

AARON MUSITEYI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 11 and 12 February 2021

Bail Application

F Matinhure, for the applicant
Ms TL Katsiru, for the respondent

MWAYERA J: The applicant was arraigned before the Magistrates Court on a charge of rape as defined in s 65 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. It is alleged that some time in December 2020 the complainant approached the accused's shop to buy a zip. The accused took advantage of being alone with the complainant and forced the complainant to sit on his lap following which he exposed his and her private parts and forcefully inserted his male organ into the complainant's private parts thereby having none consensual sexual intercourse with the complainant.

The applicant has approached this court seeking to be admitted to bail pending trial. In applications of this nature the court has to strike a balance between the right to individual liberty of the applicant and the interest of administration of justice. The right to individual liberty is a constitutionally guaranteed right emanating from the criminal hallmark of the presumption of innocence which operates in favour of applicant until otherwise proven guilty by a competent court of law. See *Altken and Another vs Attorney General* 1992 (1) ZLR 249. As a matter of principle unless there are compelling cogent reasons an applicant ought to be admitted to bail pending trial. On the other hand the interest of administration of justice is equally important as this is derived from the societal interest that an accused should be available and stand trial for the matter to be logically concluded see *State v Ndlovu* 2001 (2) ZLR 261. It is apparent therefore that were there is no threat or prejudice to the administration of justice the court should lean in favour of upholding the right to liberty.

In this case the state is not opposed to bail. It properly conceded to the fact that the seriousness of the offence on its own is not good enough reason for denying the applicant

bail. In the circumstances of this case the state case appears weak considering the delay in making the report of alleged rape, the suggestion that complainant's father implicated the accused, that both complainant and the applicant were medically examined and the complainant had positive results for an STI while the applicant had negative results and finally the alleged demands for payment of damages by complainant's father are factors which speak volumes to the weakness of the state case.

The applicant's explanation and denial of the charge seems supported by the extortionist claims. Considering the weaknesses of the state case it can safely be deduced that the applicant has no basis to succumb to the temptation to flee. There is no likelihood of abscondment neither is there any tangible basis for assuming he will interfere with state witnesses. There is no prejudice which will be occasioned to the administration of justice by admission of the applicant to bail.

This is a case in which upon considering all relevant factors cumulatively there are no compelling reasons militating against admission of applicant to bail. As was observed in *State v Benator* 1985 (2) ZLR 205 H in striking a balance between the individual right to liberty of the applicant and interests of justice the imposition of appropriate bail conditions is deemed decisive.

Accordingly the applicant is admitted to bail on the following conditions:

1. He deposits \$13 000-00 with the Clerk of Court Mutare Magistrates Court.
2. He resides at Musi Village, Chief Zimunya, Mutare until this matter is finalised.
3. He reports at Muromo Police Station once every week on Mondays between 6am and 6pm.
4. He does not interfere with any state witnesses.

Gonese and Ndlovu, Applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners