



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

Case number: **CC01/2023**

In the matter between:

THE STATE

versus

NATHAN LEEMAN	Accused 1
YUWEN NEWAT	Accused 2
BRADLEY MURPHY	Accused 3
CARLTON WILLIAMS	Accused 4
ASHWIN TIFFLON	Accused 5
ZHARNEY JOHNSON	Accused 6
ANTONIO BAILEY	Accused 7
ROMANO WITBOOI	Accused 10

CHESLYN SPANNENBERG

Accused 11

JAYDON FELIX

Accused 12

Coram	:	Da Silva Salie, J
Judgment delivered	:	15 September 2025
Counsel for the State	:	Adv. Breitenbach S.C Adv. Prinsloo
Counsel for Accused 1 & 2	:	Adv. Sibanda
Counsel for Accused 3 & 4	:	Adv. Camphor
Counsel for Accused 5 & 6	:	Mr Mgengwana
Counsel for Accused 7	:	Adv. Kuun
Counsel for Accused 10, 11 & 12	:	Adv. Lange

Summary: Bail – State’s application for leave to appeal against High Court order granting bail – Prolonged pre-trial detention and State’s disclosure failures constituted exceptional circumstances under s 60(11)(a) CPA – No reasonable prospects of success on appeal – Application for leave to appeal dismissed.

ORDER

1. The application for leave to appeal is dismissed.

JUDGMENT DELIVERED ON 15 SEPTEMBER 2025
APPLICATION FOR LEAVE TO APPEAL AGAINST GRANTING OF BAIL

DA SILVA SALIE, J

Introduction:

[1] This is an application by the State for leave to appeal to the Supreme Court of Appeal against the order of 5 December 2024 granting bail to the accused pending trial, subject to stringent conditions. The trial remains pending before this Court. This application for leave to appeal is against the following Order:

“Having heard the Legal Representatives for Accused 1 to 8 and Accused 10 to 12 and Legal Representation on behalf of the State and having read the documents filed of record:

IT IS THEREFORE ORDERED THAT:

1. *Bail is set for the abovestated Accused in the amount of R500.00 (Five Hundred Rand) each, payable to the Clerk of the Court, Magistrate’s Court, Cape Town.*
2. *The following bail conditions apply:*
 - 2.1 *The Accused shall ensure that he/she attends all further Court appearances until finalisation of the matter.*

2.2 The Accused shall report at Grassy Park Police Station, Cape Town, on the following days: Monday, Wednesday and Saturday between 06h00 and 18h00.

2.3 The Accused shall not tamper with evidence or have any contact with the witnesses, directly or indirectly pending finalisation of the matter.

2.4 The Accused will reside at the addresses supplied by them to the Investigating Officer through their Legal Practitioners and supplied to the State Counsel until the matter is finalised or the bail conditions varied by the Court. In the event of any change of address such shall be done in writing to the Investigating Officer.

2.5 The Accused will surrender his/her passports, regardless of whether such passports are valid or expired and he/she is not to leave the Western Cape or the borders of South Africa.

2.6 Any change of address must be communicated to the Investigating Officer who is also authorised to check on the Accused, at reasonable times, to ensure that he/she is still so resident.

Ex lege, if any of the Accused fail/s to adhere to the bail conditions, his/her bail will be forfeited to the State.”

[2] At the time of the hearing of this application, leave to appeal was not sought in respect of Accused 8 as his bail had been withdrawn during a pre-trial hearing earlier this year. The application for leave to appeal only relates to accused 1 – 7 and accused 10 – 11. Accused 9 had previously been released on warning.

Background:

[3] The matter initially came before me on the criminal pre-trial roll of 15 November 2024. During the hearing of this matter, I indicated my concern that the accused were in custody for almost 3 years whilst the trial remained unallocated for

hearing. The accused were denied bail during a bail application before the Wynberg Magistrates Court during 2022 whereafter the matter was transferred to this Court. I enquired from the State whether it would consider agreeing to bail subject to stringent conditions whilst the matter was pending trial or as may be further directed by the Court. Counsel for the accused indicated that several enquiries had been made for the High Court to reconsider bail and that footage requested from the State had not been forthcoming, leaving the accused unable to prepare for trial and in custody indefinitely. During a conference scheduled a week or so later, Counsel indicated that they were unable to come to an agreement as the State was not amenable to agreeing to bail.

[4] A formal bail reconsideration hearing was convened on 5 December 2024. Affidavits, heads of argument, and the record of the bail proceedings were placed before the Court. The State chose not to adduce additional evidence, instead maintaining that this Court lacked jurisdiction to entertain bail in this manner and forum as bail was refused in the magistrates' court. At the bail hearing counsel for the State argued that the matter had to be remitted for reconsideration or heard by this Court on the basis of an appeal against the refusal of bail. Counsel for the accused argued that prolonged detention, disclosure failures, and systemic delays in allocating the matter to trial cumulatively with all the other relevant circumstances constituted exceptional circumstances warranting release pending trial.

[5] Having considered the record of earlier bail proceedings, the arguments, and the inordinate delay, I was of the view that grounds existed to reconsider bail under s 60(11)(a) of the Criminal Procedure Act 51 of 1977 (CPA). In particular, the accused had by then remained in custody for a substantial period since the last bail hearing, and the State had failed to provide full further particulars to the defence. These developments amounted to new facts or changed circumstances post the earlier bail refusal. I therefore postponed the matter for a formal bail enquiry: first convened by way of a conference in chambers and thereafter by way of a hearing in open court. Counsel for both the State and the defence were directed to file submissions and place any evidence before the Court for the hearing set down on 5 December 2024.

[6] The State now seeks leave to appeal, arguing that the Court misdirected itself, applied the bail test incorrectly, and relied on inherent jurisdiction under s 173 of the Constitution impermissibly. It emphasised the seriousness of the charges and contends that the prejudice of pre-trial detention is outweighed by public safety considerations.

Discussion:

[7] Having considered the record, the arguments, and the inordinate delay, this Court was satisfied that exceptional circumstances existed within the meaning of s 60(11)(a) of the CPA. I considered that the accused had remained in custody for a substantial period since the last bail hearing and that the State had failed to provide full further particulars to the accused. These factors constituted new facts or changed circumstances post the earlier bail refusal.

[8] In the application for leave to appeal, counsel for the State drew emphasis to the principles as set out in ***S v Mabena and Another 2007 (1) SACR 482 (SCA)*** in support of its contention that the accused themselves had to initiate an application for bail and that by raising the issue I acted as a "*protagonist*". It is however trite that a presiding officer's duty at pre-trial is not merely to serve as a postponement court, but to ensure that the constitutional rights of accused persons are respected. In any event, once the issue was raised at the pre-trial hearing, counsel for the accused confirmed that various prior attempts at securing a reconsideration of bail had gone unanswered and that they indeed sought such reconsideration. The reliance on ***Mabena*** is in my view misplaced: that matter turned on circumstances where the Court impermissibly assumed the role of an applicant in the absence of any indication from the accused.

[9] Here, by contrast however, my intervention was mandated to ensuring that the accused's constitutional rights were not rendered nugatory by prolonged inaction, and once the issue was raised, the defence expressly sought reconsideration of bail. It was not in dispute that attempts were made by defence counsel to have the matter set down for a reconsideration of bail hearing, which attempts were unanswered. The State's reliance on the authority of ***Mabena*** in contending that this Court

assumed the role of a protagonist is distinguishable: unlike in **Mabena**, the defence in this matter expressly sought reconsideration once the issue was raised, and my intervention was directed, as judicially required, to ensuring that the accused's constitutional rights were protected during pre-trial management. This distinction further undermines the State's prospects of success.

[10] Section 60(11)(a) places the onus on the accused to show exceptional circumstances that justify release. In this case, the prolonged and unjustified pre-trial detention of nearly three years, coupled with the State's failure to disclose crucial CCTV footage, constituted such exceptional circumstances of constitutional dimension. When the matter was heard, the parties did not elect to call witnesses; it was argued and determined on the papers, the record and the submissions of counsel.

[11] As foreshadowed in paragraph [4] and having considered the full record (including the bail proceedings) as well as the submissions, I was satisfied that on a conspectus of all relevant issues before me, the interests of justice permitted the accused release on bail subject to stringent bail conditions. The Constitutional Court in **S v Schietekat 1999 (4) SA 623 (CC)** confirmed that the "interests of justice" demand a balancing exercise that protects both public safety and the accused's right to liberty and a fair trial.

[12] The seriousness of the charges was not ignored and was highlighted by the bench during the hearing. It was weighed against other relevant factors including but not limited to the absence of prior relevant convictions, no evidence of interference with witnesses, the accused's willingness to comply with bail conditions, the indefinite delay in the allocation of a trial date and long outstanding particulars from the State as requested by the defence.

Appealability of Bail Orders:

[13] Section 65A of the CPA allows the State to appeal a decision of the High Court granting bail. However, such an appeal requires leave under s 17(1) of the Superior Courts Act 10 of 2013, which demands reasonable prospects of success or

other compelling reasons. Bail decisions involve judicial discretion and are not easily overturned unless a clear misdirection is demonstrated (***S v Barber 1979 (4) SA 218 (D)***).

[14] In this case, the prolonged and unjustified pre-trial detention of nearly three years, coupled with the State's failure to disclose crucial CCTV footage and to provide full further particulars, constituted exceptional circumstances of constitutional dimension. I regarded these developments — occurring after the earlier refusal of bail — as new facts or changed circumstances that weighed heavily in favour of reconsidering bail.

[15] The application for leave to appeal does not meet the threshold under s 17(1)(a)(i) of the Superior Courts Act. I am satisfied that no reasonable prospect exists that another court would interfere with this Court's exercise of discretion and would come to a different conclusion.

Order:

[16] For the reasons stated herein, I make the following order:

"The application for leave to appeal is dismissed."

G. DA SILVA SALIE
JUDGE OF THE HIGH COURT
WESTERN CAPE DIVISION