



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2025-189869

In the matter between:

LEVERNE PILLAY

APPLICANT

and

THE STATE

RESPONDENT

ORDER

1. The appellant's appeal against the order of the court below refusing his application for bail is dismissed

JUDGMENT

Delivered on: 4 December 2025

SHAPIRO AJ

[1] The appellant is charged with one count of murder and one count of attempted murder; it being alleged that he murdered the deceased by intentionally running him down with the tow truck that the appellant was driving. The charge of attempted murder relates to the same event.

[2] Given the nature of the offence, it falls within the ambit of Schedule 6 to the Criminal Procedure Act 51 of 1977 (“the Act”). Therefore, any application for bail is governed by the provisions of section 60(11) of the Act which holds that an accused charged with an offence under Schedule 6 shall be kept in custody unless he can demonstrate exceptional circumstances that justify him being admitted to bail, and that it is in the interests of justice that he be so released.

[3] The appellant launched a bail application in the court below and elected to rely on an affidavit submitted on his behalf by his legal representative and that was read into the record during the bail application. The State also relied on an affidavit, of the Investigating Officer, which likewise was read into the record. Neither party sought to deliver a further affidavit or to lead oral evidence in

support of or in opposition to the application.

[4] The Learned Magistrate refused the appellant's application, finding that the appellant had not established exceptional circumstances that would justify his admission to bail. The appellant appeals against this decision.

[5] In terms of section 65(4) of the Act, the court below's decision must stand unless I am satisfied that it is wrong. However, Binns-Ward J described the test in the following terms¹:

“...in respect of bail applications governed by s 60(11), in which the bail applicant bears a formal onus of proof, the nature of the discretion exercised by the court of first instance is of the wide character that more readily permits of interference on appeal than when a true or narrow discretion is involved... where the magistrate refused bail because he found that the appellants had not discharged the onus on them..., if this court, on its assessment of the evidence, comes to the conclusion that the applicants for bail did discharge the burden of proof, it must follow (i) that the lower court decision was ‘wrong’ within the meaning of section 65(4) and (ii) that this court can substitute its own decision in the matter...”.

[6] It is settled that section 60(11) is constitutional and that it is for the applicant to prove on a balance of probabilities that he will be acquitted of the charge².

¹ *Killian v The State* – unreported judgment of the Western Cape Division of the High Court, case no AR87/2021, delivered on 24 May 2021, para [8]

² *S v Sithole* 2012 (1) SACR 586 (KZD) at para [16]

[7] In his affidavit, the appellant averred that was approached by a group of males, unknown to him, who asked him about an acquaintance of his, Sameer. When the appellant stated that Sameer was not with him and he did not know where Sameer was, the group became confrontational and began pelting his vehicle with bottles. The appellant stated that he drove away from the scene in haste and then drove to a Refuel petrol station, where the same group followed him and were swearing at him and threatening him. When the appellant was attempting to escape from the situation, he heard someone scream that “a person had been struck by [his] vehicle” but that he looked around and could not see anything. The appellant averred that he then went to the Durban Central police station to report the incident but that when he was accompanied back to the scene by the police, no one was there. The police told him to come back the next day, which he did and was then told to wait until the next shift had come on duty and to return then. He did so and was then advised that an inquest case had been registered relating to the death of a male person “that may have been linked to [his] circumstances” and stated that he was “later charged” with the murder of the deceased.

[8] According to the appellant, he lived with his mother in a house owned by his uncle and was employed by a towing company that paid him approximately R7,000 per month on a commission basis. This was his first offence.

[9] The State's version is quite different, and it was averred by the Investigating

Officer that the appellant not only knew the group of males with whom the confrontation occurred but that he followed the group to the Refuel petrol station, arriving there after them and then intentionally running down deceased. The State averred that it was in possession of video evidence and bail was opposed primarily because of the safety of the witnesses, who were known to the appellant.

[10] In his Ruling, the Learned Magistrate recorded that he was obliged to consider the grounds set out in section 60(4) of the Act cumulatively to determine whether the appellant had established the existence of exceptional circumstances, and that it was then in the interests of justice that he be admitted to bail.

[11] The Learned Magistrate focused on three areas of the appellant's case, finding that the fact of his employment (which was not supported by any objective evidence) was not exceptional, that the alleged reporting of the offence and attendance at the police station was unsupported by objective evidence and was not a decisive factor and then also found that the appellant had not discharged the onus of establishing a defence to the charges that likely would succeed at trial.

[12] The appellant argues that the Learned Magistrate paid lip service to his obligation to consider the grounds in section 60(4) cumulatively and in fact did

the opposite. It was argued that the Learned Magistrate focused on a limited number of grounds, overemphasising the strength of the State's case and the weakness of the appellant's prospects and that had the Learned Magistrate considered the appellant's personal circumstances, his stated defence and his undisputed version that he did not know the witnesses that would be called by the State and that he had reported himself to the police station, bail would have been granted.

[13] Accordingly, the appellant argued that the Learned Magistrate had misdirected himself in applying the appropriate test and that, therefore, the court was at liberty to interfere with that decision and set it aside.

[14] The State argued that the Learned Magistrate's decision was right and that given not only the weakness in the appellant's defence but his failure to discharge the onus that rested upon him, there were no grounds to interfere with the refusal to grant bail.

[15] Regarding the election of an accused to rely on affidavit evidence in a bail application where exceptional circumstances must be established, Binns-Ward J stated the following in *Killian*³:

“[9] The appellant chose to bring his application for bail by means of an affidavit and the state responded with answering affidavits... In the result the court a quo was called upon to determine the bail application on what were in substance motion proceedings. I

question whether it is wise or desirable for a party bearing a formal onus to seek to discharge it by adducing its evidence on paper, especially when the evidence is likely to be challenged or disputed, as was the case in the current matter...

[13] Bail applications are *sui generis*. To an extent they are inquisitorial and, in general, there is no prescribed form for introducing evidence at them. But in cases where s 60(11) applies and there is consequently a true onus on the applicant to prove facts establishing exceptional circumstances, an applicant would be well advised to give oral evidence in support of his application for bail. This seems to me to follow, because – differing from the position in which the Plascon-Evans rule is applied – the discharge of the onus is a central consideration in s 60(11) applicants. If the facts are to be determined on paper, the state’s version must be accepted where there is a conflict, unless the version appears improbable.”

[16] I respectfully agree. On the facts before me, I cannot find that the State’s version is improbable and, as I must, I therefore accept it. I must proceed from a starting point that not only recognises the nature of the offence and the alleged violence used but also that *prima facie* there is a relationship or connection of sorts between the appellant and the individuals with whom he came into conflict on the night in question, including the deceased. I must therefore question why the appellant would profess not to have knowledge of these individuals, which raises a reasonable concern (as it did in the mind of the Investigating Officer and the Learned Magistrate) that the likelihood exists of the interference with or intimidation of witnesses.

³ See above

[17] The Supreme Court of Appeal has found that the fact of an applicant's employment is not exceptional⁴ and given the default position that obtains in Schedule Six offences, the fact that it may be a first offence is not relevant.

[18] I do not consider that the applicant has demonstrated on a balance of probabilities that he will be acquitted of the charge of murder. The appellant does not explain how people he did not know would be sufficiently aware of who he was to approach him at 02h00 in the dark in the middle of winter while he was parked on the side of the road and know that he was an acquaintance of Sameer. The appellant is very vague about exactly how the incident occurred, not only that led to the death of the deceased but also the injury to the second victim. It is unclear currently whether the two victims were standing in front of his vehicle or behind it and, certainly, if they were standing behind the vehicle such that the appellant did not know that he had struck them, he would have had ample opportunity to drive forward and to escape from the conflict. If the victims were standing in front of his vehicle, he could not but have known that he struck them when he drove off.

[19] Whilst I make no findings in this regard, these are the fundamental questions of which the appellant should have been aware and that may well have been resolved at the appropriate level had he testified and been cross-examined. His election not to do so means that both the court below and this court are left to

speculate and cannot therefore accept with any comfort that the appellant has discharged the onus resting upon him to demonstrate that he will be acquitted at trial.

[20] The appellant's alleged visits to the police station are neutral: if in fact he acted as alleged by the state, reporting himself to the police to control the narrative makes sense. His version of the three visits to the police station does not appear to tally with the fact that he was arrested the day after the event and it is entirely unclear from his affidavit how long after he was allegedly told about the "inquest" that he was arrested. In the circumstances, the Learned Magistrate was correct to be cautious and not simply to accept the veracity of the appellant's version in the absence of any real evidence.

[21] I do accept that the Learned Magistrate identified certain discrete grounds of enquiry in his *ex-tempore* ruling before refusing the application for bail. However, I do not accept that this means that he assessed the grounds contemplated in section 60(4) in isolation, especially where he was clearly alive to his obligation to assess the grounds cumulatively. The fact that he did not identify every ground does not mean that he failed to consider them or that he misapplied the appropriate test.

[22] I therefore cannot conclude that the Learned Magistrate was wrong when dismissing the appellant's bail application and I do not agree that he misdirected

⁴ *S v Scott-Crossley* 2007 (2) SA 470 (SCA) at para [12]

himself in any other way that would justify this court interfering with that decision.

[23] Given the fact that the appellant chose to lay an affidavit before the court and his choice not to testify, I agree that the appellant did not discharge the onus resting upon him to demonstrate the existence of exceptional circumstances justifying his admission to bail. Based on what I have stated above, it is therefore not in the interests of justice that the appellant be admitted to bail.

[24] **I make the following order:**

The appellant's appeal against the order of the court below refusing his application for bail is dismissed.

SHAPIRO AJ

APPEARANCES

Appellant's Counsel: Mr W Lombard

Appellant's attorneys: Ramouthar Attorneys
66 Round the Green
Umhlanga Rocks

Counsel for the State: Mr B Mbokazi
Office of the Director of Public Prosecutions, KwaZulu
Natal

Date of hearing: 28 November 2025

Date of judgment: 4 December 2025