IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A106/2024
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.
DATE 19 March 2025

In the matter between

RUSHIL SINGH Applicant

and

THE STATE Respondent

***EX TEMPORE* JUDGMENT**

KUNY, J:

Judgment in this matter is as follows:

1. The appellant was charged with his sister, Nishani Singh, with two counts of forgery, two counts of uttering and one count of fraud. The charges relate to the alleged forging of two demand guarantees issued by Stanbic Ghana and presented to Investec Bank pursuant to a Term Facility Loan Agreement ("loan agreement"), entered into between Big Business Innovations

Group (Pty) Ltd ("BIG") and Investec Bank.

2. 2.1 The charges relate to demand guarantees issued by Stanbic in Ghana ("Stanbic") on behalf of GIC to satisfy the condition imposed by Investec that such guarantees be presented before monies were advanced. It is alleged that the guarantees were forged and fraudulently presented to Investec to induce it to loan large sums of money to BIG.

2.2 It is not disputed that two demand guarantees were actually presented to Investec, who, acting on them, loaned an amount of R178-million to BIG. When BIG did not repay the loans, Investec called upon Stanbic to honour the guarantees. However, Stanbic denied that it had issued the guarantees in the form in which they were presented, and informed Investec that the guarantees that were presented for forgeries.

3. The appellant was initially arrested for another case on 17 January 2024 at OR Tambo Airport on his arrival from Ghana. The case against him involved fraud charges relating to a R1-million credit card facility granted by Nedbank. The appellant was granted bail in respect of that case. It is alleged that altered bank statements were submitted on the applicant's behalf in order to induce the bank to extend his credit facilities.

4. The appellant and Ms Singh were subsequently arrested on or about 26 August 2024 on the charges referred to in paragraph 1 and 2 above. On 27 August 2024 they applied to the Regional Court Palm Ridge for bail. They were denied bail. An appeal to the High Court against the refusal of bail was dismissed by Dosio J on 25 September 2024.

5. The appellant, together with his deceased sister, were shareholders and directors in BIG and its subsidiary, Global Innovative Consulting Ltd (a company registered and incorporated in Ghana) ("GIC").

6. In terms of section 51(2) of Act 107 of 1997 read with Schedule 2, Part

2, the offences carry a minimum sentence of 15 years' imprisonment in the case of a first offender, unless substantial and compelling circumstances are shown.

7. On 25 November 2024 (after the death of his sister in prison on 19 October 2024), the appellant brought a further bail application before the Regional Court contending that new facts had arisen. On 28 November 2024 the regional magistrate who heard the first bail application again refused to grant bail to the appellant. She found, *inter alia,* that the appellant had just reshuffled the evidence from the previous bail application, and that he was opportunistically attempting to blame his sister for the commission of the offences, as she was unable to answer for the crimes that had been committed.

8. The current bail appeal is an appeal against the refusal of the regional magistrate to grant the appellant bail on new facts. It is common cause that the offence in respect of which the appellant seeks bail is a schedule 5 offence. He has an onus to satisfy the Court that it is in the interest of justice that he be released on bail.

GROUNDS FOR NEW APPLICATION

9. The appellant in his affidavit filed in support of his new bail application states that he was advised by his legal representative in his initial bail application to seek a postponement to deal with the investigating officer's affidavit opposing bail. However, because his sister was gravely ill, he decided to go ahead with the bail application notwithstanding this advice. He did not know that he could postpone his bail application and have it heard separately from his sister's application.

10. The substance of the appellant's application on new facts is that after he was initially denied bail, he received the contents of the docket. He contends it is clear from the docket that the State does not have any evidence directly linking him to the commission of the offence. He contends that the evidence

shows that the fraud was committed by his deceased sister, assisted by other co-directors and employees. The appellant alleges that:

10.1 His late sister managed the activities of GIC and BIG in Ghana, and she was involved in raising the working capital for these companies in Ghana. He was not involved in the day-to-day activities of BIG and GIC. He was responsible for limited operational matters of BIG in South Africa.

10.2 His late sister was the mastermind of the fraud and was assisted in this regard by his other co-directors and employees in GIC and BIG. He was aware that Investec required demand guarantees from Stanbic in Ghana. However, these were arranged by his late sister, and he did not know that they had been forged. He was not involved in the negotiations between his deceased sister, Stanbic and Investec in relation to the demand guarantees and he believed that proper and lawful processes had been followed in producing and presenting the guarantees.

10.3 He was not copied in any of the fraudulent emails and consequently, there is no evidence that he was aware of the emails that were sent to Investec.

10.4 He was only implicated in the fraud because he allegedly received substantial benefits from the money loaned by Investec to BIG.

11. It appears from the papers that the appellant has been sequestrated. Scant details are furnished in this regard. However, he states that he will assist his trustee to preserve the value in his sequestrated estate. He also states that he is appealing his sequestration. The appellant is scathing in his criticism of Investec Bank, whom he blames together with his late sister, for his predicament. He states that Investec acted belligerently and he goes so far as to suggest that Investec personnel were either complicit in the fraud or, at least

negligent, in paying out without verifying the demand guarantees.

12. The investigating officer, Sergeant S Motloung, denies that the State's case against the appellant is weak. She states in an affidavit opposing bail on new facts:

> 12.1 The appellant's email signature for the address, r[…] indicated he was the "CEO" of BIG.
>
> 12.1 At all material times the applicant was both a director and a co-shareholder of both BIG and GIC. GIC is a wholly-owned subsidiary of BIG.
>
> 12.3 The applicant had by the end of 2020 been involved in numerous credit applications to various banks. As a chartered accountant, it is unthinkable that he did not understand how bank demand guarantees function and what is required before a bank will issue them.
>
> 12.4 The evidence shows that the appellant was provided with daily updates on the balances in the bank accounts of BIG and GIC, and he was aware from this that these companies did not have the finances required to support the issue of the demand guarantees by Stanbic.
>
> 12.5 Proceeds of the Investec loan in the amount of R135 million were immediately converted into US dollars and transferred to GIC. A substantial amount of these funds were transferred into personal accounts controlled by the appellant.
>
> 12.6 The appellant used the proceeds of monies paid out by Investec to purchase high value motor vehicles. It is alleged that in January 2022 he purchased a Porsche motor vehicle from funds held in his Stanbic Ghana account for an amount of US $1.4-million. He also utilised the

funds to purchase two McLaren sportscars valued at approximately R45-million.

13 The State contends that the regional magistrate in the Court *a quo* was correct in finding that no new facts were presented to the Court that entitled the applicant to a reconsideration of the refusal of bail.

DISCUSSION

14. The appellant and his late sister signed the loan agreement on 14 April 2021. The demand guarantee was defined in the loan agreement as a finance document and it was pivotal to the grant of the loan. Clause 1.18 of the loan agreement provides as follows:

> "1.18 'Demand guarantee' means the on-demand ZAR denominated guarantee for an amount of ZAR 150 000 000 in a form and substance satisfactory to the Lender issued by Stanbic Bank Ghana in favour of the Lender, or on the terms and conditions contained therein."

15. On 17 April 2021 Investec's Deal Team sent Ms Singh and the appellant comments regarding the required wording of the proposed R150-million demand guarantee to be issued by Stanbic on behalf of GIC. Ms Singh's replies to this email were copied to the appellant. On 12 April 2021 Ms Singh forwarded to the appellant documents regarding the loan agreement and the changes that Investec required to the proposed Stanbic guarantee. On the same day Ms Singh informed Investec that they were awaiting Stanbic's feedback on Investec's proposed changes. This email was copied to the appellant.

16. The forged demand guarantee was emailed to Investec on 19 April 2021 by Ms Singh, and was apparently not copied to the appellant. On 21 April 2021 R150 million was paid in South Africa to BIG's Standard Bank account. Of this amount, R135 million was then paid to BIG's Investec account,

and these funds were converted to US dollars and transferred to GIC's Stanbic account in Ghana.

17. The appellant alleges that the loans sought from Investec were required as working capital to execute a contract with the government of Ghana to build roads and that he was told by his sister that the guarantees were issued against an "award letter" in respect of this contract. He further states that he thought that his sister used her personal assets to raise the guarantees. The appellant also alleges that GIC utilised property in Ghana as security for the issue of the demand guarantees. He states that he did not know that the guarantees had to be backed by money held in the accounts of BIG or GIC.

18. In addition to being a signatory to the loan agreement, the appellant, together with his late sister, gave a personal suretyship for the repayment of the loan. He was an obligor in terms of the loan agreement, and he made representations and gave warranties to Investec to support the loan.

19. In my view, it is improbable that the appellant was not aware of the form in which the demand guarantee had to be provided and that it had to be underpinned by funds held by GIC in a bank account in Ghana. The appellant's alleged belief that Stanbic would issue the guarantee on the basis of an award letter for the building of roads, or on the basis of personal assets held by Ms Singh, or on the basis that GIC held property in Ghana, is implausible.

20. The fact that an amount of R135 million of the monies loaned by Investec remitted to Ghana (or a substantial part thereof), found their way into the appellant's personal bank account and were used by him for personal expenses, including the purchase of a very expensive sportscar, does not lend any credibility to the appellant's explanation that he was ignorant of the submission of fraudulent guarantees. On his own version, the monies loaned were working capital for the building of roads. How then did they come to fund the appellant's lavish expenditure?

21. The appellant's explanation as to how he thought Stanbic came to issue the demand guarantees is also contradictory. If they were issued against the security of GIC's property, then the property would have to be secured by a bond or some other form of security. As a director BIG and GIC, he would have had to authorise this transaction. When the loan agreement was signed, the precise form of the demand guarantee had not been specified. The statement that his late sister used her personal wealth to provide security is similarly vague and implausible. Why, if he was to benefit in the manner that he did, was he not required to stake any of his assets in the production of the demand guarantees? The explanation that he thought that the demand guarantees were issued against an award letter is also implausible. The appellant, as a chartered accountant and as a shareholder and director of BIG and GIC, would have been aware that something more was required by Investec before they would pay over the substantial amount of money they had agreed to loan. In my view, there is credible evidence to show that the appellant was involved in and party to the presentation of fraudulent guarantees to Investec.

22. A court hearing a bail application is not required to adjudicate the merits of a case. However, in view of the fact that the merits of the case against him is the issue raised by the appellant, this Court can assess such issue. In my view, even though it may be said that the evidence does not show that the appellant physically submitted the fraudulent guarantee to Investec, there is credible evidence to sustain a finding that the appellant was party to the forgery and presentation of the fraudulent guarantees to Investec. This is a matter that will have to be decided by the trial court. At this stage it is but one of the facts that the Court took into account in denying the appellant bail.

23. The statement in the appellant's affidavit submitted in his initial bail application that he had not been fully apprised of the full extent of the charges and amounts involved was clearly false. The charge sheet, although only provided on the day of his appearance, was detailed and very specific as to the charges against the appellant and Ms Singh and the amounts involved.

24. Even without having been provided with the docket, the appellant had an opportunity at that stage to place before Court his defence that the demand guarantees had been obtained and submitted by Ms Singh, and that he was not aware that they were forged. He consciously chose not to do so, on his version, because of his sister's illness. There was no reason why he could not have postponed his application and reformulated his affidavit. He was represented by experienced senior counsel who advised him to do exactly this. I agree with the Court *a quo* that the shifting of blame by the appellant to his deceased sister, now that she will no longer be able to testify about her and the appellant's involvement in the loan agreement and the issuing of demand guarantees, is opportunistic.

25. The regional court magistrate hearing the bail application found, amongst other things, that the appellant was a flight risk if he was released on bail. This finding was confirmed by Dosio J on appeal. The learned judge in that appeal set out the evidence in relation to the risk and the reasons he agreed that the appellant should not be admitted to bail. Those findings cannot be revisited by this Court.

26. A further ground advanced by the appellant is that he needs bail so that he can attend to the winding-up of his late sister's estate and deal with his legal challenges that have beset him since the fraud relating to the guarantees was discovered. He states that he is unable to attend to these issues from a prison cell.

27. On 15 November 2024 the appellant's attorney wrote a letter seeking his trustee's support for the appellant's bail application on new facts. The appellant promised to cooperate, *inter alia,* in identifying assets relating to his and his deceased sister's estate and their associated companies, so as to minimise the indebtedness of his insolvent estate. He submits that this would be to the benefit of creditors.

28. In reply to this letter on 18 November 2024 (prior to the hearing of his

new bail application) the joint provisional trustee, KS Pollock, states that the appellant has not cooperated to date, and that he continues to withhold and conceal assets from the trustees. He specifically asked the appellant to inform him of the whereabouts of two McLaren Senna sportscars, a Toyota Yaris and a BMW M4 motor vehicle. Pollock declines to support the appellant's release on bail because of the appellant's failure to cooperate. It appears that the whereabouts of the Porsche motor vehicle purchased by the appellant for an amount in the region of US $1.4-million is also still undisclosed.

29. The information provided by the appellant's trustee in relation to the appellant's lack of cooperation is troubling. It also contradicts the appellant’s assertion that if he were released on bail, he would be in a position to assist in the recovery of funds to help settle his debts and those of his late sister's estate. It demonstrates a lack of *bona fides* on his part, and supports the State's argument that the appellant remains a flight risk. It is a new fact that counts against the appellant.

30. The appellant is "clutching at straws" when he complains that his prison cell cannot accommodate all the multitude of documents that he will be required to work with in preparation for his legal matters. Electronic copies of documents can be made available, and if he is not provided with the necessary facilities and tools to prepare for trial and fight his legal battles, he has other remedies.

31. I have for the purposes of this appeal considered that the facts put forward by the appellant in his second bail application after he received the docket entitle him to be reheard on the issue of bail. That said, I am not at all satisfied that the regional court magistrate who denied the appellant bail on two occasions, and in particular on new facts, was wrong. Even if the so-called "new facts" raised by the appellant are taken into consideration, I am of the view that they do not constitute grounds to release the appellant on bail.

ORDER

32. In the circumstances, I make the following order:

32.1 The appeal against the refusal to grant the appellant bail on new facts is dismissed.

KUNY J

JUDGE OF THE HIGH COURT

GAUTENG LOCAL DIVISION, JOHANNESBURG

APPEARANCES:

APPEARANCE FOR THE APPLICANT: MR GROVE

APPEARANCE FOR THE RESPONDENT: ADV MHLONGO