

JOHN DUBE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 14 AND 21 OCTOBER 2021

Bail Application

B Siansole, for the applicant
K Jaravaza, for the respondent

MAKONESE J: This is an application for bail pending trial. The applicant is facing one count of murder as defined in section 47 (1) (a) of the Criminal Law (Codification and Reform) Act (Chapter 9:23). The applicant denies the allegations and avers that he is a suitable candidate for bail.

The facts giving rise to the charge are set out in a Form 242, Request For Remand. On 20th May 2021 and at around 2230 hours the applicant was in the company of one Tedi, Sga, Knowledge and two others who are at large. Applicant and his colleagues were at Palace Hotel, Bulawayo. They were drinking beer. A dispute arose over a girlfriend. The dispute involved one of the applicant's associates. The deceased was at the centre of this rather acrimonious matter. Deceased person fled the scene with applicant and his friends in hot pursuit. Applicant and his colleagues caught up with the deceased outside Malaicha.Com (Pvt) Ltd, along 10th Avenue/JM Nkomo Street.

The applicant and his associates assaulted the deceased with booted feet, clenched fists and stones leading to his death.

In his bail statement, applicant denies any involvement in the assault. He admits that he was present at the scene but does not define his role in the whole incident. In his oral submissions *Mr Siansole* appearing for the applicant indicated that the applicant did not advise him what role he played in the assault. I indicated to *Mr Siansole* that where the state makes specific allegations against an accused person, it is the duty of a legal practitioner to seek and obtain detailed instructions from the accused. The state alleges that the offence was

committed on the 20th of May 2021. The accused was evading arrest from the time of the commission of the offence. Applicant was arrested in a raid conducted at his residence on the 27th May 2021, some seven days after the offence was committed. Applicant alleges that he never evaded arrest and that he was always at his residence at 11362 Nkulumane, Bulawayo. It is not disputed that accused did not report the assault to the police. Applicant did not surrender himself to the police. The state contends that the strength of the case against the applicant is strong. The applicant was seen by two witnesses chasing and assaulting the deceased. There is further evidence in the form of Closed Circuit Television footage installed at Malaicha.Com (Pvt) Ltd. The applicant was seen in that footage assaulting the deceased. Applicant made indications at the scene after his arrest.

In an application for bail, the court must exercise its discretion to grant, or refuse bail, where there are compelling reasons. An applicant in a bail application must make full disclosure of all material facts surrounding the commission of the offence. Where an applicant deliberately withholds vital information or conceals details that may tend to implicate him, then the court is less likely to exercise its discretion in favour of the applicant. Section 117 subsection (2) (a) of the Criminal Procedure & Evidence Act (Chapter 9:07) provides that the refusal to grant bail and the detention of an accused in custody shall be in the interests of justice where one or more of the following grounds are established:

- (a) Where there is a likelihood that the accused, if he or she were released on bail will:
 - (i) endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule or,
 - (ii) not stand his or her trial or appear to receive sentence or,
 - (iii) attempt to influence or intimidate witnesses or to conceal or destroy evidence or,
 - (iv) undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system;

In considering whether to refuse or grant bail the court must balance the interests of the proper administration of justice and the applicant's personal interests. The seriousness of

the case on its own is not a ground for refusing bail. The strength of the case for the prosecution and the corresponding incentive for the applicant to flee must be assessed on the conduct of the applicant before, during and after the commission of the offence. The applicant went into hiding soon after the commission of the offence and was only arrested after information was relayed to the police on his whereabouts. Applicant in this matter gives the impression that he was an innocent bystander, who took no part in the assault of the deceased. The information before the court indicates that applicant was an active participant in the assault.

Mr Jaravaza, appearing for the state largely abided by his written response to the application for bail. He mentioned that applicant is not a proper candidate for bail.

In *S v Jongwe* SC 62-02, the court indicated that:

“... because the prospects of conviction, and upon conviction the imposition of a long prison term, indeed even the death penalty is real, the temptation for applicant to abscond if granted bail is irresistible.”

The sentiments expressed in above case apply with equal force in the case at hand.

For these reasons, and in the result, the application for bail pending trial is hereby dismissed.

Dube, Mguni & Dube, applicant’s legal practitioners
National Prosecuting Authority, respondent’s legal practitioners