Reportable: Yes / No
Circulate to Judges: Yes / No
Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE HIGH COURT, KIMBERLEY

CASE NO:CA&R 55/10

HEARD: 23/05/2012

DELIVERED: 01/06/2012

In the matter between:

MILVERTONRAYNOLDGREEF APPLICANT

and

STATE RESPONDENT

JUDGMENT

HUGHES-MADONDO AJ

1. The applicant, MilvertonRaynoldGreeff, was charged with count 1- rape and count 2-sexual assault. On 24 March 2010 he was found guilty of both counts and sentenced on 20 May 2010 to 10 year's imprisonment in respect of count 1 and 3 years imprisonment in respect of count 2 these sentences were to run concurrently.

2. He filed a petition with this court against both his conviction and sentence. Leave to appeal was granted on 11 February 2011 by, Lacock J and Olivier J in respect of both his conviction and sentence.

3. Although leave to appeal was granted on 11 February 2011, to date the applicant has not filed any paper into court pertaining to his appeal. He now approaches this court to grant him bail pending the hearing and judgment of his appeal.

4. Adv I J Nel, who represented the applicant, set out the following grounds in his papers to support the application for the release of the applicant on bail pending his appeal.

    a) The applicant was 45 years of age and had a live in partner who was sickly;

    b) He had 16 years in the South African Police Services(SAPS) when he was convicted and he is currently battling to attain his pension monies from the SAPS;

    c) He had lost his house as a result of his incarceration and therefore upon his release he would be staying at his mother's home at, No. 57, 4deStreet,Warrenvale,Warrenton.

    d) He was able to pay R 2000.00 in respect of bail, and he undertook to abide by any further conditions set by the court. In the lower court, after his conviction he was granted R2000.00 bail pending his sentenceand he adhered to the bail conditions imposed then; and

e) Lastly, as the record of the proceedings was not complete for the appeal to be heard, the compilation of the record might take time and the appeal in turn would take some time to be heard.

5. Mr Nel argued that in a bail application pending appeal, I am not called upon to consider the merits of the appeal as two Judges of this court have already examined the merits and granted the applicant leave to appeal.He stated that I am taskedin this application to consider whether it would be in the interest of justice for the applicant to remain in custody or to be released on bail pending his appeal and whether the applicant is a flight risk or not.

6. In my view a court in the course of bail proceedings is tasked to make a value judgment in accordance with all the evidence together with the application of the provision of section 60(4) and section 60(9) of the Criminal Procedure Act 51 of 1977. More so if the bail is sought pending an appeal against conviction and sentence, the absence of reasonable prospects of success on appeal may justify refusal of bail. It is evident to me that additional factors have to be considered in an application for bail pending an appeal against conviction and sentence. **See Joubert CRIMINAL PROCEDURE HANDBOOK9th edition (2009) at page 159**.I am not persuaded by Mr Nel's submission that I should not consider the merits and only consider whether the applicant is a flight risk and whether it would be in the interest of justice to keep the applicant in custody or not, since he has been granted leave to appeal.

7. It is trite that the mere fact that one has been granted leave to appeal does not mean that one is by right entitled to be released on bail pending the hearing of that appeal, as there is an existence of a

reasonable prospect of success at the appeal. **See S v BRUINTJIES 2003 (2) SACR 575 (SCA) 577** at **577 d – i.**

8. I turn to deal with the case against the applicant. The state's case against the applicant was that on 24 February 2007 in Warrenton, he unlawfully and intentionally had sexual intercourse with Margaret Maditsi without her consentin the toilet of the police station where he was stationed. Further that on 3 April 2008 and also in Warrenton the applicant unlawfully and intentionally inserted his finger into the vagina of Nicolette van Rooyen, a relative of his, without her consent.

9. If I look at the charges preferred against the applicant it is evident that applicant committed the initial's sexual offence on 24 February 2007 and the second sexual offence on 3 April 2008. From the record I note that the applicant was arrested for the first sexual offence on 26 February 2007. I can safely conclude that whilst the applicant was on bail or released for the initial sexual offence he committed the second sexual offence.

10. The state opposed the bail application of the applicant. The basis of its opposition was that the applicant had no prospects of success on appeal on both conviction and sentences. It would not be in the interest of justice to release the applicant pending his appeal as he had been a police official when he committed these sexual offences, one of which was inflicted upon a relative. Further, the applicant was now a flight risk as he now had the experience of having being in prison and that was reason enough for him to flee.

11. In the court below the magistrate found that the applicant was guilty of count 1-rape and count 2-sexual assault. In respect of first sexual offence, count 1-rape, this act was committed at the Police Station,

where the applicant was employed as an Inspector.At that time he had been in the SAPS employ for 16 years. The second sexual offence, count 2-sexual assault, was committed in one of his family member's homesand was against one of his relatives. What is telling is the fact that the rape took place on 24 February 2007, he was arrested on 26 February 2007 and released and whilst his case was pending he commits yet anothersexual assault on 3 April 2008. These offences are relatively a year and two months apart from each other. To compound issues the second offence was committed against one of his family members. This sort of behaviour of the applicant, to my mind, is an indication that he is likely to endanger the safety of the public, that is, other female members of the public or any particular person, which could be yet another family relative. Thus **section 60(4) (a) of the Act**becomes applicable.

12. When the applicant was released on bail in the lower court, he was still in the employ of the SAPS and he had a fixed place of abode. He has been in custody for over two years; has been relieved of his services with the SAPS; and he has lost his fixed place of abode. Representation was made on his behalf that he would be residingat his mother's home.In the face of the above facts and in addition the fact that the applicant has already spent time in prison, the state argued that there was a likelihood that he would try to abscond and by doing so he would be evading the finalization of his appeal. Her again**section60(4) (b) of the Act**will be applicable.A further consequence of him absconding would lead to the jeopardizing the proper function of the bail system and to this end**section60(4) (d) of the Act**becomes applicable.

13. I agree with the submission advanced on behalf of the state that being a policeman in prison for the past 2 years would not have been an

ideal situation for the applicant and as such he would want to be kept out of prison at all cost. Therefore I am persuaded that there is likelihood that the applicant would abscond and evade the appeal procedure.I conclude that proper grounds in terms of sections 60 (4) (a),(b) and (d) has been set out.

14. Mr Nel submitted that it is evident from the record of the proceedings, at the commencement of the applicant's evidence in chief, that the applicant did not have a fair trial as he was at odds with his representative and also at odds with the presiding officer.He further submits that for this reason alone the applicant had reasonable prospects on appeal that his conviction and sentence could be set aside and the trial commence *de novo* in lower court.

15. It is trite that in evaluating the prospects of success it is not the function of this court to analyse the evidence in the court *a quo* in great detail. If the evidence is extensively analysed it would became a dress rehearsal for the appeal to follow. **See S v Viljoen2002 (2) SACR 550 (SCA) at 561g-i**. Findings made at this stage might also create an untenable situation for the court hearing the appeal on the merits. **SeeS v Scott-Crossley2007(2) SACR 470 at 473 paragraph [7].**

16. I agree with the sentiments set out above and as such I do not propose to deal with the contentions raised by Mr Nel as regards the issues between the applicant and his representative and the presiding officer as this will be dealt in the appeal.

17. The applicant's version was that he did not rape the complainant, Margaret Maditsi, in the toilet of the police station whilst he was no duty on 24February 2007. His defence is that the complainant

wanted the police to pay because she was arrested and assaulted by other police who were also on duty that is why she pointed him out as having raped her. The states version which was accepted by the court *a quo*, was that the applicant admitted that he was the only one on duty at the charge office at the time that the alleged rape took place. When he removed the complainant from the cells he was not authorised in terms of police procedure to do so, she being a female prisoner and he a male policemen, he was not allowed to remove her if he was not in the company of a female police or if none was on duty another male policemen. Lastly, the complainant though she did not know his name identified him by the deformity of his eye and on that night he was the only policemen on duty with such a deformity.

18. As regards count 2–sexual assault of his relative, Nicolette van Rooyen on 3 April 2008, the applicant stated that there was a conspiracy against him, by van Rooyen and her mother and that he had not seen her in the house on the day in question. However, thecourt below accepted Van Rooyen account as to how the offence took place.

19. In all the circumstanced of this case I am satisfied that the consideration that the applicant is likely to abscond, that he is likely to evade his appeal and that is likely to endanger the safety of the public by committing further sexual transgressions carries more weight than any other consideration. In the result the application cannot succeed.

20. Order:

In the result the application to be released on bail, of the applicant, pending appeal is dismissed.

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W HUGHES-MADONDO

ACTING JUDGE

NORTHERN CAPEHIGH COURT, KIMBERLEY

On behalf of the Applicant:**ADV I J NEL**

On behalf of the Respondent: **ADV J MABASO (DPP)**