

IN THE NORTH GAUTENG HIGH COURT,

PRETORIA [REPUBLIC OF SOUTH AFRICA]

CASE NUMBER: CC98/2010

In the matter between:

JACOBUS MICHAEL PRINSLOO

APPLICANT

And

THE STATE

RESPONDENT

JUDGMENT

MAVUNDLA J.

[1] The applicant is an adult male aged 66 years old and a South African citizen of No. 7.... F..... S..... M..... Pretoria. He was indicted and convicted by this Court on the following charges:

1.1 theft;

1.2 murder read with the provision 51 of Act 105 of 1997,

1.3 Contravening the provisions of Section 3, read with the provisions of Section 1, 120 (1) and 121 of Act 60 of 2000 and

1.4 Contravening the provisions of Section 90, read with the provisions of Section 1, 120(1) and 121 of Act 60 of 2000.

[2] The applicant was sentenced to 25 years imprisonment for the aforesaid offences. The applicant brought and testified in a bail application pending the bringing of an application for leave to appeal. The State opposed the last mentioned bail application. This court dismissed this last mentioned bail application because it was not satisfied that there existed exceptional circumstances, which in the interest of justice permitted the admission of the applicant to bail. The court subsequently granted leave to appeal to the Supreme

Court of Appeal against both the conviction and sentence. The applicant then sought to bring an application for bail on new grounds, namely, that leave to appeal has since been granted. This latter application was opposed by the State on the basis that the court was *functus officio* to entertain another bail application. This court upheld the legal point which was raised by the State that it was *functus officio*.

[3] Leave to appeal to the Supreme Court of Appeal against both decisions refusing bail pending the bringing of an application for leave to appeal, and also the decision of the court that it was *functus officio* were granted. It is common cause that the Supreme Court of Appeal overturned the decision of this Court that it was *functus officio* and referred the matter back to this Court. It is common cause that the appeal against the refusal to admit the applicant on bail, pending the bringing of an application for leave to appeal was not prosecuted.

[4] The applicant has since filed a supplementary affidavit in support of his bail application on alleged new grounds. The applicant stated in

this affidavit, *inter alia*, that:

According to his legal representative, before the appeal was heard, learned Lewis JA enquired from the prosecution whether they were not prepared to consider in consenting to certain bail conditions and requested both parties to consider this. He has further been informed that the learned Theron JA also inquired from the prosecution in open Court whether it was not possible that the matter in respect of bail between the prosecution and the defence could be resolved.

- [5] The State indicated that it seeks a postponement of the bail application to afford them an opportunity to file affidavits to respondent to what is supposed to have been said by the Justices of the Supreme Court of Appeal. In order to avert the undue and protracted delay of this matter, this Court expressed its disapproval to a situation that would result in the officers of this court who were intimately at all relevant times in the main trial and the previous bail application. This would require a new legal team for the State to further conduct this matter. A delay would have been prejudicial to the applicant. This court took the view that, what is alleged to have been said by the learned justices of the Supreme Court of Appeal and not being contained in a judgment

was not binding to this court and shall therefore not be taken into consideration in the adjudication of this application.

[6] What is contended to be new facts is contained in the applicant's supplementary affidavit. The new facts are supposed to be the following: he has been in custody for almost 6 months subsequent to being sentenced. He was suffering from serious insomnia, has no strength in his body. He complains of pains throughout his body. He has not seen his Oncologist since his incarceration, although he has seen a general medical practitioner. He has since developed a serious lump in his throat. His vocal cords have become hoarse and seriously needs medical attention. He is afraid that the cancer that was removed from his throat area has further spread and or revived. He is suffering from high blood pressure. He complains of shoulder pain. His cholesterol due to diet provided in prison has also dangerously risen above 6. The only medication provided to him is from his relatives which sometimes arrive two weeks late during this time of his incarceration without medication.

[7] The applicant has further stated that his house in Montana has a bond of approximately R500, 000. 00. His two sons presently reside

with his pensioned sister at this place who presently purchases and pays for the daily food and maintenance. His son Jaco is presently in his final year of engineering (electronics). His other son Stefan obtained a temporary employment at a workshop at Wonderboom Airport. He earns a small salary and cannot support himself. He completed matric the previous year.

[8] The applicant further stated that he can immediately obtain employment from Mr. Rudolph de Bruin at Sephako Minerals and will earn between R50, 000. 00 and R60, 000. 00 per month. This would assist him to further maintain the children, service the bonds and furnish his representatives with sufficient funds to timeously and in accordance with Court Rules prosecute his appeal on merits. It needs to be noted that there was no confirmatory affidavit filed by the said Mr. De Bruin.

[9] According to the applicant, at no stage did he have any monies abroad. He held shares in a company called Global Precious

Commodities, which has since been liquidated, making his shares worthless. He has neither funds nor assets in any foreign country. He further stated that he was informed that he is to be transferred into a cell with 40 other inmates. It is very difficult in that there are language barriers and they do not understand one another. They are woken up at 5: 30 in the mornings. The doors are opened at 7: 30. They are then released into the square until about 11 o'clock, when they are locked up again. The cells are again opened at 1:30 for them to have lunch. Thereafter they are allowed into the square where after they locked up at 2: 30. He has already been assaulted in prison by three other inmates who wanted to steal some of his property. He was threatened that if he reported the matter to the authorities he would be killed.

[10] He further stated that a specific diet was prescribed by the oncologist. Despite his attempts to raise this with the prison authorities none of this has been complied with. He is afraid that his health condition would seriously deteriorate. He further complains about not receiving his preventative medication and that this endangers his life.

[11] The applicant further stated that he is not a flight risk. He has all the reason than ever before to prosecute his appeal successfully to the Supreme Court of appeal, well knowing that if he flee the country he will be extradited. He does not want to be fugitive of the law for the rest of his life. He pledges the major part of his estate which brings about that, if he is flight risk and should he flee, he would not have any assets to maintain himself with. His family and assets bind him to the country.

[12] The applicant has also attached confirmatory affidavits of both his sons. In their respective confirmatory affidavits his sons confirm what their father has said about them, and beg the court to grant the applicant bail.

[13] In his unsigned affidavit filed together with his notice of application pending appeal to the Supreme Court of Appeal, which was filed on 18 July 2013, the applicant stated, *inter alia*, that he religiously attended court during the trial and after conviction when his bail was increased to R30, 000 and further extended. He has a passport which he is willing to have surrendered to the state if so ordered. He

further stated that he has no family ties abroad. He has nowhere to go and South Africa is his country. After bail was set he and his two sons during November 2009 left for a holiday to Switzerland, Austria and Germany where his eldest sons Jaco led one of the world's greatest violinist on organ. Pending his trial he did geologist surveys in Mozambique and Zimbabwe and returned every time to South Africa. During the trial he went to Mozambique twice and adhered strictly to the conditions without problem with the State. It has further been conveyed to him that the Republic of South Africa has several extradition agreements with other countries. He does not want to be for the rest of his life a fugitive of the law. His children and family is too precious for him and will in no way attempt to be fugitive.

[14] The conviction of the applicant was a sequel to a dastardly killing of his divorced wife with whom he has two grown up sons. The killing was done by the applicant's gardener Mr. Moloi who pleaded guilty to the offence. Mr. Moloi testified against the applicant and implicated him. This court accepted, *inter alia*, the evidence, of Mr. Moloi who was a single witness in so far as his implicating the applicant in the main trial to secured the conviction of the applicant

and this court held the view that there was a reasonable possibility that another court might find that he was not a credible witness. It was contended on behalf of the applicant that therefore there was a very strong and arguable case for success of his appeal and this was therefore a new and an exceptional circumstance warranting the admission of the applicant to bail.

[15] Section 321 of the Criminal Procedure Act 51 prohibit the suspension of a sentence imposed by a superior court by reason of any appeal against conviction unless the trial court thinks it fit to order the sentenced accused's release on bail. Therefore the court has a discretion to admit a convicted person to bail pending appeal; vide *Khawuleza v S* [2005] jol 14239 (TK).

[16] The fact that leave to appeal against conviction and sentence was granted is in no way an exceptional circumstance warranting admission to bail pending appeal, *vide S v Bruintjies* 2003 (2) SACR 575 (SCA) at para [6] at p577 *S v Masonganye and*

another 2012 (1) SACR 292 (SCA) at para [13]; Yvonne Beetge v The State case no 925/12 Supreme Court decision delivered on 11 February 2013. It is however one of the factors to be considered in the totality of the evidence placed before the court.

[17] The duration of six month's incarceration referred to by the applicant, is in my view, not an exceptional circumstance. It is a consequence of sentencing and the logistical problems that are encountered in any system of imprisonment.

[18] The health problem of the applicant is not something new. During the initial bail application which was turned down by this court and not appealed against, the health aspect was mentioned and considered. The aspect of body pains and insomnia, are in my view, mere psychosomatic signs of failing to deal with and accept the reality of the changed circumstances the applicant finds himself in. The applicant has not placed any medical evidence before this court dealing with his alleged health difficulties. In any event, on his own admission he can access a general practitioner in prison, who; needs to or can refer the applicant to the hospital for any other

medical treatment not provided in prison. I am not persuaded that the applicant has placed before this court any credible evidence that deals with health aspect to be regarded as amounting to exceptional circumstances, warranting that this court should exercise its discretion in favour of admitting the applicant to bail.

- [19] The applicant's sons are grown up men and no longer children who it can be said that are still, financially dependent on the applicant. It needs mention that during the trial it emerged that there is a guest house which the applicant hold 50% and the two sons hold the other 50% of shares. This aspect was not addressed by the applicant as one of the alleged changed circumstances. Besides, the applicant has assets which if need be, can be converted into monetary term to deal with any alleged financial difficulties encountered by the two grown up sons of the applicant. I am therefore not persuaded that there is either new fact nor exceptional circumstances shown by the applicant in this regard.

[20] The applicant was convicted of serious offences which fall within the purview of schedule 6 of the Criminal Procedure Act. There is no doubt in my mind that, society expects offenders of serious violent crimes to be sentenced to long imprisonment, otherwise its confidence in the justice system might be lost. I am inclined to agree with Jozana AJ in *Khawuleza v S (supra)* at page 4 where he opined that the courts in considering the release of a person on bail pending appeal should also have regard to the interest of society. This indeed accords with s60 (5) (h) of Act 51 of 1977. The applicant has not placed any evidence which demonstrate that his release would not raise the indignation of the public, especially the family of the deceased.

[21] In the premises, I conclude that there are neither new factors nor exceptional circumstances which warrant that the applicant, in the exercise of my discretion should be admitted to bail. Therefore the bail application pending appeal is dismissed.

N.M. MAJ&JffiDLA JtitGE OF THE HIGH COURT

DATE OF HEARING

: 27 NOVEMBER 2013

DATE OF JUDGMENT : 04 DECEMBER 2013

APPLICANT'S ATT : DREYER & DREYER ATTORNEYS

APPLICANT S ADV : MR. P. A. VAN WYK S.C.

RESPONDENTS' ATT : JACQUES VAN DER MERWE ATTORNEYS

**RESPONDENTS' ADV : ADV. N.P. MARRIOT &
ADV VAN DER WESTHUIZEN**