

ALBERT ISAAC MUTENDENEDZWA
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 29 January & 3 February 2016

Bail Application

O Zimbodza, for the applicant
A Muziwi, for the respondent

ZHOU J: The applicant was arrested on charges of robbery and rape, it being alleged that on 16 October 2015 at or about 12 noon he attacked and waylaid the complainant, a female aged 22 years. He was armed with a catapult when he confronted the complainant and demanded that she surrenders to him her handbag. After searching the handbag and taking her cellular phone, the applicant is alleged to have force-marched the complainant into the bush and forced her to remove her clothes. In the bush the applicant is alleged to have produced a knife and forced the complainant to lie on the ground. He raped her once. The complainant now seeks his admission to bail pending trial.

It is trite that at this stage the presumption of innocence as enshrined in s 70 (1) (a) operates in his favour. Further, s 50 (1) (d) of the Constitution provides that a person who is arrested “must be released unconditionally or on reasonable conditions, pending a charge or trial, unless there are compelling reasons justifying their continued detention”. If the admission of a person to bail is not in the interests of justice in the sense that the proper administration of justice would be undermined by his release then there would be compelling factors to deny that person the right to liberty. In the instant case the application is opposed on the ground that there is a risk of abscondment on the part of the applicant given the seriousness of the charges and the very strong evidence against him. The applicant was positively identified by the complainant. This is a matter in which there is virtually no chance of a mistaken identity given that the offence was committed in broad daylight around 12 noon

and the complainant had a lot of time to observe the applicant from the time that he accosted her as she was walking and ordered her to stop and surrender her bag to him. The accused thereafter ordered the complainant into a bush having confiscated her cellular phone. In the bush he ordered her to lie down before raping her. Those events could not possibly take such a short time as would disable the complainant to properly observe the applicant. For that reason the evidence against him is indeed strong.

Given the above factors the risk of abscondment is very real. This is a matter in which the seriousness of the offence, the likely period of imprisonment upon conviction and the very strong evidence against the accused person constitute compelling grounds for the right to liberty to yield to the proper administration of justice.

In the circumstances, the application for bail must be and is hereby dismissed.

Zimbodza & Associates, applicant's legal practitioners
National Prosecuting Authority, respondent's legal practitioners