



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: **A220/2025**

In the matter between:

KEANO CUPIDO

Appellant

and

THE STATE

Respondent

Coram: Magona-Dano AJ.

Heard: 18 November 2025

Order granted: 18 November 2025

Reasons Delivered: 11 December 2025

Summary: Bail appeal- Schedule 5 - Objective of bail proceedings-
misdirections by magistrate- weighing the interests of justice properly-evidence
by affidavit-Appeal court's power to intervene

ORDER

1. The bail appeal of the appellant is upheld
2. The Magistrate's Court order refusing bail to the appellant is hereby set aside and substituted with the following order:

That the Appellant is granted bail in the amount of R2 000(Two thousand rand)pending his trial and subject to the following conditions-

- a. The Appellant is to appear at the Parow Regional Court at 8:45 am on 26 November 2025 and remain present until he is excused by the Court. The accused is to appear on subsequent dates, times and

places determined by the Court until such time that the case is finalised.

- b. The Appellant must report every Wednesday and Friday to the Commanding Officer of the Community Service Centre of the South African Police Service in Mfuleni during the hours of 08:00 am to 20:00 pm.
- c. The Appellant may not make contact or communicate in any way, directly or indirectly, with the complainant, J[...] M[...], her mother or any other state witnesses.
- d. The Appellant is to reside at 2[...] M[...] Street, Blackheath, until such time that the proceedings under case A77/2025 is finalised.
- e. The Appellant is not to enter the area of Belhar and the home where the complainant resides.

REASONS FOR JUDGMENT

Magona-Dano, AJ:

Introduction

- [1] This is an appeal in terms of Section 65 of the Criminal Procedure Act 51 of 1977 (the Act) against the decision by the Magistrate, in the

Magistrate's Court for the City of Cape Town Sub-District Bellville, held at Bellville refusing to release the appellant on bail pending trial.

[2] On 18 November 2025 I had issued an order upholding the bail appeal and granting bail for the appellant with conditions. I had also indicated to the parties that I would formulate and forward my reasons for the decision thereafter.

[3] These are the reasons.

Background Facts

[4] According to the charge sheet the appellant is charged with a crime of assault, where it is alleged that on or about 12 January 2025 and at or near 1[...] D[...] Crescent, Belhar he unlawfully and intentionally assaulted J[...] M[...] by banging her head against the sliding door several times.

[5] In court the Prosecutor indicated that the offence was a Schedule 5 offence because it was a domestic violence matter as the appellant and the complainant were boyfriend and girlfriend.

[6] The appellant did not testify and submitted an affidavit in court in support of his application for bail. I turn now to look at his bail application.

The initial bail application

Appellant's case

[7] According to the appellant's affidavit,

- a. he has been in custody since 24 January 2025. He is 28 years of age and resides at 2[...] M[...] Street, Blackheath, together with his family.
- b. He has lived at this address for the past 27 years. Additionally, from September 2024 until January 2025, he lived with his girlfriend—the current complainant—at 1[...] D[...] Crescent, Belhar. All members of his family reside within the Western Cape.
- c. He is employed as a mechanic on vessels, earning about R8000 per month, and has completed grade 12 over seven years ago. The complainant is his girlfriend.
- d. He is not aware of any protection or harassment orders against him, has no prior convictions, and no pending cases or warrants.
- e. He further asserts that his release on bail will not compromise public safety or the safety of any individual, nor will it disrupt public order.
- f. He assured the court that he will not abscond from trial following his release, nor will he attempt to influence or intimidate state witnesses. Additionally, he affirmed that he will neither conceal nor destroy evidence, and that he will not undermine or jeopardise the objectives of the criminal justice system, including those of the bail process.

g. He undertook to comply with any bail conditions imposed by the court. Regarding the charge, he stated that he intended to plead not guilty, that he did not wish to disclose the particulars of his defence.

h. Furthermore, he declared that he was able to pay a bail amount of R500 which his family was prepared to cover on his behalf.

[8] While the appellant was submitting the affidavit to be included in the court record, the court noted the existence of an interim protection order issued on 24th January 2025. The magistrate inquired why that order had not been served as the court was in possession of the relevant file containing the protection order.

[9] The magistrate then requested the appellant's attorney to revise paragraph 7 of the affidavit, instructing that it should not include a statement indicating unawareness of any protection or harassment order. The court further directed that the protection order be formally served on the appellant during the bail application proceedings.

[10] That if that was not done the magistrate would be required to conduct an inquiry in accordance with section 60 (12) (b) of the Act. The bail proceedings were adjourned for a few minutes to allow for the service of the protection order on the appellant. Once service was effected, the appellant's legal representative amended the affidavit. Upon resumption,

the magistrate observed that paragraph 7 needed to be deleted in its entirety and be substituted to avoid contradiction.

[11] The accused signed the amended portions of the affidavit, which was submitted as Exhibit B.

[12] The appellant's representative put it on record that the appellant was never served with the protection order prior to the alleged offence and was not aware of it. The record showed that he was arrested on 23 January and the protection order issued on 24 January 2025.

The State's Case

[13] The complainant was called to testify on behalf of the state in opposition to the bail application.

- a. She stated that she is the appellant's former girlfriend and expressed concern that if he were released, he might harm her.
- b. that after their breakup, the appellant came to her house at 1:00 a.m. using his mother's car, threatening to break the complainant's mother's windows if she did not come outside. She added that her mother could not attend court because she works for the Department of Justice, but this did not even stop the appellant from behaving as he did.
- c. This was not the first incident in which the appellant had physically assaulted the complainant and when she expressed that his actions

were unacceptable, the appellant responded that she was working on his nerves. The complainant became fearful due to her knowledge of similar behavior in his prior relationship, indicating a recurring pattern that appears unlikely to cease.

- d. The complainant went on to list the previous incident to include that in 2023, while intoxicated, he deflated the complainant's car tyres to prevent her from leaving. He blamed alcohol for a second similar incident, but in recent months, he has been sober and fully aware of his actions.
- e. That the appellant was not intoxicated when he threw her to the ground after slamming her head twice into the sliding door at home (the current incident).
- f. The complainant was also cautioned by the appellant's mother of his issue with alcohol. However, complainant claims that he was not intoxicated in the previous two incidents. Appellant is also verbally abusive whenever he gets a chance, even if he were to stay in a different location.
- g. The complainant never opened a case because she feared facing him in court and potential repercussions of doing so thereafter from him

- h. Their relationship was entangled in petty arguments and that she would suffer if she spoke out against him. For this reason, she was afraid to appear in the courtroom and testify against him where she may end up having to deal with the fallout if he gets released.
- i. That even if he moves on, he still has a way of torturing her with his words; it is not only physical abuse; it is the things he says to her and when drunk the appellant is not afraid to drive his own mother's automobile to her mother's place.
- j. During cross-examination, she confirmed to have been in constant communication with him. She was trying to be civil with the appellant seeking him to allow her to get her belongings. She confirmed having picked up and returned the appellant to sleep over at her place on 12 January 2025. She last spoke with the appellant on 14 January 2025 between 6 and 7pm.
- k. She explained she did not report the 05 January 2025 incident earlier because on January 13th, she was admitted to a mental health hospital until 21st January 2025 and thereafter dealt with family issues she had to take care of.
- l. She only laid a charge against the appellant on 23 January 2025 and obtained a protection order on 24 January 2025.

[14] The State thereafter closed its case without calling the Investigating officer to testify.

Magistrates Court' decision-initial bail application

[15] The Magistrate made a finding applying section 60 4 (a) of the Act. That 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 a likelihood that the accused if he or she were released on bail would endanger the safety of the public. Any person against whom the offence in question was allegedly committed or any other particular person who will commit a schedule 1 offence.

[16] The magistrate found that the complainant was fearful of the appellant, she also feared for her own mother and therefore imposed a danger to them.

[17] That S.60 (5) of the Act establishes that the court may, where applicable, take into account

- a. The degree of violence towards others who are implicit in the charge against the accused.
- b. Additionally, the accused may have threatened to harm anyone, including the person who was allegedly the victim of the act. Bail was refused on the aforementioned grounds.

[18] Bail was refused on the aforementioned grounds.

Bail application on new facts

[19] The appellant had a new legal representative who then brought an application for bail on new facts.

[20] Appellant's legal representative only made submissions without leading evidence. The submissions related to allegations that the National Prosecution Authority had taken the assault with intent to cause grievous bodily harm and reduced it to a common assault.

[21] The state prosecutor denied that this was the case, but the opposite had taken place. The parties engaged in back-and-forth arguments, but no new information on the bail application itself was presented under oath.

[22] Other issues were ventilated, but correctly so, as had been found by the Magistrate, no evidence was led before the magistrate and he made a finding that the issue that there was a domestic relationship and there was also an interim protection order between the appellant and the complainant still remained.

[23] The Magistrate held that there were no new facts that were placed before the court for consideration and therefore a refusal of bail remained.

[24] The decision was then appealed and brought before this court.

The Issues for determination

[25] Did the appellant discharge the onus of proving on a balance of probabilities that the interests of justice permit his release?

[26] Did the magistrate correctly apply the Schedule 5 test for bail in terms of s60(11)(b) of the Criminal Procedure Act?

[27] Were there misdirections (factual or legal) that materially affected the refusal of bail? if so, should the Court substitute its own decision and grant bail?

Legal Principles

[28] A bail appeal can succeed if the appellant demonstrates that the lower court misdirected itself in law or fact.

[29] In *S v Barber*¹ the Court remarked as follows in the context of deciding an appeal in terms of **section 65(4)** of the CPA:

“It is well known that the powers of this Court are largely limited where the matter comes before it on appeal and not as a substantive application for bail. This Court has to be persuaded that the magistrate exercised the discretion which he has wrongly. Accordingly, although this Court may have a different view, it should not substitute its own view for that of the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that,

¹ 1979 (4) SA 218 (D) at 220E–H.

no matter what this Court's own views are, the real question is whether it can be said that the magistrate who had the discretion to grant bail exercised that discretion wrongly.” [Emphasis added.]

[30] In *S v Porthen and others*,² this Court decided, with reference to *S v Botha*,³ that the appeal court’s powers to consider an appeal against the refusal of bail in terms of section 65(4) of the Act are not to be constrained by the decision in *Barber*. The appeal court is at liberty to consider its own analysis of the evidence in order to conclude whether an accused person has discharged the onus on him as set out in section 60(11)(a) of the Act:

“Insofar as the quoted dictum in S v Barber (supra) might be amenable to be construed to suggest that the appellate Court's power to intervene in terms of s 65(4) of the CPA is strictly confined, in the sense of permitting interference only if the magistrate has misdirected him or herself in the exercise of his or her discretion in the narrow sense, I consider that it would be incorrect to put such a construction on the subsection; certainly in respect of appeals arising from bail applications made in terms of s 60(11)(a) of the CPA. I am fortified in this conclusion by the manner in which the Supreme Court of Appeal dealt with the bail appeal in Botha's case supra. See paras [21] - [27] of the judgment.

² 2004 (2) SACR 242 (C) at paras [16]-[17].

³ 2002 (1) SACR 222 (SCA)

It is clear that the Appeal Court undertook its own analysis of the evidence and came to its own conclusion that the appellants had not discharged the onus on them in terms of s 60(11)(a) of the CPA.

... Without in any way detracting from the courts' duty to respect and give effect to the clear legislative policy inherent in the provisions of s 60(11)(a) of the CPA (viz that save in exceptional circumstances it is in the public interest that persons charged with the class of particularly serious offences listed in Schedule 6 to the CPA should forfeit their personal freedom pending the determination of their guilt or innocence ...), it is still necessary to be mindful that a bail appeal, including one affected by the provisions of s 60(11)(a), goes to the question of deprivation of personal liberty. In my view, that consideration is a further factor confirming that s 65(4) of the CPA should be construed in a manner which does not unduly restrict the ambit of an appeal Court's competence to decide that the lower court's decision to refuse bail was 'wrong'. See s 39(2) of the Constitution of the Republic of South Africa Act, 1996.”

[31] Thus, even if this Court finds that the Magistrate was wrong, this

Court must consider the facts before it afresh and determine whether the appellant has discharged the applicable onus.

[32] In terms of section 1 of the Domestic Violence Act,⁴ A “domestic relationship” means a relationship between a complainant and a respondent, whether they (are of the same or of the opposite sex) live or lived together in a relationship in the nature of marriage, although they are not, or were not, married to each other, or are not able to be married to each other;

[33] An appeal court intervenes if the original court wrongly exercised its discretion. Grounds for a successful appeal include errors in law (like misconstruing the offence schedule), errors in fact (such as overlooking evidence), or failing to exercise proper discretion (not weighing the interests of justice adequately).

Submissions

[34] Ms Adams for the Appellant submitted that the Magistrate misdirected himself in not granting bail to the appellant when considering his personal circumstances, the fact that he is a first offender and has no previous convictions or warrants, he never had a protection order against him but was served one in court during the bail application. Therefore the appellant was not in contravention of it as the alleged incident happened on 5 January 2025 and no other incidents have ever happened since.

⁴ DOMESTIC VIOLENCE ACT 116 of 1998

[35] Further that the appellant successfully discharged the onus to show that it was in the interests of justice that he be released on bail. That he did not pose a risk to the complainant and has moved to live in Blackheath after their relationship ended. That the strength of the State's case is for the trial court to decide on.

[36] I was referred to *S v Acheson*⁵.

“An accused person cannot be kept in detention pending his trial as a form of anticipatory punishment. The presumption of the law is that he is innocent until his guilt has been established in court. The court will therefore ordinarily grant bail to an accused person unless this is likely to prejudice the ends of justice.

[37] Mr Koti for the State submitted for the application to be dismissed due to the nature and seriousness of the offence. That this was a domestic violence matter and the court should confirm the refusal of bail.

[38] The magistrate was correct in finding that the mere fact that the charge of assault with intent to do grievous bodily harm has changed to common assault is of no effect as this was a domestic violence matter.

[39] He further made submissions that in determining whether there were new facts, the approach were to consider whether they were in the first instance facts which were new.

⁵ 1991, (2) SA 805 (NM) at page 822

[40] Further ,whether they were relevant and to consider bail application on such new facts against the background of the old facts. [S v Petersen⁶; S v Yanta ⁷]That, therefore, the magistrate was also correct in finding that there were no new facts.

[41] On questions asked by the Court there were submissions on the issue of the schedule of the offence and the charge that the appellant was actually charged with. I will not deal much with this as I now find as the offence was related to domestic violence in nature as defined above.

[42] Mr Koti further conceded that because the protection order was only served on the accused in court during this bail application it cannot be said that the accused had contravened it before his arrest when he was not even aware of it.

Discussion

[43] Bail applications are distinct and unique, the rules of evidence typically followed in trial actions are not rigidly enforced, and the presiding officer possesses greater inquisitorial powers.

Analysis-The initial bail application

⁶ 2008(2)SACR 355(C) at para [57]

⁷ 2023 (2) SACR 387 (WCC) at para [15] to [15.5]

[44] Whilst the offence is serious due to it being a Gender Based Violence (GBV), in my view, each case must be treated differently according to its facts.

Overemphasis of the crime

[45] The charge sheet on record reflects that the charge was that of common assault, the magistrate in his judgment refers to it as assault with intent to cause grievous bodily harm, even if this did not change the fact that the charge was related to domestic violence

[46] The magistrate erred in not taking into account the fact that the appellant since 5 January 2025 he never again threatened or assaulted the complainant or her family.

[47] The previous threats which were correctly considered were allegedly made in the past; there is no clarity about how long ago they were made. The current offence was once off and the detailed issues thereon will be dealt with by the trial court.

Consideration of Section 60(4)- Public safety and witness tampering

[48] The Magistrate erred in not taking into account that from the recent history the appellant kept his distance from the complainant whilst she was the one

communicating with him by phone and allowing him to sleep over even after 5 January 2025 (the date of the incident).

[49] Therefore during this time the element of fear did not seem to have existed from the complainant's side, and no threats of violence were made.

[50] The Magistrate erred by failing to consider the evidence that the reporting of the case to the police took place when the complainant was not successful with her quest to get her possessions from the appellant and him having failed to give her attention when contacting him as well as lack of remorse for what he had done to her.

[51] Further the element of fear stated by the complainant was a subjective issue and could have been guarded against by the consideration of stringent bail conditions, and the complainant also being advised not to communicate with the appellant. I deal with this further below.

[52] The complainant testified that she tried to resolve issues with the appellant prior to reporting this criminal case but he kept on ignoring her concerns; she has shown that she was serious by reporting the assault and having a Protection Order issued against him and now helped in opposing this bail application after his arrest to really show the serious attitude she has against the allegedly abusive nature of the appellant. The relationship has since come to an end.

[53] The magistrate whilst taking into account the content of the appellant's affidavit in the summary of the evidence he failed to weigh these with the

circumstances placed by the complainant, instead focused on the alleged crime and threats made only.

[54] The magistrate failed to consider the factors dealt with below as he weighed the complainant's version

stable community ties

[55] The Appellant lives with his family outside of the Belhar area, that is in Blackheath for some 27 years except from September 2024-January 2025;

[56] To show he has family support it was recorded that his family was willing to pay for his bail showing the reality of the closeness.

[57] He had stable employment therefore someone with structure and responsibilities during the week.

robust alternative accommodation arrangements

[58] The magistrate erred in not considering using the family house address in Blackheath which I understand is kilometres away from Belhar as an alternative accommodation for the appellant to be restricted to live in pending the finalisation of this case.

[59] That the complainant and the appellant's relationship has come to an end since January 2025, therefore imposing conditions restricting his

movement or communication with the complainant or her family directly or indirectly should have been considered.

Personal circumstances

[60] In my view further the magistrate did not properly apply his mind to the appellant's personal circumstances in that;

- a. He is a first offender.
- b. He has no previous convictions.
- c. He has no pending cases but only allegations of threats that were made by him.
- d. The alleged incident of 05 January 2025 was the first reported the appellant kept away from the complainant whilst the latter did not.

[61] In my view the magistrate's decision was wrong. The above were some of the factors that reflected that the appellant satisfied the onus that rested on him that it was in the interests of justice to release him on bail, with stringent bail conditions.⁸

[62] To quote Kriegler J: S v Dlamini⁹, S v Joubert; S v Schietekat¹⁰ para [11]

⁸ See S v Porthen and Others above

⁹ S v Dlamini 1999(2) SACR 51 (CC)

¹⁰ S v Joubert; S v Schietekat (CCT21/98, CCT22/98, CCT2/99, CCT4/99) [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 June 1999)

“It is that there is a fundamental difference between the objective of bail proceedings and that of the trial. In a bail application, the enquiry is not really concerned with the question of guilt. That is the task of the trial court. The court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails in the main protecting the investigation and prosecution of the case against hindrance”.

[63] This court notes that the magistrate overlooked the fundamental difference between the objective of bail proceedings and that of the trial as stated above. The focus of the magistrate was to decide whether the interests of justice permitted the release of the accused pending trial, which include, protecting the investigation and prosecution of the case against hindrances.

[64] In my view I found that approving bail for the appellant, contingent upon stringent conditions to effectively restrain and eliminate the chances of him communicating with the complainant or her loved ones; prevent him from committing a schedule 1 offence, was justified.

[65] Further, since the appellant was served with a Protection Order, a move I commend from the magistrate's side as he was duty bound to issue one if this was not done after an enquiry. The Protection order now was effective

immediately on the day of service which carries stringent conditions to it, an added advantage for the complainant.

[66] In my view, I found the above would certainly strengthen the protection needed for the complainant or her family as these court orders carry clear consequences with them should there be any breach of the conditions.

[67] Upon reviewing the lower court's record and considering the evidence, this court concluded that the lower court's decision to deny bail in the initial bail application was wrong.

[68] Having made that decision I regarded it would be superfluous for me to deal with the Magistrate's decision regarding bail on new facts since the initial bail decision I have found to be wrong, in case of any doubt it is also set aside.

[69] Section 65(4) of the Act 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.”

Conclusion

[70] In my view the Magistrate's decision in refusing the initial bail was wrong he overlooked some of the evidence which led for him to improperly

exercise his discretion as explained above. I found that it was in the interests of justice that the appellant should be released on bail.

[71] These are the reasons the order stipulated above was granted.

MAGONA-DANO, AJ

Acting Judge of the High Court of South Africa

Western Cape Division, Cape Town

Appearances:

For the Appellant: Adv L Adams
 Legal Aid South Africa
 Cape Town

For the Respondent: Adv M Koti
 Director of Public Prosecutions
 Cape Town