



IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE LOCAL DIVISION, MTHATHA]

[Not Reportable]

CASE NO: CA & R 49/2022

Heard on: 29/07/2022

Delivered on: 10/08/2022

SIZWE BEBULA

Appellant

and

THE STATE

Respondent

JUDGMENT

NHLANGULELA DJP

[1] The appellant has noted an appeal against the judgment of the District Magistrate (per Mr Namba) sitting in Libode. The said judgment was delivered on 08 March 2022. It shows that the bail application was refused.

[2] The main ground of the appeal is that the magistrate *erred* in the manner in which he exercised discretion to grant bail in terms of the provisions of s 60 (10) of the Criminal Procedure Act 51 of 1977 aa (the CPA); in that the evidence of the appellant

was not taken into account, he preferring the version of the respondent resulting in the finding that exceptional circumstances do not exist which in the interest of justice permit the release of the appellant on bail.

[3] The charges which the appellant is faced with are that he is guilty of committing the offences of premeditated murder, possession of a firearm without a licence, possession of a firearm with intent to commit an offence and unlawful possession of ammunition. It is common cause that these four charges are, both individually and collectively, very serious in nature; and that the appellant faces a sentence of life imprisonment if proved to have indeed committed them. As a result, the Legislature has, in terms of s 60 (11)(a) of the Criminal Procedure Act 51 of 1977, thrust a duty on the shoulders of the appellant to adduce evidence which satisfy the court that not only his right to release on bail is served, but also that the interest of justice would have been served if he is released on bail.

[4] When the application for bail served before he magistrate the appellant adduced evidence on affidavit, which was admitted by the magistrate. The evidence disclosed the allegations that:

- (1) he was on parole at the time when he allegedly committed the offences with which he has been charged;
- (2) he is an adult male aged 41 years;
- (3) he resides in Grabouw, Western Cape;
- (4) he is not married;
- (5) he has one child aged 4 years and he maintains the child at the cost of R3 000,00 per month;
- (6) he was gainfully employed as a security guard earning R20 000,00 per month;
- (7) he is at the same time the manager of Bebula Family Trust, a business trust that is already engaged in executing a certain business contract from which he earns R10 000,00 a month;
- (8) he is a breadwinner in his family;
- (9) he has previous convictions for attempted robbery, dealing in dagga;

- (10) he has a pending case of murder that was committed in Grabouw, Western Cape in which he does not have bail;
- (11) he was positively identified at the identification parade as the killer of the deceased in the murder that he allegedly committed in this case;
- (12) he needs private medical attention for chest pains sustained during torture by the police;
- (13) he has a confession for the Grabouw murder which he regards as inadmissible in a court of law;
- (14) he is not a violent person;
- (15) he denies all the charges preferred against him in this jurisdiction and in the Western Cape;
- (16) he is not a flight risk;
- (17) he needs to arrange funds for private legal representation;
- (18) he will not interfere with state witnesses who are known to him;
- (19) he needs to attend to the minor child who suffers from epileptic fits;
- (20) he is a primary caregiver;
- (21) his mother is unemployed and she depends on him for all her needs.

[5] It also appears from the record of bail proceedings that the appellant has a list of previous convictions for murder, dealing in drugs; two robberies; and two counts of unlawful possession of firearms and ammunition. He was sentenced to custodial punishment of more than 10 years for these crimes.

[6] Based on the personal circumstances disclosed in the affidavit, it was submitted before the magistrate that the appellant was a suitable candidate for bail.

[7] Mr Xolile Mdepha, a Captain in the SAPS and the Investigating Officer in this case, testified on behalf of the State. He opposed the application for bail on the following reasons: The appellant gave false names during the investigations; there is strong evidence of an eye witness (the deceased's wife) who identified him at the identification parade; he is facing two charges of murder which were committed in Cape

Town whilst he was on parole; the claim that the community of Grabouw needs him to be freed is false; that he was tortured by the police was false; that in 2003 he committed attempted murder in Cleremont, Cape Town; and that he is a sickly person is not supported by medical evidence. Mr Mdepha told the Magistrate that in view of the evidence that the appellant inclines towards committing crimes across the Western Cape and Eastern Cape he is a flight risk.

[8] The evidence adduced by Mr Mdepha is essentially the facts that he gathered during investigation. It was not seriously disputed. The credibility of Mr Mdepha's evidence was not impugned during cross examination.

[9] The magistrate accepted the evidence that the appellant is facing a very serious offence and that he has propensity to commit serious crimes. The magistrate was satisfied with the evidence of Mr Mdepha. He took into account the fact that the appellant's alleged illness was not verified, the applicant was a flight risk, and that appellant's knowledge of state witnesses placed them at risk of interference. He concluded that since the evidence adduced was not of exceptional circumstances the bail application did not pass muster in terms of s 60 (11)(a) of the CPA.

[10] On appeal this Court was urged to find that the magistrate misdirected himself on the facts. I was not persuaded with that submission because the evidence adduced, and which influenced the magistrate's decision to refuse bail, demonstrates that the appellant:

- (a) is facing a very serious offence of murder in which he was positively identified by the wife of the deceased as the perpetrator;
- (b) is facing another serious crime of murder in Grabouw;
- (c) he has a string of previous convictions for serious offences; including murder;
- (d) he does not seem to have rehabilitated his criminal behaviour ever since the first conviction for dealing in drugs in 2002;
- (e) he has a penchant for committing violent crimes using dangerous weapons;

- (f) he has no regard for the administration of justice system in that he violated parole conditions by committing two murders.

[11] The ground of appeal that the magistrate did not analyse the evidence adduced by the appellant properly does not have a merit. I reject it.

[12] In argument it was submitted on behalf of the appellant that the magistrate's acceptance that the State has a *prima facie* case against the appellant meant that a strong case does not exist against the appellant. With respect, these submissions are not supported by the judgment of the magistrate in which the following was said on page 7 thereof:

“... but the state is confident that it has a strong case against the appellant. It is not in dispute that the identity (*sic*) parole was done.”

[13] I am satisfied that the decision of the magistrate was not wrong and, therefore, the bail application was properly tested against the societal interest in terms of s 60 (4) and s 60 (8A) of the CPA and the personal interest of the appellant in terms of s 60 (9) and s 60 (10) of the CPA.

[14] In the result the following order shall issue:

“The appeal is dismissed.”

Z M NHLANGULELA

**DEPUTY JUDGE PRESIDENT OF THE HIGH COURT,
MTHATHA.**

Counsel for the appellant : Adv. V. Calaza

**Instructed by : T. Gxumisa Inc
MTHATHA.**

Counsel for the respondent : Adv. D. Triesch

**: Office of the Director of Public Prosecutions
MTHATHA.**