

MUSHORE GIVEMORE
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 4 & 11 October 2016

Bail Application

Applicant in person
B. Murevanhema, for the respondent

ZHOU J: This is a second attempt by the applicant to be admitted to bail pending trial. His first application was dismissed on 23 June 2016. He has now approached this court again alleging changed circumstances. The application is opposed by the respondent.

The applicant is facing two counts. The first is of unlawful entry in aggravating circumstances as defined in s 131 (2) of the Criminal Law (Codification and Reform Act [Chapter 9:23]. The second count is of murder as defined in s 47 of the same Act. The two offences were committed on the same night but at different premises.

The trial in this matter has commenced but was postponed *sine die* owing to the insufficiency of the time allocated to it. The applicant made the first attempt to be admitted to bail after the postponement of the trial. The present application, just like the first one, is opposed by the State.

Section 50 (1) (d) of the Constitution applies to the applicant since he has not been convicted and the presumption of innocence still applies to him. That section requires that unless there are compelling reasons, an arrested and detained person must be released unconditionally or on reasonable conditions. Given that the trial in this case has commenced, the court in addition to relying on the facts alleged in the summary of the State's case, is in the advantageous position of having heard evidence from the State witnesses who have testified to date.

The first point to be made is that while in appropriate cases the passage of time may constitute a change in circumstances, in the present case the passage of time has not really affected the case against the applicant. Put in other words, no new facts have been alleged or established to justify an invitation to the court to revisit its earlier decision by which the applicant's application was dismissed. The evidence of fingerprints which link the applicant to the offence remains intact. The offences which the applicant is being charged with are very serious, and may attract very long periods of imprisonment if not capital punishment in the case of the murder charge given the facts alleged. The pistol which was recovered from the applicant and his co-accuseds matched the one that was used in the commission of the murder. The applicant is said to have made indications at the scenes of crime.

The evidence implicating the applicant is clearly overwhelming, and remains so many months after the matter was postponed. There are therefore compelling factors justifying the continued detention of the applicant pending the finalisation of the trial. His admission to bail would jeopardise the administration of justice as the applicant will in all likelihood abscond if he is released on bail. His undertaking to stand trial if he is admitted to bail is clearly unconvincing.

The application is quite clearly without merit. It is accordingly dismissed.

National Prosecuting Authority, respondent's legal practitioners