IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA

(TRANSVAALSE PROVINSIALE AFDELING) A55.2

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DIE STAAT teen: PATRICK MABUYA BALEKA EN 21 ANDER

VOOR: SY EDELE REGTER VAN DIJKHORST EN

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COURT RESUMES ON 20 MARCH 1986.

MR CHASKALSON ADDRESSES COURT: My Lord we considered last night the affidavits which were filed by the State and we have prepared a very brief reply and we are ready to deal today with the bail application. Now there are two matters, or a few matters I should mention to Your Lordship before I commence argument. First accused no. 9 is in hospital and the reply has therefore been signed by all the accused other than him. I do not think anything will turn on the absence of his signature. Secondly the papers have been paginated and there (10) is an index which has been prepared and which has now been put into the file which Your Lordship's Registrar made available to us. The pagination is in accordance with the typed index. One matter and that is that apparently the original exhibits have been kept in an envelope. Those bear numbers on the index but they actually have not been paginated, are not in that file, and they remain in the envelope intact and they have not been dealt with at all. We have prepared some heads of argument and we have it in two sections, a brief note on the use of assessors in bail applications which we understood (20) Your Lordship wished us to deal with in our argument. We have also prepared a set of heads of argument which I would like to hand up to Your Lordship. I may say that the conclusion to which we come is the same as the conclusion to which the State has come, and that is that the decision in regard to the bail application is a matter for the Judge sitting alone.

COURT: You have no objection to them being present?

MR CHASKALSON: No My Lord but it seems to be Your Lordship's decision and not that of the Court. We may be wrong in that but the State and us have both come to the same conclusion (30) independently. May I hand up to Your Lordship first of all

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the brief note on the use of assessors. That we have managed to get punched. Now as far as the main heads of argument is concerned I think it will be better if I, I would like to hand up the heads which we have prepared If Your Lordship would like to have a set to put in the file we have an extra set which has been punched but it has not got a staple and it will fall to pieces unless it is in the file.

COURT: I would like the punched one.

MR CHASKALSON: Your Lordship can have two if you want to keep them separately. But I must warn Your Lordship that (10) these will fall to pieces unless the, because they are not stapled, they had to be removed for punching.

COURT: Yes, it is only the heads, not the argument.

MR CHASKALSON: Well no My Lord, the argument is sound and secure. We will try to get copies for Your Lordship's assessors as well. Can I deal very briefly with the question of the use of assessors? The position of assessors is defined in the Criminal Procedure Act and we refer to Section 145(2) which deals with the circumstances in which the presiding Judge may summon assessors to assist him at the trial and the key(20) words there seem to be that the assessors are summoned to assist the Judge "at the trial". And we point that the circumstances identified in Section 145 are those in which the Attorney General arraigns an accused before a superior court for trial and the accused pleads not guilty or for sentence or for trial and the accused pleads guilty and a plea of not guilty is entered at the discretion of the presiding Judge. Now the function of the assessors seems to be to hear evidence and that means evidence arising out of the issues to be tried, and the cases refer to the oath of office which the assessors (30) are required to take. The oath that the assessors take is

that each assessor takes an oath that he or presumably she will, on the evidence placed before the Court, give a true verdict upon the issues to be tried. And it is in relation to that that there have been a number of judgments and it has been held that the issued to be tried is the issued of the guilt or innocence of the accused and then, so it means therefore that everything relevant to the guilt or innocence of the accused is a proper matter for the assessors but it is that and only that that is their concern. When one comes to matters such as confessions although confessions, or the admissibi- (10) lity or otherwise of confessions are matters relevant to the issue of the accused's guilt in the past assessors were excluded from that hearing because of the possibility of prejudice to the accused through their being made aware of information which might be prejudicial to the accused and which might emerge during the course of the separate trial. The more recent amendment to the Criminal Code now gives the Judge a discretion to have the assessors with him on such occasions. But once again the relevance of that would be because it is directly relevant to the guilt or innocence (20) and it is a factual issue which is relevant to the guilt or innocence of the accused. The question of bail really has nothing whatever to do with the guilt or innocence of the accused, it is not a matter relevant to the verdict in the trial and the guilt or indeed the cases say that the bail application proceeds on the assumption of the presumption of innocence and therefore the function of the assessors, or the task which the assessors have to perform is in no way relevant to deciding on the question of bail. Now we have quoted at the bottom of page 2 a passage out of, of this short (30) heads of argument a passage from HOME, J. in the case of

SPARKS. We have also quoted a passage on page 3 in the, from Gardiner and Lansdowne dealing with the same matter and then we quote the most recent case that we have been able to find dealing with the role of assessors, it is the case of MPETA(?) which was decided in the Cape. We refer to it in paragraph 5 of our heads of argument, it is a judgment of WILLIAMSON, J. and it was a question as to whether or not a hearing should take place in camera and WILLIAMSON, J., after referring to the previous authorities, came to the conclusion that that was an issue for the Judge alone and not for the (10) assessors because the question as to whether the court hearing should be in camera or in public was not a matter which was relevant to the assessors responsibility which is to give a true verdict. And that was so even if evidence were to be led in relation to the issue as to whether or not the hearing should be in camera. So the conclusion which we reach, and we set out in this very brief document, the passages which seem relevant and which I do not think I need take up Your Lordship's time by reading now, the conclusion which we reach is that the decision should be that of Your Lordship alone. (20) As I understand the State they too have reached the same conclusion quite independently of us and they have reached it by reference I think by and large to the same authorities.

If I might then turn to the, I do not know whether Your Lordship wishes My Learned Friend Mr Jacobs to deal with the role of the assessors now or whether you wish me to proceed to the bail application now.

COURT: May I just enquire from him in what his attitude is?

MNR JACOBS: Edele ek stem met My Geleerde Vriend saam dat die Staat dit ook tot dieselfde konklusie gekom het. Die (30) Staat het net 'n bietjie verder gegaan in die konklusie met

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gesag waarna verwys word en ook na die gesag van die verdediging en sê dat selfs in geval soos 'n vonnis waar die Hof oor 'n vonnis moet besluit kan die Hof die assessore raadpleeg. So al sit die Hof het die diskresie of die assessore saam met hom gaan sit, as die Hof daardie diskresie uitoefen dat hulle saam sit dan sê ons dan kan hy selfs verder gaan, hy kan met hulle raadpleeg volgens die gesag wat My Geleerde Vriend ook nou aangehaal het in Gardiner & Lansdowne en die gesag wat ons aangehaal het. Dit verhoed die Hof nie om dit te doen nie maar the beslissing is die Hof sin alleen. (10)

HOF: Het u enige beswaar dat die assessor by sit by die argumentering?

MNR JACOBS: Nee Edele ons het geen beswaar nie.

MR CHASKALSON: Well My Lord can I then turn to the application. Now what we have endeavoured to do in our heads of argument is to begin by setting out the background to this application and to bring to Your Lordship's attention the fact that there, and that of course emerges from the papers themselves, that there has been a previous application for bail which was refused. Now the circumstances were that (20) when the accused were released from detention and were arrested on the charges they now faced, and that happened on the same day. There were all served initially with certificates by the Attorney General pursuant to the provisions of Section 30 of the Internal Security Act. That was on 10 June 1985. An application was then brought for bail in the Transvaal Provincial Division. Well it started off before a magistrate and it then found its way to the Transvaal Provincial Division in regard to the question as to whether or not the Attorney General's certificate was valid. The State opposed the (30) bail application initially on the ground of the certificate

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and later put up some affidavits. They did so after the Transvaal Provincial Division had in a series of judgments, where the Judges for different reasons reach different conclusions but on balance that they came to the view that the effect of their three judgments was that the certificate was valid. I do not want to deal with those judgments, it is not relevant to Your Lordship now. The issue does not arise now. But the Transvaal Provincial Division concluded unanimously that though each of the Judges had given different reasons and that there were disagreements on the various points (10) which were argued the overall effect of their three judgments was that the certificates should be set aside and they set aside the certificates. What happened then was that in that application the certificate having been set aside the matter was then dealt with on the basis of an application for bail in which there was no certificate but there was an affidavit from the Attorney General, the Attorney General himself put up an affidavit stating his attitude and the basis of his personal objection to the granting of bail. And the main thrust of the Attorney General's affidavit was that he, the (20) Attorney General, considered the then existing state of emergency and the security conditions in the country to be such that it was in the interests of the safety of the State that the accused be not then released to bail. The other affidavits were filed by the police, or were filed by members of the police force in which other matters were brought to the attention of the Court in relation to issues which were seen by the State as being relevant to the grant or refusal of bail, and they dealt with matters such as the likelihood of the accused standing trial or not standing trial, the likelihood of (30) witnesses being interfered with and the question of political

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activity, the sort of matters which one not infrequently finds being referred to in cases where bail was concerned. Not so much a political activity, I will come back to that later.

When the matter continued, the matter continued before the same three Judges who had heard, who were hearing it and who had set aside the certificates, they then had to deal with the merits and when they dealt with the merits they came to the conclusion that the, because of the state of emergency and because of the affidavit from the Attorney General that he considered it not to be in the interests of the safety of (10) the State for the accused to be released to bail that the application should be refused. Now we have annexed to the papers the judgment which was given by the Full Court through the Deputy Judge President ELOFF, J. We refer to it in paragraph 3 of our heads and that judgment is at pages 18 to 28 of the papers. Your Lordship will have seen the judgment and will have seen that Judge reviews the information that was put before him and then proceeds to deal with the bail application on the narrow issue of State security and was careful to point out that he was not expressing, and that the Court (20) had deliberately refrained from going into the other issues raised, they were concerned only at that stage with the state of security and the situation then prevailing when the emergency was in force and they were themselves very careful to point out that their decision would not be the final word on the matter and that if circumstances changed or if the emergency were lifted the application for bail could then be made to the trial Judge and they specifically refer to these two matters at page 28 of the record where it is said in the second paragraph: (30)

"I come to the conclusion that in view of the security

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of the state the application for bail cannot succeed. This of course is not the last word in the matter. It may be that if in the weeks and months that lie ahead greater stability is achieved as regards the situation of the unrest or, if the state of emergency is lifted, it may be that different considerations will apply. The accused are at any stage free again to approach the trial Judge and may, in the light of changed circumstances, again bring an application for bail.

A few last words. I think it unnecessary and indeed impolitic to discourse on the further question whether it was adequately proved or not proved that the accused are likely to stand their trial. This judgment should not be interpreted as being a judgment on that part of the case. For all these reasons it seems to me that the application cannot succeed and it should be dismissed."

So the position in which we find ourselves today is that there is a previous ruling which was indicated by the Judge to be confined to the narrow issue of State security and to be one which could be, and that the issue of bail could be raised again if circumstances changed. Now circumstances have changed because on 7 March the state of emergency which had been proclaimed on 21 July the previous year was lifted. Now that of course has considerable importance. Its importance lies not only in relation to the fact that it was one of the specific factors mentioned in the judgment as being a circumstance which would permit the accused to come back and renew their application for bail. The lifting of the state of emergency is specifically identified as a matter which in the view of the three Judges would justify the lifting of bail, the

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raising of the issue of bail, but the other matter really is this, at the time of the state of emergency political activity was put under constraint. The emergency regulations in effect prevented the conduct of political activity. Political leaders, a large number of political leaders were arrested and were in jail and one of the purposes of the emergency was to put a damper on all political activity of a particular type opposed to policies being pursued by the State. It was one of the purposes and so it was a period of time when people really were not meant to be involved in political activity of (10) that type and that the political leaders, and I think this is well known, were arrested. Over 1000 people were detained in the first month and we know from the figures that many thousands were held during the emergency. So the position of the accused at that stage as an awaiting trial prisoner was no different to the position of thousands of other people who were being held in detention under the state of emergency because it was felt that it was not in the interests of the State that political activities of a particular type should be conducted during that period. Now in those circumstances (20) the release of twelve people, twenty-two people or any number of the accused might have had some impact on the general political level of the country and what was happening. Today you are faced with a very different situation. The organisations to which these accused belong and are associated, and 19 of the accused are associated in some way, not all as members but in some way with the Vaal Civic Association, and three of the accused are office bearers of the United Democratic Front, they have no direct contact with the Vaal Civic Association. Now the United Democratic Front is a lawful (30) organisation and is carrying out its activities and it is

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continuing to carry out its activities publicly and openly at present. All its leaders are about the country doing precisely that. I will come back a little bit later to deal with the effect of the acquittal of some of the leaders in the RAMGOBEN trial in Maritzburg. The Vaal Civic Association is a lawful organisation and it is carrying out its political activity. Now the level of political activity, if I may put it that way, and the safety of the State cannot be affected in any way whatever by the fact whether another 22 people are going to be free, be out of jail or in jail, and indeed(10) I will come back to this, I am going to come back to it in a different context but I would like to assume for the moment that even if no conditions and no restraints whatever were placed on the accused in relation to what their political activities will be, and that is not necessarily what would happen if Your Lordship were to release them to bail, but the fact of the matter would be that an extra few people, let me take the position of the three UDF officials, accused nos. 19, 20 and 21. At the moment the leaders of the UDF are moving about the country engaging in political activity, making (20) public speeches and attending to the affairs of the UDF. It is operating publicly, operating at the moment without any interference from the State in relation to what it is doing. The fact that another three officials should be out of jail can make no difference whatever to what the UDF will do. The presence of these three persons in jail or their release from jail, the UDF activities are going to continue as they are continuing now and the presence of the accused in or out of jail is going to be a neutral factor as far as that is concerned. And the same will hold true for the Vaal Civic (30) Association. Whatever is happening at the moment is happening

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without the accused being part of it. They are in jail, they are no part of what is going on and whatever is going to happen will happen whether they are in jail or out of jail. And so the element of State security in this particular instance, in our submission this is going to fall away completely. And I am going to come back a little bit later to look at the affidavits. But this is a fundamental change, the fundamental change is that with the lifting of the emergency, and one has seen it, and in fact the State's own affidavits say so. They say with the lifting of the emergency the level of political activity has increased and they start drawing attention to matters to which they take objection. Of course those are matters to which the accused had no part at all, could have had no part whatever because they were in jail. So whatever has been happening since the state of emergency was lifted, whatever political activity has taken place since the state of emergency has been raised is not in any way or cannot in any way be laid at the feet of the accused.

Now I would like then to turn to paragraph 6 of our Heads of argument on page 3 where we deal with the fact that, we deal with the case of RAMGOBEN in Pietermaritzburg in which certain senior officials of the UDF had been charged with treason and were acquitted. Now the relevance of the RAMGOBEN case is limited and I would not like to be understood by Your Lordship as suggesting to you that the acquittal of the accused in the RAMGOBEN case is of the same moment as the lifting of the emergency or that it is fundamental to the grant or refusal of bail. But what I do want to point is this, that, and I do not need to deal with paragraph 6 where we show how the RAMGOBEN case was referred to previously because Your Lordship will remember that in the RAMGOBEN case the accused

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in that case were in fact released on bail in Natal and...

COURT: Were they released by agreement or were they, by agreement between State and Attorney General?

MR CHASKALSON: Yes.

COURT: Attorney General and defence?

MR CHASKALSON: An application, what happened was, the history was not dissimilar to the history of what took place in the Transvaal. The accused were arrested and originally an Attorney General's certificate was issued. That blocked the bail application. An application was then made to Court for bail, to set aside the certificate. The certificate was in fact set aside by the Natal Supreme Court. The bail application was then to be heard and in the course of those proceedings the State then agreed that the accused should be released on bail and so the Court was never called upon to give a judgment but the accused were released on bail and they duly stood their trial and in due course were acquitted.

COURT: What were the conditions of bail there?

MR CHASKALSON: My Lord I do not, I will get them for Your Lordship. I do not have them readily available, there were a number of conditions which were imposed, the amounts of money involved were substantial. It was of course during the emergency that all this happened. I am sorry, no I am wrong apparently they were released on bail before the emergency was declared. They were apparently released on bail in June so the question of the emergency did not arise in that case. I made a mistake. The conditions, and I will get them and they are in a reported judgment and I can refer Your Lordship to the reference of the judgment.

COURT: Are they in a reported judgment?

MR CHASKALSON: There is a reported judgment dealing with it

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and we will get it and we will give it to Your Lordship. But there were, the conditions were conditions involving reporting, the non-participation in certain political activities and the affairs of certain organisations and there was also a rider attached to it enabling the Attorney General as it were to withdraw the agreement which he had made.

COURT: Now was that valid?

MR CHASKALSON: Well I do not think so.

COURT: Can one have an agreement which is made an Order of Court because in the end bail is granted by the Court, that(10) somebody else than the Court can withdraw the bail?

MR CHASKALSON: No, My Lord the order was made by the Court but what the, I think what the, what had happened was that the Attorney General had agreed and I think really what it came down to this was that in view of the agreement of the Attorney General if the Attorney General changes his mind and no longer wants to give his consent to bail then you would have to come back again and get another order. I find it a strange condition, it is certainly one which I think the Judges of the Transvaal Provincial Division during the course of argu- (20) ment seemed to indicate would not be a condition which they would impose if they were to grant bail. Because after all the grant or refusal of bail is with the Court and if the Attorney General wishes to withdraw, if the Attorney General wishes to have bail withdrawn what he needs to do is to come to Court and ask the Court to withdraw the bail, not as it were ....

COURT: But even on that basis, even had there been an agree- ment that he could ask the Court to withdraw the bail the Court could not have granted it because there was no breach(30) of a condition then. The Court can only withdraw bail when

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there is a breach of a condition.

MR CHASKALSON: No, or if new circumstances were brought, I presume, I think what was implicit in that was that the Attorney General wished to have some mechanism whereby if the situation changed rapidly he could act with speed. I do not understand it and I do not ...

COURT: I am not entirely sure that that is correct. I have the idea that when bail is granted on certain conditions, say (a), (b), (c) and (d) it is only, the bail can only be withdrawn should (a), (b), (c) or (d) be breached. (10)

MR CHASKALSON: I think, with respect My Lord, if new circumstances arise which are not covered by the original application, could I give Your Lordship a very simple example? Let us assume that the conditions were that you shall not attend any meetings ....

COURT: I am sure what you are going to tell me would be the correct position but is it in accordance with the Act?

MR CHASKALSON: Well I suppose I had better look at the Act before I make that submission. I would have thought that...

COURT: You see if you look at 68 for example that might (20) be the only one that ....

MR CHASKALSON: In other words, that was the example I was going to give Your Lordship, it is in the statute.

COURT: Yes. Yes that is so because then the Attorney General would have had to come and, come to Court and convinced the Court that the accused was about to abscond.

MR CHASKALSON: Yes.

COURT: Which would not normally be a condition of the bail, that you do not abscond. That is implicit.

MR CHASKALSON: And clearly on that basis there sometimes(30) have been applications for ....

COURT:/.....

COURT: So actually the whole agreement that the Attorney General entered into and which the Court, on which the Court granted bail and which the Court incorporated in the grant of bail was not covered by this section.

MR CHASKALSON: Well My Lord I have not given consideration to that because it was not a condition I was going to suggest would be in any way appropriate. Perhaps I should take an opportunity ...

COURT: Well it may not be that it is very important in this case, I do not know. But that is a question that might be (10) considered at some future stage, whether that was in any event a valid agreement.

MR CHASKALSON: Well as I say My Lord it is not a matter which, to which I have given any consideration and I will try to give some thought to it during the adjournment and if I can make any useful submissions in regard to it I will. But it seems to me in any event to be a wholly inappropriate condition for a Court to impose and I argued the matter in the Transvaal, I did not argue the certificate but I argued the second application in the Transvaal and I certainly at that(20) stage had no intention of suggesting that that would be an appropriate condition and the Judges, during the course of argument, indicated that in their view, I was asked by one of the Learned Judges, I think PREISS, J. specifically asked me is this a proper condition and I said I thought not and the matter was left there. Neither I nor My Learned Friend Mr Jacobs in his argument made any suggestion that that should be done, and I do not intend to make that suggestion today. But the reported judgment is S v RAMGOBEN 1985 (4) SA 130 and the bail conditions are set out at page 132. (30)

COURT: What were the conditions?

MR CHASKALSON:/....

MR CHASKALSON: Well My Lord the conditions were that sums of money should be deposited as set out in a schedule, they are very substantial sums of money ranging from five to fifteen thousand Rand, that the accused were required to report twice daily between the hours of 07h00 and 09h00 and 17h00 and 20h00 to police stations specified against his or her name in an annexure, and that was prepared. At that stage of course the Court was not sitting. That each of the accused were to refrain from leaving the magisterial area specified against the name, save with the permission of the Attorney General, and it was provided petitions should not be refused where it was sought for the purpose of bona fide consultations with legal representatives, that the accused were obliged to surrender passport or travel documents to the officer in charge within 72 hours of being released, that the accused were to refrain from communicating with any witnesses whose name appeared as a witness in the indictment or whose name was communicated to the accused by the State, and that the accused were not to leave their places of residence between the hours of 21h00 and 06h00 without the permission of the investigating officer. Then there was the condition to which Your Lordship referred to saying "Bail in respect of each accused granted in terms of this notice is subject to cancellation without notice if

1. There has in the opinion of the Attorney General been any breach or attempted breach of any conditions or,
2. there are grounds based on the interests of justice, the security of the State or the maintenance of law and order which in the opinion of the Attorney General or in his absence any of his Deputies justifies cancellation.

Then there was a condition that each of the accused should

refrain/.....

refrain from in any manner taking part in any activity of any organisation mentioned in the indictment or any other body or organisation affiliated to any such organisation, that each of the accused should refrain from attending any gathering or addressing or convening any gathering held under the auspices or in collaboration with any body or organisation. That was the list. So the list really provides for a substantial sum of money, to provide for reporting to the police at regular hours, to provide that the accused should remain at a particular place most of the time and that they should refrain from taking part in political activity. Now I understand that the matter proceeded on that basis, that the accused actually agreed to these conditions. What had happened was that the conditions, when the Attorney General indicated that he would not oppose the bail there was then a period during which the legal representatives of the accused and the legal representatives of the Attorney General, and I am not sure which is the chicken and which is the egg My Lord, but whether that came first and there was then the agreement or whether there was an agreement and this came second but I do not think it matters because what happened was that this agreement was in fact worked out between the legal representatives of the accused and the Attorney General and it was then put before the Court and I understand that there was not argument in regard to this issue which Your Lordship has raised in regard to the condition of cancellation. In fact that these were agreed conditions, that the Court was satisfied that they would protect the interests of justice and made an Order. But the importance of, one of the important factors is this that the twelve people in the RAMGOBEN case, well all 16 in the RAMGOBEN case were given bail. The four people, 12

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of them were subsequently acquitted and four of them are continuing to stand trial and are still on bail. Now one of the factors is that with the acquittal of the RAMGOBEN people the 12 leaders of the UDF are now free to move about the country. So whereas whilst they were subject to bail conditions and therefore under political constraints at the time, now of course they are free to move about and to engage in their political activities. So the whole leadership structure of the UDF, which was on trial there, is intact and engaging in its activities. Now we have endeavoured to show similarities between this case and the RAMGOBEN case and I do not want to spend time on it because I am not suggesting to Your Lordship that the fact of the acquittal in Natal means more than the fact that on the facts of that case, and in the light of that indictment the accused were acquitted. But it has implications and I want to point to those implications. We do so on page 4 and the first is that those who were acquitted all held leading positions in the UDF. Secondly that the four who were not acquitted and whose trial is still proceeding are not UDF people, they are the union people and their case is proceeding in the connection, with the alleged connection between the union and SAFTU. Thirdly that the UDF leaders who have been acquitted were released, were not made subject to any administrative prohibition in terms of the Internal Security Act or any other law, that they have attended and addressed public political meetings, have resumed their political activities in the UDF and other organisations of which they are members. Now that is all supported by affidavit and it is not disputed by the State. Fourthly that there are strong similarities between the averments made against the 12 UDF leaders and those who were

acquitted/.....

acquitted. Now may I mention what they are. First of all the documentation, and that is not in dispute, on which the State relied in Maritzburg, is substantially the same as the documentation which is relied on here. Now we do not suggest that there are not documents which will be relied upon by the State here which were not relied upon in Maritzburg.

COURT: Were those documents placed before the Court? I got the impression that only one witness was called and at the end of his cross-examination the case fell apart?

MR CHASKALSON: Yes My Lord what I am, I am not talking about the attitude of the Judge at the time of granting of bail. What I am suggesting is that the State in Maritzburg, relying on documents which it is relying on here could not get a conviction in Maritzburg.

COURT: But did they place those documents before Court?

MR CHASKALSON: It had not reached the stage, they withdrew My Lord. The State in Maritzburg gave up. The way that the matter came to an end, it did not come, the State stopped the prosecution.

COURT: But why did they ever start?

MR CHASKALSON: Well that is a good question My Lord.

COURT: I mean with only one witness?

MR CHASKALSON: No they intended, their case was going to last for months and months. It was not only going to be one witnesses, a number of witnesses were called but the case fell apart when the, what the State in Maritzburg saw was its central witness which was an expert who was saying what the documents meant, well there are different views as to why it fell apart but the fact of the matter is that after the cross-examination of the expert the State withdrew the charges against the accused. And it is not, the State was ready and

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able, in fact Your Lordship will see that a lot of the numbering of these documents are in fact the Maritzburg numbers. The case was going ahead and if I might say so it is purely fortuitous that the three accused, accused nos. 19, 20 and 21 are charge in Delmas and not in Martizburg because they are not alleged to have had any direct dealings in the Vaal Triangle at all. Their connection with the Vaal Triangle on the indictment is quite peripheral. They are alleged to be responsible in this trial because of their UDF role and all the 12 UDF leaders who have now been acquitted and are(10) released are cited as co-conspirators to the treason. So what we do know is that there are three people whose position is, certainly as far as the Vaal Triangle is concerned and the UDF is concerned, are in no different position to the people who were acquitted, are standing trial here. It has two consequences, it does go, no doubt the State in Maritzburg took one view of what it could prove through the evidence. It is not as if, there is one State and the State Prosecutor, there are different Attorneys General. Different Attorneys General take different views of the weight of the case. The (20) Attorney General in Natal took the view that he could not get a conviction and he stopped the prosecution but he had all the documents and he had the same treason charge, he formulated it somewhat differently but it was still treason and it was still treason arising out of the activities of those individuals. The distinction which the State seeks to draw between this case and the Maritzburg case is that here the accused are charged because it is alleged that everybody who is an official of the UDF and everybody who joined one of the affiliates is guilty of treason because by joining and (30) participating you joined the conspiracy. That is the averment

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made in the indictment. I will come to that later when I deal with that. But all I want to say now is that these accused, let me deal with the position of the three accused who are UDF officials, if they are guilty of treason then the 12 people in Maritzburg are equally guilty of treason because they are also officials of the UDF and if the one is guilty by reason of being an official of the UDF and participating in the UDF activities the other must equally be guilty and the State recognises that and the State cites them as co-conspirators, saying you are co-conspirators in this case. I am (10) saying only that 12 of the co-conspirators in this case on the treason charge, insofar as it affects those three persons, have been acquitted and that that is a factor.....

COURT: But not on this type of treason charge, was the treason charge there not that the revolutionary alliance was using the executive of the UDF for its aims, its aims being the violent overthrow of the government, not necessarily saying that the executive of the UDF knew that it was being used?

MR CHASKALSON: Well My Lord I do not know how you could (20) get a conviction, I do not see how one could get a conviction of the people without their knowing that they were being used.

COURT: Well there is no allegation in the papers that they knew that they were being used.

MR CHASKALSON: Well My Lord you could not be guilty of treason if you did not have the mens rea and so you could only be guilty of treason if you knew what you were doing.

COURT: No, the allegation is that the so-called revolutionary alliance of which the UDF was not part had the necessary intention. So there they could be guilty of treason if (30) properly proved. But the allegation is not that the executive

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of the UDF or that the UDF itself, well first of all it was not alleged that the UDF was involved. Secondly it was alleged that the UDF's executive was involved but only to the extent that they were being used to further the aims of the revolutionary alliance. Of course insofar as individual accused were also members of the executive those accused were alleged to have had the necessary intention.

MR CHASKALSON: But the details are set out, Mr Manoyim(?) in his affidavit refers to the structure of the indictment and to the questions which are asked and the answers which were given.

COURT: Yes I read the indictment.

MR CHASKALSON: And the structure is different. But the point I am making to Your Lordship is this that if these three accused are guilty of treason then those 12 who have been acquitted of treason are also guilty of treason because they are officials of the UDF, they furthered the activities of the UDF and the State alleges something which I would suggest there has been no evidence of at all so far, that everybody, that there is a conspiracy of which everybody was aware and everybody who joined either the UDF, everybody who became either an official of the UDF or joined one of its affiliates made himself guilty of the treason. Of course an individual cannot join the UDF, only an organisation can. So when it is said that the persons on trial in Maritzburg were held guilty through the affiliates to which they belonged, it was the activities on behalf of the affiliates, well of course that would be so because they could not join the UDF, they were not a member of the UDF.

COURT: No, no, that is not what was said in Maritzburg. It is said here but it is not said in Maritzburg.

MR CHASKALSON:/....

MR CHASKALSON: No it was formulated in a different way in Maritzburg but I think we seem to be somewhat at cross purposes. What I am saying to Your Lordship is that the 12 people who according to the State are guilty of treason because they are officials of the UDF and are alleged to be co-conspirators were charged with treason and were acquitted and are now walking about the country free and nobody is doing anything about it and that must surely be a factor which Your Lordship will take into account. Your Lordship can say that the indictment was formulated differently but the fact of the (10) matter is that if the State had evidence to get a conviction in Delmas it had the same evidence upon which it could get a conviction in Maritzburg. And it is not as if there is information which is secretly available to the Attorney General of the Transvaal and which would be withheld from the Attorney General in Pietermaritzburg, and according to the averments made in this case those 12 people should be standing trial for the treason and if the State's case was of any substance they should be convicted. The contrary we know has happened, that they were charged for treason and they were (20) acquitted. It means that the evidence was evaluated differently in Martizburg from the way it was evaluated in the Transvaal, it may even have been put together differently in Maritzburg to the way it has been put together in the Transvaal, but it is the same evidence, the same witnesses, and the same body available. So in the one instance one Attorney General says "I stop the prosecution and I cannot continue with it and you are acquitted" and from then onwards the people have been moving about quite freely, and another Attorney General says "I am prosecuting". He has not yet produced any witness (30) to say that there was such a conspiracy and we have had a

number/.....

number of witnesses so far who have denied the existence of any such conspiracy, State witnesses who when they have been asked about denied it. But I will come to that later because I think it would be inappropriate to try to argue the merits of this case in regard to the first two months evidence before Your Lordship now and it would be wrong for me to do so. I am going to make certain suggestions to Your Lordship about the evidence because Your Lordship must have regard to the evidence which has been given so far and it will be wrong, Your Lordship must take cognisance of it but I will come to that later. The other factor which is of importance to the question of bail we make at paragraph 7.5, the top of page 5 of our heads, that very many people who have been cited as co-conspirators in the present case have not been arrested, they have not been held on any charge, they are moving about the country freely, they are attending to their day to day affairs in the normal way. Now I mention that and it is relevant for this reason, it is relevant because if the State is saying that these accused should, there is a presumption of innocence at the moment and the cases say that that must be taken into account. That presumption of innocence is, means that the accused are presumed at the moment to be no different to those of the other co-conspirators because if you are a co-conspirator on a charge of treason you are guilty of treason, and if we have a situation where, and I will get the numbers for Your Lordship later, I do not have the exact number of people who are mentioned in the indictment as co-conspirators but if I can use a hypothetical example, if it is alleged that 100 people are guilty of treason and you take five percent of that 100, you take 5 people and you charge those five with treason and you leave the other 95

people/.....

people who you allege to be guilty of treason and you let them go free, walk around the country, and the five are presumed to be innocent there is a striking disparity in the way in which you are dealing with the people against whom you are making the charge, you are selecting a few people, you are charging them with an offence of which you say everybody is guilty, you are allowing the others to go round the country conducting the affairs of a political organisation to which they belong and taking part in public meetings and public debates, issuing public statements, moving about the country as they will and you say to the five percent of them "We are going to lock you up and we are going to try you and not only are we going to try you, we are going to try you for a trial which may last a year or more and we object to your being free during that period." Now that is a very striking disparity and it is a very strange situation and that we suggest is a most material factor in the circumstances of the present case. It may be that this is a trial, is the guinea pig trial, the State wants to see whether it can prove this sort of case and in the heads of argument, I have not had a chance of studying them, my time last night was cut out in getting our argument ready and finalised. But I have glanced through the State's argument, I see that the State says well it has nothing to show that those people will not be charged in the future. So be it, but in the meantime their position is no different and when the State also says that it is suggested that everybody that has been cited as a co-conspirator but none of the co-conspirators have been arrested or held on charges, well that is not what we say. There have been other people who have been arrested. Some have been acquitted, some have still trials pending. But the State,

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and I will deal with that later, are citing people as co-conspirators who, as far as I know, are not alleged to be co-conspirators in this case at all. They refer to trials pending against people who are not said to be co-conspirators here. But still that is my submission in that regard and we suggest that it is a material factor which Your Lordship will take into account and that in conjunction with the lifting of the emergency that has become even more material to this application than it was at the time when the emergency prevailed and political activity was under constraint. (10)

Now in section C of our argument on page 5 we deal with the individual circumstances of each of the applicants. It appears from affidavits which they have filed, and I am going to look at it a little bit later, I do not want to refer to it now, it is not a matter which is in dispute, but what I want to draw attention to is that there are 22 applicants. The State has not attempted to deal with the differences between the positions of each of the applicants. Its affidavit is simply on a blanket ground. None of you should be released to bail. And you get what I suggest is quite a (20) ridiculous statement being made by Major Kruger that he has information that "van die beskuldigdes", some of the accused he says he has information that some of the accused have weapons. Which of the accused? 1, 2, and because one or two of the accused, everybody denies it but the attitude is if we have got a ground to object to, if we have got a bit of information against one it is relevant to all 22. Now that is not right. A case cited later in our heads of argument, perhaps if I could appropriately refer to it here, it is a case of KOENIG v THE ATTORNEY GENERAL 1915 TPD 221, (30) bail application. It has the similarity that it was a treason

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charge. It arose at a different time, it arose at the time of the rebellion. The circumstances were different, the similarity is that the accused was one of a number of people who was charged with treason, the Attorney General objected to the granting of bail and the Court said this through the then Judge President DE VILLIERS J. at page 224 to 225:

> "The Attorney General says that the Court will be guided to a large extent by the Crown and naturally the Court attaches weight to the representatives of the Attorney General but here he takes a view which does not commend itself to the Court for he has stated that in none of the cases should bail be allowed. This is a conclusion which this Court cannot endorse. Every case must stand on its own merits and in each case the Court will ask whether there is any reason why the accused should not be admitted to bail. In this case it seems to me to be no reason why the applicant should not be admitted to bail."

Now the Judge came to the conclusion that the accused in that case would stand his trial, that he drew attention to the fact that in cases of high treason that there may, people who are alleged to have taken a prominent part in bringing about the state of affairs, and this was a particular person who was alleged to have had a prominent part, that it was a factor as to whether or not such people should be let out on bail. But he went on to hold at page 225 that:

> "In the present case if the Court provides that the applicant should report himself to the police daily and abstain from any interference in politics that would meet the requirements."

Now our submission to Your Lordship is that the failure of

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the State to address the individual position of each of the accused and to tell Your Lordship why in the case of each one of these 22 persons it has objections to that person being released on bail is of great importance and that Your Lordship cannot be expected to give effect to the opposition which was put forward on this very generalised non-specific basis, and as I will show Your Lordship later, based on information which is hearsay, speculative, from sources which are not revealed and deal with matters which in our submission in some instances have nothing whatever to do with the accused in this case. (10) But I would like to come back a little bit later just to examine the individual position of some of the accused and I will do so at the time when I think it might be appropriate to do so but could I leave out that section for the moment and proceed to page 19 of our heads of argument where we draw attention to the structure of the indictment in the present case.

Now the accused are all charged on the basis of conspiracy. Two conspiracies are alleged to exist. One involving the African National Congress and the United (20) Democratic Front and the other simply the United Democratic Front. The goals of the conspiracies are said to be the same, namely the violent overthrow of the government of the Republic, which of course was the same goal with which the RAMGOBEN accused were charged. The accused are alleged to be guilty of treason because they performed certain acts in pursuance of one or other of both of the conspiracies, and then there are a number of alternative charges which consist of charges under the Internal Security Act, five counts of murder and a charge of furthering the objects of an unlawful organi- (30) sation. In Maritzburg there were no murder charges, there

was/.....

was a charge of furthering the objects of an unlawful organisation. Now, and there were also terrorism charges, charges under the Internal Security Act. Now the overt acts set out in the indictment and in the further particulars do not make out the case that a specific agreement was entered into between the accused, or any of them, and the African National Congress or the United Democratic Front or between the African National Congress and the United Democratic Front to overthrow the government. The case is presented in the indictment on the basis that the actions of the accused and other persons (10) demonstrate the existence of the alleged conspiracy or conspiracies and the adherence of the accused thereto. We then look at the structure of the indictment which sets out the acts and activities on which the State rely and it covers 364 pages and it can possibly conveniently be analysed, as we have sought to do in the next seven sub-paragraphs. It deals in the first instance with the formation of the UDF, the public meetings associated with the launching of the UDF and speeches made in public on those occasions. It deals with the meeting of and decisions taken by the National (20) Executive of the UDF between September 1983 and November 1984 and three of the accused are alleged to have been members of the National Executive. It deals with the meetings and decisions taken by the Transvaal Region of the UDF between September 1983 and July 1984 and again accused nos. 19, 20 and 21 are alleged to have been present at some of these meetings. It deals with a series of training programmes directed to matters such as the preparation and use of propaganda, planning of tactics and strategies for the activities of certain UDF affiliates, the organisation of the UDF, the launching of (30) new organisations and the running of campaigns. It then

deals/.....

deals with a series of twenty mass meetings held in various parts of the Republic, and it appears that these mass meetings are also the subject of the Maritzburg case and of course all this UDF activity would have been the subject of the Maritzburg case as well. These are all public meetings and reliance is placed by the State and speeches and other activities at these meetings. Then it deals with a series of campaigns directed to day to day issues, such as housing, labour, education, Black Local Authorities, etcetera. And then it focusses on the Vaal Civic Association and the events in (10) the Vaal Triangle. Now of course that, all that is referred to in paragraph 12.7, was not a part of the Maritzburg indictment. Now the Vaal section, with which the Court has really been concerned over the past two months, deals with the formation and subsequent meetings conducted by and campaigns organised by the Vaal Civic, culminating in a stay away from work, in a march, in a mass protest against rent increases during which portions of the crowd became violent. I will come back to the evidence which we have had in relation to this but this is the allegation made. The allegation is (20) that portions of the crowd became violent and that this resulted in the deaths of five persons and the destruction of property and that it is those deaths which form the subject matter of the murder charges. Now it is not alleged that any of the accused actually committed the killings and all the accused are sought to be liable for the deaths on the basis that the killings resulted from the overall conspiracy or conspiracies or common purpose to which they are alleged to be party. So that then is the structure of the indictment and the nature of the charges. They are serious charges and I(30) will deal with the implications of that later Now we in

paragraph/.....

paragraph 13 deal with the, what we perceive to be the principles governing the grant of bail and although the onus is on an accused person to show that the interests of justice will not be prejudiced if he is released on bail it has been pointed out on a number of occasions, and the passage in McCARTHY's case which I see in the heads, the State's heads of argument as well and which I think is a well known passage, that the Court is always desirous that an accused person should be allowed bail if it is clear that the interests of justice will not be prejudiced thereby, more particularly (10) if it thinks upon the facts before it that he will appear to stand his trial in due course. That principle has been consistently followed and there is a judgment in the case of ESACK(?) which has also been quoted on more than one occasion since then. It was given by MILLER, J. We cite here the passage from ESSACK on which we rely where MILLER, J. said that in dealing with an application of this nature, I think ESSACK was being charged, I think it was with terrorism but it was certainly with a security offence and there was objection to bail in that case and MILLER, J. said that in (20) dealing with an application of this nature it is necessary to strike a balance as far as can be done between protecting the liberty of the individual and safeguarding and ensuring the proper administration of justice.

COURT: Was this not the gentleman who attended an unlawful meeting or something, he had been banned? Or is that a different case?

MR CHASKALSON: I think that that is a different case. The position of ESSACK was that he was charged under the Suppression of Communism Act. He himself was a banned (30) person and the charges against him were that he had

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communicated with other banned persons and that he had attended gatherings in breach of the notice served upon him. And the bail was objected to on the basis that the accused might leave the country and that there were easy escape routes and once out of the country there would be no extradition. That was the argument.

COURT: Is there a difference in approach in cases where it is not a capital offence and where it is a capital offence?

MR CHASKALSON: Yes, the more serious the charge the, the question, it is obviously an important factor. The attitude of the Court is the same but it is, the view which has been expressed is that the stronger the case which appears from a preparatory examination record or other matters, the more serious the charge, the stronger the inducement might be to an accused person not to stand his trial. I think the courts view it, what I was going to say to Your Lordship is of course that all the bail cases in a sense do depend upon their own facts and their own circumstances. In some of the cases statements have been made, they are not cases which we cite. I think that some of the cases deal with the question of the amount of bail, some of the cases deal with whether an accused should or should not be released on bail. Some of the cases deal with the conditions which should be imposed on bail and some of the statements are taken in that context. So obviously each case is important and each case depends upon its own facts and circumstances. But the important statement made by MILLER, J. is that it is necessary to strike a balance as far as that can be done between protecting the liberty of the individual and safeguarding and ensuring the proper administration of justice. His Lordship goes on to say:

"The presumption of innocence operates in favour of the

applicant/.....

applicant even where it is said that there is a strong prima facie case against him. But if there are indications that the proper administration of justice and the safeguarding thereof may be defeated or frustrated if he is allowed on bail the Court will be fully justified in refusing to allow him bail."

Now we will look just now at the factors which in our submission will be relevant to the decision taken by Your Lordship. But if I could just for the moment draw attention to two matters in ESSACK, first the presumption of innocence (10) which applies even if there is a strong prima facie case or said to be a strong prima facie case and secondly the striking of the balance. Now we also draw attention here to the one aspect involving the interests of justice and that is in paragraph 13.3 where we cite a passage from Gardiner, well it is no longer Gardiner & Lansdowne, it is Lansdowne and Campbell, where it is said that it is in the interests of justice that an accused person should be given a full opportunity to prepare his defence and to place it before the Court, deprived of his freedom of movement, hampered in the (20) tracing of witnesses and that a frustrating disadvantage in the matter of consulting and instructing his legal adviser the inmate of a prison cell must find himself severely handicapped in the meeting of a criminal charge and in endeavouring to present to the Court a demeanour other than one reflecting the suspicion conceived of a lowered morale. In its endeavour to protect the administration of justice the Court should not lose sight of its duty to safeguard the liberty of its subject and a balance should be struck between these two interests. The accused have already been in (30) custody for a very long period of time. It varies. In

some/.....

some cases it is nearly a year, that is the least period. In some cases it is nearly seventeen months, eighteen months. We are told, and that appears to be common cause, that this case is going to continue for a very long time. We do not know, we have heard estimates of about a year. But the fact of the matter is the accused have so far, for a year or more, been kept away from their families and their friends, their lives are shattered, their personal positions are really intolerable, they are standing a trial where they have to consult in jail, out of hours, a lot of work has to be done quickly, they (10) have the difficulty in summoning the concentration to deal with the matters before them. They are cut off from the association of their family and their friends. These are very serious matters and the seriousness of it is that the judicial process can, in effect, have a result which could be seen to be vexatious because if at the end of the day people facing charges are acquitted, if they had been made to stand trial and to remain in jail two or more years what has happened is not perceived as justice. it is perceived as a process which has weighed heavily upon individuals and has in fact(20) subjected them to very severe punishment for offences upon which they have been acquitted.

COURT: I know that this is said in regard to the ADAMS case. Was there a bail application in the ADAMS case?

MR CHASKALSON: Well the accused in ADAMS were all on bail. There was in ADAMS, the accused in ADAMS were released on bail. They were arrested, they were held in custody for a certain time, they were released on bail, they were, it so happened that ADAMS has the similarity that the first state of emergency took place during the course of the ADAMS trial and there (30) was a period during the ADAMS trial when the emergency took

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place and then during that period the accused were in custody, under the emergency regulations. And when the emergency was lifted the accused went back out on bail again. So the accused stood their trial on bail in ADAMS.

COURT: But now why is there then a complaint about the ADAMS case?

MR CHASKALSON: What complaint My Lord?

COURT: I read a complaint, not in your case, somewhere I read a complaint about the ADAMS case.

MR CHASKALSON: Well My Lord I am sure there are lots of (10) complaints about the ADAMS case. If I were one of the accused and I ....

COURT: I was under the impression that the accused were held in jail during the whole course of the ADAMS case.

MR CHASKALSON: No My Lord, definitely not. That is not so. In the ADAMS case the accused were released on bail, the bail was, the emergency took place during the course of the hearing and the accused were in custody during the emergency.

COURT: Were the accused released on bail by the Court? Was there an application? (20)

MR CHASKALSON: Well I do not know that there was an opposed application but they were released to bail by the Court. It might even have been before the preparatory examination. My Learned Friend Mr Bizos says it was at the preparatory examination but I think it might have been before or during, before the preparatory, but I do not think that matters. They were on bail, they remained on bail, they all remained here throughout the whole of that long trial and in due course they were all acquitted. There would be a complaint, if I were an accused in that case I would have complained if I had to (30) spend three years of my life attending a trial and away from

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my income and my, well it might have been more than three years. Apparently the trial started in 1956 and finished in 1961. But be that as it may whether it is three years or five years I suppose that if somebody stood trial for that long period and during that period was unable to attend to their normal lives and their normal affairs that there may be some complaint about it. But ADAMS is an example of an accused charged with treason who were admitted to bail, who stood trial and who were in due course acquitted. RAMGOBEN is an example of accused who were admitted to bail, stood trial and in due course (10) were acquitted. So the mere fact that treason is charged is not a reason for the refusal to grant bail. But what I do want to say, and perhaps I should come back to it a little bit later when I look at the implications, is that Your Lordship must in a case like this have regard to the duration of the trial. It is one thing to say to an accused person "Well your trial is going to come up next month and when I am weighing the scales what the implications are we will keep you, for one month you will be an awaiting trial prisoner and it will all be over". It is a totally different thing (20) to say to somebody "You have been in jail for eighteen months and we are going to keep you there for another year or so." And that is a very relevant factor when one comes to weigh up the one side the interests of the State and on the other side the question of liberty. I believe this is the time Your Lordship usually takes an adjournment.

COURT: You can go another five minutes.

MR CHASKALSON: As Your Lordship pleases. Now at the top of page 25 we deal with the question of the nature of the charges. Now the charges are serious but this in itself (30) is not sufficient justification for refusing bail. It has

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been said that if that were so then nobody ever charged with murder or treason or any capital offence would ever be released to bail and that of course is not the law. People are frequently released on bail on such charges. I suppose treason is not such a common charge but we have examples of it having happened and murder we know too of people charged with murder are released on bail. The strength or weakness of the State case is a factor which can be taken into account and Your Lordship has heard evidence for two months, and of course Your Lordship must have regard to that in whatever decision you take. You cannot as it were sit as if you heard nothing and knew nothing. I think the State suggests that you should have regard to the evidence and we agree. You must have regard to the evidence. It would be inappropriate to deal in any detail with the quality of the evidence and also probably be, we would not ask Your Lordship to make any finding or even presumably Your Lordship would not want even now to express a prima facie view on such evidence. But we must draw attention to certain matters which Your Lordship can, and in our submission should, have regard to. Firstly that after two months no evidence has yet been led in support of the alleged conspiracy to overthrow the State by violence. The evidence of Lord McCamel and other witnesses, such as Mr Mahlatsi and Mr Petrus Mohapi and Mrs Rina Mokoena, one of the witnesses who gave evidence in camera and there was some doubt as to whether I had got the right IC number but everybody assured me that Your Lordship would know who I am talking about, who I am referring to and that is to the effect that there was no such conspiracy involving the Vaal Civic Association or its members. Now that is the State case, that comes from the State witnesses. We suggest that it must cast some

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doubt on the ability of the State to prove the allegation that by reason of their membership or active support those of the accused who were associated with the Vaal Civic Association are guilty of this major conspiracy which has been alleged. There is nothing to suggest in the indictment, if I may put it that way, that any of the accused, and that is all the accused other than 19, 20 and 21, who are charged because they are either alleged to be members or supporters of the Vaal Civic Association, there is nothing in the indictment to suggest that their position is different to the position of any (10) other Vaal Civic Association member. They are charged through attending meetings, through speeches which one or other of them may have made and through certain actions which some of them have performed, and we can look at that later but the important factor is that there is actually no suggestion that they, for instance that anybody here would be different to for instance Lord McCamel or to any of those witnesses who specifically say there is no conspiracy with the UDF or the ANC or anybody to overthrow the State by violence, that was never discussed by any of us, it was never planned by any (20) of us, we never heard anything about it. Well if after two months of evidence on that, as far as those nineteen accused are concerned it is not reasonable to say that the State has, does not show a strong case on the conspiracy charge, and certainly there should not be very much inducement to the accused not to stand their trial to meet the evidence that has been given against them so far.

The evidence is also to the effect that the immediate cause of the rioting in the Vaal Triangle was the increase in rent. It seems to be the central grievance. None of (30) the accused are alleged to have participated directly in any

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of the killings which form the subject matter of the murder. The evidence of what is supposed to have happened at the meetings at Sharpeville and at the Roman Catholic Church at Small Farms and the gathering or gatherings immediately before the march on the morning of 3 September has been contradictory. I do not want to analyse all that evidence but if one is looking again at the accused and you take simply as an illustration the evidence which we have so far had involving Mr Sam Matlole who is accused no. 7 in regard to those meetings, 17, is that the witness Masenya absolves him from any in- (10) citement to violence but implicates other accused. Mrs Rina Mokoena says that Mr Matlole incited persons to violence but does not implicate any other accused, and Mr Mahlatsi, who talked about the same meeting absolves all the accused but implicates one Khabi who is not mentioned by any of the other witnesses. So one has the fact that there are contradictory, there are a series of contradictions and evidence which does not so far meet up to the requirement of even a strong prima facie case as far as these persons are concerned in regard to the Vaal Civic Association. (20)

COURT: Shall we take the adjournment now?

MR CHASKALSON: Well perhaps I should just finish sub-paragraph and then I can start a new point and that ...

COURT: I have read that paragraph.

MR CHASKALSON: You have read that paragraph. Well then I will not ....

COURT ADJOURNS FOR TEA. COURT RESUMES.

MR CHASKALSON ADDRESS COURT FURTHER: I was at page 27 of the heads, paragraph 13.5. I was going to deal with the fact that allegations are made that parts of the country are in (30) an unsettled state and we submit to Your Lordship that this

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is in itself not a sufficient reason to refuse bail. We refer to a case here which is not a bail case. It is the old case of In re WILLEM KOK & NATHANIEL BAILEY where Sir Henry de Villiers in giving judgment in a case had this to say - I can hand up to Your Lordship a photocopy of the Buchanan report if it will be of any assistance. I apologise it has been marked but we have it available, and the passage in WILLEM KOK & NATHANIEL BAILEY is at page 66 where Sir Henry de Villiers is reported as saying:

"But then it is said that the country is in such an unsettled state and the applicants are reputed to be of such a dangerous character that the Court ought not to exercise the power which under ordinary circumstances might usefully and properly be exercised. The disturbed state of the country ought not, in my opinion, to influence the Court for its first and most sacred duty is to administer justice to those who seek it and not to preserve the peace of the country."

Now it is in a different context, it is dealing with the question of habeas corpus but again it was a dictum which was repeated very recently and adopted by the Full Bench in the Eastern Cape Division in the case of NKWINTI v COMMISSIONER OF POLICE. It is a judgment of KANNEMEYER, J., it is not yet reported. It was given in November 1985, the case number if M.1631/85. NKWINTI's case too was really a question of an application for the release from detention of certain people held under the emergency, it being alleged that the regulations were invalid and I appreciate that different principles apply. Of course in the one case, in the case of WILLEM KOK and in the case of NKWINTI one was concerned there with people who were seeking a release through the application of the rule of habeas corpus whereas here an analogous principle of seeking to be admitted to bail is at issue and the same considerations do not necessarily apply.

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The fact of the matter is that no specific reason has been given why these twenty-two people should not be allowed to move about freely and others can. The mere fact that they are facing a charge is no different when it comes to the question of the unsettled nature of the country. The fact that they are facing a charge may be relevant as to the question as to whether they are likely, well one has to consider there are they likely to stand their trial, will they interfere with State witnesses, will the administration of justice be interfered with by their being released. But in regard to other (10) matters it would be really introducing a form of preventative detention to say that simply because you are charged you must now be kept out of the way of the public. And that I suggest is not the principle which ought to be applied. Now we want to look at the grounds of opposition by the State. We put out in the founding papers the affidavits previously filed by the State and the State in turn has filed certain further affidavits which deal really with the state of the country. But the opposition which we have endeavoured to summarise in paragraph 14 is first that a policeman who was to be a wit- (20) ness at the trial of the accused was murdered on 1 September. Secondly there is in Captain Kruger's affidavit the fact that the ANC has a plan to help the accused escape from South Africa if they are released to bail, the averment that certain of the accused have concealed weapons in safe places, the averment that the ANC is actively involved in providing training and in giving instructions to promote political disturbance, fifthly that the ANC has given instructions for the Vaal Civic Association and the youth organisations to be re-structured and is providing financial assistance to the (30) UDF affiliates in the Vaal Triangle, that certain persons

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associated with the UDF have left South Africa and have joined the ANC. Then in the additional affidavits which have been filed the points made are that since the lifting of the emergency there has been unrest and political activity in the Vaal Triangle, that UDF officials have had contact with the ANC, that a State witness has disappeared and that rent has not been paid in the Vaal Triangle. And then reliance is also placed in these new affidavits on the alleged attitude of Mr Frank Chikane in February 1986 at a time when the emergency was still in force. Mr Chikane was acquitted in (10) the Maritzburg trial but is alleged to be a co-conspirator in the present case and he was formerly a Vice-President of the UDF. Now we turn to deal with these different grounds of objection.

In paragraph 15 we draw attention to the fact that the case of Letsele has in fact been the subject of evidence given in this trial at the time of an application by the State that the evidence of certain witnesses be heard in camera and that it appears from the evidence that the death of Letsele arose out of a quarrel which was started in a shebeen. The accused(20) deal with this incident in paragraph 10 of the application at page 9. I would like to read to Your Lordship what they say there. They say:

> "Each of us denies having any knowledge of the threats alleged to have been made against the said Letsele or to have been party to any such threat or the killing of the said Letsele. We state that the death of Letsele had nothing whatever to do with us and we submit that it can have no relevance to the issue as to whether or not we should be released on bail. Letsele in fact died at (30) a time when all of us were in detention. Evidence was

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given in regard to this incident at the time when evidence was called on the issue as to whether the evidence of certain witnesses should be heard in camera. We submit that it appears from this evidence that the death of Letsele arose out of a quarrel which commenced in a shebeen and that there is nothing in the circumstances of that event to suggest that any person will be endangered by the release of any of us on bail."

It has not been suggested by the State, no attempt whatever has been made by the State to link any individual accused person, either the 22 as a group or any one of them, as having been party in any way to the threats made to Letsele or being party in any way to his killing and we submit that there is nothing in this incident which suggests that the safety of any person will be endangered if the accused or any of them were released on bail. The fact of the matter is that the incident occurred while they were in detention. It would have had no greater or lesser risk of occurring whether they were in jail or in detention, it is in fact a neutral fact. Then Captain Kruger's affidavit, and if we could look at that, the way it is put, page 49. Captain Kruger, I believe he is now Major Kruger but at the time he was Captain. Captain Kruger identifies himself and he is the investigating officer and he says that he had received information from informants and that he will not disclose the informers, who the informers are and then he says that as a result of that information, or the effect of that information is as follows and he then says:

"(a) Dat 'n ANC plan behels om die beskuldigdes sodra hulle vry gelaat sou word op borgtog te help om die RSA te verlaat en by die ANC aan te meld.

(b) Dat van die beskuldigdes veilige plekke met wapens

afkomstig/.....

afkomstig van die ANC bewapen het.

(c) Dat die ANC aan lede van die sameswering in the buurstate opleiding verskaf hoe om die massas in die RSA te organiseer en te politiseer deurdat die ANC direkte opdragte gee hoe om dag tot dag issues te gebruik om die massas tot oproer op te sweef.

(d) Dat die ANC opdrag gegee het dat die Vaal Civic Association en jeug organisasies herstruktuur moet word.

(f) Dat die ANC finansiele hulp aan UDF geaffilieerde (10) organisasies in die Vaal Driehoek gee.

(g) Dat sekere leiers figure van die PCA en jeugs-organisasie wat aan UDF geaffilieer is en direk betrokke is by die bewerings in die Akte van Beskuldiging reeds die RSA onwettig verlaat het en tans aktief by die ANC betrokke is."

Now the answer to that put up by the accused is at page 9 of the papers where they say:

"With regard to the averments made in the affidavit of Captain Kruger we state that the allegations made by (20) him in this affidavit that the ANC has a plan to help us to leave South Africa came as a complete surprise to each of us when we read the affidavit. None of us has any knowledge of such a plan and it was denied by each of us at the time of the original application. Each of us denies that he is or was a member of the ANC."

I may say it is not alleged in this indictment that anyone was a member of the ANC.

"And each of us denies that he has any intention of leaving the country or of joining the ANC. No direct (30) evidence has been adduced in regard to any individual

person/.....

person in this case other than an unknown informer who suggests that the ANC has a plan to try and get the accused out of the country."

Strangely that plan was to take effect as soon as they were released on bail. Curiously when the Ramsbottom people were released on bail no such thing happened. I do not know why the Rambottom people should be seen as being less important than these accused but still that is the only way one can test this type of averment.

"Even if the ANC plans to approach us to leave the country and to join the organisations, and all of us doubt very much that this is so, each of us states that he would not comply with such a request." (10)

In this regard can I also draw your attention to the individual affidavits of the accused. Let me take as an example what Father Moselane says when he deals with his own position. Page 64 of the papers. He says:

"I was detained on 21 October 1984. This period of time away from the church, my home, the parishioners which the church serves and from my family has already damaged the relationships which I have with each of them. I will traverse the effects on each below. (20)

As rector of St Cyprian's parish in Sharpeville I attend to the spiritual and other needs of a very large community. In Sharpeville alone there are at least one thousand families who belong to the church and attended services. In addition this church serves other Anglicans in adjoining areas, namely Boiphatong township 400 families, Bophelong township 300 families and four farms in the area with thirty or forty families on each farm. Although I have sub-deacons who assist me (30)

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in my work of ministry into this spread out parish they are clearly only able to accomplish a limited amount of work. I am informed by my wife that church affairs and the general well being of our parish are seriously affected by my absence. In ministering to the parish I do not only serve the spiritual needs. I do counselling, baptisms, marriage counselling and help with a range of social problems and family problems. As a committee member of the South African National Council of Alcoholism and Drug Dependence I am involved in assistance to alcoholics. This is all in addition to my more formal religious duties which as rector and priest at St Cyprian's I am required to do, namely conducting services, officiating at baptisms, funerals and weddings, preparing candidates for confirmation etcetera. Because of the limited financial resources of the parish I am required to attend to much of the secretarial and bookkeeping work. I understand that in my absence the parish has had to rely on visiting priests from elsewhere to provide the basic facilities required by the congregation, such as conducting communion services and funerals. This involves the parish in additional expense but the ordinary routine pastoral attention required by the parishioners has not been provided. None of the other social services and spiritual ministering which I have described above is at present being provided to the members of the church. I further understand that since my detention the accounting records of the parish have not been audited. People are having to come to visit me in prison in Delmas to seek advice about the running of the parish in my absence. I know that the effect of my being in detention

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must therefore mean that the affairs of the parish are in disarray. The services of a priest are not limited to Sundays but are required to assist parishioners every day of the week. The need for a priest in the present difficult times being experienced in Sharpeville is particularly acute. I must stress that I regard Sharpeville as my home and as the home of my family. I believe that the church with me as the rector is a functional part of the Sharpeville community and that the whole community's stability and well being is adversely affected by my continuing detention. My wife has advised me that many of the parishioners and members of the church hierarchy ask after me very regularly. It will be noted that I was an assistant priest in Sharpeville in 1973 and 1974 and I saw my appointment in 1980 as rector there as confirmation that the parishioners had confidence in me and respected the work that I was able to do for them. Over the last few years I have dedicated a significant amount of time to the renovation and refurbishing of the church property in Sharpeville. Recently renovation work costing thousands of Rand was effected on the church. I intend to continue with this work but unfortunately my detention has disrupted it. At Boiphatong and Bophelong the parishioners are still collecting funds in order to effect further renovation."

He then deals with his wife and his family saying:

"My wife is a senior teacher at Lebahong Senior Secondary School in Boiphatong. She teaches mathematics and physics. She and the children are suffering as a result of my continued detention in a number of respects She needs to rear the children all on her own. As I set

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out above the children are all boys aged 12, 10 and 5. The five year old is apparently presenting problems to my wife. He has become disturbed as a result of my detention. I must mention that he was very close to me because my wife used to leave him with me in the mornings when she used to go off to school and I used to take him along to the creche, fetch him from the creche and generally tend to his needs during the day. I am very close to the child and from his one visit to me in prison I can see that he is extremely upset not to be with me. I believe that my wife and the older two children are affected as well and are constantly having to face questions as to whether their father is a criminal."

He talks about the disruption as far as his wife is concerned, the problem of his wife's safety which disturbs him, and then he deals in paragraph 8 with the question of the possibility of his absconding and he says:

"I have been advised by my attorneys that the question of the possibility of my absconding and estreating my bail are factors to be taken into account when considering the question of bail. In this regard I must advise as follows: I had reason to suspect long before my detention that there as a possibility of my being detained or otherwise being the subject of police attention. This will appear from what I say below. On the evening of 3 September, almost two months before my detention, while I was at home an attack was made on my house. Teargas canisters were fired into my house from a vehicle which I was satisfied was a police vehicle. A protest against this incident was lodged by the Synod of the Anglican Diocese of Johannesburg and in

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a letter of 15 October addressed to the South African Police at Vanderbijlpark I gave full particulars of what had happened. Some time before my detention I was informed that it had been alleged in certain court proceedings that I was in a measure responsible for the unrest in Sharpeville at the time. I was also informed that at a funeral in the locality a speech had been made by a local personality accusing me of being responsible for the unrest in Sharpeville. On the morning of 21 October, the date of my detention, when the police first came to the rectory to detain me they could not find me there because I was not staying at the rectory as a result of the attack on the rectory which had occurred earlier on. When I arrived at my home at the rectory on the morning of 21 October, having come from the place where I was temporarily taking refuge, my cousin told me that the police had come to the rectory and were looking for me. He told me that they said that they would come back. Again I had an opportunity to escape detention but because I believed that I am not guilty of an offence and because I am willing to prove my innocence in any court of law I did not fear for my detention. I proceeded to conduct services that morning and later that afternoon I was detained at my home. It would not be in my nature at all, or in line with my personal conscience or belief to abscond and not face trial in this matter. I am not a member of any political group and I wish to show my innocence in court and to clear my name. Most of the accused were detained before I was detained If, as the State apparently alleges, I have acted in concert with my co-accused and if I had wished to run

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away I had sufficient time to do so between the time of their detention and the time of my detention."

Then he deals with his financial investments and the fact that he has a passport which has been handed over to the police. Now these are the individual circumstances of this man and the State does not attempt to deal with it. It puts up a generalisation, puts up a generalisation in respect of each one of the people in relation to their position. And we make the submission, paragraph 16 of our heads of argument, that the averments made in Captain Kruger's affidavit are so (10) vague and general and unspecific that it is really impossible for the applicants to respond to the averments in any way other than they have done, that after some two months of evidence none of these allegations have been supported or even alluded to by any witnesses, that the generality and all embracing nature of the complaints involve a failure by the police to deal independently with the individual position of each accused and that that detracts from the weight of the averments which are also suspect because they are based on information provided by unidentified informers. (20)

Now if I could come back to page 10 where the accused deal with the weapons allegation. Now it is alleged "van die beskuldigdes" without identifying who, but this is what the accused say at page 10, 11.2:

"Each of us denies that he has stored or kept any weapons in any safe place or any place whatsoever We point out that there is no allegation to this effect in the indictment. No interrogation at all was directed to any of us on this issue at the time when we were heled in detention in terms of the provisions of Section 29 of the Internal (30) Security Act and none of us has ever been asked to point

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out weapons caches or for any information whatever in regard thereto. Finally it is pointed out in this connection that we have all been visited regularly by our families and none of us has received reports from any of our families suggesting that the police have conducted any searches or made any enquiries from family members in regard to the alleged cache of weapons."

Then in paragraph 11.3 the accused say that none of them has knowledge of the alleged training provided by the ANC.

"Each of us denies that he has been in receipt of any such training." (10)

And again there is no averment in the indictment that any accused received such training, and they state that they would not accept such training. They all deny being party to the conspiracy, they all deny receiving instructions from the ANC or receiving financial assistance from the ANC. They all say that they have no knowledge of instructions being given to other persons with whom they have been associated, or financial assistance having been given by the ANC to the Vaal Civic Association, and they say that they do not believe that (20) this has happened or that such assistance has been given, and indeed after two months evidence Your Lordship has none of that at all. You only have denials from State witnesses in regard to that sort of thing having happened. And then they say that they are aware, they have been informed that Mr and Mrs Raditsela have left the country and that apart from that they have no knowledge of any other leading figures in the Vaal Civic Association having left the country and no knowledge at all of any persons previously associated with the Vaal Civic Association or Vaal youth organisations having become (30) involved in the affairs of the African National Congress.

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Now in page 30 in paragraph 16 of our heads we refer to the case of ESSAK and, My Lord I seem to have a wrong reference there, I am sorry we were preparing this very late last night.

ASSESSOR (PROF JOUBERT): 1965 (2) is it.

MR CHASKALSON: No the page is right but the passage which I have is, I will look for the passage, My Learned Friend Mr Marcus will find it for me. But the passage is that a distinction must be drawn where averments are made of a general nature and where specific information affecting a specific accused, and that the general sort of objection must be (10) treated differently and what the Court requires is not suggestions that there are risks but rather information which link the, apparently the passage is at 164C where MILLER, J. says.

> "The evidence which is before me tends to show that the only reasons which can be in support of such a likelihood - that is a likelihood of the accused not standing their trial - are general reasons which have not been shown in any way to be applicable or likely to be applicable to the applicant in this case."

In other words because it is a political offence, because (20) you can abscond, because other people have absconded, therefore you might abscond. And His Lordship says well there is nothing to show that that is applicable to the particular accused in a particular case. In the case of HAFAJEE(?), LANSDOWNE, J. dealt with an averment relating to interference with witnesses. He says that in that case no allegation had been made that the accused would not stand his trial but the opposition to bail was on the ground that if he were released certain witnesses might be interfered with. It was put as follows:

> "In the present case there is no allegation or sugges- (30) tion that the applicant will be likely to disappear if

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he is released but it is suggested that if he is released certain witnesses who are or who may be available for the Crown will as a result of his release either not become available or they will be so influenced by communication with the accused that valuable evidence will be lost. This is merely a matter of opinion on the affidavits before me. No facts have been presented to show that the accused has done anything of the sort, nor is any fact presented from which I may reasonably infer that he probably will do something of the sort. The most that can be said, I think, upon these affidavits is that having regard to the alleged criminal conduct of the accused in the case of the two persons charged with theft he is a person who might be likely to intefere with the witnesses and hinder the course of justice."

His Lordship said that that was no enough over the accused's denial and admitted him to that. And passage in BATES & LLOYD AVIATION v AVIATION INSURANCE COMPANY is one of the, I think it is the most recent case in the Appellate Division in which the dictum of Lord Rice in the case of CASWELL & POWELL doctrine was quoted, that there can be no inference unless there are objective facts from which to infer the other facts which are sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had actually been observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made the method of inference fails and what is left is mere speculation or conjecture. Now the State case really is based on speculation and conjecture, the opposition put forward her to the granting of bail. If you are released on

bail/.....

bail witnesses might be interefered with. Well why? The accused say in their papers that they do not even know who the witnesses are. The list of witnesses is not given. The main witnesses are all being held in detention so even if they wanted to interfere with them the accused could not. There is no suggestion that they have made any attempt to inter- fere fere with witnesses. There is a reference to the disappearance of Mrs Lethlake, nothing to suggest that the accused were in any way party to that. We do not know what the cause of Mrs Lethlake's disappearance is. We just know that she is (10) not here. But the fact of the matter was that all that happend while the accused were in jail and there is nothing to suggest that if the accused are released anybody who is going to give evidence will not give evidence, or that any witness will disappear because the accused are released. And it is that sort of opposition which we suggest is just not good enough.

One other passage in this context and in this vein, it is a case cited elsewhere in our heads but if I could read it now, it is the case of S v BENNET 1976 (3) SA 652 (C), a judg- ment given by VOS, J. and the allegation again and the oppo-(20) sition was that the accused if released may interfere with the investigation. That is at page 655 F-H:

> "According to Mr Harwood it is only in view of the new facts discovered that the risk of interference arises. Indeed Mr Harwood says the State does not know who the witnesses may be - in other words who the witnesses who may be interfered with may be. - It appears to me that an applicant has thusfar not interfered with the investigation. A proper approach should be that unless the State can say that there is a real risk that he (30) will, not merely may, interfere there does not appear

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to me to be a reasonable possibility of such inteference." And then he quotes what the applicant says and his denial and he then concludes on that that that was sufficient and that the State had not shown that there was any likelihood that there would be interference. We make the submission to Your Lordship, and I am not going to read the pages 9 to 12, I ask Your Lordship to do that but we make the submission to Your Lordship at page 31 of our heads that the answer is a good and satisfactory response to the general allegations made by Captain Kruger and that the averments made by Captain Kruger(10) taking into account the specific denial of the accused and the failure by Captain Kruger to attempt to meet that criticism which had been advanced of his averments make the case so vague and lacking in specificity that little or no weight can be attached to these averments which are founded on the unknown and unidentified informant. And we make the submission that it is one thing to say that a factor is relevant and an entirely different thing to say that it is cogent or persuasive, and that is taken from a passage in MILLER, J.

Now Warrant Officer Syfret refers to persons who have(20) estreated bail. They are dealt with, that is dealt with by the accused in paragraph 9 of the application and we again draw attention to the fact that the personal circumstances of the accused as set out in the affidavits filed by each of them in support of the application show that they all have a lot to lose by leaving the country. Some of them are not young people any more, they are accused people who are in their fifties, we have people who are in ill health. What purpose would they have in seeking to go and join a revolutionary organisation out of South Africa at this time of their lives(30) after living their whole lives in South Africa and being

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party openly and publicly to ordinary civic affairs? Now we make the submission in paragraph 18 that the allegations concerning unrest and political activity in the Vaal Triangle since the lifting of the emergency and the other matters referred to in the affidavits filed by the respondent on 19 March do not advance any reason why the accused should not be released on bail. In particular it is not suggested that the accused played any part whatever in the events referred to in the affidavit and the fact of the matter is that these events, if they occurred at all, took place while the accused were (10) in custody. There is no reason to believe that the release of the accused on bail will make any difference to what does or does not happen in the Vaal Triangle or elsewhere in the country. No suggestion is made that the State has any information that the accused or any of them would promote unrest or become involved in unrest if they are released on bail and it is not suggested, nor could it be suggested, that the activities of the UDF or the Vaal Civic Association would be affected in any way adverse to the State, if the accused or any of them are released on bail. And here of course the (20) imposition of conditions can go a long way towards ensuring that the accused will not take part in any meetings or activities of these associations or undertake the activities which could in any way lead to the type of disturbance which is taking place in the Vaal area, and I need to stress again that both the United Democratic Front and the Vaal Civic Association are lawful bodies functioning lawfully with the knowledge and permission of the State so to function.

We make the submission in paragraph 19 that the opposition of the State is based in the main on hearsay and speculation (30) that the allegations in regard to political activity and unrest

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in the Vaal Triangle can have no relevance to accused nos. 1, 16, 19, 20 and 21 who do not live in the Vaal Triangle. The other accused do live in the Vaal Triangle but as far as they are concerned we suggest that the risk of the peace being disturbed is remote. Not only do they deny any intention of disturbing the peace but they will be required to attend their trial which at present is continuing every day of the week and so most of the time they are going to be in court and outside of the Vaal Triangle, and any other risk might be adequately dealt with by the imposition of conditions and also by the (10) use of the powers under the Internal Security Act and the Criminal Procedure Act which are at the disposal of the State. We draw attention in paragraph 20 to the distinction which needs to be made between persons who are alleged to be members of banned and unlawful organisations who carry on political activities covertly and the case where the State's concern arises in relation to the public activities of lawful organisations. In paragraph 21 we draw attention to the fact that the State does not dispute that a very long time will elapse before the case against the accused is concluded, that (20) the accused will suffer prejudice in their personal lives if bail is not granted and that the accused will be prejudiced in the preparation of their defence if they are compelled to prepare for this lengthy and complex trial whilst in custody. We draw attention in paragraph 22 to the consideration of health applicable to certain of the accused, which appears from their affidavits, and in addition, though it does not appear on the affidavits Your Lordship knows that accused no. 9 has recently been taken to hospital suffering from diabetes and is expected to be hospitalised for over a month. Now (30) we submit that in these circumstances the accused have shown

changed/.....

changed circumstances and they have made out a good case for the Court coming to their relief and granting them bail.

The details of the conditions to which the accused would be willing to submit, well not be willing to, obviously Your Lordship will impose such conditions as Your Lordship would think appropriate.

COURT: May I just ask two questions? The one is if the accused are let out on bail how will they be able to get to this court. Some of them live in Soweto and some of them live in, most of them live in Sebokeng? And this Court starts at 09h00.

MR CHASKALSON: Well My Lord we have given consideration to that. Arrangements will be made to ensure that transport is provided. It will be possible to provide, to make arrangements for the accused to leave from Sebokeng in one vehicle, there can be one vehicle procured to get them to court and for the accused who are coming from the Johannesburg area to get here in time. The accused would no doubt be able to make their own arrangements, if travelling is extremely difficult on occasions possibly to stay over somewhere closer to the court but it would be a most unfortunate consequence of a decision to hold a trial at a place remote from the accused's home to say well because we are going to hold it away from your home you cannot be released out on bail. We think that arrangements can be made. One appreciates that there is a logistical problem but one cannot say that because the accused are being tried away from their home that they should not be released on bail.

COURT: One of the accused is from Durban I believe?

MR CHASKALSON: Well My Lord he obviously, in the Maritzburg case the accused were on bail and they came from all

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around the country and arrangements were made during the week for those persons to be accommodated in a city close to the court.

COURT: The second question and that is now on the facts placed before me, except for accused no. 3 who has R6000 in the bank, nobody has any money at all. Now obviously the money, some money will have to be put down for bail. If that money is not the accused's money how will the fact that that money is paid keep the accused in the country?

MR CHASKALSON: Well My Lord the accused obviously are not (10) in a position, I think another accused does have resources to fund, accused no. 6.

COURT: Well one other accused says that he has some shares in a building society but we do not know how much that is.

MR CHASKALSON: The accused are not people of means but it has never been the law that poor people should not be granted bail. I mean what is ....

COURT: No, no but what has been a consideration in cases in the past, not in this type of case obviously, is that the man has nothing to put down to serve as bail. (20)

MR CHASKALSON: But they have their, My Lord ....

COURT: Would that then mean if a man is a total pauper and he has committed a serious murder he has to be let out on his own recognisances?

MR CHASKALSON: No My Lord I would not say that. I would say that what would happen in these cases would be what always happens, is that an accused person puts up so much of the bail moneys as he or she can provide and looks to sureties or to friends or to other people who are willing to assist in providing the money and that has happened .... (30)

COURT: Well nobody has informed me where he can get any

money./.....

money. Except accused no. 3 and possibly no. 6.

MR CHASKALSON: No. But My Lord I have not dealt with the question of the amount of the bail because it seemed that the bail application might be dealt with in two stages.

COURT: No it is not the amount that concerns me. The amount one can always debate but the obvious answer is that if bail is stipulated at a substantial amount, which obviously has to be the case in this type of case, the hat will be passed around in the community and the money will be raised. If that is so how can the fact that the money is paid help to keep the accused to stand his trial?

MR CHASKALSON: Well one of the matters would be that the loyalty of the people, those who have put up the money for them, and the fact that they would not readily cause such person to forfeit, or the people concerned to forfeit the money which has been put up. It is always true, I think if one goes back to any, if Your Lordship, if one starts approaching a matter such as this purely by looking at the money ....

COURT: No one does not approach it, I have asked this question at the end of your argument, not at the beginning.

MR CHASKALSON: Well no My Lord, my use of language is unfortunate but what I want to say is this that if one, money is always required so that there should be some sanction if bail is estreated. That is one of the purposes of money but we know all the time that young people are admitted on bail. Just take people of eighteen, fifteen, twenty, put up by their parents. They do not have any resources themselves, aunts, uncles, parents, friends put up the money. They as an individual may have no, may suffer nothing as an individual if the bail is estreated but the bail goes and that is a factor. The same is true in all cases, I would suggest, in

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which large sums of money have been fixed in bail and where people have to look for sureties and obviously if one looks at the amounts put up in the Pietermaritzburg case large sums of money were involved there and those sums of money had to be obtained. Clearly not all the accused were in a position to put up that sum of money themselves. My Lord can I do something in reverse? If the accused who, an accused who is likely to estreat bail, there are a number of factors which would keep people to face their trial. One of the factors is that this is where their life is, this is where their family(10) is, this is where their wives, their children ....

COURT: Well while you are talking of that let us take accused no. 1. Accused no. 1 is not married, has no children at all, he has no assets at all and he is a young man. What keeps him here?

MR CHASKALSON: Well My Lord what keeps him here is that this is his home. It is true that he is a young man and that he has no family but this is his home, it is quite a major thing to leave your home and your roots and to go out to a strange country and to try and survive in a place where you know (20) nobody and where you have no friends or associates. And the only suggestion that a person in the position of accused no. 1 might do that is that well other people have left the country and joined a revolutionary organisation. But who wants to join a revolutionary organisation, what is involved in that? That is a huge step to undertake. To leave the country and join a revolutionary organisation. It is not suggested that he is a member of the ANC or PAC or any, or the Communist Party or any unlawful organisation. Why should he want to abandon a life at the moment of safety and security within this (30) country where his roots are and where he can reasonably

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expect to lead his life to the risky and lonely life of an exile with no contacts. Now obviously there are circumstances in which people have left the country. People have left the country and chosen that route but it is a major thing to do, it is not something which people undertake lightly and it is a factor Your Lordship will take into account. But then as I suggest one must weigh up the position of each one of the people, one must weigh up the sort of allegations which have been made against them. Accused no. 1 has been very, we have gone two months and his only involvement is alleged to be,(10) accused no. 1, the averments made against him is that he has spoken at two meetings. It is alleged that he spoke at a meeting on 19 August in Sharpeville and that he spoke at a meeting on 25 August and that those are the two specific averments made against him. From that it is alleged generally that he identified himself with the UDF campaign against the government and the Black Local Authorities and that he was a member of the, I think it is of the VCA, which actually actively co-operated with the UDF in the Vaal and as such that he encouraged violent conduct and collaborated with the(20) UDF to make South Africa ungovernable. But this is the case that he is being called upon to meet and Your Lordship must then view his particular position in that light. The only direct averment in the indictment that I know of against accused no. 1 are those made at page 327 and 344 of the indictment and he is referred to in general terms in the particulars. Now there are the two meetings. Your Lordship has heard evidence about the two meetings and accused no. 1, one only one I am told. But there is no inducement to him at the moment to go, there is no suggestion that he is different (30) to other people, to other hundreds of people who are part of

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the Vaal Civic Association who have not been charged. Apparently, I am told that there has been evidence so far only of the meeting of the 19th and we are told that that was not a VCA meeting. But these are factors no doubt which Your Lordship would take into account but if Your Lordship takes accused no. 1 the case against him as pleaded is not a strong case, the evidence against him so far is remote. His activity is confined to the Vaal Triangle. There is pure speculation that he might leave. He says he will not. He says he is part of a family and he wants to stay here. As far as money(10) is concerned again no doubt if there, if the accused, if an accused person is the sort of person who would accept money from other people for bail and he is the sort of person who, having accepted that money for bail, would then abandon the people who are helping him and leave the country, leaving them to meet the expense and then go into exile and seek some life outside of the country that is a risk. What is pushing a person to do it? The fact that he is facing a charge of which he is presumed to be innocent and is so far standing trial where the case against him is not as yet particularly (20) strong. Why should he go? One might say that ultimately that if the desire to avoid the risk of going to jail, there is always a desire, anybody who is facing a charge must be concerned, even if they are innocent, that justice will not be done. Everybody is afraid who stands a trial that something, assume an innocent person on trial and that is how Your Lordship must approach it, that each one of these 22 people are innocent but assume factually a person, not a hypothetical assumption that a person is innocent, innocent people are always afraid that the law may not function pro- (30) perly and they may finish up by being convicted. That fear

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exists in the case of everybody, everybody may then be willing to forsake friends and ....

COURT: But must one approach an application of this sort on the basis that there will not be a conviction or must one approach the application on the basis that there might be a conviction?

MR CHASKALSON: Must obviously approach it on the basis that there might be a conviction because the accused have been indicted My Lord.

COURT: On that basis then then one must approach it on the basis that if there is a conviction and the accused is convicted will he be here when he is to be sentenced?

MR CHASKALSON: My Lord that is really the issue in this case, the rest I suggest are really red herrings, that there is really nothing about interference of witnesses as far as these accused are concerned, there is nothing as far as State security as far as these accused are concerned. The real issue here is are these accused likely to stand their trial and the only reason for saying no, I suggest, is that it is a political trial and why, the law is not, we are not here, the Attorney General could have issued a certificate in terms of Section 30 and he has not. The Attorney General has not even made an affidavit in these proceedings. But that is not the point. The law is not that if you are on charge in a political trial you cannot get bail. And Your Lordship will take into account a number of factors. Let me take the position of another accused, let me take the position of accused no. 6 for a moment. Your Lordship has put the case of accused no. 1 to me. Let me put accused no. 6 to you. Accused no. 6 is Mr Mokoena and I read to Your Lordship the position of Mr Mokoena. Page 83 My Lord. Mr Mokoena

says:/.....

says:

"I am accused no. 6 in the case. I have read the application. I confirm all the facts contained in the application."

Then he draws attention to his personal circumstances, paragraph 5:

"My house is at 262 Heath Road, Evaton and I have been residing here since 1969 and I regard this as my permanent place of residence. I will return to live in my house if granted bail. I was born in Evaton on 8 October 1938. I have worked regularly since I left school in 1960. I started work as a clerk in the office of the Bantu Affairs in Evaton and then found employment in the electronics industry and later started my own business. In 1978 I became a member of the Evaton Community Council and held office as a councillor until the Council was dissolved in 1983. Evaton is one of the few areas in South Africa where Blacks still have freehold rights. Property in Evaton is valuable because of the shortage of land which can be owned by Black persons. I am the registered owner of the land at the above address and declare that the value of the property is approximately R200 000. This property is very important to me and I do not have a profession. I let out parts of the property and earn a living therefrom. I am married and I have six children who are wholly dependent on me."

He gives the names of his six children.

"My mother, aged 71 years, and my wife Bertha are also wholly dependent on me. I own a cafe called the West End Restaurant which is also situate at the address mentioned above and until my detention I was a person

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within my family who managed and ran the cafe. I was accordingly the sole bread winner of my family. Since my detention my wife has been compelled to take responsibility for the cafe. She has had great difficulty in doing this as she is also required to run the home and look after the children. My wife has no experience in running a cafe and in fact when I was detained under Section 29 she had to request the Security Police to allow her to visit me in order to discuss the affairs of the cafe. Since my detention my business has deterio- (10) rated and the turnover has dropped. If I were to remain in prison much longer I am afraid that I will not have a business to go back to."

Then he deals with his health. Now the only averment, the only specific averments made against accused no. 6 that he hosted and attended a meeting at his house on 8 July, that is at page 333 of the indictment. In the further particulars at page 7 he is said to be the secretary of the Evaton Ratepayers Association and the representative on the UDF Council meetings. At page 38 he is said to be aware of and identi- (20) fied with the objects of the UDF and to have, page 72 is is said that he was a member of the UDF structure and formulated, accepted or executed UDF policy. There is a general averment that he encouraged violent conduct and apparently in support of that some evidence has been given of a speech which he is alleged to have made and which has been apparently published in a newspaper which has been handed in and there was no suggestion of his inciting anybody, even on the State case. He is alleged to have been present at a meeting where a decision was taken to boycott Mr Rabotake's celebration (30) feast. Now it is precisely my complaint that the State,

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instead of looking at the individual positions of each of the accused, instead of looking at why that particular accused should or should not be granted bail, instead of saying well as far as accused X is concerned the case against accused X is strong for this reason, the motives for accused X not standing trial is these, what it has done is it has just put a globular objection to all 22 on precisely the same terms as if the same considerations were applicable to each of them and it is manifestly not correct. And I have asked Your Lordship to look at each of the averments to see the position of each one of the accused. And I invite the State to tell you why it is that each one of the 22 accused is dealt with as if they were, the same considerations apply to each of them. Once you get that sort of blanket objection to the bail, the fact that each one of them is dealt with on the same terms detracts from it being applicable to all of them. The generalisation weakens the whole case as far as the State is concerned. If the State had singled out particular individuals and said as far as you are concerned this is our complaint against you, then one could have understood an objection if they could have identified why each one was to be opposed to bail. But they have not done that. It is clear that they just cannot, that they actually really are not in a position to say more than one thing, we have charged you with a serious offence and there is a risk that you will not stand your trial because it is a political offence and if you leave the country we cannot extradite you. And it is as simple as that, that is really what the State's objection is and all the rest is window dressing, atmosphere and window dressing but it does not affect these individuals. And I suggest to Your Lordship that if Your Lordship looks carefully,

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and I can take Your Lordship right through the papers if you want me to but I think I will be a very long time if I do that and I invite Your Lordship to read the affidavits, where we have drawn attention in our heads of argument to the personal position of the accused and to what we make, to what we say is that they, all of them have a lot to lose by leaving the country and in some individuals, I have given Your Lordship the examples already of Mr Mokoena and of Father Moselane, they are settled family people living all their lives in a community with roots here. They may, as anybody may throw it over, they may leave the country, there is always that risk but Your Lordship has to strike the balance and the balance, it is not the law that the balance as it were gets struck in favour of the Crown or in favour of the State. It is not the law that you can arrest and hold people for two or three years without their being able to get bail simply because you charge them with political activity and say there is a risk that you might leave the country. We have drawn attention to the other major cases in which bail has been granted, we mentioned the ADAMS case and we mentioned ADAMS and RAMBOTTOM(?) and there are many others. Bail is sometimes granted, bail is sometimes refused. We make the submission in this particular case that Your Lordship is concerned with people who are not adventurers and not people who have, who participated openly and publicly, they have been charged with open and public acts. Why should they flee? Why should they not stand their trial and justify themselves to themselves, their families and their communities? That after all is the ultimate responsibility of every individual. We make the submission that they are entitled to bail.

Now as far as the bail is concerned I ....

COURT:/.....

COURT: No Mr Chaskalson you did reply to the State's case. I have not had an opportunity to read that if there is a reply to the State's case.

MR CHASKALSON: Yes, there is a very brief reply ...

COURT: The rest I have read. What is stated there?

MR CHASKALSON: What is said, well what is said by the accused is that they have no personal knowledge of any of the matters referred to in these affidavits which do not affect them directly. Page 211, they say:

> "We have no personal knowledge concerning the various developments in the Vaal Triangle deposed to in these affidavits and are unable to say whether or not the statements made in the affidavits in regard to such developments are correct. We have not been concerned with the affairs of any organisations since each of us was detained and we state that we are not and cannot be held responsible for any political activities which have taken place in the Vaal Triangle or elsewhere since the state of emergency. Equally we have no knowledge of any of the allegations contained in the affidavit of Major Kruger."

And there is just the question of the role of whether Mr Frank Chikane was a Vice-President of the United Democratic Front at the time that he was alleged to have made the speech or not, they say he was not, that he was not re-elected in April 1985 so he was not an officer of the United Democratic Front at the time that Major Kruger says that he is alleged to have made the speech. Now what is said in the affidavits which have been handed in yesterday, they deal with the state of unrest, with the level of political activity in the Vaal, with speeches which people are alleged to have made, and

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the suggestion that there is some information that two people who were officials of the UDF had communicated with the African National Congress in regard to the death of Mr Moses Mabile(?). The accused, on these affidavits, the affidavits which have been put out by the State may be reasons for charging other people, may be reasons for arresting and bringing a number of other people to trial if there is any substance in them but they really have got nothing whatever to do with the accused who, for the past eighteen months, have not been, well not all of them of course, some of them have been in jail only for (10) eighteen months. Now again Your Lordship will remember the way in which the first affidavit was put forward, where the accused, in regard to the death of Letsele it was put forward as it were as some sort of plan to which the, in some ways involved the organise, the VCA or the accused in the death of Letsele and that was why they should not be released on bail. Your Lordship has now heard the value of that sort of hearsay and we now know that Letsele was killed in a, just outside a shebeen after a quarrel in a shebeen. The suggestion is that the subject matter of the quarrel was the arrest of one of(20) the relatives of the person who has been charged. There also appears to have been possibly a robbery motive as far as that particular incident is concerned. But the accused quite clearly are not able to deal with these matters because they are based upon informer who are not identified, on information which is not, and the speakers are not identified on some occasions. It is just said that this is said by somebody who would not give his name. But, so we suggest that what has been put up by the State is really totally collateral. The real issue, and I do come back to that, the real issue(30) is does Your Lordship feel that the accused will not stand

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trial if they are granted bail. If that is the conclusion that you reach, despite their denials and their roots and everything that has been said, then bail will be refused. But if Your Lordship is not satisfied on that then we suggest that everything else is just window dressing, it is atmosphere, but it does not affect these individuals and it is really, it cannot be laid at their doors.

Now as far as the bail amounts are concerned and the bail conditions are concerned there are two matters here. If, the conditions My Lord should be directed towards ensuring (10) the attendance of the accused and the accused would obviously have to report on days when court was not sitting, either have to report at court at a particular, to be in court at a particular time or to report at particular times. The sort of conditions could very easily be worked out between the State and the accused along the lines of what was done in the RAMGOBEN case and the amounts would have to be substantial amounts of money and these too, I suggest, if the principle of bail were accepted, could easily be worked out between the State and the accused and if they are unable to agree on (20) specific conditions Your Lordship could define the parameters of the conditions. One would have to identify particular police stations where reporting would have to be and one would have to prepare the sort of schedules, and once it is known what Your Lordship would require that sort of detail could be worked out between the State and the accused and what I would ask Your Lordship to do as far as that is concerned is to suggest that Your Lordship decides initially in regard to the question of bail and the nature of the conditions which you would require the accused to observe, (30) the not participating in political activities, the non-

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attendance of particular gatherings, matters such as that. If those are identified it would, I would suggest that the stage would then be for the State and the defence to work out the details and if they cannot to come back to Your Lordship, put a document before Your Lordship to say either they agree on this or the area of disagreement is that the State asks X and the defence says Y. But I am not sure that any good purpose would be served by attempting to debate those details at this stage without knowing precisely what Your Lordship's concerns are. Those concerns can be identified by Your (10) Lordship, the conditions of non-attendance, non-participation in political activities, non-participation in the affairs of the United Democratic Front and the Vaal Civic Association, the non-interference with State witnesses. All those sorts of conditions such as are referred to in the RAMGOBEN case obviously would be the sort of conditions which are applicable and some of the accused are alleged to belong to organisations other than the United Democratic Front and some accused are alleged to belong to AZAPO. Your Lordship may want to refer to their position as well. But the conditions (20) in the RAMGOBEN case provide, we suggest without that condition of the relating to the cancellation, the automatic cancellation of bail, we would suggest provide the framework of the conditions and provide adequate protection to the State. If our Lordship or My Learned Friend feels that there are additional matters in relation to which protection is needed they can be identified and can be dealt with. As far as amounts are concerned they would obviously have to be substantial. Obviously as far as most of the accused are concerned that will apply that money is going to have to be raised. But (30) I believe that the money can be raised and that that too

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is a matter upon which the State and the defence may be able to reach agreement in regard to the amounts applicable to the individuals if the principle of bail is accepted. It is only if we cannot reach agreement on that that we need come back to Your Lordship and argue quantum. But I would accept that bail has to be substantial. Those are our submissions.

MNR. JACOBS : U Edele, ter aanvang wil ek net op een aspek - op twee aspekte eers wys. My Geleerde Vriend het gepraat, ek het dit nie in my hoofde gehad nie en voor ek daarvan vergeet, dat 'n kontrole kan gehandhaaf word indien die beskuldigdes (10) uitgaan op borg, dat hulle nie sal deur voorwaardes te stel dat hulle nie aan politieke aktiwiteite deelneem of politieke organisasies in die Swartwoonbuurtes nie. Ek wil net eerstens hierop wys dat sulke kontrole sal in die huidige omstandighede baie moeilik wees. U het voor u verklarings waar dit sê dat as polisievoertuie in die woongebiede kom, word hulle onder die klippe gesteek en dit is in woongebiede waar die polisie nie behoorlik kontrole oor kan uitoefen op hierdie stadium nie, veral in hierdie gebied en veral in die Vaal ook nie, want dit is die getuienis dat polisievoertuie word aangeval(20) en onder die dokumente en pamflette wat daar ingehandig is by daardie verklaring, is dit dat kampanjes gevoer word dat die polisie en weermag uit die woonbuurtes uitgeweer moet word. So, dit is 'n aspek wat die Hof in aanmerking moet neem in hierdie geval.

Dan die tweede punt wat ek op hierdie stadium wil meld voordat ek met my betoog aangaan is die kwessie van omdat daar nie deur die Staat ingegaan is op die persoonlike omstandighede van die beskuldigdes en dan te wys dat hierdie een is soveel verantwoordelik en daardie een is soveel nie. Die (30) feit van die saak is dat hierdie 'n saak is met 'n idiologiese

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doeleinde. Dit is die eerste aspek. Die tweede aspek is dat dit 'n sameswering is. As die Staat aan die einde van die dag daarin slaag om 'n sameswering te bewys, dan gaan dit nie daarop neerkom om te sê dat A was alleen verantwoordelik vir een dag se gebeure nie, maar dan gaan hy verantwoordelik gehou word vir dade van ander vanaf die datum wat hy aan die sameswering deel geword het. So, om nou te gaan probeer, vir die Staat, om te sê dat hierdie man soveel verantwoordelik en daardie man is soveel verantwoordelik, sal eintlik onverantwoordelik wees. Dit kan nie gedoen word nie. Hierdie saak is nie (10) waar 'n man van sy persoonlike dade aangekla word nie, maar van 'n sameswering en waar hy hierdie dade verrig het in die uitvoering van 'n sameswering. Dit is die bewering.

As ek dan na my betoog toe in die geheel kan gaan. Ek het hierso die regsposisie behandel. Die regsposisie is blykbaar korrek gestel, want dit is nooit deur My Geleerde Vriend aangeval nie en ek aanvaar dus dan en om nie die Hof onnodig te belas nie, ek het probeer om dit volledig uiteen te sit in hierdie hoofde wat ek ingehandig het by die hof. Ek gaan nie die hele regsposisie weer oor behandel nie, tensy die (20) Hof verlang dat ek dit moet doen, maar ek dink dit is so duidelik gestel en dit is nie betwis nie. Dit is die posisie soos die reg geld.

Ek wil dan begin by bladsy 19 van my betoog en net kortliks eers op hierdie stadium na 'n ander regspunt verwys en dit is die bewyslas. Dit is ook gemeensaak tussen die verdediging en die Staat dat die bewyslas om te bewys dat die beskuldigdes op borg moet uitgaan, rus op die verdediging. My submissie is dat hulle moet dan op 'n oorwig van waarskynlikhede 'n saak uitmaak dat borg aan hulle toegestaan moet (30) word, hetsy vir 'n antwoord op al die verskillende redes, hetsy

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dit die veiligheid van die Staat raak, hetsy dit die handhawing van die regspleging raak waar daar nie ingemeng sal word met getuies nie of persone sal weghardloop of daardie aspekte, maar die feit bly, die bewyslas rus regdeur op die applikante om dit te bewys.

Ek wil dan ook my betoog begin verder op bladsy 23. Ek wil daar dan ook verwys na die saak waarin ELOFF, R. die uitspraak gegee het. In daardie saak het ELOFF, R. en die twee ander geleerde here regters die saak op twee voete benader. Die een was die veiligheidsituasie en die tweede been is (10) die handhawing van die regspleging waaronder al hierdie ander aspekte geval het. Op die kwessie van die veiligheid en dit is waar ek dan begin met my saak hierso, het ons dan die uitspraak wat My Geleerde Vriend ook hier aangehaal het en wat op bladsy 28 van die applikante se stukke voorkom. My submissie aan u is dat in die uitspraak word die prokureur-generaal se verklaring wat destyds uitgereik was genoem op bladsy 19 van hierdie uitspraak en dit is dus deur die verdediging voor hierdie Hof geplaas. As ek nou sê 19 verwys ek hierso na die groot 19. Dit is die nommer wat verskaf is deur die applikante (20) op die uitspraak self bladsy 2.

In hierdie stukke word daar dan uiteengesit in die hele aanhangsel hierso dat daar twee bene is waarop die prokureur-generaal sy sertifikaat voor die Hof gelê het. Hy het gesê hy beskik oor inligting wat die veiligheid van die Staat raak en dan het hy gesê 'n tweede waarneming is 'n aspek van hierdie veiligheid is dat dit word, hierdie feite waaroor hy beskik word dan gestaaf dat daarna ook - in 'n mate gestaaf dat daarna 'n noodtoestand afgekondig is. Dit is van wesenlike belang.

Om dan terug te kom na Sy Edele ELOFF, R. se uitspraak,(30) dan is dit baie opmerklik dat hy sê dit mag gebeur dat as die

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noodtoestande opgeblaas is, opgehef word, dat ander omstandighede sal bestaan. My submissie aan u, om te verwys na die bewyslas is dat dit vir die verdediging, vir die applikante is om te kom bewys dat ander toestande ontstaan. My submissie is dat in die eerste die noodtoestand per se is nie die gronde waarop die prokureur-generaal gesteun het nie, maar dit was net 'n stawing daarvan en dit is dan vir die verdediging om te bewys dat daar ander omstandighede geld. Wat my opgeval het in hierdie hele betoog van My Geleerde Vriend is dat daar nooit gemeld is dat daar wel nog 'n veiligheidsituasie is wat die aandag verg nie en in die verband is dit so dat die president dit in sy rede self noem. Ek het die stukke vir u voorgestel, voorgelê en dit is gemerk Aanhangsel G. Daar sê hy dat sporadies en geïsoleerde gevalle van geweld egter nog steeds in verskillende dele van die land aangestig word en nogtans het hy dit goedgeag en die situasie sodanig verbeter het dat hy die noodtoestand opgehef het.

Die belangrike aspek hieruit is dat daar is nog veiligheidsrisiko's. Dit is nie 'n kwessie met die opheffing van die noodtoestand dat die hele land nou gestabiliseer het nie. My respekvolle submissie is dat die verdediging en die applikante het hoegenaamd niks voor hierdie Hof geplaas in hierdie aansoek om te bewys dat daar "may be other factors" is wat bewys dat die veiligheidstoestand nie meer 'n faktor is nie. My respekvolle submissie is dan verder dat die Staat en dit is wat ook weer vir my opmerklik was, dat daar 'n ander konnotasie aan die doel van die Staat se verklarings was, maar die Staat se getuienis was juis indien die verdediging sou getuienis aanbied dat dit op 'n oorwig van waarskynlikhede blyk dat daar nie 'n veiligheidsgevaar meer bestaan nie, het die Staat juis verklarings aangebied, ingehandig om verder steun te verleen

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waar daar nie eers getuienis was van die verdediging nie, dat die veiligheidsituasie is nog plofbaar en daar word nog georganiseer.

Ek wys dan daarop in my hoofde in Aanhangsels B(1), B(2) en C waarin dit duidelik aangetoon word dat direk na die opheffing van die noodtoestand is daar weer begin om te organiseer in die Vaal Driehoek. Ek wys daarop dat dadelik is die ou strydpunt van huur en raadslede weer opgeneem in daardie gebied en dat daar daarom georganiseer word weer en dan wys ek daarop wat nog meer is, is dat die geweldpleging in die (10) Vaal Driehoek het dadelik geëskaleer na die opheffing van die noodtoestand. Dit is my respekvolle submissie dat hierdie is tog aspekte wat 'n belangrike faktor is wat die Hof in aanmerking moet neem om te besluit of die veiligheidsituasie wat die prokureur-generaal gesê het in sy verklaring aanvanklik wat voor hierdie hof geplaas is deur die verdediging, dat daar is nog faktore wat die veiligheidsituasie raak. Ek verwys dan weer in hierdie geval na Aanhangsels B(1), B(2) en C, maar dit is nie die einde daarvan nie, want ek wys op bladsy 24 punt 5 na die heer Frank Chikane van UDF en ook van die (20) Soweto Civic Association. Ek het dit nie hierin genoem nie, maar dit kom voor in die verklaring. Hy het 'n verklaring gemaak voordat hierdie noodtoestand opgehef is. Nou noem hy dit hierso, ek haal aan wat uit sy verklaring gekom het - dit is 'n beëdigde verklaring van feite wat tot die Staat se kennis gekom het dat dit nie 'n onrus is wat in die land plaasvind nie, maar dat dit 'n opstand is. Die tweede is dat ouers en kinders staan nou saam om druk op apartheid uit te oefen en dan die derde, dat die opstand, nie onrus nie, nie beëindig sal word nie, totdat daar nie meer apartheid in Suid-Afrika(30) is nie. In die lig van die totaliteit van die bewerings in

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die klagstaat, dat daar 'n sameswering is en waarin apartheid tot niet gemaak moet word, het dit tog duidelike betekenis. Weer in die lyn van die noodtoestand wat opgehef is en dan nie die noodtoestand soseer nie, maar die veiligheidsituasie in hierdie land. Dit is nog 'n verdere bewys wat die Staat aangebied het dat dit onwaarskynlik is dat daar nie 'n gevaarsituasie in die land bestaan op die huidige oomblik nie, soos die prokureur-generaal in sy verklaring uiteensit nie.

Die volgende aspek wat ek na verwys in hierdie selfde lyn van die veiligheidsituasie is dat UDF - en dit is tog (10) die kern waarom hierdie hele sameswering draai - het plakkate in die Vaal Driehoek versprei om die massas te politiseer en die Staat te verdoem en die massas kon opsweep na geweldpleging. Ek verwys daar na sien Aanhangsel B(1) en die UDF News wat Aanhangsel B(1) is word die massas aangemoedig om deel te neem aan die vryheidstryd. As 'n mens kyk na bladsy 186 van die hergenommerde hele aansoek. Dit is nommer G van daardie aanhangsels. As 'n mens die laaste passasie daar op kolom 3 lees dan sê hulle :

"When Mandela steps out of jail, nothing will stop the (20) people and their leaders marching forward to freedom."

Dan is dit ook my betoog verder - op hierdie aspek kan ek nog verder noem, ek het dit nie hier in gemeld nie, op hierdie selfde dokument wil ek dan net daarby invoeg dat hierdie "the struggle continues" op bladsy 2 - wat hy hier gemerk is op die nuwe nommer is bladsy 187 - daar onder Walter Sisulu se biografie en sy foto.

"Months of detention have not weaken the resistance of activists held under the state of emergency from behind the walls of Diepkloof, Modderbee Prisons came the (30) demands."

... / So

So, van selfs agter die tronkmure af kom daar verdere organisasie en dinge. Modderbee is die gevangenis waar die beskuldigdes aangehou word op die oomblik.

HOF : Is daar enige ander beskuldigdes wat op hierdie prentjie is wat daar aangehou word?

MNR. JACOBS : Nee, van hierdie ander mense wat op hierdie prentjies is - ek dink Paulsmore is die gevangenis. Ek is nie heeltemal vertroud nie, maar ek dink Sisulu word daar aangehou, Jackie, Mhlawa. As 'n mens kyk is hierdie almal die Rivonia verhoor mense en hulle word in Paulsmore aangehou. (10) By hierdie kwessie van die veiligheid kan ek net - wil ek dan ook nog net byvoeg dat daardie latere verklaring wat ons gekry het, wat ek ook nie hier by gebring het nie, is - ek verkies na die verklaring - die verklaring dat die organisasies wat in die Vaal gedoen word en die mense se toesprake waar hulle aanmoedig dat terroriste ondersteun moet word, dat die stryd nog voortgesit word teen die raadslede.

HOF : Waar staan dit?

MNR. JACOBS : Ek wil nou net daardie verklaring vir u kry. Ek dink dit is B(2). Ek sal dit nou kry. Die dokument is (20) B(2). Dit begin op bladsy 191 paragraaf 5 daarso. In hierdie - die eerste persoon wat daar gepraat het van Vaal Youth Congress ek gaan net 'n opsomming gee op hierdie stadium, hy propageer en populariseer verbanne organisasies, Congress of South African Students, COSAS en Pan African Congress. Die tweede persoon wat gepraat het. Dit was die Detainees Parents Support Committee. Die vermoorde raadslid wat daar in die Vaal vermoor is word dan daar beskou dat hy deur die gemeenskap vermoor word. Dit propageer hy daar en dan op bladsy 3, dit is bladsy 192, hy het die aanwesiges verder meegedeel dat die onluste (30) bestaan omrede die Lekoa Stadsraad nie die huishuur wil verlaag

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nie. Hy het 'n beroep op die aanwesiges gedoen om nie die sogenaamde terroriste as vyande te beskou nie, maar dat hulle inderdaad die vriende van die gemeenskap is wat veg vir vryheid. Die volgende man van die Vaal Civic Association wat gepraat het, hy het steeds die aanval geloods teen die raadslede, die huishuur. Dan kom dieselfde ou refrein weer oor. Hy het die aanwesiges aangeraai om (1) nie huishuur te betaal nie; (2) deel te neem aan die oproep dat raadslede moet bedank en die gemeenskap meegedeel dat die raadspolisie slegs daargestel is om lede van die gemeenskap te vermoor. (10)

Paragraaf 8 is Vaal Parents Crisis Committee waar dit spesifiek gaan en hier kan die Hof daarvan kennis neem dat daar aangeval word en aangedring word dat die polisie en die weermag uit die Swartwoongebiede moet onttrek, skoolinspekteurs en skoolkomitees verwyder word, identiteitsdokumente moet vernietig word, dat daar nie huishuur moet betaal word nie, dat daar 'n oproep gedoen word op eenheid en veg vir hulle vryheid. Dan is daar 'n oproep na die verbruikersboikot wat weer beplan word in daardie omgewing. Dit is vir moorde en dan vir die "stay-away" vir Maandag 24 Maart 1986. Dan (20) het hy die aanwesiges ingelig dat Albertina Sisulu 'n veldtog in Soweto en elders gaan loods om die 22 beskuldigdes wat tans in Delmas verhoor word vrygelaat te kry en 'n beroep op die aanwesiges gedoen om die veldtog te ondersteun.

Dit is my respekvolle submissie as 'n mens al hierdie dinge in aanmerking neem, dat daar wel duidelik nog opsweping en onrus plaasvind. Ek mag net sê dat in die ander verklaring word daar genoem hoe dat daar nog op die geweld eskaleer deur brandstigting, aanvalle op polisievoertuie en dit is na die opheffing van die noodtoestand toe al hierdie dinge gekom (30) het. In die president se verklaring, soos ek reeds gesê het,

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self meld hy ook daar is nog plekke waar dit aangestig word. So, die opheffing van die noodtoestand, is my respekvolle submissie, is nie per se dan 'n toestand wat nou ontstaan en wat die beskuldigdes geregtig daarop maak om nou te kom sê hulle is geregtig op borg nie. Dit is my submissie dat die getuienis wat die verdediging moes aangebied het en nooit aangebied het nie, is nie hier om te bewys dat daar "may be" ander "factors" is wat nou in aanmerking geneem kan word nie. Die Staat gaan verder en lê hierdie stuk nog voor om te bewys dat selfs net op blote argumente daar nie op 'n oorwig van waar-(10) skynlikhede rede bestaan om te sê dat die veiligheidsituasie is sodanig dat die beskuldigdes op borg kan uitgaan nie.

Dit is my hoofargument wat ek voor u wil lê, dat op hierdie stadium nog steeds geld daardie sertifikaat van die prokureur-generaal of verklaring van die prokureur-generaal en is
K158 my submissie ook geld nog steeds die bevel wat - ek weet nie hoe om dit nou mooi te stel nie - in daardie vorige saak uitgereik is, is 'n bevel wat u ook kan bekragtig op hierdie stadium, omdat niks bewys is deur die verdediging nie. U sal onthou in daardie uitspraak van Sy Edele ELOFF, R. het hy (20) dit ook genoem en hy het sterk daarop gesteun omdat die verdediging niks voorgelê het behalwe persoonlike omstandighede om daardie bewerings van die prokureur-generaal te weerlê nie. My submissie is ook dat in hierdie aansoek is niks voor u gelê om 'n ander sienswyse te regverdig nie.

Dan gaan ek verder om die ander aspekte, die tweede been ook te argumenteer in hierdie saak. Die eerste punt wat daar genoem word, daar word verwys na Ad paragraaf 6 bladsy 6 van die aansoek. Ek kan dit nie hier meer beklemtoon nie, dat die aanklag van die sogenaamde leidende lede van UDF in (30) Natal totaal irrelevant is en hoegenaamd nie 'n president

... / is

is in hierdie hof nie. My submissie is ook weer, hoewel daar 'n bewyslas op die beskuldigdes is ... (Hof kom tussenbei)

HOF : Net interessantheidshalwe, as ek reg gehoor het was daardie saak op die stadium dat daar een getuie getuig het en dat hy in sy kruisverhoor was en dat die saak toe teruggetrek is teen die mense teen wie dit teruggetrek is?

MNR. JACOBS : Dit is so.

HOF : Nou hoe het hulle so lank gevat om by een getuie uit te kom? Wat het hulle intussen gedoen?

MNR. JACOBS : Ek moet my verlaat op spekulasie. Ons het (10) probeer uitvind wat daar aangaan, maar almal is maar "hush-hush" daarso.

HOF : Weet u of daar met hierdie een getuie of voor hierdie een getuie van die dokumentasie ingehandig is wat hier in 'n ry staan in die hof?

MNR. JACOBS : Daar is hoegenaamd geen dokumentasie ingehandig van hierdie dokumente wat in hierdie hof is nie of ander dokumente wat hulle self op gesteun het nie.

HOF : As ek dit reg verstaan het hulle staat gemaak op toesprake en die soort van dinge. Ons het ook hier toesprake,(20) onder andere. Is die toesprake nie ingehandig nie?

MNR. JACOBS : Nee, daar is nie ingehandig nie. Ek het probeer, sover ek kon, vasstel sou dit nog - was daar onderhandelings of daar sou 'n betwisting van die toesprake nog gekom het.

HOF : Dit was nog nie voor die Hof nie?

MNR. JACOBS : Nee.

HOF : Maar wat het hulle gedoen intussen dan? Ek het in die koerant gelees hulle het 'n week lank video's gekyk?

MNR. JACOBS : Blykbaar het hulle op die basis dat dit (30) later bevestig kan word en die bewys voor die Hof gelê moet

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word en dat die bewys voor die Hof gelê moet word dat dit toegelaat moet word, was daar na 'n video gekyk. Ek is nie seker nie, ek was nie daar nie, maar die video was voorlopig na gekyk en toegelaat op daardie stadium, maar hy is nog nooit agterna werklik toegelaat nie. Dit is nooit geargumenteer nie. Hier is van die mense wat in daardie verhoor gestaan het. Miskien kan hulle vir die Hof duideliker sê, maar sover ek kan vasstel was daar geen dokumente nog toegelaat nie en dit is een van my redes hoekom ek sê dat daardie saak kan nooit as 'n president geld hier nie. Die eerste punt wat ek hier maak is, dat (10) die beskuldigdes in die Natal saak was geheel en al op 'n ander basis aangekla en beslis nooit in hulle hoedanigheid as lede van UDF se bestuur nie. In 'n beëdigde verklaring wat ek hierby aangeheg het en wat ek voor die Hof gelê het en waarop ek steun en waarop ek probeer aandui dat ek verskil van die aanduidings van die verklarings van die verdediging wat hier ingehandig is - die verklaring is bladsy 201, Aanhangsel D - wys ek daarop uit in watter hoedanigheid hierdie mense aangekla was. Hulle was aangekla as mense van 'n organisasie bekend as TIC, Dit is die Transvaal Indian Congress, NIC Natal Indian Congress,(20) Release Mandela Campaign, SAWU en die aanklag was dat in daardie hoedanigheid van die hoofde van daardie en nie in die hoedanigheid van mense van UDF nie, UDF word nie eers daar genoem nie, as ek reg is, word in daardie hoedanigheid as die voorsitters en lede van daardie organisasies het hulle gebruik gemaak van die nasionale uitvoerende bestuurnek van UDF en ander leiers. Hulle het gebruik gemaak van hulle.

Sover ek ook kon vasstel uit die openingsbetoog van die Staat in daardie saak was dit ook duidelik gestel in die hof, dit is nie UDF wat aangekla word nie, maar dat UDF word (30) gebruik eintlik. So, daardie punt wat hier geopper word in

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die verdediging dat 'n ooreenstemming met hierdie saak is, kan nooit opgaan nie. Dit is my respekvolle submissie dat daar ook geen sterk punte van ooreenkoms is tussen die twee sake nie. Daardie saak was bloot gebaseer en soos dit in die verklaring uiteengesit word wat die mense gesê het en hoe dat hulle dan UDF sou gebruik het, ek weet nie hoe hulle dit kan doen nie, ek noem dit maar hierso.

HOF : Daar was tog bewerings dat die Staat omver gewerp moes word deur geweld?

MNR. JACOBS : Dit is reg. (10)

HOF : Was daar bewerings dat daar inderdaad met geweld opgetree is of was dit bloot toesprake?

MNR. JACOBS : Ek het die akte van beskuldiging vir u geleen.

HOF : Ek het gelees, maar ek het nie al die detail gelees met die skedules nie, want dit is 'n bietjie lank.

MNR. JACOBS : Sover ek dit verstaan in daardie akte van beskuldiging van hulle, was daar nooit enige dade van geweld nie, daar was blykbaar mense aangestig, gemobiliseer, gepolitiseer om oor te gaan tot geweld.

HOF : Maar daar is nie gesê daar het uiteindelik geweld (20) plaasgevind nie?

MNR. JACOBS : Nee.

HOF : Is dit die onderskeid met hierdie saak?

MNR. JACOBS : Dit is een van die onderskeide, want die ander een is, ons sê dat UDF en sy topstruktuur het die mense opgesweep. Daar sê hulle UDF is gebruik. Ek weet nie hoe dat hulle gebruik is nie. In my betoog hierso het ek dit gestel dit is blote spekulasie om te kom sê dat daardie saak 'n ooreenkoms is, want hoe - miskien, en nou spekuleer ek hoekom daardie saak teruggetrek is en sê is dit miskien omdat die (30) Staat nie kon bewys hoe dat UDF se topstruktuur gebruik is

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nie. Met ander woorde, waarom die prokureur-generaal daar teruggetrek het, is blote spekulasie, want hoe dat UDF gebruik is, kan ek nie klein kry uit daardie saak uit nie. Wie van UDF gebruik is, weet ek ook nie. Soos u sal sien en u het dit ook netnou gemeld toe My Geleerde Vriend gepraat het, daar was 'n sameswering tussen 'n alliansie ANC, SAKP, NIC, TIC, SAWU en daardie mense en wat vir my interessant is in die ding is dat die twaalf beskuldigdes wat so gedurig voorgehou word as 'n voorbeeld was nou die mense en die presidente en die leiers blykbaar van daardie organisasies en die sameswering wat (10) UDF gebruik het, maar dit is vir my eienaardig dat hulle is ondergeskik aan UDF, ondergeskik aan die bestuur van UDF, ondergeskik aan die uitvoerende bestuur van UDF, maar hoe dat hulle hulle kon gebruik het, weet ek nie. Dit is maar net alles spekulasie en terselfdertyd vrae wat 'n mens moet antwoord en wat 'n mens nie weet hoe nie. As TIC se mense nou geaffilieer is by UDF hoe dat hulle hom kon gebruik het, weet ek nie, want hulle moes UDF beleid uitgevoer het, volgens die beginsels van UDF se grondwet, geaffilieerde organisasies moet die beleid uitvoer. As 'n mens in hierdie saak verstrengel raak, raak (20) 'n mens nog meer - dan raak 'n mens regtig verstrengel in Natal en daarom sê ek ook daardie saak is nie 'n president vir hierdie saak nie. Daardie mense kan nie as voorbeelde geld vir hierdie saak nie en daarom kan mnr. Manoyen, die prokureur, se verklaring ook nie korrek wees nie. Ek noem dit hier dat ek stem nie saam met hom nie en ek betwyfel die korrektheid daarvan en dit is my submissie dat die korrekte toestand word in Aanhangsel D weergegee.

By hierdie punt het ek dan ook saam behandel die feit dat genoemde samesweerders op hierdie stadium nog nie vervolg(30) kan word nie. 'n Mens moet aanvaar daar moet praktiese redes

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wees. As 'n mens nou al hierdie honderde mense in een verhoor gaan saamgooi, gaan dit moeilikheid gee. Ons het probeer om die brein van UDF wat op daardie stadium nie vervolg was in 'n ander saak nie, in ons saak in te bring en die mense in die Vaal, maar dit sê nog nie dat die ander vervolgings nie later kan volg nie en dit sê ook nie dat daar nie op die huidige oomblik ander samesweerders wat saamgesweer het wel vervolg word nie. Ons het onlangs die geval van die nege mense wat ter dood veroordeel is - ses mense en waaroor kampanjes deur UDF gevoer word. Ek verwys ook hier na die geval van die (10) mense wat die land uitgehardloop het toe hulle vervolg moes geword het. So, om dit voor te hou as 'n rede hoekom borg gegee moet word, kan ek nie insien nie.

HCF : Nou sê mnr. Chaskalson, maar die twaaf wat julle sê mede-samesweerders is, loop nou vry rond en hou politieke vergaderings en julle houding is dat hierdie mense wat nou die ander mede-samesweerders is in die tronk moet sit intussen. Wat sê u van daardie argument?

MNR. JACOBS : Op hierdie oomblik is daardie mense onskuldig bevind. Ons kan nie daarby verbykom nie. Vir watter rede (20) die prokureur-generaal daar besluit het om die verhoor te staak.

HOF : So, u standpunt is, hulle loop nie gevaar nie? Hulle kan nie weer aangekla word nie?

MNR. JACOBS : Hulle kan nie weer aangekla word nie. Ek praat tentatief, want die basis van daardie aansoek dat hulle UDF wou gebruik het, dit gaan 'n groot regsargument wees, of hulle miskien weer aangekla kan word om te sê hulle is autrefois acquit, om te sê op watter beginsels, as 'n mens hulle op 'n ander basis aangekla op dieselfde feite, maar dit is 'n (30) faktor wat in oorweging geneem kan word en daar is ander sake

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wat ondersoek word. Dit is nie te sê dat hulle almal gelyktydig aangekla moet word nie.

HOF VERDAAG. HOF HERVAT.

K159 MNR. JACOBS : Met hierdie vorige punt, net voordat ek afsluit met hom, ek noem dit op bladsy 26 dat dit is 'n foutiewe stelling om te beweer dat daar word geen vervolgings gedoen nie, ten aansien van ander samesweerders. Ek verwys dan na die ter dood veroordeeldes en ek verwys ook ... (Hof kom tussenbei)

HOF : Net 'n oomblik. Was die bewering daar dat daardie ses mense wat ter dood veroordeel is saamgesweer het of was dit 'n doodgewone moordsaak.

MNR. JACOBS : Dit was 'n doodgewone moordsaak, maar dit kan in die lig wees dat dit van die samesweerders was wat gesê word wat nie vervolg word nie.

HOF : Maar daardie ses mense is tog nie op die lys van samesweerders nie?

MNR. JACOBS : Nee, maar wat uit hierdie sameswering gevloei het. Wat ek daar wel na verwys is dat mense van ander organisasies wat deel van die sameswering is het ook weggehardloop en dit is waarna verwys word in die verklaring, Aanhangsel C. Dit is van adjudant-offisier Seyffert. Dit is bladsy 42 van die applikante. Daar is Pieter Gideon Seyffert se verklaring. My respekvolle submissie, ek gaan nou na die vierde punt toe, ek het in my argument reeds grootliks daarmee gehandel en ek kan dit nie sterk genoeg beklemtoon nie, dat die RAMGOBIN saak nie 'n president kan wees nie, ook vir die feit dat daar slegs een getuie gelei was wat nie oor die meriete van die saak getuig het nie, terwyl in hierdie saak het daar 'n reeks getuies ... (Hof kom tussenbei)

HOF : Maar waaroor het hy dan getuig as hy nie oor die meriete van die saak getuig het nie?

... / MNR. JACOBS

MNR. JACOBS : Blykbaar was dit 'n deskundige getuie.

HOF : Maar 'n deskundige getuie getuig tog ook oor die meriete?

MNR. JACOBS : Maar ek meen op die feite van wat beweer word wat op sekere plekke sou plaasgevind het om te onderskei. Ek mag net sê sy getuienis was blykbaar 'n uitleg van sekere Sechabas en Mayibuyas en daardie tipe dinge en dokumente blykbaar, maar die toets en die finale toets wat in hierdie saak moet geld is of hierdie saak van RAMGOBIN, bewys dit dat op 'n oorwig van waarskynlikhede dat hierdie saak se feite in aanmerking geneem moet word in hierdie saak om te bewys dat(10) hulle op borgtog uitgaan en my respekvolle submissie is dat hierdie saak is irrelevant en dat die feite nie bewys op 'n oorwig van waarskynlikhede nie, want omdat die feite in daardie saak so groot verskil van hierdie een, wat ek hier in my hoofde reeds vooraf behandel het.

Die volgende aspek wat ek behandel is paragraaf 9, bladsy 7 tot 9 van die aansoek en dit is dan spesifiek weer, dan kom ek terug na Seyffert se verklaring toeen ek sê dat hierdie getuienis van Seyffert is irrelevant in hierdie saak vir die volgende redes: Die persone wat die land uitgevlug het (20) en hulle verhoor nie gestaan het nie, was lede van organisasies wat met UDFgeaffilieer was en as sulks deel van die sameswering. Dit bewys ook hoe maklik dit is om die land te verlaat en 'n verhoor nie te staan nie. Dit is ook belangrik vir die Hof om kennis te dra dat hierdie geaffilieerdes van UDF gevlug het en hulle na die ANC gewend het. Dit is ook belangrik in die lig van die regspraak wat hierbo behandel word, dat geen uitlewering gedoen word ten opsigte van sogenaamde politieke vlugtelinge nie en dit is ook waarna verwys word in die prokureur-generaal se verklaring wat in Sy Edele ELOFF, R. se (30) uitspraak aangehaal word.

... / My

My respekvolle submissie is dat hierdie aspekte is wel relevant en dit is aangebied deur die Staat om die waarskynlikheid dat die beskuldigdes onder die omstandighede waarin hulle hulle bevind wel ook kan die land verlaat.

Die volgende aspek wat ek dan behandel op bladsy 27 verwysende na paragraaf 10 op bladsy 9 van die aansoek. Dit is my submissie die feit dat daar met getuies gepeuter kan word van wesenlike belang is vir hierdie saak en wat beslis die aandag van hierdie Hof ook sal geniet en dit geld in die lig van veral applikant se blote bewering dat dit irrelevant (10) is. Daar word nie getuienis aangebied om die teendeel te bewys nie. Daar word net 'n blote ontkenning gemaak dat hulle iets daarmee te doen het en gesê dit is irrelevant.

Dit is belangrik dat die persoon wat in hierdie verklaring genoem was, sou 'n getuie in hierdie saak gewees het, hierdie besondere saak, teen die beskuldigdes en hy was gedreig en dit is die belangrike aspek van daardie getuienis, hy was gedreig voor die tyd omdat hy 'n getuie in die saak is en wat nog meer belangrik is en dat in hierdie saak 'n tweede getuie selfs met behulp van 'n prokureur kontak met haar gemaak (20) het, was sy sodanig geïntimideer, is my bewering, dat sy skoonveld verdwyn het en het nog nie weer te voorskyn gekom nie. Dan verwys ek in die verband na Aanhangsel F, bladsy 206. Dit is kaptein Kleynhans se verklaring. My submissie respekvol aan u is dat dit nie op blote spekulasie is wat die Staat kom sê dat daar moontlik met getuies ingemeng kan word nie, maar dat hier werklike feite is dat dit gebeur het dat met getuies ingemeng is. Ek wil net in die verband ook nog vir die Hof verwys na die bewysstuk waarna ek reeds verwys het, dit is G, die UDF News. Dit is Aanhangsel G. As 'n mens die(30) genommerde bladsye gaan gebruik is dit 187 en 188. As 'n mens

... / na

na daardie dokument kyk, weer op dieselfde bladsy waar ons netnou gekyk het ... (Hof kom tussenbei)

HOF : Ja, ons het op twee bladsye gekyk. Watter een?

MNR. JACOBS : Die eerste een waar Walter Sisulu se gesig op voorkom. As u kyk na die heel boonste aanhef. Dit lyk vir my dit "In jail on the run and in other courts - and in the courts, the heroes of our struggle still continue or carry - ongelukkig het dit nie so mooi deurgekom nie - the torch of freedom." Met ander woorde, selfs in die gevangenisse gaan dit nog voort. As 'n mens dan net op die vorige bladsy (10) weer kyk, waar die ding begin, dan sê dit "Our leaders on trial" en dan word die name van drie van die beskuldigdes spesifiek weer daar genoem, wat hierdie "torch" dan na vryheid sal dra. Dan op die volgende bladsy "The Vaal six will not be hanged", daardie opskrif. Dit is tog insiggewend dat hulle sê "The UDF condemns the hanging of the six" en dan daar onder die volgende "Only people's powers will secure peace." Dit is tog duidelik dat die afleiding wat 'n mens hieruit kan maak is dat daar vrede in hierdie land sal wees, tensy die "people" oorgeneem het. So, my respekvolle submissie is (20) dat die verdediging het niks gedoen wat op 'n oorwig van waarskynlikhede aandui, behalwe 'n blote ontkenning, dat hulle nie die land sal uitgaan nie.

Dit sluit aan by paragraaf 10 wat behandel word op bladsy 9 van die aansoek, die verklaring van nou majoor Kruger. Dit is en bly steeds van belang en dit sluit ook sterk aan by hierdie vorige paragraaf. Die kern hiervan is dat die inligting wat daar betrokke is, nog steeds bestaan en die blote ontkenning van enige van die beskuldigdes dat hulle nie van die plan van die ANC om hulle te help ontvlug weet nie en (30) niks daaraan sal doen nie, moet in die lig van die volgende

... / oorweeg

oorweeg word. In die eerste instansie weens veiligheidsrede was die bron of kan die bron nie geopenbaar word nie. Om net te sê dit is hoorsê van 'n ander storie van iemand wie se naam nie genoem word nie. Dit is aanvaarde feit dat bronne se name nie openbaar sal word nie en is dit nou maklik om te kom sê bestaan van so iets te ontken, wetende dat die Staat nie bewyse voor die Hof kan kom lê nie en soos in die akte van beskuldiging uiteengesit is, word beweer dat Esau en Dorcas Raditsela deur persone wat in die akte van beskuldiging genoem word en nog daagliks hierdie hof bywoon as 'n regsverteenwoordiger (10) gehelp was om die polisie te ontvlug en tans by die ANC in Lesotho is. Ek verwys hier na paragraaf 77 van die akte van beskuldiging. Botswana is by die ANC. Jammer.

HOF : Moet ek dit nou verander na Botswana?

MNR. JACOBS : Ek wil net seker maak in daardie verklaring. Ja, dit is Botswana. Ek het dit verkeerd daar ingesit. Dan wys ek op die volgende punt dat daar is 'n noue skakeling tussen die ANC en die UDF. Dit is belangrik in hierdie opsig van waar persone die land verlaat het en hulle bevind by die ANC, die feit dat UDF bestuurslede wat in Aanhangsel B(2) genoem word(20) met ANC bestuurslede ook in dieselfde B(2) genoem geskakel het, gerapporteer het oor die vordering van die sogenaamde stryd, die feit dat die massas uitgenooi word om die ANC terroriste as hulle vriende te ontvang vir die vryheid - en vir die vryheid te veg. Dit is in B(2) ook. Dit het tog 'n besondere betekenis, om op 'n oorwig van waarskynlikheid weer te toon en te bewys dat daar is wel duidelike skakeling met die ANC en dat daarso maklik deur die mense - die vraag was hier gestel hoekom sou hulle by 'n rewolusionêre beweging aansluit, maar die liggaam wat hulle aan behoort, veral beskuldigdes nrs. 19, 20 en 21,(30) het dan die noue skakeling op hoë vlak met die ANC. Dit is

... / nie

nie 'n vergesogte en 'n spekulatiewe gedagte wat deur die Staat uitgespreek word dat mense kan aansluit by die ANC nie. Dit is werklike skakeling volgens die bewysstuk wat voor die Hof gelê word en weer eens, dit weerspreek en dit bewys dat die waarskynlikhede dat hulle wel sal uitgaan, wel redelik sterk is. Ek noem dan die volgende aspek, dit is as in aanmerking geneem word die erns van die misdade wat die beskuldigdes ten laste gelê word, dit sluit aan by die moontlikheid dat dit hulle kan noop om makliker die land uit te gaan. 'n Mens kan hierby die aspek wat reeds geopper is in die hof inbring (10) dat die mense, volgens hulle eie verklaring, behalwe beskuldigde nr. 3, het geen middele nie en my submissie is dat uit die akte van beskuldiging as geheel dit blyk hulle hang 'n idiologie na om die regering in hierdie land tot val te bring en 'n regering van die massa te stig en is my respekvolle submissie dat die doel waar hulle self die "struggle", soos dit hier gestel word, sal "continue"totdat die "people's power" verkry is, gaan hoër weeg by hulle as die ander mense wie se geld hulle dan gaan gebruik as hulle uitgaan op borg, om daarvoor te betaal. So, my respekvolle submissie is dan, om dit saam te(20) vat, dat die verdediging hoegenaamd geen getuienis voor hierdie Hof geplaas het wat in die eerste instansie dan kan bewys dat die veiligheidsituasie, dat daardie ekstra iets waar Sy Edele ELOFF, R. na verwys het, nie ooit probeer is om hier voor die Hof te lê nie, terwyl die Staat al die getuies wat - verklarings wat daar aangebied was, nie aangebied was om te bewys dat ander mense misdade gepleeg het, dat ander mense daaroor gearresteer kan word nie, maar om die waarskynlikhede wat die bewyslas is wat die beskuldigdes hulle van moet kwyt of die applikante hulle van moet kwyt, nie bestaan nie en dat dit eintlik onwaarskyn-(30) lik is wat hulle bewyslas betref. Ek dink dit is die kern van

... / die

die saak en die kern van hierdie verklarings is, soos ek gesê het, nie om net swart te smeer of iets van die aard nie, maar om hierdie spesifieke punte te bewys.

Dan net as 'n laaste gedagte, kan ek voor die Hof lê dat die beskuldigdes hier in die hof het beweer die Staat is verantwoordelik vir die Vaal se geweld - ek het hom net andersom gestel. Die bewering is wat die Staat maak dat die beskuldigdes hier voor die Hof is verantwoordelik vir die geweld in die Vaal. Die Staat beweer verder dat hulle leiersfigure is in die tot stand bring van daardie geweld in die Vaal en ook (10) ander dele van die land. As hulle in hulle afwesigheid as leiersfigure so georganiseer word soos tans die geval is in die Vaal en ander gebiede, wat sal gebeur as hulle op borgtog vrygelaat is en as leiersfigure weer terug is onder die mense? My respekvolle submissie is dat die ou storie gaan weer herleef en ons gaan weer dieselfde kry.

HOF : Wat sê u van die betoog dat as 'n mens die persone so kan vasbind met voorwaardes van borgtog dat hulle nie kan deelneem aan enige politieke bedrywighede nie?

MNR. JACOBS : Dit is daarom dat ek - ter aanvang sal u (20) onthou het ek twee punte genoem wat ek bang was ek sou vergeet en een was van die voorwaardes. My respekvolle submissie is dat onder die huidige omstandighede ... (Hof kom tussenbei)

HOF : U sê dit kan nie gemonitor word nie?

MNR. JACOBS : Dit kan nie gekontroleer word op geen wyse hoegenaamd nie. Daar kan nie beheer daaroor uitgeoefen word nie. Die situasie is in die woongebiede sodanig dat snags telefone orals gebruik kan word om verder te organiseer. Dit kan die Staat nie beheer nie. Die Staat kan nie in die gebied ingaan omdat voertuie aangeval word en soos wat ek netnou hier vir (30) u gewys het op bladsy 187 van daardie dokument dat reeds uit

... / die

die tronke uit word daar georganiseer. Dit sal dit net vir hulle baie makliker maak as hulle buitekant is. So, my submissie aan u is dat die borgaansoek van die hand gewys sal word en dat borg nie kan slaag nie. Verder het ek die regsaspekte in my hoofde volledig behandel. Ek weet nie of u wil hê dat ek iets daaroor moet sê nie.

HOF : Ek het dit gelees.

MNR. JACOBS : Dankie, dit is al.

MR CHASKALSON : MY Learned Friend dealt with the question of security of the State and he asks why the accused have (10) not dealt in more detail or in any detail with the question of the security of the State. There is a very simple answer. It is in paragraph 4 of the application on page 5.

> "We have been advised and readily believe that the attorney-general no longer contends that the safety of the State might be harmed if we are to be released on bail."

The source of the information there is a discussion between the attorney-general himself, Mr William Lane, the senior president of the Transvaal Law Society. It was on the basis of that that this affidavit was prepared. I may say that I (20) personally spoke to the attorney-general subsequently to find out when the affidavits were going to be filed. I was informed by the attorney-general that he did not and would not dispute paragraph 4 of our papers, that he would and did have information that there was a level of disturbance elsewhere in the country, it was not all peaceful, but there would be no opposition on the grounds that the safety of the State being endangered and at that stage he told me that no affidavits were going to be filed. I was later informed that some affidavits would be filed in regard to the local disturbances (30) in the Vaal and we have concerned ourselves solely with that

fact for that reason. Significant that the attorney-general has it not seen fit to make an affidavit suggesting that that is not so, as he did in the first case and even in the heads of argument My Learned Friend begins by making the concession that there are new circumstances and that there is justification for the bail. Your Lordship will see that in paragraph B(1) of the heads of argument. He concedes it at the very beginning of his heads of argument and now he has launched into argument dealing with local circumstances in the Vaal, the disturbance which there exists which are of a nature as(10) described in the affidavits and elevated that into, as it were, the security of the State in the sense in which it was used in the main application.

As far as the local conditions in the Vaal are concerned the first matter is that what is relied upon by the State are really three matters - three separate propositions are relied upon by the State. First Captain Conradie made two affidavits, one at 11h00 on the 18th and one at 12h00 on the 18th. The affidavit that he made at 11h00 is to be found at pages 173 to 180 and his 12h55 affidavit at pages 190 to 193. Those (20) affidavits deal with public meetings and some publications, but public meetings. Public meetings which the police had no difficulty in monitoring, which the police had no difficulty in getting details of exactly what was said by everybody, public meetings at which they, either through themselves or their agents or informers were able to establish exactly what they needed to know. That has been put up, an undertaking that there is no difficulty according to Captain Conradie. He does not suggest that he cannot monitor the meetings or cannot find out and indeed could not, because, he has been (30) able without any difficulty to give an account of what he says

... / happened

happened at a number of meetings. Now, of course, if it is suggested that the accused are going to take part in those sort of activities, the conditions can very easily control that type of event.

Secondly - I may say there is no affidavit or evidence from anybody in regard to the difficulties that the police have in finding out what people are doing and what is happening. Indeed, they seem to have been able to put information before Your Lordship in regard to alleged communications between Mr Nair and Mr Gumede and the African National Congress. (10)

Secondly, there is the - the second allegation in regard to the conditions in the Vaal are what appears at pages 196 to 199 of the papers. There and this, I was told by the attorney-general, when he spoke to me, he said there were local disturbances, there were disturbances around the country. He originally said they were not going to file affidavit, but was later told they would be filing something about the conditions in the Vaal. This is all that this affidavit deals with. It deals with a level of unrest and political activity in the Vaal area, largely apparently as a result of student(20) activity as far as one can tell, because you are told about "'n klipgooiery deur studente by skole, samedrommings in strate deur studente, ontwrigting van skole, brandstigting by skole". The type of unrest which was talked about here, is a level of unrest on the part of students and scholars, which has risen since the lifting of the emergency.

Now, of course, the accused - there are some of the accused that are younger persons, but most or none of the accused could by any stretch of imagination be regarded as scholars and certainly, the activities at schools and the disturbances(30) associated with people going to school, are not matters with

... / which

which these particular accused would be associated or likely to participate in or even would be permitted to participate in, should they want to if they were to be released on bail.

That is the nature of the unrest that is described. The level of the unrest has increased and Your Lordship would take that into account in considering whether or not to grant bail,, but if you look then to the individual positions of the accused, it is suggested that some of the older people, some of the sickly people are going to walk out into the streets and throw stones and man the barricades. There is no suggestion (10) that they have ever done that, that they are going to do that and there are just nothing in these affidavits which in any way link the accused with these sort of activities and the accused say "We know nothing about it. We have been in jail. We cannot be held responsible for that. We know about it. We cannot be of any assistance to you. As far as we are concerned it is not something for which we can be held responsible. It is not something that we would participate in and you cannot hold us responsible for that."

If we could then turn very briefly to look at the (20) RAMGOBIN case. My Learned Friend says he disagrees with Mr Manoyen's affidavit, but he has not told Your Lordship what part of Mr Manoyen's affidavit he disagrees with, nor has he told Your Lordship anything in Mr Manoyen's affidavit which is not 100% correct, nor has he suggested to Your Lordship anything in Mr Manoyen's affidavit which is in any way contradictory to that of Captain Van Niekerk and I have read them both. I cannot understand how he can make that acquisation that he does against Mr Manoyen and suggests that what Mr Manoyen says is incorrect. There is actually nothing in the (30) affidavit which conflicts with what Captain Van Niekerk says.

Mr Manoyen has actually put up the relevant parts of the indictment and showed to Your Lordship what he has to say about it and indeed Captain Van Niekerk does not purport to dispute anything that Mr Manoyen says.

As far as the trial is concerned, the information My Learned Friend has given to you about the trial is quite incorrect. I do not know what his source of information is. I hope that the information upon which he is asking Your Lordship to deny bail to the accused is not quite as unreliable as that because it would be really a travesty if bail were denied (10) on those sources, but the fact of the matter is and I say so because there are counsel in court who can give me that information and who were there at the times and I satisfied myself by reference to attorneys who were present and the counsel who were present that the State called more than one witness, they called a number of witnesses, four or five persons had given evidence before the case collapsed, but the main witness for the State was an expert. That expert's evidence-in-chief lasted for over a week. The expert had studied all the documents which would include documents such as those we have (20) in court today. He had studied all the video's on which the State is going to rely on in this case. He had studied all the speeches upon which the State is going to rely on in this case. He was then led in evidence and his evidence-in-chief identified the passages in the documents, the passages in the video's and the passages in the speeches which included the speeches at the mass meetings which are referred to in this indictment and the video's which are referred to in this indictment and he identified what he regarded in that body of evidence as relevant that the charge - to the charges. (30) It was not just reading a few Sechabas. That is just no

... / substance

substance whatever and after he had been through all these documents, he was cross-examined - the case stood down for some time, he was then cross-examined and it was at that stage that the State withdrew.

The difference between - there is a difference between - there is obviously a difference between the Maritzburg charge and this charge and I have not suggested to Your Lordship that they are the same. I am suggesting that there are areas of similarity which are important. The Maritzburg - the State case here is that everybody who joined an affiliate of the (10) UDF became party to the conspiracy to overthrow the State with violence. There are approximately 600 affiliates, and I understand that there a million or more people who belong or have membership to affiliates. So, the State here, its contention in effect is the conspiracy involves plus-minus a million people who are seeking to overthrow the State, because that is the effect of saying that every member of every affiliate is party to the conspiracy.

The State in Pietermaritzburg were not so bold. Their case is, as one can see from the papers, that certain UDF (20) people, certain people associated with the UDF formed a secret court to the conspiracy, and they used their position in the UDF And the affiliates to promote the conspiracy. You will see that if you look at pages 35 and 37 where Mr Manoyen gives a request for particulars and the answer furnished by the State. There was one body of evidence.

There are two important differences. One is here the State are relying on the specific incidents which occurred in the Vaal Triangle which, of course, are relevant to the - specifically to the accused from the Vaal area and the (30) people who are alleged to have participated directly in those

... / meetings

meetings, that is the accused other than 19, 20 and 21. The State is also alleging that violence occurred elsewhere in the country as a result of the conspiracy. So, they are alleging that there was a conspiracy and consequently upon that conspiracy certain matters took place.

In Maritzburg, as I understand the position, I have not seen the full indictment, the case was really the conspiracy. It did not go further and alleged that the acts of violence which occurred in the country, were the direct results of that ccnspiracy. (10)

Now, of course, the State has one body of evidence. That body was available to the attorney-general in Pietermaritzburg, it was available to the attorney-general in the Transvaal. The attorney-general in Maritzburg drew one inference and pleaded one way. The attorney-general in the Transvaal drew another inference and pleaded in another way, but the same documents, the same speeches, the same organisations, are the subject matter of the case. I am leaving aside now the special features of the Vaal.

On the issue of State security, one then has a situation(20) that on the State case a very large and far reaching conspiracy involving members of all the affiliates of the UDF is at issue. All those people or most of those people are free and wondering around. The leaders we know are free and politically active and what impact we say in those circumstances can the release 22 people subject to bail conditions have on that situation. The only answer that we have got to that is the level of unrest among scholars in the Vaal has increased, there have been public meetings in the Vaal where the same issues of rent and councillors have cropped up. No doubt those are burning issues (30) within the community and they are raised whether the accused

... / were

were there or not, but the first answer to that is that the - that that has no application whatever to accused nos. 1, 16, 19, 20 and 20, because they do not live in the Vaal and they can be excluded from going to the Vaal. So, the increase level of political activity in the Vaal is at best relevant to some of the accused and not to all of the accused.

As faraas those accused are concerned I have made by submissions in regard to the efficacy of conditions and in regard to the fact that they will be standing trial and the fact that really their presence in the Vaal - either their (10) presence or absence in the Vaal is not going to affect the level of activity, but, My Lord, the accused would be reluctant to do so for very obvious reasons, but if necessary they would accept the condition that they must remove themselves from the Vaal Triangle and find accommodation which can be found for them outside the Vaal. They do not want do to that. They want to go back to their normal family homes and I am not suggesting that it would be appropriate, but if it were suggested that this factor of their being back in the Vaal might disturb conditions in the Vaal, then that condition (20) as well could be opposed and would be affected by the accused.

My Learned Friend referred to speeches, publications. Can I just deal with what he had to say. He looked at the publication called the UDF News and he read to Your Lordship two passages from the UDF News, that is at page 186. It is that document - passages which he read that the UDF said that at the same time we demand the unconditional release of all other political prisoners and detainees, the return of our brothers and sisters in exile, the unbanning of the ANC and the lifting of the state of emergency. If everybody who (30) has said that were to - it was necessary for everybody who

... / believed

believed in that and who said that to be kept behind bars, the jails would not be big enough to hold them. Whether the accused are in jail or not in jail, people are not going to stop saying this sort of thing, they read it in every newspaper, there are leaders of industries saying things like that, leaders of commerce saying things like that, you read about leaders of political parties saying things like that and really the fact that this is being said by the UDF cannot, one way or another, it is not an offence to say these sort of things and it is really not going to stop, whether the accused come (10) out on bail or not. Then My Learned Friend says when Mandela steps out of jail, nothing will stop the people and their leaders marching forward to freedom. I really I do not understand what point he is making. The desire for freedom, the desire to have control over your own destiny, your own lives and control over yourself and your own country, is a very strong feeling which has been with people of all nations of all parts of the world at all times. It is not an offence to say that "we desire our freedom". They cannot be denied bail because some people say - some people with whom they (20) are associated would say these are our leaders and we want our freedom.

Then My Learned Friend read from page 187 and he seemed to suggest to Your Lordship that the article at page 187 suggested that the accused were engaging in political activity from jail.

COURT : Do you mean the part under our leaders on trial?

MR CHASKALSON : He read two parts. I think the part of our leaders on trial was not the part from which he drew that inference. He just drew attention to the fact that our leaders (30) are on trial at two courts, one at Delmas, and one in Maritzburg,

... / 26

26 leaders of the people stand trial for treason and then names are mentioned. Now, it is not surprising that the UDF should refer to its senior officials as their leaders. The names mentioned are Lekota, Molefe and Chakane and they, of course, are officials of the UDF and it is not surprising that they should be described as heroes in the struggle. It is after all their organisation, but I do not think it is that passage. He just drew attention to it that these are the leaders. Of course they are not the only leaders. There are, as I have said, many other leaders who are active at the (10) moment, but the passage he referred to is that the struggle continues from behind - unfortunately my copy is bad - prison walls and he said months of detention have not weakened the resistance of activists held under the state of emergency. From behind the walls of Diepkloof and Modderbee Prison came the demand. Release detainees unconditionally. Lift the state of emergency. Withdraw the troups from the townships. My Learned Friend says, well, the accused were at Modderbee. I do not actually understand the point that he is trying to make. May I just point out that the persons who are alleged (20) to have issued this demand, are those who are being held under the state of emergency. They would be detainees. In fact Modderbee was a place at which emergency detainees were held. The accused, of course, are not emergency detainees. They were awaiting trial prisoners. No attempt has been made anywhere in these papers to suggest that the accused at any stage since their detention and being held in prison conducted any sort of activity behind bars or that they are politically active at the moment and they say they are not. So, that passage does not refer to the accused at all. In any event, (30) I do not really understand what point my friend makes of it.

... / If

If people who are being held under the state of emergency in jail without trial and without having or without being alleged to have committed the offence, because that is the basis of the emergency detention, were to have made known that their views are that they would like all detainees to be released on condition, that they want the state of emergency removed and they want the troups withdrawn from the township one would expect people in that position to say precisely that. I cannot see that that is an offence and those things have been said, they were said until the state of emergency(10) was lifted and you read any number of times in the papers the community leaders in Black townships saying we want the troups removed from the township.

The point I make again is that these things have been said, these things are being said and these things, whether we like it or not, are going to continue to be said and whether the accused are in jail or not in jail, it is going to happen.

The suggestion also is that the detainees referred to have been on hunger strike to protest their detention and publicised the detention of the people. Well, of course, (20) none of the accused have ever been on hunger strike, it was never suggested that they had been on hunger strike and they were not detainees.

Then My Learned Friend dealt with the intimidation of the witnesses. I do not want to repeat what I have said, but I do want to draw attention to the fact that My Learned Friend again describes the intimidation by an attorney of a witness. There is absolutely no evidence as far as that is concerned.

COURT : I was not so sure that that was what was stated (30) in the papers. It would seem that the witness ran away

... / despite

despite having been assisted by an attorney.

MR CHASKALSON : Well, certainly, the only evidence that Your Lordship has - I believe Mr Bham gave evidence and said I gave her advice which did not include and did not include this. A charge has now been brought against him, but there is nothing on these papers to suggest that anybody intimidated the witness to run away. All that the Captain says at page 206 of the papers, which is the affidavit upon with My Learned Friend relies - this is what Captain Kleynhans says. He says "ek is die ondersoekbeampte." (10)

> "Die beweerde regsverydeling spruit voort uit die verdwyning van Swartvrou Isabella Lethlake. Volgens die beskikbare getuienis het die getuie sedert haar ontmoeting met beskuldigde te Dube spoorloos verdwyn. Ek het ook by die getuie se moeder navrae gedoen en sy kon my ook geen inligting met betrekking tot die getuie se huidige adres verskaf nie. Ek het ook getuie se foto op TV1, 2 en 3 laat toon. Ek is vertroud met die inhoud van die verklaring."

That is the only evidence the State puts up and Your Lordship has already had evidence from the attorney concerned to say that he certainly did not do anything which was in any way improper. So, from that, the suggestion is made that this supports the proposition that she was forced and intimidated into leaving by an attorney. It is almost like "van die beskuldigde" have been buried weapons. That is that sort of averment. (20)

Then we are told that - all I can say about that too is that there is no evidence to support it and again nothing to suggest that the accused were in any way party to it. So, it has nothing whatever to do with the accused. (30)

... / Then

Then My Learned Friend says that there is "noue skakeling tussen" I think those were his words "noue skakeling" between Mr Gumede and Mr Nair and the ANC. Mr Gumede and Mr Nair stood trial and were acquitted. I am sorry, not Nair. He was not charged. He was a co-conspriator. If the State has evidence of "noue skakeling" between Mr Gumede and Mr Nair and suggesting that they are engaging in some or various activities, he no doubt can charge Mr Gumede and Mr Nair for it, the moment Mr Gumede and Mr Nair are free and no doubt if one finds out from Mr Gumede and Mr Nair what may or may(10) not have happened, that they may have a somewhat different version of the events, but in any event, if they have committed an offence and if they are participating in affairs with the ANC, they can be tried for it.

Then My Learned Friend says none of the accused has assets. That is just not correct. If one looks at the individual affidavits of the accused, some of them talk about their homes which have been purchased on a 99 year leasehold. Some of them talk about their family background, about their savings and their position. Certainly some of the younger (20) people do not have assets, but the younger people - the older people have families, houses and ties to the country and again I must say that one cannot deal with this on a globular basis. One has to look at the position of each one of the accused. If My Learned Friend says or suggests, what does he say for instance about the people who have been mentioned that do have assets and do have ties and to have families and are people of responsibility, shown to be people of middle-age responsible figures in their community. Does he say that there is nothing to keep them here in the country and really what it comes (30) down to is that this is a political - these people are

... / charged

charged with, as My Learned Friend says, there is an idiology behind it. He sees it all as a political dispute and of course there are political issues here. The UDF of which three of the accused are officials takes ppart in political activity in the Vaal Civic Association at local level with engaged politics as well. So, what he is saying is, people are being - the trial arises out of political activities and therefore the accused will not stand their trial and it does not matter with their ties are, it does not matter what the assets are, it does not matter what specific information we have against (10) them. We have enough to indict them. We have enough to make them stand their trial and if that is so, the risk of their disappearance is too great to permit them to have bail.

We submit to Your Lordship that one has to weigh into the scale the factors which I have mentioned including the length of the trial and all the other factors to which I have referred.

Finally My Learned Friend also referred to the speech - not the speech, to the attitude of Mr Chikane - Mr Frank Chikane. I think that one needs to - the way it is put is this (20)

"Mnr. Frank Chikane, a vise-president van die UDF en 'n vise-president van die Soweto Civic Association wat as 'n mede-samesweerder in die akte van beskuldiging in die saak van S v PATRICK MABUYA BALEKA EN 21 ander genoem word gedurende Februarie 1986 hom soos volg uitgelaat het."

We are not told whether this was - where this happened, what he is supposed, to whom he is supposed to have spoken, was it at a public gathering, was it a private discussion with some diplimatic representatives, is it something said in his cups late in the evening, was it at a committee meeting of the (30) UDF, was it in a discussion with his child. What was it.

... / "Soos

"Soos volg uitgelaat het." That is elevated, this statement - not a statement, this account of his attitude is elevated into a statement of principle of the United Democratic Front because Mr Chikane - he is said to be the vice-president, but in fact the affidavit shows that at this time he was not the vice-president, that he was not re-elected in April 1985. So, what it comes down to is, that the former vice-president of the UDF in some unknown circumstances in relation to unidentified people "homself soos volg uitgelaat het." That becomes a policy statement of the UDF which is put forward as a ground(10) for denying the accused bail. In our submission that is just of no substance and that what has happened is that the whole lot of red headings, if I may use that expression, have been pulled into the matter. The matter has been clouded and confused by issues which are on analysis not really relevant to the crucial issue and that is viewed individually, looked at each one of the accused individually, having regard to the nature of the case against that accused, having regard to the strength or weakness of the case against the accused, having regard to the personal position of that accused in all the (20) circumstances should they be given bail. My Learned Friend has not dealt with it, other than in generalities and our submission is that they should get bail and we ask Your Lordship to order that bail be given.

HOF : Mnr. Jacobs, wat sê u van paragraaf 4 op bladsy 5?

MNR. JACOBS : Paragraaf 4 ... (Hof kom tussenbei)

HOF : Die betoog is dat daar 'n bewering deur die prokureur-generaal was dat hy nie meer daarop staatmaak dat die veiligheid van die Staat in gedrang kan kom as die beskuldigdes vrygelaat word nie? (30)

MNR. JACOBS : Hier is twee aspekte wat ek dan hierso vir die

... / Hof

Hof wil sê. Die eerste aspek wat ek vir die Hof wil noem is, dat dit is nie nodig vir die prokureur-generaal om 'n verklaring in te gee nie, want die verdediging het sy verklaring wat hy aanvanklik gemaak het voor die Hof geplaas in die uitspraak van Sy Edele ELOFF, R. wat voor u geplaas is. Daarom sal u onthou my betoog was ter aanvang ook gewees dat in daardie het ek aanhalings aangehaal uit daardie verklaring twee punte, dat ... (Hof kom tussenbei)

HOF : Nee, dit begryp ek heeltemal goed en ek het dit ook afgeskryf. Nou sê hulle hier ja, maar die situasie het verander sedert die prokureur-generaal sy eedsverklaring gemaak het, want ons het op Vrydag, 7 Maart of net daarna met hom gaan praat en hy neem nie meer daardie standpunt in nie. Dit was nou eintlik die betoog. Met ander woorde, dat julle uit twee monde praat, jy en die PG? (10)

MNR. JACOBS : Met alle respek, die verklarings wat hier ingehandig is, is almal met die PG - die PG was geken gewees en dit was gevoel gewees dat daardie verklaring is voor die Hof, hy hoef nie nog 'n verdere verklaring te maak nie. Die tweede aspek is, na sekere inligting aan hom beskikbaar gestel is, het dit geblyk dat hy hou by daardie verklaring en dan is daar verdere verklarings ingehandig. Dit is deur My Geleerde Vriend hierso gestel dat verdere verklarings is ingehandig, hoewel die prokureur-generaal miskien sê daar gaan nie verdere verklarings ingehandig word nie. My respekvolle submissie is, hier is ook nie 'n verklaring om hierdie aspek te dek nie, behalwe dat hier in paragraaf 4 gesê is dat dit geglo word, want die inligting waaroor die prokureur-generaal beskik is hierdie inligting wat ook - onder andere hierdie wat voor die Hof gelê is en hulle is met daardie doel ook dan voor die Hof gelê. Ek mag net hier as 'n finale punt noem, my opdrag (20) (30)

... / hierso

hierso om die borg te betwis, is nie op my eie beslissing geneem nie. Dit is geneem - die beslissing is geneem deur die prokureur-generaal en dit is aan my opgedra om hierso voort te gaan.

HOF : En ook dat u dit moet voordra op die wyse wat u dit voorgedra het?

MNR. JACOBS : Dit is reg. Die prokureur-generaal het ook insae gehad in elkeen van hierdie verklarings. Ek kan dit nie verder as dit neem nie, want soos ek sê my opdrag is om hierdie aansoek te bestry. My opdrag is so gegee. Die verklarings(10) is so gegee en soos ek sê om 'n nuwe verklaring van die prokureur-generaal te verkry was nie nodig gewees onder die omstandighede waar gesteun word en dat daar ander verklaringvvan hom voor die Hof gelê was nie. Daardie punt wat gemaak word dat ons verwys het in ons hoofde na, die stelling maak dat ons aanvaar, die nuwe aansoek kan kom voor hierdie Hof as 'n faktor dat die noodtoestand opgehef is, nie dat ons aanvaar dat die hele situasie het in die land gestabiliseer nou omdat die noodtoestand opgehef is nie, maar ons erken dat dit is 'n faktor wat die verdediging regverdig om hier by die Hof te (20) kom, want die verdediging, is my respekvolle submissie, kan nie na hierdie hof toe kom met hierdie aansoek, as hulle nie met nuwe inligting kom nie en om hierdie Hof jurisdiksie dan te gee om hierdie aansoek te hoor, het ons aanvaar dat die opheffing van die noodtoestand is 'n faktor wat 'n nuwe faktor is en soos u sal sien is my betoog dan daarop, dit is maar net 'n faktor, dit is nie <u>per se</u> die hele kwessie nie of hele geskilpunt nie, dit is maar 'n faktor by die beoordeling van die veiligheidstoestand. U sal sien ook daar daar word verwys na Sy Edele die president se stellings daar dat alhoewel (30) die noodtoestand opgehef is, beteken dit ook nie - uit daardie

... / selfde

selfde verklaring van Sy Edele die president blyk dit baie duidelik uit dat selfs daarvolgens is daar nog veiligheidsrisiko's wat voortgaan en dat mense aangestig word daartoe. Op bladsy 209 van die stukke is dit.

HOF : Nee, ek het u nie gevra om dit oor te betoog nie. Ek wou u net vra ten aansien van paragraaf 4 op bladsy 5 en die betoog van mnr. Chaskalson ten aansien daarvan.

I reserve judgment on this application. I will do my utmost to deliver judgment at 09h00 on Monday morning. This case will resume in the ordinary way. The leading of evidence(10) will be continued tomorrow morning at 09h00.

COURT ADJOURNS UNTIL 21 MARCH 1986.

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... / JUDGMENT