

TRUST MAWIRE**Versus****THE STATE**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 11 FEBRUARY & 2 MARCH 2020

Bail Application

K. Ngwenya for the applicant
T. Muduma for the respondent

MAKONESE J: The applicant is a Sergeant in the Zimbabwe Republic Police. He is based at Beitbridge. He is facing allegations of theft of a motor vehicle as defined in section 113 of the Criminal Law (Codification and Reform) Act (Chapter 9:23). Applicant denies the charge. He has approached this court seeking bail pending trial. The state is opposed to the application.

The brief facts surrounding this case are that on the 14th September 2019 the applicant in the company of other police details recovered a silver Range Rover motor vehicle bearing South African registration number HBR 529 MP near Chicago Business Centre, Beitbridge. It is alleged that the motor vehicle was suspected to have been smuggled into the country. The vehicle was towed to Zimbabwe Republic Police Beitbridge Impound Yard. It is further alleged that on 30th September 2019 the applicant stole the motor vehicle from the police station and drove it to an unknown destination. The vehicle has not been recovered.

The Investigating Officer in this matter filed a sworn statement wherein he states his reasons for opposing bail. The affidavit reads in part as follows:

“On the 30th of September 2019, at around 1930 hours the accused person brought a road recovery vehicle and towed the silver grey Range Rover out of Beitbridge Police complex.

He misrepresented to Itai Muna, a police officer who was guarding the Beitbridge Police complex that the release of the vehicle was authorized by the Officer In Charge, Beitbridge Urban. The accused person endorsed an entry in the Beitbridge Police complex main entrance occurrence book with false references to support his claim.

I therefore oppose the granting of bail to the accused person on the following grounds:

- (a) Accused person may run away considering the gravity of the offence and the value involved.*
- (b) There are witnesses that saw the accused person removing the vehicle from the Beitbridge Police complex on 30 September 2019. The accused is senior to the police witness and may interfere with the witness/ testimony.*
- (c) The motor vehicle in question has not been recovered yet. His unlimited freedom may further complicate efforts being put in recovering the vehicle.”*

The two principal grounds for opposing the granting of bail are these:

- (a) Applicant is likely to abscond
- (b) Applicant is likely to interfere with state witnesses

Applicant is awaiting trial on the allegations levelled against him. It is trite that the seriousness of an offence is not on its own a ground for opposing the granting of bail. In terms of section 70 (1) (a) of the Constitution of Zimbabwe (Amendment No. 20) 2013 it is provided that any person accused of an offence has the right to be presumed innocent until proven guilty. The state alleges that the accused may abscond due to the serious nature of the charges. It is averred that the applicant may run away because of the seriousness of the offence and the sum involved. Whilst the grounds may appear sound on the face of it, there is no indication by the state that the applicant has shown an inclination to flee and abscond. No facts have been placed before the court to show that if granted bail, the applicant may indeed abscond. In his bail statement, the applicant contends that he has every intention to stand trial. He avers that he has no knowledge of the alleged theft and took no part in the removal of the vehicle from the ZRP Impound Yard. He suggests that his name has been merely been associated with the vehicle and this offence by virtue of his involvement in its recovery. The state further alleges that if granted bail, applicant’s unlimited freedom may further complicate efforts being put in recovering the

vehicle. It is noted that a period of almost five months has elapsed from applicant's arrest in September 2019. I have no doubt that from the time the applicant was arrested the state has had more than ample time to prepare its case for trial and secure the attendance of its witnesses. Our criminal justice system would certainly fail if persons are kept in remand custody indefinitely pending finalisation of investigations. For the state to simply oppose bail because of the fear of abscondment without any basis for taking such a position is clearly not acceptable.

Section 116 (7) of the Criminal Procedure and Evidence Act (Chapter 9:07) sets out the principles that ought to be considered in applications of this nature. These include whether the applicant would not stand trial, whether the applicant would not interfere with the evidence against him and whether he may commit other offences whilst on bail. In section 50 (1)(a) of the Constitution of Zimbabwe it is provided that any person who is arrested must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying his continued detention.

In *Makamba v The State* SC-30-04 the principles to be considered in determining whether a person is suitable candidate for bail were considered. These are:

- (a) Whether the applicant will stand trial in due course
- (b) Whether the applicant will interfere with investigations
- (c) Whether the applicant will commit other offences if granted bail
- (d) Other considerations the court may deem good and sufficient.

See also; *S v Biti* 2002 (1) ZLR 115 (H)

From the foregoing, I am satisfied that the applicant is indeed a suitable candidate for bail. The state has not shown that the applicant has shown any inclination to abscond if granted bail. The state had not placed any facts before the court for the assertion that the applicant is likely to interfere with witnesses or evidence if granted bail. In any event, given the time lapse

from the arrest of the applicant, the state must by now have secured its evidence and completed its investigations.

For these reasons, the application for bail pending trial is granted in terms of the Draft Order.

T. J. Mabhikwa & Partners, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners