

INNOCENT PHIRI
versus
THE STATE

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 30 JUNE AND 23 JULY 2015

Application for bail pending trial

Mrs J. Mugova for accused
Mr T. Makoni for the state

MAKONESE J: This matter was set down for trial on 18 June 2015. The state was ready to proceed with the trial but defence counsel indicated that they needed more time to take instructions from the accused. The court granted the indulgence requested by the accused's legal practitioner and the matter was accordingly removed from the roll. I directed that the matter be set down for hearing during the next term. On 30 June 2015 accused through his legal practitioner filed an application for bail pending trial. The state consented to bail but I refused the application. I have been asked to furnish my reasons for dismissing the application for bail. These are my reasons.

Background

The accused is facing a charge of murder. It is alleged that accused was aged 22 years at the time of the commission of the offence. The deceased was aged 55 years old. On 27 July 2013 at around 2000 hours the accused person was at West Nicholson Beer hall drinking beer when he suddenly turned violent and started provoking various people. Some patrons were angered by accused's behavior and started assaulting him. Accused was rescued by his friends who forcibly took him home and left him at his house to sleep. At around the same time, the deceased who had also been drinking and was heavily drunk decided to go and put up at his step son Moffat Ncube's house at B57 Zimcan houses, West Nicholson. Accused who was also at Moffat

Ncube's house heard the deceased knocking calling for his son to open the door for him. When accused heard the knock he picked up an empty soft drink bottle, open the door and struck the deceased once on the head. The deceased fell down and as a result of injuries sustained in the attack later died on 2 August 2013.

Whether accused ought to be granted bail pending trial.

The accused has been indicted for trial and the state is ready to proceed. The request for a postponement of the trial was at the behest of the accused's legal practitioner. The granting of bail is customarily at the discretion of the court. Where there is no danger of abscondment and where the administration of justice will not be compromised bail is frequently granted. It is noted, however that in recent times a disturbing trend is emerging. An accused person is indicted for trial. His attendance for the trial is secured. All witnesses are warned to attend court on the trial date. The court is persuaded that the defence needs time to take further instructions. The matter is removed from the roll. A few days later, defence counsel make an application for bail pending trial. Once the accused tastes his freedom securing his attendance becomes illusive.

The applicant contends that there is no danger that he will abscond pending his trial. It is my considered view that the seriousness of the charges the applicant is facing and the fact that his trial is imminent will provide sufficient inducement for the applicant to be tempted to abscond. I am alive to the fact that the seriousness of the offence on its own is not sufficient grounds to deny applicant bail. However the strength of the state case in this matter is not to be ignored. Had the trial been commenced on 18 June 2015 this matter could have been concluded. It is the accused who requested the postponement of the case and I am convinced that the administration of justice would be compromised if the accused were granted bail at this stage. I am not satisfied that the applicant has shown good cause while bail ought to be granted at the present time. Further my view is that bail is granted at the discretion of the court. In the exercise of the court's inherent discretion I consider that it is not desirable to admit the accused to bail.

In the result, for these reasons, I refused the application for bail pending trial.

Lazarus and Sarif, accused's legal practitioners
National Prosecuting Authority's office, state's legal practitioners