



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A198/2025

In the matter between

ASHRAF MIA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Mia v The State* (A198/2025) ZAFSHC 365 (20 November 2025)

Coram: MHLAMBI J

Heard: 14 November 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 20 November 2025.

Summary: Bail appeal – renewed bail application – new facts – s 60(11)B of the Criminal Procedure Act 51 of 1977 – interests of justice – appellate review.

ORDER

The appeal against the bail refusal is dismissed.

JUDGMENT

Mhlambi J

[1] The appellant is charged with 32 counts of unlawful firearm possession, and his initial bail application was denied in the Magistrates Court on 19 August 2025. An appeal to the High Court was unsuccessful, and the appellant reapplied to the Magistrate's Court for bail based on new facts, which was again denied on 27 October 2025. He has now approached this Court to contest that decision.

[2] In *S v Mpofana*,¹ the court described the approach to be used in bail applications based on new facts 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.'

[3] In *Yanta v S*,² the court stated that the Criminal Procedure Act 51 of 1977 (CPA) does not specify or define what qualifies as new facts. There is no established procedure for renewed bail applications. However, guided by case law, it appears that certain general principles have been identified as relevant when a court is asked to consider an accused's release on bail based on new facts. These can be summarised as:

¹ *S v Mpofana* 1998 (1) SACR 40 (TK) at 44G.

² *Yanta v S* [2023] ZAWCHC 23; 2023 (2) SACR 387 (WCC) para 15.

- (a) Whether the facts came to light after the bail was refused. Such facts can include circumstances that have changed since the initial bail application, such as the length of time an accused has been incarcerated;
- (b) Whether the facts are 'sufficiently different in character' from those presented at the prior unsuccessful bail application in the sense that it should not merely be a 'reshuffling of old evidence';
- (c) Determine whether the alleged new facts are relevant, meaning they would help the court reconsider the release of an accused if presented, either on their own or when combined with other facts already in the case from the initial bail application.
- (d) A court considering an application based on alleged new facts must decide, referencing the evidence previously presented in the unsuccessful bail request, whether these facts are truly new.
- (e) Evidence that was known and available to a bail application but not presented during a previous application generally cannot be used as 'new facts' for a renewed bail request. It was explained in *S v Le Roux en Andere*³ that, without such a rule, there could be an abuse of process leading to unnecessary and repeated bail applications. An accused should not be allowed to seek bail multiple times by relying on a piecemeal presentation of evidence.

[4] The evidence before the court *a quo* was presented through affidavits. The appellant, in addition to his own, submitted confirmatory affidavits from his parents. After counsel read the applicant's statement into the record, there was concern that it and the other confirmatory statements were not commissioned. This was then corrected. The state relied on the affidavit of Lieutenant Colonel Flyman. The appellant's case mainly involved correcting and supplementing his earlier evidence given in the bail application regarding his marital status; the status of his minor children since his detention on 29 July 2025; and the difficulties his parents have faced since his incarceration. Additionally, he has been, since the bail was denied, disturbed by the prison diet and the interrogations by police while in custody.

³ *S v Le Roux en Andere* 1995 (2) SACR 613 (W) at 622A-B.

[5] Lieutenant Colonel Flyman testified that the firearms found in the appellant's possession were recovered at crime scenes in Cape Town and the Eastern Cape. He also stated that the appellant was not treated differently from other prisoners, especially Muslim prisoners held at Grootvlei prison.

[6] The court found that none of the circumstances presented by the appellant, whether considered together or individually, amounted to what would be deemed in the interest of justice as outlined in section 60(11)B of the CPA, to persuade the court to find on a balance of probabilities that the appellant should be released on bail. The court noted the appellant's testimony that, since 2010, he has had a medical condition, including asthma and nerve damage to his head, and has been on chronic medication ever since. This evidence was not disclosed during the initial bail application and, therefore, could not be regarded as a new fact. This occurred even though the appellant was given ample opportunity to reopen his case and submit additional affidavits. The time he spent in custody, his criminal history, and the situation of the children were details that his parents could have easily provided to the attorney during the initial bail application.

[7] The court observed that, when denying bail, the strength of the state's case against the appellant was one of the factors considered. The appellant failed to demonstrate how the alleged new facts diminished the strength of the state's case during the application. Additionally, the state claimed that the appellant faced extra charges, including possession of ammunition and related offenses.

[8] 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 this event, the court or judge shall give the decision which, in its opinion, the lower court should have given. In *S v Barber*,⁴ the court remarked as follows:

'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

⁴ *S v Barber* 1979 (4) SA 218 (D) at 220E–F.

the magistrate because that would be an unfair interference with the magistrate's exercise of his discretion. I think it should be stressed that, 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.'

[9] I cannot find that the magistrate was wrong in considering both the old and new facts of this case to decide on bail. According to the record, the appellant does not dispute that the state has a strong case and that additional charges should be added. The main argument of the appellant's case is the inconvenience caused to his family by his absence. His father's dental practice suffers because he visits the appellant in custody. His mother's health and professional life are also impacted as she must cancel meetings to attend to the children. His absence has affected the children's health and performance.

[10] The appellant's new facts, while relevant, did not sway the 'interests of justice' in his favour. In my view, the court a quo correctly found that the appellant had not met the threshold of satisfying the interests of justice, allowing his release on bail. Consequently, the appeal must fail.

[11] I, therefore, make the following order:
The appeal against the bail refusal is dismissed.

J J MHLAMBI
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

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Instructed by:

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For the respondent:

P Mabale

Instructed by:

The National Director of Public Prosecutions,
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