

**PETER MOYO**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J

BULAWAYO 13 FEBRUARY AND 3 MARCH 2022

**Bail Pending Trial**

Applicant in person  
*B.Gundani* for the respondent

**MAKONESE J:** This is an application for bail pending trial. Applicant is facing a charge of murder in contravention of section 47 (1) (a) of the Criminal Law (Codification and Reform) Act (Chapter 9:23). The Applicant denies the allegations of murder and avers that he is a suitable candidate for bail. The State opposes this application.

The allegations against the applicant are summarised in the Request For Remand Form 242. On the 29th October 2020 applicant was in the company of Ben Sibanda (deceased) and one Robson Ndlovu who is at large. They were drinking alcohol. A dispute arose over applicant's wife. Applicant alleged that the deceased was having an adulterous affair with his wife. The applicant and his co-accused assaulted the deceased by hitting deceased on the head. They led the deceased into the

accused's house where they stabbed him with a knife once on the head and on his right collar bone leading to his death.

The applicant who is not legally represented filed a detailed hand-written bail statement citing sections of the Constitution of Zimbabwe and relevant case law on the aspect of bail. In his bail statement, applicant admits that an argument arose but he denies any involvement in the assault. Applicant states that his co-accused hit the deceased with a stone. He avers that he intended to hit the deceased with a log but was re-primed by his co-accused when he realised that the deceased was bleeding. The physical confrontation stopped and they continued drinking. Applicant states that he left the scene to buy cigarettes. Upon his return, he met his co-accused who advised him that he had stabbed the deceased. Applicant states that he never suspected any danger and on his way he met a friend who diverted his route. Applicant did not report the assault to the police instead he fled to Jambezi where he was arrested on 30<sup>th</sup> October 2021. The accused was evading arrest from the time of the commission of the offence.

The law relating to applications for bail pending trial in this and other jurisdictions is now well traversed and well established. The Constitution of Zimbabwe (Amendment No.20) 2013, in section 50 (1) (d) states that a person who is arrested must be released unconditionally or on reasonable conditions pending bail unless compelling reasons justifying the continued detention. In the case of *S v Moyo* HB-307-17 the court held that this constitutional provision must be balanced with the fundamental principle of the need for the proper administration of justice and assurance that an accused person will indeed avail himself for trial. The central consideration of an application for bail pending trial is the risk of abscondment. See *S v Jongwe* 2002 (2) ZLR 209 (S).

Section 116 of the Criminal Procedure and Evidence Act (Act) empowers the court to admit an applicant to bail pending trial. It is trite that an accused person is presumed innocent until proven

guilty. Section 117 (1) of the Act states that bail is awarded at the discretion of the court where it is satisfied that the release of the applicant will not prejudice or jeopardize the interests of justice.

It is the onus of the State to proffer cogent reasons supported by information justifying why the applicant should not be released on bail. See the case of *S v Hussey* 1991 (2) ZLR 187 (S). *In casu*, the respondent opposes this application on two main grounds:

- (i) that there is a strong prima facie case against the applicant
- (ii) that the applicant has the propensity to abscond because after the commission of the offence he fled from Bulawayo to Jambezi.

In *S v Makamba* SC 30/04 the court listed the primary considerations in a bail application as:-

1. Whether the applicant will stand trial in due course (likelihood to abscond)
2. Whether the applicant will interfere with investigations of the case against him or tamper with prosecution witnesses (likelihood to interfere with witnesses)
3. Whether the applicant will commit other offences while on bail (propensity to commit further offences)
4. Other considerations which the court may consider good and sufficient.

With regards to the likelihood to abscond, it is a fundamental requirement in our law for the proper administration of justice that an accused person should stand trial. If there is an indication that accused person will not stand trial if released on bail, the court will secure the needs of justice by refusing to grant bail. See the case of *S v Fourie* 1973 (1) SA at page 101. There exists a strong possibility that if the accused is given bail pending trial, he is likely to abscond to avoid standing trial. Applicant's accomplice is still at large and the likelihood to interfere with investigations if applicant

is granted bail pending trial is a real possibility, and not a mere possibility. It is not disputed that upon committing the offence accused fled the scene.

Applicant in this matter is facing a very serious offence which attracts a fairly long sentence upon conviction. The possibility of applicant absconding to avoid trial is quite high.

For these reasons, the application for bail pending trial is dismissed.

Applicant in person

*National Prosecuting Authority*, legal practitioners for the respondent