


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

CASE NO: A01/2020

DATE OF HEARING: 2020/01/16

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
 SIGNATURE	31/01/2020 DATE

In the matter of:

SUKHMANDER SINGH SANGERA

APPELLANT

and

THE STATE

RESPONDENT

JUDGEMENT

N N Bam AJ

1. This is an appeal against the decision of the Magistrate's Court for the district of Ekurhuleni Central, held at Germiston.
2. Appellant is an adult male of Indian origin. He is in South Africa on the strength of a work permit which is linked to a specific employer. He is also a holder of a valid passport which is in possession of the state.
3. Appellant was arrested and charged with fraud which began as a schedule 1 offence, but when the details of the charge pointed to an amount beyond a million rand, the charge was altered to schedule 5. Accordingly, the bail proceedings were entertained under the auspices of section 60 (11) (b) of the Criminal Procedure Act, CPA¹. The test, in terms of this section, is that the applicant must demonstrate that the interests of justice permit his release.
4. The primary concern for the court a quo, as is apparent from the record, is whether the appellant would attend trial in the event he was granted bail. The state opposed bail, relying on the evidence of the investigating officer who highlighted certain infor-

¹ Act 51 of 1977

mation to court which indicated that the appellant is a flight risk, and that the interests of justice would be better served with the appellant kept incarcerated.

5. The arrest of the appellant came against the following background which emanated from the live evidence of the investigating officer: Appellant was employed by Rustivia Metals CC, an entity which is based in Actavia Park, Germiston. It is to this company that appellant's permit was linked. Up until the day of his arrest, he was also accommodated on the premises of this particular employer.
6. According to the investigating officer, the owner, who is the complainant in this case, realized that he was missing substantial sums of money and began investigating. His investigations, supported by CCTV footage, pointed to the appellant. Appellant was subsequently arrested and charged with fraud. On the day of his arrest, it is said appellant was found packing his bags, a statement the defence did nothing to upset. As of the day of his arrest, appellant lost his accommodation.
7. In addition, the investigating officer's evidence highlighted to the court that she had come across a letter from the Department of Home Affairs which conveyed that, during the assessment of the appellant's application for a permanent residence, it was discovered that he had submitted a fraudulent SAQA evaluation. The letter thus concluded that the Department of Home Affairs no longer considers the appellant a person of good standing. The letter had not been confirmed with the department according to the investigating officer. The investigating officer went further adding that upon investigating alternative arrangements which were said to have been made for

the appellant's accommodation, she established that at the said address, there were five Indian males residing while the terms of the lease (according to the lease agreement) only permitted four people. The lessee, according to the lease, had to obtain the consent of the lessor in the event there were to be more than four people at any given time. The court was told the lessee had not sought such permission. As for the four occupants found at the premises, they had no knowledge of the appellant.

8. The investigating officer further told the court that the unit, which is in Randburg, is leased in the name of one Mr Dispou Singh, an Indian national who testified that he had been in South Africa for five years and had known the appellant from the temple. Mr Dispout testified in court on behalf of the appellant. He mentioned to the court that he had no knowledge of the people who visit his unit as he often traveled overseas. Dispou further confirmed that the appellant had never visited his home. Based on the total evidence before it, the court concluded that appellant was a flight risk and refused to admit him to bail. It concluded that the interests of justice would be undermined in the event appellant were to be released.
9. A fresh application was subsequently launched on the basis of new facts. A Mr Rossouw testified for the appellant. It emerged during his testimony he had been approached by a friend of the appellant, along with his legal representative. The two had asked Mr Rossouw to consider employing and accommodating the appellant to which Mr Rossouw agreed at a remuneration of R5000 per month. Appellant was to

pay R500 for rent. I mention, at this stage, that appellant was paid R17 000 per month by the previous employer and in addition was provided boarding.

10. On behalf of the state, the investigating officer informed the court that he had interviewed Mr Rossouw and his wife in connection with the accommodation arrangements for the appellant. Upon hearing the background which gave rise to the appellant's arrest, the Rossouws expressed concern to the investigating officer and concluded that they were only going to accommodate him for one month. In court however, Rossouw agreed that he was willing to extend the period of accommodation beyond a month.

11. The investigating officer went further, informing the court that she had not only confirmed the earlier letter relating to alleged fraud committed by the appellant in connection with his application for a permanent residency permit, but also produced an affidavit which was submitted into record confirming that the permit issued to the appellant only permitted him to be in South Africa as long as he was working for Rustivia CC. As the appellant was no longer working for Rustivia he was in violation of the law and was considered an undesirable person by the Department. Based on this information, the state vehemently opposed bail, arguing that the appellant is a flight risk. Once again, the court dismissed his application for bail on the basis that the interests of justice would be better served with the appellant incarcerated.

12. Before this court, it was submitted on behalf of the appellant that the court had misdirected itself in several aspects. They are: The court *a quo*, ought to have identified

that the state's case is extremely weak and consequently the appellant was a suitable candidate for bail. It was also submitted that the appellant had a fixed address for bail and that the court had failed to take into account the appellant's personal circumstances. It was also submitted that the court had misdirected itself in finding that there was no contract of employment between Rossouw and the appellant. Finally, it was submitted that the court had misdirected itself in finding that the appellant could only extend his work permit at the South African consulate in India. .

13. It perhaps needs to be added, without going into detail, that the appellant had told the court in his initial bail application that he is financially responsible for supporting his parents. He has no assets nor family in South Africa, and his family was enduring prejudice owing to the continued detention of the appellant. He further stated that he had intention to defend the case against him with no intention to leave South Africa.

14. I note as I begin, that this bail appeal is governed by the provisions of section 65 (4) of the CPA which provides that 'the court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which, in its or his opinion, the lower court should have given.'

15. Bail proceedings are not concerned with the guilt or otherwise of an applicant; their only concern relates to where the interests of justice lie in relation to bail². In this

² *S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat* (CCT21/98, CCT22/98, CCT2/99, CCT4/99) [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 June 1999)

case, the state has laid sufficient basis to raise the heightened risk that the appellant may not attend trial and may flee if released. For example, it was not denied that he was found packing his bags to flee on the day of his arrest. The whole arrangement with Mr Rossouw, which came at the behest of the appellant's friend and legal representative, was not considered a contract by the court for the simple reason that there had been no demonstrable normal contract of employment, especially considering the manner in which the agreement came about. The court further took into account the affidavit from the Department of Home Affairs which the defence did little to challenge, even during its submissions in this court, save to say the appellant had not had time to deal with the affidavit. The court, after considering the evidence at its disposal, including information dealing with the provisions of section 60 (4) (a) to (e), concluded that the appellant was a flight risk and that the interests of justice would be better served by incarcerating him and denying bail.

16. I find that the court's discretion was not incorrectly exercised and that a real risk exists that the appellant may evade trial if granted bail, such that the interests of justice would be undermined.³

ORDER

17. The appeal is accordingly dismissed.

³ See in this regard the reasoning of the court in *FJ Sewela v The State* (731/10) [2010] ZASCA 159 (01 December 2010), an appellant charged with multiple fraud counts.



NN BAM

ACTING JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION

APPEARANCES

APPELLANTS:

INSTRUCTED BY:

Adv J J PIENAAR

D VAN WYK & ASSOCIATES

2A TRICHARDT HOUSE, 33

WALTER SISULU STREET,

MIDDLEBURG

RESPONDENT:

DIRECTOR FOR PUBLIC

PROSECUTIONS

DATE OF JUDGMENT

31st January 2020