

SUSAN CHIBAYA
versus
THE STATE

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 16 November 2020

Bail Application (Reasons for judgment)

Applicant in person
M Musarurwa, for the State

MUZENDA J: On 16 January 2020 the applicant made an application for bail pending trial which I dismissed and I gave reasons for that dismissal, which reasons were explained to the applicant ex-tempo.

On 11 November 2020 Messrs *Matsika Legal Practitioners* wrote a letter to the deputy registrar requesting reasons why the application was dismissed. These are they.

On 23 August 2018 the applicant was arrested by the police on allegations of Murder. The state alleged that on 31 July 2018, the applicant was arrested by the police on allegations of murder. The state further alleged that on 31 July 2018 at Mwenje River, Nyajezi, Nyanga, applicant strangled Nenyasha Dzirutsva to death. Deceased was 1 year 9 months old. The applicant allegedly took away the child without the biological mother's knowledge before killing her. Applicant later made confessions surrounding the crime.

The application was opposed by the state under Section C of form 242, the state provided three reasons for opposing bail.

- 1) Because of the gravity of the offence, applicant was likely to abscond.
- 2) Applicant was residing in the same village with state witnesses, hence she was likely to interfere with them.
- 3) The applicant's life was in danger if she was released on bail thus for her safety she was to remain in custody.

The state in its response further added that the applicant was likely to flee into neighbouring Mozambique due to the proximity of her place to the border. It was also

indicated by the state that the matter was likely to be afforded priority and be heard during the second session of this Court at Mutare.

Having looked at the state's response, the applicant was asked by the court to respond, unfortunately she did not have anything to say especially on the aspect of her safety after release. She was asked whether she had any alternative address to stay and she stated that she had none. She admitted that her village was right at the border with Mozambique and asked whether she had anything to say about to defray the fears of the state about her probability to flee to Mozambique, she did not respond. All the reasons for opposing bail advanced by the state were left undisputed by the applicant. More relevantly, the state felt and submitted that the parents of the deceased as well as the community would harm the applicant if she was released on bail pending trial. If the applicant had supplied an alternative address and provided meaningful surety the court would have taken these factors and reach a decision. The applicant failed to prove that she was a good candidate for bail. In any case the state undertook to proceed with the trial during the second session of the High Court.

It was thus ordered that there were compelling reasons why applicant should remain in custody.

As a result the following order was given.

The application for bail pending trial be and is hereby dismissed.

National Prosecuting Authority, state's legal practitioners