

SOUTH AFRICA / JUDGMENT

Leach v S (Bail) (CC20/2023) [2024] ZAECQBHC 85 (30 July 2024)

[2024] ZAECQBHC 85

COURT

Eastern Cape High Court, Gqeberha

BEFORE

M Makaula

CASE / FILE NUMBER

CC20/2023

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, GQEBERHA)

CASE No: CC20/2023

In the matter between:

REINHARDT LEACH

Applicant

and

THE STATE

BAIL JUDGMENT

MAKAULA J:

A.

Introduction:

[1] The applicant is applying to be admitted to bail on any conditions this court may deem fit and suggests that he can afford an amount of R10,000.00. The application is opposed by the state on various grounds. It is noteworthy that both the state and the applicant elected to file affidavits in lieu of the application.

B. The charges.

[2] The accused is facing eight (8) counts namely.

2.1 conspiracy to commit murder.

2.2 murder.

2.3 robbery.

2.4 unlawful possession of a firearm.

2.5 and lawful possession of ammunition.

2.6 defeating or obstructing the course of justice.

2.7 possession of drugs.

2.8 possession of drugs.

[3] In respect of the offence of murder in 2.2 above, the state invoked the provisions of section 51 (1) of the Criminal Law Amendment Act 105 of 1997, as amended by Act 38 of 2007, (the Criminal Law Amendment Act) in that in the event of a conviction he is likely to be sentenced to life imprisonment. In respect of the offence in 2.3 above the state invoked the provisions of section 51(2) (a) of the Criminal Law Amendment Act, which, in the event of a conviction carries a minimum sentence of 15 years imprisonment.

C. The Applicant's case.

[4] In this application the applicant dealt with the charges, his personal circumstances, constitutional rights, conditions in prison, and the factors to be considered by courts in terms of the provisions of section 64(4) to (9) of the Criminal Procedure Act[1] (the CPA).

[5] The applicant states that he is aware of the charges preferred against him and elect to invoke his right to remain silent. However, he is going to plead not guilty to all the charges. Consequently, he will not answer to the allegations at this stage save to state that he will address them at the appropriate time and forum.

[6] Regarding his personal circumstances the applicant testifies that he is 35 years of age, having been born on 9 December 1988, he is not married and has no children. Prior to his arrest he lived with his parents for 27 years before he moved out to stay with the deceased. If released on bail he will move back with them.

[7] After matriculating, the applicant taught at various schools including in Saudi Arabia. He later joined the commercial market but unfortunately due to the passing of his business partner, that venture never got off the ground. If released on bail, he would be employed in the construction or plumbing industry.

- [8] The applicant argues that it is his constitutional right to be released on bail as he is presumed innocent at this stage. If released, he will not endanger the safety of the public or any person, will not commit any offense, will not attempt to evade his trial, and will not undermine or jeopardize the objectives or the proper functioning of the justice system including the bail system.
- [9] The applicant states that he is not a flight risk as he has handed over his expired passport to the police and has no financial means of his own to flee the country. As previously stated, he will abide by any conditions this court may impose as he embraces the legal system of this country. Furthermore, he does not have previous convictions and is not aware of any other criminal investigations against him. He has no pending criminal cases.
- [10] The applicant says the following about prison conditions.
- “22. South African prisons are dramatically overcrowded. They are riddled with gang activity where gang membership breaches the divide between prisoners and officers of correctional services;*
- 23 Assault, by inmates as well as correctional services officers, is a constant threat. Membership of gangs is often predicated by the commission of an assault;
- 24 Applying the concept of systematic failure, the South African prisons and juvenile facilities do not have the facilities available to make provision for my safety and security;
- 25 Access to ablution facilities and sanitation is totally inadequate and the lack thereof contributes to the spread of disease. The communication facilities at North End correctional center is currently non-existent, so one cannot communicate via telephone with the outside world other than in person visitation.
26. This is the first time that I'll be applying for bail proceed with a bail application so I'm facing serious charges and I will need to consult with my legal representative on a regular basis and being granted bail would make this aspect considerably easier.” (sic)

E. The Respondent's case.

- [11] In opposing the application, the respondent relied on the affidavit of the investigating officer, Colonel Swanepoel. For reasons that later transpired in oral argument, the affidavit is so detailed in dealing with the merits of the case. The respondent maintains that the allegations that appear in the summary of the evidence that they rely on, are either supported by evidence contained in affidavits, exhibits, voice recordings, cellular phone downloads, cellular phone billings, other digital evidence etcetera. I shall attempt in this judgment to paraphrase the facts as appearing in the affidavit and relied upon by the respondent.
- [12] The applicant appears as accuse 1 in the trial having been charged with Arnold Abraham Terblanche (accused 2). Briefly, the facts appearing on the affidavit of the investigating officer, reveal that the deceased was married to accused 2 and they had a child. Prior to her death they were in the process of divorcing. There was disagreement between them

regarding their matrimonial property and the custody of the child. That resulted in their divorce being acrimonious. Accused 2 wanted the deceased to settle the divorce according to his terms, something that was opposed by the latter. The respondent contends therefore that accused 2 devised many plots to blackmail and paint the deceased as an immoral person who was a drug addict. Due to the pending divorce, the deceased moved out of their house and went to live at 2[...] W[...] V[...] Complex (the deceased home) with the child. The place was leased by accused 2.

- [13] During July 2021 the deceased and the applicant became romantically involved to an extent that the latter moved in with the deceased and they cohabited. The respondent avers that the applicant at the time was a man of straw and dependent on the deceased for his day-to-day living. The respondent further alleges that the applicant was a drug addict, involved in abalone poaching and used the deceased's house and vehicle to store and transport it. The respondent states that the applicant wanted the divorce to be settled quickly as he was keen to lay his hands on the matrimonial share of the deceased once the divorce is finalized. As that was not achievable, he plotted to kill accused 2, so that the deceased may inherit the whole estate. He failed in doing so, as the people he approached to kill the deceased demanded money he could not afford.
- [14] On the other hand, accused 2 developed hatred towards the applicant to such an extent that he started to investigate "dirt" against him. He began to use derogatory terms to call the applicant like "cocaine kop perlemoen smuggler" and told Shuan Terblanche that he hoped the applicant would kill the deceased saying, "Yip hoping he more her dead". It became apparent, so avers the respondent, that there was mutual animosity between the applicant and accused 2. Accused 2 then devised means of pitting the deceased against the applicant by disseminating WhatsApp information that the deceased was pregnant with the child of the applicant and unbeknown to the latter terminated that pregnancy because that was not his child.
- [15] According to the respondent, the applicant got wind of the fact that the deceased would not benefit anything if accused 2 was killed and that prompted him to change tack. He decided against killing accused 2. The change of heart resulted in the applicant forming an alliance with accused 2 against the deceased, so states the respondent. The evidence of the respondent is to the effect that the applicant and accused 2 then conspired to kill the deceased by holding several meetings, exchanging WhatsApp messages and phone calls. Consequently, the appellant arranged with Mario De Ridder jnr (Mario) and Dylan Cullis (Cullis) to assist him in portraying the deceased as a drug addict and to subsequently kill her. Arrangements were made between the applicant and accused 2 regarding the procurement of a firearm and the way the deceased was to be killed. For purposes of this judgment, I shall not delve much into the meetings which were held and the subsequent payments which were procured by applicant from accused 2. Suffice to state that an amount of R 2 200.00 was received from accused 2 in lieu of hiring a BMW motor vehicle which was subsequently used in conveying the body of the deceased to where she was buried. Furthermore, an amount of

R5000. 00 was received from accused 2 to procure drugs which were to be fed to the deceased after they decided that she should not be shot but be given a drug overdose.

- [16] The respondent alleges that Mario and Cullis procured substantial amount of drugs amongst which is “Perkies” from the R5000.00. The two including the applicant proceeded to the deceased house. They found that the deceased was not feeling well and was in bed. The applicant crushed the drugs and mixed them with fizzy drink and gave it to the deceased to drink. Mario and Cullis remained in the lounge. After some time, the applicant came and reported to them that the deceased drank the concoction. The evidence is to the effect that at some stage, during the evening, Cullis heard that the deceased was starting ‘to gag’ because of the overdose of the drugs and ‘Perkies’. Cullis moved the deceased to the spare room and made her to sit in an upright position to save her. The applicant barged into the spare room and accused Cullis of foiling the plan to kill the deceased by drug overdose. The applicant instructed Cullis to kill the deceased. Cullis did not have the stomach to do so. The applicant took a pillow, placed it over the face of the deceased and suffocated her to death. Mario entered the room as the deceased was being killed by the applicant.
- [17] Having killed the deceased, traces of drugs were scattered all over the house to create the impression that the deceased was ‘on a drug using spree’. The evidence reveals that the applicant instructed Mario and Cullis to collect all valuable items belonging to the deceased which were ultimately sold by him to other people in town. One of the people who was approached to purchase the items was Savahl who initially declined to purchase the items. Eventually, Savahl bought the iPhone for R500.00 and made an e-wallet payment to one of the cellular phone numbers used by the applicant. The applicant was physically identified as such by Savahl.
- [18] With the deceased dead, they left her lying in the house and went gallivanting around town. The next day they decided to dispose of the body. They wrapped it and placed it in the boot of the BMW vehicle and roamed around town trying to find a way of disposing of the body. They thought of throwing the body at sea or burn the body and leave it. The applicant approached accused 2 for his boat (rubber duck) so that they could throw the body at sea. The latter refused to give them the boat. They eventually decided to go to Greenbushes where the applicant requested Rupert Eldridge (Rupert) to dig a grave under the pretext that they were to bury an animal. The latter dug the grave and they buried the body of the deceased, in it unbeknown to Rupert.

Having done so, the applicant informed Mario and Cullis that accused 2 would buy him a farm and promised to build them houses on the farm.

- [19] The applicant and accused 2 agreed that the explanation they would proffer regarding the disappearance of the deceased would be that she progressively abused drugs and left her residence without any explanation. According to the evidence, on 21 October 2021 the applicant went to Mount Road Police Station (the police station) where he reported the deceased missing. He told the police that on 18 October 2021 at about 12h00, he and the

deceased took a nap. When he woke up, he found the deceased sitting on the bed in the spare room with Cullis. The applicant found that behaviour very strange. That led to an argument between the applicant and the deceased. The applicant, Mario and Cullis left the residence in the BMW vehicle. The applicant further reported that upon his return on 19 October 2021 at about 16h00 the deceased was missing. He informed the police that he suspected that she went in search of more drugs as she could not cope without them. The applicant portrayed the deceased as a drug addict who disappeared without trace.

[20] On 22 October 2021, members of the South African Police Services (the police) attended to the deceased's house investigating a complaint of possible 'trespassing' as the house was 'standing open' with unpleasant smell coming from it. They entered the house, found a photo, and realised that it was that of the deceased who had been previously reported as missing. They contacted the applicant to meet them at the deceased's house. The applicant arrived and upon consulting with him, the police decided to take him to the police station to obtain a statement from him. At the police station he made mention of Cullis. The police requested him to take them to Cullis. The police brought Cullis to the police station. After questioning Cullis, he admitted being involved in the killing the deceased, implicating the applicant in the process. Cullis took the police to the shallow grave where they had buried the deceased. They were both arrested for the murder of the deceased.

[21] In their investigations the police discovered that the BMW vehicle that was always driven by the applicant had a tracker device. The tracker confirmed all the places visited by the applicant, Mario and Cullis in trying to dispose of the deceased's property and her body as stated by the witnesses to those events.

[22] The investigating officer summed up his reasons for opposing bail as follows.

"8.65 The applicant has demonstrated his ability to destroy evidence and to conceal the truth. Subsequent to the murder the deceased's

clothing and personal belongings were removed from her residence to create the impression that she had vanished without a trace. The number plate of the BMW was originally removed to avoid detection. The goods of the deceased were sold all over Gqeberha. The digital devices of the deceased and Mario De Ridder were factory reset to destroy all evidence. The applicant was prepared to mislead the SA police in their investigation in finding the deceased. He buried the body of the deceased and then went and reported her as a missing person.

8.66 The applicant has, as early as 14 October 2021, verbalized his ability to avoid detection by swapping sim- cards and using sim cards that are not RICA' ed.

8.67 The mindset of the applicant is reflected in the fact that he created the impression that he was in love with the deceased, but unbeknown to her he was plotting her death.

8.68 It is clear from the evidence that the applicant operates in the underworld or at least in the criminal network.

8.69 Applicant own no assets, he does not have a fixed address, he does not have a work or a legitimate income. In one of the communications with accused 2 he makes it very clear that accused 2 must not expose him as he has no alternative address besides 2[...] W[...] v[...]. The applicant is most definitely a flight risk.

8.70 I am of the view that the state has a watertight case against the applicant.

8.71 In view of the facts as stated above it is my submission to the Honorable Court that firstly, there are no exceptional circumstances that warrant the release of the applicants on bail, secondly that it would not be in the interest of justice to release the applicants on bail, and therefore I believe that bail should be refused.' (sic).

D. Argument.

[23] Adv. Coertzen, counsel for the applicant argued that the applicant qualifies to be allowed out on bail for the reason that;

- (a) he has a fixed place of abode i.e. his parent's home where he has lived for the past 27 years;
- (b) he has a great potential to obtain employment and would be able to financially support himself and contribute to the economy
- (c) he has no previous convictions or any other pending cases to suggest that he has no propensity for committing crimes and endangering the safety of the public or particular individuals;
- (d) that the investigations are complete and therefore there is no likelihood that he would interfere or temper with the police in the investigation of their investigations;
- (e) being allowed Bail would facilitate the consultation between him and his legal representative;
- (f) that the applicant is not a flight risk and will not undermine or jeopardise the objectives or the proper functioning of the criminal justice system and;
- (g) that he had succeeded in establishing exceptional circumstances and the interest of justice permit his release on bail.

[24] Adv. Stander, counsel for the respondent, submitted that the applicant should be denied a bail on various grounds as enunciated above. He argued that the state case is strong against the applicant, since it is relying on cell phone records, WhatsApp messages, emails between the applicant and accused 2 and various other witnesses to be called by the state, Cullis has undertaken to be a state witness with inside information as to how the deceased was killed. Furthermore, the state argued that the applicant has failed to establish that there are exceptional circumstances present which militate in his favour.

E.

Analysis.

[25] It is common cause that some of the offences with which the accused is charged fall under schedule 6 of the (the CPA). Section 160 (11)(a) of the CPA provides;

“11. Notwithstanding any provision of this act, where an accused is charged with an offence –

(a) referred to in schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release;”

[26] There is a plethora of cases from all levels of our courts which deal with what constitutes exceptional circumstances that should be considered when the release of an accused on bail is contemplated. I shall not deal with all those cases. Suffice to say that the highest court in the land, the constitutional court in *S v Dlamini*; *S v Dladla & others*; *S v Joubert*; *S v Schietekat*[2] Kriegler J said the following about exceptional circumstances;

“[75] In this regard, I am not persuaded not that there is any validity in the complaint raised in argument that the term exceptional

circumstances is so vague that an applicant for bail does not know what it is that has to be established. An applicant is given broad scope to establish the requisite circumstances, whether they relate to the nature of the crime, the personal circumstances of the applicant, or anything else that is particularly cogent. The contention was moreover that if one adds that those circumstances

must “in the interest of justice... release”, the subsection becomes in an insurmountable obstacle in the way of bail.

In my view the contrary is true. In as much as we are not dealing with the obstacle itself but with ways of bypassing it, the wider the avenue, the more advantageous it is to freedom. A related object that the requirement is constitutionally barred for vagueness falls to be rejected for basically the same reason. In any event one can hardly expect the lawgiver to circumscribe that which is inherently incapable of delineation. If something can be imagined and outlined in advance it is probably because it is not exceptional.

[76] Likewise I do not agree that, because of the wide variety of “ordinary circumstances” enumerated in sub-ss (4) to (9), it is virtually impossible to imagine that would constitute “exceptional circumstances”, and that the prospects of their existing are negligible. In requiring that the circumstances proved must be exceptional, the subsection does not say they must be circumstances above and beyond, and generally different from those enumerated. Under the subsection, for instance, an accused charged with a schedule 6 offence could establish the requirement by proving that there are exceptional circumstances relating to his or her emotional condition that render it in the interest of justice that the release on bail be considered notwithstanding the gravity of the case”.

[27] The constitutional court further held that although the inclusion of the 'requirement exceptional'

in section 60(11)(a) limits the right enshrined in section 35(1)(f) of the constitution, it is a limitation which is reasonable and justified in terms of section 36 of the constitution in our current circumstances. It is apparent therefore that in the context of section 60(11)(a) the exceptionality of circumstances must be such as to persuade a court that it would be in the interest of justice to order the release of the accused person. This may, of course, mean different things to different people, so that allowance should be made for certain of flexibility in the judicial approach to the question[3].

[28] The applicant contends that he has been made aware of the provisions of the sections of the CPA which are applicable in his course. I shall, as I deal with the provisions alluded to by the applicant, analyze them in the light of the circumstances prevailing in this application.

[29] The applicant states that he has complied with the provisions of section 60 (11B) (a) of the CPA in that he has no previous nor pending cases, there is no order against him in respect of domestic violence nor a protection order in terms of the Protection from Harassment Act 17, 2011 issued against him. He is or was not at the time of the alleged commission of the offenses, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act 111 1998. There is no contention from the respondent that the applicant has flouted the provisions of this section and therefore his word is taken for it.

[30] The applicant further undertakes to comply with the provisions of section 60(4)(a) – (e) read with the provisions of section 60(5) of the CPA. Section 60(4(a)) provides that the interest of justice would not be served if the applicant is likely to endanger the safety of the public, or any person against whom the offence in question was allegedly committed, or any other person or will commit a schedule one offence if released on bail. Section 60(5) makes provision for factors to be considered in determining whether the applicant would comply with the provisions of section 60(4)(a).

[31] As previously mentioned, the death of the deceased involved an elaborate planning, if I have regard to the evidence of the investigating officer. The applicant fell in love with the deceased and moved in with her. He had no financial means to the extent that he depended on her for a living. Because of his greed, he initially planned to kill accused 2. When that did not turn to be lucrative, so to speak, he changed and colluded with accused 2 to kill the deceased who had been his financial pillar of strength, so that accuse 2 could get leverage in their pending divorce action. As though that was not enough, his plans morphed into a detailed effort to kill the deceased. The characterization of the applicant by the respondent based on the evidence available to it, depicts a person who changes his criminal intentions at whim. It is possible therefore that the applicant, as provided for in section 60(5)(d) has a disposition to violence as is evident from his conduct in this regard.

[32] Section 60(4)(c) stipulates that where there is a likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence. The evidence before me suggests that a plan was made where drugs were purchased, planted in the house of the deceased with some having been fed unknowingly to her. On realizing that the deceased did not die of

drug overdose, the applicant suffocated her to death. Thereafter, the applicant, Mario and Cullis went on a spree to find means and ways of disposing of the body of the deceased. That culminated in the deceased being buried in a shallow grave under the pretext that they were burying an animal. Such conduct is indicative of the fact that the applicant is capable of concealing and destroying any evidence he may come across to prove his innocence or otherwise.

[33] The undisputed evidence tendered by the respondent reveals that after the deceased was buried, the accused approached

the police and misled them into believing that the deceased disappeared due to her uncontrolled drug addiction. He stated that he looked in vain around town at every drug post to find the deceased. In the process, he mentioned the name of Cullis, unbeknown to him that Cullis would, after being approached by the police, spill the beans, so to speak, and implicate him in the killing of the deceased. Knowing all the drug posts where he searched for the deceased, further confirms the contention by the police that the applicant is a drug addict himself and was involved in criminal conduct of dealing of poaching abalone because he would not know the posts if he had never visited them before. This conduct falls foul of the provisions of section 60(4)(d), in that if released, there is a likelihood that the applicant will interfere with the proper functioning of the justice system.

[34] As previously stated, the respondent relies on the evidence of communication between the applicant, accused 2 and other witnesses. Such communication is based on cell phone messages. The evidence paints a picture that the applicant and accused 2 used different sim-cards and handsets to avoid detection. The respondent attests to the fact that such communication constitutes real evidence to be presented by the state at trial. This points to the direction that the applicant is an untrustworthy person capable of interfering with the administration of justice and may interfere with the police in their further investigations, if needs be. It provides prima facie ability of the applicant to be able to conceal the truth, to avoid detection and is capable of being deceitful. I say so because the allegation by the respondent is that he was able to deceive the deceased to believing that he was in love with her, to the amazement of all those around her, for he was able to plot and kill her. Not that I am pronouncing on the guilt of the applicant at this stage, far from it. The prima facie evidence presented by the state indicates that it has a strong case against the applicant.

[35] The other reason proffered by the applicant is that the prison conditions as alluded to in paragraph 10 above. The applicant submits that there is no access to ablution facilities. This contention by the applicant has not been meaningfully disputed by the respondent. It is trite

that the conditions in prison are bad and this issue has been raised and dealt with by our courts. However, the applicant is not without remedy as dealt with by the Supreme Court of Appeals in *S v Van Wyk*[4] that an applicant for bail in such circumstances is not without a remedy. The court held that the remedy of an accused detained in conditions infringing dignity and threatening health and personal safety would be to challenge the constitutional validity of his detention or to seek an order compelling the prison authorities to comply with the law. Similarly, the applicant in this matter has that remedy.

F.

Conclusion.

[36] Having had regard to the strong prima facie case which the respondent has demonstrated against the applicant, the personal and related factors postulated by the applicant, the seriousness of the offences, the possible sentences and various other factors considered above, I find that the applicant has failed to establish that there are exceptional circumstances which justify his release on bail.

Consequently, I make the following order:

Bail is refused.

M MAKAULA

JUDGE OF THE HIGH COURT

Appearances

For the Applicant

: Adv Coertzen

Instructed by

: Legal Aid South Africa

Gqeberha Office

For the Respondent

: Adv Stander

Instructed by:

: DPP's Office

Eastern Cape

Gqeberha

Date heard

: 26 June 2024

Judgment

delivered

: 30 July 2024

[1] Act 51 of 1977

[2] 1992 (2) SACR 51 (CC) at paras [75] and [76]

[3] See *S v Petersen* 2008 (2) SACR 355 @ para 55

[4] 2005 (1) SACR 41 (SCA)

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