BEN GAHA
and
PRINCE AUSTIN DUWA
and
TASHIDIDI ALIFI
and
SAMUEL BUTAO
versus
THE STATE

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 15 & 22 July 2016

Bail application

S Chikotora, for the applicants
A Muziwi for the respondent

ZHOU J: All the three applicants are facing three counts of attempted murder as defined in section 189 as read with section 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The facts in respect of the three counts reveal that the offences were committed in the course of attempting to commit acts of robbery. The applicants were arrested on 3 June 2016. Two alleged accomplices are still at large. The instant application is for bail pending trial. The application is opposed by the respondent.

In terms of s 50 of the Constitution of Zimbabwe 2013 a person who is being charged with a criminal offence is entitled to be admitted to bail unless there are compelling reasons militating against his or her admission to bail. In considering whether or not such compelling reasons exist the court will consider the following factors set out in s 117 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]:

1. Whether the accused, if released on bail, will endanger the safety of the public or any particular person or will commit an offence referred to in the first schedule.
2. Whether the accused will stand his trial.
3. Whether the accused will attempt to influence or intimidate witnesses or to conceal or destroy evidence.

4. Whether accused's release will undermine or jeopardise the objectives or proper functioning of the criminal justice system including the bail system.

The offences were committed using the same *modus operandi*. The Form 242 shows that there are witnesses who saw the applicants when they committed the offences. It is stated that forensic evidence revealed that the same firearm was used in the commission of the three counts. It is also stated that the second applicant is the one who acquired that firearm from one Sylvia Shamhuyarira at Acturus Mine. There can be no doubt that the offence which the applicants are facing is a very serious one. Also, the above statements by the police show that there is some evidence linking the applicants to the commission of the offence. The applicants have made very bald denials, and have pleaded that they were not at the three scenes of crime when the offences were committed. The applicants have not explained how the four of them are connected; neither have they denied that they know or are connected to their alleged accomplices who are still at large but whose names were stated in the Form 242. It has been submitted by the respondent that if the applicants are released on bail they are likely to re-group and commit further offences. The three counts of attempted murder were committed within a period of one week. The manner in which the offences were committed shows that they were well planned and executed.

In view of the above evidence, I am of the view that the applicants are likely to abscond if they are admitted to bail. That is so because not only is the offence committed a very serious one but there is also evidence sufficiently connecting the applicants to the offence. Those two factors will induce the applicants to escape if they are released on bail. The manner in which the three counts were committed within a period of a week shows a propensity to commit offences. The risk of interference with witnesses is also there given that the applicants have been alerted through this application to the place of residence of the witnesses. The release of the applicants at this stage will certainly undermine the criminal justice system.

Given the above factors, it seems to me that the applicants are not suitable candidates for bail.

In the result, the application is dismissed.

Rubaya & Chatambudza, applicants' legal practitioners
National Prosecuting Authority, respondent's legal practitioners