



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

**Criminal Case No: 304/14**

**In the matter between**

**SHAHID JAVID**

**APPLICANT**

**Versus**

**REX**

**RESPONDENT**

Neutral citation: *Shahid Javid v Rex (304/14)* [2014] SZHC 205  
(27 August 2014)

**Coram:** **M. S. SIMELANE J**

**Heard:** **20 August 2014**

**Delivered:** **27 August 2014**

**Summary:            Bail application by Applicant of Pakistani origin –  
Charges of Attempted Murder and Assault –  
Applicant a flight risk – bail refused.**

### **Judgment**

#### **SIMELANE J**

- [1] The Applicant an adult male of Pakistani origin commenced this application on the premises of urgency contending for his release on bail upon such terms and conditions as this Court may deem fit.
- [2] The Applicant is charged with two counts which are Attempted Murder and Assault.
- [3] The Crown opposes the bail application. Mr S. Dlamini who appeared for the Crown filed heads of arguments and advanced oral arguments for which I am grateful.
- [4] The grounds for the opposition are contained in the answering affidavit sworn to by 2173 Senior Superintendent Herman Dlamini, described there as an Investigator based at the Manzini Police Regional Headquarters.

- [5] In the opposing papers the Crown contends that the Applicant is a flight risk. It is contended by the Crown that the Applicant left for Mozambique while involved in tax fraud with the Swaziland Revenue Authority. The Crown submits that there is a great likelihood that the Applicant can leave the country again as he disappeared for two (2) years when he defrauded the Swaziland Revenue Authority.
- [6] The Crown also contends that the Applicant is likely to temper with the administration of justice if released on bail. The Crown's argument is that the Applicant is an admitted fraudster. He undervalued the import cars he was selling in an endeavor to evade tax with the Swaziland Revenue Authority.
- [7] The Crown also contends that there is annexure HD 3 which proves that at the Magistrates Court on the 4<sup>th</sup> August 2014, amongst the Pakistani nationals there were also Mozambicans who eventually spoke to the Applicant when he made his remand hearing.
- [8] The Crown further contends that the Applicant is facing a very serious offence of which upon conviction he will get a custodial sentence. The Crown's submission is that this may induce the Applicant to temper with Crown witness and evade trial if released on bail.

- [9] It is also the Crown's contention that Swaziland and Mozambique do not have an extradition treaty and hence it will be impossible to bring the Applicant back to Swaziland for trial if released on bail and decides to evade trial and remain in Mozambique as he did in the past when he escaped the country and remained in Mozambique for two years having defrauded the Swaziland Revenue Authority.
- [10] Mr S.C. Simelane who appeared for the Applicant advanced arguments for the Applicant and filed heads of Arguments for which I am grateful.
- [11] In his replying affidavit the Applicant refuted that he is a flight risk as alleged by the Crown. He alleged that he only went to Mozambique to explore better business opportunities. He states that his return to Swaziland was also motivated by business interests. The Applicant contends that there is no real likelihood that he will abscond trial if released on bail.
- [12] It is further contended by the Applicant that he has a good defence to the charges preferred against him.
- [13] It is contended by the Applicant that for the above arguments the he is entitled to be released on bail on such conditions that the Court may impose.
- [14] This Court undoubtedly has powers to grant applicant bail. I am also cognizant of the fact that this however is a discretionary power of the

Court which should be exercised judicially and judiciously. Section 96 of the Criminal Procedure and Evidence Act 67/1938 as amended enjoins this Court to weigh certain factors and balance same with the interest of justice. The factors include but are not limited to the following:-

1. Whether the Accused is familiar with the identity of the Crown witnesses and with the evidence which they may bring against him/her.
2. The nature and the gravity of the offence of which the Accused is to be charged.
3. Whether the nature or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed.
4. Whether the safety of the Accused might be jeopardized by his release.
5. Any other factors which in the opinion of the Court should be taken into account.

[15] Having carefully considered the submissions by both counsel for the parties, I hold the firm view that the Applicant is a flight risk and it will not be in the interest of justice to release him on bail at this stage.

I am also inclined to agree with the Crown that the Applicant is likely to temper with the due administration of justice if released on bail.

[16] *In casu* the Accused stand charged with the offences of Attempted Murder and Assault. The Crown has graphically exhibited the circumstances under which the offences were committed. The Applicant is faced with serious offences hence the gravity of the offences can not be over emphasized. Upon conviction the Applicant is likely to get a harsh sentence which is a custodial one particularly for the Attempted Murder charge. I find that there is a likelihood that the Applicant may evade trial and thus undermine the criminal justice system.

[17] There is the uncontroverted evidence that the Applicant was a director at Nagra Motors and that company defrauded Swaziland Revenue Authority and undervalued cars to evade tax and for the Applicant and his co-directors to maximize profit.

[18] Secondly, the Applicant is his own admission has shown that the company of which he was a director decided to change its trade name to T. T. Global when they realized that they were in serious trouble with the law. The Applicant states that he voiced out his explicit opposition to the formation of another company as this would amount to circumventing the *lien* that had been placed by the Swaziland Revenue Authority on Nagra Motors and that was illegal.

[19] One wonders why the Applicant did not report that to Swaziland Revenue Authority if he was not party to it. He kept quiet and they were able to establish another company. They did this because they failed to make payments with Swaziland Revenue Authority as arranged and Nagra Motors was sinking into more financial woes. It is clear to me that the Applicant is an untrustworthy person and has the propensity to temper or undermine the due administration of justice.

[20] I am also of the considered view that there is a likelihood that if the Applicant is released on bail he will evade trial. I say this because he has admitted that he left for Mozambique and disappeared for two (2) years at the height of his indebtedness to the Swaziland Revenue Authority. He did so inspite of the acknowledgement of debt and settlement arrangement with Swaziland Revenue Authority. He only resurfaced after his co-directors had settled the monies owed to Swaziland Revenue Authority, about E2 000 000-00. This clearly exhibits the Applicant as an untrustworthy person. This factor strongly militates against Applicant's release on bail in the interest of justice. The Applicant is a person with propensity to disappear when he has to face justice.

[21] The Applicant's argument that he has a big business of selling import cars in Swaziland does not hold water to me because he was in the same business before and left it and stayed in Mozambique for two (2) years. It appears to me that there is a likelihood that he can still

abandon this business and disappear which is likely to jeopardize the interest of justice.

[22] I am also mindful of the fact that there is no extradition treaty between Swaziland and Mozambique. As stated above if the Applicant evades trial by escaping to Mozambique, it would practically be impossible to bring him back to Swaziland to stand his trial. There is also a likelihood that he can escape to Pakistani and never return to Swaziland to face the criminal charges preferred by the state in Swaziland against him.

[23] It appears to me therefore that the interest of justice in the instant matter far outweighs the right of the Applicant to liberty pending his trial. It is for the totality of the foregoing reasons that I dismiss the Applicant's application.

[24] **ORDER**

1. Applicant's application for bail pending trial be and is hereby dismissed.
2. Applicant's trial be and is hereby ordered to be expedited.

**M. S. SIMELANE J.**  
**JUDGE OF THE HIGH COURT**



**For the Applicant: Mr S.C. Simelane**

**For the Respondent: Mr S. Dlamini**