

THOMAS JAFET VERSUS THE STATE

1994/08/29

FRANK, J et HANNAH, J

CRIMINAL PROCEDURE

Bail. - Amended section 61 of the Criminal Procedure Act confers a much wider discretion on the Court than was the case previously. - Court need only be of the opinion that it is in the interest of the public or the administration of justice that bail be refused.

If there is material upon which such an opinion can be formed an appellate court will not lightly interfere.

Delivered on:

1994.08.29

IN THE HIGH COURT OF NAMIBIA

In the matter between

THOMAS JAFET

versus

THE STATE

**CORAM: FRANK, et HANNAH,
JJ.**

Heard on: 1994.08.29

JUDGMENT

HANNAH, J.: This is an appeal against the refusal by the Oshakati Magistrate's Court to grant the Appellant bail pending his trial on a charge of theft of a motor vehicle. The grounds of the appeal are that the Magistrate erred in finding that:

- "A. The Respondent only had to make out a prima facie case that the Applicant showed a propensity to commit certain offences;
- B. The Respondent had made out a prima facie case that the Applicant showed a propensity to commit certain offences;
- C. The Applicant had failed to prove on a balance of probabilities that he shall not interfere with the police investigation if granted bail;

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CASE NO.

- D. The Applicant had failed to prove on a balance of probabilities that he shall not interfere with the State witnesses if granted bail;
- E. The interest of justice will be prejudiced if the accused is granted bail."

The brief facts of the case are as follows. The Appellant is a married man with a family and has no previous convictions. Before his arrest he made a living repairing motor-vehicles from which he earned approximately \$800 per month. In February of this year he was arrested on a charge of forging motor-vehicle change of ownership certificates and he was granted bail in the sum of \$1000 when he appeared before the Magistrate's Court. Then at the end of April he was arrested again this time on a charge of theft of a motor-vehicle. It was with regard to this charge that bail was refused.

During the application for bail various grounds for refusing bail were advanced by the State but in refusing bail the only grounds relied upon by the Magistrate were that the appellant "is likely to commit further offences and that it is in the interest of the administration of justice if accused is refused bail." Amplifying this when addressing the grounds of appeal the Magistrate said that the Court had to take into account all the relevant evidence and on that evidence the State had made out a prima facie case that the Appellant showed a propensity to commit offences involving theft of motor vehicles and the illegal disposal of motor vehicles. In refusing bail she had taken account of the prevalence of this type of offence in her district and the seriousness of this type of

offence and had come to the opinion that it was in the interest of the administration of justice that bail be refused. In reaching this decision she had not accepted the State's contention that the Appellant would interfere with witnesses or with police investigations.

Deciding whether to grant bail or not is often a difficult task. However, since section 61 of the Criminal Procedure Act was amended in May 1991, the Courts have been granted a much wider discretion than previously when considering bail applications. The section now reads:

"If an accused who is in custody in respect of any offence referred to in Part IV of Schedule 2 applies under section 60 to be released on bail in respect of such offence the court may, notwithstanding that it is satisfied that it is unlikely that the accused, if released on bail, will abscond or interfere with any witness for the prosecution or with the police investigation, refuse the application for bail if in the opinion of the court, after such inquiry as it deems necessary, it is in the interest of the public or the administration of justice that the accused be retained in custody pending his or her trial."

As may be seen, bail may be refused if the Magistrate is of the opinion that it is in the interest of the public or the administration of justice that it should be refused. And if there is material before the Magistrate upon which such an opinion can be formed this Court will not lightly interfere. In the present case there was the fact that within a short period of time the Appellant had been arrested and charged with offences involving the theft or illegal disposal of motor

vehicles and there was no suggestion made on behalf of the Appellant during the application that the police did not have reasonable grounds for making those arrests. Then there was evidence that two Angolans were shot while driving a motor vehicle bought from the accused. It was reasonable to assume, in my view, that this was the motor vehicle the subject of the theft charge and the Appellant, when he gave evidence, admitted having some connection with those people. Another piece of evidence which is rather ominous was the appellant's answer to the following question:

QUESTION: I put it to you that you are likely to commit further offences because this offence is allegedly committed whilst on bail.

ANSWER: I won't do it again.

The Appellants attorney made no attempt to clarify that answer in re-examination.

In my view, there was material before the Magistrate upon which she could form an opinion that it was in the interest of the public or the administration of justice that the Appellant be held in custody pending his trial and I can see no good reason to find that the Magistrate's opinion was wrong or to interfere with the very wide discretion conferred upon her by section 61 of the Criminal Procedure Act.

I would therefore

erore dismiss the appeal

HANNAH, JUDGE

A handwritten signature in black ink, appearing to be 'FRANK', is written over a horizontal line. The signature is stylized and somewhat abstract.

FRANK, JUDGE

¹ agree