



**IN THE HIGH COURT OF SWAZILAND**

Criminal case No: 38/2014

In the matter between:

**SUNDAY PHINDA GAMEDZE**

**APPLICANT**

**VS**

**REX**

**RESPONDENT**

Neutral citation: *Sunday Phinda Gamedze v. Rex (38/2014) [2014] SZHC69 (2014) 24 March 2014*

**Coram:**

**M.C.B. MAPHALALA, J**

**Summary**

Criminal Procedure – bail – applicant charged with murder, armed robbery and house-breaking – held that the offence of armed robbery is listed in the Fifth Schedule – further held with regard to the murder count that the victim was a law enforcement member and that he died during the course of a robbery with aggravating circumstances – held further that the applicant could only be released if he could satisfy the requirements of section 96 (12) (a) of the Act by adducing evidence which satisfies the Court that exceptional circumstances exist which in the interest of justice permit his release – held further that the applicant has failed to discharge the said onus as required – application for bail is dismissed.

**JUDGMENT**  
**24 MARH 2014**

[1] The applicant is charged with the offences of Murder and Armed Robbery as well as House-breaking. The Crown contends and it has not been disputed that the charge of murder was committed by the applicant and his co-accused in an attempt to rob the deceased who was a soldier of a firearm belonging to the State. The applicant has not disputed as well that he recorded a confession before the Principal Magistrate in Manzini confessing to participating in the killing of the deceased in the course of an armed robbery. The applicant has also not disputed the Crown's contention that various exhibits to the robbery charge were recovered having been sold by the applicant to various persons.

[2] In order for the applicant to be granted bail with regard to the count of armed robbery and to a certain extent the murder count, the applicant has to satisfy the requirements of section 96 (12) (a) of the Criminal Procedure and Evidence Act No. 67 of 1938 as amended. As stated in the preceding paragraphs, the Crown has made contentions which have not been disputed by the applicant that the killing of the soldier was committed by the applicant and his co-accused in an attempt to rob him of his firearm belonging to the State.

- [3] The Fifth Schedule to the Criminal Procedure and Evidence Act lists serious offences including murder when it was premeditated or where the victim was a law enforcement officer whether on duty or not but killed by virtue of his holding such position or where the death of the victim was caused by the accused in committing or attempting to commit robbery with aggravating circumstances or where the offence was committed by a person or group of persons or syndicate in the execution or furtherance of a common purpose or conspiracy. In light of the contentions by the Crown which have not been disputed by the applicant, the murder charge can properly be classified under the Fifth Schedule.
- [4] The Fifth Schedule further lists, *inter alia*, robbery involving the use by the accused or his co-accused of a fire-arm or the infliction of grievous bodily harm by the accused or his co-perpetrators. Count three of the charge sheet is Armed Robbery in which the applicant and his co-perpetrators were charged, using both a firearm and a knife to induce submission to the taking.
- [5] Section 96 (12) (a) of the Criminal Procedure and Evidence Act provides as follows:

**“96. (12) Notwithstanding any provisions of this Act, where an accused is charged with an offence referred to-**

- **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.”**

[6] The applicant has not adduced any evidence of the existence of exceptional circumstances as required by section 96 (12) (a) of the Act save for presenting a bare denial as a defence. In the case of Wonder Dlamini and Lucky Dlamini Criminal Appeal No. 1 of 2013, I dealt extensively with the issue of exceptional circumstances as envisaged by section 96 (12) (a) of the Act. It suffices to say that in the present case, the applicant has not adduced any evidence that would satisfy the Court that exceptional circumstances exist which in the interests of justice permit his release.

[7] Accordingly, the application for bail is dismissed

**M.C.B. MAPHALALA  
JUDGE OF THE HIGH COURT**

For Applicant  
For Respondent

In person  
Crown Counsel Elsie Matsebula