FARAI ZIMUNYA

and

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO10 NOVEMBER AND 4 DECEMBER 2014

Mr. L. Moyo for the applicant
Mr. T. Makoni for the respondent

Bail Application

      MOYO J: This is an application for bail pending trial.

      The Applicant faces a charge of murder. He submits in his statement that he is a suitable candidate for bail for the following reasons:

a)   that the presumption of innocence weighs in his favour.

b)   that he is aged 37 years and does not have any pending criminal cases nor does he have any previous convictions.

c)   that there is no likelihood that he would abscond as he handed himself to the police.

      The State conceded to this application. Central to the determination of applications like this one is that the accused person will not abscond and will stand trial.

      Section 116(7) of the Criminal Procedure and Evidence Act sets out the principles which ought to be followed in considering admission of an accused to bail.

      The court should not grant bail where:

1)   The accused person is not likely to attend trial. That means where there is a likelihood that the accused would not stand trial then he should be denied bail.

2)   The accused is likely to interfere with the evidence against him

3)   The accused is likely to commit further offences.

      These considerations have been dealt with clearly by ZIYAMBI JA in the case of *James Chafungamoyo Makamba vs The State* SC 30/04. She stated thus:

      "The primary considerations in assessing evidence and submissions in a bail application are:-

1)   whether the Applicant will stand trial in due course.

2)   whether the Applicant will interfere with the investigations of the case against him or tamper with the prosecution witnesses.

 3)   whether the Applicant will commit further offences whilst on bail.

4)   and other considerations the court may deem good and sufficient.

Nothing much has been placed before me which deals with the other considerations for bail. What is central to the determination I should make is therefore whether or not if granted bail the Applicant is likely to stand trial. In paragraph 8 of his bail statement Applicant states thus:

> "There is no likelihood of Applicant absconding and not standing trial. For the reason that Applicant handed himself over to the investigating officer after calling him with his nephews who then accompanied him to the investigating officers."

In his original affidavit the investigating officer stated that bail is opposed and one of the reasons was that the accused absconded soon after committing the offence only to be arrested after 3 days of intensive manhunt and he was now staying under a bridge. It was on the face of the contents of the Investigating officers' affidavit contents that I queried the concession that was being made by the state. The State Counsel then submitted that it looked like later, after absconding, the accused nonetheless surrendered himself to the police. I then tasked the state Counsel to get a further affidavit by the Investigating officer which would then inform this court on the circumstances of the accused person's arrest.

It was then that a further affidavit was filed by the Investigating officer who stated in his second affidavit as follows:

> "5.   On 10 October 2014, tracking the accused was intensified (sic) and the owner of the motor vehicle which was being used by the accused was invited to the office. He confirmed that the car that was being used by the Accused was his but (sic) was not aware of his current whereabouts.
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> 6.   I then tasked him to track the accused which he (sic) agreed and (sic) was in a bid to clear himself ---. On the same day at about 20:00 hours, he phoned me advising (sic) that he had picked some information that the accused visits Queenspark West shops in the evening to look for food and that it was not known where accused stayed. I assigned him to remain at the shops and monitor then advise me."

The investigating officer was later called by the vehicle owner and advised that they had since located and gotten hold of the accused. He then advised them to bring the accused person to

town.

His (vehicle owner's) names are Patrick Matika. He also swore to an affidavit stating the circumstances in which accused was arrested.

In paragraph 4 thereof he states thus:

"The police encouraged me to help them locate the accused so that the case can be handled and my vehicle released---"

"I then made my own enquiries on the possible whereabouts of the Applicant and I got information that he would buy his food at the Queenspark shops --- paragraph 6.
I went there on the 10th of October and waited there until I saw him coming to the shops in the early evening."

He then says upon talking to the Applicant he said he had panicked and fled as he feared a mob that wanted to beat him and was afraid of the police as he had injured one of their own. He says the Applicant then voluntarily agreed to go with them to the police. What can be gleaned from these facts is that soon after committing the offence, he lived under a bridge, he would wait until night time to go and look for food at the shops. It is said that he panicked when he ran away and that he feared the people and the police. This does not make sense at all. A man who flees after committing an offence, lives under a bridge and buys food during night time is certainly not willing to face the law and the consequences of his actions. The risk of abscondment is very high in this matter. It is therefore my finding that the concession made by the state was not properly made on these facts. It can not be in the interests of justice to grant bail to a man who fled his home soon after the commission of the offence and lived under a bridge, visiting shops to buy food at night so that he can not be seen. It is for this sole reason that I find that the accused person is not a suitable candidate for bail and I accordingly dismiss the application.

Mcijo, Dube and partners, applicant's legal practitioners
Criminal Division, National Prosecuting Authority's office, respondent's legal practitioners