

JONAH CHIRAMBA
versus
THE STATE

HIGH COURT OF ZIMBABWE
NDEWERE, J
HARARE, 2 March 2018

Application For Bail On Changed Circumstances

Applicant appearing in Person
T *Kasema*, for the respondent

NDEWERE J: On 17 November 2017, an application was made for bail pending trial. The application was dismissed by this Honourable Court on 19 November 2017.

The reasons for the State's opposition to bail being granted at the time as can be gleaned from the Form 242 and the State's response to the application were that:

- a) The applicant was accused of having committed murder, a very serious offence under aggravating circumstances. He had allegedly killed the deceased during the course of an armed robbery. If convicted, the applicant could well face the death penalty.
- b) The applicant has been on the run and had only been arrested after a serious manhunt.
- c) The applicant went on to commit further serious offences after the alleged murder. These included unlawful entry, theft and theft of a motor vehicle. It was the State's fear that if released, the applicant had shown that he was likely to commit further similar offences.
- d) The applicant was likely to interfere with witnesses since they resided in the locality with him.

On 8 February 2018, the applicant then filed the current application citing changed circumstances.

From the onset, I wish to state that in my view an application for bail on the basis of changed circumstances must of necessity show that since the initial bail application, there has been a change of the circumstances which had been used to oppose or deny the applicant his initial bail application. It is incumbent upon the applicant to show such a change of circumstances.

In *casu*, the applicant has not shown or even alleged that there are changes in the circumstances stated above. He relies only on the “passage of time” to make his application. He contends that after being initially denied bail in November, 2017, the lapse of 2 months constitutes a changed circumstance which entitles him to be released on bail. In fact, he followed the 8 February, 2018, application with a supplementary one on 19 February, 2018. In effect all the applicant has done amounts to urging the court to release him as he has been in custody for a total of 8 months. It should be remembered that changed circumstances, in this context, do not refer to simply anything that has changed since the applicant’s incarceration. Rather, the time period we must consider is the time since the Applicant was formerly denied bail. For instance, if he had been denied bail on account of being a flight risk, have the facts since then changed so that the court might come to a different conclusion on that matter.

The case of *Thembinkosi Mathuthu v The State* HH 182/17 has similar facts to the one before me. Applicant had allegedly committed murder during the course of a robbery. My brother, Justice CHITAPI stated thus:

“The passage of time does not constitute an automatic entitlement to bail. Each case is dealt with on its own merits”

I agree with the learned Judge’s statement.

In *casu*, a lapse of only 2 months cannot be so said to be so long as to entitle one to claim passage of time as a reason to re-apply for bail. Even then, whatever amount of time has lapsed, that on its own is not a strong enough reason for bail to be granted. The lapse of time should be accompanied by or attached to a change in the circumstances that led to the original denial of bail.

I also subscribe to Justice CHITAPI’s finding in *Thembinkosi v State (supra)* that s 117 (b) (a) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] places an even more onerous burden on an applicant in a 3rd Schedule Offence. The applicant is required to adduce evidence to the satisfaction of the judge that exceptional circumstances exist which, in the interests of justice, permit his release on bail.

Consequently, I find that there are no changed circumstances in this case. The application is dismissed.

