

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: SS36/2024

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<i>17/03/2025</i>	
DATE	SIGNATURE

In the matter between:

MICHAEL HARRY LOMAS

APPLICANT
(Accused no 12)

and

THE STATE

RESPONDENT

JUDGMENT

STRYDOM, J

Introduction

- [1] Mr Michael Lomas, the applicant in this opposed bail application is a 77-year-old male, a British national with a South African identification number. He was

arraigned with 11 other accused on multiple counts of section 3(b) of the Prevention and Combatting of Corrupt Activities Act,¹ in that it is alleged that he gave or agreed or offered to give unauthorised gratifications or benefits to Eskom employees relating to a contract to improperly influence their decision making in relation to a contract awarded to Tubelar Construction Projects (TCP) (accused 5) to perform certain works during the construction of the Kusile Power Station.

- [2] In terms of section 51(2) of the Criminal Law Amendment Act² (the Minimum Sentences Act) the applicant is facing a sentence of 15 years imprisonment on conviction on most of these counts, unless a court finds that substantial and compelling circumstances exist to deviate from this prescribed sentence.
- [3] These offences fall within the ambit of Schedule 5 to the Criminal Procedure Act,³ as amended.
- [4] In accordance with the provisions of section 60(11)(b) of the CPA if the accused is charged with a Schedule 5 offence, a court shall not order the release of an accused person on bail until he or she, having been given a reasonable opportunity to do so, adduce evidence which satisfies the court that the interest of justice permits his or her release on bail. An applicant therefore bears an onus to satisfy the court, on a balance of probabilities, that it is in the interests of justice for the court to permit his release on bail pending the finalisation of his criminal trial.
- [5] On behalf of the respondent Mr. Joubert, informed the Court from the bar, that the state opposes the bail application as there is a likelihood that the applicant, if he is released on bail, will attempt to evade his trial considering that the state's case against him is strong. It was stated that the applicant may commit suicide if released on bail and that this would jeopardise the objectives of the proper functioning of the criminal justice system, including the bail system.

¹ 12 of 2004 (POCA).

² 105 of 1997.

³ 51 of 1977 (the CPA).

- [6] Applicant presented oral evidence to support his application. Before dealing with his evidence, there are certain aspects which crystallised as common cause or not seriously contested. These are:
- a. Applicant, after his retirement from the construction company Group 5 assisted TCP and its subsidiaries with their contractual relationship with SPX/Deutsche Babcock Thermal Technologies (Pty) Ltd (DBT) and Eskom.
 - b. On 5 March 2018, applicant left South Africa for Namibia and on 7 March 2018 he flew to the UK, where he lived until his extradition to South Africa.
 - c. The South African authorities filed an extradition application in the UK seeking the extradition of applicant. This application was granted during or about October 2020.
 - d. On 13 April 2021 the applicant was arrested in the UK. He opposed his extradition application but on 13 December 2022, a court in the UK ordered his extradition.
 - e. Before he could be extradited this order was appealed against by the applicant but on 13 December 2023, that appeal was dismissed.
 - f. Further appeals followed based on applicant's medical condition and the conditions of his detention, once extradited, in the Johannesburg prison. These appeals were also dismissed.
 - g. During these processes in the UK, applicant was released on bail subject to conditions for a period of approximately 3 years. At some stage the bail conditions were amended as set out in exhibit "G". Applicant complied with these conditions but when his final appeal was dismissed, he was taken into custody and on 20 September 2024 and was flown to South Africa.
 - h. Applicant was incarcerated in the Johannesburg prison where his detention cell was prepared to comply with conditions attached to the extradition order issued in the UK.
 - i. Applicant was joined as an accused with the other 11 accused and the matter was transferred to the High Court where he, with the other accused, appeared on 3 December 2024.
 - j. After this date, notice was given of his intention to apply for bail.

- k. This bail application proceeded before this Court on 17 January 2025.
 - l. All the other individual accused were previously released on bail in the amount of R 300 000 each.
- [7] The applicant presented oral evidence in support of his bail application. He testified that he is currently 77 years old and gave a synopsis of his academic qualifications and how he obtained an engineering degree and later obtained further qualifications. He became a professional engineer and worked for various construction companies in this country. During the later years of his career, he became the CEO of Group 5 Incorporated but had to retire when he turned 60 in 2007. He was asked by TCP to join the company to assist them. He later became chairman of this company. He became more involved and assisted TCP to negotiate its contracts relating to the Kusile Power Station. During March 2015, he resigned from TCP but was later asked to assist again as he had to sign off certain works as a professional engineer. He continued to work with TCP until mid-2017. Thereafter he undertook leisure expeditions which eventually affected his health.
- [8] He returned to South Africa in August 2017 where he still retained an apartment and still maintained his membership on a medical aid scheme. He was medically treated in South Africa but went to recover close to his son's home in the UK. On 22 February 2018, he returned to South Africa, but on 5 March 2018 he left South Africa for the UK via Namibia. He travelled with a rented vehicle to Namibia as he wanted to attend a location across the border where someone was going to attempt to set a land speed record with a vehicle. He could not provide much detail about this event but testified that he became aware of the event whilst watching television. Once in Namibia he saw some advertising boards, advertising this event.
- [9] After his return to the UK during 2018, he was involved in a serious cycling accident during which he sustained bone fractures, spinal injuries and other injuries. His neck injury never healed, and his spinal cord got trapped at cervical joint level 3 and 4. He had to undergo surgical interventions.
- [10] The operations affected his vocal cords and ability to swallow. This affected his ability to eat certain foods and his digestive system. He also developed a bowel

problem for which he received extensive medical treatment which was ongoing and not finalised at the time of his extradition.

- [11] The applicant testified that before his initial arrest to be extradited, he was never contacted by any official from South Africa to return to this country and to stand trial.
- [12] He further testified about his deteriorating health and medication which he required.
- [13] He testified about the size of his single cell and how he fainted and fell on more than one occasion. He stated he has been treated by a psychiatrist in prison for his depression, and he is not suicidal. A letter by Dr Weinbrenn, a psychiatrist, contracted by the Department of Correctional Services (the DCS), was handed to Court, in which Dr Weinbrenn concluded that the applicant was not currently suicidal.
- [14] He testified about a prostate problem and possible cancer of the prostate, which he required to be treated by his private medical doctor. He also stated that further surgical interventions to his spine are required, but he would prefer this to be done by his own doctors. Tests were also done for colorectal cancer.
- [15] He testified that in terms of the extradition order, he had to be observed every 15 minutes, but this did not happen. He stated that he needed a biopsy to be taken of his prostate as it could not be done at Baragwanath Hospital, where he was previously taken.
- [16] His application to receive private medical care was handed in at prison but was not yet finalised, but even if granted, he would have to pay approximately R 5000 on each occasion he is taken to his doctor under a security escort.
- [17] He testified that he cannot digest some of the food he receives in prison and as a result thereof, regularly must get enemas. He lost 7 kilograms in weight.
- [18] He testified that in general the prison authorities tried their best to accommodate him but despite this, he needs private medical care which he can afford.
- [19] He testified that it was difficult and expensive to make telephonic contact with his children living in the UK and in Australia.

- [20] He testified that because of the extent of the documentation in his criminal case (he mentioned 65 lever arch files) he will not be able to properly prepare for the trial in prison. Moreover, he has no access to computers and the time afforded to his legal advisors for consultation purposes is limited.
- [21] During his testimony documents were handed in by the applicant, some of which originated from the state. These being:
- a. Exhibit A — Medical treatment received by the applicant at Baragwanath Hospital. It shows various visits to the hospital and treatment received.
 - b. Exhibit B — Letter from the Johannesburg Prison's state psychiatrist, Dr Weinbrenn, dated 22 January 2025. D Weinbrenn later testified and the court will deal with his evidence hereinbelow.
 - c. Exhibit C — A letter dated 17 March 2020 from applicant's UK lawyers to the UK Metropolitan Police. In this letter, the applicant promised his cooperation with the police and stated that if required he will surrender himself for an extradition hearing.
 - d. Exhibit D — A reply to exhibit C from the Metropolitan Police.
 - e. Exhibit E — A further letter dated 3 April 2020 from the Metropolitan Police to applicant's UK lawyers.
 - f. Exhibit G — Applicant's amended bail conditions in the UK dated 8 September 2023.
 - g. Exhibit H — The order of District Judge Sternberg in the UK, dated 25 July 2024, ordering the revocation of the applicant's bail, which was subject to appeal.
 - h. Exhibit "J" — The order of Mr Justice Cavanagh granting the appeal against the revocation of the applicant's bail on certain conditions.

- [22] Applicant was further questioned about his mental condition during July 2024 and a report by a Dr Hillier after accused was interviewed by him. It was reported that applicant fell into a high-risk category to commit suicide. It was reported that on 2 occasions applicant recklessly walked into traffic and possessed poisonous berries he contemplated eating. The applicant testified that he never attempted to commit suicide. He admitted, though, that he told the doctor that should an order be granted for his extradition, he will commit suicide. This statement was mentioned in the report of Dr Hillier (exhibit "I") and in the judgment of the UK Justice Bourne in his judgment ordering the extradition of applicant. He analysed the findings of Dr Hillier (exhibit "K").
- [23] Applicant admitted that he told Dr Hillier that he contemplates suicide but testified that this was said after he saw the conditions under which he would be detained in the South African prison. His attitude, however, changed whilst still in the UK and after he started to stay and was treated in a care facility for his depression.
- [24] He testified that after his extradition to South Africa his incarceration conditions in the Johannesburg Prison were not as bad as he expected. He said that he is currently undergoing treatment from a psychiatrist and his mental state has markedly improved. He stated that he is now dealing with issues and has been in custody for about four months already. He testified that he no longer considers suicide and that he will stand his trial.
- [25] It was put to applicant that at some stage in the UK his bail was revoked. This he denied, but it later transpired during the evidence that his bail was in fact conditionally revoked, but on 18 July 2024, reinstated on appeal (exhibit "J"). He never went into custody during this process. In fact, his bail was provisionally revoked on condition that he lodged an appeal within a specified period. This appeal was lodged within this period and the appeal was upheld, despite Dr Hillier's evidence stating that applicant could commit suicide.
- [26] Applicant was asked about his assets within South Africa and abroad. Without going into too much detail, the applicant has extensive assets running into tens

of millions of rands abroad. Some of these assets were transferred to his son and to his wife in terms of a divorce settlement. He still has investments and a bank account but no immovable assets in South Africa. He receives a pension of approximately R 160,000 per month which is paid into his South African bank account.

[27] He was queried about the reason why he left South Africa via Namibia on 5 March 2018. It was pointed out to him that there was no land speed record attempt which would have taken place during that time in Namibia. Such attempt was going to take place on a saltpan called, Hakskeenpan, in South Africa. He testified that he was under the impression that this event was going to take place in Namibia. He then decided to return to the UK as his business in South Africa was done, via Namibia, to attend this event and then to fly from Windhoek to the UK. He admitted he came to South Africa on a one-way ticket and that he rented a vehicle to travel to Namibia. He denied that he was fleeing the country as he was not aware that a case against him was investigated and there was no indication that he was going to be arrested. He was not, during his stay in South Africa, or thereafter in the UK, contacted by any officials from South Africa requiring him to stand trial in this country. It was put to him that the docket was opened during August 2017. He said he was not aware of this. It was also put to him that a warrant for his arrest was issued on 18 December 2018. He was also not aware of this. He only found out during 2020 that his co-accused were arrested. He said that he did not come back to South Africa as he was being medically treated in the UK and "*wanted to know his right[s]*".

[28] The Applicant elaborated on the difficulties he will experience in preparing for a trial in prison where it is noisy and where he will have limited access to computers and no access to the internet. He said that if bail is granted, he will be in a much better position to consult with his lawyers and to prepare for his trial.

[29] He then testified about his health problems and that the prison diet was not suitable for him. This, despite the prison authorities doing their best to accommodate him, was still difficult for him. He said it would be much easier for him if he could care for himself with the assistance of his own caregiver.

- [30] He testified that he rented an apartment in Melrose, Johannesburg for 12 months and that he will stay there if released on bail.
- [31] The applicant could not dispute that the state has a strong case against him as he did not have the opportunity to study the docket, and he elected not to go into the details of his defence at this stage.
- [32] He denied that he took all steps possible not to face trial. He explained that he had three sets of surgeries, following a serious cycling accident in the UK, and that his health and continued treatment was one of the reasons why he opposed his extradition. He was advised by his legal team in the UK to oppose the extradition and to take decisions that went against him on appeal. Further, his perceived treatment which he would have received in a South African prison was of concern. He saw pictures of the small holding facilities and a toilet without a seat.
- [33] He testified he would stand his trial and would have to live with the outcome thereof. All that he required was an opportunity to prepare properly. He stated he got beyond his thoughts of committing suicide. He testified that he was going to defend himself and this gave him a purpose to live.
- [34] He placed on the record that he was a first offender with no previous convictions. He said he would not undermine the justice system or the bail system. He stated that in the UK, he handed himself over voluntarily and once released on bail, he stood his bail pending his extradition. His passport and ID document have been handed to the investigating officer, and he would not apply for any further travel documents.
- [35] It was pointed out during his cross-examination that in the UK, the applicant used his mental health and ideations of suicide as an excuse not to be extradited, but here in South Africa he now says he should get bail as his mental health has changed for the better and he no longer contemplates suicide. He denied this and said it was mostly his legal advisors who made the decisions to oppose his extradition from the UK. He said that his experts who inspected the holding cells in the Johannesburg prison were of the view that considering his medical and mental condition, the cell was not fit for him to be incarcerated in. The conditions would add to his depression. He testified that once he was extradited and kept

in a cell in the Johannesburg prison, he observed that his cell was upgraded and was made more comfortable. He was provided with a toilet seat, railings to assist his movements, a better mattress and he found the staff treated him well. The anxiety he suffered subsided, and he got medicine for his depression, which was now under control. He was treated and assessed by Dr Weinbrenn who saw him regularly. He testified that his prison experience was far better than what he expected. This caused his depression to subside and for the dosages of his medication to be lowered.

- [36] When it was put to him that he could prepare for trial in prison he disagreed and complained of the consistent noise.
- [37] During re-examination he testified that the other accused in his matter were out on bail in the amount of R 300 000. He elaborated on his medical condition and surgery required at the C3-C4 level of his spine as the bones were compressing a nerve. He required an urgent biopsy of his prostate as there were signs of possible cancer.
- [38] Dr Weinbrenn was called to testify on behalf of the applicant. He confirmed the contents of his letter, exhibit "B", dated 22 January 2025. He is an experienced psychiatrist who qualified in 1977. He has been treating inmates in prison for 30 to 40 years. He treated the applicant. He concluded and I quote: *"He is currently in my opinion, at this stage, not a suicide risk."*
- [39] He testified about the medication the applicant was receiving and the dosages which were lowered. This was done as he observed that the mood of the applicant improved. The suicidal ideation which was reported in the UK was no longer present. He saw the applicant on 8 occasions for about an hour at a time. When he saw him on 28 January 2025, a date after his letter dated 22 January 2025, the applicant's mood was good. Since November 2024, his mood started to change for the better, and he became emotionally stable. His depression was under control. He stated that he obtained collateral reports from staff and received no negative reports which may point to ideation to commit suicide. He testified that although the applicant never attempted suicide, he, whilst in the UK, had such thoughts. He concluded his evidence by recommending that the applicant continued his treatment with a psychiatrist.

- [40] On behalf of the respondent an affidavit, exhibit "N", was handed in and read into the record, deposed to by the investigating officer, Lieutenant Colonel, Du Plessis (the IO). I do not intend to repeat all evidence contained therein but would refer to the more material parts.
- [41] The facts of the case were set out. The applicant was employed by Tubular Holdings as an executive advisor from the period January 2008 to May 2014. Later, he became a consultant and the chairman of this company. Tubular Holdings was appointed by Alstrom S&E Africa (Pty) Ltd (Alstrom) as a subcontractor in the construction of Turbine Generation Works. Alstrom was appointed by Eskom to perform these works at its Kusile power station which was under construction. Eskom received information regarding the unlawful manipulation of contractual agreements, corrupt practices by contractors, employees and third parties at Kusile. This included Tubular. It is alleged that the applicant was part of these irregularities and made extensive payments to two Eskom employees, Mr. Hlakudi and Mr. Masango, who are currently his co-accused. It is alleged that the applicant paid rental for a property, leased by Mr. Hlakudi, from his ABSA cheque account.
- [42] With reference to section 60(6)(a) of the CPA, it is alleged that on 5 March 2018, the applicant fled and left South Africa through the Rietfontein border control with Namibia and returned to the UK on a flight from Windhoek. It was stated that the accused has no emotional, family, community or occupational ties in South Africa where he is to be tried. It is pointed out that the accused is a UK citizen and that his son and daughter live abroad. The IO confirmed that on 14 January 2025, he was provided with an address, namely Unit 527, One on Whiteley Road, Melrose, Johannesburg, where the applicant claimed he will stay, should the court release him on bail. The IO visited this unit and provided a description thereof.
- [43] The IO provided evidence of the South African bank accounts held by the applicant. He confirmed that the applicant has a UK passport which will expire on 6 October 2025. He provided extensive evidence to indicate that the applicant can afford to forfeit bail monies, if so paid. In South Africa he has investments exceeding R 3 million. In the UK he has financial investments in the amount of R 29 327 256. He also has other investments in the form of Flexi Endowment

Options. Some of these monies were moved to accounts of his ex-wife and children.

- [44] The IO noted that the extradition process to get the applicant to stand trial in South Africa was a long and difficult process. The applicant opposed his extradition and took the decisions in terms of which he was extradited on appeal. He provided evidence of the bail, and conditions attached thereto, which was applicable when the applicant was released on bail in the UK.
- [45] As far as the nature and the gravity of the charges levelled against the applicant, it is stated that between February 2015 and December 2017, the applicant made payments to the value of R 2 249 500 from his personal bank accounts to bank accounts for the personal benefit of Mr. Hlakudi. The applicant is charged with 41 counts of contraventions of section 3(b) of POCA and 24 further charges in terms of this Act. It is alleged that the case against the applicant is a strong one. It was stated that the applicant will avoid facing the charges in South Africa, and that he remains a serious flight risk. Applicant has demonstrated by his past conduct that he would not stand his trial. It was further pointed out that the minimum sentence of 15 years imprisonment is prescribed by section 51(2) of the Minimum Sentences Act upon conviction on these counts.
- [46] It was alleged that if he is released on bail, the applicant will undermine or jeopardise the objectives of the proper functioning of the criminal justice system, including the bail system, as contemplated in section 60(4)(d) read with subsection 60(9) of the CPA. In this regard, no indication could be provided when this matter would be set down for trial. It was stated that the applicant would not be hampered in his preparation for trial as he already obtained the services of his legal representatives, and they consulted with him in prison. It was stated that sufficient medical services are available in the Johannesburg Prison to treat the applicant, and for more serious conditions, the applicant would be sent to the Baragwanath Hospital.
- [47] It was stated that the applicant is at high risk to commit suicide. It was pointed out that during his extradition hearings and appeals, the state provided certain undertakings and steps to be taken to prevent the accused from committing suicide. If he is released on bail, there will be no measures in place to prevent

him from committing suicide. The IO then referred to the various reports and judgments that dealt with the issue of suicide. It is stated that, to the satisfaction of the UK courts, the Department of Correctional Services put measures in place to address the applicant's risk of suicide. This was set out in the affidavit by Mr. Gebuza ("DPDP-7").

- [48] A supplementary affidavit was filed by the IO which was also read into the record (exhibit "O"). In this affidavit, the IO provided evidence pertaining to his investigations after the applicant's testimony. He provided further evidence concerning the applicant's explanation as to why he crossed the border to Namibia on 5 March 2018. He stated that he established that the land speed record by a supersonic car would have taken place in October 2018 at this place called Hakskeenpan, in the Northern Cape. He said mention was not made in any of the publications he sourced on Google indicating that any activity would have taken place to attempt a land speed record during February or March 2018, either in Namibia or in South Africa. It was stated that the version of the applicant was contradicted by objective facts and that he fabricated his version in his attempt to explain why he fled South Africa via Namibia. He submitted that the inference is justified that the applicant, by March 2018, already knew that the South African police and authorities were investigating the offences and that he would have been arrested. He fled in anticipation of his likely arrest.
- [49] The additional allegations contained in this supplementary affidavit dealt with a Capitec bank account belonging to the applicant in which there was a balance of R 247 108.76, and of other Discovery bank accounts. Lastly, it was confirmed that the applicant's co-accused were granted bail in the amount of R 300,000. Updates were provided pertaining to the balances of some of the applicant's accounts abroad and an update of the applicant's application for private medical care.
- [50] An affidavit deposed to by Ms. Lindiwe Jonas was handed to the Court. In this affidavit, Ms. Jonas, provided the Court with the applicant's full medical history since he arrived at Johannesburg Medium "C" Correctional Centre. Information is provided regarding the medical attention received by the applicant as well as the medication prescribed. (Exhibit "P").

- [51] A further affidavit deposited to by Mr. Gcobani Gavin Dyonase, in the employ of the DCS was handed in to Court. In this affidavit an explanation was given why 7 inmates were temporarily placed in a cell close to the applicant's detention cell. (Exhibit "Q").
- [52] An affidavit in terms of section 212(3) of the CPA, deposed to by Ms Van Der Schyff, from the Department of Home Affairs, was handed in to Court. (Exhibit "R"). In this affidavit the entries contained in the passport of the applicant were explained with reference to a record of his movements over a period, including the relevant period from 2017 to September 2024 when he arrived back in South Africa after being extradited.
- [53] That concluded the evidence on behalf of the respondent.
- [54] The applicant applied to reopen his case to deal with new facts which came to the fore in the affidavits filed on behalf of the respondent. The Court permitted the applicant to lead further evidence relating only to new matters, not previously canvassed by the applicant.
- [55] The applicant testified that there were certain ligature points in his cell, meaning that if he wanted to commit suicide he could have done so. He pointed out that his medication for his depression was reduced, but that he has not received physiotherapy or occupational therapy as was recommended by these doctors. He complained about the noise levels which would make it difficult for him to prepare for trial. He stated that he again saw Dr Weinbrenn and that they had a good conversation and that he does not have any suicidal thoughts. He testified that he needs to see his private urologist who can take a biopsy of his prostate as his PSA level was high. He stated that he received no chicken for the last three weeks and was living off sweet beans and potatoes. The beans, however, upset his stomach and this resulted in diarrhoea, and he lost control of his bowel movements. He testified that he still has a network of family in South Africa as he has four sisters in law and some friends. He was also visited by his Baptist minister. He said that he cannot drive a car. He will make his unit at Melrose Arch safe for him to stay at, if he is granted bail.
- [56] He stated that if he is granted bail he would continue with his psychotherapy.
- [57] This concluded the case on behalf of the applicant.

[58] The Court was provided with heads of argument by the respective counsel for which the Court extend its appreciation.

Evaluation

[59] As stated hereinbefore, the onus rests on the applicant to satisfy this court that the interest of justice permit his release on bail. To isolate the issues to be considered in deciding whether the applicant should be released on bail, the starting point would be to isolate the grounds advanced by the respondent for opposing bail. The respondent informed the Court that the applicant is likely to evade his trial and that he may commit suicide. It was argued that the applicant is a flight risk as there exist a likelihood that he, if released on bail, would evade his trial once he is released. Further, that there is the likelihood that the applicant, if he is released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system. These grounds upon which bail could be refused are provided for in section 60(4)(b) and (d)⁴ of the CPA.

⁴ **60. Bail application of accused in court**

(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial.

...

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system....

[60] To consider whether these grounds have been established, the court will have regard to the factors mentioned in sections 60(6)⁵ and 60(8)⁶, respectively, and will consider the issue pertaining to the possibility that the applicant may commit suicide before his trial is completed.

[61] It was argued that the applicant has the financial wherewithal to make arrangements and flee from this country, despite the fact that his passport and ID was handed to the IO. It was further argued that the applicant has fled the country when he left South Africa into Namibia. Further, it was argued, that the applicant, by vigorously opposing his extradition from the UK, made it clear that he does not wish to stand trial in this matter. Add to that, the applicant has no emotional, family, community or occupational ties to South Africa he failed to discharge the onus on him that the interest of justice permitted his release on bail. It was pointed out that most of his assets were abroad, and he had no assets of value in South Africa except for some investments. Because of his strong financial position, he can afford to forfeit the amount of bail which may be set. He might flee to a country with whom South Africa does not have an extradition

⁵ 60(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely-

- (a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;
- (b) the assets held by the accused and where such assets are situated;
- (c) the means, and travel documents held by the accused, which may enable him or her to leave the country;
- (d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;
- (e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;
- (f) the nature and the gravity of the charge on which the accused is to be tried;
- (g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;
- (h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her; (i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or
- (j) any other factor which in the opinion of the court should be taken into account.

⁶ 60(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely-

- (a) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;
- (b) whether the accused is in custody on another charge or whether the accused is on parole;
- (c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or
- (d) any other factor which in the opinion of the court should be taken into account.

treaty. The applicant is facing serious charges for which he can be sentenced to 15 years direct imprisonment. The respondent has a strong case against the applicant.

- [62] As a starting point this Court will accept that the respondent has a strong case against the applicant. The evidence produced by the respondent in this regard stood uncontested. The Court will also accept that upon conviction, the elderly applicant may be sentenced to a relatively long period of imprisonment considering that a minimum sentence of 15 years imprisonment is prescribed in terms of the Minimum Sentences Act. The Court will, however, also consider the possibility of a lesser sentence being imposed, bearing in mind that the applicant, if convicted, may indicate the existence of substantial and compelling circumstances to deviate from the prescribed minimum sentence. In this regard, the fact that the applicant is a first offender and currently 77 years old, may constitute such circumstances.
- [63] The fact that the applicant is a wealthy person should not carry undue weight in the consideration whether he would stand his trial. This would mean that wealthy individuals would face an extra hurdle to overcome, particularly where they apply for bail in serious cases which carry severe penalties upon conviction.⁷ The question should rather be - is there any evidence which indicates that the wealth of the applicant in bail proceedings would be utilised to facilitate his flight from the country in which he is to stand trial. In this case there is no such evidence. The wealth of an applicant, in my view, would be relevant in the context of determining the amount of bail, if so granted. The bail amount fixed must not be so low to be easily forfeited.
- [64] As alluded to hereinbefore it is the state's case that when applicant left South Africa on 5 March 2018 travelling towards Namibia, the applicant was fleeing the country. This was denied by the applicant who provided an explanation that he wanted to attend a land speed record setting attempt by a vehicle. The state argued that considering that this event was not going to take place in Namibia during that time, that on the probabilities, the only reasonable inference which could be drawn from applicant travelling to Namibia, was that the applicant in fact

⁷ Wilkenson v S (20706/14) [2014] ZASCA 192 (27 November 2014).

fled from South Africa. The Court accepts the evidence that no such event was going to take place in Namibia during that time. The Court finds it improbable that a qualified professional engineer would travel to an event to attend same, without properly establishing where and when this event would take place. On the applicant's version he acted on incomplete information and took his chances that this event might take place in Namibia. The Court is not convinced about the veracity of the applicant's version in this regard. The Court will, however, also consider that at the time when the applicant left South Africa, there is no evidence to indicate that the applicant was aware that he was going to be arrested in connection with this matter. There is no evidence that the applicant was aware of the status of the investigation in this matter which, according to the IO, proceeded from August 2017. His co-accused were only arrested on 19 December 2019. This is about 1 year and 9 months after applicant travelled to Namibia. The applicant testified he only became aware of the pending case against his co-accused during 2020. Add to this, that during March 2018 the applicant was free to enter and leave South Africa on his UK passport. If he was afraid to leave South Africa from the OR Tambo Airport, as he might get arrested, there was no guarantee that the same might have happened to him at other border posts. He testified that he came to South Africa to finalise the selling of his property in Knysna and to do a few other things. After this he would have left in any event.

[65] In my view, despite the applicant leaving South Africa under suspicious circumstances, the court cannot on the probabilities draw an inference that he was fleeing the country. To label his actions as "fleeing", there at least should have been some indication that applicant knew that his arrest was eminent and that he established this whilst in South Africa. The latter proviso is added, else if he knew before he decided to return to South Africa, he would not have returned if he wanted to avoid arrest.

[66] The respondent argued that this Court must draw the inference from the applicant's actions in the UK during the extradition process that he did not want to return to South Africa to stand trial. He opposed his extradition in all possible ways available to him in law. To explore and utilise all legal avenues not to be extradited, in my view, does not mean that the applicant would attempt to

abscond and not stand his trial. The fact that a person uses legal and lawful avenues to resist his extradition may indicate that such a person does not want to stand trial. For that matter, the court will accept that generally people do not want to be tried by a criminal court. But this does not mean that once they are arrested, they will unlawfully evade their trial.

- [67] The circumstances of the applicant should also be considered why he opposed his extradition to South Africa. The uncontested evidence was that he was seriously injured in a bicycle accident in the UK during 2018 and received extensive medical interventions. At the time of his arrest in the UK, he was still being treated, and he was not convinced that he would be able to continue with his treatment on the same level if detained in a South African prison. The information which he obtained through his legal representatives in the UK indicated that the conditions of his detention in a South African prison would have added to his existing depression. After his arrest in the UK, the applicant was released on bail pending the finalisation of his extradition application. From the outset, his lawyers engaged with the UK authorities providing undertakings that he will cooperate during the process. Whilst out on bail he could have fled during this period. He could have committed suicide. He refrained from doing this.
- [68] The evidence in this matter have shown that the applicant is not a healthy man. This was already recognised by the UK courts which made findings on this issue in judgments delivered pertaining to the state of his health. The applicant's mobility is restricted.
- [69] Even though he as a UK citizen, who had to be extradited to South Africa, the fact that he has limited emotional, family, community or occupational ties to this country, does not persuade this Court that the applicant is a flight risk. He is currently too frail and too unhealthy to engage in risky escape plans. He has become a known face to many members of the public rendering in even more difficult to flee. Moreover, I am of the view that appropriate bail conditions could be ordered, which would make it even more difficult for the applicant to evade his trial.
- [70] Having found this, it does not mean that the applicant is entitled to bail as the respondent relied on further grounds for opposing the applicant's bail application.

The question remains whether there is a likelihood that the applicant, if he is released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system. In this regard, the applicant's alleged suicide ideation requires investigation. It was argued that applicant is suicidal, and should he take his own life, he would avoid him standing trial and thereby avoid facing the charges levelled against him. This, it was argued, would undermine and jeopardise the objects or the proper functioning of the criminal justice system.

- [71] The Court was referred to cases where bail was refused or granted on the basis that it was shown that the applicants for bail contemplated or already attempted to commit suicide. In *Conradie v Rex*⁸ the issue at hand was not the granting of bail after a suicide attempt by Conradie, but the excessive amount thereof. On appeal the court found that the attempt to commit suicide is a relevant factor. This finding was made with reference to the amount of bail and not to the fact that bail was granted. Solomon J found as follows:

*"There can be no doubt that the heavy bail of £4000 which the magistrate has now fixed was fixed by him mainly on the ground that the accused had attempted to commit suicide. Speaking for myself, I am not prepared to say that the magistrate is not entitled to take into consideration a fact of that nature. The object of a bail bond is to secure the appearance of the accused at the trial; and I think a magistrate, in fixing the amount of the bail, is entitled to consider the probabilities or otherwise of the accused appearing to take his trial. It seems to me that one of the facts which the magistrate is entitled to take into consideration is a fact of this nature—whether the accused, having attempted to commit suicide on one occasion, and there being some evidence of his having attempted to do so on a second occasion, those are not facts which the magistrate is entitled to take into consideration in fixing the amount of bail, just as much as if the accused, while in goal, had attempted to escape. I am not prepared to say that the magistrate would not have been perfectly justified in taking that fact into consideration in fixing the amount of bail."*⁹

- [72] In the same matter Curlewis J, concurring with the judgment of Solomon J, found as follows:

⁸ 1907 TS 455.

⁹ *Id* at 459.

*"As regards taking into consideration the fact that the accused has already attempted to commit suicide, I am not prepared to say that the magistrate was not entitled to take that fact into consideration in determining the amount of the bail. But it should not be taken into consideration to such an extent as to practically deprive the prisoner of his right to be admitted to bail. In the present case the magistrate has given it so much importance as substantially to deprive the applicant of that privilege. I think it is a fact which might fairly be taken into consideration in determining the amount of the bail, with respect, for instance, to the question of the probability of the accused attempting to escape and not appearing to stand this trial."*¹⁰

[73] The Court was referred to the matter of *S v Groesbeek en 'n Ander* (2)¹¹ and the respondent relied on this decision to argue that if the possibility of suicide of an applicant for bail exists, this should be a consideration to refused bail. But in *Groesbeek* there is no clear indication that bail was refused on any other basis than the strength of the state's case against the applicant. In passing, the court mentioned that there was an allegation that the applicant attempted suicide. There is no indication in the reported case that this factor carried any weight in the decision to refuse bail.

[74] In the matter of *Sellers v S*,¹² a judgment granting leave to appeal by Willis AJ (as he then was) against the refusal of bail, the court commented on the relevance of an attempt to commit suicide in a bail application as follows:

"I furthermore accept that it is unlikely that he would not stand trial by being a fugitive from justice. A relevant consideration is that the accused, shortly after the incident, threatened to commit suicide. It would seem from the record that he was evasive and not entirely candid about this particular threat and I accept that the state has a legitimate concern in preventing an accused person from committing suicide in order to ensure that he stands trial. The state has the legitimate interest in knowing the reasons why this particular accused shot and killed his wife and a legitimate interest in there being an appropriate sentence handed down in a case such as this."

[75] The comments in *Sellers* were made in an application for leave to appeal without stating what weight should be attached to a treat to commit suicide in a bail application. It is not clear from the authorities how much weight should be

¹⁰ *Id* at 461.

¹¹ 1969 (4) SA 455 OPD at 460A.

¹² (A535/98) [1998] ZAGPHC 6 (15 September 1998).

attached to the possibility that an accused person may evade his trial by committing suicide, either in the granting or refusal of bail, or the amount of bail to be fixed. It is clear, though, that it may be a factor to consider on a case-to-case basis.

- [76] In *casu*, the court will first have consider the evidence pertaining to applicant's alleged suicidal ideation before considering the weight that should be attached to this allegation.
- [77] The respondent relied extensively on the evidence received in the UK courts from various specialists, including psychiatrist Dr. Hillier, Dr Picchioni and a neuropsychologist, Dr Poole, for its contention that the applicant may still be a candidate to commit suicide. The context in which these doctors provided their reports to the courts in the UK is also of relevance. The context can be ascertained from the two judgments of District Judge Sternberg and Justice Bourne. The applicant opposed his extradition on the basis, *inter alia*, that he suffers from depression and that his extradition to South Africa would lead to an elevated risk of suicide. These reports and judgments revealed that what contributed to applicant's depression, which enhance the likelihood of his suicide, was the uncertainty about his continued medical care and the conditions of his detention should he be extradited. After considering all the evidence, Justice Bourne found that the applicant showed a potentially high risk of suicide, but the chances of the risk could substantially be diminished when consideration is given to the steps undertaken by the DCS in South Africa to accommodate the special needs of the applicant whilst in the Johannesburg prison.
- [78] Since the findings of Justice Bourne on 28 August 2024, the applicant was extradited to South Africa and been in detention for about 5 months. There is no evidence that he attempted to commit suicide during this period, and more importantly, according to the evidence of Dr Weinbrenn, a psychiatrist appointed by the DCS, applicant has adjusted well in custody and is no longer suicidal. The applicant testified to the same effect and the dosages of his medication have been lowered. This is the current situation which was brought about by the applicant's realisation that his detention and the treatment he had been receiving in custody was not as bad as he expected. His remaining concerns, adding to his depression, are his diet and his required medical treatment. These concerns

would further be alleviated if he can control his own diet and medical treatment. Consequently, I find that on the evidence regarding the applicant's current situation, that he is no longer suicidal. This being the case, this aspect should not be a factor to consider whether to grant or refuse the applicant bail.

- [79] On behalf of the applicant, it was argued that applicant requires urgent medical care which he could not get whilst in custody. It was argued that he would not be able to properly prepare for trial. These are relevant factors which are mentioned in section 60(9) of the CPA but are not decisive in this bail application. The applicant received proper medical attention in custody and was well cared for. He applied for permission to consult his own private doctors. I see no reason why this request, which has been under consideration for too long, could be refused. He would be able to prepare for trial should bail be refused, albeit, that it would be much easier if released on bail. In my view, these factors are not the reason why this Court decided to grant the applicant bail. Having found that the applicant is not a flight risk and that he is no longer suicidal, I approach the matter from the perspective that freedom is a precious right protected by the Constitution of this country. Section 35(1) of the Constitution entitles any arrested or detained person *"to be released from detention if the interest of justice permit, subject to reasonable conditions"*.

- [80] In *S v Acheson*¹³ Mahomed AJ (as he then was) emphasised that—

*"An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in court. The court will therefore ordinarily grant bail to an accused unless this is likely to prejudice the ends of justice."*¹⁴

- [81] The court is of the view, that the applicant discharged the onus which is placed on him and that the interest of justice permits his release under strict conditions. The bail amount should be high considering the seriousness of the counts the applicant faces, and the possible sentence which could be imposed. Applicant is a wealthy man who will be able to pay the amount. Further, bail conditions should be added which would restrict the applicant's movements.

¹³ 1991 (2) SA 805 (NM).

¹⁴ *Id* at 822A.

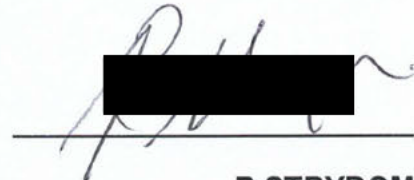
[82] The applicant testified that if bail is granted, he intends to stay in an apartment on his own but with some assistance by a caregiver. The applicant extensively provide evidence to this court about his frailty and weak medical condition. He suffers from depression and previously was suicidal. The court is of the view that applicant should not stay in an apartment on his own without professional assistance close to hand. He should stay in a care facility like the facility he resided at in the UK before his extradition. In such a facility his movements, with the assistance of the personal at such a care facility, could be monitored by the IO. Accordingly, the court would add such a bail condition to its order.

[83] The following order is made:

- a. Bail is fixed in the amount of R 2 000 000 in terms of section 60(13)(a) of the CPA subject to the further conditions mentioned hereinbelow.
- b. Once the conditions attached to bail is met and bail paid and the applicant is released, the applicant shall appear in the High Court Gauteng Division, Johannesburg, on 20 July 2026, the day to which this matter was already postpone for trial and applicant should appear in Court on all postponement dates, until the matter is finalised.
- c. The United Kingdom Passport and the South African Identification Document of the applicant shall remain in the custody of Lieutenant Colonel Du Plessis (the IO) until the conclusion of this matter. The applicant would be entitled to receive a certified copy of his ID.
- d. The applicant shall not apply for any new passport or travel documents.
- e. The applicant shall have no contact, either directly or indirectly, with any state witnesses mentioned in the attachment to the indictment.
- f. The applicant must continue with his medical treatment with a psychiatrist and a psychologist, and three-monthly reports ought to be submitted to the IO.
- g. The applicant must reside at a care home of his choice in the greater Johannesburg Metropolitan Area. The applicant must provide the IO with the name, address and contact details of the manager of such care facility before his release on bail. The applicant should continue to stay at such

care home for the duration of the trial. Should the applicant seek to move to a different care home, prior notification should be given to the IO, providing the name and address of such care home, the date when he will take occupation and the contact details of the manager of the new care home.

- h. The applicant may not leave the borders of the Gauteng Province without prior permission obtained from the IO, which permission should not be unreasonably withheld.
- i. The applicant should within 48 hours of his release on bail, obtain a smart cellular phone with a location monitoring capacity, which should be enabled, and the particulars of which should be provided to the IO, for the IO to be able to monitor applicant's location at all times. This phone should always remain charged.



R STRYDOM
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Appearances

For the Applicant: Adv. Witz
Instructed by: Witz Incorporated

For the Respondent Adv. DJ Joubert
Adv. R Burger
Instructed by: The National Prosecuting Authority

Date of hearing: 6 December 2024, 17, 24, 29 January, 14, 26-27
February 2025

Date of judgment 17 March 2025