IN THE HIGH COURT FOR ZANZIBAR

HOLDEN AT VUGA

CRIMINAL APPLICATION NO. 3 OF 2014

MANSOOR YUSSUF HIMID ..... APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT

RULING

Mwampashi,j.:

This is an application made under S. 150 (4) of the Criminal Procedure Act, 2004 (Act No. 7/2004) by the applicant Mr. Mansoor Yussuf Himid. The respondent to this application is the Director of Public Prosecutions Zanzibar. The application is for the direction of this court that the applicant whose case is pending for trial before the Regional Court at Vuga be admitted to bail. The applicant has been prompted to file this application before this court because one of the three offences he faces before the Regional Court to wit being found in unlawful possession of a firearm c/ss 6(3) and 34(1) and (2) of the Arms and Ammunitions Act, No. 2 of 1991 (Cap 223 R.E 2002) is one of the offences which are listed under S. 150(1) of the Criminal Procedure Act, 2004 as offences that are

not bailable and of which the Regional Court is not empowered to grant bail.

The application is supported by an affidavit of Ms. Fatma A. Karume while on the other hand in opposing the application the respondent has filed an affidavit in reply affirmed by Mr. Khamis Juma Khamis learned state attorney.

At the hearing of this application the applicant was represented by Mr. Gasper Nyika learned counsel assisted by Ms. Samah Salah and Mr. Omar Said learned counsel while Ms. Raya Mselem, Mr. Maulid Ame and Khamis Juma learned state attorneys appeared for the respondent.

According to the supporting affidavit and the affidavit in reply filed by the parties the parties are not in dispute on the following brief fact; that the applicant could not be released on bail by the trial court because under S. 150 (1) of the Criminal Procedure Act, 2004 the trial court has no power to grant bail to accused facing the offence of being found in unlawful possession of firearms, that the applicant at one time was a member of the cabinet of the Revolutionary Government of Zanzibar and for 15 years he dedicated his life and energy to public service, that for some years back until recent he was a member of the House of Representative, that he is a husband to one wife a father of three

children and has a sick mother aged 84 years all depending on him, that he is a businessman owning and operating two hotels and has one residential house here in Zanzibar and that he was not arrested by the police whilst committing an act of aggression against anybody.

On the other hand the facts disputed by the respondent include the following; that under S. 150 (4) of the Criminal Procedure Act, 2004 all offences are bailable with the direction of the High Court, that the applicant is a person of good character and has no previous criminal records and is an upstanding member of his community who until recently represented the people of Chukwani in the House of Representative, that at the moment apart from his wife, children and the sick mother he has other several dependants at home who need his full support, that continued incarceration will deny his constitutional right of freedom of movement and will defeat the presumption that he is innocent until proven guilty, that he poses no danger to society, he was not forcibly arrested and did not attempt to escape or evade the arrest, that he was born, bred and all his loved ones are in Zanzibar and has all his assets in Zanzibar, that he will always be available to appear to the court whenever required by the court and that in the circumstances it is fair and just that he be admitted to bail.

Mr. Nyika the learned counsel for the applicant started his arguments in support of the application by submitting that in principle all offences are bailable under the Criminal Procedure Act, 2004. He however pointed out that the offences listed under S. 150 (1) of the Criminal Procedure Act, 2004 which are termed as non bailable offences are in fact bailable under S. 150 (4) of the Act with the direction of the High Court. Mr. Nyika did also submit that one of the offences listed under S. 150 (1) of the Act as non bailable i.e the offence of being found in unlawful possession of firearms, is one of the offence the applicant faces before the Regional Court.

It was further argued by Mr. Nyika that S. 150 (1) of the Act gives discretionary power to the High Court to direct that an accused charged before a subordinate court with any of the offences falling under S. 150 (1) of the Act to be admitted to bail. The discretion, it was insisted by him, has to always be exercised judicially taking into account the interests of the society and that of an individual applicant. He explained that the interests of the applicant is his right to liberty and to be presumed innocent until proven guilty the rights which are guaranteed by the Constitution of Zanzibar of 1984 under Article 14 (1) and (2) and

Article 12(6) (b). As for what is the interest of the state it was pointed out by him that in criminal cases the interest of the states is to assure that the accused person appears to the court and stands his trial. Mr. Nyika did therefore insist that bail will be denied to an accused person only where there is concrete evidence that if released on bail such accused person will not attend to the court to stand his trial. Other factors to be considered when considering bail applications are whether the accused is likely to interfere with the witnesses or police investigations.

In support of what is the main test and the factors to be considered in bail applications. Mr. Nyika referred this court to the cerebrated case of **DPP vs Daud Pete** [1993] TLR. 22. Other cases cited by him are that of **Panju vs R** (1973) EA. 282, **Jaffer vs. R** (1973) EA, 39, the Indian case of **Sanjay Chandra vs. Central Bureau of Investigations**, Criminal Appeal No. 2179/2011, **Abdullah Nassor vs. Rex** (1921-1922) Vol. 1 LRT 289 and **Tito D. Lyimo vs. R** (1978) LRT 55, where it was insisted among other things that bail is not a privilege but an entitlement. As for the question in regard to balancing the interests of the state and that of an accused the court was referred to an article

titled "**Inconsistent and Unclear: The Supreme Court of India On Bail"** by one Vrinda Bhandari.

Mr. Nyika did therefore submit that the test to be applied to the application at hand is whether if admitted to bail the applicant will appear before the court to face his trial. He insisted that the respondents were supposed to show and produce concrete evidence showing that if the applicant is admitted to bail he will fail to attend for his trial or that he will interfere with witnesses but they have failed to do. It was insisted by him that it is not the matter of mere allegations but what is needed is solid and concrete evidence to the satisfaction of the court otherwise the court cannot that easily deny the applicant his right to liberty and the right to be presumed innocent. He asked the court to again revisit the cases of **Tito vs R** (supra) at page 276, that of **Abdullah vs. Rex** (supra) at page 293 and the **Panju's** case (page 283) where it was insisted that concrete evidence need to be produced if bail is to be refused by the court.

Mr. Nyika further argued that in the supporting affidavit there are listed a number of factors and facts that clear any doubt that the applicant if granted bail will fail to appear and face his trial while the affidavit in

reply filed by the respondents is full of mere denials with no solid evidence to disprove what is stated in the supporting affidavit.

It was also argued by Mr. Nyika that one of the factors that need to be considered by the court in applications for bail is the gravity of the offence. On this it was submitted by him that under the circumstances of the applicant's case the offence of being found in possession of the firearm alone is not that much grave and does not render him a dangerous person. He argued that not every possession of firearms is dangerous to the society. Mr. Nyika referred the court to the applicant's firearm licence annexed to the affidavit in reply filed by the respondent which is a proof that the applicant's possession of the firearm was not unlawful. He pointed out that if it is the applicant's failure to renew his licence which is in issue then the offence is not that much serious and it cannot by itself render him a dangerous person to the society. On this he referred the court to the case of **Daud Pete** at pages 43 and 44 where the Court of Appeal held among others that failure to renew a licence does not by itself render the holder a dangerous person.

It was finally submitted by Mr. Nyika that there is no evidence from the respondent's side showing that the applicant is not a fit person to be admitted to bail and therefore that there is no necessity of keeping him

in prison before he is proven guilty. He therefore prayed for the court to direct that the application be admitted to bail on conditions to be set by the court as the court did in the case of **Abdullah Nassor.**

Ms. Raya Mselem the learned state attorney for the respondent started her submission by insisting that the respondent vehemently opposes the application. She firstly argued that it is a mis-leading statement to argue that the correct interpretation of S. 150 (4) of the Criminal Procedure Act, 2004 is that the provision makes all offences in Zanzibar bailable. She further argued that S. 150 (4) of the Act does not override the provisions under S. 150 (1) of the Act which lists certain offences including the offence of being found in possession of firearms non bailable. Ms. Mselem insisted that the Legislature intention was not as such as to make all offences bailable. She argued that S. 150 (4) of the Act is not a mandatory provision as the word used is 'may' and not 'shall'. She referred the court to the case of **Daud Pete** where the power given under S. 148 (5)(e) of the Criminal Procedure Act which is pari materia to S. 150 (4) of our Act was held to be discretionary and which has to be exercised judicially taking into account the interests of the society and that of an individual person. She argued that the

interests of the society should always come first before the interests of the individual person.

It was further submitted by Ms. Mselem that the applicant is not a person of good character because according to annexure F1 to the affidavit in reply it is shown that in 2010 when the licence of the firearm found in the applicant's possession was being issued to him he lied by informing the licencing authority that he was a resident of Upanga in the Mainland Tanzania while it is well known that by that time the applicant was still a member of the House of Representatives and was residing at Chukwani here in Zanzibar and not in Upanga. She therefore argued that whilst it is not disputed by the respondent that the applicant has no criminal record it is maintained that he is not a person of good character as claimed in the supporting affidavit under paragraph 5.

Ms. Mselem went on arguing that under the circumstances of this case it will not be a violation of our Constitution if the applicant is denied bail because under Article 14 (2) (a) and (b) of the Constitution of Zanzibar of 1984 lawful incarcerations are allowed. She urged the court to read Article 14 (1) together with Article 14 (2) (a) and (b). Ms. Mselem did further submit that Article 16 (2) of the Constitution read together with

Article 24 (1) is the foundation of S. 150 (1) of the Criminal Procedure Act, 2004 under which incarceration is made lawful.

As on the argument that denying bail to the applicant is tantamount to the breach of the presumption of innocence it was argued by Ms. Mselem that since the trial of the applicant is still pending the concept of the presumption of innocence does not apply. She further submitted that in the case of **Daud Pete** it was held among other things that S. 148 (5)(e) does not violate Article 13 (6)(b) of the Constitution of the United Republic of Tanzania of 1977 and that denying bail does not necessarily amount to treating an accused like a convicted criminal.

Ms. Mselem did also argue that in our society the mere fact of being found in possession of a firearm is by itself a danger and renders the one so found a dangerous person. As for the question that the applicant if granted bail will always be available to face his trial it was submitted by Ms. Mselem that because according to annexure F1 to the affidavit in reply the applicant resides in Upanga Tanzania Mainland his availability if released on bail is not certain.

It was finally submitted by Ms. Mselem that under the circumstances of this matter fairness and justice do not favour the applicant that he be released on bail while there are many other accused facing same offences who are being lawfully detained under S.150 (1) of the Criminal Procedure Act, 2004. She maintained that the applicant is neither an exceptional nor above the law and therefore that under the circumstances of this case it will be fair and just not to allow the application. She insisted for the application of equality before the law.

Mr. Khamis Juma learned state attorney for the respondent joined hand with Ms. Mselem adding that since this court is a court of record then the matter at hand has to be handled very wisely and that the court should not let the counsel for the applicant mis-lead it by arguing that under S. 150 (4) of the Criminal Procedure Act, 2004 all offences are bailable. He also argued that the cases of **Jaffer** and **Panju** cited by the applicant's counsel do not apply to the case at hand. Mr. Khamis Juma did therefore pray for the application to be dismissed for being baseless.

In his rejoinder the learned counsel for the applicant Mr. Nyika did again repeat his stand that the offences listed under S. 150 (1) of the Criminal Procedure Act, 2004 are bailable with the direction of the High Court as provided under S. 150 (4) of the Act. He referred the court to S. 2 of the

Act and argued that the definition given under S. 2 of the Act makes it clear that in Zanzibar as opposed to the Mainland Tanzania all offence including those listed under S. 150 (1) of the Act are bailable by the High Court. Mr. Nyika did also reiterated his argument that the respondents have completely failed to substantiate their mere statement in the affidavit in reply and they have failed to show what state interests are likely to be in danger if the applicant is admitted to bail. He insisted that the fact that the applicant was found in possession of the firearm alone does not render him a dangerous person to the society. It was also submitted in rejoinder by Mr. Nyika that the argument that the applicant is not a person of good character because he gave wrong information to the licencing authority that he is a resident of Upanga while he resided in Chukwani comes from the bar and should therefore not be accepted. He also reminded the court that there is nothing wrong for one two have two residences in one country. As for the arguments concerning the Constitution it was Mr. Nyika's submission that the force of their argument is not that there is any Article of the Constitution which has been violated but that the applicants constitutional right as guaranteed in the Constitution be protected by the court. He therefore again asked this court to consider all the circumstances of the case and all the factors and decide in the applicant's favour because as it was

held in Sanjay's case (para. 14 at page 7) detention before trial always causes difficulties to a detained person and for the detention order to be made there must exist extraordinary circumstances and the necessity to do so.

From the supporting affidavit and the affidavit in reply and also from the arguments of both counsel the first important question which has to be dealt with by this court is the issue in regard to the correct construction of S. 150 (1) and (4) of the Criminal Procedure Act, 2004. In the simplest way the issue is whether all offences in Zanzibar are bailable or not?

To start with, the relevant provision i.e S. 150 (1) and (4) of the Criminal Procedure Act, 2004 is hereunder reproduced as follows;-

S. 150 (1) **When any person, other than a person accused of murder or treason or armed robbery or possession of firearms or drug trafficking, is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any**

stage on the proceedings before such court to give, bail such person may be admitted to bail.

(2) .....

(3) .....

(4) Notwithstanding anything contained in subsection(1) the High Court may in any case direct that any person be admitted to bail or that the bail required by a Subordinate court or police officer be reduced.

Without beating around the bush it is hard to understand for what reasons and why from the clear wording of S. 150 (4) of the Act one can still dispute the fact that in Zanzibar all offences are bailable. S. 150 (4) of the Act clearly gives power the High Court to direct that any person charged with any offence including the so called non bailable offences listed under S. 150 (1) of the Act to be admitted to bail. The only important thing to be noted here is that the power under S. 150 (1) of the Act is vested only to the High Court and not to subordinate courts. The argument that the offences listed under S. 150 (1) of the Act are non bailable is therefore true only in as far as subordinate courts are concerned and not otherwise. As correctly argued by Mr. Nyika in Zanzibar all offences are bailable but the offences listed under S. 150 (1) of the Act as non bailable offences are bailable only with the direction of

the High Court. This, I believe, is the correct construction of S 150 (1) and (4) of the Criminal Procedure Act, 2004.

To fortify the above holding that the offences listed under S. 150 (1) of the Criminal Procedure Act, 2004 are bailable by the High Court under S. 150 (4) of the Act I would like to borrow the words of Georges CJ (as he then was) in the case of **Republic vs. Lomanda Obei** when his Lordship in interpreting S. 123b(3) of the then Criminal Procedure Code, Cap 20 and which is pari materia to S. 150 (4) of our Criminal Procedure Act, 2004 have these to say;-

> **`Section 123 (3) of the Criminal Procedure Code does empower the High Court to direct a person to be admitted to bail even though he has been charged with murder or treason".** (See A Magistrate's Manual By B.D Chipeta, at page 45).

The fact that in Zanzibar the law as it stands is that all offences are bailable by the High Court can also be deduced from S.2 of the Criminal procedure Act, 2004 under which a bailable offence is defined to mean;-

> **" An offence which the accused person may be admitted to bail by any court as provided under section 151 (1) and non-bailabe offence means an offence specified under s. 150 (1) for which bail may be admitted only by the High court under section 150(4)".**

Before I proceed to another issue I find it prudent to point out that S. 150 (4) of the Criminal Procedure Act, 2004 is one of the provisions in our laws of which all those involved in the process of its enactment deserve to be commended. I believe the inclusion of that provision in our laws is not only the sign of the political will on the part of the legislature as one arm of the Government in ensuring that the right of individual to liberty as guaranteed in our Constitution is protected but to the greater extent is also a sign of the recognition of the principles of separation of powers, the independence of the judiciary and the trust to the judiciary which is the arm of the Government entrusted with powers to administer justice. This trust can be maintained and the desired end expected under S. 150 (4) of the Act will be achieved only if those entrusted with those powers will always exercise the powers judicially and independently.

Going back to the business of the day, the second issue to be determined by this court is whether the application at hand deserves to be granted or not. On this the starting general point, as also agreed by both counsel, is that powers under S. 150 (4) of the Criminal Procedure Act, 2004, are in the discretion of the Court. It should also be noted that even in the usual applications for bail pending trial i.e applications not

made under S. 150 (4) of the Act generally the granting or refusing to admit an accused to bail is a matter in the discretion of the court. Granting or refusing bail is a judicial process which must be exercised judicially.

The question one would probably seek to know at this juncture is the meaning of a term "judicial discretion". According to Coke (see Jowitss's Dictionary of English Law), a term 'discretion' has the following meaning;-

> **'a science of understanding, to discern between falsity and truth, between wrong and right, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections',**

'Judicial discretion' according to Lord Mansfield is therefore;-

> **'A sound discretion guided by law. It must be governed by Rule, not by humour. It must not be arbitrary, vague and Fanciful, but legal and regular'.(**See **R vs Wilkes, 4** Burr, 2527**).**

The late Justice B.D Chipeta in his book titled **"A Magistrates' Manual"** at page 51 defines the term' judicial discretion' to mean;-

> **"The process of arriving at a decision through a**

dispassionate and regular consideration of all the available options in a given situation".

The discretionary powers involved in the process of granting or refusing bail is therefore a process in which the court in a free, wise and independent mind considers the relevant law, principles, rules and all the circumstances surrounding the case at hand to reach at the right decision that guarantees a proper and just end of the course of justice.

Therefore as correctly argued by Mr. Nyika and as it is generally accepted in deciding whether an application for bail is to be allowed or not the court directs its mind to the question whether if granted bail the accused person will appear to take his trial and not seek to evade justice by leaving the jurisdiction of the court. According to **Bhagwanji Kakubhai vs. R,** 1 TLR 144 the test applied in such judicial exercise is whether the granting of the application will be detrimental to the interests of justice, good order and the keeping of public peace. Interests of justice require that there will be a fair trial, that the accused person's freedom should not be unjustifiably denied and that if released on bail he will not jump his bail or interfere with the police investigations or witnesses. On the other hand interests of public peace and good

order require that while on bail the accused person will not commit other offences, cause terror or breach peace and tranquillity.

Deciding on whether to grant or refuse bail to an accused person is therefore an exercise of balancing and deciding between two competing claims. The individual right to personal freedom on one hand and the need to protect the interests of the society at large within legal, social, economic and political environment of the society on the other. There are other factors to be considered is such a process but most of the time they depend on the particular case and circumstances but the common one include the seriousness of the offence, the severity of punishment involved, how reliable is the accused and his or her sureties, his or her residence or domicile, how long has he/she been in custody, his/her age, the nature of evidence in support of the charge if hearing has started etc.

Where the application for bail is objected on the ground of certain allegations or facts, such allegations or facts must be satisfactorily substantiated either by filing an affidavit or by adducing evidence. It is for the side opposing the application to satisfy the court that if the application is granted the interests of justice would be at stake.

The question before me is therefore whether in the present application there is concrete evidence for me to believe that if the application is granted public interests will be jeopardized. Are there any solid reasons for denying the applicant his constitutional right to liberty?

It is a settled finding of this court that the facts alleged in the supporting affidavit and maintained by the applicant's counsel, that the applicant is a reliable, upstanding member of the society and a person of good character has not been substantially disproved by the respondent. In additional to that is the fact that the applicant has no criminal record. This fact, though disputed in the affidavit in reply, was conceded by Ms. Mselem during the hearing of the application.

The attempt by the respondent to disprove the fact that the applicant is a reliable person is based on the fact that particulars in a copy of the applicant's firearm licence annexed to the affidavit in reply as F1 show that in 2010 when the licence was being issued, the applicant's address is shown to be at Upanga in the mainland Tanzania. It was Ms. Mselem's argument therefore that since it is a common knowledge that in 2010 the applicant was still a member of the House of Representatives and was staying at Chukwani here in Zanzibar then the applicant did not give correct information to the licencing authorities and therefore that he

lied. With due respect to Ms. Mselem, this court is of a view that her argument is unfounded. The fact that by 2010 the applicant was residing at Chukwani does not necessarily mean that he could not have another residence at any other place and in particular at Upanga in mainland Tanzania. Is it not common among us, that some of us, have more than one residences not only within Tanzania as a whole but even here in Zanzibar? The argument by Ms. Mselem, in absence of any other concrete evidence, that the applicant is not a reliable person because he did not tell the truth as regards to his address when applying for the firearm licence in 2010 is therefore of no merits and cannot be accepted.

The other forcefully argued ground against the application is that the applicant is a dangerous person and that he is a danger to the public peace and good order. It has been Ms. Mselem's argument that the only fact that the applicant was found in possession of the firearm is enough to prove that he is a dangerous person. This again is an empty argument that cannot be accepted. As correctly argued by Mr. Nyika being found in possession of a firearm by itself does not make the holder a dangerous person. It was expected, if this ground was to be accepted, that the respondents could have presented evidence to substantiate their stand and their argument that the applicant is a

dangerous person. To the contrary we have not been told that the applicant had ever in any way used his firearm unlawfully. We are not even told that the applicant is a kind of those persons who would publicly display their firearms to either terrorize others or who just do so for their pleasure and boasting.

Furthermore, the copy of the applicant's firearm licence i.e ennexure F1 to the affidavit in reply, is another piece of evidence which applies in the applicant's favour in as far as the question, whether he is a dangerous person or not, is concerned. It is vivid from the annexure in question, that the substance of the accusations against the applicant is not that he has no licence for the fi rearm, but that he might have failed to renew it. If that is the case, the failure to renew a firearm licence, as it was held by the Court of Appeal of Tanzania in the cerebrated case of **Daudi Pete** (supra) does not render the holder a dangerous person. In its observations and in declaring the provisions of S. 148 (5)(e) of the Criminal Procedure Act, 1984 as amended by Act 12/1987 and Act 10/1989 null and void for being broadly drafted to even cover those accused persons who could not be considered to be dangerous to the interests of the defence, public safety and public order, the Court of Appeal had these to say;-

> **'For instance, these provisions cover an accused person who while defending himself or his property against robbers uses excessive force resulting in the death of one or more of the robbers. They also cover an accused person who finds someone committing adultery with that person's spouse, and being provoked, seriously assaults and causes grievous bodily harm to the adulterer. Similarly, the provisions also encompass an accused person who, to the knowledge of everyone, inherits a firearm from his or her parent but forgot to obtain a firearm licence, thereby unwillingly committing the offence of being in possession of a firearm without a licence. Section 148(5)(e) would also cover all or every person who, though licenced to possess a firearm, forgets to renew his or his licence within the prescribed period. Many more such examples may be given. None of these persons can reasonably be said to be dangerous'.**
>
> (emphasis supplied).

There was also an argument by Ms. Mselem that our Constitution under Article 12(1) requires that all persons should be treated equally before the law and therefore that the applicant cannot be admitted to bail while there are many other accused persons facing charges of the similar nature i.e charges of which bail is prohibited under S. 150 (1) of the Criminal Procedure Act, 2004, who are being lawfully detained waiting for the finalization of their respective trials. It was Ms. Mselem's further contention that the applicant is not an exceptional or above the law. She insisted that the concept of equality before the law need to be strictly observed. It is a sad observation of this court that if, as lamented by Ms. Mselem, there are many accused person who are languishing in detention waiting for their trials because of the provision of S. 150 (1) of

the Act while they are in fact fit and deserve to be admitted to bail under S. 150 (4) of the Act, then that is very unfortunate. S. 150 (4) of the Act was not enacted to decorate our laws but it was wisely brought under our laws as a savoir for the rescue of those who might find themselves unjustifiably held under S. 150 (1) of the Act and who deserve the discretion of the court under S. 150 (4) of the Act. It should however, be emphasized here that it is not every accused person facing any of the offences listed under S. 150 (1) of the Act who can be admitted to bail under S. 150 (4) of the Act. S. 150 (4) of the Act is meant for only those accused person who can successfully pass the test. The provision is for those reliable, trusted accused persons whose release on bail would not in way, be detrimental to the interests of justice, good order and the keeping of public peace. The discretionary power of the court under S. 150 (4) of the Act is not for every tom and dik. This provision will, in most cases, not protect, for instance, accused persons who in the course of committing robberies they commit murder or those who are found in possession of stolen or illegally obtained firearms to mention but the few. It is on this basis that this court holds that the fact that it is only few accused persons who might pass the test and be admitted to bail under S. 150 (4) of the Act does not necessarily mean that the provision is discriminatory or segregating. It should also

be pointed out at this point that even when two or more accused persons are jointly charged still it will be lawfully and not segregating for the court to admit to bail one of them and continue to detain the others. Likewise, two or more accused persons jointly charged and convicted of the same offence can be differently punished depending on mitigating factors. In such circumstances it cannot necessarily be said that the principle that requires equal treatment before the law has been violated.

In totality of all the circumstances of this case and in application of the relevant law and principles, this court is of a clear mind that there is nothing from the respondent side suggesting that if the application is granted public interests will be in jeopardy or that the applicant will fail to appear and face his trial. This court is of a settled view that under the circumstances of this matter the applicant is not the kind of accused who is likely to betray the confidence and trust placed on him by this court i.e that if admitted to bail he will turn up and stand his trial. The applicant's social status in general, his personal commitments and even the type of the punishment the offence he faces carries, make it less probable that the applicant if admitted to bail may be tempted to run away from the course of justice. This court is convinced that if the applicant is admitted to bail not only that no public interests will be at

stake but also that to the greater extent it will be for the public benefit. If the applicant is admitted to bail the public will be relieved from shouldering unnecessary costs of keeping and taking care of the applicant. The applicant will be free and will continue operating his two hotels which most probably are at the risk of collapsing if the applicant is not admitted to bail. It is a belief of this court that if admitted to bail the applicant will continue to contribute towards the economical development of this country by way of paying relevant taxes and levies payable to the Government and by providing employment to many. Keeping him in detention will not only deny his constitutional right to liberty but will unnecessarily cause him to suffer irreparable damages if at the end of the day the charge against him fails while on the other hand the state will suffer no damages if the case against him succeed as the applicant will be available to suffer the consequences.

It is on the above observations and findings that I accordingly grant the application and direct the trial court to admit the applicant **Mr. Mansoor Yussuf Himid** to bail on the conditions set hereunder;-

1. Tshs. 3,000,000/= in cash be deposited to the court by the applicant.

2. Two reliable and well identified sureties to sign a bond of Tshs. 5,000,000/= each.
3. The applicant to surrender to the trial court all his travel documents.
4. The applicant is prohibited to leave the jurisdiction of this court without a prior leave of the court.

Sdg: Abraham Mwampashi.

Judge,

18/08/2014.

This ruling has been delivered in court this 18th day of August, 2004 in the presence of Mr. Gasper Nyika and Mr. Omar Shaaban (adv) for the applicant and also in the presence of Mr. Maulid Ame & Khamis Juma Khamis (SA) for the respondent, DPP.

Sdg: Abraham Mwampashi.

Judge,

18/08/2014.

I **CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL**

Sgd.

REGISTRAR HIGH COURT

ZANZIBAR.