

THE HIGH COURT OF SWAZILAND**REX****Vs****MANDLA MHLANGA**

Criminal Case No. 162/2005

Coram

S.B. MAPHALALA - J

For the Applicant

MR. MHLANGA

For the Respondent

MR. DLAMINI

JUDGMENT(On bail application) (19th August 2005)

[1] Presently before court is an application for bail which is not opposed by the Crown. The court is merely called upon to fix the *quantum* of bail regard being had to be provisions of Section 95 (4) of the Criminal Procedure and Evidence Act (as amended) No. 67 of 1938. The said subsection provides that **where the court is satisfied that substantial and compelling circumstances exist which justify that the amount of bail be fixed in an amount less than E15, 000-00, it shall enter these circumstances on the record of proceedings and may thereupon fix the amount of bail at such lesser amount.**

[2] According to the affidavit in support of the application for bail on or about the 17th June 2004, the Applicant was arrested by members of the Royal Swaziland Police based at Sigodweni Police Station (Matsapha) and charged with the rape of one N M a girl of 17 years. For purposes of this application, Applicant has averred that he is innocent of the charge preferred against him in as much as the said complainant is his girlfriend, which is a "well known secret" in the flat they were staying in at Mobeni, Matsapha. Further, that in the event that he is granted bail, he will attend trial as and when he is called upon to do by the Crown and will further abide by all such terms and conditions that the court will stipulate.

[3] When the matter appeared before me on the 17th August 2005, *Mr. Dlamini* for the Crown made certain disclosures to the court, namely that the Applicant is 23 years old and is currently a scholar. The second disclosure is that on trial the charge might be reduced to a lesser offence. It is on the basis of these disclosures that the court is called upon to determine whether or not that these facts constitute substantial and compelling circumstances as envisaged by subsection 4 of Section 95 of the Act. It appears to me that they do and they are thus recorded on the record of these proceedings as required by the subsection.

[4] Having found that substantial and compelling circumstances exist in this case it now behoves me to fix an amount of bail less than E15, 000-00. I have considered the facts of the matter and the personal circumstances of the Applicant. I have come to the conclusion that an appropriate amount in the circumstances is in the sum of E1, 000-00 as bail.

[5] In the result, the Applicant is granted bail of El, 000-00 and is to observe the conditions as will be agreed in the recognizance form.

S B MAPH AL ALA

JUDGE