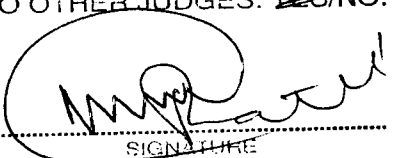




IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
07/11/2014	
DATE	SIGNATURE

Case No: A796/2014

Date heard: 07 November 2014

Date of judgment: 07 November 2014

In the matter between:

REINETTE WRIGHT

Appellant

and

THE STATE

Respondent

JUDGMENT

A.M.L. PHATUDI J:

[1] This is an appeal against refusal by the Magistrate (Mr Wessels) to release the appellant on bail pending trial.

[2] The appellant a qualified accountant appearing as accused 1 in the Magistrate Court Pretoria North, is alleged to have committed numerous counts of fraud. As at the date of hearing, the investigating officer testified that 26 more counts of fraud are proffered with the likelihood of more such counts to be added. Counsel for the appellant placed on record at the commencement of the hearing of this appeal that 22 more counts have since been added. Warrant of arrest has been issued at Ludsville Northern Cape for similar offences against the appellant. The appellant placed on record in her affidavit that she as well faces the charge of murder of a police officer. The police officer has been shot at by the appellant's co accused who is said to have since died on the 02 October 2014. The appellant was legally represented throughout the bail proceedings.

Factual Background

[3] The appellant is a sole member of a close corporation under which she operates a business called Zambezi Tours and Safaris. The accused, with her co-accused, advertised in the newspapers holiday packages. Their clients, mostly pensioners, would undertake train trips

as packaged. Days before undertaking the trips, clients would receive sms' cancelling the trip. The appellant and her crew would then request their clients banking details in order for them to effect refund payments. The monies have not been paid back to their clients. When clients follow up their repayments, the appellant would then become untraceable.

[4] The police received a tip off of the business whereabouts. They further received a tip off that the appellant with her co-accused were about to flee the country for Namibia. Upon further investigations, the police found out that the appellant rented out house 782 Afonso Street, Montana with Just Letting estate agents. On the day of her arrest, it was indeed found that the appellant was on her way to Namibia.

[5] Further investigations revealed that the appellant:

5.1 does not have immovable property

5.2 does not have a fixed physical address

5.3 does not have fixed employment

5.4 has two Passports. The one with her Wright surname and the other with her previous surname Holtzhausen

[6] The state opposed her bail application on the basis of factors mentioned above. The crux of the state's opposition is that the appellant had made out payments of monies into her Namibian banking account amounts of monies in excess of R500 000.00. The state, reasonably believe that the appellant, if released on bail, will abscond and become untraceable.

Law

[7] Section 35(1) (f) of the Constitution of the Republic of South Africa provides that 'everyone who is arrested for allegedly committing an offence has the right to be released from detention if the interest of justice permit, subject to reasonable conditions.'

[8] Section 60(1) (a) of the Criminal Procedure Act provide that 'an accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interest of justice so permit.'

[9] The appellant is saddled with the *onus* to prove, on a balance of probabilities, that it is in the interest of justice that she be released on bail.

Evaluation

[10] In my consideration of the evidence led in the trial court and the testimony of Constable John Ramollo (Ramollo) and submissions made, it is clear that the appellant does not have immovable property in the Republic of South Africa. Ramollo's investigation revealed that she does not have a fixed residential address. The evidence has shown that her name is not among the residents of Emerentia Geldenhuys camping site situated at Bela-Bela against her word. She provided to Mr Ramollo that she resided there after vacating the leased property, she did not renew the lease agreement she concluded with Just Letting estate agents in respect of the said Montana property. The only asset she has is a motor vehicle. The state failed to ascertain the appellant's Namibian business address. The telephone numbers of Namibian business provided by the appellant were in vain

[11] It is not in dispute that she operated the Zambezi Tours and Safaris touring business. It is common cause that some trips were cancelled due to the company's financial constraints.

[12] Counsel for the appellant refers me to **S v Dlamini; s v Dladla and others; S v Joubert; S v Schietekat 1999(2)SACR 51 CC** in his heads of argument which he submits to be standing by and stated that the court held that the 'court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the "interest of justice" lie in regard to bail'. On my perusal of the case, I find that counsel omitted to quote what the court said thereafter. The court further thereto held that '[t]he focus at the bail stage is to decide whether the interest of justice permit the release of the accused pending trial; and that entails, in the main, protecting the investigation and prosecution of the case against hindrance.'

[13] The magistrate correctly found that the state has a good case against the appellant. Considering other factors including the number of counts coupled with the offences committed in the Northern Cape, the magistrate found "*te veel rooi ligte*" which made him to conclude that "*dit nie in belang van regspleging is om u op borg vry te laat nie.*" The magistrate correctly found the appellant to be a flight risk and likely not to stand trial. The effect of the magistrate's ratio in refusing bail coils around

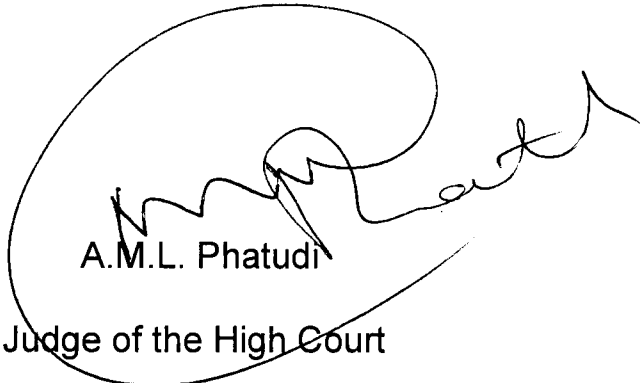
protecting the investigation and prosecution of the case against hindrance which may be caused by the appellant's possible absconment.

[14] In my final evaluation of the evidence and the magistrate's findings I find no leg to stand on to fault his findings that the appellant is a flight risk. The interest of justice does not permit the release of the appellant on bail pending trial.

The following order is thus made.

Order:

The appellant's appeal is dismissed.



A.M.L. Phatudi
Judge of the High Court

On behalf of the Appellant:

Botha Attorneys

Pretoria

Adv. H.F. Klein

On behalf of the Respondent:

Director of Public Prosecutions

Church Square

Pretoria

Adv. Fourie