

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION JOHANNESBURG

CASE NO: A09/2026

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

05/02/2026

Date

NEMAVHIDI AJ

In the matter between:

SHANNON COMBRINK

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

NEMAVHIDI AJ:

[1] This is an appeal in terms of section 65 of the Criminal Procedure Act 51 of 1977 (“the CPA”) against the refusal of bail by the Regional Court Magistrate, Ms. Thlapi, on 22 August 2025.

[2] The appellant is accused 2 in the matter under case number 41/730/2025. He faces charges of attempted murder and child abuse (or deliberate neglect of a child). The matter is governed by Schedule 5 of the CPA.

[3] The application for bail was heard on 19 August 2025. The appellant relied on an affidavit setting out his personal circumstances, while the State opposed bail on the basis of an affidavit by the investigating officer and other documentary evidence.

[4] The court *a quo* refused bail, finding that the appellant had not satisfied the onus under section 60(11)(b) of the CPA to show that the interests of justice permit his release.

[5] The appellant appeals on various grounds, contending that the magistrate erred in her application of sections 60(4)(a)–(e) of the CPA and that her decision was wrong.

LEGAL FRAMEWORK

[6] Section 60(11)(b) of the CPA provides that where an accused is charged with a Schedule 5 offence, the court shall order his or her detention unless the accused adduces evidence which satisfies the court that the interests of justice permit release.

[7] The onus is on the accused to show, on a balance of probabilities, that it is in the interests of justice to be released on bail. In deciding this, the court must consider the factors listed in section 60(4) of the CPA.

[8] On appeal, this court may only set aside the magistrate's decision if satisfied that it was wrong (section 65(4) of the CPA). The appeal is not a hearing *de novo*; the focus is on whether the magistrate exercised her discretion properly on the evidence before her.

ANALYSIS

[9] The appellant's main contentions are:

- That the State's case against him is weak because he was not seen in the video smoking drugs or handing drugs to the child.
- That he is not a flight risk as he has strong family ties, visited overseas twice, and is willing to surrender his passport.
- That the magistrate speculated about public outrage and failed to distinguish between possibility and probability in terms of section 60(4).
- That he has provided an alternative address away from the area of the witnesses and the community outcry.

[10] The State, in opposing the appeal, argues:

- The appellant failed to discharge the onus placed on him.
- The evidence against him is strong: he admitted taking the video of the child smoking what is alleged to be drugs, and the video went viral.

- He did not testify *viva voce* and his affidavit was not tested under cross-examination.
- The magistrate correctly considered the factors under section 60(4), including the seriousness of the offence, the risk to public safety, and the potential undermining of public confidence in the justice system.

[11] I have considered the record, the magistrate's judgment, and the detailed submissions of both parties.

[12] The appellant's personal circumstances are not seriously disputed. He is unemployed, unmarried, has no dependents, and has resided in Bosmont most of his life. He has provided an alternative address which was verified. He has a previous conviction for possession of drugs in 2018, for which he received a fine.

[13] However, the charges against the appellant are extremely serious. They involve a four-year-old child being exposed to drugs and allegedly being given drugs to smoke. The appellant admitted to recording the incident and distributing the video. This is not a case of mere presence; it is active participation in the recording and dissemination of an act that constitutes child abuse.

[14] The magistrate found, on the evidence before her, that the appellant failed to show that his release would not endanger the safety of the public or the child. She also found a likelihood that he would evade trial given the seriousness of the charges and potential sentence. She further considered that his release could undermine public peace and confidence in the justice system, given the public outrage and protests at court.

[15] I am not persuaded that the magistrate was wrong in these findings.

[16] In Schedule 5 matters, the court must be satisfied that the interests of justice permit release. The appellant's affidavit did not adequately address the substantive allegations against him. He did not deny being present, recording, or sharing the video. He did not provide any exculpatory explanation. His silence on these critical aspects weakens his case for release.

[17] The magistrate was entitled to consider the viral nature of the video, the public reaction, and the potential harm to the administration of justice. Her reference to community protest was not speculative; it was based on evidence before her that protests occurred outside court.

[18] While the appellant argues that he is not seen in the video handing drugs to the child, his admitted role in recording and disseminating the video places him squarely within the alleged criminal enterprise. His assertion that he is not a danger to the child or the public is not convincing in light of his admitted conduct.

[19] The magistrate did not misapply the "likelihood" standard. She properly weighed the evidence and reached a conclusion that is reasonable and supported by the record.

[20] The appellant's right to be presumed innocent is not in question. However, in a bail application, the strength of the State's case is a relevant consideration. Here, the State's case appears substantial, and the appellant did little to rebut it.

[21] I am not satisfied that the magistrate's decision was wrong. The appellant has not shown that the interests of justice permit his release.

In *Carelse v The State* [2025] ZAWCHC 537 para 21, the court said *"Put another way, this court cannot substitute its own view for that of the judicial officer in the lower court (unless the decision was wrong even if this court held a different view) because that would amount to an impermissible interference with the discretion exercised by the judicial officer in the lower court"*

ORDER

[22] The appeal is dismissed.

[23] The appellant shall remain in custody pending the finalisation of his trial.



NEMAVHIDI AJ

ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

Date of hearing: 5 February 2026

Date of judgment: 5 February 2026