

**IN THE HIGH COURT OF JUSTICE**  
**CRIMINAL DIVISION**  
**HOLDEN AT FREETOWN**

**IN THE MATTER OF AN APPLICATION FOR BAIL.**

**BETWEEN**

**THE STATE**

**VS.**

**ALHAJI AMADU BAH**

**RULING**

**YI Sesay Esq (State Counsel) for the State**

**MP Fofanah, M Sesay, CI Pateh Bah and Z Dainkeh for the accused.**

**Introduction**

1. The accused person is arraigned on a four counts indictment (amended on 14 October 2022) for offences of Robbery contrary to section 23(2) of the Larceny Act 1916 as repealed and replaced by section 2 of the Imperial Statutes (Criminal Law) Adoption (Amendment) Act No 16 of 1971. It was alleged that the accused on the 12<sup>th</sup> June 2022, at Freetown in the Western Area of the Republic of Sierra Leone, robbed Francess Wilson of the sum of Two million and ninety thousand Leones (Le2090000).
2. The prosecution further alleges that the accused person on the same day robbed Ishmail Kamara and Christiana Koroma of the sum of four million two hundred thousand Leones and one million six hundred thousand leones respectively. By virtue of the amendment to the indictment, the prosecution added a fourth count to the indictment of inflicting grievous bodily harm contrary to section 20 of the Offences Against the Persons Act 1861. It is

alleged by the prosecution that the accused on the 12<sup>th</sup> day of June 2022, maliciously inflicted grievous bodily harm on Musa Mansaray.

3. Mr MP Fofanah of counsel for the accused has applied for bail for the accused person which was objected to by Mr YI Sesay (State Counsel) for the State. In support of the opposition to bail, is an affidavit in opposition sworn to by Ishmail Kamara sworn to on the 14<sup>th</sup> day of October 2022. Mr Fofanah at an earlier hearing had raised the issue of the accused's medical condition and showed the court a copy of a letter dated 15<sup>th</sup> July 2022, from the director of medical services at the correctional centre with regard to an assessment of the accused.
4. In the light of the accused's medical condition as suggested by his lawyers, I considered it expedient for the accused to be further medically evaluated in order to obtain a more recent medical update on his health. On Wednesday the 12<sup>th</sup> day of October 2022, pursuant to the orders I gave on the 7<sup>th</sup> October 2022, the SL Correctional Services provided me with a copy of a medical report issued by the director of medical services, dated 12<sup>th</sup> October 2022.
5. Following another adjournment, the Ministry of Health and Sanitation at Connaught Hospital, also provided a medical report dated 18<sup>th</sup> October 2022, in which a more recent diagnosis and cause of treatment was reported on. Mr YI Sesay has renewed his objection to bail and has filed another affidavit in opposition, dated 14 October 2022. I have to consider the courts approach to bail when an accused is arraigned before it for trial.

#### The approach of the courts to bail

6. The issue of bail is provided for in the laws of Sierra Leone in section 79 of the Criminal Procedure Act No 32 of 1965. Section 79 (2) provides:

*“(2) When a person is charged with any felony, other than murder or treason, the Court may, if it thinks fit, admit him to bail.”*

7. This provision requires the judge to exercise a discretion in the decision to grant or to refuse bail. The judge has to consider the circumstances of the case and the evidence supporting the application and the evidence opposing the application, if any, and take a decision as to whether it deems it fit to admit the accused person to bail.
8. To aid the exercise of such discretion, Parliament has enacted the Bail Regulations 2018, to guide Judges, Magistrates, judicial officers (and the police) in the application of the bail provisions of the Criminal Procedure Act 1965.
9. In the case of **Amadu Makah Jalloh v The Attorney General and Minister of Justice, Misc.app 13/2020**, Browne-Marke JSC at para 19 of that judgement had this to say:

*“It is the view of this court that in all criminal matters, it is the duty of a trial judge to consider the issue of bail, even if it has not been raised by the defence. Since the passing of the Bail Regulations 2018, this has become mandatory, and in our view, the High Court should set the pace for the edification of the Magistrates Court. It is the duty of the judge to grant bail. If the prosecution objects to bail, it must file an affidavit deposing to its reasons for so objecting, before the trial commences.”*..... Further, the court is obliged to state for the record, its reasons for refusing bail. These reasons written down should be given to the accused person, if he applies for them. Furthermore, the issue of bail has to be considered at each hearing of the case.
10. The court further held that a judge must always give serious consideration to the issue of bail. It is with these principles in mind that I consider the relevant provisions of the Bail Regulations 2018.

### Bail Regulations 2018

11. At the heart of these regulations is regulation 5(1) which provides the basis upon which bail may be denied. The court must be satisfied that there are substantial grounds for believing that the defendant if released on bail would:

- (i) fail to appear in Court;
- (ii) commit an offence while on bail;
- (iii) likely endanger the safety of victims or the public;
- (iv) likely interfere with witnesses or obstruct the course of justice; or
- (v) likely endanger national security.

12. Regulation 5 (2) further provides that “In deciding whether or not any of the circumstances specified in paragraph (a) of sub-regulation (1) exists in relation to any defendant, the Court shall take into consideration the following-

- (a) the nature and seriousness of the offence;
- (b) the defendant’s character, association and community ties;
- (c) the defendant’s record with regard to the fulfilment of his obligations under previous bail;
- (d) whether the defendant is a repeat offender;
- (e) the defendant’s health profile; or
- (f) any other factor which appears to be relevant.

13. With these principles in mind, I now turn to consider the personal circumstances of the accused. I shall not set out in detail the contents of the medical report in order to protect the privacy of the accused. Suffice to say, I have taken the details of his medical report fully into consideration in reaching a decision. However, I need to make some general references to the medical report for the purposes of this judgement.

#### The medical report

14. The said medical report is dated the 12<sup>th</sup> October 2022 and makes references to the following matters:

1. That upon examination he presented with a number of ailments that are set out in the report.
2. The diagnosis as set out in the report.
3. The course of treatment.
4. The test report from the medical laboratory dated 30<sup>th</sup> September 2022.

15. I have also had regard to the affidavit in opposition as the application for bail is opposed. The said affidavit is sworn to by Ishmail Kamara on the 14<sup>th</sup> day of October 2022. In summary he swore to the following facts:

1. That he is the complainant in the matter.
2. That since the matter came up for trial, he has been receiving calls from relatives making promises to him not to appear in court to testify in the proceedings.
3. That one identified himself as the father of the accused, one Mr Bah and the other identified himself as Junior who promised to give him a job and money.
4. That they agreed to meet at Wilberforce to give him the money so he will not attend the court proceedings.
5. That he informed the state counsel in conduct of the matter who informed the witness protection officer Sgt 10705 Alimamy RS Kamara, who organized police officers to escort him to meet Mr Bah and Junior.
6. That Mr Bah and Junior arrived with an unlicensed vehicle to meet with him at the Total Filling Station and as they were about to give him the money, the CID officers arrested them both and took them to the CID Headquarters.

7. That they told him they had already given money to Frances Wilson and Musa Mansaray in order that they will not come to court and he was the only one left.
  8. That the accused person's relatives are bent on interfering with witnesses for the prosecution.
  9. That it will be in the interest of protecting himself and other witnesses if bail is refused and the accused person kept in custody.
16. In considering whether to grant or refuse bail, the primary test for doing so is that set out by the **Court of Appeal in R v Robinson 23 LJ QB 286** whether it is probable that the accused will appear to stand his trial. This test is applied by reference to a number of considerations:
1. The nature of the accusation
  2. The nature of the evidence in support of the accusation.
  3. The severity of the punishment which conviction shall entail.
  4. Whether the sureties are independent or indemnified by the accused persons.
17. I have also had regard to a decision of the High Court in **S v Omrie Golly & Ors () [2007] SLHC 32 (06 July 2007)**, in which Sey J considered the discretionary powers of the court to grant bail. The learned judge had this to say:
- “Clearly, the issue is a matter of the discretion of the Judge and in exercising that discretion certain factors have to be taken into consideration. As a general rule, the accused need not be granted bail if the court is satisfied that there are substantial grounds for believing that the accused, if released on bail, would -
- (a) fail to surrender to custody, or
  - (b) commit an offence while on bail, or

(c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

18. The Learned judge considered the position was of the view that where there are are substantial grounds for believing that the accused persons, if released on bail, would interfere with witnesses, or otherwise obstruct the course of justice, whether in relation to themselves or any other persons, bail ought not to be granted and bail applications in such cases ought to be refused.
19. In this case, I have considered the accused's medical reports on the one hand and also had regard to the seriousness of the offence charged and any possible sentence on conviction. The accused is charged with an offence of robbery which is a very serious offence, that attracts a significant period of imprisonment of fourteen years.
20. It is significant to note that there is no right to bail under the laws of Sierra Leone. In regulation 2 of the Bail Regulations 2018, bail shall be granted in accordance with the provisions of section 79 of the Criminal Procedure Act 1965, which requires the court to only admit to bail, were it sees fit. This is in keeping with provisions in the regulations that positively stipulates situations where bail can be denied. Further Regulation 8 of the said Regulations make provisions which envisage that in certain circumstances, bail can be granted, or denied or the conditions upon which bail was granted can be varied, and where any of those circumstances apply, the court must give reasons for doing so.
21. I have to balance the competing interests set out in regulation 5 whilst taking the accused's personal circumstances into consideration. Where a court, notwithstanding the accused's personal circumstances considers that there are circumstances where bail should be denied, it must consider the provisions of regulation 5 (1)(a) of the 2018 Regulations. Having regard to the circumstances

of this case, as set out in the affidavit in opposition, the most relevant considerations can be found in regulation 5(1)(a)(i)(ii)(iii) and (iv).

22. Further this court is required to consider the provisions of regulation 5 (2) in deciding whether or not any of the circumstances specified in paragraph (a) of sub regulation (1) apply and must take into consideration the matters set out at para (a-f) of regulation 5(2).

23. At this stage I have no information on the defendant's character, association and community ties or whether the defendant is a repeat offender. I also have no information on the accused's record with regard to the fulfilment of his obligations under previous bail that was granted to him. However, I have enough information to take into account the nature and seriousness of the offence charged, the attempt to interfere with witnesses and the accused's health profile.

24. I have carefully analyzed the medical report and I note that there is no reference in the report to the state of urgency or the treatment required by the accused. There is no reference to whether the condition of the accused is at a critical stage or otherwise. Most importantly there is no reference to any requirement for urgent referral for any proposed course of treatment. I have not been referred to any passages in the report which demonstrates that the accused has a life-threatening condition, nor have I spotted any.

25. In having regard to other factors as provided for by regulation 5(2)(f) of the Regulations, I have to consider the presumption of innocence on the one hand as guaranteed by section 23(4) the Constitution of Sierra Leone, Act No 6 of 1991 and the public interest in ensuring the safety of the public. I have borne in mind that if bail is not granted that might occasion further detention of the accused during the course of the trial.

26. in *Punzelt v Czech Republic* (2001) 33 EHRR 4, at para 73 on the issue of *the length of detention, had this to say.*

*"The court reiterates that the reasonableness of the length of detention must be assessed in each case according to its special features. Continued detention may be justified in a given case only if there are clear indications of a genuine public interest which, notwithstanding the presumption of innocence, outweighs the right to liberty. . . . The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. The court must then establish whether the other grounds given by the judicial authorities continues to justify the deprivation of liberty. Where such grounds were 'relevant' and 'sufficient', the court must also ascertain whether the competent national authorities displayed 'special diligence' in the conduct of the proceedings."*

27. In line with that reasoning, there is a clear and important need for the court to take into account custody time limits for unconvicted accused persons and in that light, the decision of the Court of Appeal in *R v Manchester Crown Court, Ex p McDonald* [1999] 1 WLR 841, 845-846: is relevant in which Lord Bingham CJ had this to say:

*"If the law ended at that point [simply with the Bail Act] (in this case section 79 of the Criminal Procedure Act 1965) it would manifestly afford inadequate protection to unconvicted defendants, since a person could, if the Bail Act conditions( in this case (the section 79 conditions) were satisfied, be held in prison awaiting trial indefinitely, and there would be no obligation on the prosecuting authority to bring him to trial as soon as reasonably possible."*

28. In *Ilijkov v Bulgaria* (Application No. 33977/96) (Unreported, 26 July 2001), a European court of Human Rights Decision, the court had this to say:

*"84. The court reiterates that continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the*

*rule of respect for individual liberty. . . . Where the law provides for a presumption in respect of factors relevant to the grounds for continued detention ... , the existence of the concrete facts outweighing the rule of respect for individual liberty must be nevertheless convincingly demonstrated.*

*85. Moreover, the court considers that it was incumbent on the authorities to establish those relevant facts. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases."*

29. In **O (FC) (Appellant) v. Crown Court at Harrow (Respondents) (Criminal Appeal from Her Majesty's High Court of Justice) 2006 UKHL42**, in which Article 5 of the European Convention on Human Rights was considered. It is interesting to note that this provision accords with section 17(1) of the Constitution of Sierra Leone Act No 6 of 1991.

30. There are two fundamental requirements that need to be considered by the court when considering the issue of bail. First, that the prosecution must bear the overall burden of justifying a remand in custody. It must advance good and sufficient public interest reasons outweighing the presumption of innocence and the general presumption in favour of liberty; and secondly, that the judge must be entitled to take account of all relevant considerations pointing for and against the grant of bail so as to exercise effective and meaningful judicial control over pre-trial detention.

31. Such is in keeping with the provisions of regulations 5 (1) and (2) of the 2018 Regulations, which requires such a balancing exercise to be conducted. In relation to the accused person's medical health profile, in the light of my comments above, (para 24), I have had regard to the provisions of section 38 of the Sierra Leone Correctional Services Act 2014, which provides as follows:

*38 “Arrangements shall be made for the provision of other medical and related services, in accordance with any relevant policy or programme of the Ministry responsible for health.....”*

32. The above provision imposes a statutory requirement on the Correctional Services, by law, to make arrangements for the care of inmates by the provision of other medical and related services. Further, section 48 (1) of the Sierra Leone Correctional Services Act 2014 provides as follows:

*48. (1) In the case of serious illness of an inmate confined in a correctional centre in which there are inadequate medical facilities or unsuitable accommodation for that inmate, the officer in charge, on the advice of the medical officer, may make an order for the removal of the inmate to a hospital.*

33. Having so conducted such a balancing exercise, I am satisfied that the offence for which the accused is standing trial is a serious offence with a significant period of imprisonment should the accused be convicted and that is likely to represent a disincentive to the accused for him to submit himself to the jurisdiction of the court to face his trial.

34. Further, I am satisfied by the affidavit evidence, which is uncontroverted that the accused's close relatives have been allegedly involved in a serious and sustained attempt to pervert the course of justice by interference with the witnesses who are scheduled to come to court to give evidence. I see no rational basis upon which this court can conclude that the accused has a different view from those family members who are allegedly seeking to pervert the course of justice in a bid to win his freedom from the charges he faces or will distance himself from such attempts. There is therefore a significant risk that if given bail, there would be further attempts to interfere with witnesses and there is equally a significant risk that the accused will not return to stand his trial, having regard to the fact that the alleged attempt to pervert the course of justice was ultimately to win him his freedom.

35. I am equally satisfied that the law provides a mandatory requirement for the correctional services in whose care the accused is to provide medical treatment for him if needed, even outside of the correctional services centre where he is held. The correctional services are under a legal duty to provide him any medical care he requires. I have already indicated that this trial should be speedily concluded in the interest of justice, and to that extent, the court shall allocate adequate court time to deal with this matter as quickly as possible. In the circumstances, I shall make the following orders:

**UPON** hearing Mr YI Sesay of counsel for the State and Mr MP Fofanah for the accused person:

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. The application for bail is refused. The accused will stay in custody pending his trial.
2. The Director General of the SL Correctional Services shall provide the accused with access to medical treatment, in hospital where it is so required, if there are inadequate medical facilities for the accused within the correctional centre in which he is confined.

**DATED THIS 17<sup>th</sup> day of October 2022.**

**The Hon Justice A Fisher J**