
STRINGENT BAIL CONDITIONS; AN IMPEDIMENT TO THE ADMINISTRATION OF CRIMINAL JUSTICE SYSTEM IN NIGERIA

Abstract

The law is trite that, grant of bail and the determination of the conditions attached thereof are within the discretion of a trial court. However, the law enjoins the courts to exercise such discretion judiciously and judicially bearing in mind that, the main essence of bail is to ensure the presence of a defendant at his trial. Again, granting bail to a defendant is not an escape from justice but affords a defendant an opportunity to have access to requisite facilities for the preparation of his defence. This position gives credence to the provision of the Section 36(5) of the Constitution of Federal Republic of Nigeria, 1999 (as amended) which presumes a defendant innocent until the contrary is proved. Strangely, under our criminal justice system the imposition of stringent or excessive bail conditions is gaining momentum on daily basis thereby posing a serious threat to the whole essence of bail. One of the reasons for correctional service centres congestion in Nigeria is attributed to the inability of inmates or defendants to perfect their bail conditions due to the stringent nature of the bail terms. Some inmates even die in custody while waiting to perfect their bail due to the unattainable nature of the bail conditions. The objective of this paper therefore, is to critically analyse the practice of giving onerous or excessive bail conditions by trial courts and its effects on Nigeria's criminal justice system with a view to make recommendations that will guide the courts in giving liberal bail conditions thereby enhancing quick access to justice by the citizens. The paper adopted doctrinal research methodology using case laws, statutes, journals and internet materials. At the end, the paper recommended proper re-orientation of judicial officers, punishments for judicial rascality and strict implementation of our criminal procedure laws on bail, to ensure that imposition of stringent bail conditions is expunged from our criminal justice system.

Key Words: Bail Conditions, Courts, Criminal Justice, Constitution, Judicial Discretion.

1. Introduction

Bail is a crucial part of our criminal justice system as it allows persons accused of crime to be released from custody of the law pending investigation, trial or appeal. Bail is a constitutional right guaranteed a defendant standing trial before a court which is predicated on the fact that a person charged with a criminal offence is presumed innocent until proven guilty¹. Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) states that, "Every person who is charged with a criminal offence shall be presumed innocent until proven guilty". Thus, the Constitution is emphatic on the importance of bail in our criminal justice system.

The sole purpose of granting bail is to enable the defendant come back to stand his trial.² In the case of *Asari Dokubo v FRN*³ the Supreme Court held that: 'the main function of bail is to ensure the presence of an accused at the trial. This criterion is regarded as not only the omnibus one but also the most important of all the criteria for granting bail at the trial court'. The law frowns at anything that will truncate the attendance of a defendant at his trial. In *Maduv State*⁴, the court held that, it is against the spirit of the Constitution to impose excessive and stringent conditions for bail as that will be tantamount

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¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section 36(5),

² *Suleiman v The Commissioner of Police* (2008) 8 N W L R. pt 1089 at p. 298.

³ (2007) 12 NWLR pt 1048, @331

⁴ (2016) LPELR 3973.

to refusal of bail. Again the court in *Omoefe Eric Uduesegbe v FRN*⁵ held that, trial courts are enjoined to be liberal in their approach to granting of bail and the conditions thereof in non capital offences. Thus, the courts are to grant bail on favourable and affordable conditions.

It has been reiterated over time that, the issue of bail, its grant and fixing of conditions are entirely at the discretion of the trial court.⁶ However, such discretion must be exercised judicially and judiciously in the sense that, it should be guided by rules of law, sound judgment, common sense and fairness.⁷ It should not be exercised arbitrarily or be influenced by irrelevant considerations.⁸ To ensure that trial courts exercise their discretion properly as regards the conditions and terms of bail, the appellate courts have always served as a watchdog. For instance, if a trial court exercises its discretion properly, the appellate court will not interfere but where the trial court fails to exercise its discretion properly the appellate court will interfere by making the appropriate orders. There have been a number of cases where the appellate court interfered on excessive bail terms. For instance, the Court of Appeal in the case of *Dasuki v Director General of State Security & Ors*⁹, set aside the conditions of bail granted to the defendant for being too excessive and stringent. Also in *Madu v The State*¹⁰ the Court of Appeal varied the conditions of bail granted the appellant by the trial court for being too excessive.

Despite the explicit position of the law and judicial authorities on the essence of bail and need for liberal and affordable bail conditions, some trial courts have continued to dish out stringent bail conditions even when there is no provision for such under our criminal law. How does one explain a situation where a defendant who is charged for a misdemeanor or simple offence be required by the trial court to provide a surety who must be a civil servant of not less than grade level sixteen with three years tax clearance, landed property within the court's jurisdiction, a letter of identification from a traditional ruler etc. The imposition of these stringent terms of bail on the defendants practically amounts to a refusal of bail. It is likened to giving someone something with a right hand only to take same away with the left hand. This paper will therefore make a critical analysis of the imposition of stringent bail conditions and reasons for such strange practice; its implication on the criminal justice system. The paper will also give recommendations.

2. Types of Bail

2.1 Police Bail

This is the type of bail granted by the police. The Police Act empowers the police to grant this type of bail.¹¹ Police bail is also known as administrative bail. In this type of bail the suspect simply needs to fill the application, provide sureties, enter a bail bond and then released to go home with an undertaking to attend or come back whenever required at the police station. The police grants administrative bail in misdemeanors and felony offences.¹² That is to say that, the police may not grant bail when an offence is capital in nature such as murder. The police bail lasts as long as a suspect is still with the police. Once a suspect appears before a court, the police bail elapses and a fresh application is made to the court.¹³

⁵ (2004) LPELR 23191.

⁶ SK Sharma, 'Dimensions of Judicial Discretion in Bail Matters' <<https://www.Jstororg.com>> accessed on January 15th 2025 by 730.

⁷ Ibid.

⁸ *Ahmed v COP Bauchi State* (2012) 9 NWLR pt.1304, 904 at p.130.

⁹ (2019) LPELR 48113 (CA)

¹⁰ (2016) LPELR 3973.

¹¹ Police Act 2020, Section 62(1) of the Section 62(1).

¹² SaliuJimoh, 'Bail Bond and Forfeiture Actions in Nigeria, Lessons from the Case of Senator Ali Ndume' *Achievers University Law Journal* (2023) III(1) 252 – 233.

¹³ Ibid

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Mention must be made that, under our law, police or administrative bail is free.¹⁴ Thus, whenever the police arrest or detain a suspect over an allegation or reasonable suspicion of crime and investigation is ongoing, their duty is to offer bail to the suspect free of any charge. However, in practice the police make the conditions for bail so stringent by requesting that a huge sum of money must be paid before a suspect is released on bail and in situations where a suspect is not able to afford or pay the huge amount of money demanded by the police, they are left in the police cells beyond the constitutionally stipulated time. This situation is common in almost all the police stations in Nigeria especially where the suspect does not have a lawyer to pursue his bail. This incidentally leads to congestion of police cells. The police also grant bail while investigation is ongoing to avoid the effect of Section 35(5)(a) of CFRN 1999 (as amended).

2.2 Court Bail

There are two types of court bail namely Bail pending trial and Bail pending appeal.

2.2.1 Bail pending trial: this is the type of bail granted by the court when a defendant is brought or charged before the court and the defendant is still under trial. In other words, it is the type of bail granted a defendant upon arraignment and pending the determination of the case against the defendant.¹⁵ Before this type of bail is granted, the court will take into consideration factors and also give certain conditions which the court is enjoined to do judiciously and judicially. It should be stated that, the power of a court to admit a defendant to bail depends on the court before which the defendant is standing trial and the nature of the offence with which the defendant is charged.¹⁶ Whichever one, the bail conditions must not be excessive. The Supreme Court in the case of *Bamaïyi v State*¹⁷ laid down the factors or guidelines a court must consider in exercising its discretion to grant bail:

- a. The nature of the charge
- b. The evidence by which it is supported
- c. The sentence which by law may be passed in the event of a conviction
- d. The probability that the accused will appear to take his trial
- e. The criminal record of the accused
- f. The likelihood of the accused committing another offence while on bail
- g. The detention for the protection of the accused
- i. The necessity to procure medical or social report pending final disposal of the case.

The factors stated above are not exhaustive in guiding the courts in granting bail applications. In other words, it is not necessary that all the factors must apply in any given case. Thus, each case must be treated on its own peculiar circumstance in a way that will reflect judicious and judicial exercise of discretion. The law enjoins the courts to approach the issue of bail liberally to avoid rendering the constitutional right to bail nugatory see the case of *Ibori v FRN*.¹⁸

2.2.2 Bail Pending Appeal: this refers to a bail application made after a defendant is convicted by a trial court and the defendant decides to appeal his conviction.¹⁹ He can send an application to the appeal

¹⁴ Action 4 Justice Nigeria, 'Understanding Bail' <<https://www.nigeriaaction4justiceorg>> accessed on January 30th 2025 by 5pm.

¹⁵ Saliu Jimoh, 'Bail Bond and Forfeiture, Actions in Nigeria Lessons from the Case of Senator Ali Ndume' *Achievers University Law Journal* (2023) 3(1), 252 – 233.

¹⁶ Nomos Legal practice 'Attitude of Nigerian Courts of Bail Application in Criminal Proceedings' <https://www.monday.com> Accessed on February 2nd, 2025 at 3:15pm.

¹⁷ (2001) 8 NWLR pt 715 at 270.

¹⁸ (2019) 3 NWLR pt 1127 at 96.

¹⁹ C Uchechukwu 'The Administration of Bail in the Nigerian Legal System' *SSRN Electronic Journal* <<https://researchgatenet>> Accessed on January 30th, 2025 by 10pm.

court asking to be released on bail pending the determination of the appeal. In a situation where a defendant was denied bail by a magistrate, such a defendant can make an application for bail at the high court. An application for bail from a magistrate court to a high court must be by way of motion on notice supported by an affidavit, a copy of the charge sheet and the record of proceedings must be exhibited to show that an application was earlier on made before a lower court and it was refused.²⁰ The court of appeal does not have original jurisdiction to entertain an application for bail but possess an appellate jurisdiction from a refusal by the high court.²¹

3. The Legality of Excessive or Stringent Bail Conditions under Nigeria Criminal Justice System

The law seriously frowns at the practice of imposing excessive bail conditions²². In fact, it is against the spirit of the law to impose excessive and stringent conditions for bail as that would amount to refusal of bail²³.

1. Section 35 (4)(a) and (b) of the Constitution of the Federal Republic of Nigeria provides:

Any person who is arrested or detained in accordance with subsection 1(c) of this section must be brought before a court of law within a reasonable time and if he is not tried within a 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 he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for his trial at a later date.²⁴

The Constitution also provides that, any person charged with a criminal offence is presumed innocent until otherwise proven guilty.²⁵ Similarly, the Criminal Procedure Act provides that the amount of bail to be taken in any case shall be in the discretion of the court by which the order for the taking of such bail is made, shall be fixed with due regard to the circumstance of the case and shall not be excessive.²⁶ The Administration of Criminal Justice Act, 2015 prescribes that the terms of bail to be granted should be liberal and not excessive.²⁷ A combine reading of the above provisions of the laws suggests that; the whole essence of bail is to ensure the attendance of a defendant at the trial and such bail conditions should not be stringent or excessive to be met or perfected. Once the terms of bail are too stringent or excessive, then it amounts to a denial of bail. Bail conditions should not be commercialized or made to be too onerous as that in it may become a punishment. Also, by imposing excessive bail conditions, the court is assumed to have discarded the presumption of innocence that the Constitution guarantees to a defendant.

4. Factors and Guidelines that Determine Bail Conditions in Bail Applications.

Bail is one of the constitutionally guaranteed rights of a defendant who is charged with criminal offence.²⁸ Thus, the conditions or terms attached to the bail must not be stringent so as to enable the

²⁰ Nomos Legal practice 'Attitude of Nigerian Courts of Bail Application in Criminal Proceedings' <<https://www.mondaq.com>> accessed on February 2nd, 2025 by 3:15pm.

²¹ Ibid.

²² Administration of Criminal Justice Act, 2015, Section 165.

²³ Justice Zainab Bulkachuwa 'Excessive Bail Conditions Amount to Refusal- court of Appeal' <<https://dailytrust.com>> accessed on February 5th, 2025 by 11:26pm.

²⁴ CFRN, 1999 (as amended), Section 35(4) (a) and (b).

²⁵ Ibid. Section 36(5).

²⁶ Criminal Procedure Act, Section 120.

²⁷ ACJA, 2015, Section 165.

²⁸ CFRN, 1999 (as amended), Section 35(1).

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defendant enjoy the right except in few cases as prescribed by the law.²⁹ Although the issue of granting of bail and the conditions attached thereof are entirely at the discretion of the court, the courts are however enjoined to exercise such discretion judicially and judiciously. Each case must be determined on its own peculiar circumstances. The exercise of court's discretion to fix bail conditions must be guided by rules of law, sound judgment, common sense and fairness. A court should not be influenced by irrelevant considerations while fixing bail terms. See the case of *Ahmed v Cop Bauchi State*.³⁰

In imposing bail terms, the court will not overlook the seriousness of the offence as alleged by the prosecution as that will guide the court in determining the bail conditions. However conditions attached to a bail must not be excessive, neck-breaking, outrageous, onerous and untenable. See the case of *Abacha v State*.³¹ If the defendant shows his availability and willingness to attend court to stand trial, the court should not deny him this opportunity by giving onerous bail terms which will make it impracticable for the defendant to prepare for his defence at the trial.³² A court in fitting bail conditions should always bear it in mind that no matter how grievous or bogus a charge is, a defendant is presumed innocent until proven guilty and as such should not give excessive bail conditions which will ordinarily look as if the defendant has been found guilty and convicted of the alleged offence.³³ The court in exercising its discretion in fixing bail terms should have at the back of his mind that the main purpose of bail is to ensure the presence of the defendant at the trial. This criterion is regarded as the most important of all criteria for granting bail in Nigeria. See the case of *Asari Dokubo v FRN*.³⁴

At the police station, whenever the police arrest or detain a suspect over an allegation or reasonable suspicion of crime and investigation is ongoing, their duty is to offer bail to the suspect free of any charge either on self -recognizance or with a surety.

5. Why Do Courts Give Stringent Bail Conditions

5.1 Abuse of Judicial Discretion: under our criminal procedure laws, the grant or refusal of bail application and the determination of the conditions thereof are entirely at the discretion of the trial court. However, this discretion must be exercised judicially and judiciously by weighing all the circumstances of a given case in the interest of justice. See the case of *Echaka Cattle Ranch Ltd v N. A. C. B. Ltd*.³⁵ Most times, courts flagrantly abuse their discretionary powers by giving onerous bail conditions without taking proper consideration of the facts of the case and without recourse to rules of law and good judgment, as the case may be. Some judges and magistrates allow sentiments, mood swings, premeditated opinions sway their discretionary powers against the defendant in bail applications.

5.2 Judicial Rascality: judicial rascality is one of the perceived reasons some courts give excessive bail conditions. Under our criminal jurisprudence courts are duty bound to adhere completely with the decisions of supreme courts and criminal procedure laws in deciding matters brought before the courts including bail applications. In reality, some judicial officers and magistrate deviate from these age long judicial decisions and laws in considering bail applications. They rather take the laws into their hands. The law and the supreme court have warned repeatedly that excessive bail terms is not permitted in our

²⁹Nomos Legal practice 'Attitude of Nigerian Courts of Bail Application in Criminal Proceedings' <<https://www.mondaq.com>> accessed on February 2nd, 2025 at 3:15pm.

³⁰ (2012) 9 NWLR pt 1304, 104 at p 130.

³¹(2002)5 NWLR pt 76 at p 638.

³²Ibid.

³³ CFRN, 1999 (as amended), Section 36(5).

³⁴(2007) 4 FWLR pt 395 at p.6467.

³⁵(1988) 4 NWLR pt 547 at 525.

law, despite this warning some judicial officers still impose outrageous bail conditions in defiance to the law and judicial precedents, eroding the presumption of innocence guaranteed the defendant by the Constitution.

5.3 Lack of Orientation: most newly appointed magistrates do not appreciate the issue of bail and factors to be considered when giving bail terms. They just want to exercise their newly acquired judicial authority or power. Sometime ago, In one of the magistrate courts, a newly appointed magistrate granted a defendant who was charged with the offence of stealing a Bluetooth, bail in the sum of one million naira with a surety who must be a permanent secretary or a director with three years tax clearance, a letter of recommendation from his traditional ruler and a landed property in the city of the court's location. Of course the defendant could not perfect the bail condition as such was not tenable for him. He was remanded in custody, he later regained his freedom when his lawyer applied to the high court and the excessive bail conditions were varied. This scenario is abound mostly in magistrate courts. Many inmates are trapped in the correction service centers as a result of excessive and neck breaking bail conditions imposed on them by magistrate courts.

5.4 Fear of the Defendant Jumping Bail and to Discourage Prospective Sureties: most times, the court impose stringent conditions on the defendant with the belief that by so doing the defendant will not jump bail. Again, courts believe that by imposing stringent bail terms prospective sureties will be discouraged because of the huge sum of money involved in the bail bond and when such happen the defendant will be remanded in custody. This is actually punitive and negates a defendant's constitutional presumption of innocence.

5.5 Vindictiveness: when a judge or magistrate or their relatives have been a victim of an offence for which a defendant is charged before them, there is a likelihood that such court will have resentment towards the defendant and may manifestly show such by imposing a very stringent bail condition on the defendant so that the defendant will find it impossible to perfect the bail conditions and subsequently be remanded in custody. It is usually common to see a judge or magistrate requesting a colleague to give onerous bail conditions to a defendant who is alleged to have committed an offence against him or his acquaintances so that the defendant will be remanded in custody pending the final determination of his case just to oppress the defendant.

5.6 Political interference: In rare cases, we have read or seen situations where some courts for one reason or the other impose very stringent bail conditions on a defendant or people who are considered enemy or opposition to the government in power. The aim usually is to keep such persons perpetually in custody by imposing very excessive bail conditions that are very difficult to be met or perfected. Sometimes such people develop serious health challenges or even die in custody while waiting to perfect such excessive bail conditions.

6. Consequences of Imposition of Stringent Bail Conditions on our Criminal Justice System

Imposition of excessive bail conditions by the police and trial courts is one of the many reasons for the congestion of cells and correctional facilities in Nigeria³⁶. This is as a result of the inability of the inmates or defendants to perfect their bail conditions which are very stringent in nature. Some of the inmates awaiting trial have been in custody for a period longer than the punishment prescribed for the offence they were charged with. Some inmates develop serious health challenges which may eventually

³⁶ PRAWA 'Prison Congestion: CJN Asks Magistrates to Liberalize Bail Conditions <<https://prawa.org/prison-com>> accessed on February 3rd, 2025 by 10:15am. See also VANGUARDNGR, 'Nigeria: Stringent Bail Conditions Responsible for Prison Congestion<<https://www.prison-Insidercom>> accessed on January 18th 2025 by 8.00pm.

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lead to death while they are waiting in custody. Some of the cells and correctional service facilities across Nigeria are in deplorable conditions. Some were designed to house or accommodate a certain number of inmates but as time goes by the number of the inmates keep increasing thereby posing life threatening challenges to the inmates. This is ridiculous and does not speak well of our criminal justice system.

It is often said that justice delayed is justice denied. When a trial court imposes stringent conditions and the defendant subsequently fails to meet up with the condition, the defendant will be remanded and he will be there as long as his case lasts. Sometimes unforeseen factors such as strike, public holidays sit at home etc make the court not to sit while the defendant wait hopelessly in correctional service facility. In some cases the defendants die in custody while waiting to perfect their bail condition without getting justice. Some people that are in correctional service centers as a result of their inability to perfect their bail conditions were brought to court on bogus or frivolous charges not that they have been found guilty. Some may be innocent of such charges but are suffering in custody because of their inability to perfect their bail conditions due to the stringent nature of the bail terms.

It is a popular saying that the judiciary is the last hope of a common; it is believed that judiciary is where an ordinary Nigerian can get justice. Unfortunately, these days the attitude of some courts as regards imposition of stringent bail conditions is gradually eroding the confidence and hope of a common man in the justice system. Just recently, there was a public outcry both from national and international human right lawyers when a Federal High Court granted bail to some end bad governance protesters majority of who were children, on conditions described as ‘outrageous’ and ‘punitive.’³⁷ It is usually worrisome and troubling to know that most of these stringent bail conditions are politically induced. Such situations do not speak well of Nigeria’s justice system at the international community. The justice system should not be a place where a common man will be scared to approach or feel hopeless if he finds himself before it.

7. Conclusion and Recommendations

The Constitution of the Federal Republic of Nigeria, 1999(as amended) and the Criminal Procedure Laws prescribe that the grant of bail must be on liberal and affordable conditions to ensure the defendant’s attendance at the trial. There is a presumption of innocence in favour of the defendant until the contrary is proved. Therefore, imposing excessive or stringent bail conditions on the defendant is an indication and a rebuttable presumption that, the court already perceives the defendant as guilty. The appellate courts have in a plethora of cases frowned at excessive bail conditions; as such practice is strange to our criminal jurisprudence. The essence of bail which is to secure the attendance of the defendant in court and the constitutional guaranteed presumption of innocence must always be born in mind by the trial courts when considering bail conditions and terms while treating each case on its own peculiar circumstance.

To expunge the practice of imposition of stringent bail conditions from Nigeria’s criminal justice system, this work therefore, makes the following recommendations:

1. The National Judicial Council and other disciplinary bodies should be at the vanguard of the fight against abuse of judicial discretion and judicial rascality by punishing or sacking judicial officers who are found wanting. This will serve as a deterrent to others who intend to indulge in abuse of judicial powers.

³⁷Sunday Ejike, ‘Bail Conditions of #EndBadGovernance Protesters Punitive, Witch-Hunt-Amnesty International. <<https://www.tribuneonline.ng.com>> accessed on February 3rd, 2025 by 9am.

2. The Executive arm of government should allow the doctrine of rule of law and separation of powers of the three arms of government to operate optimally. The courts should not be used as an instrument of persecution and oppression by influencing the courts to give stringent bail conditions.
3. Courts while determining bail terms and conditions should bear it in mind that, a Defendant who jumps bail does so at his own peril. Hence, the risk or strong likelihood that an accused may jump bail should not be used as a sole reason for denial of bail or basis for imposing outrageous or neck-breaking bail conditions against such a Defendant.
4. There should be more periodic seminars, workshops and refreshers courses for the orientation and re orientation of judicial officers especially the new intakes. No judge or magistrate should stay more than a year without attending workshops and seminars. This is to keep them abreast with developing innovations in the criminal justice system and international best practices.
5. Courts should always ensure strict compliance and application of judicial precedence and adherence to the factors enshrined in our criminal laws on issues relating to bail and determination of bail terms and conditions.