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Excessive Bail Conditions and the Presumption of Innocence in Nigerian High Court Practice

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Abstract

Bail is among the most frequently exercised and least consistently disciplined discretions in Nigerian criminal procedure. Federal and State High Courts often grant bail in form while attaching conditions that many defendants cannot meet: Grade Level 16 or 17 civil servant sureties, title to land in named high-value districts, and cash deposits running into tens or hundreds of millions of naira. Using a doctrinal method, this article examines those terms against sections 35 and 36(5) of the Constitution of the Federal Republic of Nigeria 1999 and sections 158, 161–162, 165, and 167 of the Administration of Criminal Justice Act 2015. It draws on Supreme Court and Court of Appeal authorities, including Suleman v. Commissioner of Police (2008), Dokubo-Asari v. Federal Republic of Nigeria (2007), Dasuki v. Director-General, State Security (2019), Nolan v. Federal Republic of Nigeria (2020), Adole v. Federal Republic of Nigeria (2022), and Federal Republic of Nigeria v. Efenyumi (2026). The article distinguishes between the lawful objective of bail, that is, to secure the attendance of the accused, while the accused remains presumed innocent against pre-trial punishment. It finds that a condition which cannot reasonably be fulfilled is a constructive refusal of bail and makes liberty contingent on wealth or public office. Appellate courts have already supplied a workable standard: fix the quantum to the defendant's circumstances; require a resident surety who knows the accused; treat public office as evidence of stability, not a closed class; and verify landed security at the local registry rather than in a luxury district. Applying that standard would reduce remand congestion and restore the presumption of innocence in High Court practice.

Keywords: Bail, Administration of Criminal Justice Act, Presumption of Innocence, Sureties, High Court, Nigeria

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1. INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides for the exercise of power by the three arms of government: the Legislature, the Executive, and the Judiciary. The cardinal responsibility of the Judiciary is to see that justice is done between the parties before it through a pronouncement on the guilt or otherwise of a person and to impose punishments for any breach of the law of the land (section 6(6)). However, in the administration of the criminal justice system, the pivotal principle is that an accused person is innocent till proved guilty by a competent court of law. The safeguards are further provided in section 36 of the Constitution. It is the objective of the Constitution that no person shall be convicted of a criminal offence unless that offence is defined and the penalty thereof is prescribed in a written law.

The Nigerian criminal justice system is defined as a system of institutions and practices whose primary focus is to mitigate and deter crime, uphold social control, and sanction individuals who violate the laws of a specific State, with rehabilitation in view. The court is the enforcement backbone, with proactive oversight to protect inmates, deriving its inherent power from sections 230–259 of the Constitution. Apart from the 1999 Constitution, the Administration of Criminal Justice Act (ACJA) 2015, in section 348, emphasises the importance of courts in trials: *trials shall be held in the High Court on information filed*. The Judiciary, as interpreter and enforcer of the law, plays a pivotal role in operationalising these protections by ensuring that law enforcement and correctional authorities do not infringe on an inmate's rights.

Bail is among the most frequently exercised discretions in Nigerian criminal procedure and among the least consistently disciplined. In Nigeria today, the problem of harsh, excessive, unrealistic, and unattainable bail conditions, which negatively affect the fundamental rights of Inmates has taken front-burner in national discourse. *"Inmates"* under the ACJA 2015 primarily refers to *arrested suspects, accused persons on remand, and convicted prisoners in correctional custodial centres, police detention cells, and other law-enforcement agencies.* The purpose of this article is to restate the governing principles, collect the principal authorities, and extract from the case law a standard against which High Court bail orders can be tested. The inquiry is doctrinal. Trial-court illustrations are used where the certified terms have been publicly reported; appellate citations are preferred wherever a law report exists.

2. MATERIALS AND METHODS

The study employed an exploratory approach to analyse provisions of the Constitution of the Federal Republic of Nigeria 1999, the Administration of Criminal Justice Act 2015, and decided court cases on the use of discretionary powers of courts in granting bail. The study adopted a doctrinal research design. The doctrinal component involved black-letter review of statutory provisions and content analysis of reported decisions to identify gaps in the implementation of the ACJA. Primary materials included the Constitution of 1999, the ACJA 2015, the state Administration of Criminal Justice Laws, and related statutes. These were sourced from official government repositories, legal databases such as the Nigerian Law Pavilion, and scholarly literature like peer-reviewed articles, books, and theses on Nigeria's criminal justice system. A textual and contextual interpretation of the ACJA 2015 provisions on bail was conducted.

3. CONSTITUTIONAL AND STATUTORY FRAMEWORK

The Constitution of the Federal Republic of Nigeria 1999 guarantees personal liberty and the presumption of innocence. The ACJA 2015 and the counterpart Administration of Criminal Justice Laws of the States entitle a person brought before a court to bail and forbid excessive conditions. In practice, especially in corruption, security, and politically salient prosecutions, Federal and State High Courts have developed a

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repertoire of terms that only a narrow class of Nigerians can satisfy. The constitutional provisions guarantee the rights to dignity, personal liberty, fair hearing, and enforcement of fundamental rights. Every inmate is not to be subjected to torture, degrading treatment, or unduly prolonged remand. Section 35(4) of the Constitution guarantees that a suspect arrested or detained must be brought before a court of competent jurisdiction within a reasonable time, and such a suspect is entitled to bail except in a capital offence. The right to bail is reinforced by section 36(5), which provides that every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty (Mohammed, Agbo, Malumfashi, 2025).

To buttress the principle of presumption of innocence, the Court of Appeal in Olowookere & Anor v. The State (2011) LPELR-9108 (CA) stated that:

> …. the provisions of the said section are very clear and unambiguous and require no "aid for their interpretation. By those provisions, an accused person is absolutely presumed to be innocent till the prosecution proves otherwise. It is not the duty of an accused person to prove his innocence. Far from it, the prosecution must establish the guilt of an accused person. See Chianugo v. The State (2002) 2 NWLR (Pt. 750) 225.

Until a competent court convicts, the person remains legally innocent, even if arrested, investigated, or charged. The presumption of innocence is a cornerstone of criminal law and plays a vital role in Nigerian criminal procedure. This right is recognised internationally in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR): everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law (United Nations, 1966).

In Ezeigbo v. ASCO Invest. Ltd. (2022) 8 NWLR (Pt. 1832) 367 at 389, the Supreme Court defined the right to personal liberty to mean:

> freedom and autonomy of movement at will without hindrance or restraint, physical or otherwise, and the right not to be subjected to any wrongful restraint, arrest or any other physical confinement, whether in an enclosure or open space, in a manner which does not accord with the law or admit any legal justification. It may also mean freedom to do what a person pleases within the ambit of the law without any hindrance or restraint.

3.1 Statutory architecture of bail under the ACJA

Section 158 of the ACJA 2015 gives statutory expression to pre-trial entitlement to bail. Section 165(1) nevertheless leaves conditions at the discretion of the court: *the conditions for bail in any case shall be at the discretion of the court with due regard to the circumstances of the case and shall not be excessive*. Section 165(2) permits a deposit of money or other security. Section 167 permits sureties sufficient, in the court's opinion, to ensure appearance. Section 167(3) forbids excluding a woman as surety. Nothing in the Act authorises a closed class of public officers, a named luxury neighbourhood, or a cash figure divorced from the defendant's means. State ACJLs contain equivalent language. The statutory command is therefore uniform: discretion exists; excess does not (Okorie, 2025).

In criminal proceedings, bail is categorised into three types. One, bail where a suspect is charged with a capital offence; two, bail where a defendant is charged with an offence exceeding three years' imprisonment; and three, bail where a defendant is charged with an offence not exceeding three years' imprisonment. Where a suspect is charged with a capital offence, the window is narrowed. It is only in an "exceptional circumstance" that a suspect is granted bail. Section 161 defines 'exceptional circumstance'

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to include ill health confirmed by a qualified medical practitioner employed in a government hospital; extraordinary delay in investigation, arraignment, and prosecution exceeding one year; or any other reason that the judge may consider exceptional in his opinion.

Section 162 of the ACJA is emphatic in granting bail. An inmate whose sentencing, upon conviction, would exceed three years is entitled to bail except where there is a risk of flight, commission of another offence, interference in investigation or intimidation of witnesses, destruction of evidence, or undermining of the functioning of the criminal justice administration. Inmates whose sentencing would not exceed three years are equally entitled unless the court sees reasons to the contrary. There is therefore a presumption of bail for all offences, even in capital offences under the exceptional circumstances outlined in section 161(1)(2). No doubt, section 165 of the ACJA emphasises that bail conditions must be reasonable and not excessive, aimed at ensuring the accused's appearance at trial rather than punishing the accused person pre-conviction. In summary, while courts have legitimate interests in ensuring suspects appear for trial, harsh or unattainable conditions systematically infringe the fundamental rights captured in sections 35 and 36(5) of the 1999 Constitution. In Ogede v. Federal Republic of Nigeria (2018) LPELR-46316 (CA), the Court of Appeal affirmed that the trial court has no discretion to refuse bail when the accused is charged with an offence punishable with imprisonment exceeding three years unless the circumstances in section 162(a) to (f) are shown to exist. A court is bound to grant bail.

4. THE OBJECT OF BAIL

The Supreme Court in Suleman v. Commissioner of Police (2008) described bail as contractual. The accused is released from the custody of the law and entrusted to appear. Attendance has been called the cynosure of all the criteria and the centre-piece. The freedom is temporary. It ends on conviction or acquittal. In similar vein, Dokubo-Asari v. Federal Republic of Nigeria (2007) and later decisions restated the dual purpose: to preserve the liberty of a person still presumed innocent, and to secure presence at trial. Bail does not terminate the criminal process. 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. It has been a recurring statement that the issue of bail, its grant, and fixing of conditions are entirely at the discretion of the trial court (Sharma, 2025).

Despite various judicial decisions, the challenge associated with the discharge of the discretionary powers of courts in granting bail continues to infringe the fundamental rights of inmates, resulting in overcrowded custodial centres with attendant health, social, and cultural consequences. In principle, bail serves as a bridge between liberty and accountability. Courts are expected to consider factors such as the nature of the offence, the accused's character, community ties, and flight risk. The goal is to reduce pre-trial detention, alleviate prison overcrowding, and uphold the constitutional right to liberty under section 35. Nevertheless, judicial discretion has increasingly veered toward overly burdensome requirements.

5. DISCRETION AND THE CRITERIA FOR GRANT OR REFUSAL

The grant of bail pending trial is discretionary (Alaya v. State (2007). The familiar criteria are the nature and gravity of the offence, the strength of the evidence, the likelihood of attendance, the risk of further offending or interference with witnesses, and antecedents (Suleiman v. C.O.P Plateau State, 2008). In capital cases, exceptional circumstances are required under section 161 of the ACJA 2015. Discretion must nonetheless be exercised judicially and judiciously. Appellate courts intervene when it is not (Adole v. Federal Republic of Nigeria, 2022). Where the offence is bailable, the prosecution bears the onus of showing why bail should be refused or why extreme terms are necessary. A large sum in the charge sheet is not, without more, such a showing. Inability to perfect administrative bail does not authorise detention

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beyond the constitutional window.

6. HIGH COURT PRACTICE UNDER REVIEW

6.1 Federal High Court

Published orders illustrate the pattern. In Federal Republic of Nigeria v. Sowore (2019), bail was ₦100 million with two sureties resident in Abuja who owned landed assets worth the bond and had to deposit original titles. In Federal Republic of Nigeria v. Bello (2024), the figure was ₦500 million, two Abuja property-owning sureties, verification by the deputy chief registrar, affidavits of means, passport photographs, surrender of the international passport, and a travel restriction. In Federal Republic of Nigeria v. El-Rufai (2026), ₦100 million was coupled with a surety resident in Maitama or Asokoro, original certificate of occupancy, a federal officer not below Grade Level 17, three months' bank-authenticated salary, tax clearance, departmental verification, and monthly reporting to the Department of State Services. In Federal Republic of Nigeria v. Olawoleogede (2024), ₦100 million required three sureties, two of them serving directors in the Federal or Lagos State Government. These are trial rulings, often unreported in the law reports. Their legal significance lies in the appellate responses they provoke.

6.2 State and Federal Capital Territory High Courts

State courts have not been uniformly milder. State v. Dogogo (2022) required ₦20 million and a Rivers indigene owning Port Harcourt property of like value. Anambra High Court in State v. Ezenagu (2026) fixed ₦50 million, deposit of the defendant's own title (forfeitable on absconding), and a restriction on press interviews. Ajai v. Commissioner of Police (2022) records a Yobe sequence that began with ₦50 million and two permanent secretaries and ended with cash deposits into an interest-yielding account. The Federal Capital Territory High Court in Commissioner of Police v. Abubakar (2024) granted ₦10 million each with two sureties, one depositing Abuja titles said to be worth ₦120 million.

There is a counter-tradition. Ogunsola v. State of Lagos (2016) imposed ₦200,000, two Lagos-resident property-owning sureties, and registry verification. Commissioner of Police v. Alhassan (2022) used ₦5 million and one respectable resident surety. Federal Republic of Nigeria v. Shitu Ahmed Tata & Or (2018) in an FCT High Court granted bail in the sum of N20 million with two sureties in the like sum, sureties must be blood relations of the 1st Defendant and not less than Grade Level 14 and above within the Federal Capital Territory, Sureties must have landed property within the Court jurisdiction and the legal title document (Certificate of Occupancy) fully verified, and that the 1st Defendant will never leave the protective border of Federal Capital Territory with no permission of the Court. Those orders show that the same statutory discretion can be exercised without constructing a private oligarchy of eligible sureties.

7. APPELLATE CORRECTION OF SPECIFIC TERMS

7.1 The civil-servant surety

In frowning at the habit of using public servants as sureties, the Court of Appeal in Dasuki v. DG, SSS & Ors (2019) LPELR-49182 (CA) rejected the use of public servants as sureties in criminal bail matters. Justice Stephen Adah, JCA (as he then was) expressed grave concern over the growing practice of requiring senior public officers to stand surety for persons facing criminal prosecution:

> *Involving civil servants or public officers in the Public Service of the Federation and the State in the bail of people accused of criminal offences has never been the practice in Nigeria or any part of the civilised world. Expecting a Level 16 Servant to own property worth ₦100,000,000 would run counter to the Public Service Rules and, by extension, the fight against corruption. In this respect, I will act ex*

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> *debito justitiae to ensure that the aspect of involving a serving Public Servant not below the status of Level 16 Officer in either the State or Public Service of the Federation or any of its agencies is removed, and I so order.*

The court substituted ₦100 million with two sureties resident in the jurisdiction who could show ownership of property in the Federal Capital Territory. Nolan v. Federal Republic of Nigeria (2020) applied the same logic to a requirement that the surety be a sitting senator owning developed Maitama property. The bond was reduced from ₦500 million to ₦100 million. Olayiwola v. Federal Republic of Nigeria (2018), cited in Nolan, locates the surety in personal knowledge of the defendant, not in a grade level. Adole v. Federal Republic of Nigeria (2022) is a middle path: public service not below Grade Level 14 was an option, not a closed class, alongside ownership of property in Makurdi or a Benue local government headquarters.

7.2 The cash deposit

Federal Republic of Nigeria v. Efenyumi (2026) is the clearest recent statement on cash. The Federal High Court, Warri, had added a ₦50 million registry deposit. The Court of Appeal, Asaba, set it aside. A demand that an average person cannot meet, the court held, contravenes section 36(5) of the Constitution, punishes before conviction, and makes liberty contingent on wealth. A condition that cannot reasonably be fulfilled is indistinguishable from a refusal. The restored terms were ₦60 million with one surety owning property in Warri or Asaba and a statutory certificate of occupancy verified at the land registry. Section 165(2) of the ACJA therefore authorises security; it does not authorise a figure chosen without regard to means.

7.3 Landed property as proportionate security

Property is not itself unlawful. Samson v. Federal Republic of Nigeria (2020) granted ₦2 million with one surety showing three years' tax payment and occupation of property within the jurisdiction. Ogunsola (2016), Adole (2022), and the restored Efenyumi (2026) order all use verifiable title as a tether to the forum. The vice is the combination of a crushing quantum, a named luxury district, and a public-office qualification that together shrink the pool of lawful sureties to a handful of persons. Nahoms v. Federal Republic of Nigeria (2022), arising from the Maima suretyship, illustrates the other side of the contract: when the principal absconds, the surety's bond is not a metaphor. That is an argument for realistic bonds that can actually be enforced, not for fantastical ones that never leave the page.

8. A WORKABLE STANDARD

The authorities yield a standard that High Courts can apply without waiting for the next appeal. First, identify the object: attendance, not pre-trial incapacitation (Dokubo-Asari v. Federal Republic of Nigeria, 2007; Suleman v. Commissioner of Police, 2008). Second, fix the quantum with regard to the defendant's circumstances, not the headline figure in the charge (ACJA 2015; Federal Republic of Nigeria v. Efenyumi, 2026). Third, require a surety who knows the defendant and is resident in the jurisdiction (Dasuki v. Director-General, State Security, 2019; Nolan v. Federal Republic of Nigeria, 2020; Olayiwola v. Federal Republic of Nigeria, 2018). Public office may be evidence of stability; it may not be a statutory class. Fourth, landed property, if required, should be verifiable at the land registry within the forum. It need not sit in Maitama, Asokoro, Ikoyi, or Banana Island. Fifth, passport surrender, reporting conditions, and affidavits of means are proportionate supplements. Cash deposits require evidence of means. Sixth, if the chosen package cannot be met by a person of the defendant's station, the court has refused bail, and should say so, or change the package.

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9. CONCLUSION

Stringent bail conditions that are unattainable have drastic effects on suspects. Prolonged pre-trial detention leads to prison congestion as inmates who have been granted bail cannot meet conditions such as sureties who are Grade Level 16 or above or civil servants owning properties worth hundreds of millions of naira. The fundamental right to personal liberty guaranteed by section 35 of the Constitution is circumvented through harsh, unrealistic conditions—exorbitant sums and high-ranking civil-servant sureties with valuable property—which keep suspects in detention despite a formal grant of bail. Bail is a mechanism to secure attendance at trial without unnecessary deprivation of liberty. This situation equates to punishment before trial even where the offences committed are bailable.

Excessive bail conditions punish suspects before conviction, contradicting the principle of presumption of innocence until proved guilty, which is a violation of section 36(5) of the Constitution. This creates psychological and socio-economic harm to suspects, families and friends. Unwarranted detention due to inability to meet exorbitant bail conditions causes trauma, loss of livelihood, family disruption, stigma, and health deterioration. The situation forces guilty pleas or weakens cases. The human and systemic costs are profound. Nigeria's prisons are notoriously overcrowded, with a significant portion of inmates being awaiting-trial persons unable to perfect bail. Economically disadvantaged suspects bear the brunt more.

Nigerian bail law is not undertheorised. The Constitution of 1999, the ACJA 2015, and a dense appellate corpus already answer the question that trial courts keep reopening (Okorie, 2025). Bail is a temporary trust designed to produce a defendant at trial. Conditions that only the rich, the politically connected, or a Grade Level 17 officer with a Maitama certificate of occupancy can fulfil convert that trust into a price list.

There is no doubt that the court possesses the discretion to impose stricter conditions in granting bail. The concern is whether the exercise of that discretion should result in conditions so impossible, so debilitating, that the constitutional right to bail becomes largely impracticable and, in fact, illusory. Harsh bail conditions can be seen as an assault on the spirit of liberty and an unreasonable strain on the constitutional right to liberty. When liberty depends on conditions beyond ordinary human reach, bail risks ceasing to be a safeguard and begins to resemble detention by another name. Judicial discretion sits at the heart of the justice system and must not, for whatever reason, be politicised, no matter who is involved. Balancing the rights of the accused against the need to ensure appearance for trial and protect the integrity of the judicial process should be a paramount consideration, and it must also provide an avenue for the accused to defend himself.

In summary, the Judiciary under the ACJA 2015 serves as the bulwark against rights abuses, transforming abstract protections into enforceable realities. At a time when public confidence in institutions is increasingly fragile, the courts must stand as an unassailable symbol of professionalism, integrity, courage, and impartiality anchored on constitutional realities. While courts have discretion in bail matters, harsh or impossible conditions infringe core fundamental rights by perpetuating unjust detention. This is not just a procedural issue but a substantial constitutional violation that appellate courts can and do correct. The law must remain the only influence in the courtroom. No litigant should leave a court believing that power, politics, wealth or connections have prevailed over justice.

10. RECOMMENDATIONS

In addressing harsh bail conditions, multi-pronged action is required.

- First, judicial guidelines and training should be encouraged whereby the National Judicial Council and the Chief Judges of the States of the Federation and the FCT issue clear directives on reasonable bail conditions, emphasising proportionality to the offence and to the defendant's

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means. Appellate judicial decisions should be adhered to by the trial courts.

- Second, legislative review should amend relevant laws to cap surety requirements in line with the Court of Appeal judgment delivered by Adah JCA (as he then was), to promote community-based sureties such as family members and religious leaders, and to introduce non-financial alternatives such as electronic monitoring or regular reporting where feasible.
- Third, higher courts should intervene promptly to review and vary excessive bail conditions in proportion to the offence committed.
- Fourth, investigating agencies should expand the use of administrative bail for minor cases as envisaged in the ACJA, including self-recognizance where appropriate.

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