THE HIGH COURT OF SWAZILAND

SIPHO GUMEDZE & FIVE OTHERS

Applicant

And

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

Civil Case No. 135/2004

Coram: S.B. MAPHALALA - J

For 1st Applicant :MR. M. MKHWANAZI

For 2nd Applicant: MR. MAGONGO

For 3rd , 4th and 5th :MR. MABILA

For the Respondent: MRS. M. DLAMINI - Acting Director of Public Prosecutions

JUDGMENT

(On bail application) (17/02/05)

Introduction.

[1] Before me are six separate bail applications in respect of the six Applicants before the court where at the commencement of argument it was agreed for convenience that they be argued at the same time. The 3r, 4 ' 5 and 6 Applicants joined arguments midstream in view of the similarities in their personal situations with that of the 1st and 2nd Applicants.

[2] I heard arguments in a trancated form spread over a number of days and reserved judgment to the 23rd December 2004. However, I could not deliver judgment on this matter on that day as there were some authorities I was referred by Counsel which were pertinent to the final determination of these applications which I had not been furnished. I ordered that the matter be postponed sine die pending the furnishing of the said authorities by Mr. Magongo for the 2nd Applicant. The court then went on the Christmas recess and resumed on the 17th January 2005. The said authorities were duly furnished in the first week of the session. In view of the number of Applicants in this matter and also the complex nature of the Amended Act I needed more time to consider these bail applications, thus the delay.

The relief sought.

[3] The applications have been moved in terms of Section 105 of the Criminal Procedure and Evidence Act (as amended) that Applicants be admitted to bail under the conditions to be determined by this court and further and/or alternative relief. Each application is supported by a Founding affidavit spelling out his personal circumstances and the circumstances culminating to his arrest for the offence/s

in which he is in custody. Each Applicant made the general averments in bail applications that once admitted to bail, he will not abscond trial and will abide by whatever condition/s the court may deem fit to impose. Furthermore, that he will not interfere with Crown witnesses. Furthermore, they each prayed that the interest of justice clearly favour that they be afforded the relief sought in the Notice of Motion in particular because there is no prejudice to be suffered by the Respondent, yet if they are kept in custody pending trial they will suffer great prejudice as this will take a relative long time and this court can take judicial notice of that fact.

The opposition.

[4] The Respondent as represented by the Acting Director of Public Prosecution Mrs. Dlamini, oppose the granting of these applications and in each case an opposing affidavit of the Investigating Officer 2502 Detective Sergeant T. Kunene is filed thereto. The Crown further sought to introduce a further affidavit captioned "supplementary affidavit" thus creating a hot debate from Counsel for the Applicants, more particularly Mr. Magongo for the 2^{n} Applicant as to its admissibility at this stage. I shall revert to this aspect of the matter later on as I progress with this judgment.

[5] In each case the Investigating Officer advances grounds for opposing the bail applications. The general grounds therein are that the Applicant if admitted to bail he will interfere with witnesses. Applicant will abscond trial if granted bail. I shall revert to the individual applications and the opposition put forth in each application later on in the judgment, for the sake of clarity. Before doing so, I shall proceed to determine the issue of the "controvential supplementary affidavit" as to whether it should be admitted as part of the Respondent affidavit and the evidential weight to be attached thereto.

The issue of the supplementary affidavit.

[6] As I have already mentioned, the Crown sought to introduce in each application a supplementary affidavit deposed to in each case by the Investigating Officer Thabo Kunene. Counsel for the Applicants especially Mr. Magongo took a strong objection to the admission of the said affidavit, arguing that it has not been introduced in terms of the law. In this regard Mr. Magongo referred the court to what is said by the authors Herbstein and Van Winsen, The Civil Practice of the Supreme Court of South Africa, 4th Edition at page 359 on a number of affidavits in application proceedings that "the ordinary rule is that three sets of affidavits are allowed, supporting affidavits, answering affidavits and replying ...the court may in its discretion permit the filing of further affidavits". In the instant case, so the argument goes, the Director of Public Prosecutions has not made a formal application in the proper way. I must hasten to state that I overruled Mr. Magongo and allowed the said affidavits to be used by the Crown and stated that a ruling in this regard will form part of the judgment on the merits. I must say this did not go well with Mr. Magongo who expressed his disgruntlement throughout arguments in this matter.

[7] In answer to this objection the Crown relied on Section 96 (3) of the Criminal Procedure and Evidence Act (as amended) which provides that if the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the Presiding Officer shall order that such information or evidence be placed before court. The thrust of the Crown's assertion in this regard is that the court in bail applications is not necessarily bound by the normal strict rules of procedure as asserted

by Mr. Magongo.

[8] Kriegler J delivering the judgment of the Constitutional Court in South Africa where it examined, inter alia, the provisions of the Criminal Procedure Act 51 of 1977 (which has similar provisions as out Amended Act) in the case of S v Dlamini; S v Dladla and others; S v Jourbert; S vs Schietekat 1999 (2) S.A. 51 at page 63 paragraph 11 thereof stated as follows:

"Furthermore, a bail hearing is a unique judicial function. It is obvious that the peculiar requirements of bail as an interlocutory and inherently urgent step were kept in mind when the statute was drafted. Although it is intended to be a formal court procedure, it is considerably less formal than a trial. Thus the evidentiary material proffered need not comply with the strict rules of oral or written evidence. Also, although bail, like the trial, is essentially adversarial, the inquisitorial powers of the presiding officer are greater. An important point to note here about bail proceedings is so self-evident that it is often overlooked. It is that there is a fundamental difference between the objective of bail proceedings and that of the trial. In a bail application the enquiry is not really concerned with the question of guilt. That is the task of the trial court. The court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails, in the main, protecting the investigation and prosecution of the case against hindrance."

[9] I agree with the approach adopted by the learned Judge in the above cited case and would embrace this dictum in the resolution of this thorny point before me. In view of the spirit in the Section cited by Mrs Dlamini for the Crown and the dicta cited in the above case I would allow the admission of these supplementary affidavits to form part of the Respondent's opposition.

The applicable law in bail applications.

[10] Bail is a fundamental right for an accused person and an accused person cannot be kept in custody pending his trial. In this regard Mahomed J in the case of S v Acheson 1991 (2) S.A. 805 GT 822 A - B said the following; and I quote:

"An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in court. The court will therefore ordinarily grant bail to an accused person unless this is likely to prejudice the ends of justice".

[11] In the Republic of South Africa in the Constitutional Court, in the case I have cited above that of S vs Dlamini et al observed as follows at page 51:

"Bail serves not only the liberty interest of the accused, but the public interest by reducing the high number of awaiting trial prisoners clogging our already over crowded correctional system, and reducing the number of families deprived of a breadwinner".

[12] Indeed, the above observation would equally apply in the circumstances of this country.

[13] The authors Bekker et al, Criminal Procedure, Handbook, 5th Edition commenting on Section 60 (4) in the South African Penal Code which is similar to our Section 96 of the Amended Act had this to say at page 137 thereof:

"(4) The legislature has determined that the refusal to grant bail shall be in the interests of justice where one or more of the grounds referred to in Section 60 (4) (a) to Section 60 (4) (e) are established -see the discussion of Section 60 (4) in paragraph 5.2 below.

(5) The whole issue turns on what is in the best interests of justice. Obviously, it is not in the best interests of justice to grant bail to an accused who will not stand his trial or who might otherwise abuse his liberty pending verdict, for example, by intimidating State witnesses. However, it must be appreciated that it is also not in the best interests of justice to refuse bail to an accused who will stand his trial and who will not otherwise interfere with the administration of justice. See (c) above. In 1967 27 Maryland Law Review 154 at 166 some of the disadvantages of being deprived of liberty pending the outcome of a trial, were put as follows:

The accused who ... is presumed to be innocent, is subject to the punitive aspect of detention. The effect of remaining incarcerated will probably result in the loss of his job, of his respect in the community ...even if (later) acquitted. In addition, the (accused's) defence (sic) is put to a serious handicap. He will not be free to help locate important witnesses. He will not have the opportunity to frequently contact his attorney. And if detention had resulted in the loss of the (accused's) job, he may not be able to even retain an attorney. The (accused) who is denied the right to bail will feel that effect at the most important level of criminal procedure - at the trial level..."

In Dlamini et al as referred to in paragraph 1.2 (1) above, the Constitutional Court said:

"Bail serves not only the liberty of the accused, but the public interest by reducing the high number of awaiting - trial prisoners clogging our already overcrowded correctional system, and by reducing the number of families deprived of a breadwinner".

[14] The author further state in the same book (supra) as follows:

"Each case must be considered on its merits. The Prosecutor must make an independent assessment of the case and ought not blindly to follow the police recommendation that bail should be refused".

[15] The current Amendment to the Act viz Section 96 not only sets out certain procedural and evidentiary rules governing bail applications, but also identifies various factors which the court should consider in deciding whether one or more of the grounds referred to in Section 96 (4) (a) to 96 (4) (e) are present. What was formerly to be found in case law, common law and common sense, is now largely contained in the amended Section. Cowling in the 1996 S.A. LJ 57 argues that many of the factors listed or identified in support of a particular ground could be equally relevant to the establishment of other grounds. (See also Du toit et al, Commentary on the Criminal Procedure Act, Juta, at 9 - 13 in fin 9 -14). For ease of reference, as it pertains to the present application I shall proceed to reproduce some pertinent provisions of the Act, thusly:

[16] Section 96 (4) state as follows:

The refusal to grant bail and the detention of an accused in custody shall be in the interest of justice where one or more of the following grounds are established:

a) Where there is a likelihood that the accused, if released on bail, may undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system.

Section 96 (8) states as follows:

In considering whether the ground in (4) has been established, the Court may; where applicable take into account the following factors, namely:

a) The fact that the accused knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings.

b) Whether the accused is in custody or another charge or whether the accused is on parole

c) Any previous failure of the accused to comply with bail conditions or any.

[17] The above is the position of the law which governs applications for bail under the new amendment to the Act and the present applications ought to be decided within this legal framework.

Who bears the onus!

[18] Prior to the promulgation of the amendment to the Act the onus fell on the accused as shown in some previous decisions of this court including Jeremiah Dube vs R 1979 - 1981 S.L.R 187, Sean Blignaut vs Director of Public Prosecutions - Case No. 1549/2001 and that of Nhloko Zwane vs The King - Case No. 36/2003.

In Jeremiah Dube (supra) Cohen J expressed the position in the following language; and I quote:

"It is established in our law that the onus is on the accused to show on a balance of probabilities that the granting of bail will not prejudice the interest of justice".

[19] It remains to be seen whether the new amendment has ushered a shift in the onus from the accused to the Crown. This presents an interesting debate in view of Section 96 (3), which allows the court to order for further information or evidence when it is of the opinion that it does not have reliable or sufficient information at its disposal or that it lacks certain important information to reach a decision on the bail application.

[20] Mr. Mabila who appeared for 3rd, 4th, 5th and 6th Applicants advanced an equally interesting argument on this point. He contended that the introduction of the amendment to the Act has changed the position in that under the amendment the inquiry is whether the Crown has met the requirements of Section 96 of the Act and not whether the accused has satisfied the court that he is entitled to bail as was previously the case before statutory intervention and that this inquiry should be done on the papers filed of record. In this regard he referred to the authority of Herbstein (supra) at page 364 - 368 and the cases cited thereat.

[21] It appears to me that the answer to this vexed question lies in the amended provisions themselves. Section 96 (12) of the Act provides as follows:

(12) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to:

a) In the Fifth Schedule the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release;

b) In the Fourth Schedule but not in the Fifth Schedule the court shall order that the accused be detained in custody until he or she dealt with accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release."

[22] The authors Bekker et al (supra) commenting on a similar provision in South Africa being Section 60 (11) (a) and (b) state inter alia that the said Sections places a formal onus (burden of proof) on the accused to adduce evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his release. The authors cited the case of Dlamini et al (supra) where it was held in paragraph 65 therein that in Section 60 (11) (b) which is the equivalent to Swaziland's Section 96 (12) (b) stipulates that an accused must satisfy a Magistrate that the "interest of justice" permit his or her release. It clearly places an onus upon the accused to adduce evidence. However, apart from that, the exercise to determine whether bail should be granted is no different to that provided for in Section 60 (4) - (a) or required by Section 35 (1) (f). It is clear that an accused on a Schedule 5 offence will be granted bail if he or she can show, merely, that the interest of justice permit such a grant.

[23] The learned authors at page 156 thereof continue as follows:

"The additional requirement of "exceptional circumstances" imposed by Section 60 (11) (a) is absent. A bail application under Section 60 (11) (a) is more gravely invasive of the accused person's liberty right than that under Section 60 (11) (b). To the extent, therefore, that the test for bail established by Section 60 (11) (a) is more rigorous that that contemplated by Section 35 (1) (f) of the Constitution, it limits the constitutional right".

[24] Van Diikkhorst J in the case of 5 vs Vermaas 1996 (1) S.A. 528 (T) dealt with the issue of the onus in the

following terms:

"I will first deal with the question of the onus. It was argued on behalf of the Applicant that Section 60 (11) of the Criminal Procedure and Evidence Act does not place an onus on the accused but merely a duty to adduce evidence first. The application is still an inquiry without an onus as was held in Prokureur -generaal van die Witwatersrandse Plaaslike Afdeling v Van Heerden en andere 1994 (2) SACR 469 (W) and Ellish en andere v Prokureur- general, Witwatersrande Plaaslike Af deling 1994 (2) SACR 579 (W), before the amendment to the Criminal Procedure Act was introduced.

It was argued that to hold otherwise would create conflict between Section 60 (11) and the right to bail enshrined in Section 25 (2) (d) of the interim Constitution and thus render Section 60 (11) invalid. That is to be avoided, so it was argued.

There is no attack before me on the constitutionality of Section 60 (11) and had there been I would not be empowered to deal therewith. I must interpret Section 60 (11) as it stands.

The following factors are relevant in this interpretation. The amendment of the Criminal Procedure Act was passed amidst a full-blown debate about bail, bail conditions and the onus in bail cases. There were also conflicting cases in the Provincial Divisions on the question of the onus. In the circumstances one must accept that the wording of Section 60 as a whole and Section 60 (11) in particular was well chosen. Significant is the difference in wording between Section 60 (11) and the subsections which precede it. Section 60 is of general application but Section 60 (11) is an exception to the general rule. The general rule set out in Section 60 (1) (a) is that the accused is entitled to be released on bail unless the court finds that it is in the interests of justice that he be detained in custody. That wording, in my view, creates an onus. The onus rests upon him who asserts that the accused should not be released, that is the State. In cases of doubt the accused goes free.

The converse is the case where Section 60 (11) is applicable. It is expressly worded as an exception by the use of "notwithstanding any provision of the Act". It is limited to only a number of crimes stated in Schedule 5 and commission of crimes set out in Schedule 1 while on bail. It is imperative, "the court shall order the accused to be detained". The accused is called upon to satisfy the court that the interests of justice do not require his detention in custody. Clearer wording cannot be sought for an onus on the accused.

A number of the crimes on which the Applicant stands arraigned fall under Schedule 5. In essence the charges amount to so-called round-tripping by the illegal use of the financial rand. The Applicant therefore bears the onus to satisfy me on a balance of probabilities that the interests of justice do not require his detention".

[25] It appears from the review of the above-cited authorities that the burden of proof should rest on the Crown excluding situations covered by Section 96 (12) (a) and (b). In the present case each Applicant is charged with offences falling within Section 96 (12) (a) and (b) and therefore the said Section apply in each case. However, it appears to me that in the final analysis, the whole issue turns on what is the best interest of justice (see Bekker et al (supra) and Du toit et al, Commentary on the Criminal Procedure Act, Juta at 9 - 28 and the cases cited thereat). Indeed, as Mr. Mabila argued the inquiry under the amendment is whether the Crown has met the requirements of Section 96 of the Act and not whether the accused has satisfied the court that he is entitled to bail as was previously the case before statutory intervention.

[26] Having disposed of this aspect of matter I proceed to examine the individual applications vis a vis the opposition advanced by the Crown in each application within the framework of Section 96 of the Amended Act, thusly:

Sipho Gumedze (1st Applicant).

[27] In his Founding affidavit the 1st Applicant outlined at great length his personal circumstances and how he was arrested by the police on the 3rd October 2004, and charged with the crime of robbery. He avers that he has one very young child who is presently attending the Mbabane Government Hospital after undergoing an extensive operation that cost about E70, 000-00. It is worth mentioning that the child's mother is employed but cannot cope with the minor's medical bills on her own.

[28] In paragraph 13 to 18 he avers that he has a very good defence to the charges that have been preferred against him and the temptation of absconding trial is non-existent. In paragraph 19 he avers that he is desirous to be admitted to bail and that he will not abscond trial. He further undertakes to abide by all bail conditions that would be imposed by the court. In paragraph 23 he avers that it will be in the interest of justice that he be released on bail and that he stands to suffer prejudice should he not be admitted to bail. He avers further that he has never been convicted of any offence and that he is presently out on bail on a charge of contravening the Arms and Ammunition Act. Further, in paragraph 27 he avers that he has no objection to the Respondent applying that the conditions stated in Section 96 (18) of the Act be attached to his bail.

[29] The opposition by the Crown as regards the 1st Applicant is on a number of grounds. The first ground is that the 1st Applicant played an active role in the commission of the offence charged. The Applicant was at the time of the commission of the crime out on bail for possession of a firearm including an arm of war. Therefore, clearly Applicant if released on bail there is likelihood that he may undermine the objectives and proper functioning of criminal justice system including the bail system. Again, in the commission of the robbery two firearms were used by Applicant and his co-accused. Furthermore, on the 5th October 2004, Applicant was further charged with robbery of E550-00 at gunpoint at Tex-Ray Factory. Clearly, admitting Applicant to bail may disturb the public peace and security.

[30] The third ground advanced against the Is Applicant is that if released on bail he may attempt to evade trial because of the nature and gravity of the charges against Applicant and punishment likely to be meted out on him on conviction may induce him to evade his trial. Also there is likelihood that Applicant may attempt to influence or intimidate witnesses, as Applicant is familiar with the identity of the witnesses and the evidence which they may bring against him.

[31] The supplementary affidavit filed by the Investigating Officer Thabo Kunene in the main does not advance any new grounds but supplements of what is averred in the Founding affidavit by outlining details to the general grounds advanced therein.

[32] I shall address the four grounds of opposition under four heads viz i) Applicant was at the time of the commission of the crime out on bail ii) Applicant was further charged with robbery on the 5th October, iii) may attempt to evade trial because of nature and gravity of the offence; and iv) likelihood that Applicant may attempt to influence or intimidate witnesses. I shall address these ad seriatim.

i) Applicant out on bail in respect of another offence.

[33] According to annexure "A" to the Respondents opposing affidavit the 1st Applicant were charged before the Manzini Magistrate Court with one other, a certain Nomphumelelo C. Vilane on three counts under the Arms and Ammunition Act and he was granted bail of E500-00 with certain conditions. The offences included possession of an arm of war. The bail was granted on the 17th August 2004. In this regard I am in agreement with the submissions by the Crown that the 1st Applicant has the propensity to commit further crimes and thus the court can refuse to grant him bail under Section 96 (4) (a) which provides that the refusal to grant bail and the detention of an accused in custody shall be in the interest of justice (a) where there is a likelihood that the accused, if released on bail, may endanger the safety of the public or any particular person or may commit an offence listed in Part II of the First Schedule. According to the cases the propensity of the Applicant to commit further offences may therefore be proved and considered (see S v Ho 1979 (3) S.A. 734 (W) see also generally Attorney General, Zimbabwe vs Phiri 1988 (2) S.A. 696 (ZHC)).

ii) 1st Applicant charged with the crime of robbery on 5th October 2004.

[34] In this regard my comments above (i) apply in respect of this ground and the IS Applicant's application cannot succeed. The comments I have made above apply mutatis mutandi in respect of this ground.

iii) Nature and gravity of the offences.

[35] The 1st Applicant together with the other Applicants are facing five counts of armed robbery; one count of theft; seven counts of contravening the provisions of the Arms and Ammunition Act and one count of defeating/obstructing/attempted to defeat or obstruct the course of justice

[36] The Crown contends at paragraph 7.3.1 of the opposing affidavit of the Investigating Officer that, if Applicant is released on bail he may attempt to evade trial especially because of the nature and gravity of the charges against Applicant and punishment likely to be meted out on him on conviction may induce him to evade his trial.

[37] The 1st Applicant and the other Applicants counter this objection by arguing that the Crown has a weak case against them and that in all likelihood they will all be found not guilty and acquitted for lack of evidence. Another argument in this regard which was advanced in respect of all the Applicants is that the evidence as deposed to by the Investigating Officer in the Supplementary affidavit is based on hearsay evidence. On the first argument, it appears to me and I agree with the submissions by Mrs. Dlamini for the Crown that if that was the case the Crown would not have secured the certificate by the Chief Justice in terms of Section 88 bis of the Criminal Procedure and Evidence Act permitting the Director of Public Prosecutions to indict the Applicants for summary trial in the High Court. The said certificate signifies that there are triable offences against the Applicants before court. Again on the latter submission viz admission of hearsay evidence, I agree with Mrs.

Dlamini for the Crown that in applications for bail hearsay evidence is sometimes admitted, especially if it is not considered in the interests of justice not practical at the stage to obtain direct testimony (see Jeremia Dube vs R 1979 - 81 S.L.R 187 and the cases cited thereat).

[38] In the present case from the assessment of the evidence in toto the Crown has proved Section 96 (4) (b) read with Section 96 (6) (f), (g) and (h) of the Amended Section in respect of all six Applicants before court, (see Du toit et al (supra) at 9 - 19 and the cases cited thereat).

iv) Interfering with witnesses.

[39] The Crown contends in respect of all the Applicants that there is likelihood that Applicants may attempt to influence or intimidate witnesses, as Applicants are familiar with the identity of the witnesses and the evidence which they may bring against them. The argument per contra is that the evidence of the Investigating Officer is shoddy in this regard such that the court cannot make a proper assessment either way.

[40] S vs Hlongwa 1979 (4) S.A. 122 at page 113H - 114A is authority for the rule that, depending on the circumstances, the court may in the exercise of its discretion to refuse or allow bail also rely on the Investigating Officer's opinion that the accused will interfere with state witnesses, even though the officer's opinion is unsupported by direct evidence. This opinion should be weighed with all other evidence. In S v Lukas & others 1991 (2) S.A. 429 (E) Kroon J sounded the following warning at 437b - c:

"The court should ... be astute not to simply accept the ipse dixit of the Investigating Officer or other policeman who testify on behalf of the state and should consider the possibility that such witnesses have an improper motive in opposing bail".

[41] In the instant case as it related to all the Applicants in this matter I am satisfied on the affidavit evidence that the requirements of Section 96 (4) (c) have been satisfied read with Section 96 (7) which provides as

follows:

"(7) In considering whether the ground in subsection (4) (c) has been established, the court may, where applicable, take into account the following factors, namely:

a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

b) whether the witnesses have already made statements and agreed to testify;

c) whether the investigation against the accused has already been completed;

d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

f) whether the accused has access to evidentiary material which is to be presented at his or her
trial;

g) the ease with which evidentiary material could be concealed or destroyed; or

h) any other factor which in the opinion of the court should be taken into account".

[42] The above factors exist in all the Applicants in this case. Therefore I would refuse bail on this ground.

[43] Section 96 (4) provides as follows:

"(4) The refusal to grant bail and the detention of an accused shall be in the interests of justice where one or more of the following grounds are established.

a) where there is a likelihood that the accused, if released on bail, may endanger the safety of the public or any particular person or may commit an offence listed in Part II of the First Schedule; or

b) where there is a likelihood that the accused, if released on bail may attempt to evade the trial;

c) where there is a likelihood that the accused, if released on bail, any attempt to influence or intimidate witnesses or to conceal or destroy evidence;

d) where there is a likelihood that the accused, if released on bail, may undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or

e) where in exceptional circumstances there is a likelihood that the release of the accused may disturb the public order or undermine the public peace or security".

[44] As it has been shown above, grounds (a), (b) and (c) have been proved in respect of 2nd to 6th Applicants and for the sake of brevity, I find it unnecessary to consider the individual applications as I did in respect of the 1st Applicant. The result of this is that all the Applicants' are refused bail in terms of Section 96 (4) of the Amended Section.

[45] In conclusion, it is my considered view that granting the Applicants bail will be too risky in the circumstances of the case. According to the evidence presented before me they are facing very serious offences which on conviction would attract heavy sentences. The evidence on affidavits has shown that the Applicants operate as a highly organized gang with 1st Applicant as its kingpin. They are highly mobile people travelling from one country to another with ease.

They are indeed, a flight risk. In my considered opinion it will not be in the interest of justice to grant them bail.

[46] For the afore-going reasons bail is refused in respect of all the Applicants before court.

S.B. MAPHALALA

JUDGE