ISSUES IN BAIL APPLICATION AND EXERCISE OF DISCRETIONARY POWERS OF THE COURT*

Abstract
Bail is an interlocutory application during criminal proceeding in court which can be taken either before or after arraignment of a defendant or accused in court and also within the trial depending on the circumstances that warrant the application. It is also available after conviction and sentence but pending the determination of an appeal if any. It gives the accused/defendant a temporary freedom pending the final conclusion of his trial. Granting of bail is at the discretion of the court which must be exercised judicially and judiciously having regard to the established rules and conditions by both the statute and stare decisis. The paper revels that other factors exist aside the conditions enunciated in case laws and statutes which guide the court in the exercise of their discretion in granting bail. The paper therefore examines these conditions and brings into limelight those other conditions that work on the mind of the court which are not expressly stated in statute or case laws. Reliance was placed on case laws and statutes as primary sources of data. The paper finally concludes that the criminal jurisprudence of this country should be redressed by our courts to incorporate these new factors among the existing ones while delivering their rulings on bail application or better still, the conditions should be incorporated in addition to the ones in the Administration of Criminal Justice Act.

Keywords: Bail, Application, Discretionary Power, Criminal Justice, Detention, Freedom

1. Introduction

Where there is no law, there is no sin. It is from this precept a vivid definition of offence will be coined out. Offence means violation of the law, an accused is the person against whom an allegation is made. The terms: 'crime' and 'offence' are all said to be synonymous and ordinarily used interchangeably. Offence appears to comprehend every crime and misdemeanor i.e simple offences or offences with low grade unlike crime which is used for grievous offences like capital offences. The criminal code of Nigeria does not define crime or offence in its interpretation Section neither does the Nigerian interpretation Act breath a word about it. From the definition, offence refers to violation of law and this may not attract punishment. For instance strict liability offences like traffic offence, environmental offences; fine is always awarded. However, when act of an individual amounts to violation of law and the law makes it punishable under the English legal system, it is a crime. It is the breach of the legal duty treated as the subject matter of a criminal proceeding also termed criminal wrong. It is this definition or perspective that suits the Austinian principle of law. The proposition was that every law must be backed up with sanction i.e punishment. Now, once there is a breach of an existing law, automatically there is a wrong, there is a breach of a right and neglecting of duty. The person who wrong has been committed against will lodge a complaint to the appropriate law enforcement agency that will investigate and effect an arrest. The next step is bail which can be administrative or court.

Bail is therefore, a procedure by which a person arrested, detained and or prosecuted in connection with a crime may be released on security being taking for his appearance on a day and place as may be determined by the person or authority effecting the release. Bail is the temporary release of a person awaiting trial for a crime[1]. In other words, bail could be granted by court or administratively by an appropriate body empowered by law to do same.[2]The granting of bail to an accused or suspect as the case may be is premised on the *grundnorm* of the state. It is the basic conditional right guaranteed by Section 35 of the Constitution of Federal Republic Nigeria 1999 (herein after referred to as CFRN)[3]. This Section provides that: 'Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law….' The provision of the Section contains the circumstances under which such person may be deprived of his liberty: one of those cases is where the person is under a reasonable suspicion of his having committed a criminal offence or to such extent as may be reasonably necessary to prevent his committing a criminal offence. In spite of the constitutional provision affirming liberty of persons, an accused person under arrest or in a custody cannot just be released. There are certain conditions that must be taken into consideration before he could be released to avoid menace.

Over the years, the courts have developed factors or principles which they consider before granting bail to an accused person which form, the basis of the exercise of their discretionary power. While the restoration of liberty

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[1] SB Boughman, *The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System- Introduction* (Cambridge University Press2017), pg 1.
[2] The appropriate body refers to the Nigeria Police, Nigeria Army, civil defence and security, custom NDLEA inter alia.
[3] B Osamo, *Fundamentals of Criminal Procedure in Nigeria* (Dee- sage Nigeria Limited, Abuja, 2004), Pg 80.

of an accused to him by court after incarceration is based on exercise of discretionary power, that of police or other law enforcement agents is strictly on command of the constitution of Federal Republic of Nigeria or a statute. Section 35 (4) & (5) of the constitution provides that:

Any person who is arrested or detained in accordance with subsection (1) of this Section shall be brought before a court of Law within a reasonable time, and if he is not tired within period of:

> (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail: or
> (b)Three months from the date of his arrest or detention in the case of a person who has been released on bail ...

Section 27 of the Police Act empowers the police to release on bail where it is not possible or practicable to bring an arrested person before a court of law within a reasonable time.[4] However, the police are foreclosed from granting such freedom to an accused person facing capital offence. Therefore, person arrested for capital offence may be detained more than 24 hours or 48 hours In *Eda .v. cop*, [5]the provisions of Section 17 of CPA and Section 27 of the Police Act, came for interpretation. Both Sections provide in essence that the person arrested without a warrant for criminal offence, shall be brought before a Court of Law as soon as 'practicable'. The Supreme Court held that the provisions are in consistent with the provisions of Section 32 (4) 7 (5) of 1979 constitution of Federal Republic of Nigeria now Section 35 (4) & (5) 1999 as they conflict with the specific period prescribed by the constitution. It is clear now that the police is empowered to release on bail of persons arrested or detained for non-capital offences if he cannot be brought to court within 24 hours or 48 hours as the case may be. Now, the essence of this paper is to examine court bail and discretionary power since it is court bail that has to do with exercise of discretionary power in granting bail. This paper would examine generally the conditions for granting bail and other factors which determine the exercise of discretionary power of the court. In other words, we would attempt to query the so called discretionary power of the court; why is it that it varies from one accused person to another accused person? Why is it that it varies from court to court? Attempt shall be made in this paper to proffer likely reasons to the issues raised above.

2. Meaning of Bail

Bail is a legal issue with which the Courts are inundated with almost on a daily basis[6]. The principles of bail are fundamental but have become trite due to the frequency with which the Courts address the matter. Bail is the process by which an accused person is temporarily released from state custody to sureties on conditions given to ensure his attendance in the Court whenever he is required until the determination of the case against him. Often, the proSectionution is apprehensive of the grant of bail because the accused might escape to avoid trial.

In the case of *Caleb Ojo and Anor v Federal Republic of Nigeria*[7], Muhammad JCA (as he then was), explained the bail process as follows: –

> 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. The accused/convict is delivered into the hands of sureties, and is accounted by law to be in their custody, though they may free themselves from further responsibility if they surrender him to the Court before the date assigned. Per DONGBAN-MENSEM, J.C.A. 3444(Pp. 13-14, paras. F-D) *Onyebuchi v Frn & Ors*.[8]

Bail, in law means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of Security to ensure his submission at the deposit of Security to ensure his submission at the required time to legal authority. Bail according to the Black's Law Dictionary 8th Edition is: To obtain the release of (oneself or another) by providing a Security for future appearance Also, it refers to a Security such as cash or a bond; especially Security required by a court of Law for the release of an accused person who must appear at a future time. The right to bail, a constitutional right, is contractual in nature. The effect of granting bail is not to set the accused free for all times in the criminal process than to release him from custody of the Law and to entrust him to appear at his trial at a specific time and place.

The object of bail pending trial is to grant partial freedom to an accused whose appearance in court can be compelled by a financial sanction in the Form of Money bail. The freedom is temporary in the sense that it lasts only for the period of the trial and it stops on the conviction of the accused. It also stops on acquittal of the

[4] Reasonable time' in this context has been defined under Sec 35 (5) of the constitution of Federal Republic of Nigeria 1999 as amended.
[5] 19 & 2 3 NCLR Pg 219,
[6] JA Agaba, *Practical Approach to Criminal Litigation in Nigeria (Pre-Trial)* (Lawlords, Publications 2011) pg93.
[7] (2006) 9 NWLR Pt. 984 P103 @115
[8] (2007) LPELR-4134(CA)

accused[9]. In other words, an application for bail falls within the type of application called interlocutory application. It is constitutional because it is a right constitutionally guaranteed but pre trial freedom is restricted particularly in capital offences. Under the criminal procedure Law, a person charged with an offence punishable with death shall not be admitted to bail, except by the Judge of the High Court. It is the general practice to refuse bail to a person charged with the offence of murder[10]

Bail is contractual in the sense that the bond entered into which is always in form 25 (Recognisance Form) available in both police and court bail is a contract enforceable against the surety who stands for the accused that he or she will produce the accused whenever he or she is needed in court. It is a contract containing the terms of agreement between the surety or the accused person himself and the state or Commissioner of Police depending on the court.

However, there are three types of bail the first is Police bail, Second Court bail and Third bail pending Appeal. Police bail is an administrative bail. Any person arrested by the Police or arrested by another competent person or authority and handed over to the police on suspicion of having committed an offence must be taken to court by the police within 24 hours, if there is a competent Court within 40 Kilometres of the place where the offence was committed or within 48 hours or such longer period as is considered reasonable where there is no court within 40 kilometres of the place of the alleged commission of the offence except in capital offences. To avoid violation of the constitutional provision above police normally admit any person arrested to bail either on self recognizance or on bond, surety who will stand for such person[11]. However, in practice, police detain those arrested for serious non-capital offences such as fraud and drug offences beyond the constitutional time limit, without granting them bail, on the pretext that investigation are incomplete.[12] Many lawyers resorted to Enforcement of Fundamental Human Right procedure to Secure their client's bail. On the Second type of bail which is court bail, the power of a court to admit an accused to bail depends on two factors (i) the court before which the accused is being charged and (ii) the nature of the offence levied against the accused. Therefore, it is necessary to distinguish the powers of the magistrates' Court from those of the High Court to grant bail. A magistrate cannot grant bail to an accused person charged with a capital offence. The simple reason for this is that capital offences like murder, armed robbery are not bailable offences[13]D:\l except on exceptional circumstance and it is only the High Court that can grant same. A magistrate can also grant bail in felony other than the ones that carry death sentence where the imprisonment is 3 years and more except there is a good reason to the contrary[14]. In this regard bail must be granted unless there are good reasons to the contrary[15].

3. Application for Bail

The Administration of Criminal Justice Act although, has repealed the Criminal Procedure Act and the Criminal Procedure Code. However, we are of the view that any discussion of administration of bail under the Nigerian criminal jurisprudence without the CPA and the CPC which were in use before the emergence of the Administration of Criminal Justice Act will be an incomplete discourse. Hence, we shall consider these laws together. An accused is considered for bail before arraignment, during trial i.e. upon arraignment and after conviction i.e pending appeal.

In case of a situation where the suspect is still in police or other law enforcement agency custody, the police officer in charge of the office may grant bail. The application is usually in writing which could be written by suspect's counsel or his relations and such suspect after satisfying the conductions of bail, the police may release him. Conditions normally given may include a surety with passport photograph and he will fill the Recognizance Form (Form 25). After bail has been granted, the suspect may be required to appear at the Court or Police Station depending on whether investigations have been concluded. Application for bail in court depends on the court, whether a Magistrate Court or High Court, Court of Appeal and Supreme. Magistrate Courts are normally referred to as Courts of Summary Jurisdiction in which application for bail can be orally made. In the High Court, Federal, Court of Appeal and Supreme Court, such application must be in writing. Applicant can come by way of originating summons or Motion on Notice supported by an affidavit stating the facts relied on. Documentary evidence may be attached if there is need for same in order to buttress or establish the deposed facts. These documents may be medical report, Police report, Photographs etc. It must be noted that an application for the first time must be made by originating summons. Where such application has been made to the Magistrate Court and refused, an application to High Court could be made by Motion on Notice under Section 123 of this CPA .Note also that where bail has been granted by a magistrate and the condition cannot be perfected by the

[9] *Adamu Suleman & Ors .v C. O. P* (2008) 5 SCM 200
[10] *Olugbusi .v. cop* (1970) 2 ALL NLR1.
[11] See 35 (4) & (5) of CFRN 1999.
[12] In that regard such person may go to court file Enforcement of Fundamental Human Right to compel the police to charge him to court for bail consideration.
[13] Sec 118(1) of the Criminal Procedure Act and section 341 (1) of the CPC
[14] Good reasons may include public policy, protection and safety of the accused and if there is likelihood of the accused jumping bail and fail to stand his trial. See also 341 (2) of the CPC. The phrase 'good reason is not defined by the Act.'
[15] Sec 118(1) of the Criminal Procedure Act and section 341 (1) of the CPC and section 161 of ACJA

accused person, such an accused person can file an application to the same court or High Court for variation of bail conditions under Section 125 of the CPA.

However, with the emergence of the Administration of Criminal Justice Act, all these technicalities as regards the mode of application has withered away hence parties can come by a motion on notice or summon since no specific mode is stipulated in the Act.

In Magistrates Court where an accused is not represented by counsel, it is customary for the court to grant bail after asking the prosecutor whether or not he is opposing the bail. In the High Court where the accused is not represented by Counsel, Legal aid Council or other bodies handling matters pro bono are usually invited to take up the matter by filing an application for bail. Both the Police and the court may admit to bail a person alleged to have committed an offence on such terms and conditions as they deem fit. The terms of bail are fixed with due regard to the circumstances of the case. They should not be onerous or excessive[16]. If bail is granted on onerous terms, de jure the accused has been granted bail but in fact because the terms are difficult to fulfill the bail amounts to no bail and de facto bail has been denied[17]. Bail may be granted to an accused person on self recognizance, that is on his own undertaking that he will appear to stand his trial. No bond is required and no surety as well[18]. Bail is rarely granted on this term except where the person is of high social status; or well known to the Court. For instance, the court may be the place of work of such an accused person. A person may also be admitted to bail on condition that he executes bond for the fixed sum. A bond is a written undertaking that the accused will stand his trial, appear in court whenever he is needed. The person accused may be required to pay the money specified in the bond or some document particularly relating to real property within the Jurisdiction of the court. A person may also be admitted to bail on condition that he produce one or more persons to enter into a bond for the stated sum in like sum. Such a person is known as surety. The surety will depose to an affidavit of means and undertake under Form 25 (recognizance form) that he may pay the money in the bond if the accused fail to appear at the designated place[19]; in other words, surety to show cause. As a rule of practice, counsel appearing for the accused is not allowed by court to stand as surety for his client. Counsel is only permitted to recommend to court suitable and reasonable persons to be admitted as sureties for the accused unless the court says otherwise.

4. Principles Governing the Decision to Grant or Refuse Bail

Generally speaking, the police ought to grant bail to an arrested person alleged to have committed a non-capital offence if they fail to arraign him in court within the stipulated time limit[20]. Since, the granting of bail at administrative level is a command of the statute, they are duty bound and as a matter of fact, they have no discretionary power 'to exercise. However, there may be conditions given to the arrestee to comply with or fulfill.

Like we said at the beginning of this paper that we will not neglect the Criminal Procedure Act and Criminal Procedure Code, our discussion will start from these statutes being the first existing statute that was in charge of the subject matter. Now, unlike the Police, the courts have the power to admit to bail, persons accused of offences against the criminal laws of the state. The power to grant bail is largely discretionary. Although Sections 118 (i) – (iii), of the CPA and 158 – 163 of the ACJA which govern application for bail define when discretionary power of the court is to be exercised. They mention capital offence and other felony apart from capital offence. This is also deducible from the word used by the Act, the court 'may'. While in Section 118 (3) of the CPA and 163 of the ACJA, the word used is 'shall'; ordinarily leaving no discretionary power for the court to exercise. In practice today, however frivolous an offence, or few the days, month(s) or year(s) of the imprisonment, granting of bail application is based on the discretionary power of the court. This is not limited to Nigeria Courts. By the Early English Common Law, all offences, including treason, murder, and other capital felonies, were bailable at the discretionary power of the court[21]. By the statute of West minister 1, CAP 13, the power to grant bail as an inferior Courts and Magistrates, was regulated and restricted. This statute did not, however affect the court of King's Bench. This court and its Judges were left with full common law jurisdiction upon the subject of bail[22].

In the exercise of power to grant bail, English Judges have been guided by a discretion 'regulated according to the usage of law'. The discretion was not exercised according to the caprice or individual Judgment of each Judge; It was a legal discretion regulated by rules and practices of the court as contained and expounded in the adjudged cases[23]. In *Baronnet's case*, Erle J. said 'The principle has been fully laid down already that where a crime is of the highest magnitude, and the evidence in support of the charge strong, and the punishment the highest known to the law, the court will not interfere to admit to bail'. Where either of these ingredients is wanting, the court has a discretion which it will exercise the rules and practice of the Courts upon this subject have been regarded by the English enactment in all cases where applications are made to the courts for bail, the seriousness of the charge, the nature of evidence in support of it, and the severity of the punishment awarded by law for offence, are the Chief considerations which influence the

[16] See Section 130 of the CPA and section 349 (1) of the CPC
[17] Doherty O, *Criminal procedure in Nigerian Law and Practice*. (Black Stone Press Limited 1990) Pg 130.
[18] Ibid
[19] CPA, ss 122, 17, and 18; CPC Sect. 345, Police Act LFN 2004 Sec 23
[20] Sec 35 (4) & (5) of the CFRN
[21] 4 BL 298, 299, 2 Hlae P. C. 120, Barney's case 5 mod. 323
[22] Coleridge, J. in *Exparte* Baronnet *et al* 1 E11. 7 B1. 1
[23] Chitty Burn, *The Granting of Bail: Principles and Practice* (28th ed., London, 1837) p317

determination of the question. It was the constant practice of the English courts to refuse bail where the evidence created a strong presumption of guilt[24].

Back to Nigeria, in *Adamu Suleman & 7 Ors v COP*[25]. The Apex court of this country stated the factors to be considered in general before granting bail. These are
(a) The availability of the accused to stand trial
(b) The nature and gravity of the offence
(c) The likelihood of the accused committing offence while on bail.
(d) The criminal antecedents of the accused
(e) The likelihood of the accused, interfering with the Course of Justice.
(f) Likelihood of further charge being brought
(g) The probability of the guilt.
(h) Detention for prosecution of the Accused
(i) The necessity to procure medical on social report pending a final disposal of the case.

Bail is premised on presumption of innocence [26] and the function of bail is to ensure the presence of the Accused at the trial. That is the cynosure of all the criteria. It is the centrepiece [27]. This criteria is regarded as not only the omnibus ground for granting or refusing bail, but the most important.[28] The burden of proof lies on the prosecution to proof to the court why bail should not be granted due to presumption of innocence in favour of the accused[29]D:\l.

5. Bail Application in Capital Offences
Application for bail in capital offences is governed by Section 118 (1) of the CPA and Section 341 (1) of the CPC. Section 118 (1) of the CPA clothes the court with the power to admit to bail a person charged with an offence punishable with death but does not state the criteria upon which the discretion should be exercised. Thus recurs must be had on Section 363 of the CPA which enjoins the court to follow the practice currently adopted by the High Court of Justice in England. The practice for centuries has been to refuse bail except in Exceptional circumstance(s). However, in view of the new Administration of Criminal Justice Act 2015, it is needless to embark on the academic voyage to England since Section 161 (2) (a) – (c) of the ACJA as expressly provided for what will constitute an exceptional circumstance. Sections 162 – 163 of the ACJA cover other offences that are not capital offence.

The court will have to look at the weight of Evidence against the accused and consider all the factors earlier mentioned as guiding principles. In fact, this is where the unfettered discretionary power of courts come in Court in exercising its discretionary power in favour of an applicant had considered Alibi as an exceptional circumstance and bail was granted in a Murder charge[30]. Courts had considered failure to file information and delay in prosecution as exceptional circumstance in Nigeria[31]. In fact in this circumstance, the court will be deprived of the opportunity of seeing the weight of evidence against the accused person.

In *ANAEKWE .v. Cop* [32]Tobi JCA (as he then was) said.

> A person cannot oppose bail merely as a routine procedure. There must be a valid cause or reason for opposing bail. Where bail is opposed without any valid reason, the prosecutor has not helped in the dispensation of Criminal Justice….' It is not in my humble view the function of the prosecutor to rush a charge to a Magistrate court, a court which has no jurisdiction to try murder cases, and play for time, while investigation is in progress. I have said it before and I will still say it again that the uniquely police phraseology of a 'holding charge' is not known to criminal law and jurisprudence. It is either a charge or not. There is nothing like a 'holding charge'. If the prosecution is not ready, it should do the proper thing, and the laws of the land provide for the proper thing. Therefore where the prosecution merely parades to the court the word 'M-U-R-D-E-R' without tying it with an offence a court of law is bound to grant bail.

Courts had considered impossibility of the accused standing his trial as an exceptional circumstance when the case file could not be found in the office of the DPP and state Police Command[33]as good ground for granting bail. Yet in some other cases, courts refused to grant bail in spite of the fact that the factors and exceptional circumstance were placed

[24] Ibid
[25] [2008] 5 SCM 200
[26] See 36 of the CFRN 1999.
[27] JO Ige, *A compendium of Practice notes (Lawyer's companion)*. (Vol. 1 Gown Goldmine Communications Limited,2013) Pg 114.
[28] *Adamu Suleman & Ors .v. cop* (Supra)
[29] See *Ignatius Udeh .v. Fed. Rep of Nigeria* [2001] 5 NWLR (Pt 706) 312
[30] *Olugbusi .v. cop* (1970) 2 ALL NLR 1
[31] *Boniface Ukatu .v. cop* (2001) 6 N WLR (Pt 710) 765.
[32] (1996) 3 NWLR (Pt 436) at Page 332
[33] *The State .v. Ayerin Seyi & Anor* (unreported AK/83CM) 2013. Ruling delivered by Ondo State High Court 4 sitting at Akure by Hon Justice Akeredolu.

before them. Instead, they ordered accelerated hearing.[34] Yet again, some offences are not capital but simple offences, the court would still refuse bail.

In view of the foregoing, can we say that exercise of judicial discretion is based on the grounds or principle guiding bail alone? or there are some other factors which our Courts are yet to list as among the factors that exist on the mind of each Judge and Magistrate. No doubt there are some other factors that exist aside the laid down principles which affect the discretionary power of the Court. All Judges are not from the same social background. They cannot share the same ideology and opinion or view. For instance, what a Magistrate from Ode- Omu in Osun State for instance would see and appreciate as a high standard of social life will be different from what a magistrate in Ikoyi, Lagos State would perceive as same. In *Dokubo Asari v FRN* [35]**t**he court held that on a question of exercise of discretion authorities are not of much value. No two cases are exactly similar and even if they are, the court cannot be bound by a previous decision to exercise its way because that would be putting an end to discretion. No discretion in one case can be a precedent to another. The Court of Appeal relied on *Jekins v. Bushly*[36]**;** *Kundoro .v. Alaka*[37]**,** *Solanke .v. Ajibola* [38]The pertinent question at this point is if the Courts have realised that cases on discretionary power cannot be a precedent for another, then why the need for the factors laid down for granting bail in exercising discretionary power? In Asari- Dokunbo's case, bail was refused at the lower court and the Court of Appeal dismissed the appeal while the Supreme Court granted bail in the case. We have instances of an accused person who was charged with offence of stealing N3, 000 and bail was refused while some eminent men in the society, public office holders were charged with offence of stealing Millions and bail was granted. Then where are these factors?

At this point, it our opinion that, it is a fact to say that Judges consider the following factors more than the laid down factors.
(1) The reputation of the accused
(2) The social standing of the accused
(3) The employment status.
(4) The educational back ground.
(5) The financial condition of the accused
(6) The professional standing of the accused's counsel.

For instance, A Senior Advocate of Nigeria will seek the court to move an application for bail and just inform the Court after giving the introductory part of his summon and informed the Court that: 'I know that my Lord is rich at what will constitute an exceptional circumstance. I urge on the Court to gran our application'. The Court will grant the application without quizzing him further while a similar application will be brought by a counsel who is not an SAN on behalf of a co-accused, the Court will refuse the application after serious drilling of the counsel in Court. The simple reason or explanation for this is the professional stance of the SAN. At times the court may give stringent conditions, just to ensure remand of an accused person in a simple offence. Yet, the same Court will see a permanent Secretary and give bail in most liberal terms to him. Just of recent though not in Nigeria but Sierra Leone, the case of Kono and Bo inter-party conflicts. The accused persons in the case were arraigned on a charge of several Counts ranging from Arson, Malicious damage, Assault, Assault to with intent and riotous conduct. After refusing bail during the first and second adjournments, the learned Magistrate J. O. Wellington released the accused on bail at their third appearance. It is curious that after two previous applications had been objected to by the prosecution and upheld by the Court, the court granted same on the next date of adjournment. The question is what has suddenly happened? Back home in Nigeria, few years ago, a pension board member who was charged with offence of fraud was arraigned at the Federal High Court Abuja and one of the conditions for bail was that the accused should produce 6 traditional rulers from the 6 geographical zones in Nigeria. Within an hour, the accused had produced them. From all indications, it is apparently clear that the accused must have had a prior knowledge of what the condition for bail would be. With all modesty and due respect to the learned Judge, his office should be quizzed. Another instance was when a magistrate granted bail in a charge of murder at The Chief Magistrate Court Igbokoda just because an Oba was among the accused persons arraigned before him on a holding charge.

6. Conclusion

In conclusion, it is apparently clear that it is safer to say that the guiding principles laid down by the Supreme Courts are mere principles existing de jure while the later ones identified exist de facto and in fact the basic ones that determine the exercise of discretionary power of the court. It is in view of the foregoing we are recommending that the jurisprudence of discretionary power of Court concerning bail in Nigeria should be redressed by our court to incorporate these new factors among the existing ones. At least to some extent, an accused person and his counsel would be wrestled out of their dilemma before going to Court and prepared their mind towards these other factors.

[34] See *Bamayi .v. the State* (2006) Vol 5 LRCNCC Pg 338 at 351*; R. V. Robinson* (1854) 23 L. J. R. B. 286, *Mamudu Dantata .v. Police* (1958) NRNLR 3. *Abacha .V. The State* (2002) 5 NWLR (Pt 761) 638: *Ani. V. State (*2002) NWLR (Pt 747) 217.
[35] (2008) Vol 6. Lrcncc Pg 1 at 6 particularly Pgs 20 – 21, Paras JJ-A
[36] (1891) 1 Ch. 484, at Pg 485
[37] (1956) 1FSC. 82 at Pg 383
[38] (1968) 1 ALL NLR 46 at Page 51**.**