

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

Not Reportable

Appeal case no: A122/2025

Lower court case no: B275/24

In the matter between:

A[...] M[...]

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation:

Coram: COOKE AJ

Heard: 12 August 2025

Delivered: 15 August 2025

Summary:

ORDER

[1] The appeal is dismissed.

JUDGMENT

[1] This is an appeal against the judgment of the presiding Magistrate of the Magistrate's Court for the District of Mossel Bay, in which she refused to grant the appellant bail on 20 June 2024 and 20 November 2024 respectively.

[2] The appellant is a 37-year-old man who, until his incarceration, worked as a fisherman in Mossel Bay. He has three children (not from his marriage to the complainant). Two of these children live in Worcester with the appellant's mother, and the third is studying at university.

[3] On 18 May 2024 the appellant and the complainant celebrated their ninth wedding anniversary with friends. However, the celebration did not end well. The appellant allegedly accused the complainant of infidelity and proceeded to hit her with his fists. It is alleged that he then told her to undress, whereafter she fell to the ground, and he hit her with a hammer multiple times all over her body. During this attack she broke her arm. The complainant then left the home and obtained assistance from neighbours. The appellant was arrested and charged on 22 May 2024.

[4] The appellant stands accused of attempted murder. According to the charge sheet, upon or about 18 May 2024 he attempted to kill his female partner by hitting her

with a hammer and/or hitting her with a rock and/or hitting her with his fist and/or stomping on her. The charge sheet provides further that the State will aver that life imprisonment is applicable in that the victim was in a domestic relationship with the appellant.

- [5] The Magistrate found that there is a likelihood that if the appellant is released, he will endanger the life of the complainant, and it is therefore not in the interests of justice that he be released.
- [6] There is no indication in the record before me that the Magistrate considered the imposition of suitable bail conditions. This constitutes, in my view, a material irregularity.¹
- [7] In addition, the Magistrate found that according to the charge sheet there were allegations that the appellant threatened to kill the complainant. There is no suggestion in the charge sheet that any such allegation was made.² Furthermore, this allegation was not made by the investigating officers who testified at the bail hearings. The reliance upon this allegation accordingly amounts to a further material irregularity.
- [8] Having regard to these irregularities, both individually and cumulatively, this Court is at large to consider whether bail ought, in the particular circumstances to have been granted or refused.³
- [9] It is common cause that this bail application fell within the realm of schedule 5 of the Criminal Procedure Act 51 of 1977 ('the Act'), and therefore s 60(11)(b) of the Act is of application.

¹ See *S v Branco* 2002 (1) SACR 531 (W) at 537a-b.

² Counsel for the respondent suggested that the allegation may have been contained in documents recording the appearances, which were excluded from the record. In my view this is unlikely. In any event, I can only decide the appeal based on the material included in the record.

³ *Panayiotou v S* [2015] ZAECHGHC 73 (28 July 2015) para 27.

[10] In the result, the appellant was burdened not merely with an onus to adduce evidence, but a reverse onus in terms of which he was required to satisfy the court, on a balance of probabilities, that the interests of justice permitted his release.⁴

[11] Section 60(4) of the Act lists five grounds where the interests of justice do not permit the release from detention of an accused. These include where there is the likelihood that the accused, if he or she were released on bail:

- a. will endanger the person against whom the offence in question was allegedly committed; or
- b. will attempt to influence or intimidate witnesses.

[12] The question which thus arises is whether the appellant proved, on a balance of probabilities, that none of the s 60(4) grounds are established. More pertinently – was it shown that if he is released on bail, it is unlikely that he will endanger the safety of the complainant or intimidate her?

[13] In support of this proposition the appellant adduced evidence that (a) there were no pending matters or active warrants against him, (b) there were no previous convictions, (c) he could stay at an alternative address, (d) he undertook to abide by conditions not to contact the complainant, (e) as a fisherman employed by Seavuna (a Mossel Bay-based company), he would be at sea most of the time, (f) he had not contravened any protection orders, and (g) in the four days between the incident and his arrest he did not try and contact the complainant. The appellant also indicated that he had no objection to an interim protection order being taken out by the complainant against him.

⁴ J van der Berg *Bail: A Practitioner's Guide* 3 ed (2012) at 92. See also *S v Tshabalala* 1998 (2) SACR 259 (CPD) at 271gh.

[14] As against that evidence, the State led evidence that the appellant had assaulted the complainant, including by striking her with a hammer so hard that her arm was broken. The medical evidence suggested that the injuries were life-threatening, and photographs put up by the State revealed severe harm to the complainant's face and body. Not only this, but evidence was led to show that the appellant had previously assaulted the complainant, and that the complainant had been raped by the appellant's brother in the presence of the appellant and thereafter the appellant had asked the complainant to withdraw charges against his brother. The State also adduced evidence that the complainant is very afraid of the appellant.

[15] In assessing the evidence, I have also had regard to the fact that the appellant initially indicated that he only had R300 available for bail money. However, when the second renewed bail application was made, he deposed to an affidavit which stated that the complainant had made multiple withdrawals from his bank account, and he had been intending to use that money to assist his eldest child who is currently in university. In the same affidavit he repeated that he can only afford the amount of R300 for bail money. It is difficult to reconcile the evidence of an inability to pay bail of more than R300, with the protest that the complainant had subsequently withdrawn money from the appellant's bank account (presumably in a total amount of more than R300). In these circumstances there is a question mark regarding the credibility of the appellant.

[16] On the prospects of acquittal, it is instructive that the appellant did not adduce any evidence at the first bail hearing regarding the incident, notwithstanding the grave allegations made against him and the evidence adduced by the investigating officer in respect of the serious assault on his wife. At the second hearing the appellant denied the charges and claimed that he caught his wife in bed with another person. However, the appellant provided no explanation whatsoever for the very serious injuries sustained by his wife. In these circumstances I do not consider that the

appellant has discharged the onus of proving his future acquittal on a balance of probability. Certainly, no convincing evidence of his innocence was adduced.⁵

[17] With reference to the case mounted by the appellant:

- a. In circumstances where there is evidence of previous assault, albeit that it was not reported, as well as the encouragement to not report a rape, I do not find the evidence regarding a lack of pending matters, active warrants, previous convictions, breaches of protection orders and so forth persuasive.
- b. Even if the appellant stays at an alternative address, and even if he is restricted to Worcester (where his parents reside), there will still be a risk that he will interact with the complainant, especially if he resumes his job with Seavuna.
- c. Furthermore, even if the appellant can secure employment as a fisherman, entailing that he is at sea for long periods of time, he will still be ashore for significant periods of time, creating opportunities for interaction with the complainant.
- d. I am also not persuaded that his restraint between the incident and his arrest – at a time when he had not been charged - provides comfort that he will stay away from the complainant until the trial is heard.
- e. Finally, having regard to all the evidence, I am not confident that the appellant will comply with undertakings.

⁵ See *S v Mathebula* 2010 (1) SACR 55 (SCA) para 12; *Panayiotou v S* [2015] ZAECHGHC 73 (28 July 2015) para 57.

- [18] In the result I find that the appellant has not proven on a balance of probabilities that none of the s 60(4) grounds are established. In particular, he has not satisfied me that if he is released on bail, it is unlikely that he will endanger the safety of the complainant or intimidate her.
- [19] In reaching this conclusion I have had regard to the factors listed in s 60(5) of the Act, and specifically the degree of violence towards others implicit in the charge against the accused, the disposition to violence on the part of the accused, as is evident from his past conduct, and the prevalence of gender-based violence in South Africa.
- [20] I am not satisfied that the appellant has adduced sufficient evidence to show that he is not likely to act in terms of the propensity to violence that his past behaviour illustrates.⁶
- [21] I have considered the possibility of imposing bail conditions, but I am not convinced that bail conditions would sufficiently reduce the risk of harm to the complainant.
- [22] I have also considered the factors set out in s 60(9) of the Act, and particularly the possible impact of the appellant's incarceration on his children. In this regard I take note that the appellant testified that he sends about R2 500 to R3 000 per month to his mother to support his children. I agree with counsel for the respondent that the appellant has failed to adduce adequate evidence regarding the financial impact of his incarceration. For instance, he has not shown that if he is released on bail that his previous employer (Seavuna) will re-employ him. Nor has any evidence been put up regarding the arrangements that are presently being made to maintain his children while he is imprisoned, and how those arrangements would be different if he were not incarcerated.

⁶ Compare *S v Rudolph* 2010 (1) SACR 262 (SCA) para 13.

- [23] Regarding the period for which the appellant has been in custody, I understand from counsel that the trial is set down for 7 November 2025. Although the appellant has been incarcerated for a lengthy period, there is now only three months until the trial.
- [24] Evidence was put up in the second bail hearing to show that the complainant had withdrawn monies from the appellant's bank account. This in circumstances where the complainant is not employed and is married in community of property to the appellant. To my mind this does not constitute a ground to release the appellant on bail. It was not shown that the appellant cannot take steps from jail to limit access to his bank account. Furthermore, as contended by counsel for the respondent, the financial grievances may increase the risk of the complainant being harmed if the appellant is released.
- [25] It was also contended at the second hearing that the initial investigating officer was biased as he had been in a relationship with the complainant's sister. No evidence was adduced to support this contention, and the conduct of the investigating officer does not support an allegation of bias against the appellant.
- [26] On a conspectus of all the evidence, and applying a value judgment, I do not consider that the appellant discharged the onus resting upon him. It follows that I do not consider that the Magistrate's decision was wrong, as contemplated by s 65(4) of the Act. In the result the appeal is dismissed.

DJ COOKE

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the Appellant: W Calitz

For the State: L Snyman