

MORRIS DUWA

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 17 JUNE 2010 AND 15 JULY 2010

Mr. M Dube for applicant
Mr K. Ndlovu for respondent

Bail Application

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

Applicant is facing a charge of rape. The brief background of this case is that, it is alleged that on the 14th March 2010 accused raped a 15 year old girl near Magwegwe Secondary School in Bulawayo. The alleged offence was committed while he was on bail for a similar offence..

Our courts' approach on applications for bail pending trial is that suspects should be granted bail as a general rule on the basis of the principle of the presumption of innocence until proven guilty by a competent court. It is on that principle that our courts invariably lean in favour of the granting of bail unless there are compelling reasons against such granting.

Bail should be granted as a safeguard to ensure that a suspect should have his day in court as this is his constitutional right.

However, even if he will ultimately have his day in court, bail may be denied if it is not in the best interest of justice for him to await trial while out of custody.

A person who when on bail commits a similar offence, in my opinion should not be easily granted bail as his actions would have demonstrated a brazen contempt of the courts that previously granted him bail. Such a person regardless of the allegations alone, without more, is not a suitable candidate for bail, as to release him will not be in the best interest of both justice and the society he lives in. Some of the inherent requirements for where a suspect is released on bail is the undertaking that he will not abscond, interfere with state witnesses and most importantly that he will not commit similar offences. Where a suspect is granted bail on the believe that he will not commit a similar offence, but, goes ahead to, thereby breaching that undertaking, should not be granted bail as he would have betrayed the judicial trust bestowed on him. While he is still facing an allegation only, in my view, the court should not ignore the fact that he would have been sailing too close to the wind which he should not have been doing under those circumstances.

In *casu*, applicant has abused his right to bail and as such I find no compelling reason to accord him that chance again.

For the above reasons this application is dismissed.

Cheda J.....

Cheda and Partners, applicant's legal practitioners
Criminal Division Attorney General's Office, respondent's legal practitioners