

TINASHE SHOKO

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 2 DECEMBER 2002

S Mlaudzi for the applicant
H Ushewokunze III for the respondent

Bail Application

CHEDA J: This is a bail application pending trial. Applicant is employed by National Railways of Zimbabwe at Beitbridge and lived with his father. The allegations against him are that he together with his accomplices still at large committed murder sometime in 2001. He is therefore presently on remand for the alleged offence. He was arrested on his way to his parent's home in Mataga, Mberengwa. He has been in custody since 10 July 2002. Accordingly the respondent represented by *Mr Ushewokunze III*, advised that a trial date had not yet been set.

It is trite law that an accused is presumed innocent until proven guilty by a competent court. That presumption is so strong that it should not be easily interfered with as it protects the accused's constitutional right to liberty. In my view there are four considerations which the court must take into account in determining the question of bail pending trial namely:

1. Whether accused will stand trial
2. Whether accused will interfere with state witnesses
3. Whether the accused will commit offences while on bail; and
4. Whether accused's release will jeopardise the proper administration of justice.

The list is not exhaustive as the court ought to consider other additional risk factors which would lead to frustrating the administration of justice. *Mr Ushewokunze* for respondent also argued that applicant should be denied bail for the following reasons:

1. That he is likely to abscond
2. That he is likely to interfere with police investigations
3. That he is facing a serious offence
4. That he is likely to commit more offences.

Generally, these reasons are good and basic reasons for denying a suspect bail pending trial. However, the fact that the offence is serious on its own without proof that applicant is about or has attempted to escape should not automatically warrant applicant's deprivation of his liberty which is his fundamental right. The fact that accused is facing a serious offence is not reason enough to deny a suspect bail, see *S v Hussey* 1991(2) ZLR 187 (SC). To subscribe to this reasoning will not ensure justice at all.

The state also argued that the police are yet to apprehend the other suspects. Surely, does it therefore mean that in the event of the police failing to apprehend the said suspects, applicant will then be held in custody as an incentive for their surrender? This can not be proper and should not be allowed in the circumstances.

In my view, the circumstances surrounding the commission of this offence and the manner and stage in which the investigations are at, namely that the police are yet to arrest the other suspects, cannot justify applicant's continuous incarceration more particularly when the police through respondent are not in a position to say when the investigations will be finalised.

Respondent seems to have placed reliance on an affidavit by the investigating officer one Johann Chigweshe, who stated on paragraph 9 of his affidavit attached to the respondent's response:-

“Due to the reasons stated above, I am strongly opposing bail to the accused persons. Currently one of the accused persons is still at large and if they are to be granted bail, they are likely to abscond to South Africa and bring another pistol as they did before and commit other offences. I am of the opinion that the accused persons' bail be opposed.”

With all due respect to conclude that applicant will go back to South Africa to obtain another pistol and use it in Zimbabwe is absurd to say the least. There are no facts before me which can lead to this conclusion and as such this reasoning is rejected as it is bereft of any merit.

Applicant is accordingly granted bail on the following grounds:

1. That he pays cash deposit in the sum of \$10 000,00
2. That he resides with his mother at Mataga Growth Point in Mberengwa
3. That he reports once every two weeks on Mondays between the hours of 08.00 and 16.00 hours to the police at Mataga.

Samp Mlaudzi & Partners applicant's legal practitioners
Attorney-General's Office respondent's legal practitioners