

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

A662/2010

5 **DATE:**

9 NOVEMBER 2010

In the matter between:

MAWETHU MATSIKA

Appellant

10 and

THE STATE

Respondent

15

J U D G M E N T**VELDHUIZEN, J:**

20 The appellant is charged with the crime of robbery with
aggravating circumstances. He applied for bail and the
magistrate refused his application.

It is the magistrate's refusal of his application for bail, which
25 the appellant now appeals to this court. It is true that it
/bw /...

appears that the robbery that was committed was an organised one of a cargo truck containing a consignment of cigarettes.

The investigating officer also testified that crimes of this
5 nature are on the increase. Those two considerations also appear from the magistrate's reasons to have formed the basis on which the appellant's application for bail was denied.

The appellant was, at the time of his bail application, 27 years
10 old. He had a fixed address. He was single and had no dependants. It is important that he has no previous convictions and except for the charge of robbery, which he faced, he had no other pending criminal cases. In my view, a court must be very careful to refuse bail simply to satisfy
15 public opinion. The public interest does play a role when a court is considering bail, but to refuse bail to satisfy public opinion, is not a proper approach. A court must also be careful not to refuse bail so that it could serve as punishment in anticipation that a conviction may follow.

20

According to the investigating officer, the appellant had made a statement. What exactly the contents of that statement are, is not clear to me. It is not clear to me on the evidence that there is a particularly strong case against the appellant. Be
25 that as it may, none of the usual grounds on which bail is

refused, namely the likelihood that an accused will not stand his trial, the likelihood that he will interfere with witnesses or the likelihood that he will, if admitted to bail, commit further crimes, appear to have been present in this particular case.

5

When the investigating officer was asked to state his grounds for opposing bail, he testified:

10 "Your Worship, hijacking has become problematic in the Western Cape as a whole. It becomes, your Worship, out of hand, where each and every second day there is a hijacking being reported. Your Worship, the curb that we (sic) the only thing is to send a message, even to those who still think that
15 the crime does pay, that the crime does not pay by putting all the perpetrators, your Worship, in the place where they belong."

20 This, as I have mentioned earlier, is a wrong approach to the question whether bail should be granted or not. In my view the interests of justice will not be prejudicially affected should the appellant be admitted to bail.

25 In the circumstances, I have come to the conclusion that the magistrate was wrong. The appeal is, therefore, upheld, the

magistrate's order is set aside and I make the following order.

THE APPELLANT IS ADMITTED TO BAIL IN AN AMOUNT OF

R2 000,00 on condition that he appears on the next day in the

court to which his case is postponed and on every day

5 thereafter to which the matter may be postponed until the

conclusion of the case against him.

10



VELDHUIZEN, J