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

CASE NO: A73/2025

DPP REF: 10/2/5/1-42/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 20 November 2025

SIGNATURE

In the matter between:

MOTHEBESOOANE MARCUS MATOOANE

(Accused in Court *a quo*)

APPELLANT

versus

THE STATE

RESPONDENT

JUDGMENT

BOKAKO AJ:

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines. The date of the judgment is deemed to be 20 November 2025.

Introduction

1. This is an appeal against the learned Magistrate's refusal of bail in the Germiston Magistrates' Court (the Court *a quo*). The Appellant is charged with fraud, a Schedule 5 offence under the Criminal Procedure Act 51 of 1977 (the CPA). Consequently, the burden rests upon him to satisfy the Court that the interests of justice permit his release.
2. The Appellant is also facing separate and more serious charges of kidnapping and extortion in the Johannesburg Magistrates' Court, for which he was granted bail of R5000 without any specific conditions.
3. At the commencement of the bail proceedings, it was common cause that the charges fell within the ambit of the offences listed in Schedule 5 of the Criminal Procedure Act 51 of 1977 ("Act 51 of 1977") because of the quantum involved.
31. The State opposed bail application submitted before the lower Court. The basis for the State's opposition is grounded in section 60(4)(b) of the Criminal Procedure Act (CPA), asserting that the accused poses a flight risk and is likely to evade trial. The State contends that the accused's conduct is consistent with that of an individual likely to evade trial, as he does not have a permanent place of residence. The Appellant asserts that the decision rendered by the lower Court was unreasonable and that no tribunal of reasonable judgment could have reached such a conclusion based on the evidence and information available to it. This constitutes the most common grounds for appeal.

Background and evidence in the Court *a quo*

5. The State led the evidence of the Investigating Officer. Notably, his testimony was not adverse to the Appellant's case. He testified that:
 - 5.1. He did not consider the Appellant to be a flight risk.
 - 5.2. He had no personal objection to the granting of bail.
 - 5.3. Since being released on bail in the Johannesburg matter, the Appellant had not caused any problems, threatened anyone, or attempted to interfere with the investigation.

6. The Appellant testified and presented evidence of his personal circumstances, including his employment with the Ekurhuleni Metropolitan Municipality (albeit currently suspended on full pay), his South African citizenship, and his family ties. He provided a lease agreement for his current address, explaining that he moved after his sister sold the previous property. These personal circumstances, when properly considered, do not support a finding of flight risk but rather the opposite.

The Magistrate's Ruling

7. The learned Magistrate refused bail, primarily on three grounds as contemplated in section 60 of the CPA:
 - 7.1. **The likelihood of committing a Schedule 1 offence (s 60(4)(a)):** The Magistrate found that the existence of the pending kidnapping and extortion case, which also involved municipal service providers, established a pattern suggesting the Appellant might commit another offence.
 - 7.2. **The likelihood of evading trial / being a flight risk (s 60(4)(b)):** The Magistrate cited the Appellant's financial means, his origin from Lesotho, his lack of fixed property, his suspension from work, his change of address without initial disclosure, and the potential for a 15-year minimum sentence.
 - 7.3. **The likelihood of influencing or intimidating witnesses (s 60(4)(c)):** This finding was based on the nature of the Johannesburg case and the Appellant's position at the municipality, which supposedly gave him knowledge of and access to witnesses.

The Legal Framework

8. A bail appeal does not constitute a rehearing of the initial bail application. Instead, it serves as a review of the lower Court's decision to grant or deny bail. The primary issue for the appellate Court is whether the Magistrate in the lower Court reached a decision that no reasonable court could have reached, given the evidence and applicable law presented to it. The appeal process is governed primarily by the Criminal Procedure Act (CPA) 51 of 1977.

9. Accordingly, this Court is advised to deliberate upon the subsequent factors in accordance with (Section 60(4) - (9) CPA): The likelihood of the accused standing trial; whether the accused poses a threat to the safety of the public or any individual; the potential risk of the accused undermining or jeopardising the objectives of the justice system; the probability of a future conviction; and the severity of the proposed sentence.
10. The paramount legal principle in a bail appeal is the elevated standard that an appellant is required to satisfy. The appellate Court will refrain from intervening in the lower Court's decision solely because it might have reached a different conclusion. The Appellant bears the burden of demonstrating to the appellate Court that the decision of the lower Court was incorrect, irregular, or that it exercised its discretionary authority improperly.
11. It is trite that a court considering an appeal cannot overturn a previous decision unless it believes the previous decision was incorrect. If this is the case, the Court must provide the ruling it thinks the lower Court should have made.
12. Therefore, the fundamental issue is whether the presiding Magistrate improperly exercised their discretion in denying bail. As Hefer J stated in *S v Barber*: "In consideration of the authorities, it is acknowledged that it is an established principle of law that appeal courts possess limited jurisdiction in matters concerning bail appeals. Irrespective of the Court's perspective, the primary issue is whether the lower Court *materially* misdirected itself in relation to the pertinent facts or legal principles".
13. The Court of Appeal is permitted to reassess the matter of bail solely under particular conditions. Furthermore, intervention on appeal may be appropriate if the lower court neglected to consider substantial factors in its decision-making. This stance has been corroborated by Van Zyl J in *S v Yanta* 2000 (1) SACR 237, which stated, "Like any other appeal, an appeal against the refusal of bail must be determined on the material on record."

14. According to section 65(4) of Act 51 of 1977, the Court reviewing the appeal will only overturn the decision if it determines that the original decision was incorrect.
15. In *S v Dlamini* 1999(2) SACR 51 (CC), Justice Kriegler, representing a unanimous panel of the Constitutional Court, articulated the following significant observations: "Furthermore, a bail hearing is a unique judicial function. It is obvious that the peculiar requirements of bail as an interlocutory and inherently urgent step were kept in mind when the statute was drafted. Although it is intended to be a formal court procedure, it is considerably less formal than a trial. Thus, the evidentiary material proffered need not comply with the strict rules of oral or written evidence. Also, although bail, like the trial, is adversarial, the inquisitorial powers of the presiding officer are greater. An important point to note here about bail proceedings is so self-evident that it is often overlooked." Furthermore, it was determined 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.'
16. In the case of *S v Smith and Another*, 1969 (4) SA 175 (N), the Court determined 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'
17. Consequently, this Court needs to evaluate all pertinent factors to assess if they, either alone or together, support a conclusion that the interests of justice necessitate the Appellant's release.

Analysis

Likelihood of Committing Another Schedule 1 Offence

18. The Magistrate's finding on this ground is fundamentally flawed. The mere existence of a pending charge is evidence of an *alleged past* act, not proof of a *future* propensity to commit a crime. To use an awaiting charge, for which

the Appellant has already been granted bail by another court, as the sole basis for this finding is logically and legally unsound.

19. Crucially, the Court, which is seized with the more serious charges of kidnapping and extortion, saw fit to release the Appellant on bail without imposing stringent conditions. This fact powerfully contradicts the Magistrate's inference that he presents a danger to the public. There was no evidence of a concrete "pattern" of criminality beyond a speculative connection to the municipality's service providers.

Likelihood of Evading Trial (Flight Risk)

20. The Magistrate's finding on this point stands in stark contrast to the direct evidence of the Investigating Officer, who is best placed to assess this risk. His testimony that he did not consider the Appellant a flight risk was a significant factor that was not given due weight. This testimony should have been a significant factor in the Magistrate's decision.
21. The Appellant's personal circumstances, properly considered, do not support a finding of flight risk but rather the opposite:
22. He is a South African citizen, with strong ties to the country. His familial connection to Lesotho, without evidence that he holds a passport or has the means or intention to flee there, is speculative.
23. He provided a reasonable explanation for his change of address and documented it with a lease agreement. A tenancy agreement, even without a fixed end date, establishes a fixed address for bail purposes.
24. His suspension with pay constitutes a traceable financial tie to the country, including a pension fund, not an untraceable cash reserve for flight.
25. Most significantly, he was *already on bail* for the Johannesburg matter and was a proven good candidate for bail, having complied with all conditions and not absconded. The fact that he was arrested at Court for this matter

demonstrates that he was actively attending his legal proceedings, not evading them, thereby showing his respect for the legal process.

26. While the seriousness of the charge and potential sentence is a relevant consideration, it cannot, without more, be determinative.

Likelihood of Influencing or Intimidating Witnesses

27. The finding on this ground is conjectural and lacks any evidentiary foundation. There was no evidence presented that the Appellant had attempted or threatened to influence witnesses in *this* fraud case. The Magistrate's finding on this ground is therefore not supported by the evidence.
28. The argument that he "knows who the witnesses are" by virtue of his employment is vague and insufficient to justify the denial of liberty. Furthermore, the attempt to use the pending kidnapping charge to suggest a propensity for intimidation is prejudicial. The Appellant enjoys the presumption of innocence on that charge, and it is an error in law to use it as predictive evidence of future witness tampering in an unrelated case, especially where there have been no allegations of such conduct while he has been on bail for that very charge.
29. This Court, sitting as an appeal court, may only interfere with the Magistrate's decision if it is satisfied that the decision was wrong. I am of the view that the Appellant has successfully demonstrated that the Magistrate's decision was indeed wrong for the following reasons.
30. The Magistrate disregarded compelling evidence submitted by the Appellant, and the decision appears to have been influenced by fear or public opinion rather than by concrete evidence.
31. Additionally, the Appellant contends that the Magistrate failed to exercise independent judgment regarding the facts and merely adhered to a blanket rule.

32. The State's opposition was improperly punitive and not evidence-based. The principle of bail is not to punish an accused but to secure their attendance at trial.
33. A confusion regarding his residential address, while a factor to consider, cannot be the *sole* basis for denying bail, especially where the Appellant has provided a plausible explanation and was ultimately found at a public court building. This, in itself, does not prove he is a flight risk.
34. The Appellant has demonstrated he is not a flight risk. The Appellant's argument is compelling: if he intended to flee, he had ample opportunity to do so; instead, he remained in the country and engaged in his current criminal matter in public litigation.
35. His arrest at the Johannesburg magistrate's court powerfully undermines the State's claim that he was evading authorities. A person truly intent on fleeing would not be conducting public, scheduled court proceedings. His offer to report to the police twice a week is a sufficient condition to allay any residual concerns about his attendance in Court.
36. For the reasons set out above, I am satisfied that the learned Magistrate's decision to refuse bail was wrong. The findings were unsupported by the evidence and were based on speculation rather than a balanced assessment of the facts presented to the Court. The Appellant has discharged the burden placed upon him by Schedule 5 of the CPA and has shown that his release is in the interests of justice.
37. The Appellant's arguments successfully persuaded the Court that he is not a flight risk and should be released; he has a strong community tie, in that he has a verifiable address. The investigation officer confirmed the Appellant's address and obtained a statement from the girlfriend confirming that they live together. That was supported by a lease agreement confirming the statement and that the lease is in the name of both the Appellant and the girlfriend.

38. The time has already been served; he has already spent a considerable amount of time in custody.
39. This Court was not persuaded because of the state submissions that the Appellant's concrete ties to the country (family interests) outweighed the State's abstract fear of him fleeing.
40. This court rejects the State's argument that the Appellant is a flight risk. The State's submissions do not persuade the Court, and it is inclined to grant bail, having found that the grounds for opposition are not compelling.
41. This Court finds that the Magistrate's decision to refuse bail was unreasonable and constitutes a misdirection on the facts and the law.
42. Furthermore, this court maintains that the evidence presented could not, on any rational basis, justify the decision to deny bail
43. The interests of justice favour his release. The severe hardship being inflicted on the Appellant's family, who are left without financial support, is a significant factor that the lower Court failed to consider adequately. The administration of justice is not served by punishing an accused's innocent family.
44. A reasonable court, properly balancing the evidence of a flight risk, a mere delay against the concrete and severe prejudices of continued detention, would have concluded that the interests of justice permit his release, subject to appropriate conditions. The refusal to do so was a misdirection.
45. Following a meticulous review of the submitted documentation, it appears that the esteemed Magistrate, at a certain point, mistakenly believed she was presiding over a criminal trial rather than evaluating a bail application. Consequently, she did not adequately contemplate the fundamental objective of bail. The lower Court significantly misjudged both the facts and the applicable legal principles. It evidently neglected to address the primary issue, namely, 'safeguarding the investigation and prosecution from hindrances.

46. In the matter of *S v Dlamini* 1999(2) SACR 51 (CC), 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.'

47. This Court holds that approving bail for the Appellant, contingent upon stringent conditions, will effectively prevent him from evading trial.

48. Upon reviewing the lower Court's record and considering the parties' submissions, this Court concludes that the lower Court's denial of bail was incorrect.

Order

1. The Appellant's appeal against the refusal of his bail application is upheld.
2. The order of the Court *a quo* is set aside and substituted with the order set out as follows:
3. Bail is granted to the Appellant in the amount of R20 000.00 (twenty thousand rand) under the following conditions:
4. He shall report to the nearest Police Station twice a week, namely on Mondays and Fridays between 06:00 and 17:00.
5. He shall attend his trial and all related postponements, remaining in attendance until excused, and ultimately until a verdict is rendered regarding the charges this case pertains to.
6. The Appellant shall surrender all his travel documents to the investigating officer and shall not apply for new ones.
7. He should not communicate with any state witnesses, obstruct them, or intimidate any individuals, including the complainant.
8. He shall not exit the Gauteng province without obtaining written consent from the Investigating Officer. To receive this authorisation, he must submit a valid itinerary detailing his movements and continuously inform the Investigating Officer of his whereabouts.

9. The Appellant's residence is officially recorded as Unit 3[...] G[...] R[...], 7[...] H[...] Drive, Greenstone Hill, Modderfontein, Johannesburg, Gauteng. Province. Should he update this address, he must inform both the clerk of the Court and the Investigating Officer within 24 hours; and
10. The Investigating Officer is required to personally deliver a copy of this order, which includes the conditions of bail, to the Appellant before his release on bail.
11. Furthermore, a written acknowledgement from the Appellant, affirming his comprehension of the conditions of the bail release, must be submitted to the clerk of the Magistrate's Court as an integral component of the official record.

Tbokako
T.P. BOKAKO
ACTING JUDGE OF THE HIGH COURT

Date of Hearing: 13 November 2025

Date of Judgment: 20 November 2025

APPEARANCES:

Counsel for the Appellant: Adv. H.J. Potgieter

Counsel for the Respondents: Adv. H Zwane

Instructed by the Office of the Director of Public Prosecutions