



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

Reportable/Not Reportable

Case no: CA & R 14/2025

In the matter between:

MICHEAL PETERS Appellant

and

THE STATE Respondent

Neutral citation: *Peters v The State* (Case no CA & R 14/2025) (28 November

2025).

Coram: TYUTHUZA AJ.

Heard: 31 October 2025.

Delivered: 28 November 2025.

Summary: Criminal law – Appeal to superior court regarding bail – Section 65 of the Criminal Procedure Act 51 of 1977 (CPA) – Schedule 5 Offences – Section 60(11) of the CPA – Appellant to prove interests of justice permitting release on bail – Appeal court may set aside refusal to grant bail where decision is wrong – Appeal court to

give its own decision – Magistrate's failure to analyse evidence and provide adequate reasons amounts to misdirection and failure of justice – Appeal upheld.

ORDER

1. The appeal against the refusal of bail is upheld.
2. The Magistrate's Court order refusing bail to the appellant is set aside and substituted with the order in the following paragraphs.
3. The appellant is granted bail in the sum of R5000.00 (Five Thousand Rands).
4. Upon the payment of the said sum of money, the appellant shall be released from custody on condition that:
 - 4.1. The appellant shall report to the Mothibistad Police Station between 08:00 and 16h30 every Monday of each week, unless he is attending the criminal trial in which event he shall produce proof of court attendance.
 - 4.2. The appellant shall attend court at all times, up until the finalisation of the trial.
 - 4.3. Should the appellant fail to attend any court session on a date and time appointed, or should he fail to remain in attendance at trial or such other proceedings as he may be required, the appellant may be dealt with in terms of section 67(1) of the CPA.
 - 4.4. The appellant shall not leave Mothibistad Kuruman or the borders of the Northern Cape Province without the prior written permission of the Investigating Officer.
 - 4.5. The appellant shall not interfere with the investigation in any manner and shall not interfere, contact, communicate or intimidate any State witness, either directly or indirectly until the finalisation of the case.

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 Criminal Procedure Act 51 of 1977 ("the CPA").
- [2] The appellant, accused 8 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 in May 2023 and has been in custody since. He is charged with various charges including attempted murder, conspiracy to commit murder, racketeering and gang-related offences in terms of the Prevention of Organised Crime Act 121 of 1998 ("POCA"). It is common cause that the offences fall under schedule 5 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 the interests of justice permit his release on bail.

Proceedings in the Court a quo:

- [3] The appellant adduced his evidence by way of affidavit which was placed before the Court and admitted into evidence as exhibit "O". He placed the following circumstances before the Court:
- 3.1. He is 38 years old. He is unmarried and has six children aged 12 years (twins), 4 years (twins), 3 years and 2 years old. Three of his children live with him whilst the other three live with their mothers.

- 3.2. He resides at 1[...] C[...] Road Kimberley, which residence he shares with Felicia Peters, Vincent Rosen, Pharmeston Mentoer, Thabo Sekapane, Hendrik Blom and George Peters. His alternative address is Magojane New Stands Kuruman, this address belongs to Eva Pieters, his deceased mother.
- 3.3. He is unemployed and dependent on odd jobs like tiling and painting.
- 3.4. His highest level of education is grade 9.
- 3.5. He has furniture worth R15 000.00.
- 3.6. His health status is good.
- 3.7. He enjoys privilege against self-incrimination in these bail proceedings and any evidence which he may proffer may be used against him at the subsequent trial.
- 3.8. He has also been advised by his legal representatives that he has a duty to disclose to the court his previous convictions and/or pending cases.
- 3.9. He has the following previous convictions: possession of drugs (2003), possession of dangerous weapon (2009), and theft (2013).
- 3.10. He was arrested on 4 May 2023 and charged with attempted murder and several other charges as referred to in his charge sheet. His previous convictions are long ago, he has no pending cases.
- 3.11. He has no relationship with the complainant and/or other State witnesses.
- 3.12. He has a family- six children to support.
- 3.13. He has to look after his mother's place in Kuruman as it is unoccupied.
- 3.14. He was out on bail of R1000.00 previously on this case.
- 3.15. If he is granted bail he is able to afford the amount of R1000.00. He would be able to report to Mothibistad Police Station on Mondays weekly if the Court were to attach such a condition to his bail.
- 3.16. He will not endanger the safety of the public or any person including his own safety.
- 3.17. He will not commit any offence while he is out on bail.
- 3.18. He will not attempt to evade his trial and will come to Court on the dates directed by the above Court until his case is finalised.

- 3.19. He will not interfere with the State witnesses or attempt to conceal or destroy evidence. The Court may set very stringent bail conditions prohibiting any form of communication between himself and the State witnesses/complainant should it be found that he is likely to interfere with the investigation of the case.
- 3.20. His release on bail will not jeopardise the objectives or proper functioning of the criminal justice system including the bail system.

[4] The State presented a detailed affidavit of Captain Riaan Baartman, deposed to on 29 August 2023, which sets 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 Captain Baartman’s affidavit, the appellant’s last available address is 1[...] C[...] Road, Rhodesdene, Kimberley. The said house was previously rented by Felicia Peters who no longer rents it. The address is not correct as there is no one staying there. The appellant has no previous convictions or pending cases, as all the pending cases are consolidated into one trial as indicated in the indictment. The appellant is charged with racketeering and gang-related offences. Underlying these charges are 18 counts of predicate offences as set out in the indictment of the cases. The appellant was out on bail and under house arrest relating to the 3rd gang occasion of the Hollanders gang. He has been arrested for new cases in relation to the 7th gang occasion of the said gang. He is the elder brother of accused 1 in the pending matter.

[5] Captain Baartman further states that there is very strong evidence against the appellant which implicates him as being part of a gang that partook in criminal activities. In respect of the address in Kuruman, he stated that there was no confirmation that the appellant would be allowed to stay there, as no one was found at the address to confirm. He further stated that the fact that some of the applicants are giving the same addresses as their current place of residence demonstrates that there is a likelihood that the appellant will become involved in crime again.

[6] Upon hearing the evidence in respect of the bail application, the Court *a quo* found as follows:

‘Wat beskuldige 11 betref, is dit so, Micheal Peters, dat sy beedigde verklaring dan ingehandig is as BEWYSSTUK O. Dit is verder so dat, die Hof na sy aansoek moet kyk, met inagneming van skedule 5 van die strafproseswet, artikel 60(11)(B). Beskuldigde het ses kinders, dit is so dat hy dan ’n adres aan die Hof gee, wat blykbaar die adres van beskuldigde 1 was, adres wat nie meer bewoon word nie. Daar is dan 18 aanklagtes teen beskuldigde 11, hy was dan ook op borg op die derde-gang related-of bende verwante insident en toe was hy weer gearresteer op die sewende bende verwante misdryf.

Beskuldigde 1 is reeds ’n geruime tyd in hegtenis vanaf 2 Desember 2022 en dit is so dat hy dan nie voor die Hof staan as a eerste oortreder nie, hy het weliswaar vorige veroordelings wat lank terug is, maar as daar gekyk word na die verbintenis van die partye, ook die vorige veroordelings, en die feit dat hy weer gearresteer was nadat hy vrygelaat was op borgtog, dan nou, is ek van mening dat, in die omstandighede, al hoef hy nie buitengewone omstandighede te bewys nie, dat daar bewys is dat dit in die belang van geregtigheid is, waarskynlik in die belang van geregtigheid is dat hy vrygelaat word op borgtog nie en wat beskuldigde 11 betref, word die borgaansoek dan ook afgewys.’ (*Sic.*)

Grounds of appeal:

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

- (i) That the Court *a quo* did not consider that the appellant was on bail with strict conditions on most of the charges he is currently facing, and that he attended Court religiously and complied with those conditions. Those matters were withdrawn and added to other matters in the indictment and the appellant had to apply for bail again. This is a strong factor to take into consideration when determining whether the accused is likely to default on bail conditions if released on bail.

- (ii) The appellant is charged with 23 counts out of 117 counts in the indictment in the pending matter. The 23 counts are as follows: four counts relating to gang criminal activity under POCA, ten counts of attempted murder, one count of conspiracy to commit murder, and eight counts relating to unlawful use or possession of firearms. The abovementioned charges against the appellant relate to the third and seventh racketeering events out of a total of twelve racketeering events in the pending matter. The Court *a quo* mentioned the fact that the charges the appellant is charged with do not have a minimum sentence applicable and/or likelihood of a lengthy term of imprisonment, which makes it unlikely that he will abscond. Regrettably, the Magistrate did not give due weight to the abovementioned fact.
- (iii) The Court *a quo* dealt with section 60(4)(a) - (e) and correctly found that those sub-sections will determine whether it will be in the interest of justice to release the appellant. The Court *a quo* did not, however, make a finding that there was a likelihood of the eventuation of any of those factors in respect of the appellant.
- (iv) The Court *a quo* did not consider the factors under section 60(9) of the CPA¹ when deciding whether it was in the interests of justice to grant bail.

¹ Section 60(9) of the CPA provides:

'In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely-

- (a) the period for which the accused has already been in custody since his or her arrest;
- (b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
- (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;
- (d) any financial loss which the accused may suffer owing to his or her detention;
- (e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;
- (f) the state of health of the accused; or
- (g) any other factor which in the opinion of the court should be taken into account.'

- (v) The Court *a quo* found that the appellant was out on bail and arrested for charges allegedly committed while he was out on bail, this is not correct as the seventh gang related incident did not occur while he was out on bail. This incident happened on 12 February 2022 at a time when the appellant had no pending charges on the court roll. The appellant was arrested in September 2022 and released on bail on 3 November 2022.
- (vi) The Court *a quo* misdirected itself in failing to consider granting bail coupled with appropriate conditions which could have addressed any risks under section 60(4)(a) - (e). The Court *a quo* was accordingly wrong in finding that the interests of justice did not permit the release of the appellant on bail.

Analysis of the appeal:

- [8] Section 65(4) of the CPA directs how the application in terms of section 65(1) ought to be dealt with, it directs 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.’

- [9] As alluded to above, the appellant faces charges that fall within the ambit of schedule 5 offences described in the CPA; thus, the appellant would be entitled to bail in the event that he satisfied the Court that the interests of justice permit his release. It is in this regard that section 60(11)(b) places an onus on the appellant, to prove, on a balance of probabilities, that the interest of justice permits his release on bail. Section 60(11)(b) of the CPA provides as follows:

‘Notwithstanding any provision of this Act, where an accused is charged with an offence-

(b) referred to 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.’

[10] The Constitutional Court in *S v Dlamini*; *S v Dladla and Others*; *S v Joubert*; *S v Schietekat*² stated:

‘That subsection [60(11)(b)] stipulates that an accused must satisfy a magistrate that the “interests of justice” permit his or her release. It clearly places an onus upon the accused to adduce evidence. However, apart from that, the exercise to determine whether bail should be granted is no different to that provided for in ss 60(4) - (9) or required by s 35(1)(f). It is clear that an accused on a Schedule 5 offence will be granted bail if he or she can show merely that the interests of justice permit such grant.’

[11] Indeed, the interest of justice considerations are premised on section 35(1)(f) of the Constitution³, which provides that ‘everyone who is arrested for allegedly committing an offence has the right to be released from detention, if the interests of justice permit, subject to reasonable conditions.’ In *S v Smith and Another*⁴ it was stated 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.’

[12] It is trite that a Court hearing a bail application relating to a schedule 5 offence must conduct a careful judicial enquiry as to the existence of any evidence that may permit, in the interest of justice, the release of the applicant on bail.⁵

² 1999 (4) SA 623 (CC) para 65.

³ The Constitution of the Republic of South Africa, 1996.

⁴ 1969 (4) SA 175 (N) at 177E– F.

⁵ *Mofokeng v S* 2022 (2) SACR 184 (GP) para 8. See also generally *S v Mabena* 2007 (1) SACR 482 (SCA) paras 5 and 26.

[13] Section 60(4) of the CPA sets out a list of circumstances in which it would not be in the interest of justice to grant bail, the provision provides as follows:

‘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, any person against whom the offence in question was allegedly committed, or any particular person or will commit a Schedule 1 offence; or
- (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 jeopardize 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.’

[14] It is trite that the factors listed above serve as useful guidance in assisting the court in arriving at a just decision. In dealing with the above factors in *S v Branco*⁶, Cachalia AJ said the following:

‘The factors which the court may take into account in determining whether any of the grounds described in section 60(4) have been established, are set out in section 60(5), section 60(6), section 60(7) and section 60(8) of the Act. These factors are merely guidelines in assisting the court in arriving at a just decision, they are not “*numerus clausus*” of the factors that a court may consider. (See *S v Stanfield* 1997 (1) SACR 221 (C) at 226c-d.) Nor are any of the factors individually decisive. Some of them may be weightier than others, depending on the circumstances of the

⁶ 2002 (1) SACR 531 (WLD) at 533F– H.

particular case. The court must judicially exercise a proper discretion taking into account the totality of the circumstances.’

- [15] The appellant did not present *viva voce* evidence in order to discharge the onus; he relied on an affidavit which was accepted as evidence in those proceedings. It is trite that evidence on affidavit is less persuasive and carries less weight than oral evidence.⁷ In *S v Bruintjies*⁸ the Supreme Court of Appeal stated that:

‘The appellant failed to testify on his own behalf in the trial and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which the Court *a quo* could assess the *bona fides* or reliability of the appellant save by the say-so of his counsel.’

- [16] The State could not cross-examine the appellant to test the veracity of the averments in his affidavits. This affects the weight to be attached to the averments made in the affidavits as the probative value of the affidavits could not be tested.

- [17] According to the appellant’s affidavit, three of his six children were living with him prior to his arrest, no evidence has been placed before the court regarding whom the children have been residing with since the appellant’s arrest, or what their circumstances are since the arrest of the appellant. He further alleged that he supports his children, without mentioning how, especially since he mentioned that he is unemployed and depends on odd jobs.

- [18] The appellant’s address in Kuruman is unconfirmed. Both addresses which he mentioned are unoccupied and linked to the other accused, and the Hollanders gang. The Court *a quo* had regard to the appellant’s link to the gang. It is therefore evident that the Court *a quo* was mindful, in

⁷ *S v Mathebula* 2010 (1) SACR 55 (SCA) para 11.

⁸ 2003 (2) SACR 575 (SCA) para 7(f).

contemplating its decision, that the provisions of POCA were invoked which require that the matter be viewed through a different lens.⁹

- [19] The Court *a quo* correctly found that the appellant did not have to prove any extraordinary circumstances but had to prove that it is in the interests of justice that he be released on bail. The Magistrate correctly looked at the factors envisaged in terms of section 60(4)(a) - (e) of the CPA but failed to deal with these considerations together with the evidence presented by the appellant, thus the third and fourth grounds of appeal should stand.
- [20] During the argument, it was submitted that the previous convictions of the appellant were older than ten years, mainly on minor offences, and should therefore be not given undue weight. It was further averred that it was not disputed that the appellant who was previously on bail attended his trial religiously. The respondent submitted that there were many other considerations which the court must consider and not only whether the appellant will attend his trial.
- [21] The State avers that it has a very strong case against the appellant, which evidence implicates the appellant as being part of a gang that partook in criminal activities. The appellant is linked to the activities by way of eyewitnesses, witness statements, ballistic reports and crime scene photos. The nature and the gravity of the offences is a crucial consideration in that there is a prospect of long-term imprisonment on conviction. The appellant's involvement in the criminal activities is set out in the affidavit of Captain Baartman. The appellant proffers no explanation in response thereto and only submits that he intends to plead not guilty to the offences levelled against him.
- [22] The Court in *Landela and Another v The State*¹⁰ said:

⁹ *Kameni v S* [2024] ZAWCHC 224 para 23.

¹⁰ [2017] ZAGPPHC 930 para 25.

‘The strength of the state case, ideally goes hand in hand with consideration of failure to attend court. The stronger the case and punishment upon conviction, the more incentive and chances of decamping. But this alone would not necessarily disentitle an accused person from being granted bail. Strict bail conditions can be imposed. For example, strict reporting conditions, fixing high amount of bail and confiscation of any travelling documents.’

[23] The court hearing the bail application must express a balanced value-judgment taking into account the factors mentioned in section 60(4). In general, the reasons for refusal of bail can usually be found in one of two considerations, or both: (1) will the accused abscond; and (2) will the granting of bail lead to interference with the investigation and/or prosecution?¹¹ These considerations entail a projection of future conduct taking into account past conduct.¹²

[24] In *Rosen v S*¹³, this Court was faced with an application for bail appeal of a co-accused in respect of the same proceedings in the Court *a quo*, it found as follows:

‘It is also so that in our law a Court cannot find that the refusal of bail is in the interest of justice merely because there are certain unidentified risks or possibility that one or more of the consequences mentioned in Section 60(4) will result. A finding on the probabilities must be made. The Court cannot grope in the dark and speculate because justice cannot be conceived in the dark – it is not a cloak and dagger issue. Unless and until it can be found that one or more of the consequences will probably occur, detention of the accused is not in the interest of justice, and the accused should be released- *S v Diale and Another* 2013 (2) SACR 85 (GNP).’

[25] It is clear from the record that the Court *a quo* failed to consider whether effective and enforceable bail conditions could be put in place to ensure that the appellant:

25.1. does not endanger the safety of the public or anyone else;

¹¹ Hiemstra’s Criminal Procedure, Issue 2 at 9 – 12.

¹² See *S v Thornhill* 1998 (1) SACR 177 (C) at 182E– G.

¹³ [2024] ZANHC 101 para 45.

25.2. does not evade trial; and

25.3. does not intimidate witnesses and/or conceal or destroy evidence.

All these factors were overlooked even though the State presented no evidence that the appellant would likely intimidate witnesses and conceal or destroy evidence. The 'likelihood' mentioned in the sub-sections of section 60(4) must have some factual support and may not amount to speculation.¹⁴

[26] No cogent findings were made by the Court *a quo* on whether if the appellant is released on bail there would be a likelihood that he would endanger the safety of the public or any particular person. This is notwithstanding the fact that, in his affidavit, the appellant gave an undertaking that he will not act in a way that gives rise to any of these factors. The Court *a quo* ignored the undertakings made by the appellant in his affidavit.

[27] In light of the above, I am of the view that the appellant is not a flight risk, neither is there a likelihood that he will influence or intimidate witnesses, nor undermine the criminal justice system if he is released on bail. The imposition of appropriate bail conditions will, in my view, limit any risk that he may not stand trial.

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

1. The appeal against the refusal of bail is upheld.
2. The Magistrate's Court order refusing bail to the appellant is set aside and substituted with the order in the following paragraphs.
3. The appellant is granted bail in the sum of R5000.00 (Five Thousand Rands).

¹⁴ *S v Kock* (670/2002) [2003] ZASCA 1 para 20.

4. Upon the payment of the said sum of money, the appellant shall be released from custody on condition that:
- 4.1. The appellant shall report to the Mothibistad Police Station between 08:00 and 16h30 every Monday of each week, unless he is attending the criminal trial in which event he shall produce proof of court attendance.
- 4.2. The appellant shall attend court at all times, up until the finalisation of the trial.
- 4.3. Should the appellant fail to attend any court session on a date and time appointed, or should he fail to remain in attendance at trial or such other proceedings as he may be required, the appellant shall be dealt with in terms of section 67(1) of the CPA.
- 4.4. The appellant shall not leave Mothibistad Kuruman or the borders of the Northern Cape Province without the prior written permission of the Investigating Officer.
- 4.5. The appellant shall not interfere with the investigation in any manner and shall not interfere, contact, communicate or intimidate any State witness, directly or indirectly until the finalisation of the case.

T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Appellant: Mr Ishmail
Instructed by: RC Ishmail Attorneys

For the Respondent:
Instructed by:

Adv JJ Cloete
Office of the Director of Public Prosecutions