

SOUTH AFRICA / JUDGMENT

Rune v S (82/2019) [2020] ZAFSHC 175 (16 October 2020)

[2020] ZAFSHC 175

COURT

Free State High Court, Bloemfontein

BEFORE

C Nekosie

CASE / FILE NUMBER

82/2019

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IN

THE HIGH COURT OF SOUTH AFRICA

FREE

STATE DIVISION, BLOEMFONTEIN

Case

no: 82/2019

In

the matter between:

GENERAL
RONNIE
RUNE Applicant
and
THE
STATE Respondent

CORAM:

C NEKOSIE AJ

JUDGMENT

BY: C NEKOSIE AJ

HEARD ON: 9 and 12 October 2020

DELIVERED ON: 16 October 2020

[1] The applicant approached this Court with an application to establish alleged new facts justifying his admission to bail.

[2] The applicant is charged in this Court sitting at Virginia with the following:

Count 1: Rape, of M E (hereinafter referred to as "M")

Count 2: Attempted defeating the administration of justice;

Count 3: Corruption - giving a benefit;

Count 4: Attempted extortion;

Count 5: Rape, of M M;

Counts 6 - 32: Trafficking in persons;

Count 33: Attempted rape, of V N;

Count 34: Rape, of N N;

Count 35: Attempted rape, of L M;

Count 36: Rape, of M R;

Count 37: Rape, of S L;

Count 38: Rape, of T R; and

Count 39: Rape, of E L.

[3] The applicant lodged an initial bail application on 19 February 2019 in the Regional Court Welkom. His bail was refused and he appealed that decision, which appeal was dismissed on 29 March 2019. The applicant`s petition to the Supreme Court of Appeal was dismissed on 9 July 2019. It is significant that the applicant faced 3 charges during his initial bail proceedings and subsequently counts a further 33 courts were added.

[4] The applicant subsequently brought two unsuccessful applications for bail on new facts on 2 May 2019 and 23 May 2019, respectively.

[5] The trial of the applicant commenced on 5 March 2020 and continued to 13 March 2020. It proceeded 25 May 2020 to 5 June 2020. An application for permanent stay of prosecution was brought in respect of certain of the charges. The outcome of that application is still pending and the matter has been adjourned to 2 November 2020 up to 20 November 2020.

[6] The applicant submits that there are exceptional circumstances in his favour which should satisfy the court that the interests of justice permit his release on bail and based his submission on the following new and pre - existing grounds:

6.1 The commencement of the trial and the weakness of the state's case;

6.2 The impact of the Corona virus and issues incidental thereto;

6.3 His personal profile and general requirements in relation to bail applications.

[7] Since the commencement of the trial 7 witnesses has testified. The applicant submits that because his previous bail applications

revolved around charges relating to M E and she finished her testimony, the bulk of all the issues which were raised by the state

in opposition of his bail applications then, are moot and or have no practical effect. Some of those issues being the threats and offering of money to M to withdraw the case.

[8] It was submitted with reference to the record of proceedings that M`s evidence on counts 1,2,3,4 and 6 was seriously dented and suffered major blows.

[9] It was argued by Mr Nel, for the applicant, that the Court in the first bail application refused bail because of the probability that witnesses may be influenced[1]. The fact that M has testified removes that possibility.

[10] It was pointed out that the magistrate found that the strength of the state`s case was undisputed at the time of the second bail application. Now the position is different because the accused has put his version, disputing their evidence, to the witnesses and thus challenged the state`s case. The quality of the evidence also puts the strength of the state`s case in dispute.

[11] The fact that the trial will still take a long time was also categorised as a new. Presumably because of the additional charges

being added after the previous bail applications.

[12] The impact of the Corona pandemic has on the community, which includes prison community, was advanced as a new fact that warrants

consideration by this court.

[13] The state, represented by Mr Simpson, in opposing the application submits that the weakness of the state`s case has been raised since the first bail application.

- [14] Further submissions by the state are that the criticism raised against the evidence of M related to probabilities and not contradictions or discrepancies. The evidence of E L, in conjunction with that of M, established a pattern whereby the applicant exploits unemployed and unqualified female persons, and rapes them within a few days after starting employment. From the state's point of view there is an even stronger case for the applicant to answer.
- [15] It was submitted, with reference to the trial record[2], that the applicant has a tendency to attempt to impact the outcome of the trial by influencing witnesses. There is still numerous witnesses that have to testify that may be compromised by the release of the accused.
- [16] In respect of the impact of the Corona pandemic, the state submits that this aspect has been ameliorated by the country moving to level 1 of the nationwide lock down.
- [17] This is an application where the provisions of Section 60(11)(a) of the Criminal Procedure Act[3] is applicable. The applicant thus has to prove on a balance of probabilities that exceptional circumstances exist, which in the interest of justice permits his release from custody.
- [18] The Court's approach in the consideration of an application for bail on alleged new facts was stated in *S v Mpofana*[4]:

'In considering an application for bail allegedly brought on the strength of new facts, the court's approach is to consider whether there are, in the first instance, new facts and, if there are, reconsider the bail application on such new facts, against the background of the old facts. In *S v Vermaas* 1996

- (1) SACR 528 (T) at 531e-f, Van Dijkhorst J set out the applicable approach in the following terms:

"Obviously an accused cannot be allowed to repeat the same application for bail based on the same facts week after week. It would be an abuse of the proceedings. Should there be nothing new to be said the application should not be repeated and the court will not entertain it. But it is a non sequitur to argue on that basis that where there is some new matter the whole application is not open for reconsideration but only the new facts. I frankly cannot see how this can be done. Once the application is entertained the court should consider all facts before it, new and old, and on the totality come to a conclusion. It follows that I will not myopically concentrate on the new facts alleged."

- [19] I have to consider firstly whether the facts adduced is indeed new facts and that such facts are relevant to the proceedings as stated in *S v Petersen*[5]:

"When, as in the present case, the accused relies on new facts which have come to the fore since the first, or previous, bail application, the court must be satisfied, firstly, that such facts are indeed new and, secondly, that they are relevant for purposes of the new bail application. They must not constitute simply a reshuffling of old evidence or an embroidering upon it. See S v De Villiers 1996"

- (2) SACR 122 (T) at 126e - f. The purpose of adducing new facts is not to address problems encountered in the previous application or to fill gaps in the previously presented evidence.”
- [20] In dealing with alleged weakened state of the strength of the state`s case in circumstances where such alleged weakness relates to the manner in which witnesses testified in an ongoing trial, I hold the view that the Court seized with the bail application should guard against attempting to pre-empt the Trial Court`s determination of the quality of the evidence. The bail court should venture no further then to ascertain whether the witnesses evidence conforms to what was initially alleged to be their case by the state precisely. Anything more would be assuming the role of the Trial Court. If, as in this matter, the state initially alleged that the applicant raped the witness and the witness testifies to that effect, the state`s prima facie case stands irrespective of what the quality of the evidence may be perceived to be by either party.
- [21] However, there may be instances the state makes an allegation at an initial or subsequent bail applications and the witness controverts the allegation by denying that which was alleged by the state completely. That may very well be a weakening of the state`s case that can constitute a new fact impacting on the strength of the state`s case. For example, where on a charge of rape the complainant testifies that the intercourse was consensual, the state`s case would essentially be no more.
- [22] In this matter, the record of proceeding reflects that all the witnesses that had thus far testified incriminated the accused as alleged by the state from the onset. It follows that the submissions made in regards the quality of the witnesses` evidence does not result in a conclusion that the state`s case is weakened and therefor does not constitute new facts.
- [23] Pointing to the addition of further charges does not help the applicants plight. It does have as an inevitable consequence that more witnesses will have to testify which may prolong the trial. Simultaneously though it drastically increased the severity of the possible sentence the accused might receive if convicted. This is invariably an incentive to abscond. Having shown a tendency to want to influence witnesses, the additional witnesses increases the risk of interference with witnesses.
- [23] The Corona virus pandemic has impacted on all spheres of society. It certainly had an impact on the accessibility of courts for witnesses and that of legal representatives to their incarcerated clients. The concerns raised, including, that the witness from Lesotho may not be able to attend court which will prolong the trial, is no longer valid because the country`s borders has been opened and there is greater access to correctional facilities.
- [24] When scrutinizing the applicant`s personal circumstances, it is evident that nothing new has come to light. The Court in both the preceding applications considered the health of the applicant and the effect of incarceration on his business[6]. These aspects are merely a reshuffling of previously stated facts and cannot be considered new facts.

[25] In consequence I find that the applicant has failed to put new facts for consideration before this Court and the application can therefore not succeed.

ORDER

The application is dismissed.

C NEKOSIE AJ

On behalf of the Applicant:

Adv S Nel

On instructions of

Kambi Attorneys

154 Charlotte Maxeka

BLOEMFONTEIN

On behalf of the Respondent: Adv Simpson

State Advocate

Dir. Public Prosecutions

[1] First application, Volume 3 page 302

[2] Record volume 1 p91 line 15-16, Record volume 5 p701 line 14-16, Record volume 8 p1239 – 1240

[2] Record volume 1 p91 line 15-16,

Record volume 5 p701 line 14-16,

Record volume 8 p1239 – 1240

[3] 60(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to - (a) 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 interests of justice permit his or her release;

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[4] 1998(1) SACR 40 at 44G-I, see also S v Mququ 2019(2) SACR 207 at 211B

[5] 2008(2) SACR 355 (C) at 371E-F

[6] Bail application p307 line 8-14

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