

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)**

Case no.: A86/2025

Lower Court case no.: C405/2024

In the matter between:

PEZILE NOMAVILA

Appellant

And

THE STATE

Respondent

Coram: Pangarker J

Delivered: 14 October 2025 (delivered via email to the parties' legal representatives)

Summary: *Bail – Appeal against refusal of bail – Accused charged with multiple counts of extortion – Flight risk – More than one address for purposes of bail – Likelihood of interference with witnesses – Strong prima facie case against accused*

- Bail conditions and difficulty in monitoring accused if released on bail – Magistrate's finding correct – Appeal dismissed

ORDER

On appeal from the Magistrates' Court, Mossel Bay, the following is ordered:

The appeal against the refusal of bail is dismissed.

JUDGMENT

PANGARKER J

Introduction

[1] On 20 December 2024, the Mossel Bay Magistrates' Court refused bail in respect of the appellant's bail application which was opposed by the State. This appeal against the Magistrate's decision is dealt with in terms of section 19(a) of the Superior Courts Act 10 of 2013, thus without the hearing of oral submissions.

[2] It is apparent from the record of proceedings in the Magistrates' Court that the appellant, accused 1 in the matter, was legally represented throughout the bail proceedings. I have had regard to the record, the Magistrate's judgment in the bail application, the grounds of appeal as well as the legal representatives' written submissions in the appeal in reaching the conclusion herein.

[3] The appellant is charged along with a co-accused, Lazola Perry Mtini (accused 2), with 25 counts of extortion. The State alleges that on or about 14 June 2024, near Asla and KwaNonqaba, Mossel Bay, the accused acted with a common purpose with persons known and unknown to the State and unlawfully and intentionally induced, threatened, subjected to pressure or inspired fear in the minds of shop owners and shop assistants at 25 shops, by demanding cash payments for so-called protection. Furthermore, by means of these threats, inducements or pressure, the accused unlawfully and intentionally obtained an advantage not due to him in that he received R500 per shop totalling R12 500.

[4] The parties were agreed that the offence falls under Schedule 1 of the Criminal Procedure Act 51 of 1977 (the CPA) and that section 60(1) applied to the bail proceedings in that an accused is entitled to be released on bail if the Court is satisfied that the interest of justice permits it.

Grounds of appeal

[5] The grounds of appeal in relation to the Court *a quo*'s order are, in summary, the following: (i) the Magistrate committed an error in finding that it was not in the interests of justice to release the appellant on bail; (ii) the Magistrate erred in finding that there was a likelihood that the appellant would evade his trial and would influence or intimidate witnesses; (iii) the Magistrate overlooked the fact that the appellant resided permanently outside the Court's jurisdiction thus suitable bail conditions could have been fixed, and (iv) the Magistrate misdirected himself in failing to consider granting bail coupled with the appropriate conditions as set out in section 62 of the CPA. The State presented its case first in the bail application.

The State's opposition to the granting of bail

[6] The State presented the testimony of Captain Carel Cornelius (Cornelius) who also provided a detailed affidavit which included the reasons for opposing bail. At the time of the application, Cornelius was a police officer of 39 years' experience. He testified that incidents of extortion were reported to have occurred amongst mainly Ethiopian shop owners in KwaNongqaba and Da Gamaskop police precinct. Due to their immense fear for their safety and that of their property, many of the foreign shop owners were unwilling to come forward and report these cases to the police. Consequently, various meetings were held between senior police officials and the shop owners and eventually two complainants came forward.

[7] Cornelius testified that the police applied for a section 252A operation authorization and this set in motion covert surveillance to crack the extortion syndicate in the area. Pursuant to information received from the complainants that the shops were visited every middle of the month, search and seizure warrants in respect of the taxis were applied for. Thereafter, Cornelius and his colleagues commenced surveillance at a guest house which was identified as a place where a taxi, which stopped at the various spaza shops in the area, visited regularly. The taxi's registration details corresponded with information which the police had obtained.

[8] The surveillance team decided to apprehend the occupants of the taxi and in the police's attempt to block the taxi on or about 14 June 2024, a chase ensued which saw the taxi fleeing the police blockade. Eventually, the occupants of the taxi were apprehended, with the result that the appellant, an occupant of the taxi, was apprehended and arrested while the other occupants fled the scene. Later, another suspect (also an occupant of the taxi) was arrested but released on the basis that he would be utilised as a section 204 witness in the case against the appellant. This witness also linked the appellant to multiple instances of collecting protection money in his presence.

[9] The search and seizure warrant for the taxi yielded a notebook containing the names of 41 spaza shops and its owners and it was noted that blue “ticks” appeared next to 25 of these names, which corresponded with R500 (per shop) paid by 25 shop owners, totaling R12 500. Cornelius testified that the police seized R12 180 in cash along with the notebook. Furthermore, it was confirmed that a VW Polo found at the guesthouse was rented by the appellant and had travelled from Cape Town to Mossel Bay. Cornelius emphasised that the police investigation illustrated that the appellant, his co-accused and other individuals were engaged in extortion activity as part of a criminal enterprise. It was evident that a pattern emerged from the collection dates of the extortion money in that it differed from area to area, which underscored the organised manner in which the offences were committed.

[10] According to Cornelius, the appellant was linked to the offences in that he was pointed out in photographs as being the person who collected the money from the spaza shops. The police investigation illustrated that the appellant, his co-accused and other individuals were engaged in an enterprise as a group who collected protection money.

[11] In respect of the appellant’s address, Cornelius testified that the appellant provided 5[...] N[...] Street, Khayelitsha as his residential address. He requested the appellant to show him the address on Google Maps but was informed that [...] N[...] Street was one and the same address. The information was checked on Google Maps and was followed up: it was found that one Bulelani Somlenzi was found to occupy 5[...] N[...] Street, that he knew the appellant but that he and his girlfriend occupied the property for several months at the time the police attended the address. Somlenzi advised that the appellant did not occupy the premises.

[12] The police were also provided with the appellant's girlfriend's address, 2[...] M[...] Street, Eerste River. It is noted that the record of the bail proceedings indicates several variations on the name of the street but nothing much turns on this uncertainty and confusion. The aforementioned address was followed up by Warrant Officer Williams, whose feedback was that on visiting the address, the police found

an Eddie Rose who was residing at the property for 16 years and did not know the appellant. A further follow-up by the police led them to the landlady, and it turned out that the landlady (who knew the appellant but not his girlfriend) indicated that the appellant paid the rent.

[13] As for the section 62(f) report, the address supplied by the appellant was occupied by tenants for several months who rented from the appellant. Cornelius was concerned that as nobody was home when the police attended the premises, the verification of the address was therefore questionable. Furthermore, he testified that the appellant's taxis and business documents were registered on another address, 5[...] N[...] Street, Kuyasa.

[14] Having regard to these factors, Cornelius regarded the appellant as a flight risk due to inconsistencies with his address(es). Thus, the likelihood existed that should he abscond from attending Court, it would be difficult for the police to monitor him should bail be granted and tracing him would be problematic. It was also unclear to the police where in the Eastern Cape the appellant's family resided.

[15] Cornelius testified that there was a J50 Bench warrant circulating for the appellant in a 2014 Khayelitsha matter. Cornelius feared that there was a likelihood that if bail were fixed, the appellant would re-connect with the other suspects in the taxi as he had all the information in the matter. He also feared the likelihood that the appellant, if bail were fixed, would commit other crimes.

[16] In cross-examination, Cornelius confirmed that there were in total, 11 complainants (shop owners) and others were prepared to come forward but awaited the outcome of the bail application. He testified that the individual shops were known or identified by the appellant even though the police had deliberately withheld the identities of the complainants/shop owners.

[17] Cornelius conceded that there were measures in place to protect witnesses including the section 204 witness and that it was possible, but not likely, that the appellant would return to the Mossel Bay area if bail were granted. Cornelius admitted that the police did not know why the J50 warrant was circulated when the Khayelitsha matter was withdrawn against the appellant¹. He confirmed that in a previous Blue Downs matter, bail was refused and the appellant was held in custody awaiting trial.

[18] Insofar as the appellant's address issue was concerned, Cornelius testified that he was given two notes containing address details for 2[...] M[...] Street and the reference to a Rosetta Martins as the appellant's girlfriend. These notes were attached to his affidavit opposing the granting of bail. A follow-up on the address indicated on the note brought the police to a landlady, Noloyiso, who did not know a Ms Martins, but referred to 1[...] M[...] Street (not 2[...] M[...] Street) and when prompted, indicated that she knew the appellant and his girlfriend.

[19] Cornelius did not know that Busisiwe Sikili was the appellant's girlfriend and only became aware of her at the bail proceedings. It was put to the State's witness that the appellant's version would be that 1[...] M[...] Street was the appellant's alternative address where he lived with his girlfriend, Ms Sikili, and that he rented from the landlady, Noloyiso.

[20] From his further testimony, it was clear that Cornelius had an issue that yet another address was used, 5[...] N[...] Street, Kuyasa, for the hired Polo. He was concerned that this address was not the one provided at the time of arrest, but he agreed that it was the address on the section 62(f) report and used in the paperwork related to the appellant's taxis. The appellant had three taxis registered in his name and no further extortion activity occurred while he was in custody.

¹ It is unclear from the testimony whether the Khayelitsha matter was withdrawn in 2017

[21] In re-examination and in response to the Court's questions, the witness confirmed that the appellant used the N[...] Street address for his other cases. He could not confirm that the handwriting on the notes handed into Court belonged to the appellant. This concluded the State's case in the bail application.

[22] The appellant called Ms Sikili to testify in his application. It seems from an exchange between the prosecutor and Ms Sikili, that despite a request by the defence that she remains outside the Courtroom during the State's case, she failed to heed the request and was present during Cornelius' testimony. Ms Sikili testified that she and the appellant resided at 1[...] M[...] Street, she was seven months pregnant at the time of testifying and her testimony regarding the landlady Noloyiso, who was contacted by the police regarding the appellant's girlfriend, mirrors the testimony of Cornelius.

[23] Ms Sikili testified further that she moved from 1[...] M[...] Street after the appellant's arrest and that the appellant lived with his cousin, Siyabulela, in a rented room at 5[...] N[...]2 Street. She testified that she and the appellant were in a relationship for 4 years prior to his arrest and that he is a taxi owner.

[24] In cross-examination, Ms Sikili testified that she was unaware that the appellant contended that his family home was in Khayelitsha. According to her, the appellant's family home was in the Eastern Cape. However, she also testified that the appellant's family home in Cape Town was sold and that his family had relocated to the Eastern Cape. The family home which she referred to was 5[...] N[...] Street, the same address provided for the taxi business, SARS documentation and for hiring the VW Polo. She testified that she was not aware of the appellant visiting Mossel Bay monthly, does not know Rosetta Martins and the appellant would sleep over 3 to 4 times per night.

The appellant's application for bail

[25] The appellant did not testify but relied on an affidavit which was placed before the Court and admitted into evidence as Exhibit D. The content of the affidavit is not repeated herein at length; however, certain information is referred to. The appellant stated under oath that he was 33 years old and resided at 5[...] N[...]2 Street, Kuyasa, Khayelitsha, where he lived with his cousin Siyabulela, prior to arrest. He was engaged to Ms Sikili, who lived at 1[...] M[...] Street, Eerste River, and his family had relocated to Qumbu, Eastern Cape.

[26] The appellant has a minor son aged 1 from a previous relationship whom he maintains at R3 000 per month. Furthermore, the section 62(f) report confirmed his address as being 5[...] N[...]2 Street, Khayelitsha and it favoured his release pending finalisation of the matter. The appellant was the owner of a number of taxis, some of which were still under vehicle finance, while others were bought in cash. He was a registered taxpayer.

[27] The appellant's release on bail was premised on the following factors: having a fixed/determinable address; a favourable section 62(f) report; a good bail profile; that he gave his full co-operation to the police investigation, and that the likelihood of endangering the public safety, of being a flight risk, of interference with witnesses and evidence and jeopardising the bail and criminal justice system, did not arise.

The Court *a quo*'s judgment

[28] In the judgment, the Magistrate found that although the appellant had not threatened witnesses, the charges were of such a nature that a threat(s) was/were implied. He found *prima facie*, that the State had a strong case against the appellant, that the appellant holds no property within the Court's jurisdiction and that additionally, because the remaining suspects were not yet apprehended, it showed how easily the appellant could disappear. A lengthy period or imprisonment if convicted was, in the Court's view, sufficient reason to flee.

[29] Furthermore, the Magistrate was not satisfied with the appellant's explanation as to his actual residence and found the explanations related to the various addresses, to be ambiguous. Furthermore, the identities of witnesses were easily determinable. Accordingly, bail was denied in view of the Court *a quo* holding that there was a likelihood that the safety of the public or a person may be endangered and a likelihood that he would attempt to evade his trial and influence or intimidate witnesses.

Discussion and findings

[30] To commence the discussion, it is trite that in terms of section 65(4) of the CPA, interference on appeal in respect of a lower Court's decision to refuse bail may only occur where that Court committed an error or mistake². In my view, the main issue in the bail application relates to the appellant's address or addresses and whether he was a flight risk. Having regard to the record and submissions, it is clear that Cornelius' affidavit, supported by his oral testimony, was quite detailed.

[31] The appellant was entitled to exercise his right to remain silent regarding questions related to the merits of the charges against him. That said, it is evident that a detailed police operation led to his arrest. Significantly, the appellant was arrested as an occupant in the taxi which, according to the police's information and surveillance, stopped at the spaza shops and in which a notebook containing details of the alleged extorted spaza shops and R12 000³ were found. The appellant was thus found on the scene, as an occupant of the same taxi and at least *prima facie*, is considered to be directly connected to the charges.

[32] The appellant is linked to the crimes of extortion in two ways: firstly, he was arrested after the ambush of the taxi resulted in the occupants thereof, fleeing from the scene, and he was one of the occupants thereof. Secondly, the complainants

² S v Porthern and others 2004 (2) SACR 242 (C) par [4]

³ Rounded off

identified the appellant through photo identification as being a/the person who visited the spaza shops monthly, demanding R500 protection money.

[33] As for the charges, the evidence presented by Cornelius and the finding of the Magistrate that a threat is implicit in the charge of extortion, is correct. In view of the above, it stands to reason that the case against the appellant, at least *prima facie*, is strong, and a successful conviction could lead to a lengthy period of imprisonment.

[34] The appellant's submission that the full detail of the charge sheet (at the time of the bail application) was not yet available to the defence, is ultimately not that significant. It must be remembered that Cornelius' testimony that further complainants exist and that therefore more charges may be added in respect of the other spaza shops, was not materially challenged during the bail proceedings.

[35] It is important to also note that while the appellant submits that there was no likelihood that he posed a flight risk⁴, the following undisputed facts must be taken into account: the appellant has a passport and travelled once outside South Africa, to Lesotho. He possesses several taxis, some of which were paid for in cash or in large cash instalments, and he was able to hire a motor vehicle without trouble to travel from Cape Town to Mossel Bay prior to his arrest. It is furthermore apparent from the appellant's affidavit that he was able to access large amounts of cash with ease, for example, R220 000 for a Hi-Ace in 2021 and R170 000 for another taxi in 2018, bought in cash.

[36] In addition to these facts, and bearing in mind that the State alleged that the appellant was an occupant along with other suspects who fled the taxi at the police blockade, the indications are that the offences involve a syndicate and/or persons who operated with common purpose to extort spaza shops in the Mossel Bay and Garden Route area. In my view, the probabilities indicate that that the appellant and

⁴ Section 60(4)(b) read with section 66 of the CPA

other occupants of the taxi were prepared to flee the scene, notwithstanding the police pursuit. This certainly gives the impression that if he wished, the appellant would take the risk and flee the authorities, thus establishing a likelihood that he is a flight risk.

[37] The appellant correctly submits that the provisions of section 60(4)(b) of the Act must be read with the provisions of section 60(6)⁵. Not all the provisions may apply to a particular appellant, and consideration must be given to the facts and circumstances prevalent in a bail application.

[38] In his judgment, the Magistrate referred to the fact – and indeed made a finding - that the appellant had no family ties, nor property in the jurisdiction or area of Mossel Bay. The appellant takes issue with this finding both as a ground of appeal and in argument and submits that the Magistrate overlooked the fact that the appellant resided permanently outside the Court's jurisdiction and thus bail conditions could be fixed.

[39] Section 60(6)(a) indicates that the emotional, family, community or occupational ties to the place where an accused would be tried are factors which the bail Court may consider in determining whether there is a likelihood that the accused, if released on bail, would attempt to evade his trial. From the evidence, the alleged offences occurred in the Mossel Bay and Garden Route areas, and it is common cause that none of the addresses provided by the appellant for purposes of bail, fall within these areas. Similarly, neither the appellant's family members nor Ms Sikili are based in the area. The Magistrate was thus correct when concluding that the appellant resided in Cape Town and held no property in the Mossel Bay jurisdiction, and thus the criticism directed at the Magistrate in that he overlooked this fact, is unjustified.

⁵ S v Petersen 2008 (2) SACR 355 (C) at [59]

[40] Furthermore, the Magistrate also correctly held that the appellant held no significant emotional or family ties to the Eden/Garden Route region. All these factors must be considered along with the State's evidence that the appellant was an occupant in the taxi under surveillance⁶; that he fled the police and was eventually apprehended; that he travelled from Cape Town to Mossel Bay in a hired vehicle and that he has travelled beyond the country's borders with a valid passport. Cumulatively, these factors contribute to reducing the Court's confidence that he will ultimately stand trial on what are very serious charges.

[41] The appellant has clearly demonstrated in his bail affidavit that he has access to financial resources, and one would conclude that as the owner of five taxis, he has employees and family members operating his business while he is incarcerated. Thus, in all probability, the appellant can afford to forfeit the amount of bail which may be set. Given the testimony of Cornelius, the possibility of more complainants coming forward and more extortion charges being added cannot, therefore, be excluded. Having regard to the above, and while acknowledging that the Magistrate did not address the issue with extensive detail and was rather cryptic, his finding in respect of section 60(4)(b) read with section 60(6), cannot be faulted. There is a likelihood that the appellant, if released on bail, will attempt to evade his trial.

[42] In respect of the ground in section 60(4)(a), I am satisfied that the appellant's counsel's submission indeed has merit. Simply put, there was no evidence presented to indicate that if released on bail, the appellant would endanger the safety of the public or any specific person. Thus, I agree with the appellant that there was no basis for the Magistrate to have reached this conclusion, and the judgment certainly does not elucidate the basis upon which the finding was made.

[43] As for section 60(4)(c)⁷, the Magistrate found that a likelihood existed that the appellant would attempt to intimidate or influence witnesses. Whilst finding that a

⁶ As the taxi visiting the spaza shops

⁷ As read with section 60(7)

threat is implied in the charge of extortion, the judgment is scarce on the basis for such finding, and in his submissions, the appellant's counsel criticises the finding in the bail application. However, it must be remembered that the evidence from the State was that the complainants identified the appellant from the photo identifications and the information from the section 204 witness supports the State's case that the appellant is directly linked to the offences.

[44] It is evident from Cornelius's testimony and further police investigation, that at least *prima facie*, the appellant is in all probability part of the group of people extorting money from the foreign spaza shops identified in the notebook found in the taxi, wherein the appellant was a passenger. As mentioned, the taxi visited the shops mid-month, and money was demanded by the occupant(s) of the taxi. It is therefore highly probable that the shop owners and complainants are known to the appellant and/or easily accessible to him even in circumstances where the identities were not disclosed and not all the shop owners had laid charges. Given the strong case against the appellant, and all stated above, it would not be unreasonable to conclude that he would be aware of the names of the shops marked/ticked off in the notebook.

[45] **S v Kock**⁸ is authority for the view that a likelihood that the accused may interfere with State witnesses must not be based on speculation but must have some factual support. In this matter, the above factors amount to actual support for the conclusion that a likelihood was established that the appellant would interfere with State witnesses. To be clear, 11 complainants, who feared for their lives, came forward and there was a strong possibility that more would follow.

[46] The probabilities also indicate that the appellant would at least be familiar with the shops (if not the identities of their owners) and the areas where they are situated. Furthermore, the investigation was largely completed in respect of the appellant, and the offence of extortion consists of the element of influence and the exertion of pressure on the witnesses. Thus, it is not a far stretch to conclude that at least on the

⁸ 2003 (2) SACR 5 (SCA) 13c

State's evidence, unchallenged by the appellant, it had established the likelihood of threats and/or interference with the witnesses in the matter.

[47] Moving on, one of the major concerns in the bail application involves the uncertainty or vagueness surrounding the appellant's residential address and Cornelius spent a considerable time on this aspect. In this regard, the State argues that the information provided by the appellant regarding his address was inaccurate or false, which led to the confusion. Despite the appellant's counsel submissions regarding the correctness of the appellant's address, I would agree with the Magistrate that questions arise regarding the appellant's address, as highlighted by the State.

[48] It is evident from Ms Sikili's testimony that she and the appellant did not live together. Rather, either he slept over at her address, or she slept over at his accommodation a few times per week. Despite the appellant's attempt to confirm his family home (or former family home) as 5[...] N[...] Street, Kuyasa, it was evident that Ms Sikili, his intimate partner of four years, was unaware that this was his family home. Her further testimony on this aspect was also unsatisfactory as she seemed to contradict herself and thereby assist the appellant's version that the N[...] Street property was his family home.

[49] Furthermore, the alleged positive address of 5[...] N[...]2 Street, Khayelitsha, is also known as [...] N[...]2 Street, an anomaly which remained largely unexplained or unclarified during the bail proceedings. It raises the question as to why the appellant did not simply indicate [...] N[...]2 Street as his place of residence. This address, it is submitted, was occupied by the appellant and his cousin, yet the permanency thereof is unclear. The address is listed on the section 62(f) report.

[50] Aside from the two addresses, there exists the note referring to 2[...] M[...] Street, provided to Cornelius and which the appellant distances himself from.

Despite valiant efforts to downplay any knowledge of the note, it is highly improbable that the appellant's erstwhile attorney or the prosecutor at the time, would fabricate an address for the police to follow up and hand it to the investigating officer for that purpose.

[51] It is more probable that the appellant provided the information to his erstwhile attorney or to the prosecutor for purposes of bail information early in the matter. Then, too there is 1[...] M[...] Street, which led to the landlady Noloyiso, whom it seems, needed prodding to confirm that the appellant was known to her. This address turned out to be the former address of Ms Sikili, which then begs the question why the details of another woman (purportedly a girlfriend) would be stated on the same note. None of these aspects were clarified during the bail application, leading to uncertainty and confusion regarding the appellant's address.

[52] In view of the differing addresses and confirmation by Ms Sikili that she did not live with the appellant, and notwithstanding the favourable section 62(f) report, the steadfastness and permanency of residence were questionable, certainly leading to doubts with the Magistrate as to the police's ability to trace the appellant if he were to be released on bail. In view of the above issues, the Magistrate was correct in his finding that the addresses were vague or ambiguous.

[53] Furthermore, the abovementioned aspects also raise doubt as to the appellant's ties to the area he refers to as his home, Kuyasa, Khayelitsha. The section 62(f) report does not provide insight as to when the appellant commenced living at the N[...]2 Street address and it would also seem that the second address, 5[...] N[...] Street is specifically used for the taxi business and was used to rent the Polo. The Court was informed that the N[...] address was the appellant's former residence and if this is so, it is unclear why he would still use such address for his business enterprise and for official purposes, especially as on his version he lived at 5[...] N[...]2 Street. Once again, these issues were not clarified in the bail application.

[54] When I have regard to the above discussion, then the appellant's income, possibility of bail conditions, burgeoning taxi business and other personal circumstances, do not trump the serious concerns raised by the State as to the appellant's inconsistency regarding his address, the likelihood of absconding from the trial and interference with witnesses. As seen from Cornelius's testimony, the State has a strong *prima facie* case against the appellant.

[55] Insofar as bail conditions are concerned, Cornelius explained the serious challenges in monitoring the appellant were he to be released on bail. The reality is that, if the appellant's submissions were accepted and bail fixed, the appellant would be in Khayelitsha and the investigating officer in Mossel Bay, hundreds of kilometres away. I agree with the State that the question of bail conditions must be considered in light of the application as a whole, which presents compelling evidence against the appellant in respect of the likelihood of absconding from the trial, the likely interference with witnesses, the strength of the State's case and the inconsistencies with regard to his address(es).

[56] The judgment is criticised for its lack of considering suitable bail conditions. In my view, the reference to bail conditions occurs in the judgment, albeit without a full assessment thereof. In **S v Branco**⁹, the High Court indicated that where no consideration is given to suitable bail conditions, it may lead to a failure to exercise a proper discretion in respect of the consideration of bail. In this matter, the nature and seriousness of the offences, the strength of the State's case against the appellant, the difficulty in monitoring the appellant¹⁰, plus all the other factors mentioned above, militated against bail conditions being fixed. In my view, the Magistrate's decision not to fix bail conditions when considering an alternative to incarceration, cannot be faulted.

⁹ 2002 (1) SACR 531 (WLD) at 537 a-b

¹⁰ Due to distance and multiple addresses of the appellant

[57] On a conspectus of the evidence, the Court *a quo* was correct to find that it was not in the interests of justice to permit the appellant's release on bail. Accordingly, therefore, I find that the Magistrate's decision in refusing bail, was correct.

[58] The Magistrate seemed to have relied upon social media platforms as a guide or basis upon which to briefly discuss the prevalence of the offence of extortion within the area of jurisdiction of that Court. My observation is that the judgment lacks specific detail and statistics regarding the prevalence of extortion in the area. With respect to the Magistrate, it is hoped that in future judgments, the reference to and reliance upon unverified information on social media platforms, will be avoided. In conclusion, while the judgment may be criticised in certain respects, the exercise of the Magistrate's discretion and his refusal of bail were correct in the circumstances of the appellant's application for bail.

Order

[59] In the result, the following is ordered:

The appeal against the refusal of bail is dismissed.

M PANGARKER
JUDGE OF THE HIGH COURT

Appearances

For appellant: Adv N Mbangata

Instructed by: Prince Attorneys
Bellville

For respondent: Adv S Rambarun
Director of Public Prosecutions
Cape Town