

JOSPHAT SIBANDA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 18 JANUARY 2022

Bail Application

T. Ncube, for the applicant
T.M Nyathi, for the respondent

MOYO J: This is an application for bail pending trial. The applicant is facing a charge of murder it being alleged that on the 1st of January 2022 he caused the death of Constance Chitete by drowning her in a sewage pond with the intention to kill her or the realization that she may die. The allegations are that the 2 had a misunderstanding and accused then through his actions drowned the deceased in the sewage pond.

At the hearing of the application I dismissed it *ex tempore* and the applicant has since requested for detailed written reasons. Here are the reasons.

The state opposed bail on the grounds that there is a risk to abscond looking at the nature of the charges, the likely penalty and the strong *prima facie* case against the accused. That there are some eyewitnesses who saw the accused person push the deceased into the stream during a misunderstanding and thereby causing her death.

The accused person faces a charge of murder, which in itself is a serious offence, once convicted, he is looking at a lengthy custodial term. The state case is *prima facie* strong in that the applicant was seen by eyewitnesses drowning the deceased following a misunderstanding. Whilst the presumption of innocence operates in applicant's favour at this juncture, it is trite that where the state case is *prima facie* strong, the defence somewhat weak and the state clearly in possession of overwhelming evidence, the probabilities of a conviction followed by a lengthy custodial term is high therefore the risk to abscond similarly increases.

Central to the determination of an application for bail pending trial is the certainty that an applicant to bail once released will attend trial. Where there is a risk to abscond an applicant for bail pending trial will not be granted since that may jeopardise the interests of justice.

In the case of *Jongwe v S* SC 62-02 the Supreme Court held that the risk to abscond can be inferred from human nature where an applicant to bail faces a serious charge with a conviction and a possible lengthy custodial term. The court quoted the case of *Aitken v S* wherein it was stated that:-

“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.”

The Supreme Court further held that in the *Jongwe* case, conviction was a certainty and that there was prospect of a long term of imprisonment, thereby increasing the risk to abscond.

In the case before me, the charge is of murder, which is a serious charge and there are eyewitnesses to the drowning of the deceased by the applicant. The risk to abscond as inferred in the *Jongwe* case (*supra*) equally applies here in my view.

It is for these reasons that I found that applicant is not a suitable candidate for bail and I accordingly dismissed the application.

Dube-Banda, Nzarayapenga & Partners, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners