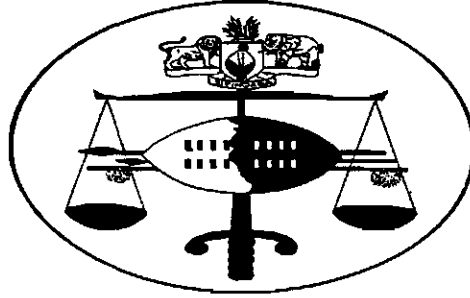


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THE HIGH COURT OF SWAZILAND

NHLANHLA MOTSA

Vs

REX

Criminal Case No. 118/2003

Coram
For the Applicant
For the Respondent

S.B. MAPHALALA – J
MR. DLAMINI
MR. B. MAGAGULA

RULING
(On bail application)
(04/07/2003)

Before court is an opposed bail application.

The Applicant was arrested by the Lobamba Police on or about the 23rd May 2002 on a charge of theft of a motor vehicle.

The Applicant in his founding affidavit avers that he is not guilty of the charge levelled against him in that he never committed the offence as charged. If admitted to bail, he undertakes to abide by all the conditions as may be set by the court and moreover undertakes to avail himself at trial. He avers further that that he has no reason to abscond. He states that all his life he has always been a resident of Swaziland and his family and property is all in Swaziland and he has no intention of relocating. Furthermore, that he is employed in Swaziland and will lose his job if his incarceration continues. He can afford the bail of E500-00, which is within his means.

On the other hand the Respondent opposes bail and the opposing affidavit of 3095 Constable P.M. Dlodlu is filed thereto. The pertinent ground for opposition is found at paragraph 7 therein. The said paragraph reads as follows:

“AD Paragraph 7

In as much as Applicant may not abscond if granted bail, I have reason to believe that Applicant will interfere with crown witnesses. One such witnesses is the person Applicant had asked and/or hired to tow from him (Applicant) the stolen vehicle and ferry from him (Applicant) certain car parts from the very same stolen motor vehicle.

This witness and Applicant work together as they are employed by the same company. I humbly submit that the risk of interference is very high for the above stated reason”.

To the above the Applicant replied as follows:

“AD Paragraph 7 – 8

Contents of this paragraph are denied and the Respondent is put to strict proof thereof. I submit that once the court grants me bail I will ensure that I adhere to whatever conditions the court may set for me. I further submit that the investigating officer’s belief that I will interfere with crown witnesses, especially one of my work colleagues is unfounded. This I say because chances of me retaining my job are very slim in terms of Section 36 of the Employment Act No. 5 of 1980, since I have absented myself from work for more a total of three (3) working days without my employer’s permission.”

Counsel have made their submissions. The only question in the instant case to be answered is “will the accused interfere with state witnesses?” In *S vs Hlongwa 1979 (4) S.A. 112 (d)* at 113H Howard J said, and I quote:

“The accused will have failed to discharge his *onus* if on all the evidence, there is a reasonable possibility that he will tamper with one or more state witnesses if he were released”.

The learned Judge goes on to say:

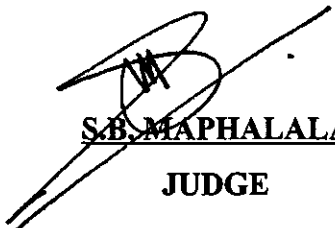
“The court may rely also on the investigating officer’s opinion that the accused will tamper with state witnesses if released on bail”.

In the case of *Ex parte Qutani 1946 EDL 173* the court held that it is not essential for the state to prove actual interference; well-grounded fears will suffice. In the case of

De Jager vs Attorney General of Natal 1967 (4) S.A. 143 (D) the court held that in assessing the risk of interference the court is entitled to consider the relationship between the accused and the state witnesses.

Taking the above enunciated legal principles into consideration *vis a vis* the facts of the present case I come to the conclusion that there is a well grounded fear that the Applicant might interfere with the crown witness in this case who happens to be his co-worker.

In the result, the application for bail is refused.



S.B. MAPHALALA
JUDGE