

THE REPUBLIC OF SOUTH AFRICA



THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

Appeal Case Number: A 232 / 2025

In the matter between:

CHRISTOPHER CARELSE

APPELLANT

and

THE STATE

RESPONDENT

Summary: Bail Appeal - Co-Accused – Possession of Dependence
Producing Drugs and Unlicensed Firearms – Onus of Proof –
Threshold not Met – *S v Kara* Revisited - Interests of Justice
- Interests of Society Represented by the State - Bail
Refused.

Coram: Wille, J

Heard: 14 November 2025

Delivered: 20 November 2025

JUDGMENT

INTRODUCTION

[1] This is a bail appeal. The appellant pursued a formal bail application in the lower court, which was denied. The appellant now seeks to be released on bail from this court. The respondent opposes this appeal.¹

[2] The initial bail application was addressed and determined in accordance with the principles and jurisprudence applicable to offences as defined in Schedule 5 of the Criminal Procedure Act, 51 of 1977 (CPA). The appellant elected not to testify in the initial bail application and presented evidence in support of his application with the use of an affidavit.²

[3] Similarly, the respondent presented an affidavit from the investigating officer, who is a high-ranking police officer. In the initial bail application in the lower court, the appellant was the second applicant (Accused 2). The first applicant (Accused 1) also applied for his bail release in the lower court. He was

¹ Both legal representatives having filed extensive and helpful Heads of Argument.

² The initial bail application was determined only with the use of affidavits.

denied bail. Both the accused sought formal release in a single composite application.³

OVERVIEW AND FACTUAL CIRCUMSTANCES

[4] The case against the appellant was made out in an affidavit deposed to by the investigating officer. He stated that a large quantity of dependence-producing drugs (cocaine in the form of fifteen bricks with a weight of 15,043 kilograms at an estimated street value of R18 052 680, 00 million) were discovered in a local storage unit allocated with number 868.⁴

[5] The investigating officer elaborated as follows in his affidavit:

‘...The cocaine was undiluted and therefore believed to originate from several international drug cartels. I submit that it is rare to discover such pure cocaine as the drug would usually undergo several stages of being “cut” and mixed with other substances before distribution and sale...’⁵

[6] In addition, the investigating officer stated as follows:

‘...I submit that the only reasonable inference that can be drawn from these facts is that first and second applicants are so-called “first-receivers” of the cocaine as it is smuggled into South Africa by international drug cartels...’⁶

³ The appellant was the second applicant (accused) in the initial bail application.

⁴ This was an extraordinarily large amount of uncut cocaine.

⁵ Page 49 at paragraph 8.

⁶ Page 49 at paragraph 9.

[7] Furthermore, certain firearms and ammunition were discovered inside unit 868. The investigating officer had the following to say about these items:

‘...It was found that three of the firearms recovered were stolen during a business robbery in Boksburg in 2019, Boksburg North Cas 290/02/2019. These were both the 9mm CZ pistols and one 9mm Smith and Wesson pistol. During the same robbery, 69 other firearms were also taken. The other four firearms are not registered on the firearm system of South Africa. At this stage, it is unknown how these firearms entered into South Africa. This is of grave concern to me as two of these firearms are fully automatic and therefore capable of inflicting an increased level of destruction. In other words, the firearms found in the storage facility (the unit) are not the standard fare that are typically seized in a police-bust. In the latter instance, the firearms initially have a legal history until a criminal act saw it circulated in the so-called “black market”. Hence, the often-seen attempts by criminals to file off the serial numbers of these firearms to conceal it`s historical origins...’⁷

[8] He went on to state the following:

‘...In this case, several of the firearms found inside unit 868 are unique in that they are undocumented. This is disturbing as it means that an organised crime entity has likely found a point of (illegal) entry for these firearms into South Africa.

⁷ Page 50 paragraphs 10 and 11.

*The proliferation of illegal firearms in the country is well-known to the courts. Preventing an influx of unregistered firearms into Cape Town is imperative...*⁸

COMMON CAUSE FACTS

[9] It was not disputed by the appellant that the items mentioned above were, in fact, discovered in unit 868. It was not disputed that the appellant rented this unit (868) for a rental amount of R2300.00 per month.⁹

[10] Furthermore, the appellant did not dispute that, as the designated person renting unit 868, he was provided with an allocated tag that would reveal the usage of the tag holder for unit 868.¹⁰

[10] The investigating officer concluded as follows (sic):

'...The movement report reveal that there was no further movement on the tag allocated to unit 868, i.e. second applicant's unit, since 19 February 2022. This is nine (9) days prior to the date first applicant initially began renting at unit 866 on 28 February 2022. I submit that the prima facie evidence at this stage indicate that first applicant enjoyed access and use of unit 868 even though it was rented by second applicant. I submit that in the absence of an innocent explanation, it is highly suspicious that second applicant would diligently pay a

⁸ Page 50 paragraph 12.

⁹ This was left unchallenged and unexplained

¹⁰ This had been the case for period of several years.

*R2300 monthly rental on his unit, notwithstanding the fact that he had not used his allocated tag in more than three (3) years...*¹¹

[12] The investigating officer noted that the first applicant in the bail application (Accused 1) was found inside unit 868 and was carrying keys that gave him access to the unit, despite the appellant being the tenant of the unit.¹²

[13] The respondent argued in the bail application that the appellant was in cahoots with his co-accused and that the inactivity recorded on the access tag of the appellant, over a period of three years, coincided with the arrival of his co-accused as a person renting a separate storage unit. Their collaboration became apparent when the appellant's co-accused relocated his rental unit to one situated exactly adjacent to the appellant's unit, once this adjacent unit became available for rental.¹³

CONSIDERATION

THE RESPONDENT'S CASE

[14] It is the respondent's case that the appellant is faced with a *prima facie* case against him. The case against the appellant is primarily based on substantial circumstantial evidence. However, there is some evidence *aliunde* in the form of the large amount of cocaine and the illegal firearms found inside unit

¹¹ Page 52 paragraph 17.

¹² This was not the subject of any material challenge.

¹³ This was never explained.

868, which unit was rented out and paid for by the appellant, for which there is no explanation.¹⁴

[15] Thus, it is undisputed that the appellant had a formal onus to satisfy the court of first instance on a balance of probabilities that the interests of justice commended his release on bail.¹⁵

THE APPELLANT'S CASE

[16] The appellant elected to remain silent on the merits and only addressed the court concerning his personal circumstances. His personal circumstances are these: (a) he is 36 years old, (b) he is a manager of a business, (c) he has been employed as a manager for the last 14 years, (d) he lives with his life partner in Cape Town, (e) he has been living at this address for the past 8 months, (f) this property belongs to his aunt, (g) he owns immovable property in Gauteng, (h) he earns a monthly salary of R 76000.00, (i) he has no previous convictions, (j) he has a passport that he is prepared to surrender, (k) he has emotional and financial ties to the jurisdictional area of this court and, (l) he has a young minor child.¹⁶

[17] Furthermore, he states that he has not had insight into the police docket or allegations against him and cannot pursue the merits of the case against him any further. This is challenging to comprehend and leaves much to be desired. I say so because he knows he is facing serious charges, and yet he relies solely on his

¹⁴ This was not challenged.

¹⁵ This is common cause.

¹⁶ He only placed his personal circumstances on record (no explanation on the merits).

personal circumstances in his attempt to secure his release on bail, without offering a single explanation regarding the merits of the charges against him.¹⁷

THE GROUNDS OF APPEAL

[18] The core ground of appeal is that the judicial officer in the lower court erred and misdirected herself by finding that the appellant did not meet the threshold of the onus imposed upon him, losing sight of the very tenuous evidence linking the appellant to the offences he faces.¹⁸

[19] Again, this is challenging to understand. To aver that the *prima facie* evidence against the appellant is tenuous is incorrect. This is especially so in the context of the appellant's decision not to take the court into his confidence regarding the merits of the allegations against him. Self-evidently, this failure on the part of the appellant contributed significantly to his inability to relieve himself of the onus resting on him to satisfy the court that his further detention is not in the interests of justice.¹⁹

SECTION 65 (4) OF THE CPA

[19] The applicable legislation provides as follows:

'...The Court or Judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such Court or Judge is satisfied that the

¹⁷ One would have expected more.

¹⁸ Section 60 (11) (b) of the CPA.

¹⁹ It goes without saying that he does have the right to remain silent.

*decision was wrong, in which event the Court or Judge shall give the decision which in its or his opinion the lower court should have given...*²⁰

[21] Put another way, this court cannot substitute its own view for that of the judicial officer in the lower court (unless the decision was wrong even if this court held a different view) because that would amount to an impermissible interference with the discretion exercised by the judicial officer in the lower court.²¹

[22] It is common cause that this is a 'Schedule 5 Bail Application' and that section 60 (11) (b) finds application, which provides as follows:

*'...in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release...*²²

[23] Thus, there was a formal obligation on the appellant to demonstrate to the court that the interests of justice did not require his continued detention. The approach by the judicial officer in the lower court cannot be faulted in that she delivered a judgment which reflected a judicious exercise of her discretion about the probative weight to be afforded to all the information placed before her. The matter before her was a discrete bail application, and it was not a miniature trial.

²⁰ Section 65 (4) of the CPA.

²¹ S v Porthen and Others

²² Section 60 (11) (b) of the CPA.

The respondent was not obliged to plug every potential loophole in its case at this stage of the proceedings.²³

[24] Before I can determine whether bail should have been refused or granted to the appellant, I must decide if a material misdirection occurred by the judicial officer in the lower court. This misdirection, if it exists, must also have been material in relation to the facts or the law, or in rare cases both.²⁴

[25] The court of first instance had to, among other things, determine on a weighing up of the available material before it whether it was legally entitled to conclude that the prosecution had a sufficient and adequate *prima facie* case against the appellant.²⁵

[26] To assist the court of first instance in this weighing-up process, the appellant was required to adduce convincing evidence to establish that the case against him was weak or that he was likely to be acquitted. The respondent submits that the appellant failed to adduce any evidence to prove that the case brought against him by the prosecution was and is a weak case.²⁶

[27] The respondent submitted that the appellant's circumstances did not demonstrate anything unusual or unique. It was not shown that the appellant would suffer any real undue hardship if bail was not granted to him. The appellant's circumstances did not warrant his release on bail in the legal sense. The appellant's life partner and his daughter are living with his aunt. There is no

²³ S v Branco 2002 (1) SACR 531 (W) 535 D-E.

²⁴ Panayiotou v S (CA&R 06 /2015) [2015] ZAECGHC 73 (28 July 2015) at paragraph [27].

²⁵ This is one of the factors to be considered.

²⁶ This as a matter of logic as the appellant failed to deal with the merits.

allegation of exceptional undue hardship to his family if he were not released on bail.²⁷

THE INTERESTS OF JUSTICE

[28] Finally, turning to the heavily debated and sometimes undefinable term known as the interests of justice. In the context of this species of bail application, it has been suggested that the term ‘interests of justice’ should be read to mean the ‘interests of society’ as a whole. This seems somewhat problematic to me.²⁸

[29] Instead, a court must weigh the interests of the appellant against the interests of society, as prescribed by the provisions of the intervening legislation, when dealing with an application for bail release under these circumstances.²⁹

[30] In this connection, the appellant takes the view that the judgment by Gamble J in *Kara* was wrongly decided.³⁰

[31] The appellant also contends that the respondent relies solely on the jurisprudence set out in *Kara*. I agree and I also disagree. I say so because the respondent only referred to the analysis in *Kara* concerning an appellant’s reluctance to deal with the merits of the case during his or her initial bail application. As a matter of pure logic, I agree with this jurisprudence.³¹

²⁷ The judicial officer in the lower court engaged with this issue.

²⁸ It is a value judgment with reference to the law and the facts.

²⁹ With reference sections 60 (4), 60 (9) and (10) of the CPA.

³⁰ *S v Kara and Others* 2023 (2) SACR 171 (WCC).

³¹ *S v Kara and Others* 2023 (2) SACR 171 (WCC) at [27] to [32].

[32] I have some difficulty with the reasoning in *Kara* in the following respects. In *Kara*, the court was dealing only with a Schedule 5 offence. Thus, only section 60 (11) (b) found direct application and nothing else.³²

[33] Thus, in these cases, the onus rests squarely on the person seeking bail to prove on a balance of probabilities that circumstances exist which permit his or her release in the interests of justice. This involves establishing a negative, in that the accused person is unlikely to 'realise' any of the risks as set out in section 60 (4) (a)-(d).³³

[34] The onus that applies to an alleged Schedule 6 offence is entirely different. I say this because section 60 (11) (a) finds application. Section 60 (11) (a) refers specifically to exceptional circumstances. The words 'exceptional circumstances', when referring to the interests of justice, are absent when dealing with an alleged Schedule 5 offence. The words exceptional circumstances with reference to an alleged Schedule 5 offence are only used in section 60 (4) (e) of the CPA.³⁴

[35] Thus, the appellant may be correct (to a limited extent) in his criticism of some of the reasoning in *Kara*, as only an alleged Schedule 5 offence was before the court in *Kara*, and the judgment, on the face of it, dealt with several issues that were not strictly before it for determination.³⁵

³² Section 60 (11) (a) finds no application.

³³ Section 60 (4) (d) finds application in this appeal.

³⁴ Dealing with a disturbance of the public order or undermining the public peace or security.

³⁵ *Fischer and Another v Ramahlele and Others* 2014 (4) SA 614 at para [13].

[36] What does this mean? I say it does not matter one iota. I say this because it does not matter what my views are on this debate. After all, the only question is whether the judicial officer in the lower court, who had the discretion to grant bail, exercised that discretion incorrectly.³⁶

[37] In this case, I am unable to conclude that the lower court's judicial officer was wrong when weighing up the appellant's personal circumstances against the seriousness of the charges against him and the interests of society.³⁷

[38] Put another way, the finding that the appellant did not provide sufficient circumstances causing it to be in the interests of justice to grant him bail was not wrong. This is, *inter alia*, because, in this case, the appellant made a conscious and deliberate decision not to address the merits of the case against him.³⁸

[39] Finally, there is some academic debate about the meaning of the term 'interests of justice' when dealing with bail appeals. I subscribe to the reasoning that the term primarily refers to the interests of the state, which, in turn, represents the interests of society.³⁹

[40] In summary, I am not permitted to interfere with the judicial discretion exercised by the judicial officer in the lower court, as this decision was correctly based on a cumulative analysis of the evidence (which was not wrong), which

³⁶ This debate is largely academic and does not touch on the real issues.

³⁷ In my view the judicial officer in the lower court was not wrong.

³⁸ The judicial officer in the lower court had only the appellant's personal circumstances.

³⁹ Bail – A Practitioner's Guide – Third Edition – John van der Berg - Page 156.

demonstrated that the appellant did not discharge the legal onus that rested on him in the circumstances.⁴⁰

ORDER

[41] The appeal is dismissed.

E.D. WILLE

⁴⁰ The lower court correctly weighed up the interests of the state representing society.