

CRI/APN/607/2011

IN THE HIGH COURT OF LESOTHO

In the matter between:-

THABANG MONETHI

Applicant

Vs

DIRECTOR OF PUBLIC PROSECUTIONS

Respondent

JUDGMENT

Coram: Hon. M. Hlajoane

Date of Hearing: 2nd December, 2012

Date of Judgment: 11th February, 2013

Summary

Application for bail - Applicant having not advanced any exceptional circumstances - Facts otherwise showing Applicant a flight risk resulting in jeopardizing the interests of justice - Application for bail dismissed.

Annotations

Statutes

1. **Criminal Procedure and Evidence (Amendment) Act 2002 S.109A**

Books

1. **Criminal Law and Procedure through Cases 1985 p188**

Cases

1. **Matlanyane & Others v DPP CRI/APN/192/2004**
2. **‘Mabathoana v DPP CRI/APN/373/2004**

[1] The Applicant who is facing a charge of murder is asking to be released on bail. Applicant in his papers denies any involvement in the commission of that murder and also denies that he is a flight risk.

[2] Though this fact has not been discussed by any of the two sides, the Court has realized that on the Annexure to the Preparatory Examination (PE) the allegations show that the murder crime was committed upon or about the 29th day of July 2011. Accused arrested on the 16th October, 2011.

[3] The founding affidavit by the Applicant has reflected that applicant heard of deceased's death on the 29th May, 2011, when the killing

had taken place the previous day the 29th May, 2011. The Respondent has also shown that it took them five (5) months to have the applicant arrested because he could not be traced.

[4] Be that as it may, the bail Application has been opposed and the investigating officer has deposed to an affidavit.

[5] According to the applicant he learned of deceased's death on the 29th May, 2011. He also came to know that some men were suspects. Immediately after that Applicant moved to Welkom with his family. He again came back home in July and learned that police were looking for him in relation to illegal firearm. He however did not report to the police despite the fact that he said he had no firearm but returned to Welkom.

[6] It was again in August when he had come home that he learned he was being suspected of murder. Still he did not go to the police but was asked by his counsel to go to his office so that he could go with him to the police. It would seem he did not go to his counsel as he was arrested on the 16th October, 2011 on a Sunday.

[7] In response to what has been said by the Applicant, Respondent has invited the Court to note that in all what has been said by the Applicant no attempt was made by the Applicant to tell us about his movements on the day in question. He has also not told us where he was when he heard about the death of the deceased.

[8] The reasons for opposing bail have been shown to be the following:

- (a) Applicant is facing a very serious charge.
- (b) Respondent has a prima facie case against the Applicant.
- (c) Applicant is a high flight risk hence why he was only arrested five (5) Months after the event as he fled to Welkom in South Africa.

[9] The law is very clear when it comes to Applications of this matter in that the Courts are always to be desirous on allowing accused bail. But there is a catch there, that it should only be in cases where the interest of justice will not be jeopardized and most importantly that it be where the Court thinks upon the facts before it that the applicant will appear to stand his trial.

[10] The Respondent has put more emphasis on the phrase;

“If it thinks upon the facts before it that he will appear to stand his trial.”

Respondent thus submitted that it would not be in the interests of justice to release the applicant who has proven to be a flight risk by being able to have fled for five months without a trace.

[11] Respondent quoted from the book by the late **M.P. Mofokeng**¹ where it stated as follow:-

“In dealing with applications such as this, it is necessary to strike a balance, as far as that can be done, between protecting the liberty of the individual and safeguarding and ensuring the proper administration of justice.”

[12] Respondent further argued that whilst considering the striking of a balance the Court still has to have consideration on the nature of the offence charged, the probability of conviction and the severity of the punishment which may be imposed.

[13] Knowing the facts of the case he further pointed out that applicant is facing a very serious charge, murder, which might attract even a death penalty. He sounded certain about conviction, but of importance is whether if released on bail applicant is going to stand his trial.

[14] Applicant, according to him, learned that police were looking for him in August but did not report to them to explain his position. Again in August he was home and learned police were suspecting him of murder but still did not approach the police to clear his name. He was only arrested in October 2011.

¹ Criminal Law and Procedure through Cases 1985 p188

[15] Applicant alleged that he has been working in Welkom since 2009 but that has been denied by the investigating officer. Respondent showed that applicant only fled to South Africa after the event and that the fact of him failing to report to the police after hearing that police were looking for him speaks volumes.

[16] The investigator showed that it could not be true that applicant was employed anywhere in South Africa. According to the Applicant when he was arrested in Maputsoe in a 4+1 cab he was on his way back to work in Welkom. But surprisingly the investigating officer deposed to the fact that when he was so arrested he was not even in possession of a travel document. He even failed to give a clear account of his place of employment when he was being interviewed.

[17] Can it therefore under the circumstance of this case be said the applicant has discharged the burden of proof in convincing the Court that if released on bail the interests of justice will not be prejudiced? No.

[18] How convenient to have left the country after the murder of the deceased. Had he not been arrested he would have went back to South Africa and jeopardized the smooth running of the wheels of justice.

[19] Again since the bail application has been opposed it was for the applicant to show exceptional circumstances. The decision by my brother **Nomngongo J** has been referred to in **Matlanyane & Others v DPP²** where he had said:-

“This Court has had occasions to remark that it is not enough in motivating a bail application under the amendment Act³ to lay before court bare facts which do not inform the court what is exceptional about the circumstances of the application and why it is necessary in the interests of justice to release him on bail.”

[20] Applicant has shown that he is assisting his family, with unemployed wife and child who is one year old. He also showed that he has strong family ties in Lesotho and would as such not flee from this country as a Mosotho citizen with permanent home in Lesotho.

[21] The Court was referred to the case of ‘**Mabathoana v DPP⁴**’ where it was stated that:-

“Procurement of odd jobs is common to most honest folks and supporting one’s wife and parents is also not an unusual circumstance.”

This Court has also come to the conclusion that no exceptional circumstances exist that would persuade the Court to admit

² CRI/APN/192/2004

³ Criminal Procedure and Evidence (Amendment) Act 2002 s.109A

⁴ CRI/APN/373/2004

applicant on bail. That on the facts of applicant's case for having only been possible to be arrested after five months, it would not be in the interest of justice to release him on bail.

[22] The Application for bail is thus refused and it is so dismissed.

A.M. HLAJOANE
JUDGE

For Applicant: Mr. Potomane

For Respondent: Mr. Mahao