


VIC & DUP/JHB/LKS

IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)

CASE NO: A1089/99

JOHANNESBURG

1 December 1999

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In the matter between:

MNDENI RIMON NZIMA

First Appellant

MTHEMBENI ABRAHAM SHOBA

Second Appellant

BHEKI SAKANA MBATHA

Third Appellant

THOMAS BAFANA MAVIMBELA

Fourth Appellant 20

MDUDUZENI ISMAIL SIKHAKANE

Fifth Appellant

and

THE STATE

Respondent

J U D G M E N T

WILLIS, J: This is an appeal against the refusal of the learned magistrate to grant bail to the five appellants. The five appellants have been charged on two counts of murder, three counts of attempted murder and a charge of malicious damage to property.

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The/..

The learned magistrate, in her well considered judgment, found that there were indeed exceptional circumstances applicable in this particular case. It is common cause that the appellants fall within the provisions of Schedule 6 of the Criminal Procedure Act and that accordingly section 60(11) is applicable. This section reads as follows:

"In a Schedule 6 offence 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, 10 after having been given an opportunity to do so, adduces evidence which satisfies the Court that exceptional circumstances exist which in the interest of justice permit his or her release;

As I have already indicated, the learned magistrate found that there were indeed exceptional circumstances applicable to this case but that the interests of justice did not permit the release of the appellants.

The five appellants are all middle-aged persons. None of them have any previous convictions. They are all taxi 20 owners. They are all persons who enjoy reasonably good income. They all have a fixed abode. They have considerable assets. They have dependants.

It is clear that the background to this case is one in which taxi drivers placed demands upon the taxi owners belonging to the Faraday Taxi Association for, inter alia, an increase in wages, changes in their conditions of employment and greater participation in the taxi owning business. It is also clear as part of the background that tensions rose, which is not, I am afraid to say, an unusual 30 feature in South African labour relations.

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The version of the first two appellants is that they acted in self-defence. They were at the time in lawful possession of firearms which have been surrendered to the police. The version of the remaining three appellants is that they were mere passengers in a vehicle at the time that the incident occurred.

It is also clear that the taxi drivers have themselves been responsible for acts of violence that related to this particular issue. It is clear also that at least one taxi owner has, on 2 September 1999, been killed and that others 10 have been injured.

I am in agreement with the learned magistrate that exceptional circumstances exist in this particular case. It seems to me that in the circumstances of this particular matter there is no risk that the appellants will estreat bail, that they themselves will commit further acts of violence or that they will intimidate witnesses. Indeed, if I understood the submissions by counsel for the state correctly, it was accepted that this is correct.

It is clear from the documents before me that there 20 have been threats to the taxi owners generally and indications by the organisation representing the drivers that their safety cannot be guaranteed. Indeed it would seem upon a perusal of the judgment of the learned magistrate that the factor that weighed very heavily with her in refusing bail was the question of the safety of the appellants themselves. Indeed Mr Kock, the counsel for the state, in his submissions relied very heavily on this particular factor. It is of course a factor that has to be taken into account. But it has to be balanced against the 30 various/..

various other factors that I have already mentioned.

Furthermore, I am of the view that the court cannot countenance a situation where organisations, through their threats to resort to unlawful action, compel the detaining of the appellants in custody. It must be borne in mind in the consideration of this particular matter that it is unlikely that the appellants will stand trial for many many months.

I accept that there may well be circumstances where the safety of a bail applicant is of decisive importance. One 10 can think, for example, of a situation in a small country town where a person has been arrested on suspicion of having committed a heinous offence of rape and even though the accused is able to satisfy all the other tests as to why he should be released on bail, the court is nevertheless of the view that the community at that particular time is so 15 angered that there is a real risk that the accused will come to harm. The background here is somewhat different. One is operating in an urban environment here and I think it is fair to take cognisance of the fact that although, as I have 20 indicated, passions and tensions rise in labour disputes, in my view it is exceptionally rare that such passions are sustained over a lengthy period of time.

A further factor is that the appellants are themselves prepared to accept the risk to themselves, this much is obvious by reason of their persisting in seeking bail. In my view the learned magistrate, although she applied her mind thoroughly and, as I have already indicated, gave a very well reasoned judgment, overemphasised the aspect of the safety of the appellants in the total equation. In my 30 view/..

view when one has a look at the full conspectus of facts that are relevant to the appellants, the safety of the appellants, although important, cannot in this particular instance be decisive. In my view therefore she erred in finding that the circumstances did not permit the release of the appellants. Accordingly there are grounds for me presiding as a court of appeal to interfere with the decision of the learned magistrate.

In the result the following order is made:

1. The five appellants are to be released on bail. 10
2. The amount of bail is fixed at R10 000,00 for each of the appellants.
3. The appellants are to report to the Johannesburg Central Police Station once a week on Wednesdays between 06:00 and 18:00.

ON BEHALF OF APPELLANTS : MR J J DU PLESSIS
Instructed by : David H Botha, Du Plessis 20
and Kruger Inc.

ON BEHALF OF RESPONDENT : ADV KOCK

DATE OF JUDGMENT : 1 DECEMBER 1999