



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION**

Not reportable

Case no: 1846/2025

In the matter between:

MOLEFI MOLISI

Applicant

and

THE STATE

Respondent

Neutral citation *Molefi Molisi v The State* (1846/2025) [2025] ZAFSHC 316 (8 October 2025)

Coram: OPPERMAN J

Hearing: 15 August 2025

Delivered: This judgment was handed down in court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand down is deemed to be 8 October 2025 at 15h00.

Summary: Bail – pending appeal – accused granted leave to appeal – effect of – mere fact that sentenced person granted leave to appeal not constituting exceptional circumstance – court will take into account that the accused has no prospect of avoiding a custodial sentence – accused's personal circumstances

commonplace and not out of the ordinary – accused has not discharged the onus of establishing ‘exceptional circumstances’ as contemplated in s 60(11)(a) of the Criminal Procedure Act 51 of 1977.

ORDER

The application for bail pending appeal is dismissed.

JUDGMENT

Opperman J

Introduction

[1] After conviction, the presumption of innocence no longer applies to the accused, who is then regarded as a sentenced offender. As a result, obtaining bail following conviction becomes more challenging. The fact that a convicted individual has received leave to appeal, by itself, does not constitute sufficient grounds for granting bail pending appeal.

[2] In addition:

‘[39] The prospects of success do not in itself amount to exceptional circumstances as demonstrated by section 60(11)(a) of the CPA. The prospect of success is not considered in isolation. This Court is not required to scrutinise the evidence of the court *a quo* in miniscule detail, as that may amount to a dress rehearsal for the appeal to follow. See: *S v Viljoen* 2002 (2) SACR 550 (SCA) 4 All SA 10 at 561 G-I.’¹

[3] The applicant in the instance was in custody pending the finalisation of the trial. Bail was refused in the district court. The respondent opposes the application. Applicant was represented by counsel throughout the trial and the applications that make out the whole of the case.

¹ *Mooki v S* (CAB 07/2024) [2024] ZANWHC 284 (14 November 2024).

[4] He relies primarily on the fact that leave was granted to appeal. Context on this factor in *casu* is crucial in introduction. The evidence conclusively and overwhelmingly showed that the applicant worked as a contract killer and posed and poses a serious threat to the community. Leave to appeal was granted solely for the Supreme Court of Appeal to determine if the testimony of a hostile witness, Thloriso Charles Letsotso (Letsotso), is admissible under current law. The evidence of this witness destroys the applicant's case of bare denial and innocence completely.

[5] I indicated in some earlier judgments in this case that the case took many twists and turns and what was supposed to be a strong case for the State turned into a sudden quandary and impasse when the pivotal key witness, that was closely and directly involved in the crimes, turned hostile and pleaded ignorance of any crimes or knowledge thereof. He was clearly intimidated.

[6] What distinguishes this case from other cases is that Letsotso also stated his case and the evidence when he pleaded guilty in terms of s 105A of the Criminal Procedure Act 51 of 1977. He was sentenced to 18 years imprisonment. This is the elephant in the room; the hostile witness and the previous alleged inconsistent statements he made. Is it admissible against a co-accused and what is the value of the statements at the end of the trial? Was it legally admitted convicting the accused?

[7] *Crucial here is that there is also the peripheral evidence that supports Letsotso's evidence in the statements.* Some evidence was discovered due to his testimony in the statements. Apart from the cases I referred to in the judgments during the trial the matter of *Kapa v S*² has also seen the light.³

² *Kapa v S* (CCT 292/21) [2023] ZACC 1; 2023 (4) BCLR 370 (CC); 2023 (1) SACR 583 (CC) (24 January 2023).

³ T Ratshibvumo 'The Kapa case: The Kapa case: A landmark ruling redefining the admissibility of hearsay evidence in criminal trials' (2023) *De Rebus*.

[8] The facts are also entwined to the extent that leave had to be granted on all the convictions and the sentences. It is important to point out that counts 6 to 9 relates to an incident that is not related to the Letsotso-evidence; the Firearms Control Act 60 of 2000 is applicable. It is a separate incident that nevertheless caused the connection to the other charges; it opened the proverbial can of worms with the assistance of Letsotso. The firearm confiscated in the possession of the applicant was ballistically connected to the murders of which the applicant was convicted. This was discovered after the accused was arrested in possession of the firearm. *These offences will not be affected by the admissibility of the evidence of Letsotso at all.*

[9] The applicant is beyond reasonable doubt guilty as convicted; as said the legal technicality of the evidence of Letsotso is the only issue that must be adjudicated on appeal. Molefi Molisi, that was accused one in this case *a quo*, was convicted as follows:

‘1: MOLEFI MOLISI

CONVICTIONS AND SENTENCES

Count 1: GUILTY (1 December 2023):

Attempted robbery with aggravating circumstances as defined in s 1 of the Criminal Procedure Act 51 of 1977.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 7(seven) years’ imprisonment.
(Botshabelo cas 254/1/2019)

Count 2: GUILTY (1 December 2023):

Attempted murder.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 12 (twelve) years’ imprisonment.
(Botshabelo cas 254/1/2019)

Count 3: GUILTY (1 December 2023):

Murder read with the provisions of s 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

Sentence: (9 February 2024):

Life imprisonment.

(Botshabelo cas 254/1/2019)

Count 4: Guilty (1 December 2023):

Murder read with the provisions of s 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

Sentence: (9 February 2024):

Life imprisonment.

(Thaba Nchu cas 79/3/2019)

Count 5: Guilty (1 December 2023):

Murder read with the provisions of s 51(1) and Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

Sentence: (9 February 2024):

Life imprisonment.

(Thaba Nchu cas 79/3/2019)

Count 6: Guilty (1 December 2023):

Contravention of s 3 read with ss 1, 103, 117, 120(1)(a), 121 and read with Schedule 4 of the Firearms Control Act 60 of 2000 and read with s 51(2) and Schedule 2 Part II of the Criminal Law Amendment Act 105 of 1997.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 15 (fifteen) years' imprisonment.

(Fouriesburg cas 129/06/2019)

Count 7: Guilty (1 December 2023):

Contravention of s 90 read with ss 1, 103, 117, 120(1)(a), 121 and read with s 8 of Schedule 1 and with Schedule 4 of the Firearms Control Act 60 of 2000.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 3 (three) years' imprisonment.

(Fouriesburg cas 129/06/2019)

Count 8: Guilty (1 December 2023):

Contravention of s 4(1)(a) and s 4(1)(f)(iv) read with ss 1, 103, 117, 120(1)(a) and s 121 read with Schedule 4 of the Firearms Control Act 60 of 2000.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 25 (twenty-five) years' imprisonment.

(Fouriesburg cas 129/06/2019)

Count 9: Guilty (1 December 2023):

Contravention of s 90 read with ss 1, 103, 117, 120(1)(a), 121 and read with s 8 of Schedule 1 and with Schedule 4 of the Firearms Control Act 60 of 2000.

Sentence: (9 February 2024):

In terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977 the accused is sentenced to 10 (ten) years' imprisonment.

(Fouriesburg cas 129/06/2019)

2. IN TERMS OF SECTION 280(2) OF THE CRIMINAL PROCEDURE ACT 51 OF 1977 COUNTS 6, 7, 8 & 9 SHALL BE SERVED CONCURRENTLY.

3. NO ORDER IS MADE IN TERMS OF SECTION 103(1) OF THE FIREARMS CONTROL ACT 60 OF 2000.'

[10] The applicant was convicted of premeditated murders as defined in part 1 of Schedule 2 read with s 51(1) of the Criminal Law Amendment Act 105 of 1997 which prescribes a minimum sentence of life imprisonment. According to s 60(11)(a) of the Criminal Procedure Act 51 of 1977, an accused is to be detained in custody when charged with an offence referred to in Schedule 6, unless he adduces evidence to the satisfaction of a court that 'exceptional circumstances exist which in the interests of justice permit his or her release.'

[11] In *S v Scott-Crossley*,⁴ referencing *S v Bruintjies*,⁵ the Court stated that someone convicted of a Schedule 6 offence isn't entitled to a less stringent bail test than unconvicted individuals as per s 60(11).

[12] Applicants must demonstrate exceptional circumstances to warrant release. Courts exercise particular caution in these matters due to the applicant's status as a convicted individual. Bail pending appeal is typically granted for cases involving brief sentences that may be completed before the appeal concludes, or where there is a compelling likelihood of a successful appeal. Approval is considerably less frequent in cases concerning serious offences – such as murder, rape, or robbery – especially when lengthy sentences have been imposed. The following must be considered:

- (a) prospects of success on appeal;
- (b) risk of absconding;
- (c) risk to the community; and
- (d) interests of justice; balancing the rights of the applicant against society's interest in the enforcement of sentences.

[13] An important concern that has emerged is that appellants lacking the financial resources to have the record transcribed encounter significant delays in both the completion and even the commencement of their appeals. As a result, they are unable to advance their cases to appeal. This has now become a ground submitted for release on bail. The community may be exposed to peril and the administration of justice may fail because the executive system does not serve the applicant. I will deal with it hereunder. It is part and parcel of the case for the applicant.

⁴ *S v Scott-Crossley* 2007 (2) SACR 470 (SCA) para 3.

⁵ *S v Bruintjies* 2003 (2) SACR 575 (SCA) para 5.

[14] The application consisted of the *viva voce* testimony of the applicant and a written affidavit. The State adduced evidence by way of the affidavit of the investigating officer and closed their case.

The case for the applicant

[15] The main grounds for his release pending appeal according to the applicant are:⁶

‘5.

Personal Circumstances.

5.1 I am 34 years old. I was sentenced to an effective term of imprisonment of life imprisonment on the 9th of February 2024.

5.2 Thus far I have served approximately 1 year of my sentence and was trial awaiting for 4 years and 6 months.

5.3 I am married and I have 3 minor children. The children are 5, 8 and 11 years old respectively.

5.4 I reside at 2[...] Section C[...], Botshabelo. I confirm that my residential address has not changed since I was convicted and sentenced in this matter.

5.5 Save for my conviction herein, I do have other previous convictions, I do not have any pending cases against me.

6.

History of bail in this matter.

6.1 I was arrested on the 12th of June 2019 on allegations of Murder, Attempted Murder, possession of firearm and ammunition.

6.2 I made formal application of bail which was considered as a schedule 6 bail application.

6.3 Bail was refused

6.4 There has never been an occasion where I did not appear in court when I was so ordered by the Honourable court. (not applicable)

6.5 Subject to any other condition that the honourable court may consider fit, I offer to report at the nearest police station on Mondays and Fridays, between 08:00 and 16:00 or any appropriate times the court deems fit.

7.

⁶ Affidavit submitted during the bail application on 15 August 2025: Exhibit A.

Assets and Income.

7.1 I earned R15000 p/m selling clothes and other items.

7.2 I still have my assets valued at about R80 000 which constitute of an immovable property.

8.

Previous convictions

My legal representatives have explained the provisions of s60(11)(B)(a) of the CPA to me. I respectfully make the following submission in this regard;

8.1 I have been convicted of any (sic) criminal offence, ...⁷

8.2 I am not out on bail on any offence.

9.

BASIS OF BAIL APPLICATION

The application for bail will be made on the following basis.

9.1 That the bail be granted pending my appeal to the Supreme Court of Appeal.

9.2 I am alive to the fact that if my appeal were to be unsuccessful, then I would have to hand myself to nearest correctional facility for processing where after I will start serving the remainder of my sentence.

9.3 The process before the Supreme Court of Appeal may take a considerable time and it will be unfair to detain me in the circumstances.

9.4. Equally, the High Court having granted leave to appeal my conviction and sentence, shows that I have good prospects of success on appeal and should I continue to be detained and my appeal succeeds, it would be unfair for me to have served sentence in the matter that would be ultimately set aside.

9.5 I state that I have already filed a notice to appeal and complete trial record with the Registrar of this Honourable court on the 26th April 2024 under case number 43/2024.⁸

9.6 My wife and children continue to suffer as my wife is struggling to make ends meet since I was sent to prison.

10.

Ad Section 60(4)(a), read with section 60(5) of the CPA

10.1 The trial on the merits has been finalized and there is no question of any possible interference with State witnesses.

10.2 I have not made any threats towards any person.

⁷ Common assault in 2015 and a fine of R150.00 was imposed and paid.

⁸ 43/2020.

10.3 I do not harbour any resentment against any specific person and I have no history of violence.

10.4 I submit that there is no likelihood that if I am released on bail;

10.4.1 I will endanger the safety of the public or any other particular person.

10.4.2 I will not commit a schedule 1 offence or any other offence.

11.

Ad Section 60(4)(b), read with section 60(6) of the CPA

11.1 I respectfully submit that the facts set out above support my submission that I do not constitute a flight risk. I have no reason to flee as I have shown consistent commitment to letting justice take its course throughout this matter.

12.

Ad section 60(4)(c) read with section 60(8) of the CPA

12.1 As previously stated,

12.1.1 I do have a previous conviction.

12.1.2 I am currently serving sentence.

12.2 I respectfully submit that there is no likelihood that I, if released on bail, will undermine or jeopardize the objectives, or the proper functioning of the criminal justice system, including bail system.

13.

Ad Section 60(4)(e) read with Section 60(8A) of the CPA

13.1 I respectfully submit that, should I be released on bail, my release will not induce a sense of shock or outrage and will not disturb the public order or undermine the public peace or security. I further submit that my safety will not be jeopardized by my release on bail.

14.

Ad Section 60(9) of the CPA

14.1 I respectfully submit that the interests of justice do not require my incarceration. If I am incarcerated and my appeal is successful, a miscarriage of justice will have occurred.

15.

Ad Section 60(11)(b) of the CPA

15. I submit that on the basis of the facts set out herein, the interests of justice will be served by my release on bail.

16.

General

16. I stand to be severely prejudiced by my incarceration, particularly having regard to the anticipated delay before this matter may be finalized. This should be balanced against the fact that I do not pose a risk to the State or anyone else, nor do I pose a flight risk, should I be released on bail, I undertake to abide by whatever condition that this honourable court might deem fit and appropriate in this matter.’

[16] The *viva voce* evidence postulated that one of the exceptional circumstances to be regarded are, to start with, to be that the appeal was delayed, and it had caused prejudice to the applicant. The delay in the transcribing of the record is unfair. Further; his children had to be moved from a private school to a public school. His sister, who supported the children, has lost her employment, and the mother is also unemployed; they cannot support the children effectively anymore. The rest of his family must assist with the financial support of the children, and they are not always willing. The applicant confirmed the evidenc in the affidavit. He confirmed that he has a passport that he will hand over to the police. He cannot remember if it is still valid. His health is not stable. He has a skin condition. He does receive medical attention, but the situation does not improve.

The case for the State

[17] The investigating officer in his affidavit⁹ expresses grave concern about the fact that the applicant will abscond due to the severity of the convictions and the sentences. He is convinced that the applicant will re-offend and that the witnesses in the case will be prejudiced. Counsel for the State is convinced of the veracity of the convictions.

‘At this point the accused is aware of the imprisonment term against him and therefore he will attempt to flee the country due to the long imprisonment term. The accused Molefi Molise has ties with Lesotho nation and if he flees, it will be difficult to trace him. Witnesses have already testified against the accused and therefore the accused might avenge because he knows it's them who put him in prison.’¹⁰

⁹ Exhibit B.

¹⁰ Exhibit B para 3.

Conclusion

[18] I indicated above that this case is unique in the sense that the only issue that must be adjudicated on the guilt of the applicant is whether the evidence of the hostile witness is admissible against the applicant. The offences convicted of are of the most serious and the law, on the circumstances of this case, dictates that the applicant shall not be released on bail. The administration of justice may not be tainted by the delay in the finalisation of the appeal due to the alleged lack of funding to transcribe the record. It will distort the system to the extent that dangerous offenders will be released on bail and allowed into the community. The applicant's personal circumstances are commonplace and not out of the ordinary. Bail must be refused.

Order

[19] In light of the above the following order is made:
The application for bail pending appeal is dismissed.

M OPPERMAN J

Appearances

For the applicant

V Abrahams

Legal Aid South Africa

Bloemfontein

For the respondent

D Mpemvane

Director of Public Prosecutions,

Bloemfontein.