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**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/Not Reportable

Case no: CA & R 8/2025

In the matter between:

BRITNEY ARENDS

Appellant

and

THE STATE

Respondent

Neutral citation: *Arends v The State* (Case no CA & R 8/2025) (21 November 2025).

Coram: TYUTHUZA AJ.

Heard: 31 October 2025.

Delivered: 21 November 2025.

Summary: Criminal law – *Appeal to superior court with regard to bail – Section 65 of the Criminal Procedure Act 51 of 1977 – Schedule 6 Offences – No exceptional circumstances permitting release on bail – Application for bail on new facts – Not new facts per se – Appeal and application on new facts dismissed.*

ORDER

1. The appeal is dismissed.
 2. The application for bail on new facts is dismissed.
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JUDGMENT- BAIL ON APPEAL

Tyuthuza AJ

Introduction:

- [1] On 30 October 2023, the Kimberley Regional Court refused bail in respect of the appellant's bail application which was opposed by the State. This is an appeal against the Court *a quo*'s decision lodged in terms of section 65 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The appellant has also lodged an application on bail based on new facts; the appellant's affidavit deposed to on 15 July 2025 is evident of this.
- [2] The appellant, accused 3 in the pending matter of *George Peters and 20 Others v The State* under case number RCZ 50/2023, was legally represented throughout the bail proceedings before the Court *a quo*. The appellant was arrested on 5 May 2023 and has been in custody since. The appellant is charged with various charges, including racketeering, gang-related offences, attempted murder and murder. It is common cause that the offences fall under schedule 6 of the CPA and that section 60(11) of the CPA applies to the bail proceedings. Thus, the appellant would be entitled to be released only if the Court was satisfied that there were exceptional circumstances permitting her release on bail, in the interests of justice.

Proceedings in the Court a quo:

[3] The appellant adduced evidence by way of written affidavit which was placed before the Court and admitted into evidence as exhibit "J". According to her affidavit, she is 22 years old, has no children and is unmarried. Her residential address is 6[...] N[...] Street, Roodepan, Kimberley. She has been staying at this address for the past four months and shares the residence with Abigail Van Wyk, Eva Peters, and seven children. Her alternative address is 6[...] W[...] Street, Roodepan, Kimberley, her mother's address. She is unemployed, and dependent on odd jobs for survival. Her highest level of education is grade 11 and her health is in good condition. She has no previous convictions or pending cases. She was arrested on 5 May 2023 and was charged with several other charges. She intends to plead not guilty to the charges. She states that there is no relationship between her and the complainant and/or other state witnesses. She would be able to afford bail in the amount of R500.00 and would be able to report to the Roodepan police station on a regular basis if the Court were to attach such conditions on her bail. She will not endanger the safety of the public or any particular person including her own safety. She will not commit any offence whilst out on bail. She will not attempt to evade her trial and will come to Court until her case is finalised. She will not interfere with the state witnesses or attempt to conceal or destroy evidence.

[4] The State presented a detailed affidavit of Captain Riaan Baartman, deposed to on 29 August 2023, which set out the reasons for the opposition to bail. The affidavit was admitted in those proceedings as exhibit "V". Captain Baartman was the lead investigator of the multi-disciplinary team, under the command of Brigadier SJ Mojela, investigating this matter. According to his affidavit, the appellant's last available address is 6[...] W[...] Street, Roodepan, Kimberley, her mother's house, and the appellant also provided four other addresses as her places of residence. The address in Kuruman, being one of the four other addresses, is the address belonging to the mother of accused 1. The other three addresses are linked to the Hollanders gang. The appellant has no previous convictions or pending matters as all the pending matters were consolidated into one trial. She was arrested in Kuruman in 2021, but that case was struck off the roll pending the finalisation of the investigation.

Accordingly, her arrest on 5 May 2023 was on new cases wherein she is implicated in 26 counts.

[5] In respect of the bail application, the Court *a quo* found as follows:

“Sover dit beskuldige 3, bederff, is dit so dat, sy geen vorige veroordelings het nie, sy word egter aangekla van aanklagtes van 26 aanklagtes en dit word so dat haar persoonlike omstandighede uiteengesit word, in BEWYSSTUK J, wat ingehandig is. Dit is ook so dat sy dan saam woonagtig is met van die ander beskuldigdes, Sone Adams, Peters en daar is gese dat die adres aan haar biologiese moeder behoort, sy is dan ook ongetroud en het geen afhanklikes nie.

Die staat se argument is dat, in die omstandighede vanwee die aard van die aanklagtes, dit nie in belang van geregtigheid sal wees om haar vry te laat nie en dat daar ook nie buitengewone omstandighede bewys is, in haar geval wat haar vrylating regverdig nie, aangesien hierdie geval onder bylaag 6 van die Strafproseswet. Dit is ook dat sy ook baie nadelig getref sal word deur die feit dat sy in hegtenis bly, of indien sy in hegtenis sou bly, sy is eweneens soos baie van die ander beskuldigdes baie jonk, sy is 22 jaar oud, maar ek is ook van mening dat waneer die feite in geheel gesien, beoordeel word, dat beskuldige 3, nie daarin geslaag het om buitengewone omstandighede aan te duin en haar aansoek om bordtog word dan ook afgewys.” (*Sic.*)

Grounds of appeal:

[6] The grounds of appeal in relation to the Court *a quo*'s order are, in summary, the following:

- (i) That the appellant was charged with offences that are included in schedule 6 offences regulating bail applications whilst it was agreed between the parties before the bail application commenced that the schedule for the application is schedule 5.

- (ii) That it was not taken into account that the appellant has an address where her mother resides 6[...] W[...] Street, Roodepan, which address was confirmed by Captain Baartman. Neither was the address of her father taken into account, wherein if she were to be granted bail and placed under house arrest, either parent is willing to take her in.
- (iii) That the Court *a quo* failed to take into account that her mother is suffering from diabetes and other health issues, that her mother is taking care of two young children, and that this is placing added strain on her already compromised health.
- (iv) That the Court *a quo* erred by refusing bail and finding that there will be certain risks in granting bail to the appellant, and therefore finding that it is not in the interests of justice to grant bail.
- (v) That the Court *a quo* erred by not taking into account that the appellant had no previous convictions and that the matter she was arrested for in Kuruman under CAS 53/7/2021, was struck from the roll pending the finalisation of the investigation.
- (vi) That the Court *a quo* erred by not finding that to release the appellant on bail would be in the interests of justice.
- (vii) That the Court *a quo* erred by not granting bail to the appellant pending the finalisation of her trial.

Analysis of the appeal:

[7] Section 65(4) of the CPA provides that: “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 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”. Thus, if I am to find that the Court *a quo* was wrong, I must consider the facts before me afresh and determine whether the appellant has discharged the onus which rested on her.¹

¹ *S v Jiyane* 2018 JDR 1300 (GP) para 13; *S v Barendse and Another* 2023 JDR 1714 (WCC) para 19.

[8] It is common cause that offences with which the appellant is charged fall within the ambit of schedule 6. Section 60(11)(a) of the CPA provides as follows:

“Notwithstanding any provision of this Act, where an accused is charged with an offence- (a) referred to 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 exceptional circumstances exist which in the interests of justice permit his or her release.”

[9] As alluded to above, the appellant has been charged with an offence referred to in schedule 6 of the CPA. Accordingly, she bore the onus to satisfy the Court *a quo*, on a balance of probabilities that; first, there exist exceptional circumstances; and second, those exceptional circumstances permit her release on bail in the interests of justice. To succeed with her application in this Court, the appellant is still called upon to prove the two abovementioned requisites. It is trite law that the two requisites under section 60(11)(a) of the CPA, *to wit*, exceptional circumstances and interests in justice, must contemporaneously or conjunctively be present or exist, for a successful bail application. The absence of one requirement may result in the bail applicant being not admitted to bail.²

[10] As to what constitutes exceptional circumstances remains undefined. In *S v Mohammed*³ when dealing with this concept the Court found that, “the true enquiry is whether the proven circumstances are sufficiently unusual or different in any particular case as to warrant the applicant’s release.” In *S v Scott-Crossley*⁴, the SCA held that personal circumstances which are really “commonplace” cannot constitute exceptional circumstances for purposes of section 60(11)(a).

² *Cele v S* (CA&R 13/2024) [2025] ZAECHMHC 2 (21 January 2025) para 31.

³ 1999 (2) SACR 507 (C) at 508G.

⁴ 2007 (2) SACR 470 (SCA) para 12.

- [11] In the written submissions, the appellant intimated that the offences she is charged with fall under schedule 5. However, during the hearing she conceded that the charges fell under schedule 6 and thus that the onus on the appellant was stricter. Accordingly, the court *a quo* correctly adjudicated the application on schedule 6, thus the appellant's first ground of appeal cannot stand.
- [12] In respect of the second ground of appeal, during the proceedings in the Court *a quo*, the appellant provided as her residence the address which she shares with Abigail Van Wyk and Eva Peters, who are also her co-accused in the matter. Her mother's address was provided as an alternative address. In those proceedings she stated under oath that she lived with the co-accused for the last four months and did not share her father's address. Captain Baartman confirmed under oath that the appellant provided four other addresses as her place of residence, and that the addresses are linked to the Hollanders gang. The appellant withheld this information during the proceedings in the Court *a quo*, deliberately so in my view. Bearing in mind that the appellant has been charged with racketeering and gang related offences, it is of significance that her address is linked to the members of the same gang she is alleged to be part of; that she lived with her co-accused; and that one of her addresses is an address belonging to the accused number 1's mother. It was submitted on behalf of the respondent, correctly so in my view, that this was an indication of her close association with the criminal enterprise, and demonstrated that she did not maintain close ties with her family. Accordingly, the second ground of appeal cannot stand either.
- [13] In the Court *a quo*, the appellant was silent about her mother's deteriorating health conditions and the circumstances surrounding the young children. Resultantly, this information was not placed before the Court *a quo* for consideration. Therefore, it cannot be said that the Court *a quo* had erred in not having taken these facts into account. This ground too cannot stand.
- [14] The respondent submitted that the appellant is alleged to have been involved in attacking a police station and private residences of community members,

and that this *prima facie* shows a lack of respect of authority and rights of fellow citizens. The respondent submitted that despite the evidence implicating the appellant having been presented in the Court *a quo*, the appellant made no attempt to challenge the strength of the evidence against her in those proceedings.

- [15] After a perusal of the record of the Court *a quo*, I am of the view that the appellant has failed to successfully discharge the onus as contemplated in section 60(11)(a) of the CPA, that there are exceptional circumstances which permit her release on bail. Accordingly, I find no grounds to satisfy this Court that the decision of the Court *a quo* was wrong.

Application on new facts:

- [16] Together with her application for the appeal of the decision of the Court *a quo*, the appellant brought an application for bail on new facts by way of affidavit, which she deposed to on 15 July 2025. The appellant asserts that new facts have since come to pass since she previously applied for bail in October 2023. She sets out the new facts as follows:

- i. She is unemployed and dependent on her father.
- ii. Her mother is unemployed and suffering from diabetes and other health issues. Her mother is taking care of two young children; this is placing strain on her already compromised health. Before her arrest she was living with her mother and assisting her with taking care of the two young children.
- iii. She can afford bail in the amount of R15 000.00 and that she will abide with any bail condition imposed by the Court.
- iv. She has no previous convictions, no pending charges and pleaded not guilty to the charges levelled against her.
- v. She understands the seriousness of the charges levelled against her and intends to prove her innocence. She does not pose a danger to the public in that despite the allegations levelled against her; she has never been

- accused of violence towards any member of the public, her family or the community.
- vi. There is no evidence of any likelihood that she will not stand trial. Her immediate family, economic and cultural ties are within the Northern Cape.
 - vii. There is no evidence that she will interfere with the witnesses' evidence or continued investigation of this matter. She is aware of the identity of some of the witnesses and has no inclination to interfere or to temper with any of them.
 - viii. She has been advised to avoid contact with any of the witnesses.
 - ix. Her release will not undermine or jeopardize the public confidence in the criminal justice system.
 - x. She confessed to the murder because she was informed that she should take responsibility for the death. Regarding the unfounded allegations made against her in 2022, she cooperated fully with the Court and the police. She submits that the State's case is exceptionally weak.

[17] In *S v Mpofana*⁵ the approach which one ought to consider when dealing with an application for bail on new facts was set out as follows: "In considering an application for bail allegedly brought on the strength of new facts, the court's approach is to consider whether there are, in the first instance, new facts and, if there are, reconsider the bail application on such new facts, against the background of the old facts."

[18] In *S v Mohammed*⁶ the Court confirmed that an application based on new facts ought to be judged with reference to the facts and circumstances which were placed before the court in the first instance. This confirms that the facts which were placed before the Court *a quo* are also relevant for me to determine whether the application for bail on new facts meets the standard set out in section 60(11) of the CPA.

⁵ 1998 (1) SACR 40 at 44G – I.

⁶ 1999 (2) SACR 507 (C) at 511A – D.

[19] What constitutes new facts and the procedure for a renewed bail application is neither defined nor prescribed in the CPA. In *Yanta v S*⁷, the Court provides guiding principles relevant to applications for bail on new facts as follows:

“15.1. Whether the facts came to light after the bail was refused. Such facts can include circumstances which have changed since the first bail application was brought, such as the period that an accused had been incarcerated;

15.2. Whether the facts are ‘sufficiently different in character’ from the facts presented at the earlier unsuccessful bail application, in the sense that it should not simply be a ‘reshuffling of old evidence’;

15.3. Whether the alleged new fact(s) are relevant in the sense that, if received by the court, it would per se, or together with other facts already before the court from the initial bail application, assist the court to consider the release of an accused afresh;

15.4. A court hearing an application based on alleged new facts must determine, with reference to the evidence previously presented in the unsuccessful bail application, whether such facts are indeed new. In [*S v Mpofana* 1998 (1) SACR 40 (Tk)] at 44g-45a Mbenenge AJ (as he then was) explained that–

‘whilst the new application is not merely an extension of the initial one, the court which entertains the new application should come to a conclusion after considering whether, viewed in the light of the facts that were placed before court in the initial application, there are new facts warranting the granting of the bail application’; and

15.5. Where evidence was known and available to a bail applicant, but not presented by him at the time of his earlier application, such evidence can generally not be relied upon, for purposes of a renewed bail application, as ‘new facts’.”⁸

⁷ 2023 (2) SACR 387 (WCC).

⁸ *Ibid* para 15.

[20] In *S v Nwabunwanne*⁹ this Court described the true nature and essential purpose of new facts in the context of a renewed bail application as follows, “[n]ew facts can and should be put before a magistrate by adducing oral evidence or submitting a document stating facts which are common cause. The purpose of adducing new facts is not to address problems encountered in the previous application, but should be facts discovered after the bail application.”

[21] The “new facts” which were not presented in the Court *a quo* are summarized as the following: The appellant’s new address, her father’s address. That she was resident with her mother at 6[...] W[...] Street, Roodepan, Kimberley and assisting her sick mother with the young children prior to the arrest. That she is dependent on her father. The circumstances around the charge of murder and that the State has a weak case against her.

Analysis of application on new facts:

[22] The appellant has, in this renewed bail application, *prima facie* demonstrated that she had placed false evidence before the Court *a quo* in her initial bail application. In those proceedings, the appellant under oath stated that she lived with the co-accused and seven children in the last four months before her arrest and not with her mother as attested to in these proceedings. In the Court *a quo* the appellant did not indicate her father’s address as a place of residence, instead, she mentioned the address she shared with the co-accused as her place of residence and her mother’s address as an alternative. In the Court *a quo*, the appellant never took the Court into her confidence regarding her mother’s health and her assisting her mother in taking care of the young children. This information which the appellant sets out in these proceedings and relies upon has come to light after the appellant’s failed bail application, despite it being information which the appellant was obviously aware of during the proceedings in the Court *a quo*, but she opted not to divulge these facts. As such I am inclined to believe that

⁹ 2017 (2) SACR 124 (NCK) para 24.

these facts are not new facts but constitute of no more than a reshuffling of existing facts with a view of supplementing unsatisfactory aspects of the first bail application.

[23] In the Court *a quo*, the evidence implicating the appellant was presented, but the appellant in those proceedings despite being aware of the charges against her, opted to not deal with them and only stated that she would plead not guilty. In these proceedings, she stated under oath that she confessed to the murder of Dameline Jacqueline Albertus, because she was told to take responsibility for the death. On her version, the confession was false, but she does not take the Court into her confidence as to how it came about that she made a false confession. I am of the view that her confession itself, is indicative of her involvement with the co-accused and their activities, and further that by virtue of giving a false confession as alleged, she is involved in defeating the ends of justice.

[24] The appellant asserts that she wants to prove her innocence and thus will attend to the trial.

[25] In *S v Mathebula*¹⁰ the Supreme Court of Appeal held that “[i]n 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

[26] The appellant stands accused of committing serious offences, she has failed to prove on a balance of probability that she will be acquitted of the charges she faces. Her only stance is that the allegations made against her are unfounded, whilst the State has presented the evidence of a section 204 witness, who has linked the appellant to the charges. In my view the appellant has not discharged the *onus* of proving exceptional circumstances by adducing strong, independent evidence pointing to her innocence. On the contrary, she has relied on facts which she failed to reveal in the first bail

¹⁰ 2010 (1) SACR 55 (SCA).

¹¹ *Ibid* para 12.

application, such facts are not new but directed at supplementing her failed bail application.

[27] Having regard to all the evidence placed before me, I am not satisfied that the release of the appellant on bail is in the interests of justice. The appellant has failed to establish exceptional circumstances that in the interests of justice, permit her release. Consequently, the appellant's application to be released on bail based on new facts must fail.

Order:

[28] In the premise, I make the following order:

1. The appeal is dismissed.
2. The application for bail on new facts is dismissed.

T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Appellant: Adv K Nxumalo
Instructed by: Legal Aid South Africa

For the Respondent: Adv JJ Cloete
Instructed by: Office of the Director of Public Prosecutions