

PROSPER BHULE  
versus THE STATE

IN THE HIGH COURT OF ZIMBABWE  
TAKUVA J  
BULAWAYO, 14 April & 05 October 2023

Bail Application

W Madzikura, for the applicant  
K MNyoni, for the respondent

TAKUVA J: This is an application for bail pending trial. The applicant is facing 14 counts of rape and robbery, 2 counts of rape and one count of attempted rape.

The allegations are that during the period extending from the month of December 2018 to March 2022, the applicant went to several houses in the Western Suburbs of Bulawayo. Applicant's modus operandi was to lure female victims between 14 and 21 years by lying to them that he had been sent by their relatives in South Africa to deliver some groceries. Further, applicant would mention the victim's relatives by name. The groceries were alleged to be in a motor vehicle that had broken down. On all occasions, the applicant would ask the complainants to accompany him to where the vehicle was.

Applicant would use footpaths passing through bushes where he would rape the complainants and rob them of cash, cellphones and other valuables. After diligent surveillance and meticulous intelligence gathering, detectives established that the applicant was planning to visit house No. 730 New Luveve Bulawayo. Detectives waylaid him there and arrested him on 18 March 2022. Upon arrest, he was found in possession of cellphones belonging to some of the complainants. Also clothes and an ear ring belonging to some complainants were found in applicant's possession. The applicant was positively identified by the complainants at an identification parade.

The applicant applied for bail on the grounds that the State has a weak prima facie case in that the identification parade was conducted contrary to the rules and that even if he was identified at the parade this was a mere case of mistaken identity.

The application was opposed by the State on the grounds that the applicant was a flight risk since he is facing 17 very grave offences of which upon conviction he is likely to face very severe penalties. This may induce him to abscond. Further if released on bail, applicant might intimidate the youthful female victims whose addresses he knows. The State has a very strong prima facie case against the applicant.

During the hearing, the applicant through his legal practitioner requested for a postponement to call the Investigating Officer and the Police Officer who conducted the Identification parade. The State agreed to facilitate the calling of these witnesses. The matter was then postponed sine die.

However, after a lengthy delay, the applicant abandoned his request and the court was requested to consider its judgment on the evidence led that far.

In bail applications, the onus is on the applicant to show on a balance of probabilities why it is in the interests of justice that he should be freed on bail. The central question is whether if released on bail a suspect would attend trial. Where there is a risk of abscondment, bail will be refused — See *Jongwe v The State* SC 62-02 where CHIDYAUSIKU CJ (as he then was) said;

"In judging the risk (to abscond) the Court ascribes to the accused the ordinary motives and fears that sway human nature. Accordingly, It is guided by the character of the charges and the penalties which in all probability would be imposed if convicted, the strength of the state case etc." (my emphasis)

In casu, I am guided in the first place by the character of the charges. These are gruesome offences perpetrated upon young women. Complainants were terrorized by applicant who was armed with an okapi knife before they were violently raped and robbed of their valuables. Despite the presumption of innocence, there is a very strong prima facie case against the applicant.

As regards the penalties, it goes without saying that these heinous crimes carry stiff sentences upon conviction which in casu is certain in view of the strong prima facie case. The applicant has no defence at all to the charges. This is not surprising due to the multiplicity of counts and the striking similarity of the modus operandi. In my view, the identification parade notes and photos show beyond any doubt that the parade was lawfully conducted and its admissibility is beyond doubt.

I take the view that there is an increased risk of abscondment in this case. Therefore there are compelling reasons why the applicant should be denied bail.

For these reasons I find that applicant is not a suitable candidate for bail.

In the s It, the application for bail pending trial is hereby dismissed.

Samp Mlaudzi & Partners, applicant's legal practitioners National Prosecuting Authority,  
respondent's legal practitioners

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