

SOUTH AFRICA / JUDGMENT

Jerry v S (A116/2024) [2024]

ZAGPJHC 1147 (11 November 2024)

[2024] ZAGPJHC 1147

COURT

South Gauteng High Court, Johannesburg

BEFORE

Yacoob

CASE / FILE NUMBER

A116/2024

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IN THE HIGH COURT

OF SOUTH AFRICA

GAUTENG

LOCAL DIVISION, JOHANNESBURG

CASE

NO: A116/2024

DATE:

01-11-2024

(1)

REPORTABLE: YES / NO.

(2)

OF INTEREST TO OTHER JUDGES: YES / NO.

(3)

REVISED.

In

the matter between

KOLA

JERRY

Applicant

and

THE

STATE

Respondent

JUDGMENT**BAIL APPEAL**

YACOOB, J: Mr Kola is charged with three co-accused of robbery with aggravating circumstances and possession of a firearm without a license, in circumstances where they were arrested together; in a vehicle identified as being involved in the incident; a few minutes after the incident, and the four co-accused were pointed out by two complainants at the time they were apprehended.

All four accused were denied bail by the magistrate. Of the four, Mr Kola alone was also facing previous charges of robbery before Randburg Magistrates Court, and had been out on bail when he was arrested.

The magistrate took that into account in denying him bail and said that he was a person who would most likely then commit another schedule 1 offence when he was out on bail, because he has already committed a schedule 1 offence while out on bail.

In my view, the magistrate has disregarded the presumption of innocence as far as Mr Kola is concerned, because he is not yet convicted of having committed either the robbery which was still pending, or the robberies of which he is now charged.

However, the fact that the magistrate might have erred in that fashion does not mean that the outcome was incorrect or that Mr Kola is now automatically entitled to bail.

The court must still be satisfied that Mr Kola has discharged his onus on a balance of probabilities of demonstrating that there are exceptional circumstances which make it in the interests of justice for him to be released on bail.

This is because he is charged with an offence which falls within schedule 6, and the legislature has determined that in such circumstances it is in the interests of justice that he remain incarcerated pending the trial, unless he demonstrates on a balance of probabilities that it is in the interest of justice that he be granted bail.

Mr Kola chose not to testify in the magistrate's court in support of his bail appeal; he chose simply to submit an affidavit. The affidavit is very simple, it states that he lives in Tembisa, he has family ties, he has never travelled, he does not have friends in the continent or overseas.

He has one child who lives with her mother. The child's mother is unemployed and he supports the child. He does odd jobs and he lost his job with Simba during the Covid pandemic and he now does odd jobs and supports the child. Near the end there is an allegation that he is the sole supporter of not only his child but also his parents.

These are all bald allegations. There are no supporting documents, there is no affidavits supporting him, from his parents or any other family member. There are no details about the alleged family ties that he has in Tembisa. The details provided to the court are very sparse.

The affidavit also makes the allegation that the state case is weak. Mr Kola denies his involvement in the incidents with regards to which he was charged and he denies having had any firearm in his possession.

Where it is the onus of a person to make out a case, it is not sufficient to simply make bald allegations. The allegations have to be properly supported. He must adduce proper evidence.

If he has family ties, he must say what they are and where those people are available; his case is strengthened if they come to testify on his behalf or if they sign supporting affidavits. There is no reason to believe in this case that the bail application was brought in such a hurry that the appellant did not have time to obtain all of these further affidavits.

And it would have been in his interests, if that supporting evidence exists, to have put it in support of his application. The tendency by bail applicants to put in a cursory affidavit is unsatisfactory. The only conclusions to be drawn are either that they do not take their onus seriously or that they really do not have a case to make out.

Nevertheless, it is in Mr Kola's favour that he has not missed any court dates in his pending charge. Since one of the purposes of detention pending trial is to secure attendance at trial, this is relevant factor for Mr Kola. Against this, I must balance the fact of the strength of the state's case.

Despite Mr Kola's allegation in his affidavit that the state's case is weak, there is nothing that he says or that his legal representative is able to say, which demonstrates why the state's case is weak. The details of the state's case are provided and these are not broken down to explain to the Court why this is weak. The circumstances in which Mr Kola and his co-accused were apprehended demonstrate, in my view, that the state's case is relatively strong.

In the circumstances, I am not satisfied that Mr Kola has discharged his onus of demonstrating that there are exceptional circumstances

which support him being released on bail and therefore the appeal is dismissed.

YACOOB, J

JUDGE OF THE HIGH COURT

DATE:

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