

SOUTH AFRICA / JUDGMENT

Gwababa v S (CC104/13) [2018]

ZAGPPHC 924 (10 December 2018)

[2018] ZAGPPHC 924

COURT

North Gauteng High Court, Pretoria

BEFORE

BAM

CASE / FILE NUMBER

CC104/13

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GAUTENG

DIVISION, PRETORIA

CASE

NUMBER : CC104/13

DATE

10/2/2018

In

the bail application of:

LUNGISA
GWABABA
Applicant
and
THE
STATE Respondent

JUDGMENT

BAM, J

1. The applicant applies for bail pending his appeal against his conviction on a charge of murder. The application is opposed by the State. On the 5 December 2018 the bail application was dismissed. The considerations follow.
2. On 25 August 2015 the applicant (accused), and seven co-accused were convicted on a charge of murder, and on 11 November 2015 sentenced to 15 years imprisonment each. Leave on appeal was dismissed by this court.

3. On 25 August 2016 the applicant's petition to the Supreme Court of Appeal for leave to appeal was dismissed. The petitions of several of the applicant's co-accused were even dismissed, however, some of the other accused were successful. Subsequently accused 1,2,4,5,7 and 8 were, upon reconsideration by the Supreme Court of Appeal, granted leave to appeal to the Full Bench of the Gauteng Division. On 8 November 2018, applicant was also upon reconsideration by the Supreme Court of Appeal granted leave. Was however granted on 20 March 2018 upon petition to the Supreme Court of Appeal.

5 The applicant bases this bail application mainly upon his prospects of success on appeal, in view of having been granted leave. However, as conceded by the applicant in paragraph[16] of his supporting affidavit (with reference to S Masoamganye and Another 2012(1) SACR 292 SCA) the mere granting of leave to appeal does not mero motu entitle him to bail pending appeal.

6 I have read the judgement of the Supreme Court of Appeal stating why leave to appeal was granted to the applicant and his co-accused. It is duly respected. This court has no right, and does not wish to express any sentiments in that regard.

7 However, taking into consideration all relevant issues concerning bail applications, and after having re-read my judgment, I am of the opinion that the applicants prospects of success on appeal found by the Supreme Court of Appeal, do not, in the interests of justice, justify his release on bail.

AJ BAM

JUDGE OF THE HIGH COURT

10 DECEMBER 2018

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