



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No.416/2011

In the matter between:

ANDISWA WASHISHA MAPHONSA

Applicant

VS

REX

Respondent

Neutral citation: *Andiswa Washisha Maphonsa vs Rex (416/2011)[2013]*

SZHC208 (September 2013)

Coram: **MAPHALALA PJ**

Heard: **9th August 2013**

Delivered: **19th September 2013**

For Applicant: In person

For Respondent: Mr. S. Dlamini

Summary: (i) Application for bail where Applicant is charged with the offences of robbery, possession of firearm and other offences.

(ii) This application for bail refused in terms of section 96(4) (a) of the *Criminal Procedure and Evidence Act (as amended)* there is likelihood that the release of the Applicant may disturb the public order or undermine peace or security.

JUDGMENT

[1] The Applicant Andiswa Washisha Maphonsa has filed an Application to be released on bail in a number of letters to the Registrar being that of the 22 December, 2011 and that of the 15 March, 2012. The Applicant states in all these letters that he was arrested on the 27th April, 2011 by the Mbabane Police under the CID Department and charged with robbery, possession of firearm, possession of dagga and housebreaking and escape from custody.

[2] The Applicant in the letter of the 15 March, 2013 states the following:

“I was arrested on the 27th April 2011 by the Mbabane Police under the CID Department and I was charged with robbery, possession of firearm, two possessions of dagga, two housebreaking and escape. I was brought before the Mbabane Magistrate Court for my first remand hearing on the 27th April 2011.

Firstly, the police officer who is presiding over my case has made numerous untruthful errors in opposing my bail application. He says he has personal information which he believes is true and correct about me. Which I’m sure is not true because I am a first offender and I have never in any case been involved with anything to do with the crime and its proceedings.

Secondly, I am not a flight risk because the presiding officer made an incorrect oath when he said on the 12th April yet it was on the 27th April when I was arrested. I was with my two brothers accused no.4 and 5 and found in possession of dagga.6.580kg at Siphocosini my home. It was about 04.30am

that they said they suspect me for crime. They took us to the police station, they asked me about the offences and I told the officers I don't know anything. They took me back to the cells without further questions. The officer wrote a lot of untruthful points before the honourable court to oppose my bail application. There are no even exhibits that the officer can produce as proof before the honourable court.

Thirdly, the officer again said the offences were committed around my community area, that is, its own true because all the offences they charged me with are said to have been committed at or around Nkoyoyo area. That is not true because I come from Siphocosini. That is clear that the officer wrote many untruthful points that are meant to jeopardize the proceedings. I intend to plea not guilty.

Fourthly, I am Swazi citizen who already have two daughters and I was in the verge of starting my own family and therefore I can not be in any case go away leaving my children with their unemployed mother who also rely on my efforts for survival. I ask the honourable court to grant me bail so that I can go and look after my children. They so much need me for their survival.

I am breadwinner, sculpture artist, who make a living by selling my artworks and my siblings are my apprentices and school going students and also beneficiaries to my project because my mother has never been employed in her life and she is in her 60's and no longer of any help financially. My father passed away in 1995.

May I also quote section 136(2) of the *Criminal Procedure and Evidence Act No.67/1938*, since it is my eleventh month but still I haven't been committed.

I humbly ask the honourable court to honour my request and grant me bail. I granted, I promise that I will abide by all the rules regarding my bail conditions. I urge the court to kindly and positively consider my request and grant me bail."

[3] The Crown as represented by Crown Prosecutor Mr. S. Dlamini opposes the Application and has filed an Opposing Affidavit of one 3447 Detective

Sergeant Robert Dlamini a Police Officer based at Mbabane Police Post under the Criminal Investigation Department and the investigating officer in this case.

[4] In the said affidavit the Police Officer opposes the Application for bail on two grounds. Firstly, that the Applicant is a flight risk as he once escaped from lawful custody on the 21st April, 2001.

[5] The second ground of opposition is that the offences the accused and his co-accused committed were committed within or around his home area and his release will cause public uproar and him being in prison will be within the public interest in his community.

[6] This court heard arguments of the Applicant and the Crown prosecutor on 9th August 2013 and then reserved its judgment to a later date.

[7] I have considered all the arguments of the parties in this case and I come to the view that it will not be in the interests of justice to release the Applicant on bail in the circumstances of this case. It is my considered view that the provisions of section 96(4) of the *Criminal Procedure and Evidence Act (as amended)* apply on the Applicant. This being paragraph (b) and (e) of the said section to the following effect:

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

(a) ...

(b) Where there is a likelihood that the accused, if released on bail, may attempt to evade the trial.

(c) ...

(d) ...

(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.

Section 96(6) (f) states as follows:

In considering whether the ground in section 4(b) has been established, the court may where applicable, take into account the following factors...”

[9] The facts of the case establishes that (c) above that members of the community are baying for Applicants’ blood following the commission of the offence.

[10] All in all, I have come to the firm view that the Crown is correct in its submissions that it will not be in the best interest of the community to release the Applicant on bail at this stage and therefor the Application is dismissed forthwith.

STANLEY B. MAPHALALA

PRINCIPAL JUDGE