



Republic of South Africa

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

Case Number: A 17/2011

LEON VAN DER LINDE

Applicant

vs

THE STATE

Respondent

JUDGMENT DELIVERED: WEDNESDAY 9 FEBRUARY 2011

JAKUJA AJ:

1. This is an appeal against the refusal of the Regional court magistrate, sitting at Bellville, to release the appellant on bail pending the finalization of his trial for 22 counts of fraud.
2. The allegations by the state against the appellant are that between 24 March to 29 December 1995, and 05 September 1996 to 05 December 1996 he defrauded SARS by claiming value added tax using fictitious invoices .The appellant was involved in a number of businesses and it is

through some of the business entities that the fraud was committed. The amount involved is 2.6 million rand.

3. Mr Van Zyl SC appeared for the appellant and Ms Valley-Omar for the State.
4. The appellant, as he was entitled to, applied for bail and as the charge was a schedule 5 offence the onus rested on him to satisfy the court that the interests of justice permitted his release on bail. This is in terms of section 60(11) (B) of the Criminal Procedure Act, 51 /1977.
5. After the hearing the Magistrate dismissed the application on the basis that the appellant failed to show, on a balance of probabilities, that the interests of justice permit his release on bail. The dismissal was based mainly on the following grounds :
 - a) that the appellant is a flight risk
 - b) the state had a strong case against the appellant
6. Grounds of appeal are that the magistrate erred in finding that :
 - a) the offences of which the appellant is charged are schedule 5 offences.

b) the appellant did not discharge the onus that rested on him to show, on a balance of probabilities, that the interests of justice permit his release on bail.

c) the appellant is a flight risk

d) the state has a strong case against the accused.

and failed to take into consideration that :

a) the appellant cannot run his business from jail as he does not have access to the internet.

b) the appellant, if he remains in custody, will not be in a position to prepare adequately, for his trial due to the nature of the charges he is facing.

7. Senior special criminal investigator Swanepoel, employed by SARS gave evidence for the state at the bail hearing. His evidence was based on a bail report that he compiled and handed into court as an exhibit .It details the case against the appellant and his personal circumstances.

8. It is not in dispute that during the period in question the appellant had business interests in South Africa. From about 1994/95 SARS started to probe or audit these business entities. The appellant was aware of the probe and was co-operating with the investigators /auditors, his attorneys and book keeper were also involved. A docket was registered in May 1998, and the appellant left the country in the same month. He went to settle in

Spain. He now has a thriving business in Spain and has 11 people in his employ. His current wife has her own business interests in that country. When he left the country he left behind two minor children from his previous marriage, they are now adults .He was estranged from the children. His businesses in South Africa collapsed or they were liquidated.

9. The investigators became aware of his departure and applied for a warrant for his arrest. It was granted in July 1998. It is on that warrant that the appellant was arrested on the 21 December 2010 upon his arrival at Cape Town International, 12 years after leaving the country. He has been in custody since his arrest. He was going to be in the country until 02 January 2011. He has a South African passport valid until 2018, a Spanish identification document or residency permit valid until 2013 and a U K visa valid until 2020.
10. Ms Valley-Omar submitted that there is no extradition agreement between Spain and South Africa but both countries are signatories to the European Convention On Human Rights. Should he be released on bail, getting him back to South Africa would not be easy, if he went to Spain.
11. The appeal is brought in terms of section 65(4) of the Criminal procedure Act, 51/77. The section provides as follows " the court hearing the appeal shall not set aside the decision against which the appeal is brought unless

such court or judge is satisfied that the decision is wrong in which event the court or judge will give the decision which in its or his opinion the lower court should have given."

12. The magistrate's analysis of the applicable law cannot be faulted. He applied his mind to all the relevant provisions of sec 60 of the Criminal procedure Act including subsections (4), (4)(b), (6) and (9). The interests of justice were judiciously balanced against the appellant's personal circumstances.
13. I am not convinced that the magistrate erred in coming to the conclusion that the appellant is a flight risk. The appellant was aware that his businesses were being investigated but he did not deem it fit to inform the relevant authorities that he was thinking of leaving the country.
14. The product that the appellant was manufacturing and distributing through the companies, according to Swanepoel, was sent for forensic analyses and was found to be water. From these facts it may be inferred that the appellant, when he left, may have been aware that an arrest was possible.
15. His finding that appellant has no ties with this country is supported by evidence on record. He does not own property in this country. He has not seen his children and his two siblings here for 12yrs. His sister has

undertaken to make a house available for his occupation, should he be released on bail.

16. He has 11 employees and a wife who can take care of his business in his absence. It is not a business that requires his presence, it is a business that can be run in cyber space.
17. Based on the evidence by Mr Swanepoel it cannot be said that the case of the state against the appellant is weak.
18. In light of the conclusion I have reached, it becomes unnecessary for me to consider whether the charges that the appellant faces fall within the purview of Schedule 5 of the Criminal procedure Act whether the magistrate's decision as to who bears the onus was correct.
19. In my view on the material that was placed before him, his decision is correct.

The Order

In the circumstances the appeal against bail refusal is dismissed.

A handwritten signature in black ink, featuring a large, sweeping loop at the top and a horizontal line with a small crossbar.

JAKUJA AJ



REPUBLIC OF SOUTH AFRICA

CHARGE SHEET

* Make an X in the appropriate block

3042012CRM003924

Police station BELLVILLE	CAS/CR/MAS/MR No. 177/5/1998	Case No. SH7/10/2012 Date 15/2/12
District/Division BELLVILLE	Place of trial COMM. COURT BELLV	Review Case No. Date
		Investigation officer. D/CAPT. D ZAAYMAN
		Date of first appearance 2010.12.22 15/02/12

Particulars of court officials must be furnished on the minutes of proceedings.

THE STATE VERSUS

Particulars of accused

Name **LEON VAN DER LINDE**Address **35 HUMAN STREET BELLVILLE**

Male ☒ Female ☐	Nationality SAC	Age 58
*In custody ☐ On bail ☒ Warned ☐	Date of arrest	

Name

Address

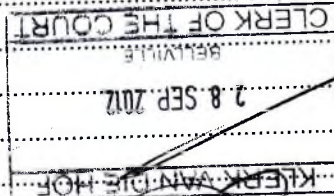
Male ☐ Female ☐	Nationality	Age
*In custody ☐ On bail ☐ Warned ☐	Date of arrest	

(hereinafter called the accused) charged with the offence(s) as set out in Annexure(s) A to as attached.

Plea (Date)

Judgement **28/9/2012** (Date)**All Charges W/D by State**

Sentence on



Gesertifiseer 'n ware afskrif van die oorspronklike dokument. Daar is geen aanduiding dat die oorspronklike dokument deur ongemagtigde persone gewysig is nie.

Certified a true copy of the original document. There is no indication that the original document has been amended by unauthorised persons.

LANDDROS/MAGISTRATE
KLERK VAN DIE HOOFKLERK OF THE COURT

28/9/2012
Date

Magistrate

1/2/2008
Date of appointment to the rank of Magistrate

Direction with regard to revision of sentence

Direction with regard to filing of case record

All charges against all accused withdrawn 28/9/2012

Office of the Director of Public Prosecutions



The National Prosecuting Authority of South Africa
Igunya Jikelele Labeshutshisi boMzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

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27 September 2012

For attention: B Harmse

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Gentlemen

**THE STATE VERSUS LEON VAN DER LINDE
[BELLVILLE CAS 177/05/1998]**

Your letter referenced BH/ms/V3873 and dated 25 July 2012 refers.

After the careful consideration of your representations and having regard to the contents of the case docket as well as having due consultations with the complainant (SARS) and the witnesses available to the State, I have decided not to proceed with the criminal prosecution against your client.

Accordingly, the case will be withdrawn on the next appearance.

Yours faithfully

DIRECTOR OF PUBLIC PROSECUTIONS: WESTERN CAPE

