

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

Case No: CA & R 15/2017

NANDIPHA RANANA

Appellant

And

THE STATE

Respondent

Coram: **Chetty J**

Heard: **6 October 2017**

Delivered: **10 October 2017**

JUDGMENT

Chetty J:

[1] On 4 August 2017, the appellant, a 36 year old occupational therapist, appeared before the Specialised Commercial Crimes Division of the Regional Court, in Port Elizabeth at an enquiry held pursuant to the provisions of s 68 of the ***Criminal***

Procedure Act¹ (the Act) to determine whether her bail, to which she had been admitted in respect of a charge pending before that court, should be cancelled. The question whether she appeared at the hearing of her own volition or under a warrant is of no consequence whatever. The issue of a warrant contemplated by s 68(1) is to secure the presence of an accused before the court to enable the envisaged enquiry to be conducted. The informal nature of the proceedings before the court *a quo* appears to have been acquiesced in by the parties and on the strength of an affidavit handed in, albeit with the consent of the appellant's attorney, that the appellant had committed an offence in Johannesburg whilst on bail, the magistrate revoked the appellant's bail and ordered that she remain in custody. The gravamen of the appeal against that order is that the magistrate misdirected himself in concluding that the interests of justice impelled the grant of the order sought.

[2] The ratio of the judgment is expressed thus: - ***"I am in agreement with the State that the criminal conduct . . . (indistinct) or the alleged criminal conduct subsequent to her being granted and released on bail in the present case is indeed worrying and I deem it in the interest of justice to revoke and cancel the bail as set on the previous occasion."*** The reasoning underlying the finding appears to be informed by the magistrate's perturbation that, given the appellant's alleged subsequent commission of another offence, she had the propensity to commit crime. I have grave difficulty in comprehending his *raison d'être*. The mere fact that the appellant may have committed the offence in question does not *per se* warrant the inference that she had the penchant to commit further crimes. The evidence adduced by the state in support of the application was in my view wholly

¹ Act No, 51 of 1977

insufficient to justify the conclusion reached that the interests of justice warranted the cancellation of the appellant's bail.

[3] In the result the following order will issue: -

The magistrate's order granted on 4 August 2017 cancelling the appellant's bail is set aside and the bail to which she had been previously admitted, is reinstated.

D. CHETTY

JUDGE OF THE HIGH COURT

Obo the Appellant:

Mr P. Daubermann

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