



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 4993/2022

In the matter between:

TSHEPO JOHN SEBATI

Applicant

and

THE STATE

Respondent

HEARD ON: 02 DECEMBER 2022

CORAM: MATHEBULA, J

DELIVERED ON: The judgment was handed down electronically by circulation to the parties' legal representatives by email and release to SAFLII on 25 JANUARY 2023. The date and time for hand-down is deemed to be 25 JANUARY 2023 at 13H00.

[1] The applicant seeks an order admitting him to bail pending the hearing of his appeal by the full bench of this division. He stood trial together with three (3) others for the murder of his estranged girlfriend. At the conclusion of evidence, I convicted him and two (2) others on 2 March 2020. One accused was acquitted. I sentenced each of them to life imprisonment and a total of 20 years'

imprisonment. The other sentences run concurrently with the sentence of life imprisonment.

- [2] Aggrieved with both convictions and sentences, the applicant applied for leave to appeal which was unsuccessful. On petition, two Judges of Appeal granted him leave to appeal to the full bench of this division. Admittedly this is the main reason why this application is before me. This application is premised on the argument that when he was granted leave to appeal, it was indicative of the existence of the reasonable prospects of success.
- [3] The grounds of appeal averred in the founding affidavit are that the court wrongfully admitted evidence of extra-curial statements by a co-accused against him; there were glaring contradictions between the post-mortem report and photographs of the crime scene, the evidence of section 204 of Act 51 of 1977 witness was not of satisfactory quality and the indictment made no reference to common purpose yet he was convicted based on the aforementioned doctrine.
- [4] Counsel for the applicant raised arguments that he is not a flight risk and does not possess any travelling documents. He pointed out that throughout his trial he adhered to the bail conditions and did not jeopardise the proper functioning of the criminal justice system. The other point raised was that he will not interfere with any witnesses because the trial has been concluded. In any event he never did so while the trial was continuing. Further he has no pending matters and there is no likelihood that he will commit any offence.

- [5] It is trite that the applicant bears the evidential burden to prove that it is in the interests of justice that he ought to be admitted to bail. In our legal system, bail is governed by the provisions of section 60 of Act 51 of 1977. The applicant must persuade the court that it is in the interests of justice that he be admitted to bail.
- [6] In this matter, the applicant does not exclusively rely on the success of the petition. It was submitted that, the fact that the petition has been granted, does not mean that there are prospects of success. The applicant in the notice of appeal raised the issue that the evidence of Moramang Zon was not approached with the necessary caution because he was a co-accused. It is ambiguous in what manner that allegation is made. There was no section 204 witness who testified during the trial. There were no extra-curial admissions either. In the summary of substantial facts, it was stated that the case for the State is that at all material times they (him and co-accused persons) were acting in execution and furtherance of a common purpose.
- [7] It is well known that the learned Judges of Appeal do not write a judgment in matters of this nature. It is unknown on what grounds was the petition granted. What is accepted is that they should have carefully considered the matter and found that there are arguable prospects of success.
- [8] However, the granting of a petition is no guarantee that the appeal will be successful. **S v Rohde** is a case in point.¹ In that matter the majority concluded that it was in the interests of justice to admit the appellant to bail because there were prospects of success. The

¹ 2020 (1) SACR 329 (SCA).

minority took a different view. The important point is that the main appeal failed.

- [9] What stands out in the matter is the gravity of the sentence imposed against the applicant. He comes before this court with drastically changed circumstances. He is no longer presumed innocent until proven guilty. He is a convicted person serving a lengthy sentence. The propensity to evade serving his sentence is more accentuated by that sentence. On that score it will not be in the interests of justice to admit him to bail.
- [10] There is no prejudice if the applicant remains incarcerated. This matter will, in all probabilities, serve before the full bench of this division before the end of the first term in 2023. It is a few weeks from now and hopefully it will be brought to finality. The applicant mentions the fact that he was gainfully employed before he started serving his sentence. There is no evidence that he still has a job and the odds are that he no longer has one due to prolonged incarceration. Again no prejudice will be suffered. In fact, this enhances the likelihood that he will not return to serve out his sentence in the event the appeal fails. During the trial it was submitted on his behalf that his wife is employed by Mohokare Municipality. In his affidavit before this court he averred that his wife is unemployed. Clearly if the accused uses all means to be admitted to bail including falsehoods, there is ample indication that he will evade his sentence. Therefore, this emphasizes the point that he will evade his sentence. That cannot be in the interests of justice.
- [11] The order is as follows: -

11.1. The application is dismissed.

M.A. MATHEBULA, J

On behalf of the applicant:
Instructed by:

Adv. J. Potgieter
Peyper & Botha Attorneys
BLOEMFONTEIN

On behalf of the respondent:
Instructed by:

Adv. L.B. Mpemvane
Office of the Director of Public Prosecutions
BLOEMFONTEIN