

RODWELL SIBANDA

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
DUBE-BANDA J
BULAWAYO 15 JUNE 2022 & 23 JUNE 2022

Application for bail pending trial

Applicant in person
T. Maduma for the respondent

DUBE-BANDA J:

1. This is an application for bail pending trial. Applicant is being charged with the crime of murder as defined in section 47 (1) of the Criminal Law [Codification and Reform] Act [Chapter 9:23]. It being alleged that he fatally assaulted the (Prince Dube) deceased with a stone leading to his death.
2. In support of his bail application, applicant testified that he is 23 years old. He does odd jobs at the village for a living. He resides at his grandmother's homestead, if released on bail he will not interfere with witnesses and police investigations. He testified that if released on bail he will not abscond and he has never been to South Africa. Applicant said he apologises to the court about what happened, if the court may forgive him as he has suffered in prison awaiting trial. If he is released on bail he will abide by whatever conditions the court may determine.
3. This application is opposed. It is contended that it is not in the interests of justice that applicant be released on bail. It was submitted that the State has a strong *prima facie* case against the applicant, and he has no defence to the charge levelled against him. In the event he is released on bail he will abscond. In support of its opposition the respondent attached an affidavit from a member of the police investigation team. The police aver that if released on bail applicant will interfere with witnesses and that he moves from place to place and in most cases he would be in South Africa.

4. The fundamental principle governing the court's approach to bail applications is to uphold the interests of justice. The court must take into account the factors set out in section 117 of the Criminal Procedure and Evidence Act [Chapter 9:07] and try to strike a balance between the protection of liberty of the individual and the administration of justice. Section 117 says 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: where there is a likelihood that the accused will abscond, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit an offence referred to in the First Schedule; or not stand his or her trial or appear to receive sentence; or attempt to influence or intimidate witnesses or to conceal or destroy evidence; or undermine or jeopardise the objectives or proper functioning of the criminal justice system, including the bail system.

5. In our law persons are presumed innocent until their guilt has been proved. Whenever the interests of justice will not be prejudiced by pre-trial release the courts should lean in favour of liberty and grant release on bail. This is particularly so if the offence in which the accused is being charged is not likely to attract a prison sentence. See: Prof. Feltoe *Magistrates' Handbook* (Revised 2021) 76.

6. This application is opposed on the grounds that if released on bail, the applicants will abscond and not stand their trial. In deciding whether flight is likely and in the absence of concrete evidence of a predisposition to abscond, account must be taken of a number of factors which common experience have shown might influence a person either to stand trial or abscond. See: Prof. Feltoe *Magistrates' Handbook* (Revised 2021) 77. When assessing the risk of an applicant for bail absconding before trial, the court will be guided by the following: the gravity of the charges and the severity of penalties which would be likely to be imposed if convicted; the apparent strength or weakness of the State case; applicant's ability to flee to a foreign country, whether he has contacts in the foreign country who will offer him sanctuary and the absence of extradition facilities in that country; whether he has substantial property holdings in Zimbabwe and his status in Zimbabwe, that might mean

he would lose so much if he absconded that flight is unlikely; whether he has substantial assets abroad; if he was previously released on bail, whether he breached the bail conditions; and the assurance given that he intends to stand trial. See: *S v Jongwe* 2002(2) ZLR 209(S), *S v Chiadwa* 1988(2) ZLR 19 (S), *Aitken & Anor v A-G* 1992(1) ZLR 249 (S).

7. In *casu*, applicant is facing a grave and very serious offence and if convicted he will likely be sentenced to a long prison term. What remains to be considered is the apparent strength or weakness of the State case. According to State papers on the 18th April 2022, the applicant and the deceased were among the people who were celebrating Independence Day at Mbondo Business Centre. At around 2200 hours, accused, deceased and one Nkosilathi Ngwenya started gambling. Deceased won a lot of money. He went a shop to share with Nkosilathi Ngwenya and one Ntandowenkosi Ngwenya. The accused person followed the three and forcible took money from the deceased, but the money was torn into two pieces. Deceased asked accused the reason he was acting in that manner, accused drew a small axe intending to strike deceased. Deceased overpowered him and took the axe. Accused then armed himself with a stone, and started a hunt for the deceased. He then struck deceased once on the head with a stone, deceased became unconscious and fell to the ground. He died on the way to hospital. On these facts and for the purposes of this application I take the view that the State has a strong *prima facie* case against the applicant.

8. On the facts of this case I am of the view that applicant is a flight risk. He is facing a very serious charge of which upon conviction very likely be sentenced to a lengthy term of imprisonment. The temptation for the applicant to abscond if granted bail is real. See: *S v Jongwe* SC 62/2002. Applicant has experienced prison life, *albeit* as a trial awaiting prisoner, he testified that he has suffered in prison. He literally begged the court to release him on bail and indicating that he will be a good person thereafter. I have no confidence that if admitted to bail applicant will wait for his trial. The seriousness of the case and the strong *prima facie* case against him will induce him to abscond. My thinking is once released on bail, he will just abscond. Although he denies that he spend most of his time in South Africa, I believe the police in this regard. The cumulative effect of these facts constitutes a weighty indication that bail should not be granted.

9. Taking all the evidence into consideration and weighing that evidence against the applicants' defence and personal circumstances, together with the submissions made on their behalf, I hold the view that the administration of justice will be prejudiced if the applicant is released on bail.

10. On a conspectus of the facts and all the evidence placed before court, I am of the view that it is not in the interests of justice that applicant be released on bail pending trial.

In the result: the application for bail be and is hereby dismissed and applicant shall remain in custody.

National Prosecuting Authority respondent's legal practitioners