



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, MAKHANDA)**

**Reportable**

**Case No.: CA&R 193/2023**

**Matters heard on: 16 October 2024**

**Judgment delivered on: 19 November 2024**

In the matter between:

**LOUIS STEFANUS LATEGAN**

**Appellant**

And

**THE STATE**

**Respondent**

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**JUDGMENT**

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**Zono A J**

**Introduction**

[1] This bail appeal emanates from the Aberdeen Magistrates Court under Case Number A573/2023. I must mention at this early stage that two bail applications were made by and on behalf of the appellant and such bail applications were made at different times, and both of them were unsuccessful.

[2] With regard to the first bail application, a judgment was delivered on 14 September 2023 pursuant to bail proceedings having been proceeded with by way of affidavits. Parties filed their affidavits for consideration by and the court *a quo* which was duly addressed by counsels representing the respective parties. The first bail application did not succeed.

[3] Bail application based on new facts was launched in the same Magistrates Court. Similarly, affidavits were exchanged and the court *a quo* was addressed based on those affidavits. That bail application too did not succeed as the judgment thereon was delivered on 22 August 2024. Relevant to this judgment, a notice of appeal was delivered on 12 September 2024, wherein the appellant set out his grounds of appeal. It is this appeal that came before me on 16 October 2024. Both parties were represented in court.

### **Brief background**

[4] The appellant faces multiple charges of rape<sup>1</sup> and trafficking persons in contravention of Section 10(1) of the Prevention and Combating of Traffic in Persons Act of 2013<sup>2</sup>; counts of unlawful possession of more than 200 cartridges of a firearm in contravention of Section 91(1) of the Firearm Control Act 60 of 2000; counts of assault with intention to do grievous bodily harm<sup>3</sup>.

[5] The court *a quo* ruled that the charges against the appellant fall within the ambit of Schedule 6. The first bail application was accordingly dealt with in terms of Section 60(11) (a) of the Criminal Procedure Act 51 of 1977 as amended. Similarly, the second bail application was dealt with under Schedule 6, in terms of Section 60(11) (a) of the Criminal Procedure Act.

[6] Section 60(11) (a) of the Criminal Procedure Act provides:

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<sup>1</sup> Where he is accused of raping several women at different times.

<sup>2</sup> Where several persons were alleged to have been trafficked at different times.

<sup>3</sup> Where different persons were allegedly assaulted at different times.

*'Notwithstanding any provision of this Act, where an accused is charged with an offence referred to—*

*(a) 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 interest of justice permit his or her release.'*

[7] In what follows I deal with the brief synopsis of the first bail application. That exercise is important because in dealing with the new facts one needs to know what was before court in the first instance. Parties exchanged affidavits and elected not to lead *viva voce* evidence.

## **Brief synopsis of the first bail application**

### **(1) Founding affidavit**

[8] The appellant alleged that he was 41 years old, having been born in Graaff-Reinet. He grew up in his family farm in Graaff-Reinet and Aberdeen district and he is a well-known resident therein. He is the oldest son of his parents. His father passed away and his mother, who is suffering from cancer, lived in Cape Town. He is a member of Dutch Reformed Church Congregation in Aberdeen.

[9] Appellant's marriage was dissolved by a decree of divorce on 6 October 2020. From his marriage, two children were born on 28 August 2015 and 7 March 2019 respectively. His children are residing with their mother who has since remarried. His access to his children is regulated by a court order.

[10] The appellant left school before Matric and started farming at the age of 18. He asserts that he earns a living from farming. He contends also that he farmed with his grandfather who has since passed away and he has since been farming on his

own on the farms - New Farm and Wynlaagte, of which he is a beneficial owner. He further alleges that these farms are registered in a Trust of which he is a trustee and only beneficiary.

[11] The farms are mortgaged in favour of Absa Bank to the tune of R530 000.00. The appellant placed on record that he is a small-stock farmer farming sheep and angora goats. He cultivates corn, maize and Lucerne when conditions permit. During the protracted drought period the appellant severely suffered a substantial loss on his stock and consequently had no recourse other than running up a substantial account with the "Co-op".

[12] The appellant significantly placed on record that he has a financial obligation towards the Co-op and desperately needs to generate his income which he is unable to do whilst incarcerated. The appellant lamented about substantive farming loss incurred through his incarceration.

[13] The appellant recorded that he has substantial and significant amount and value of movable asserts and livestock. He categorically recorded that *"owing to my incarceration, I was unable to timeously cultivate wheat or other crops. This resulted in considerable losses due to there being no current unharvested crops for the season's market"*.

[14] The appellant alludes in his founding affidavit to numerous perils challenging his farming, citing food damage in his farm and urgent need of income. He records that *"The loss of an entire season cannot be recouped. Should my incarceration continue much longer, I will surely miss another season of planting and reaping a lucrative harvest. And so the devastating losses will recur year after year. In addition, tons of seeds are deteriorating and being infected by mite, thus being rendered worthless"*. He further contends that *"The upshot of this prospect is that I will forfeit the opportunity to earn an income from my crops, certain for the next season, and probably thereafter. My farms will go under, my income flow will cease, my children, my mother and my workers and their families will suffer direly; my animals will perish. The prospect is too ghastly to contemplate."* He lamented about suffering an

irreparable harm should he remain in custody/incarceration. He anticipated in his founding affidavit what he calls “*catastrophic consequences*” as a result of his incarceration.

[15] The appellant was replete in emphasising how serious and prejudicial would it be should he be kept in custody. He stated all sorts of harms he would suffer as a result of his absence in his farms. Auctions, market, sales etcetera were central points in his founding affidavit to underscore how he would lose out on income. He even stated that he was on a verge of losing everything as a result of his incarceration. At least appellant sufficiently placed before court *a quo* the nature of harm and prejudice he would suffer as a result of his incarceration. Put differently, financial prejudice and ruin was a major point debated in appellant’s founding affidavit. It is not necessary at this stage to refer to the answering and replying affidavits.

### **Judgment on first bail application**

[16] In its judgment, the court *a quo* accordingly captures the financial and personal circumstances of the appellant. I need not repeat that under this heading as I have succinctly dealt with those circumstances in the preceding paragraphs. The court *a quo* does record appellant’s personal and financial circumstances and how the appellant alleges that he would suffer substantial harm if not released on bail. That appears at pages 3, 7 and 10 and other pages of the first judgment for bail application.

[17] At page 30 of the judgment the court *a quo* concludes as follows:

*‘When all the factors, including the personal circumstances of the appellant before court, are weighed up the applicant has not proved on a balance of probabilities that exceptional circumstances exist which permit his release from detention. His circumstances singularly as well as cumulatively do not amount to exceptional circumstances.’*

The bail was accordingly refused. That judgment still stands.

### **Bail application on new facts**

[18] The appellant in his founding affidavit states that he intends to place new facts before the court *a quo* which were not available to him at the time of the previous bail application which was heard in September 2023 and would on the basis of those facts and the facts already before the court *a quo* with regard to his previous bail application seek to be released on bail.

[19] The appellant raised the following in his founding affidavit as new facts:

19.1 Lengthy period in custody.

19.2 The management of his farming operations and the losses incurred.

19.3 Inability to raise finance.

19.4 Judgment against him.

19.5 Financial ruin.

19.6 The appellant in the same affidavit raised the issue of the Outshoorn matter and the fact that the investigations therein are concluded. He thereafter suggested some bail conditions and bail amount.

[20] It is my considered view that all of these facts are not new facts as envisaged by the provision notwithstanding that they are masquerading as such. The approach is fallacious and amount to a ruse or stratagem to revisit the facts that previously served before the court *a quo* in the first bail application but failed. A careful reference to facts that served before the court *a quo* during the first bail application in the preceding paragraphs plainly demonstrates that the purported new facts were considered by the court *a quo* during bail application. I am set out to briefly deal with

those facts hereinafter. All of these facts hinge on appellant's inability to attend to his farms.

### **Lengthy period**

[21] Appellant states that he was arrested on 3 July 2023 and has been in custody for more than a year as an awaiting trial prisoner. Nothing is said about his bail being decided on 14 September 2023. He considers that period as an inordinate lengthy delay that has a negative effect on his ability to attend to his farming operations and other income producing activities. Appellant's inability to attend to his farming operations and other income producing activities were dealt with in the first bail application. That fact is acknowledged by the appellant when he contends as follows in his founding affidavit, supporting bail application on new facts:

*'... ... I was deprived of my freedom and my ability to attend to my farming operations and other income producing activities as described in my previous bail application.'*

This put paid to whether or not this is a new fact.

[22] Regarding the lengthy period, I find this point unmeritorious. No time frame or stipulated time was ordered by the court *a quo* in the first bail application to be the time for his detention. It clearly intended to order the detention of the appellant until he is dealt with in terms of the law. I am not alone on this. Section 60(11) (a) of the Criminal Procedure Act provides:

*'11, .... Where an accused is charged with an offence referred to—*

*(a) 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.'*

[23] The appellant, like any other accused person may properly be dealt with in accordance with or in terms of the law during his trial. In effect the appellant was

remanded in custody pending the finalization of his criminal trial. The default legal position is that an accused person facing a Schedule 6 offence must be detained pending final determination of his or her trial. Any suggestion to the contrary may result in the absurdity.

[24] The Constitutional Court in *Cool Ideas*<sup>4</sup> held as follows about the interpretation of Statute:

*‘28 A fundamental tenet of statutory interpretation is that the words in a Statute must be given their ordinary grammatical meaning, unless to do so would result in an absurdity. There are three important interrelated riders to this general principle, namely:*

*(a) that statutory provisions should always be interpreted purposively;*

*(b) the relevant statutory provision must be properly contextualised;  
and*

*(c) all statutes must be construed consistently with the Constitution, that is where reasonably possible legislative provisions ought to be interpreted to preserve their constitutional validity. This proviso to the general principle is closely related to the purposive approach referred to above in (a).’*

[25] The purpose of this provision is to detain the suspect accused of a Schedule 6 offence until his trial is finalized. The only time he may be released from custody is when he demonstrates to the court that exceptional circumstances exist which in the interest of justice permit his or her release. This provision represents the gravamen of the legislature’s intensified battle against serious crimes. Bail applicants who are charged with offences mentioned in Schedule 6 have an uphill battle<sup>5</sup>. Once the accused fails to convince the court after having been given a reasonable opportunity

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<sup>4</sup> *Cool Ideas* 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC) paragraph 28.

<sup>5</sup> Hiemstra’s Criminal Procedure Act, pages 9-12, Issue 2.

that exceptional circumstances do exist which in the interest of justice permit his release from custody, the accused will invariably remain in custody until his trial is finalized.

[26] One last important point in this regard is the nature of a new fact in the context of a Schedule 6 offence. Even if it may be assumed that a prolonged investigation and trial is a new fact in the ordinary bail applications, under Schedule 6 offences it must be of such a nature that it constitutes an exceptional circumstance as envisaged in Section 60(11) (a) of the Criminal Procedure Act. It is unimaginable that prolonged trial preparations and proceedings in serious complicated crimes can morph into an exceptional circumstance. There is nothing unusual and extraordinary about that.

[27] As Lord Stern said in “*ex parte Daly*”<sup>6</sup>, “*In law, context is everything*”. This dictum was approved by the Supreme Court of Appeal in numerous judgments<sup>7</sup>. The first bail application was dealt with in the context of an accused/appellant herein who is facing multiple charges relating to rape of different women at different times; trafficking in different persons at different times; possession of more than 200 cartridges (evidence showed that there is a rifle that has been concealed); assault of different persons at different times with intent to do grievous bodily harm. It could not have been fathomed that trial preparations of cases of such a high magnitude and complexity can take short space of time. This is the context in which appellant’s first bail application was refused and appellant remanded in custody. Lengthy trial preparations and proceedings invariably occupied the mind of the court *a quo* when it was ceased with the first bail application. Therefore, I accordingly find that lengthy period is not a new fact. I reiterate that even if it was a new fact, it would still not constitute an exceptional circumstance in the context of Section 60(11) (a) of the Criminal Procedure Act.

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<sup>6</sup> R v Secretary of the State for the Home Department, *ex parts Daly* [2001] UKHL 26; [2001] 3 All ER 433 (HL) at 447A.

<sup>7</sup> Aktiebolaget Hässle and Another V Triomed (Pty) Ltd 2003 (1) SA 155 SCA paragraph 1; Minister of Home Affairs and Others v Scalabrin: Centre, Cape Town and Others 2013 (6) SA 421 (SCA) paragraph 89.

### **The management of farming operations and losses incurred and inability to raise finance**

[28] This ground too hinges on the farming operations and income producing activities which has negative impact on his financial progress and development of his farms. This is consequential upon appellant's inability to attend to his farms to perform his day to day activities. The losses the appellant complained of are directly linked to the refusal of the first bail application. When the first bail application was refused and the appellant remanded in custody, that had an inherent consequence on appellant being unable to attend to his day to day operations on his farms. His absence in his farms had an inevitable consequence of him losing income. In a nutshell, this ground presents nothing new as a fact. It was expressly and or impliedly dealt with during appellant's first bail application.

[29] The financial and income loss adumbrated under this heading was clearly foreseen and canvassed during the first bail application. The court *a quo* came to a conclusion that it does not constitute exceptional circumstance which in the interest of justice permits appellant's release. The only difference is that at that time his loss had yet not occurred, now it is alleged to have occurred, or is occurring.

[30] Detainee's inability to attend to his day to day financial operations in his farm has a direct bearing on the detainee's inability to raise finances. This ground too is not unusual and extraordinary to engender exceptional circumstances. Van Zyl J in *Peterson*<sup>8</sup> held "*when as in the present case, the accused relies on new facts which have come to the fore since the first or previous bail application, the court must be satisfied, firstly, that such facts are indeed new and, secondly, that they are relevant for purposes of the new bail application. They must not constitute simply a reshuffling of old evidence or an embroidering upon it. The purpose of adducing new facts is not to address problems encountered in the previous application or to fill gaps in the previously presented evidence.*" Once it is found that the facts in the second bail application are not new, bail application must fail on that basis.

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<sup>8</sup> S v Peterson 2008 (2) SACR 355 paragraph 57.

## Judgments and financial ruins

[31] This ground is a repetition of previous grounds dealt with above. Appellant's founding affidavit in the first bail application dealt with the possibility of appellant's financial ruin and destruction. It is the "*financial catastrophe*" he alluded to in his founding affidavit. It cannot now resurface as a new matter or fact. The appellant brought back those facts by subterfuge. I find that recycling of those facts cannot change their true nature as the facts that were previously dealt with in the first bail application. I am therefore unable to uphold this point.

[32] Having found that all what was raised in the court *a quo* as new facts were not at all new facts, the court *a quo* should have dismissed appellant's bail application and refused same on that basis. I accordingly come to a conclusion that this bail appeal cannot succeed only on the point that there was no new fact brought before the court *a quo*. Van Zyl J in *Peterson*<sup>9</sup> had this to say "*where evidence was available to the applicant at the time of the previous application but, for whatever reason, was not revealed, it cannot be relied on in the later application as new evidence. If the evidence is adjudged to be new and relevant, then it must be considered in conjunction with all the facts placed before the court in previous application and separately*"<sup>10</sup>. Facts placed before court during the first bail application are of upper most importance for the second bail application based on new facts.

[33] Even if I am wrong on the finding I made above, this bail appeal cannot succeed on other grounds. The starting point is the notice of appeal and the grounds raised therein which lack the necessary flair to establish exceptional circumstances which in the interest of justice permit appellant's release. The notice of appeal is a regurgitation of the grounds that were rejected by the court *a quo* during the first bail application. They are accordingly unmeritorious. I will revert to the ground of appeal later in this judgment.

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<sup>9</sup> S v Peterson 2008 (2) SACR 355 (C) paragraph 58.

<sup>10</sup> S v Vesmaas 1996 (1) SACR 528 (T) at 531 E-G.

## Bail appeal

[34] Bail appeal is governed by Section 65 of the Criminal Procedure Act 51 of 1977 as amended. The relevant subsections, for purposes of determination of this case, are subsection 1 and 4 which provide as follows:

### **‘Appeal to Superior Court with regard to bail**

*(1) (a) An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal as the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.’*

... ..

*(4) 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.’*

[35] Subsection 4 enjoins the court or a judge hearing the appeal to set aside the decision of the lower court refusing to admit appellant to bail only if it 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. Practically speaking, if I find that the court *a quo* was wrong in refusing to admit the appellant to bail, I am enjoined to grant him bail, fix bail amount and release him with appropriate conditions.

[36] I have dealt with the grounds upon which the appellant relied as new facts. It worth’s repetition that the appellant is aggrieved only by the second judgment of the court *a quo* which was determining appellant’s bail application based on new facts. I have dealt above with what the appellant considered to be new facts, which I found that they are not.

[37] It is fundamentally important that in cases where accused person is facing Schedule 6 offences, Section 60(11) (a) of the Criminal Procedure Act applies. The detainee can only be released from custody if the alleged new facts disclose the existence of exceptional circumstances which in the interests of justice permit the release of the detainee. Even if the new facts emerged during the custody of the detained accused person facing Schedule 6 offence, if they are of such a nature that they do not disclose the existence of exceptional circumstances which in the interests of justice permit the release of the detained accused person, they will not avail the detainee to the release.

[38] It is now trite that Section 60(11) (a) of the Criminal Procedure Act places a burden on the bail appellant to prove that exceptional circumstances exist which in the interests of justice permit his release. The *onus* is discharged on a balance of probabilities<sup>11</sup>. The exceptionality of the circumstances must be such as to persuade a court that it would be in the interests of justice to permit bail<sup>12</sup>. It is further trite that if there are no exceptional circumstances which in the interests of justice permit the release of the accused, the court is enjoined to order the detention of such an accused until his or her trial is finalised or evidence that satisfies the court that exceptional circumstances do exist is adduced<sup>13</sup>.

[39] The exceptionality of the circumstances must be with reference to the peculiar facts of the case. However, the law is settled that there is no definition that can be ascribed to the concept of exceptional circumstances. Labe J in *S v H*<sup>14</sup> held as follows:

*‘Exceptional circumstances must be circumstances which are not found in the ordinary bail application but pertain peculiarly . . . to an accused person’s specific application. What a court is called upon to do is to exercise all the*

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<sup>11</sup> *S v Yanta* 2006 (1) SACR 737 (TK).

<sup>12</sup> *S v Peterson* 2008 (2) SACR 355 (C) paragraph 56.

<sup>13</sup> *S v Nwabunwanne* 2017 (2) SACR 124 (NCK) paragraph 10; *Mtengwane v S* (CA&R91/2023) [2023] ZAECHMC 68 (12 December 2023).

<sup>14</sup> *S v H* 1999 (2) SACR 72 (W) at 77 E-F.

*relevant considerations . . . as a whole in deciding whether an accused person has established something out of the ordinary or unusual which entitles him to relief under Section 60(11).'*

[40] What must appear from the evidence is a circumstance or circumstances pertaining peculiarly to the accused person's specific application. General facts or circumstances applicable in the ordinary bail application are not without more satisfactory or sufficient to make accused person a candidate for bail under Section 60(11) (a) bail application. Exceptionality of the circumstances lies with the fact that they are unusual and out of the ordinary<sup>15</sup>.

[41] Generally speaking, "*exceptional*" is indicative of something unusual, extra-ordinary, remarkable, peculiar or simple different. There are of course, varying degrees of exceptionality, unusualness, extra-ordinariness, remarkableness, peculiarity or deference. This depends on their context and on the particular circumstances of the case under consideration. In *S v Peterson*<sup>16</sup> Van Zyl J said these words with a view to attribute a meaning to the words "*exceptional circumstances*"<sup>17</sup>.

[42] I have come to the conclusion that detention entails loss of liberty. In most cases a person who is detained normally loses income and in some instances salary. Detainee's inability to continue with a normal life and carry out his day to day personal and financial affairs is a "*sine qua non*" for and a consequence of detention. That is part and parcel and a natural consequence of detention. I accept that this constitute a factor for consideration in normal bail applications under Section 60(4) of the Criminal Procedure Act. It is one of the factors normally weighed up against others to establish if interests of justice do permit release of accused person. Under Section 60 (11) (a) and in Schedule 6 more needs to be shown.

[43] A bail applicant is legislatively burdened with a dual responsibility under Section 60(11) (a) of the Criminal Procedure Act. He must show not only that

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<sup>15</sup> Mtengwane v S (CA&R91/2023) [2023] ZAECHMC 68 (12 December 2023).

<sup>16</sup> *S v Peterson* 2008 (2) SACR 355 (C).

<sup>17</sup> *Natal Joint Municipality Pension Fund v Endumeni Municipality* 2012 (4) SA 593 paragraph 18.

exceptional circumstances do exist, but also that interests of justice permit his release on bail. Effectively a conjunctive approach when dealing with bail application under Schedule 6 is required. These two requisites, to wit, exceptional circumstances and interests of justice must be present conjunctively or simultaneously. Absence of the other or one requirement may not avail the bail applicant to the release on bail.

[44] Put differently, if it happens that the bail applicant succeeds in establishing that exceptional circumstances do exist for his release on bail, but fails to show that interests of justice permit his release on bail, applicant may not be entitled to the release on bail. The court must be satisfied that there is a synergy and co-existence between exceptional circumstances and interests of justice.

[45] The words used in Section 60(11) (a) of the Criminal Procedure Act that “*the accused . . . adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit is or her release*”, denote that subjective jurisdictional facts must be established before the accused’s release on bail. This category of jurisdictional fact is rooted on the fact that “*the empowering statute has entrusted the repository of the power itself with the function to determine whether in its subjective view the prerequisite fact or state of affairs existed or not. Expressions often used by the legislature to express this intent are, e.g. “in his or her opinion” or “if he or she is satisfied that the particular fact or state of affairs exist*”<sup>18</sup>. In the absence of such preconditions or jurisdictional facts the authority effectively has no power to act at all<sup>19</sup>. On the facts of this case, the court would permit bail only if it is of the subjective view that exceptional circumstances coupled with the interests of justice permitting the release of accused/appellant do exist.

[46] This brings me to one important issue which is not meaningfully canvassed in the appellant’s affidavits in support of bail application and in the notice of appeal. This troubling aspect of this bail application and appeal was not even contained in

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<sup>18</sup> Kimberly Junior School and Another v Head of the Northern Cape Education Department and Others 2010 (1) SA 217 (SCA); 2009 (4) All SA 135 (SCA) Paragraph 13.

<sup>19</sup> Paola v Jeeva N.O. 2004 (1) SA 396 (SCA) paragraphs 11, 14 and 16.

the appellant's heads of argument. However, appellant's counsel was invited to make submissions thereon.

[47] Affidavits opposing the grant of bail in favour of the appellant make the following contentions:

*'At this stage there is one (1) charge of intimidation. The victim indicated in a statement that she managed to get away from the farm. She went to stay at family members of the applicant. Whilst she was with them she was called by the applicant and during the call he said he will fetch me by force and if she is keeping anything from him, she will shoot her in the head. Thereafter the family members requested that we must move the victim to a different address. She was then placed in a Home of Safety in Graaff-Reinet. Because the applicant did not manage to get hold of the victim thereafter, he called her parents continuously trying to find out where she was.'*

[48] These statements are worrisome and concerning. It is in the same affidavit where it is alleged that the appellant threatened one of the victims that he would shoot her. Upon investigations by the police it transpired that one of the females who also worked for the appellant was found presumably committed suicide on the farm.

[49] In addition to that, an application for a protection order in terms of Domestic Violence Act was recently instituted by the prospective witness in this case. That domestic violence matter had a bearing on this matter. Amongst the orders that were granted in the Domestic Violence case were the following:

- ' Not to threaten the complainant.*
- Not to insult the complainant.*
- Not to communicate with the complainant at all.*
- Not to post any insulting messages, videos on social media.*

- *Not to damage the complainant's property.*
- *Not to contact the complainant.*
- *Not to use social media platform to communicate with the complainant.'*

[50] These serious orders, underpinned by allegations are not at all meaningfully dealt with by the appellant. I therefore cannot find fault on the first court *a quo*'s judgment when it found that:

*'It means that the likelihood that he will indeed attempt to influence the victims exists. Not only this, but the likelihood that if he is released on bail he will undermine or jeopardise the objectives of the proper functioning of the criminal justice system, including the bail system.'*

[51] A threat to kill someone who is an obvious witness and a victim in a criminal case cannot be taken lightly. We have a history in this country of witnesses being killed. The finding that denied appellant bail was not wrong. I am, in these circumstances enjoined by Section 65 of the Criminal Procedure Act to grant bail only when the judgment of the court *a quo* is wrong. By necessary implication an appeal court cannot grant bail if the judgment of the court *a quo* is not wrong<sup>20</sup>.

[52] A point has been made on the affidavit opposing first bail application that the appellant concealed his rifle and was later found with the relative. That is a clear manifestation that the appellant is capable of interfering with, concealing or destroying evidence<sup>21</sup>.

[53] It was argued on behalf of the state that the presence of the appellant in the farm will induce fear on the victims who are residing on the farms. That fear will extend to those who are hiding from the appellant for safety concerns. I am mindful

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<sup>20</sup> Section 60(5) of the Criminal Procedure Act 51 of 1977 as Amended.

<sup>21</sup> Section 60(4)(c) of the Criminal Procedure Act as Amended.

of the fact that the appellant is accused of having flogging the victims. A sight must not be lost of the fact that someone on the appellant's farm was found dead, suspected of having committed suicide. That manifests the egregious, oppressive and fear inducing environment in the appellant's farm.

[54] Lastly, a point was also made in the opposing affidavit that a fellow inmate met with the investigating officer and informed him that the appellant planned to escape from lawful custody and an amount of R50 000.00 was paid to actuate that escape but was unsuccessful. That manifests a likelihood that the appellant will evade his trial. He is a flight risk. Court *a quo*'s judgment is not at all wrong, accordingly I cannot find fault on it.

[55] On the conspectus of all the above facts and law, it behoves me to dismiss this appeal.

### **Order**

[56] In the result, I make the following order:

53.1 The appeal is dismissed.

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**A S ZONO**  
**ACTING JUDGE OF THE HIGH COURT**

### **Appearances**

|                           |   |                   |
|---------------------------|---|-------------------|
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