

SOUTH AFRICA / JUDGMENT

Van Vuuren v S (A721/2011) [2012] ZAGPPHC 104 (13 June 2012)

[2012] ZAGPPHC 104**COURT**

North Gauteng High Court, Pretoria

BEFORE

M F Legodi

CASE / FILE NUMBER

A721/2011

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Source record**IN****THE NORTH GAUTENG HIGH COURT.****PRETORIA****(REPUBLIC OF SOUTH AFRICA)****Case****no. A721/2011****DATE:13/06/2012****IN****THE MATTER BETWEEN:**

DANIEL

JACOBUS VAN

VUUREN.....1st

Appellant

and

THE

STATE.....

Respondent

JUDGMENT**LEGODIJ**

[1] This matter came before me on an appeal against refusal of the release of the first appellant on bail.

[2] On the 17 April 2012, the first appellant was granted bail on certain conditions. When I did so, I did not give reasons for the order that I made. I hereby now give reasons for the order.

- [3] As a brief background, the first appellant is an accused 1 in a case where he appears together with other 8 accused persons on various charges under the Sexual Offences Act.
- [4] The other eight accused persons were granted bail on appeal on the 17 November 2011. At that time, the appellant (hereinafter referred to as the accused 1) decided not to proceed with his appeal against refusal of his release on bail.
- [5] The accused 1 application for bail was refused in the regional court sitting at Wonderboom, Pretoria-North, on the 4 January
2011. It was refused together with that of the accused 2 to 8. The bail application of the accused 1 was refused later on the 6 April 2011.
- [6] In upholding the appeal against the refusal of release of the accused 2 to 9 on bail, I made amongst others, the following findings:

6.1 That the potential for the interference with state witnesses was minimised and that it would have less impact. Incoming to this

conclusion I took into account the following factors:

6.1.1 All the key witnesses, who are children at the time of the bail application were kept at place of safety.

6.1.2 At the time of the bail application, statements from key witnesses were already taken.

6.1.3 Access to the witnesses was not easy if not impossible, unless permission to access them is given by those who are in charge of them.

6.2 That the accused had no means of evading justice, neither was there evidence to suggest that they attempted to evade justice, before their arrest, during the bail application and thereafter. Incoming to this conclusion, I took into account the following factors:

6.2.1 They are all South Africans.

6.2.2 Most of them have never been outside the country.

6.2.3 Most of them do not have passports.

6.2.4 They do not have previous convictions.

6.2.5 They do not have other pending cases.

6.2.6 Their addresses are known to the police.

6.2.7 They have been staying at their respective specific residences

for a period ranging from between five, nine months, seven years and about fifteen years.

6.3 That the state case against the appellants could not be said to be so strong as to refuse their release on bail. In coming to this conclusion, I took into account the following factors:

6.3.1 the state in the court a quo opposed bail based on the hearsay evidence of the investigating officer, and

6.3.2 the hearsay evidence was based on the evidence of small children, aged between five and seven years at the time of

the alleged commission of the offences, whose evidence could easily be destroyed.

6.4 That during the bail application, there was no suggestion that if release on bail, the accused will temper with the pending police investigation.

6.4.1 In coming to the conclusion, all possible exhibits or most of them were seized by the police and there was no evidence to suggest that the accused would easily have access to them.

[7] All of the above findings should be found to be applicable to the accused 1. By the way, the accused 1 is a husband to the accused 2. The accused2's appeal was upheld on the 17 November 2011.

[8] The accused 1 and 2 had been staying together as husband and wife at Plot 62 Julliet Street, Lusthif Pretoria for a period of over 15 years.

[9] Based on all of the above, I ordered on the 17 April 2012 for the release of the accused 1 (appellant 1) on bail as follows:

"1. That the appeal against the refusal of release on bail in respect of appellant 1 is hereby upheld and the decision refusing the bail application is hereby set aside and substituted as follows:

1.1 Accused 1 is hereby granted bail in the amount of R20 000 on the following conditions:

1.1.1 that the accused 1 must attend court on all remand dates;

1.1.2 That the accused 1 must report twice daily between the hours of 06:00 and 09:00 and 18:00 to 21:00 at the Hammanskraal Police Station;

1.1.3 That the accused 1 may not have any contact or communication directly or indirectly with any of the State witnesses;

2. That the investigating officer is hereby forthwith directed to furnish directed to furnish the station commissioner of Hammanskraal

Police Station with the court order herein.

3. That the station commissioner of Hammanskraal Police Station or any person designated thereto by the station commissioner Hammanskraal

Police Station is hereby directed to immediately inform the investigating officer should any of the accused herein default in reporting as set out in 1.1.2 above

4. That the reasons for the order to be furnished in due cause".[10] The order as indicate above is still hereby confirmed.

M F LEGODI

JUDGE OF THE HIGH COURT

Heard on: 17 April 2012

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