

CRI/APN/266/2001

IN THE HIGH COURT OF LESOTHO

In the matter between

PETER LETSELA

APPLICANT

and

THE DIRECTOR OF PUBLIC PROSECUTIONS    RESPONDENT

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REASONS

This is a matter of an application for admission to bail. On the 5<sup>th</sup> September 2001, the counsel for the applicant and for the respondent addressed the court in respect of this application. After the perusal of the papers filed of record and the hearing of the counsel's addresses, the application for admission to bail was granted on the following conditions :

- (a) that the applicant pays a bail deposit of M500.00*
- (b) that the applicant attends remand and stand trial.*

- (c) that the applicant does not interfere with crown witnesses.*
- (d) that the applicant reports at the PITSENG POLICE STATION on every Friday of the week between 6.00 a.m. and 6.00 p.m.*
- (e) that the applicant surrenders his travel documents to the Clerk of Court at the Magistrate Court Leribe.*

I indicated then that the reasons will follow. These are the reasons.

This applicant was arrested on the 5<sup>th</sup> January 2001. He is not sure of this date but he does not dispute that the police are correct to allege that this is the exact date of his arrest. The applicant insists that he was arrested soon after the commission of the alleged offences. How soon is his soon? The counsel for the respondent argued that it took a long time for the police to locate the applicant and effect his arrest. He continued his argument on the basis that the alleged offences were committed on 15<sup>th</sup> September 2000. This argument is based on the allegations made in the opposing affidavit by Detective Sgt Mosuhli of Lesotho Mounted Police Service attached to the Criminal Investigations in Leribe.

The copy of the charge sheet, attached to the founding affidavit, shows this court that this applicant is facing two charges. In the first count, he is charged with the crime of murder. The second count is the charge of Armed Robbery. Both these crimes, are alleged to have been committed, on the 15<sup>th</sup> December 2000.

Therefore there is uncertainty, as regards the exact date on which the alleged offences were committed. The applicant claims he was arrested around January 2001. He adds, that his arrest happened soon after the commission of the alleged offence. If the alleged offences were committed on 15<sup>th</sup> September, the arrest happened after the period of approximately four(4) months. On the other hand, if the alleged offences were committed on 15<sup>th</sup> December 2000, the arrest which happened after the commission of the alleged offences was effected on 5<sup>th</sup> January 2001, the period taken in order to effect such arrest in approximately two weeks.

The deponent of the opposing affidavit claims that it was a struggle to arrest this applicant. What kind of struggle? What is the nature of that struggle ? There is no description regarding the nature of the alleged struggle. The charge sheet clearly shows that the alleged offences were committed on 15<sup>th</sup> December 2000. There must be an error committed by the police when calculating the time it took them to arrest the applicant.

Even if I accept that it took the police four months to locate the applicant and effect his arrest, there must be an explanation by the police which shows that the delay to locate and effect an arrest of this applicant was caused by the applicant.

The applicant does not question the lawfulness of his arrest. He merely seeks to be admitted to bail while awaiting his trial.

The facts of this case are not very clearly stated. But at this stage that is not material because the inquiry now is concerned only with the question of bail. In brief, this applicant and his companion, one Ramaphike were found by the police, in possession of a dead body. The police had earlier on, on the 15<sup>th</sup> December 2000, received a report of Armed Robbery being committed presumably at Maputsoe because the charge sheet indicates that as the place where the alleged offences were committed. Their investigations led the police to Qoqolosing where they encountered the motor vehicle they were looking for. The occupants of that motor vehicle were identified by the police as this applicant and his companion Ramaphike. They fired at the police who returned the fire. The mini gun battle ensued. According to this applicant, he ran away for fear of being caught in the cross-fire.

The story as reported by this applicant has small variations. He came to be in that motor vehicle because he had been called to come and help the person injured by Ramaphike. Ramaphike wanted to take his victim to the hospital for medical treatment. He went to wake up this applicant to come and help him. The applicant, Ramaphike and the injured person travelled in that same car. The injured person died while on the way to the hospital. Ramaphike and the applicant were still wondering whether it would be best to take the deceased to the mortuary or police station when police arrived. The applicant claims that the police started firing at them and Ramaphike returned the fire.

The Detective Sgt Mosuhli who deposed to the opposing affidavit, avers that the applicant and his companion were still on the run. The police believed, rightly and wrongly, that the applicant was in the Republic of South Africa. The Detective Sgt expressed this belief by the police, in order to support the allegation that they were not able to arrest this applicant immediately after the commission of the alleged offences. There was a further allegation that it was difficult and the police struggled to arrest this applicant. What caused the difficulty? What was the nature of the difficulty? It is not helpful to make unfounded and unsupportable allegations. There must be a proper description of the problems or difficulties encountered while in the process or at the time of making the actual arrest. In other words the suggestion that the applicant is likely to abscond, must have facts to support it.

The applicant and the police had a second encounter on 5<sup>th</sup> January 2001. The police immediately effected his arrest. Do the difficulties alleged by the police relate to this time of actual arrest or are they relevant to the whole period of four months when they believed he was in the Republic of South Africa? There is no answer to this question in the papers filed of record. There is no firm allegation and the proof thereof that this applicant had in fact run away and was hiding in South Africa. It is a mere belief by the police for their failure to arrest the culprit timeously. The mere belief of absconssion, without actual proof of the facts showing that the person has absconded, cannot support refusal for admission of that person to bail.

The other grounds on which this court is urged to refuse this applicant's application for admission to bail are :

- (a) that there is strong case against him*
- (b) that the applicant is charged with two serious offences.*
- (c) that the police struggled in order to arrest him*

In bail applications there is no requirement to prove the case against the accused. This averment, that there is a strong case against this applicant, begs of the requirement to prove the case that is alleged to be so strong. The accused remains an accused until tried and proven guilty. Until then the presumption that the accused is innocent until proven guilty obtains. The strength of the case against this applicant at the bail application proceedings may help to indicate whether or not he will abscond. It cannot be said to point at no other possibility but that of absconding.

The seriousness of the offences with which this applicant is charged, does not by itself preclude the consideration for his release on bail. This court almost routinely deals with unopposed bail application of the persons accused of committing exactly the same type of offences. There seems to be an established practice by those accused who are on bail, to attend remands and finally stand trial. The main consideration for this type of application is whether or not the accused, if released out on bail, will come back to court to stand his trial or not. **VAN DER BERG 1986 "BAIL - A PRACTITIONER'S GUIDE PAGE 59. S V ESSAC 1965 (2) SA 161.**

It is true that dangerous murderers and robbers must be kept in prison. But at the stage where they are only accused, the court cannot by mere seriousness of the cases they are facing, order their detention. There must be proof that when released on bail, such accused will commit similar or the same offences again while on bail. There was no such suggestion in this application.

It was for these reasons that bail was granted.

**K.J. GUNI**

**JUDGE**

<sup>h</sup> September, 2001

FOR APPLICANT : MR MOFOKA  
FOR RESPONDENT : MS L. MOFILIKOANE