

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: A256/2023

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
<u>14/10/2025</u> DATE  SIGNATURE	

In the matter between:

MUSAWENKOSI DLADLA

Applicant

vs

THE STATE

Respondent

JUDGMENT

MATLAPENG, AJ

Introduction

- [1] The applicant in this matter is making an application that he be admitted to bail pending his appeal to the Supreme Court of Appeal.

- [2] According to section 60 (11)(a) of the Criminal Procedure Act 51 of 1977. The court shall order an accused charged with a schedule 6 offence to be detained in custody until he is dealt with in accordance with the law unless such an accused person after having been given an opportunity to do so adduces evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permit his or her release.
- [3] In this matter the applicant was convicted by the Regional Court sitting in Springs of assault with intent to do grievous bodily harm and rape in contravention of the provisions of section 3 of the Sexual Offences Act 32 of 2007 read with provisions of section 51 (1) of the colloquially named Minimum Sentences Act 105 of 1977, the rape count attracted the imposition of life imprisonment sentence, as the complaint was raped more than once.
- [4] The applicant was sentenced to three years imprisonment on the assault charge and to life imprisonment on the rape count, his appeal to this count on both the conviction and sentence failed, he then lodged a petition to the Supreme Court of Appeal, the latter Court granted leave to appeal only against sentence, the applicant now applies for bail pending his appeal to the Supreme Court of Appeal.
- [5] The onus rest on the applicant to show on a balance of probabilities that exceptional circumstances exist which in the interest of justice permit his release on bail.
- [6] Section 60 (4)(a) to (e) of the Criminal Procedure Act 51 of 1977 herein the Act lists grounds to be taken into account whether the interest of justice permit the release of the applicant on bail. Section 60 (5) to (9) of the Act lists grounds that the court can take into consideration to determine if the factors mentioned in section 60 (4) (a) to (e) of the Act are presented.
- [7] In considering whether to grant or refuse bail the court should not speculate it must be satisfied that there is a probability of one or more of the factors mentioned in section 60 (4) of the Act happening. This point was emphasised in the case of **S v Diale** 2013 (2) SACR 85 (GNP) at para 14 where it was stated that:

“a court cannot find that refusal of bail is in the interest of justice merely because there is a risk of possibility that one or more of the consequences mentioned in section 60 (4) will result. The court must not grope in the dark and speculate, a finding on the probabilities must be made. Unless it can be found that one or more of the consequences will probably occur, detention of the accused is not in the interest of justice and accused should be released”

- [8] It is essential to briefly set out the circumstance that led to the conviction and sentence of the applicant. He went to his place of abode with the complainant and another man in the latter's car, the complainant and the appellant entered the house, the owner of the car realised that he had parked his car far from the house, he went to his car with a view to bringing it closer to the house, the applicant assaulted the complainant and raped her twice. Thereafter he locked her inside the house and left. The complainant sustained injuries on her right jaw and an abrasion on the Labia Minora, it is against this background that this application should be considered.
- [9] In the case of **S v Vermaas** 1996 (1) SACR 528 (T) Van Dijkhorst held that the prime consideration is whether an accused will stand trial.
- [10] The primary consideration in an application such as the present is whether the applicant will serve his sentence if released on bail pending his appeal to the Supreme Court of Appeal should his appeal fail.
- [11] It is not irrelevant to take into consideration the increased risk of the applicant escaping and evading to serve his sentence, it is also not irrelevant to bear in mind that the facts of this case attracts a lengthy term of imprisonment.
- [12] The applicant states that he is not a flight risk, that he is a primary care giver of his children and principally that he should be admitted to bail because there are reasonable prospects that the Supreme Court of Appeal will set aside the conviction, he is missing a point because the conviction is confirmed the appeal is only granted against the life term of imprisonment that was imposed.
- [13] The stark reality is that the circumstances under which the offence took place led the trial court to impose the prescribed sentence of life imprisonment, although

the Supreme Court of Appeal deemed it proper to interfere with the sentence imposed, the fact remains that the applicant is convicted of a very serious offence that warrants a lengthy term of imprisonment.

[14] I am of the view that in the circumstances the applicant has not discharged the onus of showing that it is in the interest of justice that he be released on bail.

[15] In the results the following order is made

1. The application for bail is dismissed.



S MATLAPENG
ACTING JUDGE OF THE HIGH COURT
PRETORIA