

SOLOMON MANYAMA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 13 and 27 May 2021

Bail Pending Trial

C. N Mukwena, for the applicant
Mrs J Matsikidze, for the respondent

MWAYERA J: The applicant lodged an application for bail pending trial on allegations of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. On 13 April 2021 applicant is alleged to have connived with a co-accused to kill two children. In that after a School Development Committee meeting the applicant took the two children home since they resided in the same area. The applicant met up with the co-accused who was in the bush and killed the two children by inflicting deep cuts in their necks. The applicant and co-accused covered blood stains on the grass with soil and concealed the bodies of the children in an unused blair toilet which was in the bush. The bodies of the children were retrieved after search on 14 April leading to the arrest of the applicant and co-accused. Also recovered was a hoe, and blood stained clothing item t-shirt and trousers of the applicant and co-accused.

The state vehemently opposed bail on the basis that the best interests of justice would not be served if the applicant was admitted to bail. The state counsel *Mrs Matsikidze* argued that the applicant is facing a serious murder charge which appears to be more of a murder for ritual purposes allegedly committed in aggravatory circumstances. The state counsel argued that the circumstances of the murder denote premeditated murder committed in aggravatory circumstances. That when viewed in conjunction with the strength of the state case and the likely sentence in the event of conviction will act as an inducement to abscond. The state argued that the combination of the seriousness nature and prospects of lengthy imprisonment term constituted sufficient basis for the applicant to abscond much to the prejudice of interest of administration of justice. In the case of *S v Jongwe* SC 251/2002 CHIDYAUSIKU CJ (as he then

was) stated that abscondment becomes high where prospects of conviction and lengthy imprisonment are a certainty. The state further entertained fears of interference considering the applicant and deceased family's blood relations. The possibility of direct and indirect interference was real considering the closeness of the witnesses including the witness who observed the applicant with the children on the day the children did not return home.

The applicant in turn argued that he is a suitable candidate for bail. Mr *Mukwena* argued that the applicant denied committing the offence and stressed that the applicant was only apprehended because he confirmed that he saw the children that are now deceased on the day in question. Further that the t-shirt which the police state they recovered is a t-shirt he was wearing on the day in question. Contrary to the state allegation the t-shirt had no blood stains but dirty brownish stain on the hem. The applicant argued that the allegations were speculative just because he had seen the children.

In dealing with an application for bail pending trial the court should always strive to strike a balance between the liberty of the accused person and the interest of justice. In terms of s 50 of our Constitution "Any person who is arrested must be released unconditionally or on reasonable conditions pending charge or trial unless there are compelling reasons justifying the continued detention." See *Munsaka v The State* HB 55/16.

The applicant in this case is jointly charged with a co-accused and both are facing a very serious offence for which if convicted is likely to be visited with a lengthy imprisonment term or life or even capital punishment. It is settled that the seriousness of the offence alone is not good enough reason to deny bail as the presumption of innocence operates in favour of the applicant. The seriousness of the offence of necessity has to be considered cumulatively with other factors such as the nature of allegations, the evidence or strength of the state case and the likely sentence. Section 117 of the Criminal Procedure and Evidence Act [*Chapter 0:07*] is also relevant as it gives guidelines of factors the court dealing with an application for bail pending trial has to consider in deciding whether or not there are compelling reasons justifying the denial of bail. These include among others:

1. Whether the accused if released on bail will endanger the safety of the public or any other person or will commit an offence referred to in the first schedule.
2. Whether the accused will attempt to influence or intimidate witnesses or to conceal or distract evidence.
3. Whether the accused's release will undermine or jeopardise the objective or proper functioning of the criminal justice system inclusive of the bail system.

When all factors are holistically considered it is apparent that the witness who observed the applicant with the now deceased children at a place close to where their bodies were retrieved is the mother of applicant's co-accused. She is also the witness who linked her son as his behaviour on that day was not normal and a blood stained hoe was recovered from her homestead. The evidence linking the applicant with the offence is clear and that boosts the strength of the state case. That together with the serious nature of allegations increase the temptation to flee. It is also a fact that the Zimbabwe Mozambique border is porous. The court will take judicial notice of the fact that Nyanga boundaries to Mozambique are often used to cross to and from Zimbabwe and Mozambique. The state fears of applicant absconding in view of the serious allegations, strength of state case and likely sentence are real.

In this case I am convinced that there are forceful and compelling reasons militating against admission of the applicant to bail. The nature of the murder in this case spell out that admission of the applicants to bail would undermine or jeopardise the objective or proper functions of the criminal justice system inclusive of the bail system.

Upon weighing the right to individual liberty anchored on the presumption of innocence and the interests of administration of justice under pinned on the societal interests to have matters prosecuted to their logical conclusion, admission of applicant to bail would be prejudicial to the interest of justice. The nature and circumstances of this matter considering the strength of the state case speak volumes to it not being in the interests of administration of justice to admit the applicant to bail. There are compelling reasons for continued detention of the applicant.

Accordingly the application for bail pending trial is dismissed.

Chibaya & Partners, applicant's legal practitioners
National Prosecuting Authority, state's legal practitioners