

IN THE HIGH COURT OF LESOTHO

In the Application of :

COSTA PETER SABA

Applicant

v

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 8th day of April, 1994

While there is on one hand a situation where presumption of innocence has fallen away because a man has been convicted, there is however, on the other hand provision in the law showing that a man who has been convicted is entitled where reasons warrant it to apply for bail and obtain it.

I have listened carefully to both sides of the argument by able Counsel who ably argued their case before this Court and to its satisfaction.

As I stated this is not a very easy determination for the Court to make because as the authorities against granting bail at this stage pointed out, granting of bail may seem to show that the Court had its own doubts about whether it had acted properly by

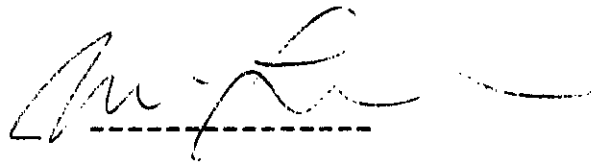
convicting in which case then it would be easy for one to say on that score there are good prospects of success on appeal - but looking at the matter and going through it with a fine-toothed comb it becomes readily apparent that it does not necessarily mean so - all it means is that another court may look at the findings of the Court a quo differently and therefore on that score establish a basis for saying prospects of success on appeal exist. That doesn't necessarily mean that the Court a quo was wrong to have made its own findings based on what it observed.

The only reason which this Court feels that it would be in the interests of justice to lean backwards in favour of granting the applicant bail is that he submitted his application way back in August showing that he was desirous of being granted bail immediately after he had been convicted and that because of the delays he is only able to pursue it now. Taken along with the fact that his sentence was fairly brief - I don't think it would look wholesome that he should be denied bail and at the end of the day find that he has served his entire sentence when perchance he is acquitted. The reason being that he was kept in jail. In such circumstances denial of bail may amount to impropriety - I am not so sure whether that is the right word but I make an exception in this case from other cases where sentences were long.

That is not to say that every short sentence will automatically entitle applicant lodging an application for bail

pending appeal to be successful. Having said that bail is granted on following conditions :

- (1) that the applicant pay M200-00 cash;
- (2) (He has already, of course, filed his grounds of appeal but I don't think it will be redundant to say) he should pursue his appeal.
- (3) that he report every Saturday at Maseru Central Charge Office between 6.00 a.m. and 6.00 p.m.



J U D G E

8th April, 1994

For Applicant : Mr. Mohau

For Respondent : Mr. Thetsane