

KHUMBULANI KHABO

VERSUS

THE STATE

IN THE HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 2 JULY 2010 AND 19 AUGUST 2010

Mr. N. Ndlovu for applicant
Ms. N. Ndlovu for respondent

Bail Application

MATHONSI J: The Applicant is facing a charge of rape, one count, it being alleged that sometime in April 2010 he raped his 6 year old daughter who was visiting him during the school holiday. It is alleged that when the complainant returned to her grandmother at Village 1 Maqaqeni on the 4th May 2010 she immediately reported the rape to her grandmother.

The State has opposed bail essentially on two grounds namely that the Applicant is likely to abscond and that he is likely to interfere with witnesses. *Ms. Ndlovu* appearing for the state argues that the state's case against Applicant is so strong that it might act as an incentive for him to abscond in order to evade justice especially as he is certainly facing a term of imprisonment if convicted.

Other than that, the State has not advanced any other reason for its fear of abscondment. It has not been shown that Applicant has a propensity to do so and it is trite that where the fear is not supported by anything more, that can be addressed by attaching stringent

conditions to bail. For his part the Applicant has undertaken not to abscond and appears to be a simple villager with no travel history.

The other ground for opposition is that the Applicant may interfere with witnesses given that the complainant is his daughter. However, it has not been disputed, in fact *Ms Ndlovu* confirms, that the two do not stay together as the complainant stays with her grandmother in another village. That argument is therefore not sustainable.

It is a cardinal principle of our law that an accused person is presumed innocent until proven guilty otherwise at the trial. For that reason pre-trial incarceration is always undesirable unless it can be shown, to the satisfaction of the court, that the accused person will not stand trial if admitted to bail or that the administration of justice will be jeopardised by the release of the accused.

In this case, I am not satisfied that the interests of justice will suffer as a result of the release of the Applicant on bail and will accordingly grant him bail.

In the result it is ordered that Applicant be and is hereby admitted to bail on the following conditions:-

- (a) He deposits a sum of US\$50 -00 with the Assistant Registrar of the High Court, Bulawayo.
- (b) He reports twice a week on Fridays and Mondays between the hours of 0800hours and 1800 hours at Inyathi Police station until the matter is finalised.
- (c) He resides at his homestead at Village 6 Dromoland Inyathi until the matter is finalised.

- (d) He does not in any way have access to the complainant until the matter is finalised and does not interfere with state witnesses.
- (e) He surrenders his passport or other travel documents, if any, to the Registrar of the High Court, Bulawayo.

Mathonsi J.....

Cheda and Partners, applicant's legal practitioners

Criminal Division Attorney General's Office, respondent's legal practitioners