

REPUBLIC OF SOUTH AFRICA

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

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

16 July 2025

DATE

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SIGNATURE

CASE NUMBER: A43/2025

In the matter between:

CANDID CHILWANE**APPELLANT**

and

THE STATE**RESPONDENT**

JUDGMENT

DOSIO J:***Introduction***

- [1] This is an appeal against the denial of bail in the Tsakane Court. The bail application commenced on 8 November 2024. Bail was refused on 12 February 2025.

- [2] The appellant was initially facing eight counts of fraud. The number of charges against the appellant have since increased.
- [3] The bail application was adjudicated within the ambit of schedule 5 of the Criminal Procedure Act 51 of 1977 ('Act 51 of 1977').
- [4] The appeal is opposed by the respondent.

Grounds of appeal

- [5] The grounds of appeal are as follows:
 - (a) The court a quo erred in finding that the appellant failed to prove that the interest of justice permits his release on bail;
 - (b) The court a quo erred in concluding that it is a matter of fact that the appellant interfered with the State witness, when there was absence of such evidence;
 - (c) The court a quo found that some of the factors listed in section 60(4) a-e of Act 51 of 1977 were present, without any factual basis or likelihood;
 - (d) The court a quo erred by failing to consider the medical certificate submitted by the appellant at the beginning of the bail proceedings and/or attached insignificant value to such medical certificate;
 - (e) The court a quo further erred in expecting the appellant to produce another medical certificate when the court was aware that the appellant had been incarcerated since his arrest;
 - (f) The court a quo erred by failing to appreciate that bail proceedings are inquisitorial in nature and instead insisted on applying rules/law applicable to trial proceedings; and
 - (g) The court a quo incorrectly applied legal principles or rules to specific facts before the court a quo thereby coming to a wrong conclusion.

Background

- [6] The appellant, together with two other accused, is charged on various counts, during the period August 2023 to October 2024, where he pretended to be a lawyer or conveyancer who was authorised to deal with the transfer of immovable property. Money was taken from the various complainants to effect these transfers whereas in actual fact, the appellant was not authorised to deal with the transfer of the various immovable properties. The

appellants co-accused acted as estate agents, advertising the various properties. Once they had a prospective buyer, they would then take the said buyer and seller to the appellant, who would then allege he would facilitate the sale and transfer, which in effect never materialised.

Evidence before the court a quo

- [7] The appellant is the first accused in this matter and also the first one to commence the bail proceedings. The appellant placed his personal and other relevant circumstances before the court a quo by means of an affidavit.
- [8] The appellant stated under oath as follows:
- (a) That he is an adult male, aged 58 years old and he has been a resident of Daveyton, Benoni, since birth;
 - (b) He is a South African citizen and he does not have any relatives outside the Republic. He did not furnish an alternative address;
 - (c) He is married with 2 (two) adult daughters aged 25 and 26 respectively;
 - (d) The appellant's highest standard of education is a B. Proc Degree which he attained from the University of the North (Turfloop) in 1993;
 - (e) The appellant practiced as an attorney under his own firm from 1995 until 2009, when he was suspended for 2 years;
 - (f) He then opened a consulting company named Candit Legal Investment which dealt with property, commercial and other legal advisory issues;
 - (g) It was alleged that the appellant is a sickly man and that his kidneys are functioning at 45%;
 - (h) It was alleged the prison officials have denied him his medication since his arrest and that the prison authorities have failed to book him in at the hospital section/unit of the prison.
 - (i) The appellant does not have any previous convictions;
 - (j) He owns movable assets (household furniture and assets) valued in excess of R700 000-00.
 - (k) The appellant indicated he understood the charges but would be pleading not guilty.
 - (l) The appellant handed in his passport to the State.
 - (m) The appellant stated that sometime in March 2024, unbeknown to the appellant, Ntombifuthi Manana laid a criminal charge against him.

- [9] The respondent led the evidence of the investigating officer, sergeant Boikanyo to oppose the bail application.
- [10] The investigating officer stated that:
- (a) The estate agents, namely, accused two and three would advertise a property for sale and after securing a potential buyer, they would then approach the appellant to facilitate the alleged fraudulent transaction.
 - (b) Monies would then be deposited into the appellant's bank account by the various complainants.
 - (c) The investigating officer stated that various threats were made by the complainants towards the appellant, and that many of these complainants were armed with firearms. The complainants also stated that if the appellant was given bail and released "they would decide what to do with him".¹ It was stated the complainants were angry and wanted back the money they had paid the appellant. The investigating officer was fearful for the appellant's life if he was released on bail.
 - (d) The investigating officer stated that the amounts involved exceeded R3 million and that this may be an incentive for the appellant to evade his trial.
 - (e) Further to the above, the investigating officer also testified that the complainant in cas 29/3/24, (one of the 8 complainants whose charge is before the court), Ntombifuthi Manana, claimed that the appellant sent people to her and because of that, she fled from Gauteng province to Mpumalanga Province.² Accordingly, the investigating officer was fearful for the safety of this witness. It appears the appellant also tried to coerce this witness to unfreeze his bank account.

Evaluation

- [11] The provisions of ss60(4)-(9) of Act 51 of 1977 apply. These subsections must be construed consistently with s35(1)(f) of the Constitution, which guarantees the right of an arrested person 'to be released from detention if the interests of justice permit, subject to reasonable conditions'.
- [12] In the matter of *S v Smith and Another*,³ the court held that:

¹ Caselines 003-35 lines 1-8.

² Caselines 003-51 lines 15-2

³ *S v Smith and Another* 1969 (4) SA 175 (N).

‘The Court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby’.⁴

- [13] In the matter of *S v Dlamini*,⁵ the Constitutional Court held that:
 ‘... The interests of justice in regard to the granting or refusal of bail therefore focus primarily on securing the attendance of the accused at the trial and on preventing the accused from interfering with the proper investigation and prosecution of the matter.’
- [14] In terms of s65(4) of Act 51 of 1977, the court hearing the appeal shall not set aside the decision against which the appeal is brought unless such court is satisfied that the decision was wrong.
- [15] This court must consider all relevant factors and determine whether individually or cumulatively they warrant a finding that the interests of justice warrant the appellant’s release.
- [16] The general principle is that hearsay evidence by way of affidavit carries less weight than viva voce evidence. During the bail proceedings, the appellant did not testify. An affidavit was filed in support of his bail application. From the provisions of s60(11)(b) the onus is on the appellant and not the respondent to discharge the onus that it is in the interests of justice to release an accused on bail.
- [17] Once the investigating officer testified, the appellant could have re-opened his case to address the aspects pertaining to the alleged intimidation charge opened against him by the complainant Ntombifuthi Manana, yet he elected not to do so. As such, the evidence of the investigating officer remains unchallenged.
- [18] In *S v Bruintjies*,⁶ the Supreme Court of Appeal stated that:
 ‘The appellant failed to testify on his own behalf and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which the Court a quo could assess the bona fides or reliability of the appellant save by the say-so of his counsel.’⁷

⁴ Ibid page 177 para e-f.

⁵ *S v Dlamini* 1999 (2) SACR 51 (CC).

⁶ *S v Bruintjies* 2003 (2) SACR 575 (SCA).

⁷ Ibid page 577.

- [19] Although this court cannot draw a negative inference from the appellant proceeding by way of affidavit, the fact remains that he could not be cross-examined as regards why he believed there was no prima facie case against him.
- [20] In the matter of *S v Smith and Another*,⁸ the Court held that:
 ‘(f) the appellant failed to testify on his own behalf, and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which the Court a quo could assess the *bona fides* or reliability of the appellant save by the say-so of his counsel.’⁹
- [21] In *S v Bruintjies*,¹⁰ the Supreme Court of Appeal stated that:
 ‘The appellant failed to testify on his own behalf and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which the Court a quo could assess the *bona fides* or reliability of the appellant save by the say-so of his counsel.’¹¹
- [22] The provisions of s60(11)(b) of Act 51 of 1977 state the following:
 ‘(11) Notwithstanding any provision of this Act, where an accused is charged with an offence referred to –
 (b) In Schedule 5, but not 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 the interests of justice permit his or her release.’
- [23] Section 60(4) of Act 51 of 1977 states that:
 ‘The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:
 (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;
 (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; or
 (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

⁸ *S v Smith and Another* 1969 (4) SA 175 (N).

⁹ Ibid pg 177 para E – F.

¹⁰ *S v Bruintjies* 2003 (2) SACR 575 (SCA).

¹¹ Ibid para 7.

- (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;
- (e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.' [my emphasis]

[24] Section 60(5) of Act 51 of 1977 states that:

'(5) In considering whether the grounds in subsection (4)(a) have been established, the court may, where applicable, take into account the following factors, namely—

- (a) the degree of violence towards others implicit in the charge against the accused;
- (b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person;
- (c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;
- (d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;
- (e) any disposition of the accused to commit—
 - (i) offences referred to in Schedule 1;
 - (ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) an offence referred to in—
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, as is evident from his or her past conduct;
- (f) the prevalence of a particular type of offence;
- (g) any evidence that the accused previously committed an offence—
 - (i) referred to in Schedule 1;
 - (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) referred to in—
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order.'

- [25] With reference to s60(5)(e) and (f) it is clear that there is a prevalence of fraud cases being committed in addition, there are currently twenty charges that the appellant will now face, instead of the initial eight charges. Furthermore, there are two further cases that have been opened against the appellant in Pretoria. These two additional cases in Pretoria are of fraud of a similar nature, in that the appellant also allegedly took monies from the complainants to prepare deeds of transfer which the complainants never received. As a result, it is clear that the appellant has a disposition to commit Schedule 1 offences.
- [26] Propensity to commit schedule 1 offences is one of the factors that ought to be taken into account when weighing the interest of justice as outlined in *S v Dlamini, S v Dladla and Others, S v Joubert, S v Schietekat*.¹²
- [27] In terms of section 60(6) of Act 51 of 1977
- ‘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.’ [my emphasis]

¹² *S v Dlamini, S v Dladla and Others, S v Joubert, S v Schietekat* [1999] ZACC 8 at paragraph 53.

[28] As regards section 60(6), the appellant does not own any immovable property. There are twenty dockets which suggests that due to the nature of the charges, the modus operandi exercised by the appellant in each instance was similar. This suggests that there is a strong case against the accused. The amount of some of these counts exceeds R100 000 and the total amount taken from all these complainants exceeds R3 million. As a result, this will fall under the ambit of a Part II of Schedule 2 offence which may attract a sentence of fifteen years imprisonment in respect of the counts falling under the ambit of Part II of Schedule 2.

[29] Section 60(7) of Act 51 of 1977 states that:

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

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify;

(c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

(e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;

(f) whether the accused has access to evidentiary material which is to be presented at his or her trial;

(g) the ease with which evidentiary material could be concealed or destroyed;

or

(h) any other factor which in the opinion of the court should be taken into account.' [my emphasis]

[30] In respect to section 60(7), it is clear that the appellant is familiar with the identity of all the complainants who paid him money. There is also a charge of intimidation that has been opened by one of the complainants, namely, Ntombifuthi Manana, where it is alleged, the appellant coerced her to unfreeze his bank account. This complainant had to leave Gauteng as she was fearful for her life and is currently living in Mpumalanga. The investigating officer also stated that the appellant prior to being arrested has been going into the office to collect files. It is clear from the behaviour of the accused that if released on bail, he may conceal or destroy files that would be necessary to prove his guilt. In addition, due to the one complainant that has been intimidated, the possibility of other complainants being intimidated is high.

[31] Section 60(8A) of Act 51 of 1977 states that:

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

- (a) whether the nature of the offences or circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;
- (b) whether the shock or outrage of the community might lead to public disorder if the accused is released;’ [my emphasis]

[32] In regard to section 60(8A), the investigating officer stated that because the appellant owes many people money, the appellants safety would be compromised if released on bail. Threats have been made by the complainants in these matters that if he is released on bail they will decide what to do with him. No alternative address was given to the investigating officer by the appellant if he is released on bail. As a result, the **possibility** of releasing the appellant on bail with conditions is not possible.

[33] This court has considered the state of the appellants health and whether the court a quo misdirected itself in this regard. The court a quo in this respect stated the following:
‘There is nothing before the court that proves that he had been denied medical treatment at prison. They were able to hand in a medical certificate dated 6 November 2024. The bail application proceeded on the 8th of November 2024. This medical certificate does not state that the applicant is supposed to be admitted at hospital. Now, the doctor who issued the certificate was he not even supposed to include in the medical certificate that applicant 1 is supposed to be admitted at hospital.’¹³

[34] The appellant’s counsel argued that it is unclear how the court expected the appellant and or the legal representative to obtain further medical evidence whilst the appellant was incarcerated.

[35] The appellant merely alleged in his affidavit that the Department of Correctional Services medical department refused to provide the appellant with medical attention and medication. There was no persuasive evidence placed before the Court a quo to highlight that his right to adequate health care was compromised. The Investigating Officer testified that he was not notified about the accused’s health status and as such he did not enquire.

¹³ Caselines 003-225 lines 8-16.

- [36] The appellant was placed under arrest on 16/10/2024, the medical certificate was obtained on 06/11/2024 and subsequently handed in on 08/11/2024. When the Court a quo enquired about the supplementary information, the appellant's legal team submitted that they could not obtain a medical certificate as the appellant was in custody and the Department of Correctional Services would not allow a private medical practitioner to examine the appellant in custody. It is unclear how the medical certificate marked exhibit KM1 dated 06/11/2024, was obtained, as the appellant was already in custody when it was prepared.
- [37] As a result, there was no evidence placed before the court a quo that the medical condition of the appellant was so severe that he could not insist on medical treatment in the medical centre of the Department of Correctional Services.
- [38] In the matter of *S v Van Wyk*,¹⁴ the Supreme Court of Appeal held that a medical condition should be taken into account together with other factors in order to determine whether an accused should be released on bail. A medical condition on its own, cannot be the only factor to grant bail, especially if there are other remedies available to the appellant. The appellant is not left without remedy. He can invoke his right to adequate medical care and access to a chosen medical practitioner in terms of s35(2)(e) and (f) of the Constitution of the Republic of South Africa Act 108 of 1996 whilst incarcerated.
- [39] It was argued on behalf of the appellant that the respondent failed to present the appellant with a complete charge sheet and the order granted by the court a quo was handed down on a defective charge sheet.
- [40] During a bail application, a charge sheet should contain sufficient particulars in order for all the parties to assess what schedule the bail application will be dealt under. Accordingly, a charge sheet at the stage of a bail application need not detail every aspect of the charge. It should at least, inform the accused of the dates and places of the alleged offences, the names of the complainants and general particulars of each alleged offence. The eight counts that existed at the inception of the bail application did contain sufficient information. The appellant was able to fully understand the nature of the charges arraigned against him.

¹⁴ *S v Van Wyk* 2005 (1) SACR (SCA).

- [41] It is unclear why the public prosecutor changed their attitude towards the end of the bail application by no longer opposing the bail application. However, notwithstanding the state's change of attitude, in terms of s60(10) of Act 51 of 1977 the Court has a duty to weigh up the personal interests of the accused against the interest of justice.
- [42] It is common cause that where an appellant has been charged with an offence referred to in Schedule 5 of Act 51 of 1977, he is tasked with the burden of convincing the court a quo that the interest of justice permit his release on bail. The appellant did not do this.
- [43] After a perusal of the record of the court a quo, this court cannot find any demonstrable misdirection of the court a quo in coming to its conclusion in refusing bail.
- [44] There are no grounds to satisfy this court that the decision of the court a quo was wrong and accordingly, the requirements of s65(4) of Act 51 of 1977 were not met.

Order

- [45] In the result, the appeal against the denial of bail by the court a quo is dismissed.



D DOSIO
JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 16 July 2025.

APPEARANCES

ON BEHALF OF APPELLANT:

Adv N M Mtsweni

ON BEHALF OF THE RESPONDENT:

Adv K Madiba

Instructed by the Office of the National
Director of Public Prosecutions, Johannesburg

DATE OF HEARING:

09 July 2025

DATE OF JUDGMENT:

16 July 2025