

BONGANI SIBANDA
and
TAKUDZWA CHAKWESHA
and
NASHWELL CHUMA
and
LUCKMORE MACHIPISA
and
PRINCE MABULAWA
and
BLESSED NYIRONGO
and
FARLEY MPHANSI
and
LAZARUS MATARIRO
and
TITUS CHIVHUNA
and
GLADYS CHABUKA
and
FADZAI MUPEDZISI
and
BRENDA MADZIRE

Versus

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 29 & 31 JANUARY 2019

Bail Application

B. Dube & T. Davira for the applicants
Mrs C. Muhwandavaka for the respondent

MAKONESE J: On the 14th January 2019 the country was rocked by demonstrations in most of the major cities in Zimbabwe. The demonstrations were characterized by looting of shops, destruction of property and widespread acts of hooliganism at a scale never seen before. For a period of four days roads into the major cities were barricaded and motorists were forced to abandon their normal routes. Scores of workers stayed in doors in their homes in

a campaign dubbed “Shutdown Zimbabwe”. The applicants are all residents of the City of Gweru. The applicants are facing allegations of contravening section 36 (1) (a) of the Criminal Law (Codification and Reform) Act (Chapter 9:23), that is public violence. The allegations by the state are that the applicants acting in common purpose destructed or endangered the free movement of persons and traffic pursuant to the “National shutdown” protests that were scheduled for the 14th January to 16th January 2019. The specific allegations against the applicants in this matter are that they blocked Mkoba 5 turn-off road, Choppies Supermarket Complex, Bristol Road and other feeder roads using logs, stones, boulders and burning tyres. It s further alleged that the applicants proceeded to Choppies Supermarket, Mkoba 6, Gweru and Chipso Changu Mini Market at Mkoba 10 and 14, Gweru. Applicants acting in common purpose are alleged to have used iron bars to break the main entrance to the supermarket complex to gain access to the shops. Once inside the shop they looted groceries and other commodities whose total value exceeds US\$40 000.

In their application for bail the applicants deny the allegations against them. They allege that there were arrested on the 15th January 2019 at their respective homes. They claim that they were nowhere near the scenes of the violence that erupted in Gweru as stated in the outline of the state case. Further they allege harassment at the hands of members of the military forces that arrested them at their homes before handing them to the police. The applicants aver that they are suitable candidates for bail in that they are of fixed abode and there is no shred of evidence linking them to the offence.

In opposing bail, the Investigating Officer listed the following as the reasons for opposing bail.

1. The accused persons are facing serious allegations and in event of conviction are and likely to receive custodial sentences.
2. The shut down demonstrations are likely to continue.
3. Since the demonstrations have not yet achieved their regime change agenda, the demonstrations are likely to continue and in that event the applicants if granted bail may be tempted to abscond.

At the hearing of the matter no credible information was placed before the court to indicate that the likelihood of abscondment was a real probability. The state did not present any credible evidence linking any of the applicants to the acts of public violence committed around the City of Gweru that led to the massive destruction of property.

The legal principles regarding the granting of bail

In terms of section 50 of the Constitution of Zimbabwe an arrested person is entitled to be released either conditionally or on reasonable conditions on bail pending trial. It is only where it is shown that compelling reasons exist to justify the applicant's continued detention that a suspect can be denied bail pending his trial. The onus rests on the state to show that there exist such compelling reasons in each particular case. See *Munsaka v The State* HB-53-10. In relation to statute, the court is guided by section 119 (1) (2) (a) (b) of the Criminal Procedure and Evidence Act (Chapter 9:07), which provides as follows:

- “(1) subject to this section and section 32 a person ... shall be released on bail unless the court finds that it is in the interests of justice that he or she be detained in custody.
- (2) the refusal to grant bail and detention of an accused person in custody shall be in the interest of justice where one or more of the following grounds are established:
- (a) where there is likelihood that the accused if he or she is released on bail will –
- (i) *endanger the safety of the public or any particular person or will commit an offence in the first schedule; or*
 - (ii) *not stand his or her trial or appear to receive sentence; or*
 - (iii) *attempt to influence or intimidate witnesses or to conceal or destroy evidence; or*
 - (iv) *undermine or jeopardize the objectives or proper functioning of the criminal justice system including the bail system; or*
- (b) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine public peace and security ...”

The primary considerations in applications for bail pending trial have been well established in our law. In cases involving public violence of the nature alleged by the state it is not sufficient for the state to make general allegations that the applicants may abscond and that the release of the accused persons may lead to the commitment of further similar offences. The allegations against the applicants have to be linked to the acts allegedly perpetrated by the applicants. All the applicants aver that they were arrested on the 15th January 2019 whilst at their homes. The applicants are not required at this stage to disprove the state case. What the state is required to do is to show that compelling reasons exist for the denial of bail. In *State v Makamba* SC-30-04 the court set out the primary considerations applicable in assessing evidence and submissions in bail applications as follows:

1. whether the applicant will stand trial in due course;

2. whether the applicant will interfere with investigations of the case against him or her or temper with the prosecution witnesses;
3. whether the applicant will commit offences when on bail;
4. other considerations the court may deem good and sufficient.

In *Chiadzwa* 1988 (2) ZLR 19 the court laid the principle as follows:

“It is the fundamental requirement of the proper administration of justice that an accused person stands trial and if there is any cognizable indication that he will not stand trial if released from custody, the court will serve the needs of justice by refusing to grant bail, even at the expense of the liberty of the accused and despite the presumption of innocence”.

In this matter there are no compelling reasons to deny bail pending trial. All the applicants are of fixed abode. The interests of justice will not be compromised if the applicants are to be granted bail. The possibility of abscondment is not a real possibility as there is no evidence at all placed before the court indicating that applicants have the inclination or propensity to abscond. The state may not rely on speculation and conjecture as grounds for opposing bail. These applicants are clearly suitable candidates for bail pending trial.

In the result, the application succeeds. The applicants are granted bail in terms of the draft order.

Gundu, Dube & Pamacheche, applicant’s legal practitioners
National Prosecuting Authority, respondent’s legal practitioners