINITION OF BAIL GENERALLY

Bail according to the Black's Law Dictionary²⁰, is defined as a process by which a person is released from custody either on an undertaking of a surety or on his or her own cognizance.

Bail is also the process by which an accused person is released temporarily from the state custody to sureties (or on personal recognizance) on conditions given to ensure his attendance in the court whenever he is required, until the determination of the case against him²¹.

Bail is most times misconceived by the ordinary man on the street as a discharge of the accused person of the allegations, while dwelling in their misconception, they presume once an accused person is released is deemed as being discharged but as learned minds bail is ipso facto not a discharge or better still, an acquittal but a contractual agreement between the court and the accused to be released temporarily on fulfilment of some ascribed terms and conditions and undertaking to abide by other conditions and terms that the court may deem fit to make in the event of the grant of the bail.

The violation of these terms and condition ipso facto means breach of the bail contract after the grant of bail, this breach warrants for the forfeiture of the bail bond by the surety and the subsequent revocation of the bail granted, thereafter the re-arrest and detention of the accused person.

The court equally defined bail in the case of **Caleb Ojo & 1 Anor v. Federal Republic of Nigeria** where Muhammad J.C.A (as he then was) explained bail as:

²⁰ Bryan A. Garner. Loc. cit.

²¹ Onyebuchi v. FRN (2009) all FWLR (pt 458) 341; Suleman v. COP, Plateau State (2008) ALL FWLR (pt. 425) 1627

“Bail is the freeing or setting at liberty one arrested or imprisoned upon others becoming sureties by recognizance for his appearance at a day and place certainly assigned, he also entering into self-recognizance.....”²²

2.2.1. TYPES OF BAIL

There are basically three types of bail namely:

- a. Police bail
- b. Court bail
- c. Government Agency bail/ Administrative Bail.

However, for the purpose of abiding by the pertinent factors in considering the grant of bail, we are limiting ourselves to court bail, specifically bail before the Magistrate Courts in Nigeria.

There are two instances under which a court can be called upon to grant bail to an accused person and they are as follows:

- i. Bail Pending Trial of the Accused
- ii. Bail Pending Appeal.

Basically, magistrate Courts in Nigeria only have powers to grant bail pending the trial of the accused person. However, these provision is subject to the provision of any other law of a state. By Section 25²³, appeals from the decision of the customary court go to the Magistrate court as an appellate court in such instances these Magistrate courts can grant bail pending appeal, where criminal appeals emanates from the customary courts and are lied before the Magistrate court in its appellate division.

²² (2006) 9 NWLR Pt. 984, page 103 @ 115.

²³ Magistrates' Court Law, Cap 82 (Vol. 3) Laws of Oyo State, 2000

In the premise, we shall however lay emphasis on bail pending trial of the accused person and the pertinent factors to be considered in the grant or refusal of same.

2.2.2. BAIL PENDING TRIAL OF THE ACCUSED

Magistrate Courts in Nigeria have powers to grant bail to an accused person in matters over which they have jurisdiction and vice versa. The power of the Court must be exercised judiciously and judicially having regards to the circumstances of each case to be taken into consideration, the interest of the Accused whom the constitution presumes innocent,²⁴ the interest of the complainant and above all, the overall interest of the public²⁵. This means that the court must consider the facts of every case and the materials placed before it by the accused and the prosecution before deciding whether or not to grant the accused person bail²⁶.

2.3. BAILABLE OFFENCES IN MAGISTRATE COURTS IN SOUTHERN NIGERIA

1. Felony offences within the jurisdiction of the magistrate court²⁷.
2. All simple offences.
3. All Misdemeanor offences

2.4. BAILABLE OFFENCES IN MAGISTRATE COURTS IN NORTHERN NIGERIA²⁸

1. Offences punishable with imprisonment not exceeding 3 years.
2. Offences punishable with imprisonment exceeding 3 years but not more than 14 years.

Worthy of note is that generally, Magistrate Courts in Nigeria do not have jurisdiction to grant bail in respect of capital offences, offences punishable

²⁴ Section 36(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

²⁵ Onyirioha v. I. G. P. (2009) 3 NWLR (pt.1128) p. 342 at 369 paras B-C.

²⁶ State v. Ozuzu (2009) 3 NWLR (pt.1128) p. 247 at 267 paras. F-G.

²⁷ Section 118 (2) of the Criminal Procedure Act. Lo. cit.

²⁸ Section 340 and 342 of the Criminal Procedure Code.

with life imprisonment, and offences whose punishment exceeds 14 years imprisonment.²⁹ By Section 12 of the CPC and appendix A to the CPC, the magistrate cannot try capital offences.

However in the case of *State v. Ozuzu*³⁰, the magistrate granted bail to the accused persons after admitting that nonetheless, he had no jurisdiction to entertain the case. At the arraignment of the accused before the High Court of Imo State for their trial, the High Court suo motu granted bail to all the accused persons, thereafter the prosecution appealed to the Court of Appeal who allowed the Appeal but the prosecution did not raise the issue of bail granted by the magistrate in the first place, neither did the Court of Appeal comment on the propriety of the exercise of the power by the magistrate. It would appear therefore that the Court of Appeal endorsed the magistrate's action.³¹

However under the Administration of Criminal Justice Act 2015, a presumption is raised that the Magistrate may grant bail even in cases it has no jurisdiction to try. This is not correct as section 295³² equally makes reference to Sections 158-188³³ as the guiding principle when a magistrate is acting under Section 295³⁴. This presumption is rebutted by the provision of section 161(1)³⁵ which provides:

**“A suspect arrested, detained or charged with an
offence punishable with death shall only be**

²⁹ OLUGBUI V C. O. P (1970) 2 ALL NLR 1

³⁰ (2009) ALL FWLR (pt 454) 1581

³¹ Agaba, J. A. *Practical Approach to Criminal Litigation in Nigeria* 3rd ed. Published by Bloom Legal Temple, 2015. Page 277 – 278.

³² ACJA 2015

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

**admitted to bail by a judge of the High Court
under exceptional circumstances”.**

At this juncture, it is apt to summarize by the vibrancy of the law³⁶ that a magistrate court cannot grant bail in capital offences even under the ACJA as presumed by section 295³⁷.

The law is well settled that an Accused person who has not been tried and convicted has a constitutional right to be admitted to bail unless the offence are capital in nature³⁸ and the court sees good reasons not to admit such a person to bail.

Thus, the burden is always on the Accused Person to place substantial materials to the satisfaction of a Magistrate Court as to reasons why he or she is entitled to bail then the burden will shift to the prosecution to adduce reasons why bail should not be granted to the Accused Person.

The law is settled that bail is at the discretion of the court and such discretion should be exercised judicially and judiciously having regards to the antecedents of every case³⁹. The Magistrate Court must consider this pertinent issues in granting or refusing bail application placed before them for consideration.

3.0. PERTINENT CONSIDERATIONS IN GRANTING BAIL APPLICATIONS IN THE MAGISTRATE COURTS.

It is good for the record to make is unblemished that the Magistrate Court can grant bail suo Motu or on the application of the accused person where it has competent power to try an offence. In such circumstance, the magistrate Magistrate’s discretion will be said to have been exercised judicially and

³⁶ Section 161, Ibid.

³⁷ Op. cit.

³⁸ Section 35(4), 36(5) of the Constitution. Op. cit., Section 162 Administration of Criminal Justice Act 2015, Section Chinemelu v. C. O. P. (1995) 4 NWLR (part390) 467. State v. Ozuzu (supra) at 268 paras. A-B

³⁹ Theophilous V F.R.N. (2016) ALL FRLR (Part 830) p. 1374 at 1395 para. F.

judicially wherein the Magistrate considers the pertinent considerations in granting bail applications.

The pertinent considerations in granting bail applications are summarized as follows:

3.1. Whether the proper investigation of the offence would be prejudiced if the accused person is granted bail.⁴⁰

It is apposite for the Magistrate courts to satisfy itself whenever an application for bail is placed before her by considering whether the proper investigation would be tampered or prejudiced if bail is granted to the accused. In considering this pertinent factor, the courts usually look at the political and socio economic position of the applicants. If the status of the accused is such that if allowed the temporal freedom in the course of his trial, every source of evidence would dry up, the court would be reluctant to grant bail. In the cases of *Bamaiyi v. State*⁴¹ and *Dambab v. State*⁴², the courts refused bail citing the influence the applicants had in the Army and the Police at that time may allow the evidences to dry up and the witnesses may not be present during the trial.

It is worthy of note that a Magistrate has a duty to grant bail because of the nature of the offences triable before her, in doing so a Magistrate who is confronted with such argument and facts as to the temporal freedom of the accused shall be prejudicial to the proper investigation of the case, in exercise of this discretion in favour of the accused person, the Magistrate must warn the accused person at the grant of the bail and should circumscribe

⁴⁰ Section 341 (2) (A) OF THE CRIMINAL PROCEDURE CODE. *AKEEM V F. R. N. (2017) ALL FWLR (PART 872) P. 5118 PP. 1566-1567 PARAS. G-G IN THE CASE OF EMMANUEL NWUDE V. FEDERAL GOVERNMENT OF NIGERIA (2004) 17 NWLR (PT. 902) 306*, THE APPELLANT WAS REFUSED BAIL ON THE GROUND THAT HE CARRIED OUT A FAILED ATTEMPT TO BRIBE HIS INVESTIGATORS AND ON THE GROUND THAT HE WOULD BRIBE THE PROSECUTOR'S WITNESSES IF RELEASED ON BAIL. SECTION 162 (1) (C) (E) (F) OF THE ACJA, 2015.

⁴¹ *Supra*

⁴² (2000) 14 NWLR (pt. 687) 396

the accused person with such condition pertinent to this factor which violation of same will pulverized the revocation of the bail.

Furthermore, in consideration of this factor, herein, the Magistrate courts should also ask itself considerable questions that would help the magistrate exercise its discretion judiciously and judicially:

- i. Whether there is a likelihood that the Accused person, if released on bail, will tamper with prosecution's witnesses?
- ii. Whether there is a likelihood that the Accused person, if released on bail, will tamper with prosecution's evidence?
- iii. Whether the Accused person, if released on bail, is likely to procure false evidence either in support of his defence or to exonerate the other accused persons involved in the commission of the crime?
- iv. Whether the Accused person, if released on bail, is likely to convey information acquired during investigation to other accused persons not yet arrested or charged for the offence?
- v. Whether the Accused person, if released on bail, will screen Co-offenders who are yet to be arrested and arraigned from being arrested and prosecuted?

3.2. Public Safety Considerations⁴³:

The rampant nature of a particular offence or class of offences usually affects the discretion of the court in granting or refusing bail.⁴⁴ Majorly, offences in Magistrate courts are ordinarily bailable, therefore the widespread or prevalent nature of an offence will not defeat the application for bail ordinarily⁴⁵. The question of rampancy of an offence becomes

⁴³ Olunike Vs. F. R. N. (2016) All FWLR (Part 865) p. 58 pp. 93-94 paras. F-D

⁴⁴ Felix v. state (1978) LRN 308; Ajudua v. FRN (2005) All FWLR (pt 246) 1274; Agaba J. A. Op. cit. pg. 297

⁴⁵ Nwoke v. FRN (2005) All FWLR (pt 245) 1083

materially and specifically vital circumstance to be considered in the exercise of discretion of the court and the court in circumstances where the offence is not ordinarily bailable, the refusal of bail application on the ground of rampancy becomes valid. However, the Magistrate courts usually have jurisdiction over offences which are ordinarily bailable, therefore they are bound to grant bail applications suo motu or on application of the accused person on this pertinent factor of rampancy in apposition to public safety⁴⁶.

Here, the Magistrate courts should also ask itself considerable questions that would help the magistrate exercise its discretion judiciously and judicially:

- i. Whether the offence is of widespread nature?
- ii. Whether the offence is ordinarily bailable or not?
- iii. Where the offence is against the human person, whether the attack was deliberate, provoked, triggered by frustration or motivated by vengeance.
- iv. The nature of the violence inflicted on the victim and the extent of the injuries suffered.
- v. The type of weapon used.
- vi. Whether the accused is likely to repeat the offence while on bail.
- vii. Whether the accused has displayed a propensity towards violence and should be regarded subject to psychiatric assessment from a recognized institution as one who has no respect for life and property.
- viii. The number of charges preferred against the accused.
- ix. Whether the accused is a persistent offender with previous criminal convictions for serious or violent offences. In such cases, the previous conviction or record of the accused shall not be referred to in a manner that will prejudice his or her right to fair trial.

⁴⁶ Ibekwe v. FRN (2004) All FWLR (pt 213) 1780.

3.3. The strength of the prosecution's evidence on the allegations against the accused person, as shown by the Police First Information Report or Police Information.

The nature, character and quality of evidence against the accused person as contained in the First Information Report⁴⁷ or Information⁴⁸ which prima facie contains the allegation and the probability of guilt of commission of the offence by the accused person, this may stand in the way of the accused person's application for bail, wherein the court's discretion is most likely tilted towards refusal of the accused person's bail. It is pertinent to state that the Magistrate courts which are court of summary trial ordinarily have bailable offences and are by these bound by the conscription of the law to grant bail despite the available strength, nature and available evidence against the accused person in juxtaposition with the constitutional right of the accused person⁴⁹.

3.4. The Criminal Record of the Accused

Where the accused shows that he is a good man in character with no record of previous conviction and by his conduct in court, and the court in its wisdom sees the accused person to be of good character and standing in the society, the accused person is most likely to sway and gain the sympathy of the court to be granted bail than a man who is reputed to have a penchant for breaches of the law. Such accused person are usually not considered for bail.⁵⁰ However, the magistrate when considering the criminal antecedent or pendency of other criminal cases against the accused persons is usually influenced not to grant bail,⁵¹ but generally, the magistrate in doing justice

⁴⁷ In the North, it is Police First Information Report the basis of which the Police arraigns an accused person

⁴⁸ In the South, it is Police Information the basis of which the Police arraigns an accused person

⁴⁹ Nwoke v. FRN (2005) (supra)

⁵⁰ Nnogu v. State (2002) FWLR pt 103 pg 482

⁵¹ Ajudua v. FRN & 1 Or (supra)

by exercise of its judicial and judicious discretion is bound to grant bail despite the criminal record against the accused person as the offence before the magistrate court are usually bailable.

3.5. The Possibility of the Accused Committing the Same or Similar offences While on Bail

In this consideration, the magistrate is to cast back its mind in considering equally the criminal record of an accused person. The Section 341(2)(c)⁵² provides that a person accused of an offence may be granted bail if the court can see that the accused if released would not commit an offence. Therefore as a pertinent factor, any ground in the believe of the court that the grant of bail to the accused person will avail the accused person an opportunity of committing any offence either related or independent of the offence he is standing trial for, he is likely to be refused bail.⁵³ However, considering the facts that the offences before the Magistrate court are ordinarily bailable, the refusal of bail in consideration of the above factor will not usually be valid except where this suspicion is so strong but the magistrate must warn the accused person and confront him with such suspicion before the grant of such bail to the accused person and in most likely cases, the magistrate must make same as a momentous condition for the grant of such bail.

3.5. Humanitarian Grounds ⁵⁴.

A more compelling pertinent factor which a magistrate court must consider in the exercise of its discretion in favour of the accused person in granting bail is the issue of ill health. In myriad of cases, the courts has considered ill-

⁵² Criminal Procedure Code

⁵³ R. v, Jamal 16 NLR 54

⁵⁴ *AKEEM V F. R. N. (2017). LO. CIT.*

health as a worthy consideration in exercise of its discretion in granting bail. As the court puts it in *Abacha v. State*⁵⁵:

“is a consideration weighty enough to be reckoned with as a special circumstance”.

More so, in *Ani v. State*⁵⁶ the court held:

“As it is only the living that can praise God, so it is only the living that can be tried, convicted and punished for an offence no matter how heinous the offence may be...”

However, mere allegations of ill-health will not crown an accused person with an entitlement of being granted bail⁵⁷. An accused person is bound to make out by placing material facts of his bad health sufficient before the court for the grant of the bail. An accused person relying on ill-health as ground for seeking bail must establish:

- a. That the prison or other detention authorities have no access to such medical facilities sufficient and required for his treatment.
- b. That his bad health is of a nature that would affect other inmates of the prison where he is being held.
- c. Lastly, the accused person must present a convincing medical report issued by an expert in the field of medicine of which the accused bad health is referable.⁵⁸

However, the Magistrate is bound to release an accused person who by physical assessment is seen to be suffering from ill-health as the court is a court of summary judgment and not bound by proof by medical report of the

⁵⁵ (2014) All FWLR (pt. 726) 412

⁵⁶ (2001) FWLR (pt 81) pg. 1715

⁵⁷ *Bamaiyi v, The State* (supra)

⁵⁸ *Ofolue v. FRN* (2005) 3 NWLR (pt. 913) pg 571; *Agaba J.A. Lo. cit.* pgs. 301 and 302.

ill-health of an accused as the offences triable by the magistrate are ordinarily bailable.

The magistrate in considering the above pertinent factor in exercising his or her discretionary powers of granting bail may place relevant consideration on issues such as:

- i. The long period of detention of the accused and the probability of further period of delay in the trial of the accused.
- ii. The likelihood of the trial being protracted resulting in a long period in remand.
- iii. The age, sex and state of health of the accused in remand.
- iv. Whether the Accused person is currently a pregnant or a nursing mother.

It must be noted that the factors are by no means exhaustive,⁵⁹ the Supreme Court acknowledged this when it held that all the criteria may not be relevant in every case. The dictum of Uwaifo JSC held inter alia:

“it is by no means expected that all would be relevant in every case. I do not also think that they are exhaustive. It may well be anyone or others may be applied to determine the question of bail in a particular case... the bailability of an accused person depends largely upon the weight a judge attach to one or several of the criteria open to him in any given case”⁶⁰.

Having said the above, it is of considered view that pertinent factors in consideration of the bail before a magistrate court are in exhaustive and in this likeness, I shall itemize other pertinent factors as follows in continuation and addition to the aforementioned:

⁵⁹ Bamaiyi v. the State (supra)

⁶⁰ Uwaifo JSC at 292-293; Agaba J. A. Op. cit. pg 303.

3.6. The Probability of Appearance of the Accused at Trial⁶¹.

Here, the court should consider application judiciously and judicially by asking itself:

- i. Whether the accused if released on bail has a fixed place of abode within the jurisdiction of the courts?
- ii. Whether the accused if released on bail is domiciled or is a permanent resident of the country?
- iii. The nature and seriousness of the offence, the punishment prescribed and the likely sentence to be imposed upon conviction i.e. whether there is a provision for a fine or mandatory custodial sentence?
- iv. The nature and the strength of the evidence in support of the charge e.g. where the evidence comprises confessions, admissions, material eye-witness account, or is supported by medical or scientific evidence such as DNA reports.
- v. Whether the accused if released on bail is likely to abscond?
- vi. Whether the Accused person if released on bail will attempt to leave the jurisdiction of the court, without leave of the court or the investigating officers?
- vii. Whether in consideration of the Accused person's previous attitude denotes or connotes that if he is granted bail he will certainly jump bail?

3.7. Whether there is serious risk of the accused person jumping bail⁶².

- i. Whether the Accused person if granted bail, can abide with the bail conditions prescribed strictly after being released.
- ii. Whether there is a tendency of the accused person evading prosecution.

⁶¹ Section 341 (2) (b) Criminal Procedure Code. Section 162 Administration of Criminal Justice Act 2015, Abacha V. State (2002) 5 NWLR (part 761) 638. **AKEEM V F. R. N. (2017) (SUPRA).**

SECTION 162 (1) (B) ACJA OP. CIT.

⁶² **AKEEM V F. R. N. (2017) ALL FWLR (PART 872) P. 5118 PP. 1566-1567 PARAS. G-G**

3.8. Preparation of Defence.

The Magistrate should ask itself and satisfy itself:

- i. Whether the circumstance of the Accused person's case and the nature of the alleged offence, a refusal to grant would deprive the accused the opportunity to adequately prepare for his defence as guaranteed by the constitution?⁶³
- ii. In the circumstance of the Accused person's case, whether the Accused person will require time to seek the assistance of a legal representative in preparation for his defence.
- iii. In the circumstance of the Accused person's case, whether the Accused person will require time to gather his documentary evidence and prepare his witnesses for his defence.
- iv. Whether there is a likelihood of the prosecution withdrawing or reducing the charges.

3.9. Whether the accused had previously been refused bail by another court and is awaiting trial.

3.10. The accused previous conduct and behavior in court.

3.11. Whether the principal accused, accomplices, and co accused (if any) have been granted bail.

3.12. Whether the accused surrendered willingly to the authorities.

3.13. Whether the accused cooperated with the authorities and assisted in the investigation to recover evidence or misappropriated other property.

3.14. Whether the accused has made restitution in part or in full.

3.15. Whether the accused is addicted to a controlled drug or other intoxicating substances.

⁶³ Section 36(6)(b) Constitution (supra).

In the case of an offence where bail may be granted, the court shall in determining the quantum of bail consider the following:

- a. Financial ability of the accused to meet monetary bail conditions.
- b. Nature and circumstances of the offence.⁶⁴
- c. Penalty for the offence charged⁶⁵.
- d. Character and reputation of the accused.
- e. Age and state of health of the accused.
- f. Weight of evidence against the accused; whether incriminating or exculpatory⁶⁶.
- g. Probability of the accused appearing at the trial.
- h. Forfeiture of other bail.
- i. The fact that the accused was a fugitive from justice when arrested.
- j. Pendency of other cases where the accused is on bail.

It should be noted that the list of what the courts would consider before deciding on whether or not to grant an accused person bail is non-exhaustive as the courts should consider other extraneous factors based on the peculiarity of the case. This position is resonated In ***Ogbuawa v. FRN***,⁶⁷ T Samiya JCA held thus:

“When it comes to the issue of whether to grant or refuse bail pending trial of an accused person by the trial court, the law has set some criteria which the trial court shall consider in the exercise of its judicial discretion to arrive at a decision.”

⁶⁴ Olunike v. FRN (2016) All FWLR pt 865 pp 58 @PP 93 Paras G

⁶⁵ Olunike v. FRN (supra) Paras G

⁶⁶ Olunike v. FRN (supra) Paras H

⁶⁷ (2011) LPELR – CA/e/293C/2010

In *Akeem V F. R. N*⁶⁸, the Appellate Court held in its wisdom that:

“though there is no room for the exercise of court’s discretion in a whimsical or capricious manner, any factor or circumstance which the Court justifiably and reasonably finds as one which will likely undermine or jeopardize the objectives or the purpose or the functioning of the criminal justice administration, would suffice. Thus any factor which would shield an accused person from being tried within a reasonable time or give room for an accused person to escape his trial or justice would operate to deny bail to an accused person. Generally however, the following factors should be considered by the courts:

- 1. The nature or gravity of the Charge/ offence*⁶⁹.
- 2. The strength or cogency of the evidence against the accused.*⁷⁰
- 3. The severity of the punishment prescribed for the offence*⁷¹.
- 4. The criminal record of the accused*⁷².
- 5. The likelihood of the accused committing a similar or other offence*⁷³;
- 6. The likelihood of the accused interfering with the witnesses or tempering with the evidence, if granted bail; and*⁷⁴
- 7. Whether there is a need to put the accused in protective custody*⁷⁵.
- 8. Whether there is the need to procure medical or social report on the accused pending final determination of the case*⁷⁶;
- 9. The likelihood of the additional or further charge(s) being brought against the accused*⁷⁷.

⁶⁸ (2017) All FWLR (Part 872) p. 5118 pp. 1566-1567 paras. G-G

⁶⁹ The alternative is mine to further buttress the topic under discussion.

⁷⁰ *Akeem v. FRN* (supra) pp. 1567 paras B

⁷¹ *Akeem v. FRN* (supra) pp. 1567 paras C

⁷² *Akeem v. FRN* (supra) pp. 1567 paras C

⁷³ *Akeem v. FRN* (supra) pp. 1567 paras C

⁷⁴ *Akeem v. FRN* (supra) pp. 1567 paras D

⁷⁵ *Akeem v. FRN* (supra) pp. 1567 paras D

⁷⁶ *Akeem v. FRN* (supra) pp. 1567 paras E

⁷⁷ *Akeem v. FRN* (supra) pp. 1567 paras E

I wish to point out at this juncture that the above criteria are not exhaustive as all the factors to be considered as pertinent which would maneuver against the grant of bail, are not closed⁷⁸. Other factors not mentioned may be relevant to the determination of grant or refusal of bail to an accused and these factor may be pertinent in their own special circumstance in such case wherein they exist. The above only provide the required guidelines to trial Magistrate courts in the exercise of their discretion on matters of bail pending trial⁷⁹.

It is apt to note that all the factors mentioned above are not co-terminus or better still, need not co-exist as anyone of those factors would suffice to refuse bail of an accused person. Thus, a Magistrate court of competent jurisdiction can admit or refused an accused person bail based on the existence or absence of one of the pertinent factors stated above.

In summary, an applicant for bail has a duty to adduce evidence showing that he has fulfilled all the requirements for the grant of the bail and once he has been able to fulfill these requirements, it is the duty of the trial Magistrate court to admit him to bail on further assurance by the accused person and the surety that they will abide by the bail bond.

4.0. THINGS TO AVOID BY THE COURT IN CONSIDERING BAIL APPLICATION

4.1.1. Court must not refuse bail to punish the Accused.⁸⁰

4.1.2. The terms of bail so granted must not be excessive otherwise it will amount to no bail.⁸¹

4.1.3. The conditions must not be onerous or impossible to fulfill⁸².

⁷⁸ **AKEEM V F. R. N. (2017). LO. CIT.**

⁷⁹ Adeniyi v F. R. N. (2012) All FWLR (part 1281) 284. **AKEEM V F. R. N. (2017). LO. CIT.**

⁸⁰ Dogo V C. O. P (1980) 1 NCR 14

⁸¹ Suleman v. Commissioner of Police, Plateau State (2008) All FWLR (Pt. 425) 1627

⁸² Suleman v. Commissioner of Police, Plateau State (Supra)

In an overview, the Magistrate courts have by extension powers to take cognizance of offences that are beyond their jurisdiction until the trial of the accused before the competent court commences. In such instance, the Magistrate cannot grant bail over such offences as they cannot try same.

The concept of bail if not properly handled with utmost care and caution, has the proclivity to cause grievous harm to the society. This is because though an accused person is presumed innocent until proven guilty, the court has a duty of protecting the state and its citizenry from criminal activities of others as well as ensuring that the rights of persons accused of those criminal allegations are protected. Also one issue that must be considered in the reality of Nigerian legal system is the congestion of Nigerian prisons hence bail must be treated with caution as the prison was engrafted fore mostly for the convict and not the persons whose innocence is still presumed under our Constitution.

The Nigerian legal system with due respect, particularly in the criminal justice system have been suffering copious setbacks, more emphatic in the areas of evasion of prosecution by accused persons. This calls for an immediate interpolation by all who are concerned and saddled with the duties in the administration of justice.

In Conclusion, we⁸³ as a whole must revamp the judiciary and work hand in hand to avoid miscarriage of justice. It is often viewed that majority of the inmates in the Nigerian prison are accused persons remanded chiefly by the inferior courts which the Magistrate Courts are inclusive. Therefore, it is upon this underpinning that the Magistrate who are first qualified as Barristers and Solicitors of the Federal Republic of Nigeria and the blueprint high priest in the temple of justice, must exercise its power in granting bail in offences where it is competent to try judiciously and judicially in juxtaposition to the pertinent factors that surrounds the eccentricity of each case before the Magistrate Court.

⁸³ The judiciary, every law enforcement agency and ministers in the temple of justice.