IN THE DISTRICT COURT HELD AT ADANSI ASOKWA ON WEDNESDAY, THE 18TH DAY OF DECEMBER, 2024 BEFORE HER WORSHIP MRS. LINDA FREMAH BOAMAH-OKYERE, ESQ

CASE NO. AR/AA/DC/B7/10/2025

THE REPUBLIC

V

PIUS NKETIAH

RULING

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1. The accused person has been charged with four (4) counts of offences, namely; unlawful entry, threat of death, assault and attempt to commit rape. The matter is at the stage where prosecution has announced to the court that steps are being taken to have the duplicate docket forwarded to the Attorney General's office.
2. On Tuesday, the 10th day of December, 2024, Counsel for the Accused made an application for bail on behalf of his client. He submitted that the accused person is to be presumed innocent until proven guilty as envisaged by the 1992 Constitution of Ghana, Article 19(2)(c). Counsel also submitted that all offences are bailable in Ghana therefore the court has jurisdiction to grant bail to the accused person herein. Counsel also submitted that the facts of the case as

presented by prosecution does not support the charge of attempted rape. He also stated that his client would make himself available to appear before court at all times and that he would also not tamper with investigations should he be granted bail.

3. Again, Counsel for the accused person argued that there is a likelihood of delay in this case because it could take a long time before the advice of the Attorney General may be received for which reason Counsel was of the opinion that it would be prudent for the accused person to be admitted to bail while awaiting the advice from the Attorney General's office.
4. It is a well-known legal principle that every offence is bailable as espoused in the case of **Martin Kpebu (No.2) v Attorney-General [2015-2016] 1 SCGLR 171**. It is also trite learning that the whole essence of the grant of bail with appropriate conditions is to secure the attendance of Accused person to court, the considerations listed in **subsections 1-6 of section 96 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30)** being the yardstick for the exercise of this discretion by the court.
5. The Supreme Court has spoken extensively on whether or not the District Court is clothed with jurisdiction to grant bail in committal proceedings in the case of Martin Kpebu (No.2) v Attorney-General (supra) where the court stated that, *"a critical appraisal of Articles 14(4), 19(1) and 19(2)(c) would appear to confer the power*

or jurisdiction to consider and grant bail to the trial court, which in the context means the court with the jurisdiction to hear the particular offence. For instance, in cases of piracy or murder and others where the High Court is the only court with original jurisdiction, application for bail cannot be made to any other court in the first instance. Thus, even if the complaint of unreasonable delay is from the pre-trial proceedings as envisaged under Article 14(4), nevertheless a committal court or a holding court, if it may be so called, has no jurisdiction to entertain any application in respect of offences which it has no jurisdiction to hear."

6. Dotse JSC again in this case made the following statement,

"By parity of reasoning, it can fairly and firmly be stated that, a case can only be said to be rape, defilement, murder, robbery etc. by the court having jurisdiction to try that particular offence. The practice where the courts which do not have jurisdiction to try an offence grant accused persons bail should not only be frowned upon but actually should not be the practice. In this respect, committal proceedings held in the District Courts pursuant to section 181-188 of Act 30 should not be construed as having conferred jurisdiction on those courts to enable them adjudicate in indictable offences. Thus, it is only the court, having jurisdiction to try an offence that can on the facts as presented decide that this offence is one of murder, rape, robbery etc. or some other offence, and then consider whether on the facts as presented after bail hearings, decide to grant or refuse bail."

7. I am guided by the above obiter dicta by Their Lordships and I shall refrain from entertaining this application for bail pending trial at the High Court. Even if I had been persuaded otherwise to consider this Application, the circumstances or status of this case may cause me to restrain myself in exercising the discretion in favour of the Accused person at this point. The reason being that the Accused person has been charged with the offence of attempting to commit rape, amongst others; according to prosecution, the duplicate docket is being forwarded to the office of the Attorney General for advice. Thus, the Accused person is yet to be served with the bill of indictment and summary of evidence and for the preliminary hearing to be conducted to enable the court to come to a determination whether or not to commit the Accused person to stand trial before the High Court.
8. I shall borrow the dictum of Benin JSC in the case of Martin Kpebu (No.2) v Attorney General (No.2) (supra) where he stated that,

"…whilst it is possible to let loose a person on trial for armed robbery for instance, yet it is still possible to put such a person behind bars if that will serve the general good of other persons or the community. It becomes obvious that the court should not be in a haste in taking decisions on bail under Article 14(4), it must receive all the evidence it needs from both the accused and the State and should thus afford them every opportunity to present the evidence to enable it make an informed decision. This constitutional provision imposes on the

court more than a passive acquaintance with the laws on bail; it requires more than 'having perused the papers filed and having heard counsel on both sides, I hereby grant, or refuse to grant the application', as the case may be. It calls for a well-reasoned decision. Thus, applications for bails in serious offences should be taken as a serious business in the interest of society which has adopted a constitution impliedly removing the restrictions imposed by section 96(7) of Act 30 and placing the trust in the court that all competing interests would be taken care of."

9. Dotse JSC also opined in the same case as follows:

"It must therefore be observed by all courts that, applications for bail must be considered when all the facts of the case are presented before them. This is the only way by which a court can make an informed decision i.e., by determining whether a prima facie case of rape, defilement, murder, robbery, narcotics etc. has been committed to enable the court decide whether if bail is granted the accused will appear to stand trial."

10. Assuming the District Court had jurisdiction to entertain this Application, it is my view that it will be necessary, based on the above erudite opinion, for the court to complete the committal proceedings and, in the event where the Accused person is committed, then the issue of bail may be considered whether to grant him bail or to have him remanded to prison custody pending trial at the High Court; having the benefit of the facts from both prosecution and accused.

See **Section 190(4) of Act 30**. If the Accused person is not committed, then the issue of grant of bail will not arise as he will be discharged.

11. For the foregoing reasons, the application for bail is accordingly refused.

SGD

LINDA FREMAH BOAMAH-OKYERE

MAGISTRATE

18/12/2024