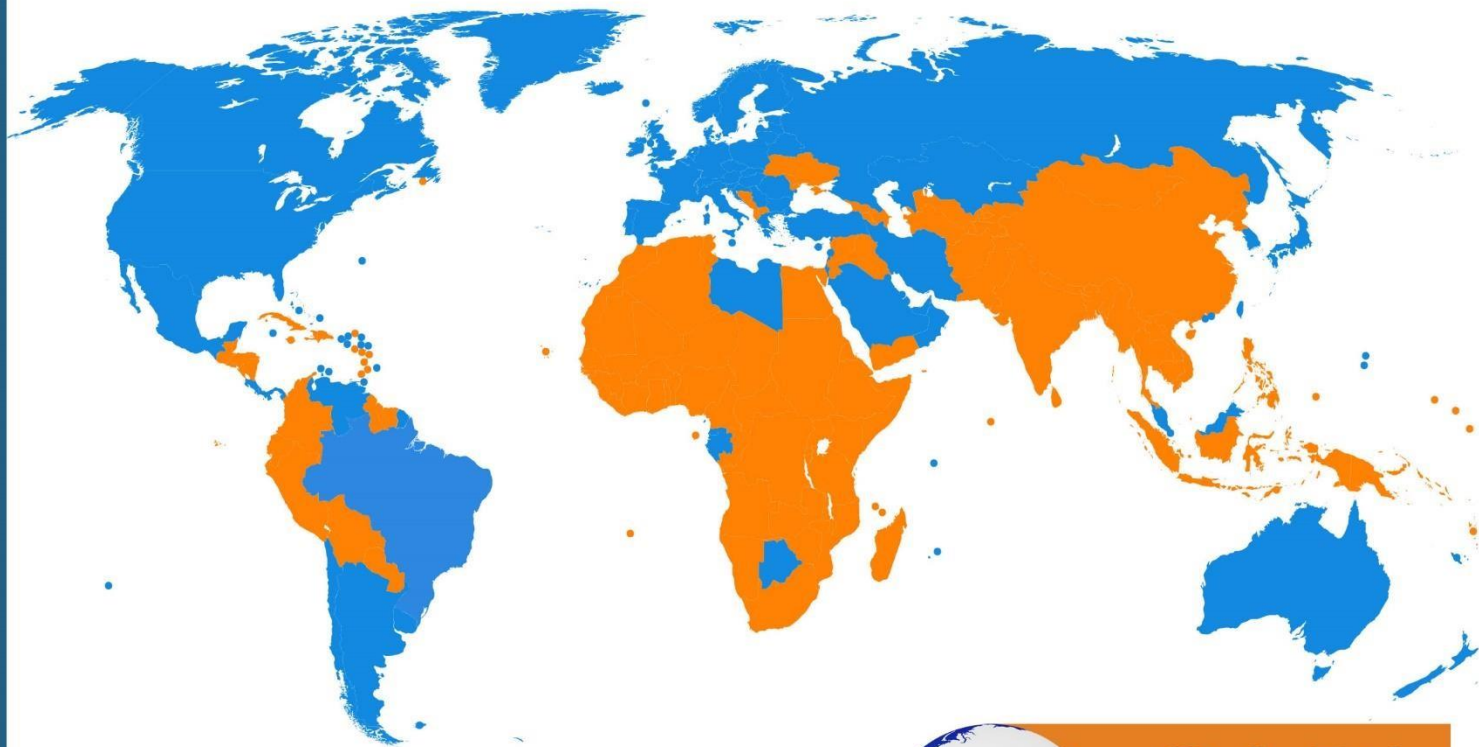


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**COUNTERACTING THE MENACE OF CORRUPTION
OCCASIONED BY POLICE BAIL UNDER THE NIGERIAN
CRIMINAL JUSTICE SYSTEM**

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**COUNTERACTING THE MENACE OF CORRUPTION
OCCASIONED BY POLICE BAIL UNDER THE NIGERIAN
CRIMINAL JUSTICE SYSTEM**

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Abstract

Purpose: This article argues strongly that in Nigeria, the expression ‘bail is free’ is not a reality but only exists in theory and everyday conversation to the point that it has now become both a household expression and a cliché. In reality, though, suspects who are arrested and are supposed to be granted bail when due are denied same ostensibly on the grounds of either not fulfilling the bail conditions or that investigation is still ongoing. The aim of this article, among others, is to proffer solutions to this growing problem of denial of bail on ostensible and unwarranted grounds. More often than not, the efforts of practitioners who visit Police divisions to secure their Client’s bail are frustrated by disgruntled Police officers who insist on the Client parting with a certain amount of money before the grant of bail, thereby leaving the practitioner with the only option of resorting to the Court to secure his Client’s bail. This Paper deals, primarily, with bail by Police under the Nigerian Criminal Justice System and how to tackle the menace of corruption occasioned by Police bail. It x-rays the issues and challenges associated with bail by Police under the Nigerian Criminal Justice and proffers solutions to the challenges Practitioners face in dealing with the menace of extortion by some officers in the process of securing the bail of a suspect in Police custody. It will also identify the greatest challenge to curbing the extortion unleashed on unsuspecting citizens by Police under the Nigerian Criminal Justice System.

Methodology: In discussing and addressing the issues which have been identified in this article with regards to the concept of bail by Police, this article relies on textbooks, judicial authorities, journal articles and internet sources to arrive at a reliable conclusion. The methods used herein are also analytical, descriptive, doctrinal and non-doctrinal approach towards the trending issues addressed in this article.

Results: Instead of the cliché ‘bail is free’ being the case in Nigeria, the opposite is entirely the case. Bail is seen as a commodity that can be purchased from the Police Station and the

amount to be parted with depends on the offence alleged to have been committed. Again, suspects are detained for longer periods of time pending the time his bail is successfully negotiated by his relatives. Police as an Institution is corrupt at an increasingly alarming level and needs a complete overhaul. This problem, of course, is not an impossible to overcome one.

Unique contribution to theory, policy and practice: This article, *inter alia*, has opined that Nigerian Courts have the rarest of privileges in playing a key role in reducing the quantum of corruption occasioned by Police bail in Nigeria. When suspect get speedy access to justice as well as speedy dispensation of same, they are less likely to part with money when detained.

Police disciplinary procedures should be extended not only to officers who have broken monumental police codes but also to those officers who have detained suspects for more than the constitutionally required period; such ones should not only be liable to action in Fundamental Rights but also to Police disciplinary procedure.

Keywords: *Police, Bail, Corruption.*

1.0 INTRODUCTION

The word ‘bail’ has a variety of definitions. Bail is the procedure through which a person accused or being charged for the commission of a crime is released by the constituted power that is detaining him, on the clause that he will come out or report to a police station or court or other known location in the future whenever his attendance is vital or so ordered. The definition of bail has also received judicial *imprimatur*. In this wise, bail was defined as the freeing or setting at liberty one arrested or imprisoned, upon other becoming sureties by recognizance for his appearance at a day and place certainly assigned, he also entering into self-recognizance.¹

Nigerian Legislation is, however, not silent when it comes to the concept of bail. By virtue of the (Administration of Criminal Justice Act, 2015) - an Act which promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crimes, and protection of the rights and interest of the suspect, the defendants and victims in Nigeria – observes that the officer in charge of a police station is obligated to release a suspect on bail on his entering a recognizance², and this recognizance can be with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognizance.³

In this century when it is thought that Police officers in Nigeria will abide by the dictates of the law that forbids the grant of bail being run as a commercial activity – a situation forbidden by the glaring provision of the law on grant of bail by Police – the problem of corruption occasioned by Police bail persists. One would normally think that the attitude of the Court would curb such excesses but it appears that this problem has continued at an alarming rate. One instant where the Court has frowned at this problem -Police abuses of human rights and detention of citizens all in the guise of ‘an ongoing investigation’ - is the case of (*Egenokwu v. A.G. Federation & Anor*, 2013);⁴ in this case, the Applicant was detained at the Police Station for a total period of four (4) days; he subsequently brought this action and sought a declaration that his arrest and detention by the Police was unreasonable, unconstitutional and a grave violation of his Fundamental Right to Liberty as guaranteed under Section 35 of the 1999 Constitution and Article 6 of the African Charter on Human & Peoples Right [Ratification & Enforcement] Act, Cap 10, Laws of the Federation of Nigeria, 2004. In as a speedy and predictable response to the Applicant’s case, the Court held:

“the arrest and detention of the applicant by the 2nd respondent’s officers for a total period of four days at Karimu police station and later at police command area 11, Abuja is unreasonable, unconstitutional and a grave violation of the applicant’s fundamental right to liberty as guaranteed under Section 35 of the 1999 Constitution and Article 6 African Charter On Human & People’s Right [Ratification & Enforcement] Act Cap 10 Laws of the Federation of Nigeria 1990.”

There is no doubt that what has been a continuous clog in the wheel of the enjoyment of the right to personal liberty are unwarranted Police detention and harassment. In fact, it may appear to be a bit acrid with cynicism but it has been pointedly stated that the act of Police arresting and detaining citizens only to release them when they part with money amounts to and is not different from Kidnapping.⁵ (Adebulu, 2019). The difference in such cases – Police arrests and unwarranted detention - being that everyone knows where the Police kept the victim. (Adebulu, 2019). Clearly, Police action acts as a set back to the enjoyment of some of the constitutionally guaranteed rights.

1.1 Police Power of Detention and the Constitutional Guarantee of Personal Liberty

It is difficult for one to talk about the concept of personal liberty under the Nigerian Law without mentioning the Nigerian Constitution which happens to be the *grundnorm*⁶ in the hierarchy of laws in Nigeria. The Constitution, on the issue of personal liberty, provides that every person shall be entitled to his personal liberty and no person shall be deprived of such liberty except in such cases as contained in the Constitution and in accordance with a procedure permitted by law. (The Constitution, 1999)⁷

1.2 The Concept of Personal Liberty

Personal liberty has been judicially defined as the privileges, immunities, or rights enjoyed by prescription or by grant. Personal liberty is not just mere freedom from bodily restraint, but rights to contact, to have an occupation, to acquire knowledge, to marry, have a home, children, to worship, enjoy and have privileges recognized at law for happiness of free men This construction becomes obvious when the two legs of the provisions- the one giving to every person the right to personal liberty and the one setting out the circumstances and the manner in which a person’s liberty may be taken away- are read together.⁸ (Ogbu, 2013)

The right to personal liberty guaranteed under the Constitution of the Federal Republic of Nigeria is so pervasive that it is extended not only of Nigerian citizens but also to aliens.⁹ This

is because the right to personal liberty is one of the most central human rights as it is connected to the essentialist rudiments of an individual's physical freedom. The right to liberty requires that the arrest or detention of an individual must be in accordance with the law. The right therefore protects the individual against the excesses of the government and its agents. Yinka (2017) has rightly stated that the right to personal liberty is essentially a personal freedom in which no government can abridge.¹⁰

The right to personal liberty is however not absolute; but the heart of the issue in our Criminal Justice System that is worth paying attention to is whether, within the ambit of the law which allows citizens to enjoy the right to personal liberty, the law enforcement agents – in this case the Police – curtail, hinder or infringe on the said enjoyment in the guise of exercising their powers of arrest, detention and bail under the law. It is submitted that the full weight of authority lies in balancing the powers to detain, release when appropriate and the rights guaranteed under the Constitution to persons to enjoy moving from one place to another. This indeed is where the *lacuna* continues to present and assert itself, especially when the issue of Police bail is involved.

2.0 LITERATURE REVIEW

2.1 Nigerian Police and the Effective Administration of Enabling Legislation

The power a Police officer exercises in effecting the arrest of a suspected offender does not come out of the blue. It is given by Statute or Legislation. (Police Act, LFN, 2004) on the issue of release on bail of a suspect arrested without warrant¹¹, provides thus:

“...In addition to the powers of arrest without warrant conferred upon a police officer by section 10 of the Criminal Procedure Act, it shall be lawful for any police officer and any person whom he may call to his assistance, to arrest without warrant in the following cases- (a) any person whom he finds committing any felony, misdemeanour or simple offence, or whom he reasonably suspects of having committed or of being about to commit any felony, misdemeanour or breach of the peace; (b) any person whom any other person charges with having committed a felony or misdemeanour; (c) any person whom any other person- (i) suspects of having committed a felony or misdemeanour; or (ii) charges with having committed a simple offence, if such other person is willing to accompany the police officer to the police station and to enter into a recognisance to prosecute such charge”

By virtue of the (Criminal Procedure Act, LFN, 2004)¹² - mention of which has been made in the Police Act cited above - any police officer is permitted to arrest without warrant any person whom he suspects upon reasonable grounds of having committed an indictable offence against a Federal law or against the law of any State or against the law of any other State, unless the written law creating the offence provides that the offender cannot be arrested without a warrant; any person who commits any offence in the presence of the Police Officer, any person who obstructs him while in the execution of his duty, or who has escaped or attempts to escape from lawful custody; any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing, any person whom he suspects upon reasonable grounds of being a deserter from any of the armed forces of Nigeria, any person whom he suspects upon reasonable grounds of having been concerned in any act committed at any place out of Nigeria which, if committed in Nigeria, would have been punishable as an offence, and for which he is, under any enactment in force in Nigeria, liable to be apprehended and detained in Nigeria; The list of instances under which a Police officer can effect an arrest continues under the Criminal Procedure Act and includes but is not limited to a situation where the police officer has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in the State and also the officer can arrest any person who has no ostensible means of subsistence and who cannot give a satisfactory account of himself and any person found in the State taking precautions to conceal his presence in circumstances which afford reason to believe that he is taking such precautions with a view to committing an offence which is a felony or misdemeanor.(Criminal Procedure Act)

The law also provides that arrest without warrant is not the same as arrest with warrant. Therefore, the provisions of the Police Act cited above on arrest without warrant shall not apply to any offence with respect to which it is provided that any offender may not be arrested without warrant. (Criminal Procedure Act). Nevertheless, the authority given to a police officer to arrest a person who commits an offence in his presence shall be exercisable in respect of offences committed in such officer's presence notwithstanding that the written law creating the offence provides that the offender cannot be arrested without warrant. (Criminal Procedure Act) Subsequent upon the issue of arrest being satisfied and the suspect arrested, what is left to be addressed by the officer concerned is the determination of the extension of bail to the suspect who is in the custody of the Police. The law appears not to be silent on this stage of the Police

activity in the apprehension of offenders. On this issue, the law provides that when a person is arrested without a warrant, he shall be taken before a magistrate who has jurisdiction with respect to the offence with which he is charged or is empowered to deal with him under section 484 of the Criminal Procedure Act as soon as practicable after he is taken into custody.(Police Act)

The provision of the above section has a proviso that appears to confer upon a police officer who has arrested a person some measure of authority or power over what happens to a suspect's personal liberty, for at least, a reasonable amount of time. According to the relevant section cited above, the Proviso goes thus:

“...Provided that any police officer for the time being in charge of a police station may inquire into the case and- (a) except when the case appears to such officer to be of a serious nature, may release such person upon his entering into a recognisance, with or without sureties, for a reasonable amount to appear before a magistrate at the day, time and place (b) if it appears to such officer that such inquiry cannot be completed forthwith, may release such person on his entering into a recognisance, with or without sureties for a reasonable amount, to appear at such police station and at such times as are named in the recognisance, unless he previously receives notice in writing from the superior police officer in charge of that police station that his attendance is not required, and any such bond may be enforced as if it were a recognisance conditional for the appearance of the said person before a magistrate.”(Police Act)

2.2 Nigerian Courts and the Exercise of Police Powers under the Police Act

The operative words in section 27 of the Police Act are that ‘the suspect shall be taken to a magistrate who has jurisdiction over the offence with which the offender is charged’ and that shall be done within a ‘reasonable amount of time.’ This provision, along with similar provisions of such nature in other legislations has been abused by some disgruntled officers all in the name of applying the provision of the Police Act empowering them to detain and arraign a suspect within a reasonable time. Little wonder, the section has been consistently attacked judicially by the Courts. In this vein, it has been held that where a person is arrested or detained for allegedly committing an offence, the police is under a duty to bring him before a Court within the period of one or two days notwithstanding the provision of any other law to the contrary. The Court therefore declared sections 17 and 27 of the Criminal Procedure Act and

Police Act respectively unconstitutional as it breaches section 35 of the 1999 Constitution which stipulates that an accused person should be brought to Court within a reasonable time which it defines as one or two days depending on the distance of the Court within 40 kilometers of the place of arrest and detention.¹³

On the issue of Jurisdiction, it has become a common style of practice in the police investigation and prosecution of matters for suspect to be hastily arraigned before a magistrate who has no Jurisdiction to handle the offences in respect of which the Accused person is charged, culminating in what is generally known as a ‘holding charge’ – a situation whereby an accused person is brought and arraigned before a court having no jurisdiction to deal with the offence in question - whereby the accused is remanded indefinitely in prison custody pending the outcome of a purported investigation by the Police or arraignment before a competent Court with Jurisdiction. In a decided case,¹⁴ the Court, while considering a case of protracted detention occasioned by the mephitic ‘holding charge’, held thus:

“...As it is palpable that the appellant in the instant case up till 8th March, 1993 when he was granted bail by this court was still being detained under what is called a purported ‘holding charge’ without any information filed against him before any lower court, I hold that this act constituted improper use of power or flagrant abuse of power by the police for which they stand condemned. This particular abuse of power is all the more condemnable when it is known that there have not been exhibited proofs of witnesses evidence evidencing police desire to prosecute the appellant placed before the trial court...”

It is submitted that another way of looking at the above cited section 27 of the Police Act is that it gives the Police to much leeway or latitude in deciding whether or not to take the suspect before a Magistrate. The test espoused in the relevant section is a subjective one and not an objective one. This can therefore give way to corruption in the administration by officers of cases where it is clear that a certain course of action ought to be taken but the particular officer concerned thinks otherwise. Umar (2018) opines that it is at the stage of arraignment before a Court that the ‘Nigerian factor’ comes into the fabrics of dispensation of Justice.¹⁵

2.3 Bail and its Practicability Under the auspices of Police Powers in Nigeria

This issue or factor is also worthy of consideration given the fact that under our criminal justice system, bail by Police is recognized. According to the Constitution (1999) it is trite law that

bail is a guaranteed right of a suspect and is attached to the fixed and time-tested principle of law that a person is presumed innocent until such one is proved guilty. According to Umar, this position seems to be disenchanted as issue of grant of bail by the Police became one of the opportunities in which policemen demand money from the suspects or their relatives, and more often than not their lawyers before they could secure the suspect's personal liberty.

It is not by coincidence that the law conferred power on the police to grant bail pending investigation or pending arraignment. Umar also observed that the rationale behind giving such power to them is to ensure that if the suspect is granted bail, he will be made available at any time he is required in the course of the investigation or trial. Except the offence or offences are capital in nature, the police under the law is empowered to grant bail to the suspect or otherwise take him to court within a reasonable period of time (the Constitution, 1999)

It is submitted that the Police has been lawfully empowered to grant bail to suspect. Nevertheless, in the exercise of such powers, there is wanton abuse of power and corruption unleashed upon unsuspecting victims who happen to be relatives or friends of the suspect in detention. Many a times, these ones are put under immense pressure to salvage the suspect from the palpitating and excruciating environment under which the suspect would normally in the usual course of event find himself when in Police custody. The situation will be so overreaching that the party at the receiving end of the entire saga – suspect or his relative – will have no option but to part with money. This brazen conduct is condemnable.

It is true that in most cities in Nigeria, the rate of police bail varies from division to division; sometimes the rate at which bail will be fixed depends on the nature and gravity of the alleged offence or offences. The minimum amount Police could receive ranges from the bargaining power of the suspect. Sometimes they have to bargain with the suspect and his capacity to pay high would cause him to stand the better opportunity to be released on bail. According to Umar, if the complaint is that of liquidated money which the complainant gave to the suspect in the course of any contractual obligations, police turns that to criminal case vide criminal breach of trust and cheating and that requires the suspect to bail himself with huge amount of money and further expect a share from the complainant out of the money, the subject matter of the complaint.

These unholy and illegal practices take place even where notices are conspicuously written and pasted at the police station that 'bail is free'. To deceive the public, in some police stations the expression 'bail is free' is written boldly in vernacular and that gives an impression to the

public that bail is granted free in the police stations. Should a suspect or his relations insist on being released or releasing the relation free, such a suspect stand the risk of spending more time than is necessary as police will implore one delay tactics or the other, resulting in the suspect spending more days in detention; of course, the preconceived motive for this is to compel him to pay and have his freedom. The usual excuse could be lack of bail forms, absence of the approving officers, that investigation is still going on or that some of the suspects are still at large. However, according to Umar, in Nigerian fashion, as soon as the suspect or his relations comply with the demand, these contrived and well-oiled justifications disappear or pale into insignificance and bail is immediately granted

Bulusson (2018) posits that in our police stations, monies are not deposited as security for the release of a suspect, but rather monies are paid as a condition to release a suspect in detention, it is like a fee paid to secure the release of a suspect, irrespective of whether there is a reliable surety or not and this is wrong.¹⁶

2.4 Nigerian Criminal Justice System and the Menace of Corruption

Corruption is a vice that has plagued deep into the flesh of many nations of the world. It is a tumor which is tortuously laced into the stuffs of the African society as it cuts across political, economic, social, and other spheres of life, affecting the old and young; male and female¹⁷ (Bandawa, 2014). It is submitted that Nigeria, in Microcosm, is affected and corruption has eaten deep into the fabrics of the Nigerian Criminal Justice System. For instance, (Lawal, 2005) posited that our judicial officers engage in various forms of corruption like bribe taking, gratification, granting of injunction against the principle governing the grant, assumption of jurisdiction where there is none, tampering with exhibits, succumbing to peer influence from peers and superiors, making derisive comment about litigants and their counsel and general abuse of judicial immunity.¹⁸

Little wonder, according to Francis and Abbas, (2017) a report was released, which report tagged Police officers, Judges and prosecutors as the most corrupt public officials in Nigeria. The 2017 National corruption Survey revealed that 46.4 percent of Nigerian Citizens have had bribery contact with police officers, 33 percent with prosecutors and 31.5 percent with judges/Magistrates.¹⁹ Corruption, which is the abuse of public office for private gains, when it flourishes in a Country, the devastating effects abound and they are: few are unjustly enriched at the expense of the majority thereby giving rise to poverty; respect for rule of law is discarded and political instability is imminent; depletion of national wealth, social inequality which may give rise to unhealthy competition; reduction in the level of productivity and quality of goods

and services; reduction in the level of foreign investment, bad international image, among others.(Bandawa, 2014)

2.5 The Influence of Corruption on the Administration of Criminal Justice in Nigeria

When it comes to the Nigeria Criminal Justice System, corruption, within its auspices, is endemic. It is prevalent not only among judicial officers, but is equally common among Court registrars who will seize any opportunity to extort money from both lawyers and litigants to perform their normal duties. In most instances, according to (Nwosu, 2018) they even engage in illegal activities in exchange for financial considerations to pervert the course of justice either at their own instance, or upon the inducement of lawyers and litigants who now know that such practices are both prevalent and routine.²⁰

This condemnable act compromises as well as jeopardizes not just the administration of justice, but by extension National development and growth. The activities of corrupt judicial officers not only erode the existing moral values of society but destroy the very foundation of the rule of law and justice thereby distorting the positive trend of national planning while obliterating integrity and discipline which are basic foundations of the judicial arm of government. (Nwosu, 2018)

When we narrow this deplorable situation down to the handing down of Police duties in Nigeria, we come to see that there is widespread corruption within the force; those in the leadership positions are not innocent of this misbehavior. The manner in which the junior police officers carry out their duties suggests that they are not accountable to any authority. Beyond public extortion of money from the motorists, another form of corruption common among the police is illegal bail charges. In some cases of arrest that do not require bail charges, the police will not allow the suspect to leave without paying. The amount paid differs from offence to offence and is based on the social status of the suspect. If unable to pay, the suspect will remain in the police station for as long as possible. Illegal arrest and detention without trial are regarded as violations of fundamental rights pertaining to personal liberty and to human dignity.²¹ (Ibrahim, 2019)

3.0 CONCLUSION

There is no gainsaying the fact that from the research conducted thus far, there is indeed corruption occasioned by Police bail under the Nigerian Criminal Justice System. Each day, citizens continue to meet with scenarios at Police divisions that constantly rob them of their hard-earned money. They are supposedly happy to part with such money because these ones

prefer life outside Police cell to few minutes in Police Cell. Nevertheless, it is submitted that this is not an impossible to overcome problem. If certain core areas in the Nigerian Criminal Justice system are addressed, we are sure to reduce the level of corruption occasioned by Police bail in Nigeria.

4.0 RECOMMENDATION

The following steps are recommended:

- i. Strengthening the Nigerian Court system in terms of speedy dispensation of Justice; Courts should be equipped both in terms of manpower and modern facilities to the extent that a simple Application for bail should be heard and determined within 48hours. This is because if a suspect in police custody is doubly sure that his lawyer can go to Court and obtain or get a ruling one way or the other on a bail Application on his behalf within a short period of time, such person is unlikely to prefer the option of parting with money in order to be quickly given bail at the Police station.
- ii. When bail must of necessity be granted by the Police under the law, such process should be carefully overseen and administered by a superior officer in charge of the Police division involved, which officer would have really been accessed to be a person of integrity to ensure that the expression ‘bail is free’ is not just a household term but indeed a reality. As a corollary to this point, the process of the grant of bail to suspect at the Police Station should be made as transparent as possible and not a clandestine activity. Bail process should also be overseen by a third party, preferably a Human Rights Organization who would follow the entire process and ensure transparency.
- iii. Citizens who have been in one way or the other extorted in the process of bail by Police should be encouraged to boldly come out and report such erring officers to the relevant authorities who would not pay leap service to such complaint but would set a good example in disciplining the erring officer(s) in question. If victims of extortion at Police station persist in filing their complaint on the issue of extortion at the Police station, such persistent complaint would go a long way in reducing the incident of extortion occasioned by Police bail.
- iv. Police accountability should be strengthened as never before. It is suggested that any Investigating Police Officer who holds an accused in his custody or Police Custody for more than the constitutionally required period of time should be made to face not only

a fundamental right proceeding in Court but a disciplinary action by the Police authority.

- v. A system ought to be put in place which will ensure that Police officers do not handle civil matters in any guise. So far this has only been achieved in theory. In practice, however, virtually every civil case, especially one involving debt, is handled by the Police. To justify the situation, the Police would normally wear the case the cloth of criminality when in reality it is a civil matter. When officers are discouraged from debt collection, it will reduce instances of Police abuses in Nigeria

In conclusion, corruption occasioned by police bail is as old as the Police force itself. Many think that this menace cannot be completely eradicated but minimized. It appears such thoughts concur with the evidence on ground given the fact that, from time immemorial, the fight against corruption occasioned by Police bail has been a continuous one. Nevertheless, such topic has continued to be among the much-talked-about without any head way whatsoever. This reinforces the fact that all hands much be on deck in fighting this menace occasioned by police bail if it must be eradicated completely. It is not a fight that should be left to only a certain group of persons. It is a fight for all and sundry.

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