

## THE HIGH COURT OF SWAZILAND HOPEWELL BHEMBE

Vs

REX

Criminal Case No. 173/2003

Coram S.B. MAPHALALA - J

For the Applicant MR. O. NDZIMA

For the Respondent MR. A. MAKHANYA

## JUDGMENT

(19/12/2003)

The Applicant has moved an application before court seeking to be released on bail on such terms and conditions as the court may deem fit.

The Applicant states in his founding affidavit that he is a Swazi citizen from Lwandle area in the Manzini Region and that at the time of his arrest he was employed at Sidvwashini in a company called Blue Ribbon. The Applicant further states that he is prepared to abide by whatever conditions this court may impose if granted bail, and further that he is prepared to report weekly at the nearest police station.

2

The Respondent has filed papers in opposition and the affidavit of 1974 Detective Inspector F. Mabuza has been used thereto. The crux of the opposition is that it is feared that Applicant will interfere with Crown witnesses. It is alleged that the Applicant is aware of the Crown witness's evidence and that most of them are well known to him. To that the Applicant has filed a replying affidavit where he states that he will not interfere with Crown witnesses nor interfere with police investigations. He further states that he is not aware of the crown witnesses and such witnesses have not been mentioned.

The principles governing the decision to grant or refuse bail have been stated in a number of authorities and the factors applicable were lucidly enumerated in the case of S vs Acheson 1991 (2) S.A. 80S as follows:

- a) Is it more likely that the accused will stand trial or is it more likely that he will abscond and forfeit his bail?
- b) Is there reasonable likelihood that the accused will tamper with relevant evidence or cause such to be suppressed or distorted?
- c) How prejudicial it might be for the accused in all the circumstances to be kept in custody by being denied bail.

According to Nathan CJ (as he then was) in the case of Ndlovu vs Rex 1982 - 86 S. L. R. 52 E - F the principles applicable are as follows:

"The two main criteria in deciding bail applications are indeed the likelihood of the Applicant standing trial and the likelihood of his interfering with crown witnesses and the proper presentation of the case. The two criteria tend to coalesce because if the Applicant is a person who would attempt to influence crown witnesses it may readily be inferred that he might be tempted to abscond and not stand his trial. There is

a subsidiary factor also to be considered, naturally, the prospect of success in the trial".

In dealing with the nub of the crown's apprehension if the Applicant be released, Mohamed CJ (as he then was) stated the following in S vs Acheson (supra) at 822 - 823C:

3

"The second question which needs to be considered is whether there is a reasonable likelihood that, if the accused is released on bail, he will tamper with the relevant evidence or cause such evidence to be suppressed or distorted. This issue again involve an examination of other factors such as;

- a) Whether or not he is aware of the identity of such witnesses or the nature of their evidence;
- b) Whether or not the witnesses concerned have already made their statements and committed themselves to give evidence or whether it is still the subject of continuing investigations;
- c) What the accused relationship is with such witnesses and whether or not it is likely that they may be influenced or intimidated by him;
- d) Whether or not any condition preventing communication between such witnesses and the accused can effectively be policed".

In the present case the gist of the opposition by the crown is that the Applicant will interfere with witnesses. The evidence of Inspector Mabuza reveals at paragraph 7 of the opposing affidavit as follows:

"7.1 He is aware of the crown witnesses' evidence, and most of them are well known to him and it is likely that they may be influenced or intimidated by him.

7.2 There is still another suspect who is at large, who is being sought by the police and is implicated in the same charges.

7.3 I submit that there is a reasonable likelihood that if Applicant is released on bail he will tamper with police investigations and suppress relevant evidence".

I have carefully assessed the evidence brought before me and also considered the submissions made by counsel in this case. I am inclined to agree with the Crown in this case that the Applicant is likely to influence witnesses in this case. On the basis of the submissions in the opposing affidavit of the Inspector I have come to the considered view that Applicant is likely to influence witnesses in this case.

In the premise the application is dismissed and costs to follow the event.

4

S.B. MAPHALALA

JUDGE