

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A110/2024

DATE: 09-10-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED,

DATE 16/10/2024

SIGNATURE 

10 In the matter between

NICHOLAS NENZHELE & OTHERS

Applicants

and

STATE

Respondent

J U D G M E N T

YACOOB, J: The four appellants appeal the refusal of bail by the Regional Magistrate on 25 June this year. The four
20 appellants are all police officers, members of the South African Police Services, with various lengths of service. The first three appellants are constables and the fourth appellant is a sergeant.

They face charges of robbery with aggravating circumstances and extortion, which allegedly were

committed while they were on duty. It is common cause that schedule 6 applies and that Section 60(11) of the Criminal Procedure Act applies to the application. As a result, the appellants bear the onus of demonstrating that exceptional circumstances exist which make their release on bail in the interest of justice.

The appellants contend that the magistrate ought to have found that exceptional circumstances exist, which tilt the balance, making it in the interest of justice to release
10 each of them on bail. It is also common cause that this court may not set aside the decision of the court *a quo*, unless satisfied that the magistrate did not properly exercise their discretion in making the decision.

The appellant's representative relies on the fact that every bail decision has to take into account the rights encapsulated in the constitution and the obligation of the court to [indistinct] spirit, purpose and object of the bill of rights, and develop the common law in the interest of justice. That much is obvious.

20 However, against that must be balanced the policy choice made by the legislature that, in certain narrow circumstances, it is the accused who must show that it is in the interest of justice that he or she must be released on bail, which is the case in this matter.

The appellants each set out in little detail their

personal circumstances and rely on these to contend that a finding should have been made that they have established exceptional circumstances and that it is in the interest of justice to permit their release. Each appellant sets out the length of his employment with the South African Police Service and his remuneration and that he supports family members.

Each states that he is not a violent person and that this is his first brush with the law. Each says that he does
10 not intend to interfere with witnesses or the investigation. Not one of the appellants sets out anything that is out of the ordinary and specific to him, apart from the ages of the children, whether he is married, the length of his employment and so on.

Against this must be balanced the evidence of the investigating officer that the appellants were found on the scene by the sergeant who went to the scene, Sergeant Rushad or Rashad, and that the complainant was afraid to point them out because they were there at the scene, and
20 rather went to the police station with the sergeant in order to say who they were.

Also, the evidence that the appellant's ordinary duties as part of the infrastructure unit, would not have required them to be at the shop where the robbery took place which they are alleged to have committed, must be

taken into account. It must be noted that the appellants stated that they were carrying out their duties at the time of the offence, but do not say whether they were carrying out their duties at the same place where the robbery allegedly happened.

Naturally they are entitled to their rights to remain silent. But they must also bear the consequence of their failure to discharge the onus of showing exceptional circumstances. The magistrate's decision indeed came
10 down to the likelihood that the appellants may interfere with the witnesses or the evidence, and the effect on the administration of justice.

I am satisfied that the magistrate did not misdirect herself. Nothing in the evidence of any of the four appellants outweighs that, or amounts to an exceptional circumstance in favour of any of the four appellants which
will permit them release on bail in this particular context.

The personal circumstances set out in the affidavit are commonplace, and there is nothing before me which
20 shows that the context of this particular matter, or these particular appellants renders them exceptional, although there may well be situations in which these circumstances do become exceptional.

But, it is for the appellants to put that evidence before the court, which allows the court to come to the

conclusion that the circumstances become exceptional. In this case there is no evidence that supports that conclusion. There have been situations where the combination of the stable personal circumstances, combined with the applicant being able to establish that they are not a flight risk, as well as that there is no risk that they will interfere with the witnesses or the investigation, or otherwise compromise the administration of justice, while they may be commonplace elements individually, have been found in combination to be
10 exceptional circumstances.

However, in this case that particular combination does not exist, and there is no combination of circumstances that I can find for any of the appellants which amounts to exceptional circumstances.

I am therefore satisfied that I cannot interfere with the decision of the magistrate. The application is dismissed.

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YACCOB, J

JUDGE OF THE HIGH COURT

DATE: 15/10/2024