

**ERIC MATANHIRE**

**Versus**

**THE STATE**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 31 JANUARY & 27 FEBRUARY 2003

*M Ncube* for the applicant  
*H S M Ushewokunze III* for the respondent

Bail Application

**CHEDA J:** Applicant was arrested on 26 November 2002 on the allegations of having committed armed robbery.

The allegations against him are that on 19 October 2002 he connived with his co-accused one Bigboy Ndlovu and robbed a Zambian national at gun point of his belongings and cash amounting to R4 000. They then fled in their car but were subsequently arrested after their vehicle was found through the Central Vehicle Registry in Harare.

Applicant through his lawyer has argued that he should be admitted to bail for the reason that he knows nothing about the allegations being levelled against him. He stated that all he knows in connection with this case, is that, he together with his co-accused were hired by the complainant to take him to Silversands Lodge and is therefore surprised why he was arrested.

Respondent on the other hand has argued that applicant should not be granted bail because he has a propensity to commit crimes and urged me to invoke the provisions of the Criminal Procedure and Evidence Act [chapter 9:09]. Section 116(7) (C) of the Criminal Procedure and Evidence Act reads:

“Subject to subsection (4) of section 13 of the constitution in any case in which the Judge or magistrate has power to admit the accused person to bail, he may refuse to admit such person to bail, if he considers it likely that if such person were admitted to bail he would:

- (a) ...
- (b) ...
- (c) commit an offence.”

It is settled law that our courts will generally lean in favour of granting suspects bail, this is on the basis of the presumption of innocence of the accused until proven guilty by a competent court. This principle should be departed from only where it can be shown on a balance of probabilities that it is in the interest of the proper administration of justice to do so.(my emphasis) *Mr Ushewokunze* for respondent has submitted that applicant should not be admitted to bail as he has a propensity of committing similar offences. To back up his assertion, he further submitted that applicant had a number of relevant previous convictions. This fact was admitted by applicant’s legal practitioner, who, however, argued that, his previous convictions should not be used against him as he had already served his sentence. This argument in my view, can not stand because it is in contrast with the standing legal position expressed by our courts. In *S v Patel* 1970(3) 565 at 568B his Lordship CILLIE CJ stated:

“It seems to me that an applicant’s past record, his actions immediately prior to the application for bail and particularly while he was out on bail in respect of another charge, may be relevant factors, particularly when they indicate a propensity to commit a particular type of crime.”

Applicant has a record of dishonesty related offences. The following are his previous convictions:

1. On 6 September 1982 he was convicted for robbery
2. On 2 February 1984 he was convicted of robbery
3. On 10 March 1987 for theft and assault

4. On 4 August 1987 for theft by false pretences
5. On 23 October 1996 for theft by false pretences
6. On 7 November 1989 for dealing in foreign currency

The offence he is facing is indeed a serious one, though of course the seriousness of the offence on its own without other factors can not and should not justify accused denial to bail. The serious charge the appellant is facing should be viewed together with the relevant previous convictions in order to determine his suitability to the admission of bail. In addition his propensity to commit further offences should be relevant to offences which he is presently facing. Appellant as pointed out (*supra*) has been involved in dishonesty related crimes and is presently facing allegations of armed robbery, a serious allegation indeed.

The risk on the applicant to commit further offences on bail should be a real risk. In the present case, applicant's previous conduct in my view poses a real risk of committing further offences.

The respondent in my view, has substantiated its fear that applicant is likely to commit further offences and as such, he is not a suitable candidate for bail and his application is accordingly dismissed.

*Hare & Partners* applicant's legal practitioners

*Criminal Division of the Attorney-General's Office* respondent's legal practitioners