

THE STATE
versus
BEATRICE MATARE

HIGH COURT OF ZIMBABWE
MAVANGIRA J
HARARE, 6 and 7 May 2010

Bail Application

C. Daitai, for the applicant
E. Nyazamba, for the respondent

MAVANGIRA J: The applicant is facing one count of armed robbery as defined in s 126 of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*]. She is the fifth accused, jointly charged with four accomplices.

It is alleged by the State that the applicant who was a security guard deployed at Stanbic Bank, Chegutu for the past four years participated in the planning of the robbery by providing logistical information to her co-accuseds. The State contends that while her involvement may appear to be minimal, she is equally liable for the consequences of the actions of her colleagues notwithstanding that she did not actively participate in the robbery physically.

It is also alleged that the applicant facilitated a reconnaissance mission on 28 December 2009 in which her co-accuseds Jotamu Gonese and Akim Matare visited the bank a day before the offence was committed. During the course of the robbery the Assistant bank manager was shot.

The applicant was allegedly implicated by the second accused who is her nephew; that is Akim Matare.

The State fears that if released on bail the applicant is likely to abscond to South Africa where some of her co-accuseds are hiding.

The applicant denies furnishing any information to Akim Matare or any of her co-accuseds. She contends that the State case against her is weak as there is no evidence linking her to the offence. She claims that she has no international connections and has no

means to abscond and that in any event, investigations have been completed. The balance should therefore tilt in her favour and she should be granted her liberty pending trial.

Armed robbery is a very serious offence which attracts lengthy custodial terms of imprisonment. It is however trite that the seriousness of an offence on its own is not a reason to deny an applicant bail. *In casu*, the State relies not only on the implication of the applicant by her co-accused but also on circumstantial evidence that points to her involvement in the planning of the commission of the offence in which she provided logistical information that led to the “successful” heist. The applicant’s alleged complicity and participation in the reconnaissance mission of 28 December 2009 is also based on circumstantial evidence arising from activities that were observed by a number of State witnesses on the day in question. It is also the State’s allegation that she is known to all the State witnesses and her release on bail will inspire fear in them.

The reliance by the State on circumstantial as opposed to direct evidence does not in my view invalidate the State’s fear that she may not stand trial as her alleged participation in the commission of the offence, though not direct, is of critical relevance to the accomplishment of the robbers’ mission and her fate is likely to be thus the same or nearly so, as that of the actual perpetrators.

The State alleges that when her co-accuseds approached the bank on the date of the commission of the offence they pretended to force-march her into the bank. A couple of witnesses’ statements which form part of file B282/10, the bail application by Jotamu Gonese, state that the applicant was force-marched into the bank. The dispute between the State and the applicant is whether or not the “force-march” was for real or it was staged, a pretence.

The balance on this issue is, in my view, tilted in the State’s favour when consideration is given to the further factor highlighted by the State that she was the only victim at the bank from whom nothing was stolen. This ought to be viewed against the fact that Akim Matare the second accused is her nephew.

It is for these reasons that I am of the view that the balance in this matter is tilted in favour of the administration of justice and the denial of bail to the applicant. These are the reasons for my dismissal of the applicant’s application for bail on 7 May 2010.

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Magwaliba and Kwirira, applicant's legal practitioners.