

MARKO CHINGOMA
versus
THE STATE

HIGH COURT OF ZIMBABWE
DUBE J
HARARE, 22 November 2011

Bail Application

E. Chatambudza, for applicant
C. Manhiri, for State

DUBE J: This is a bail application ruling. The applicant faces a charge of car theft. The allegations are that on 12 February 2011, complainant gave the applicant her car keys in order that the applicant could park the vehicle safely. The applicant drove the vehicle away and the vehicle has not been recovered. Complainant immediately made a report to the police and the matter is reported under CR 917/02/11 at Harare Central. The applicant applies for bail pending trial. The State opposes bail on the grounds that:-

- (a) Applicant is likely to abscond and not stand trial.
- (b) That he is likely to interfere with witnesses or investigations against him.

Whilst there is a presumption of innocence in favour of the applicant, the onus is on him to show on a balance of probabilities that his release on bail will not prejudice the interests of justice. The court is required to balance the interests of justice against those of the applicant and it should lean in favour of an offender unless the interests of justice will be prejudiced by accused's release. As held in *R v Fourie* 1973(1) SA 110 per MILLER J:-

“it is a fundamental requirement of the proper administration of justice that an accused person stand trial and if there is any cognisable 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”.

The applicant faces a very serious offence. The State papers reveal that there are witnesses who saw the applicant being handed over the car keys by complainant and subsequently driving away. The evidence seems to disclose a strong case against the applicant and the likelihood of conviction is real. This factor makes it likely for the applicant to abscond and not stand trial. The applicant faces a lengthy prison term if convicted. The likelihood of a heavy sentence may tempt him to abscond.

The applicant has the potential to travel and go to other countries. He has a passport. He also has connections outside Zimbabwe and occasionally travels in and out of Zimbabwe. There is a real fear that if granted bail, the applicant may abscond. When the applicant committed the offence he went to South Africa and has been in and out of the country until his arrest in November 2011. The police are strongly of the view that he was evading arrest as they were unable to locate him since February 2011 when the matter was reported. The actions of the applicant after the matter was reported are consistent with a person bent on evading justice.

The police have discovered a car theft syndicate allegedly involving the applicant which they are investigating and fear that if released on bail, the applicant may interfere with their investigations. The State's fear that the applicant may interfere with investigations is not a bare assertion. There is a real risk. There are well grounded fears that if released on bail, the applicant may interfere with the recovery of the vehicle. Investigations are still at their infancy and if released on bail the applicant may interfere with one of the persons likely to have been involved in commission of this offence. A person only known as Tendai has not been located and the police are desirous of interviewing him.

The fact that the offence is serious, coupled with fears that the applicant may abscond or interfere with investigations or evidence suffices as a valid and good reason for opposing bail. See *Hussey 1991(2) ZLR 187* for this approach.

The applicant has not been able to show that his release on bail will not hinder and prejudice the administration of justice. The likelihood that he may abscond or interfere with investigations is real.

The applicant is not a suitable candidate for bail at this stage. Bail is refused.

Hamunakwadi, Nyandoro & Nyambuya, applicant's legal practitioners
Attorney General's Office, respondent's legal practitioners