

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

31 October 2025

DATE

A handwritten signature in blue ink, which appears to be "D. S. J.", is written over a black rectangular redaction box.

SIGNATURE

CASE NUMBER: A66/2025

In the matter between:

MOHALE DAVID RAMAROPENG

Appellant

and

THE STATE

Respondent

Coram: DOSIO J

Heard: 24 and 27 October 2025

Delivered: 31 October 2025

ORDER

The appellant's appeal is dismissed.

JUDGMENT

DOSIO J:

Introduction

- [1] This is an appeal against the denial of bail in the Tembisa Magistrate Court. The bail application commenced on 30 July 2025 and was concluded on 14 August 2025.
- [2] The appellant is charged with murder of his girlfriend.
- [3] The court a quo dealt with this matter as a schedule 5 offence in terms of the Criminal Procedure Act 51 of 1977 ('Act 51 of 1977').

Grounds of appeal

- [4] The appellant contends that the court a quo erred in finding that the appellant had not discharged the onus in terms of ss 60(11)(b) of Act 51 of 1977.
- [5] Further, that the court a quo erred in not directing in terms of s60(3) read with s60(9) of Act 51 of 1977 that the statements of the state witnesses, which the state relied upon, be handed into the court and/or be read on record during the bail proceedings. Due to this failure on the part of the court a quo, the appellant was denied the opportunity to have access to the witness statements or hear them being read before court, thereby disallowing the appellant to adequately defend his application to be released on bail.
- [6] That the court a quo erred further in that it found that:
- (a) the appellant will influence or intimidate state witnesses, which were mere speculations of the investigative officer;

- (b) the appellant will temper with the evidence of the state;
- (c) the safety and wellbeing of the appellant would be jeopardized by the community of Kanana if the appellant is released on bail.
- (d) the appellant will evade trial.

Evidence

- [7] In support of the bail application, the appellant submitted an affidavit. The contents of the affidavit stated that:
- (a) he is a 42-year-old adult male
 - (b) he is a South African citizen, residing at the Kanana section in Midrand, Gauteng.
 - (c) he was employed as a gardener at a construction company and earned R2500.00 per month.
 - (d) he was resident in the area with his brother for approximately 19 years.
 - (e) if he was granted bail he would continue to reside in Centurion.
 - (f) he has movable assets in excess of R15 000.00.
 - (g) he has no passport and has never been out of the country.
 - (h) he has no previous convictions, pending cases or protection orders against him.
 - (i) on the day in question he left in the morning to go and collect funds. He saw his girlfriend sleeping on the couch and he left her there as she had been out drinking the previous night.
 - (j) he was aware that some community members were against his release on bail.
- [8] The respondent, in opposing the granting of bail, called the investigating officer to give evidence. He stated that he has 21 year's experience in the South Africa Police and that his rank was that of a sergeant. He indicated that there are 6 witness statements available and one of the witnesses saw the appellant assaulting the deceased with a chain and throwing the deceased against a wall.

- [9] The investigating officer stated that it is not the first incident that was reported in respect to the appellant and this deceased, in that a case was opened previously against the appellant for assault of the deceased under CAS 146/5/2023 at the Rabie Ridge Police Station in 2023 for assault common under domestic violence. The matter was not withdrawn, it was merely not placed on the court roll as the public prosecutor had requested certain queries to be attended to before placing it on the court roll.
- [10] The investigating officer opposed bail on the following grounds:
- (a) He stated that the appellant is familiar with the identity of the witness who came to stop the assault of the deceased by the appellant.¹
 - (b) The appellant was arrested at a taxi rank after the community had created a WhatsApp group circulating pictures of the appellant.²
 - (c) This is a femicide crime.
 - (d) The community signed a petition with 400 members requesting that bail not be set and that the prosecution be expedited. Furthermore, that the appellant be sentenced with the maximum sentence.³ Accordingly, he stated that the appellants life is in danger if released on bail.⁴
 - (e) The appellant is not a suitable candidate to get bail.⁵ The police had to act swiftly to arrest the appellant at the taxi rank as the community were already ganging up to take the law into their own hands. The taxi owners even had to place the appellant in an office to prevent him from being assaulted by the community.⁶

Evaluation

- [11] The provisions of ss60(4)-(9) of Act 51 of 1977 apply. These subsections must be construed consistently with s35(1)(f) of the Constitution, which guarantees

¹ Caselines 003-71 line 15-16

² Caselines 003-11 line 18-20

³ Caselines 003-72

⁴ Caselines 003-21 line 22-23

⁵ Caselines 003-68 line 19 and 23-24

⁶ Caselines 003-21 line 22-23

the right of an arrested person 'to be released from detention if the interests of justice permit, subject to reasonable conditions'.

- [12] In the matter of *S v Smith and Another*,⁷ the court held that:
 'The Court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby.'⁸
- [13] In the matter of *S v Dlamini*,⁹ the Constitutional Court held that:
 'The interests of justice in regard to the granting or refusal of bail therefore focus primarily on securing the attendance of the accused at the trial and on preventing the accused from interfering with the proper investigation and prosecution of the matter.'
- [14] In terms of s65(4) of Act 51 of 1977, the court hearing the appeal shall not set aside the decision against which the appeal is brought unless such court is satisfied that the decision was wrong.
- [15] This court must consider all relevant factors and determine whether individually or cumulatively they warrant a finding that the interests of justice warrant the appellant's release.
- [16] In so far as the weakness of the State's case in a bail application is concerned, the Supreme Court of Appeal in the matter of *S v Mathebula*¹⁰ held that:
 'In order successfully to challenge the merits of such a case in bail proceedings an applicant needs to go further: he must prove on a balance of probability that he will be acquitted of the charge...'¹¹
- [17] In the matter of *S v Bruintjies*,¹² the Supreme Court of Appeal stated that:
 '(f) The appellant failed to testify on his own behalf and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which

⁷ *S v Smith and Another* 1969 (4) SA 175 (N)

⁸ *Ibid* page 177 para e-f

⁹ *S v Dlamini* 1999 (2) SACR 51 (CC)

¹⁰ *S v Mathebula* 2010 (1) SACR 55 (SCA)

¹¹ *Ibid* para 12

¹² *S v Bruintjies* 2003 (2) SACR 575 (SCA)

the court a quo could assess the bona fides or reliability of the appellant save by the say-so of his counsel.’¹³

- [18] In the matter of *S v Mathebula*,¹⁴ the Supreme Court of Appeal stated that:
 ‘In the present instance the appellant’s tilt at the state case was blunted in several respects, first, he founded the attempt upon affidavit evidence not open to test by cross-examination and, therefore, less persuasive.’¹⁵
- [19] The appellant bears the onus to satisfy the court, on a balance of probabilities, that it is in the interests of justice to permit his release on bail. A mere denial of the considerations and/or probabilities of events, as contained in s60(4)(9) of Act 51 of 1977, will not suffice in order to succeed in convincing the court that it is in the interests of justice to be released on bail.
- [20] After the investigating officer testified, setting out in detail that there is a witness who saw the appellant hitting the deceased with a chain and throwing her against the wall, the appellant could have re-opened his case to rebut this. He did not re-open his case.
- [21] The appellant’s counsel argued that in terms of s60(3) of Act 51 of 1977, the court a quo erred in not requesting that the respondent place these witness statements before the court and that the court erred in relying on the hearsay evidence of the investigating officer. Reference was made to the case of *S v Green & Another*¹⁶ (*‘Green’*) where the Supreme Court of Appeal held that:
 ‘... On a proper consideration of the case on which the state relied any reasonable court must have concluded that it lacked reliable and important information necessary to reach a decision, notwithstanding that such information was apparently readily available....’¹⁷

¹³ Ibid para 7

¹⁴ *Mathebula* (note 10 above)

¹⁵ Ibid page 59 B-C

¹⁶ *S v Green & Another* 2006 (1) SACR 603 (SCA)

¹⁷ Ibid para 23

- [22] The matter of *Green*¹⁸ is distinguishable from the matter in casu, in that in the matter of *Green* the defence attorney applied for access to the police docket, which application was refused by the magistrate. The defence attorney also applied for access to the closed-circuit television tapes. This application was also opposed by the state and was subsequently dismissed by the magistrate. The Supreme Court of Appeal in the matter of *Green*¹⁹ was correct to state that the magistrate should have granted the defence access to the video tapes and the witness statements. In the matter in casu, no application was brought by the defence to obtain contents of the docket and witness statements. When asked by this court why such application was not made, the counsel for the appellant stated he had no instructions in this regard.
- [23] Section 60(3) of Act 51 of 1977 states that:
 ‘(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain information to reach a decision on a bail application, the presiding officer shall order that such information or evidence be placed before the court.’
- [24] The court a quo had a detailed explanation from the investigating officer as to what had transpired and what a certain witness saw the appellant doing to the deceased. Had the legal representative requested the statements of the witnesses prior to the launch of the bail application they would have had all the information they needed to dispute what the investigating officer put on record. To now argue that the blame sits on the shoulders of the court a quo for not calling for the witness statements is misplaced. The onus rested on the appellant to request the witness statements and to prove it is in the interests of justice to be released on bail.
- [25] As stated previously, the appellant never re-opened his case after the investigating officer testified. As stated in the matter of *S v Mathebula*²⁰, the

¹⁸ Ibid

¹⁹ Ibid

²⁰ *Mathebula* (note 10 above)

appellant must go further in bail proceedings to show on a balance of probabilities that the case is weak and he will be acquitted. This was not done.

[26] Subsection 60(4) of Act 51 of 1977 states:

‘(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence;

[Para (a) substituted by s. 4 (c) of Act 85 of 1997 (wef 1 August 1998 and by s 4 (c) of Act 12 of 2021 (wef 5 August 2022).]

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system;

(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.’

[27] Subsection 60(5) of Act 51 of 1977 states that:

‘(5) In considering whether the grounds in subsection (4)(a) have been established, the court may, where applicable, take into account the following factors, namely—

(a) the degree of violence towards others implicit in the charge against the accused;

(b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person;

(c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;

(d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;

(e) any disposition of the accused to commit—

(i) offences referred to in Schedule 1;

- (ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) an offence referred to in—
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, as is evident from his or her past conduct;
 - (f) the prevalence of a particular type of offence;
 - (g) any evidence that the accused previously committed an offence—
 - (i) referred to in Schedule 1;
 - (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) referred to in—
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or
 - (h) any other factor which in the opinion of the court should be taken into account.’
- [my emphasis]

[28] The appellant’s counsel relied on the cases of *S v Koch*²¹ and *S v Dv and others*²² to suggest that since the investigating officer already had all the witness statements, that accordingly, there could not be any interference or intimidation of witnesses by the appellant if released on bail.

[29] In considering the grounds in ss60(4)(a) of Act 51 of 1977 it appears great violence was perpetrated against the deceased. Even though there is no protection order opened against the appellant there was a charge of assault

²¹ *S v Koch* [2003] 1 All SA 551 (SCA)

²² *S v Dv and others* 2012 (2) SACR 492 (GNP)

common in respect to the appellant's girlfriend which was opened against the appellant under CAS 146/5/2023 at the Rabie Ridge Police Station. The respondent's counsel addressed this court stating that the key witness is Angel Vonela Mgolwane and that when she tried to intervene to prevent the appellant from assaulting his girlfriend further, the appellant warned her to stay away. As a result, it is clear the appellant does know who the main witness will be. This witness will also attest to the continued forceful violence perpetrated against his girlfriend, even though this witness told the appellant to stop assaulting his girlfriend.

[30] The charge which the appellant is facing is murder of his girlfriend, which is a case of femicide, which is particularly prevalent in the community.

[31] Subsection 60(6) of Act 51 of 1977 states that:

'(6) 'In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely—

(a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;

(b) the assets held by the accused and where such assets are situated;

(c) the means, and travel documents held by the accused, which may enable him or her to leave the country;

(d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial;

(f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.'

[my emphasis]

- [32] The appellant has no immovable property and no children attending school. The nature and gravity of the charge on which the appellant is to be tried is also extremely serious. The strength of the case against the appellant is also strong.
- [33] The appellant's counsel has referred this court to the matter of *Landela and Another v The State*²³, where the court held that even if the state's case is strong on the merits, it does not mean that the other factors can no longer be considered by the court to determine whether an applicant can stand trial if released on bail.
- [34] The matter of *Landela*²⁴ is distinguishable from the matter in casu, in that in the matter of *Landela*,²⁵ the appellants were charged with a contravention of s57(1) of the National Environmental Management Biodiversity Act 10 of 2004, for killing a white rhino. The sentence for such a contravention is R10 million or imprisonment for a period not exceeding ten years or to both such a fine and such imprisonment. The charge on which the appellant is to be tried is murder. If the state decides to charge the appellant with murder in terms of s51(1) of the Criminal Law Amendment Act 105 of 1997 ('Act 105 of 1997'), then a mandatory sentence of life imprisonment is to be imposed, unless there are substantial and compelling circumstances not to impose it. If the state decides to charge the appellant with a charge of murder in terms of s51(2) of Act 105 of 1997, then the mandatory sentence for a first offender is 15 years imprisonment.
- [35] The possible sentence the appellant is facing is much higher than the sentence the appellants were facing in the *Landela*²⁶ matter. The stronger the case and punishment upon conviction, the more the incentive and chance of an accused absconding. As stated previously, the appellant has no immovable

²³ *Landela and Another v The State* [2017] ZAGPPHC 930 (30 November 2017)

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

property or school-going children which would decrease his necessity to remain where he resided prior to being arrested, or the new address suggested.

[36] Subsection 60(8A) of Act 51 of 1977 states that:

‘(8A) In considering whether the ground in subsection (4)(e) has been established, the court may where applicable, take into account the following factors, namely-

(a) whether the nature of the offences or circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(b) whether the shock or outrage of the community might lead to public disorder if the accused is released;

(c) whether the safety of the accused might be jeopardized by his or her release;

(d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;

(e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or

(f) any other factor which in the opinion of the court should be taken into account.’
[my emphasis]

[37] The appellant himself is aware from the contents of his affidavit that ‘a large number of people and taxi drivers arrested [him] at the taxi rank’ [my emphasis]. Due to the high levels of gender-based violence and femicide in our country, it is clear that the community in the matter in casu were outraged.

[38] The appellant’s counsel referred this court to the decision of *Nel and Others v S*²⁷ and argued that this court need not be influenced by the public to deny bail, due to such public outrage. It was also argued that the appellants safety and wellbeing will not be jeopardised by the said community, as he will be residing at 4676 Oliven Extension 19, Centurion. The respondent’s counsel addressed this court and stated that even though there is no statement to such effect, the investigating officer had informed him that members of the community who were against the appellant getting bail, were sitting in court

²⁷ *Nel and Others v S* 2018 (1) SACR 576

on the day the new address was mentioned by the appellant's legal representative. The respondent's counsel addressed this court further by stating that the community will follow the appellant to the new address suggested and his life is in danger if released on bail. The investigating also testified in the bail application that the police had to respond swiftly when the appellant was arrested by the community and taxi drivers. The community were already ganging up to get the appellant themselves when the taxi drivers intervened and locked the appellant in an office to safeguard him from being assaulted by the community.²⁸ Four hundred members of the community have also signed a petition to request that the appellant's matter be expedited and that the highest sentence be imposed on him.

- [39] This court has considered the provisions of ss60(9) of Act 51 of 1977 pertaining to the appellant's personal freedom and prejudice he will suffer should he remain in custody. Having weighed the provisions of ss60(8A) and 60(9) of Act 51 of 1977, as well as the matter of *Nel and Others*,²⁹ there are objective facts in the matter in casu, as well as the likelihood that if the appellant is released, he will be injured and probably killed.
- [40] There are many aspects that the appellant could have dealt with after the respondent closed its case, as well as factors suggesting that his welfare would not be affected if released on bail. The appellant never led any evidence in this regard.
- [41] The appellant did not present viva voce evidence in order to discharge the onus. He sought to rely on an affidavit accepted as an exhibit in the bail proceedings. As stated in the case of *Bruintjies*³⁰ and *Mathebula*,³¹ evidence on affidavit is less persuasive than oral evidence. The denial of the appellant rested solely on his say-so with no witnesses or objective probabilities to strengthen it. As a result, the State could not cross-examine the appellant to

²⁸ Caselines 003-21 line 22-23

²⁹ *Nel and Others* (note 27 above)

³⁰ *Bruintjies* (note 12 above)

³¹ *Mathebula* (note 10 above)

test the veracity of the averments in his affidavit. This accordingly affects the weight to be attached to the averments made in his affidavit.

[42] The investigation is complete and a decision has already been made by the National Prosecuting Authority that this matter will be heard in the High court. The only remaining evidence outstanding is the postmortem report.

[43] After a perusal of the record of the court a quo, this court finds no misdirection on the part of the court a quo. The appellant did not successfully discharge the onus as contemplated in ss60(11)(b) of Act 51 of 1977. Accordingly, there are no grounds to satisfy this court that the decision of the court a quo was wrong.

Order

[44] In the result, the appellant's appeal is dismissed.



D DOSIO
JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand- down is deemed to be 10h00 on 31 October 2025.

APPEARANCES

ON BEHALF OF THE APPELLANT:

Adv. T.G Ngobeni

Instructed by Sehunane Incorporated
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ON BEHALF OF THE RESPONDENT:

Adv. A.K Mathebula

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