



IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)

CASE NO: A119/14

|       |                                     |
|-------|-------------------------------------|
| (1)   | REPORTABLE: YES / NC                |
| (2)   | OF INTEREST TO OTHER JUDGES: YES/NO |
| (3)   | REVISED.                            |
| ..... | .....                               |
| DATE  | SIGNATURE                           |

12/12/2014

In the matter between:

**NIMROD RACHOSHI**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT**

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**MUSHASHA AJ**

[1] This is an appeal against the refusal of bail.

[2] The appellant and two others appeared on 25 November 2013 in the magistrate court for the district of Nebo, Limpopo Province for bail application. The appellant was cited as accused no.3.

[3] The appellant now comes before this court on appeal. The appellant and two others are charged with murder and robbery with aggravating circumstances.

[4] In the magistrate court a somewhat strange *point in limine* raised on behalf of the appellant to the effect that since appellant was not brought before the court on the date arranged for bail application his further detention became unlawful and consequently the appellant should have been set free. It was further contended that the appellant's further detention infringed upon the appellant's right to freedom. The magistrate turned down the application. The appellant also appeals against the said magistrate ruling.

[5] Regarding the *in limine* point taken, it transpired that the force of the original warrant of detention of the appellant extended beyond the date arranged for the bail application and was never amended. In the result I find that the magistrate did not misdirect himself on this point. In any event if the appellant's rights to freedom were infringed he has the remedy for a claim of damages in the civil courts.

[6] I turn now to the refusal of bail.

[7] The appellant placed an affidavit before the court *a quo* and elected not to testify. The affidavit reflected the following:

- (i) that appellant was 21 years of age.
- (ii) appellant was not married.
- (iii) appellant was not employed.
- (iv) appellant has no assets of value.
- (v) the appellant was not linked to the commission of the offence.

[8] Meanwhile the state in opposition to the bail application tendered the evidence of the investigating officer Mamaila. The following emerged from his evidence.

- (i) the crimes are serious.
- (ii) according to hearsay appellant and his co-accused were seen in the company of the deceased prior to his death.
- (iii) at the appellant's residence a T-shirt belonging to the appellant was found with blood stains.
- (iv) the appellant was reported to have returned home at night and left the following morning.
- (v) the residents of Mamoni village are angry, mostly the business community, the Mapoga business unit and the appellant safety cannot be guaranteed.

[9] The magistrate found that section (60)(ii)(a) of the Criminal Procedure Act 51 of 1977 was applicable since the offences fell within the ambit of schedule 6 and that therefore the applicant had to show exceptional circumstances. The provisions of section 60(11)(a) reads as follows:

"Notwithstanding any provisions of this act where an accused is charged with an offence referred to

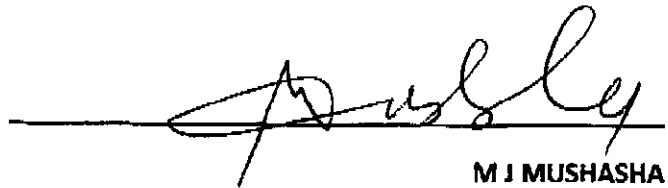
(a) in schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law unless the accused having been given reasonable opportunity to do so adduces evidence which satisfied the court exceptional circumstances exist which in the interest of justice permits his or her release."

[10] As I have already stated the appellant did not adduce any evidence to show exceptional circumstances or to show that it would be in the interest of justice to permit his release.

[11] The evidence of the investigating officer, Mamaila, demonstrates circumstantially the appellant's complicity in the crime. Regard being had to the appellant's affidavit which was read into the record and the submissions by both counsel I am of the view that the magistrate was correct in finding that there were no exceptional circumstances and that the release of the appellant would not be in the interest of justice.

[12] In the circumstances I cannot find any misdirection on the part of the magistrate warranting interference with the exercise of his direction.

In the result the appeal is dismissed.



M J MUSHASHA

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

DATE OF HEARING : 14 March 2014  
DATE JUDGMENT DELIVERED : 12/12/2014

Instructed by

for the Appellant

Instructed by

for the Respondent