

SOUTH AFRICA / JUDGMENT

Tsao v DPP Johannesburg (2024/052869)

[2024] ZAGPJHC 567 (20 May 2024)

[2024] ZAGPJHC 567**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Fisher

CASE / FILE NUMBER

2024/052869

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Source record**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****GAUTENG****LOCAL DIVISION, JOHANNESBURG****Case Number:**

2024/052869

1.

REPORTABLE: NO

2.

OF INTEREST TO
OTHER JUDGES:NO

3.

REVISED: NO

20

May 2024

In the matter between:

SHU UEI

TSAO

Applicant

And

DPP

Johannesburg

Respondent

JUDGMENT

FISHER J

Introduction

[1] This is an application which was brought in the urgent court for the urgent amendment/relaxation of the applicant's bail conditions in terms of section 63 of the Criminal Procedure Act (CPA). The DPP opposes the application.

Background facts

[2] The applicant is accused number 1 in a trial currently part heard in this court, with six other accused on 191 charges including Human Trafficking of adults and minors, assault. The applicant and his co-accused brought a bail application in the Johannesburg Magistrate Court which was denied on 20 March 2020. On 26 June 2020. The applicant apparently holds dual South African / Taiwanese citizenship and has a South African identity document and two passports. His six co-accused are Chinese Nationals and are undocumented.

[3] The trial is part heard before Mhango AJ. The state has closed its case and an application for discharge brought by the accused including the applicant was refused.

[4] After bringing another bail application on new facts, the applicant was granted bail in the amount of R70 000,00 with the following conditions:

(i) that the applicant resides at unit 37 New Times Square 36 Ernest Oppenheimer Avenue, Bruma, JOHANNESBURG;

(ii) that the applicant is allowed to leave the complex only on Monday, Wednesday and Friday between 06H00-18H00;

(iii) that the applicant's passport be kept with the Investigating Officer until the finalisation of this matter and that he cannot travel outside the borders of the Republic of South Africa; and

(iv) that the Applicant signs the bail register at Cleveland SAPS Monday, Wednesday, and Friday between 06H00-18H00.

[5] The applicant seeks that these bail conditions be relaxed to allow him to travel out of the country. He alleges that on 29 April 2024 he was advised of the death of his father who died in Taiwan. He alleges that he is the only son of his father and that he wishes to attend his funeral and cremation in Taiwan. He states that his position in the family dictates that he perform certain funeral rites.

[6] He wishes to depart South Africa on 17 May 2024 and return on 08 June 2024 and has made provisional flight bookings. The trial is due to resume on 1 July 2024.

[7] The investigating officer on the case is detective warrant officer Lulama Kona.

- [8] He describes the alleged facts founding the criminal charges as follows. On November 2019 the South African Police Services (SAPS) received information about trafficking of persons and labour exploitation at a factory warehouse in Village Deep. The Departments of Labour and Home Affairs, the Hawks and a Tactical Response Team conducted a joint operation on 12 November 2019. This resulted in the rescue of 91 Malawian nationals of which 37 were children aged 17 and under. All these persons were undocumented. The allegations were to the effect that they had been smuggled into South Africa in containers and imprisoned by their employers.
- [9] W/o Kona alleges that the accused including the applicant were pointed out by the victims as being employers who exploited and imprisoned them.
- [10] W/o Kona states that the applicant is a seasoned international traveller. He owns no property in South Africa.
- [11] It is raised furthermore that two of the applicant's co-accused attempted to skip bail and leave South Africa.

Legal principles and argument

- [12] The inquiry as to whether there should be a relaxation of the conditions entails the court exercising a discretion on the basis that it is required to balance the constitutional right to freedom of movement with the interests of the State in the prosecution of offences and the public interest in such prosecution.
- [13] The applicant argues that he is not a flight risk. The DPP argues that because the crimes are so serious and will result in incarceration even for life if a conviction follows, that there would be no inclination for the applicant to return. The applicant argues that he is not a flight risk.

Discussion

- [14] The applicant bears the onus to establish that the probabilities suggest that he will return to face trial.
- [15] All he is able to raise in this regard is that he has not attempted to flee. This is not sufficient information in the light of the objection of the DPP. The failure to flee is one thing, the temptation not to return is quite another.
- [16] The trial is at a sensitive stage. The obligation of the applicant and his co-accused to put up their cases is a burdensome task which the applicant may well wish to avoid for various reasons.
- [17] The bail conditions were previously crafted on information before the criminal court. This court is not privy to that information. It would seem to follow, however, that the strictures preventing travel were not lightly imposed. There was no appeal of the imposition of such conditions.

[18] The fact that the appellant has no known family or other ties of any permanence in South Africa is a further factor which militates against the relaxation of the conditions. He is furthermore no stranger to overseas travel.

Conclusion

[19] I accept that this matter is urgent in light of the fact that the remains of the applicant's father await his cremation and his family is in mourning.

[20] Whilst I am sympathetic to the applicant's wish to attend his father's funeral, on a consideration all the circumstances, it seems to me that it would not be in the interests of justice to exercise my discretion in favour of the granting of the relief sought.

[21] In the circumstances the application is dismissed. In light of the sensitivity of the matter, I am not inclined to make a costs order.

Order

[22] I thus order as follows:

- 1) The application is treated as one of urgency.
- 2) The application is dismissed.

FISHER J

JUDGE OF THE HIGH COURT

JOHANNESBURG

This Judgment was handed down electronically by circulation to the parties/their legal representatives by email and by uploading to the electronic file on Case Lines. The date for hand-down is deemed to be 20 May 2024.

Heard:

16 May 2024

Delivered:

20 May 2024

APPEARANCES:

Applicant's counsel:

Adv Kriel

Applicant's Attorneys:

BDK Attorneys

Respondent's Counsel:

Adv Dube

Respondent Attorneys:

The National Prosecuting Authorities

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