

**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION
DURBAN**

Reportable/Not Reportable

CASE NO: 10730/21

In the matter between:-

TREVOR GOPAL

FIRST APPELLANT

SHAHEEN GOPAL

SECOND APPELLANT

and

THE STATE

RESPONDENT

This judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for hand-down is deemed to be 14h00 on 21 February 2022

ORDER

MOODLEY J

1. The appeal against refusal of bail to the appellants by the court a quo succeeds.
2. The decision of the magistrate in the court a quo is set aside.
3. The appellants are granted on bail pending their trial in the amount of R10 000 each, subject to the following conditions:

- (i) the appellants are to reside at their residential addresses as furnished to the investigating office until the conclusion of the trial;
- (ii) the appellants are directed to report to SAPS at the Phoenix Police Station every Friday between the hours of 06h00 and 18h00;
- (iii) the appellants shall not leave the magisterial districts of Verulam and the greater Durban area without informing the investigating officer; in his absence, the head of the detective section and/or the station commissioner should be informed;
- (iv) the appellants shall forthwith surrender to the investigating officer their passports or any other travel documents;
- (v) the appellants shall not contact, interfere with and/or intimidate any state witness reflected on the charge sheets or in documents furnished by the state to the defence, whether in person or by means of:
 - (a) any cellphone or landline telephone;
 - (b) email, Whatsapp, sms, or any form of electronic communication.

JUDGMENT

Delivered on 21 February 2022

[1] In July 2021 KwaZulu-Natal was racked by acts of violence, looting and attacks with overtones of racial tension, in which many persons were injured or died. The appellants were arrested on 24 August 2021 in connection with one such incident which occurred on 14 July 2021 in the Phoenix area, during or arising from which one person died and several people were injured. They appeared with three co-accused in the Magistrates Court, Verulam on 1 count of murder read with S51(1) and Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997, 5 counts of attempted murder, 1 count of public violence and 1 count of theft out of a motor vehicle. The appellants' co-accused were granted bail but they were refused bail on 12 October 2021, and appeal to this court against that refusal. The appeal is opposed by the State.

Argument

[2] Mr J Howse SC who represented the appellants in this appeal, submitted that the learned magistrate lost sight of the main purpose of bail which was to ensure that the accused stands trial, and where there are clear indications that he will do so, refusal of bail is wrong. He pointed out that bail is also intended to strike a balance between the interests of society and the liberty of the accused, who is presumed innocent pending the outcome of his trial. He contended that despite there being little evidence to sustain the charges which brought the bail application under Schedule 6, the magistrate relied on the prima facie value of the DPP's certificate to maintain that the bail application remained an application under Schedule 6. Mr Howse contended further that magistrate erred in concentrating on the murder charge in his judgment and holding that the evidence prima facie showed that the appellants participated in common purpose in the murder and attempted murder charges, although there was no evidence whatsoever that the appellants' actions or omissions fell within the prior agreement or conspiracy format of the doctrine of common purpose. Instead the magistrate held that by their presence at the scene where the violence was committed they 'complied' with the doctrine and must have been aware of the crime committed and associated themselves with it, although he did not specify what the acts of association were.

[3] Mr Howse also pointed out that the murder charge lacks particularity, which was prejudicial to the appellants' attempt to discharge the onus on them in the bail proceedings. He submitted further that the lack of strength in the State case was in itself an exceptional circumstance, in respect of which the magistrate misdirected himself by not finding that the appellants had succeeded in discharging the onus on them. He pointed out that the magistrate had not accorded proper weight to the fact that the IO accepted that the appellants were not flight risks. Instead the magistrate erred in finding that there was a likelihood that they would attempt to influence or intimidate witnesses to conceal or destroy evidence or cause public disturbance were they to be released on bail, when there was no evidence to support such conclusions. He therefore submitted that the appellants should be admitted to bail with appropriate conditions.

[4] In response Mr T Buthelezi, who also represented the respondent in the proceedings before the court a quo, contended that as the DPP's certificate constituted

prima facie proof of the charges preferred by the state, the appellants were obliged to discharge the onus imposed on them by proving the existence of exceptional circumstances. He submitted that in the DPP's certificate the count of murder is read with the provisions of S51 (1) and part 1 of schedule 2 of the CLA because the state alleges that the murder was pre-meditated and committed by a group of persons acting in common purpose. He argued that the evidence established premeditation on the part of Appellant 1, who knew that the complainants were coming to his tavern. He therefore gathered a crowd and incited them to attack the complainants when they arrived. Mr Buthelezi submitted that the deceased died as a result of the assault perpetrated consequent to the incitement by Appellant 1. Then the appellants burnt the taxi in which the complainants and deceased arrived. He submitted that the aforesaid conduct of the appellants constituted evidence of active participation and association with the other assailants in the attacks which resulted in the killing of the deceased and the destruction of the taxi, which established that the state case against the appellants was strong.

[5] Mr Buthelezi reiterated the IO's testimony that there was a likelihood that the appellants would interfere with the state witnesses. He also submitted that the CCTV footage had not been obtained and 'cannot be found', which also sustained the likelihood of the destruction of evidence by Appellant 1 should he be released. Mr Buthelezi emphasized the interest of the family members of the deceased and the community in this matter. In conclusion he submitted that the same considerations and arguments applied to Appellant 2 as he was the brother of Appellant 1, and the appeal should therefore fail.

The law and relevant legal principles

[6] Section 65 (4) of the CPA provides :

'The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.' There is no provision for furnishing additional information to the court hearing the appeal. In *S v Ho, McEwan* J pointed out that it is 'incumbent upon an appellant or his legal representative to place the relevant facts fully before the magistrate

when the application for bail is made or, if any such facts are not known to such legal representative, to take steps under sub-s (2) when they become known to him. It is not competent to lay them before the appeal court by way of affidavit, nor is it proper to attempt to introduce them by way of statements from the bar.¹ An appeal must therefore be determined within the constraints of the record which includes the court a quo's judgment.

[7] In *S v Barber*² Hefer J provided the following guidelines for a bail appeal:

'It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application. This Court has to be persuaded that the magistrate exercised the discretion which he has, wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, no matter what this Court's own views are, the real question is whether it can be said that the magistrate had the discretion to grant bail but exercised that discretion wrongly.'

It is therefore trite that an appeal court must be persuaded that the court a quo exercised its discretion incorrectly, or misdirected itself materially on the facts or legal principles, before it may consider the issue of the grant of bail afresh. Where a court of appeal sets aside a magistrate's refusal to grant bail, it is obliged in terms of s 65(4) to give the decision which the magistrate should have given. However, this does not mean that an appellant should be released on bail.³

[8] In *S v Porthen & others*⁴ Binns-Ward AJ said that there could 'be no quarrel with the correctness of the observations of Hefer J in *Barber* as a general proposition'. Binns-Ward AJ nevertheless considered it necessary to point out that a court hearing a bail application (ie, the court a quo) exercises a wide as opposed to a narrow (or strict) discretion. At [16] the following was said with reference to *S v Botha en 'n Ander*⁵: 'Insofar as the quoted dictum in *S v Barber* (supra) might be amendable to be construed to suggest that the appellate court's power to intervene in terms of s 65(4) of the CPA is strictly confined, in the sense of permitting interference only if the magistrate has misdirected him- or herself

¹ 1979 (3) SA 734 (W) at 737G

² 1979 (4) SA 218 (D) 220E–H

³ *S v Green & another* 2006 (1) SACR 603 (SCA) at 609i–610d

⁴ 2004 (2) SACR 242 (C) at [7]

in the exercise of his or her discretion in the narrow sense, I consider that it would be incorrect to put such a construction on the subsection; certainly in respect of appeals arising from bail applications made in terms of s 60(11)(a) of the CPA. I am fortified in this conclusion by the manner in which the Supreme Court of Appeal dealt with the bail appeal in Botha's case supra. See paras [21]–

[27] of the judgment. It is clear that the Appeal Court undertook its own analysis of the evidence and came to its own conclusion that the appellants had not discharged the onus on them in terms of s 60(11)(a) of the CPA. (The fact that the appeal in Botha's case was an appeal from a decision of a bail application by the High Court as the court of first instance does not affect the principle in issue.)'

[9] At para 17 of *S v Porthen & Others* (supra) *Binns-Ward* AJ observed further that it remains necessary to

'be mindful that a bail appeal, including one affected by the provisions of s 60(11)(a), goes to the question of deprivation of personal liberty. In my view, that consideration is a further factor confirming that s 65(4) of the CPA should be construed in a manner which does not unduly restrict the ambit of an appeal court's competence to decide that the lower court's decision to refuse bail was "wrong".'

I align myself with the aforesaid comments in my determination of the present appeal.

Proceedings before the court a quo

[10] It was common cause before the court a quo that the bail application fell within the purview of the provisions of Schedule 6 of the CPA, and that the provisions of s 60(11)(a) applied to the application for bail. S 60(11) (a) of the CPA provides that where an accused is charged with an offence referred to in Schedule 6:

'the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.'

It was also common cause that the appellant bore the onus to establish, on a balance of

⁵ 2002 (1) SACR 222 (SCA)

probabilities, that there are exceptional circumstances which in the interests of justice permit his release on bail. In other words, the exceptionality of the circumstances must be such as to persuade the court that it would be in the interests of justice to grant bail.

Summary of the pertinent evidence before the court a quo

[11] The appellants did not testify at the application for bail, but elected to file affidavits in support of their application in which they declined to deal with the merits of the charges. In his affidavit, 52 year old Appellant 1 alleged that he had no pending cases and set out a list of his previous convictions, some of which were older than 20 years. In paragraph 9, he set out details of his personal circumstances, his family, and his substantial business operations and immovable assets. In paragraphs 10 -15 he furnished his responses to the provisions of s60(4)(a) – (e) of the CPA, averring that he does not have a propensity to commit crime, he is not a flight risk, and that there is no allegation that he has or a likelihood that he will interfere with witnesses or the investigation.

[12] Appellant 1 also denied that his release on bail would jeopardize the criminal justice or bail system and pointed out that he had cooperated with the police. Insofar as public interest is concerned, Appellant 1 submitted that there were no exceptional circumstances that justified the refusal of bail. In conclusion he submitted that the cumulative effect of all the circumstances advanced by him, constituted exceptional circumstances which permitted his release on bail in the sum of R10 000 for bail, and that he was prepared to abide by any reasonable condition imposed if he was granted bail. (It is common cause that Appellant was at the time facing other charges, and has since been admitted to bail in respect of those charges.)

[13] Similarly 50 year old Appellant 2 furnished details of his previous convictions, which he stated were older than 20 years, his personal circumstances, his family, his business and immovable assets. In addition he described his medical conditions, alleging that he was consequently at risk if he were to remain in detention. Paragraphs 10 -14 of his affidavit mirrored that of Appellant 1 in respect of his submissions on s60(4)(a) – (e). In conclusion Appellant 2 alleged that his business interests, medical condition and his cooperation with the police in handing himself in, cumulatively with the other circumstances he advanced, constituted exceptional circumstances which permitted his release on bail in the sum of

R10 000 for bail, and that he was prepared to abide by any reasonable condition of bail imposed.

[14] In opposing bail, the State relied on the identical affidavits in respect of each accused filed by Sgt M E Cele, the investigating officer ('the IO'). In respect of the factual circumstances leading up to the events that form the bases of the charges against the appellants, the IO described the events preceding the arrival of the complainants in the taxi in which they were travelling at Appellant 1's tavern. The taxi was damaged before they arrived and when they arrived at the tavern some of the complainants inspected the damage to the taxi while others went into the tavern. At that stage they were assaulted by a group of Indian males who carried sjamboks, sticks and firearms and shots were fired, and the taxi was set alight. The complainants ran away but the deceased who was sleeping inside the taxi 'was removed by an ambulance from the scene' to hospital where he died.

[15] The IO's reasons for his opposition to bail were:

1 the crime committed is serious: it caused public violence which resulted in the death of the deceased and civil unrest which may harm the economy and cause racial strife.

2 Although the accused were not flight risks, they may interfere with the state witnesses. The accuseds' lives were also in danger and if released on bail, they may be killed for revenge.

3 the accused have 'many cases related to violence' which is also an element of the charges for which they have been arrested. The accused incited public violence which caused the death of the deceased and the burning of property belonging to another person.

4 There is strong evidence against the accused.

[16] Mr Buthelezi summarized the grounds of opposition by referring to the DPP's certificate in terms of s60(11A)(a) (Exhibit A), and confirmed that the charges faced by the accused were murder, attempted murder, theft and malicious damage and not the charge of public violence. He emphasized the fact that the attacks were racially motivated and there was a risk of further public violence motivated by a desire for vengeance, as the unrest in

Phoenix was widely publicized.

[16] Both appellants filed replying affidavits, in which they denied the specific allegations against them. They also pointed out that there had been no outcry or threats against them up to their arrests. Appellant 1 alleged further that the state case against him was exceptionally weak as he was only arrested after several identifications parades were held and he was eventually pointed out by a single witness.

[17] The IO testified during the bail proceedings in amplification of his affidavit. He admitted that the items stolen which formed the basis of the charge of theft had been recovered and that Accused 3 was implicated in the theft. He testified that he had a statement from an eye witness who had been in the crowd when Appellant 1 threw about R500 onto the ground and instructed members of the Indian community gathered there to 'strike' the occupants of the taxi, before the taxi arrived at the Appellant's tavern. The witness also stated that Appellant 1 had poured petrol on the taxi and set it alight. There was nothing else in respect of Appellant 1's involvement in the incident.

[18] The IO had no knowledge of how the deceased died or his injuries, and the post mortem report remained outstanding. Two of the complainants hid inside the tavern and others ran away. He conceded that Appellant 1 was not a flight risk but testified that there was a risk of a schedule 1 offence being committed and of interference with the witnesses who are his customers. He added that if appellant 1 were released on bail, there was also a risk of further public unrest and a risk to the appellant because he was the 'ring leader'. In respect of Appellant 2, the IO testified that there was the evidence of an eye witness who stated that Appellant 2 had been amongst the crowd when the assault began and he inserted a cloth into the petrol tank of the taxi and set it alight. There was no evidence that he had done anything else. Appellant 2 was also not considered a flight risk, but the same objections relating to further unrest and risk to the appellant as with the Appellant 1 were raised. However the CCTV footage from the tavern had not yet been retrieved by the police.

[19] Under cross-examination Mr Barnard, who represented the appellants before the

court a quo, elicited confirmation from the IO that the only evidence he had from the single witness is that Appellant 1 incited the crowd and that both Appellants set the taxi alight. The IO also conceded that if the complainants were attacked by the Indians who arrived later, it is possible that they did not hear the comments allegedly uttered by Appellant 1 which were construed as incitement to violence. He also admitted that there had been no attacks on the appellants and no violence in response to the release of others arrested in connection with the July riots, but pointed out that they may yet be such a reaction to the release of the appellants.

[20] In response to questions by the magistrate, the IO confirmed that he had no evidence against the appellants (and their co-accused) relating to the death of the deceased, and that the cause of his death would only be confirmed by the post mortem report. He confirmed further that there was also no evidence that any of the accused attempted to kill anyone. He had also not obtained the SAP 69 reports on the appellants. The matter was adjourned for the previous convictions of the appellants to be confirmed or clarified. It was subsequently ascertained that many of the previous charges were withdrawn and that most of the previous convictions were older than 10 years and /or not relevant to the elements of the current charges.

Judgment of the court a quo

[21] Although the learned magistrate questioned the prosecutor about the framing of the murder charge in the charge sheet and pointed out that there was no reference to the facts which brought the charges within the purview of Schedule 6, specifically the absence of any reference to common purpose or pre-meditation, in his judgment he nevertheless accepted that the state 'alleged that the murder was committed by a group of persons acting in the execution for furtherance of a common purpose or conspiracy'. However a perusal of the record indicates that the term 'common purpose' and the allegation that the murder of the deceased was premeditated were heard for the first time in the bail application when Mr Buthelezi was presenting his argument to the court a quo, which triggered the interrogation by the magistrate. However, contrary to his reservations which he expressed in his prolonged exchange with Mr Buthelezi, and which in my view had substantial merit, the

magistrate subsequently also merely accepted the DPP's certificate as prima facie proof that that the appellants faced a charge or charges which fell within the ambit of Schedule 6.

[22] Although Mr Buthelezi has submitted that this court should do the same, I am not persuaded that the magistrate was correct in doing so because he recognised the lack of particularity in the charges as framed. He stated in his judgment that 'The written confirmation was also lacking in particularity and detail against each of the applicants', and recognized the significance of such shortcoming in respect of the onus on the applicants. The charge sheet for murder merely refers to the provisions of s 51(2) 52(2) 52A and 52B of the CLA but does not specify why the charge is read with those provisions of the CLA nor are there any details of allegations which bring the charge under those provisions. Similarly Exhibit A merely refers to 'Murder read with s51(1) and part 1 of schedule 2 of the CLA.'

[23] I am therefore in agreement with the submission by Mr Howse, that the appellants were prejudiced in their attempts to discharge the onus on them by the lack of particularity in the charge of murder. Although the magistrate was alive to this material shortcoming, in his judgment he concluded that the appellants 'knew perfectly well that they were charged with murder wherein it is alleged that the offence was committed by a group of persons acting in the furtherance of a common purpose' and '...it would have been within their contemplation that the nature of the murder ...within the ambit of schedule 6.' Similarly I am of the view that the magistrate failed to consider that in the allegations in the charges of attempted murder there is no reference whatsoever to the appellants or their co-accused acting in common purpose. Further there was nothing in the IO's evidence that sustained the allegation of common purpose nor did he present any evidence about a conspiracy to murder. In fact, he even conceded that the Indians who arrived after Appellant 1 incited the attack, may not have heard his incendiary remarks, although they assaulted the complainants. Consequently as the magistrate failed to take these relevant factors and evidence into consideration or accord them appropriate weight in the exercise of his discretion, his misdirection must redound to the benefit of the appellants.

[24] It is also significant that, as recorded earlier in this judgement, in response to questions by the magistrate himself, the IO confirmed that he had no evidence against the appellants (and their co-accused) relating to the death of the deceased or that any of the accused attempted to kill anyone. In my view, it was highly relevant in the determination of whether bail should be granted to the appellants, that the cause of death would only be confirmed by the post mortem report which was still outstanding, given that there was no other evidence as to how the deceased died. Consequently Mr Buthelezi's submissions that the deceased died as a result of the assault incited by the appellants acting in common purpose or that his death was premeditated are without reliable foundation.

[25] The magistrate was also well aware that there was no evidence relating to the cause of death of the deceased or to the nature of the assaults or injuries he suffered. He firmly stated to Mr Buthelezi that the cause of death was 'not even established on a prime facie level'. He even questioned 'What if he passed on due to a totally unrelated event?' Yet he nevertheless concluded that evidence 'on a prime facie level' established the appellants had the requisite *mens rea* and had performed some act of association which manifested the common purpose to commit murder. I am therefore also in agreement with the submission that there was no evidence whatsoever that the appellants' actions or omissions fell within the prior agreement or conspiracy format of the doctrine of common purpose in respect of the charge of murder. Not even the act of setting the taxi alight, as submitted by Mr Buthelezi, sustains such a conclusion.

[26] The magistrate has recorded the sequence of events wrongly in his judgment. He stated that that after the complainants arrived at the tavern, Appellant 1 incited the crowd he had gathered by making derogatory racial remarks and threw down money to encourage the attack on the complainants. Persons in the crowd then attacked the complainants and fired shots. The IO however testified that Appellant 1 had incited the crowd and thrown down the money before the taxi arrived at the tavern. It is appropriate to note at this juncture, that I find it discordant and inconsistent with the allegations against Appellant 1 that, according to the IO, some of the complainants escaped further harm by running into the tavern. If the appellant who owned the tavern intended them harm, how did they protect themselves by running into his premises. In my view this evidence

therefore impacts adversely on and weakens the State case.

[27] The magistrate also pertinently questioned why the video footage had not been retrieved if it was so significant to the state's case. The IO could not explain why the video footage had not been retrieved although a specific person had been tasked with doing so. Although it was put to the IO under cross-examination that Appellant 1 was prepared to hand over any footage of the incident, the magistrate concluded that 'it seems unlikely that he will willingly do so for unknown reasons'. He however furnished no reason for such conclusion, and I am unable to find any evidence or facts that sustain this conclusion. I am also not persuaded by Mr Buthelezi's argument that as the video footage 'cannot be found', there was the likelihood that Appellant 1 would destroy evidence if granted bail.

[28] Although the circumstances from which the charges arose were fraught with unrestrained anger and public indignation, the courts have an obligation to maintain judicial equanimity and independence, and to remain impervious to public outrage, except insofar as the interests of the public may be relevant to the application for bail in the provisions of section 60 of the Criminal Procedure Act 51 of 1977 (the CPA'). The learned magistrate expressed similar comments in his engagement with counsel during the proceedings before him. However despite asserting the need to assess the facts dispassionately, in his judgment he seems to have accorded an inordinate significance to the violence and racial tensions when considering the likelihood that the release of the appellants on bail will disturb the public order and undermine the public peace and security. Yet all 5 applicants for bail faced the same charges which arose under the same circumstances, the objections to their release on bail were exactly the same, and three were granted bail although the state opposed bail in respect of accused 3. Further the allegations of common purpose and premeditated murder would also have been relevant to the granting of bail to these 3 accused.

[29] In his engagement with counsel, the learned magistrate effectively (and correctly in my view) questioned the paucity of the state case, especially in respect of the charges that brought the bail application within the ambit of Schedule 6. Nevertheless in his judgment he stated that the 'State appears, on the face of it, to have a strong case against applicants 4

and 5', being the appellants herein. In my view the learned magistrate, having properly recognised the weaknesses in the state case in respect of the Schedule 6 charges, erred in holding that the appellants had failed to establish exceptional circumstances which permitted their release on bail. To the contrary he ought to have exercised his discretion in favour of admitting them to bail with appropriate conditions, being mindful that the purpose of bail is to strike a balance between the interests of society (the accused should stand his trial and there should be no interference with the administration of justice) and the liberty of an accused (who, pending the outcome of his trial, is presumed to be innocent), especially as the presumption of innocence operates in favour of an applicant even where there is a strong *prima facie* case against him, although it does not create an absolute right to be admitted to bail.

[30] In *S v Fourie* ⁶ the court stated that:

'It is a fundamental principle of the administration of justice that an accused person stand trial and if there is any cognisable indication that he will not stand trial if released from custody, the court will serve the needs of justice by refusing to grant bail, even at the expense of the liberty of the accused and despite the presumption of innocence.'

In *S v Branco* ⁷ Cachalia AJ stated:

'[A] court should always consider suitable conditions as an alternative to the denial of bail. Conversely, where no consideration is given to the application of suitable conditions as an alternative to incarceration, this may lead to a failure to exercise a proper discretion.'

[31] Having considered the evidence before the court a quo, I am of the view that the learned magistrate misdirected himself in assessing the strength of the state case and the risk to public interest and order should the appellants be admitted to bail. I am satisfied that within the constraints of the evidence before the court a quo it was apparent that the state case was weak. Therefore the magistrate ought to have exercised his discretion in favour of granting bail with suitable conditions. In the premises this court is at liberty to interfere with the decision of the court a quo, and order that the appellants be admitted to bail.

⁶ 1973 (1) SA 100 (D) at 101G

⁷ 2002 (1) SACR 531 (W) at 537a–b

Order

[32] In the premises the following order do issue:

1. The appeal against refusal of bail to the appellants by the court a quo succeeds.
2. The decision of the magistrate in the court a quo is set aside
3. The appellants are granted on bail pending their trial in the amount of R10 000 each, subject to the following conditions:
 - (i) the appellants are to reside at their residential addresses as furnished to the investigating office until the conclusion of the trial;
 - (ii) the appellants are directed to report to SAPS at the Phoenix Police Station every Friday between the hours of 06h00 and 18h00;
 - (iii) the appellants shall not leave the magisterial districts of Verulam and the greater Durban area without informing the investigating officer; in his absence, the head of the detective section and/or the station commissioner should be informed;
 - (iv) the appellants shall forthwith surrender to the investigating officer their passports or any other travel documents;
 - (v) the appellants shall not contact, interfere with and/or intimidate any state witness reflected on the charge sheets or in documents furnished by the state to the defence, whether in person or by means of:
 - (a) any cellphone or landline telephone;
 - (b) email, Whatsapp, sms, or any form of electronic communication.

Moodley J

APPEARANCES

Dates of Hearing :	7 February 2022
Date of judgment :	21 February 2022
For Appellant:	Mr J E Howse SC

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