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Further corrected 30 October 2025 – Kuny J

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

CASE NO: A62/2025

DATE: 2025-10-15

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

DATE 28 October 2025

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In the matter between

STATE

and

TIONA MEGAN MOODLEY

Accused

EX TEMPORE JUDGMENT

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KUNY J:

1. The appellant Tiona Megan Moodley is a 25-year-old Indian woman. She is accused 2 in a pending case against her and accused 1, Darryn Gavin Wilken.
2. The state has preferred charges under section 19A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 as amended. It is not alleged that the appellant and accused 1 created, made or produced child pornography. The offence related to the online distribution and sale of child sexual abuse material.
3. There are also charges under the Prevention of Organised Crime Act 121 of 1998 relating to the acquisition, possession or using the proceeds of unlawful activities. The state relies in this regard on section 6, alternatively section 4(b)(a) of the above Act. There is also a charge of fraud, possession of stolen property and the possession and use of drugs.
4. The state submits that the charges that relate to the dissemination of pornography are schedule 1 offences. However, it is submitted that the charges that relate to contraventions of POCA are schedule 5 offences and accordingly, that the provision of sections 60(11)(b) of the Criminal Procedure Act of 1977 applies. This section places an onus on the accused to adduce evidence which satisfies the court that the interest of

justice permits his or her release on bail.

5. The state filed an affidavit before the lower court of Warrant Officer Boshoff opposing the grant of bail to accused 1 and the appellant. Warrant Officer Boshoff is stationed at the SECI unit in Johannesburg. He is the investigating officer in the matter. He explains in his affidavit as follows:

10 5.1 The investigation originated when an under aged girl in the United States of America reported a case of 'sextortion' to the Federal Bureau of Investigation (FBI).

5.2 The FBI Cyber Investigation traced the offence to an online pornographic website known as "DankmegaZ" which was found to host extensive child sexual abuse material.

5.3 The administrator of the site was identified as a South African national, confirmed to be accused 1.

20 5.4 The USA police authorities conducted undercover operations and made control purchases of child pornography from the DankmegaZ website.

5.5 After establishing that the website administrator was located in South Africa, the information was forwarded to the South African Police Services.

6. Warrant Officer Boshoff details in his affidavit the fact

that accused 1 was difficult to trace. He was eventually found and arrested at his residential address and business premises, also occupied by the appellant. The police found at the premises a digital infrastructure used to run the alleged illegal online business distributing child pornography. Digital devices, storage media and records seized linked accused 1 directly to the website operations.

10 7. Warrant Officer Boshoff alleges that subsequent investigation revealed that the appellant played a major role in the daily operations of the website and the associated business. Her electronic devices were seized and analysed and this showed that the appellant had attempted to delete or destroy evidence after the arrest of accused 1, in order to conceal her role in the running of the website. Fortunately however, investigators were able to secure and mirror the incriminating data on alternative devices before the information could be erased. The appellant was
20 arrested thereafter once her active involvement had been confirmed through the recovered evidence.

8. The state alleged that the appellant and accused 1 are “unseen predators” who operated behind a digital veil, profiting from the exploitation and abuse of children.

9. In opposing the grant of bail to the appellant the state

relies heavily on the submission that it has a strong case against her. It also alleges that she and accused 1 made use of cryptocurrency and that if she is released, the appellant will be able to access crypto wallets and make use of funds that the state contends are the proceeds of crime.

10. The appellant relies in summary in her submissions that she should be granted bail on the following:

10.1 She submits that her personal circumstances warrant the grant of bail.

10.2 She has no previous convictions and there are no pending cases against her.

10.3 She is able to rely on her family support, and her aunt and uncle have undertaken to provide her with a place to stay if she is released on bail.

10.4 An amount of ten thousand rand is tendered in respect of bail.

10.5 The applicant submits that accused 1 was the primary predator and controller of the relevant operations.

10.6 The appellant argues that the state's case against her is weak and that there are no direct allegations that she transmitted, offered, procured, accessed, downloaded, possessed or benefited from child pornography.

10.7 She avers that she has no disposition to violence and poses no threat to public or individual safety.

10.8 She emphasises that she voluntarily surrendered herself to the police on 23 January 2025 after she had been contacted by the investigating officer and that she has cooperated with the police since accused 1 was arrested on 17 January 2025.

10.9 Appellant undertakes not to contact or interfere with witnesses and not to access any relevant online platforms. She asserts that she has no access to evidentiary material as all devices were seized and forensically examined. She further notes that the state returned her cell phone after she voluntarily handed it over. (It was revealed in argument that the appellant's mobile phone has since been returned to the police and is being held in custody as an exhibit).

10.10 The appellant alleges that she was in a "misogynistic relationship" with accused 1 and that he controlled her bank accounts and directed the payment of monies.

10.11 When accused 1 was arrested, he transferred an amount of a hundred and ninety-eight thousand rand to her. The appellant submits that this money was given to her as payment for legal

fees that would be incurred after accused 1's arrest.

10.12 Finally, the appellant contends that the prosecution of this case will not be completed anytime soon. She submits that her continued detention whilst awaiting the completion of the trial would be unjust.

11. In my view, there was sufficient evidence to conclude that the appellant is not a flight risk.

10 11.1 She is a young South African citizen who has concrete ties to South Africa.

11.2 She has a verified place or residence where she will stay if released on bail. The state has satisfied itself of the address.

11.3 She has the support of her family although this may have been complicated by adverse publicity that surrounded this case.

20 11.4 She states that she does not have foreign assets or ties that would induce her to flee from South Africa.

11.5 She surrendered herself to the police voluntarily when requested to do so after accused 1 was arrested, and she appears to have cooperated with the police.

11.6 The likelihood that she may flee can further be

reduced by suitable bail conditions that require her to surrender her passport and to report to her nearest police station.

12. I do not regard the fact that the appellant may have deleted certain information from her devices as a reason to refuse bail. The police are already in possession of the evidence they need to prove the unlawful activities that were allegedly engaged in, and they have forensically secured the devices and data that were allegedly used in the commission of the offence.

13. Although the state alleges that there are crypto wallets that she can access, there is no concrete evidence that such wallets exist. The appellant denies that she had access to crypto wallets. She states however, that if there is any evidence of crypto wallets he will cooperate with the state in securing these wallets.

14. The state did not rely on the fact that the appellant was a flight risk. It primarily relied on the fact that on the evidence in its possession it was likely to secure a conviction against the appellant and that she was facing a custodial sentence because of the seriousness of the offence.

15. I agree that the state has *prima facie* evidence linking

the appellant to a website that is alleged to have disseminated and sold pornography. On the evidence of Warrant Officer Boshoff child pornography was hosted on this website. However, the fact that the state has a good case against the appellant, in itself, is not sufficient to deny he bail.

10 16. In the judgment of *Michael Harry Lomas v S* (SS36/2024) (17 March 2025) my brother Strydom J, in deciding whether to grant bail, accepted that the state has a strong case against the accused. He went so far as to say that the evidence produced by the state stood uncontested and that upon conviction, the accused was facing a mandatory sentence of fifteen years. The court nevertheless found the accused was not a flight risk and granted him bail.

20 17. In my view, the court a quo conflated the allegations against the accused 1 with the allegations against the appellant. The evidence points to the fact that whilst the appellant was involved in the administration of the offending website and probably had received monies obtained through the sale of pornographic material, she was not the primary offender.

18. There are no minimum sentences applicable in this case, and although the charges against her and accused are serious, it is not a foregone conclusion

that if convicted, the appellant will necessarily receive a custodial sentence. It would not, in my view, be in the interest of justice to deny her bail. During the course of argument, Ms Ryan, who appeared for the state, informed the court that the investigation has proceeded and come to a conclusion.

10 19. In further argument that was heard by the court just before it was about to deliver its judgment, the court drew Ms Ryan's attention to the fact that the initial bail application was heard in February 2025. Some eight months have lapsed since this bail appeal has been heard. The state was invited (before the handing down of this judgment), to submit a further affidavit disclosing any new information in the state's possession that may affect the court's decision in granting bail. Ms Ryan informed the court that she did not believe this was procedurally correct and she declined the court's invitation in this regard. She only made further submissions to the court that the proposed
20 amount of bail offered by the appellant was not commensurate with the seriousness of the offence, and she asked that bail in the amount of fifty thousand rand be set. Whilst taking cognisance of the seriousness of the offence, I am of the view that bail should not be set at an amount that would effectively deprive the

appellant of the opportunity to be released on bail.

20. In all the circumstances, in my view, the magistrate erred in finding that it would not be in the interest of justice to admit the appellant to bail.

21. The appellant has agreed to subject herself to stringent bail conditions. The bail application in the lower court was heard decided in February 2025. It may be that since then, the state has been able to obtain further information from electronic devices used by the
10 applicant and accused 1 to operate the alleged illegal website. Such information may reveal the existence of crypto wallets and cryptocurrency. The search for and processing of such information requires special forensic skill in computer technology. If further information is available that requires that appellant's co-operation with the handing over of passwords, log on details, crypto
20 currency serial numbers and other information, the appellant has undertaken to cooperate with the investigating officer. If she does not cooperate, the state can again approach the court for a reconsideration of bail. I propose to include, as part of this order, a digital lockdown on the appellant that will prohibit her from accessing the internet. The defence acknowledges that such lockdown would be difficult to monitor and check up on. This may be so. Before the appellant is

released she must sign a declaration that she undertakes and swears that she will abide by the conditions relating to the prohibition against her accessing the internet. She must acknowledge that if she breaches these conditions her bail may be revoked and she may be returned to prison pending the finalisation of her trial.

22. In the circumstances, I make the following order.

- 1) The appeal is upheld.
- 10 2) The decision of the court a quo refusing to admit the appellant to bail is set aside.
- 3) The appellant is granted bail in the amount of fifteen thousand rand subject to the following conditions:
 - 3.1) The appellant must surrender her passport to the investigating officer.
 - 3.2) The appellant shall reside at 4[...] A[...] P[...] Street, E[...] P[...]rk, Pretoria and shall not be permitted to leave Gauteng without the written permission of the investigating officer. If the
20 appellant changes her residential address she shall first inform the investigating officer and seek his written permission.
 - 3.3) The appellant shall surrender any electronic devices owned by her that are capable of

accessing the internet, including any smart phone that is capable of accessing the internet via WIFI or LTE, 3G, 4G or 5G.

10 3.4) The appellant may possess and use a basic cell phone that is capable of GSM communication provided that such a device is not capable of accessing the internet and is not capable of operating digital communication platforms such as WhatsApp, messenger, telegram and the like. Appellant shall be required to provide the investigating officer with her cell phone number and the sim card number and details of the network used.

3.5) The appellant shall not access the internet through any other person's computer, laptop, tablet or similar digital device for the purposes of browsing the internet, interacting with social media of any kind and sending emails or digital messages in any other form.

20 3.6) The investigating officer or an expert in the services of the SAPS may monitor the appellant's communication via any permitted electronic monitoring device, in order to ensure that she complies with this order.

3.7) The appellant shall not communicate with any

state witness or potential state witnesses. If she does not know whether a person is a potential state witnesses, she must approach the investigating officer for confirmation that she may communicate with such person.

10 3.8) If any further information becomes available to the state from forensic analysis of devices in its possession the appellant shall cooperate with the state in handing over passwords, log-on details, crypto currencies, serial numbers and if she not able to do so, to provide any further information at her disposal as to how these can be obtained.

3.9) The appellant shall not visit or communicate directly or indirectly with accused 1, but may do so through her legal representative only.

3.10) The appellant shall report to Garsfontein police station twice a week on Tuesday and Friday between the hours of six AM and eight PM.

20 3.11) Before the appellant is released on bail she shall sign the following declaration.

"I swear and undertake that I shall comply with the above conditions and I acknowledge that if I breach any of these conditions, my

*bail may be revoked and I may be required,
upon the order of a competent court, to be
reincarcerated pending the finalisation of my
trial.*

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KUNY J

JUDGE OF THE HIGH COURT

DATE: 28 OCTOBER 2025

JUDGEMENT FURTHER CORRECTION FOR

TYPOGRAPHICAL ERRORS ON 30 OCTOBER 2025