



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

Case No: A296/2025

In the matter between:

SHAFIEK DREYER

Appellant

And

THE STATE

Respondent

Coram: Yake AJ

Heard: 30 January 2026

Delivered: Electronically on 11 February 2026

Summary: Bail Appeal – Section 65 of the Criminal Procedure Act 51 of 1977, Schedule 5 Offence, Section 60 (4) - *Onus* is on the Appellant to prove the interests of justice permit his release on bail — Appeal Dismissed.

JUDGMENT – BAIL APPEAL

YAKE AJ

INTRODUCTION

[1] This is an appeal against the findings and order made by the Magistrate, sitting in Malmesbury Magistrates Court in which he denied the release of the appellant on bail on 25 September 2025. The application is opposed by the respondent.¹

[2] The appellant was arrested on 30 July 2025. He was charged with the offence of Kidnapping of the victim, Oswald Tieties. He was legally represented throughout the bail proceedings in the Court *a quo*. The parties agreed that the bail application falls within the ambit of Schedule 5 of the Criminal Procedure Act 51 of 1977 ("The Act"). Consequently, the *onus* is on the appellant to satisfy the court that the interest of justice permits his release on bail².

[3] The parties were *ad idem* that the notice of appeal was filed out of time. In the result, the appellant lodged an application for condonation for the late filing of notice to appeal. The respondent opposes the condonation application.

CONDONATION

[4] The notice of appeal was filed on 26 November 2025. This is after the Court *a quo* refused the release of the appellant on bail on 25 September 2025. The reason furnished by the appellant's counsel for not filing the notice of appeal within 14 days after refusal of bail was due to the delay in receiving the transcribed record of proceedings. He contends that the transcribed record was only received and made available to him on 20 November 2025. He therefore needed time to peruse the record which he could manage to do outside Court hours due to prior commitment in a High Court trial.

[5] The appellant's counsel submitted that no prejudice will be suffered by the State if condonation is granted; only the appellant will suffer prejudice through no fault on his part. The appellant's papers are silent on how the appellant will suffer prejudice. The papers are also silent on whether there are prospects of success on

¹ See Heads of Arguments for both legal representatives.

² Section 60 (11) (b) of the Criminal Procedure Act 51 of 1977

appeal. The condonation application is opposed by the respondent on the grounds that there are no reasonable prospects of success in the matter.

[6] Notwithstanding that the Act allows a litigant a period of 14 days to bring an appeal, I am alive to the challenges faced by the lower courts in obtaining transcribed records of proceedings in that the process of the record transcription and receipt thereof tends to be a tedious exercise. I am of the view that the lapse of a period of two months is not unreasonable under the circumstances. If I were to refuse condonation, I would be punishing the appellant while the delay occasioned is through no fault of his. I am of the view that the explanation tendered by the appellant's counsel is reasonable and satisfactory. The application for condonation is granted.

PROCEEDINGS IN THE LOWER COURT

[7] The appellant did not present any *viva voce* evidence. In support of his bail application, he filed an affidavit which was duly read into the record and handed into the record of proceedings as an exhibit. Thereafter, the court put questions to the appellant which, in its view, were not covered by the content of the affidavit.

[8] In opposing bail, the respondent led *viva voce* evidence of two witnesses, Mr. Alan Williams ("Williams"), the ward councillor of Kalbaskraal and Mr Abraham Agulhas ("Agulhas") the chairperson of Kalbaskraal Community Forum. The respondent further presented and filed on record the statement of Mr Riedewaan Moos, who has since passed away. The statement of Warrant Officer Marieta Papier ("Papier"), who was the initial investigating officer of the case and the admissions by Sergeant Ian Bartlett ("Bartlett"), the current investigating officer were presented as evidence in the bail proceedings.

[9] The following are the salient features of the appellant's case. The appellant is a fifty-three (53) years old South African citizen. He has been residing in Western Cape for more than fifty (50) years. He is married to two wives. He is a father of three adult daughters and one grandchild. His eldest daughter has cancer and is gravely ill. He and his first wife are taking care of her. He works on a freelance basis as a tour operator with an income of R20 000 per month. He owns a house in

Kalbaskraal with his second wife. He has a previous conviction of murder and one pending case of assault.

[10] The appellant contended that he had secured an amount of R10 000.00 for the purposes of bail. With reference to section 60 (4) (a) to (e) read with section 60 (5) of the Act, he submitted he has not breached and will not breach any of the grounds stated therein. He already has an alternative address in Grabouw, where he currently resides. He contended that the State's case is weak against him and he intends to plead not guilty. He further contended that it is in the interest of justice that he be released on bail, as he has been in custody since his arrest in July 2025 and he is not a flight risk. He is willing to abide by any bail conditions.

[11] Williams, who is one of the state witnesses, testified that he received information that the appellant took the victim, placed him in the boot of his car and drove away with him. No one knew where he took him to and the victim was never seen again after that day. After the victim's disappearance there was unrest and chaos in Kalbaskraal, gangsters took over and five more people were murdered within a period of a month. Subsequent thereto, a witness named Riedewaan Moos was murdered. He could not say whether the appellant was a gang member or not. He recommended that the appellant not be granted bail for his own safety.

[12] His sentiments that the release on bail must be refused were shared by Agulhas who testified that the community signed a petition to make sure that the appellant is not released on bail as they believed that he was involved in the disappearance of the victim. The petition and two eyewitness statements were handed into the record of proceedings as exhibits.

[13] Papier, in her affidavit, indicated that she was informed by witnesses that the victim was repeatedly stabbed by the appellant. Afterwards the appellant put him in the boot of his car and drove away with him towards the direction of N7. From thereon they have been trying to trace the appellant for months without any success.

[14] Later on, a decomposed body was found in the Philadelphia area. A DNA of the victim's daughter was obtained to compare it with the decomposed body. At the time of the bail application I assume DNA results were still unavailable as there was

no mention thereof.

[15] Papier's opposition to the release of the appellant on bail was primarily founded on the assertion that the appellant: (i) will interfere with witnesses, (ii) will evade his trial, and (iii) will endanger the safety of the public.

[16] Bartlett, who took over the matter from Papier, indicated after receiving the docket he perused the statements. In the docket there were witness statements in which it was indicated that they saw the appellant assaulting the victim and thereafter driving away with him. A black shoe belonging to the victim was recovered at the place where the victim was assaulted. Days later, a decomposed body was found in Philadelphia. In proximity to the body there was a shoe that matched the one that was found where the victim was assaulted. A DNA sample was taken from the daughter of the victim to compare it with samples from the decomposed body.

FINDINGS BY THE MAGISTRATE

[17] In his judgment the Magistrate considered the affidavit filed by the appellant, the *viva voce* evidence led by the respondent's witnesses, the affidavit of Papier as well as the admissions by Bartlett. He was not persuaded that the appellant discharged his *onus*. He made a finding that the appellant was a candidate likely to endanger the safety of the public and denied bail.

GROUND OF APPEAL

[18] The grounds of appeal wherein the appellant alleged that the Court *a quo* erred can be summarised as follows: That the Court *a quo* erred in the following respects: (i) in only placing reliance on section 60(4)(a) of the Act and finding that it would be infringed; failing to consider section 60(4) (b) (c) and (e) in that the interests of justice permit his release on bail, (ii) by placing undue weight on hearsay evidence and finding that he is a candidate likely to endanger the safety of the public and not sufficiently weighing up his personal circumstances and averments which includes that he is currently residing in Grabouw 100 kilometres away from the scene of the incident, (iii) by conflicting itself in saying the court is not convinced that the spiking chaos and unrest in the community since the incident can be placed on the feet of the applicant whilst in the same breath it says that the statistics cannot be ignored,

(iv) in finding that the appellant was likely to endanger the public safety in light of the fact that the appellant resides in Grabouw and would be able to sign at the police station there and (v) by refusing the release of the appellant on bail.

APPLICABLE LEGISLATIVE PROVISIONS

[19] In terms of section 60(11)(b) of the Act, the accused applying for bail in respect of a Schedule 5 matter must satisfy the court on a balance of probabilities that the interests of justice permit his release on bail, failing which he must remain incarcerated.

[20] Section 60(4) (a) to (e) of the Act outlines the grounds under which the interests of justice do not permit the release of an accused from detention. These grounds include *inter alia*, the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person; or will commit a Schedule 1 offence; or will attempt to evade his or her trial; or will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system or 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. (underlining supplied).

[21] If one or more of the grounds referred to in subsection four above are found to be present, then it will not be in the interest of justice that the appellant be released on bail and bail should be refused.

[22] It is trite that the Appeal Court cannot set aside the decision of the court *a quo* unless it is satisfied that the decision was wrong. 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.

[23] In S v Barber³, the court remarked as follows in respect of 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, 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.”

[24] Thus, even if this court held a different view regarding the decision by the Magistrate, it cannot simply substitute that decision for its own view unless it finds that the Magistrate misdirected himself in some material way in relation to either facts or law. It is only when such a misdirection is established that the appeal court may interfere and consider the question of bail afresh.⁴

SUBMISSION BY PARTIES

[25] The appellant argued that there is no evidence placed on record that if released on bail he will endanger the safety of the public. He has moved to Grabouw and will reside there. He has no intention of returning to Kalbaskraal as his home has been destroyed.

[26] The appellant further argued that there is no evidence placed on record that he will evade trial. He relied on the fact that on 18 June 2025, before his arrest, his attorney, Mr Hendricks (“Hendricks”) made enquiries from the police if they were looking for him and was informed that the matter was under investigation.

[27] He further argued that there is no evidence that he had threatened, intimidated or influenced the witnesses. No evidence was adduced linking him to the

³ S v Barber 1979 (4) SA 218 (D) at 220E–H

⁴ S v Porthen and others 2004 (2) SACR 242 (C) at paras [16]–[17]

witness that was killed. The fact that the eyewitnesses alleged that he stabbed the victim cannot alter the charge he is facing, which is kidnapping.

[28] He contended that his personal circumstances make him a suitable candidate for release on bail and it is in the interest of justice that he be released on bail. According to him the refusal to grant bail cannot be based on the strength of the State's case as this is not a trial.

[29] In persuading the court that the appellant did not discharge his *onus* of adducing evidence which proves that the interests of justice permit his release on bail, the respondent submitted that there is evidence of eyewitnesses who saw the appellant stabbing the victim and driving away with him. One shoe belonging to the victim was recovered where the stabbing occurred and the second shoe matching the first one was recovered where the decomposed body was found.

[30] There is a video footage showing that the appellant was in Kalbaskraal on the day of the incident. The footage showed him driving towards Boney and whereupon Wanie gave money to Boney. An eyewitness was murdered, and probabilities are that the witness' murder is connected to his being a witness in this case. There is further evidence that the appellant was on the run as the community members were looking for him. The respondent contends that there is likelihood that the appellant will interfere with the witnesses as they are known to him and he is associated with a gang member named Polla. The respondent submitted that the appellant failed to discharge his *onus* that the interest of justice permits his release on bail.

DISCUSSION

[31] In considering the evidence and the submissions made, this court must decide whether the Magistrate erred in denying bail of the appellant. In doing so I must consider whether the appellant will endanger the safety of the public, interfere with witnesses or evade trial.

[32] It is trite that in bail proceedings, the *onus* is on the appellant to convince the court on a balance of probabilities that the interest of justice permits his release on

bail. In *S v Dlamini, S v Dladla, S v Joubert; S v Schietekat*⁵ Kriegler J stated the following:

[11] *“An important point to note here about bail proceedings is so self-evident that it is often overlooked. 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”.*

[33] In refusing bail, the Magistrate made the following remarks at pages 4 and 5 of his judgment:

“The representative community of Kalbaskraal undoubtedly places the spiking unrest and chaos at the feet of the applicant. The Court is not convinced and persuaded that they are correct in the allegation. However, the court cannot deny factual crime stats from the investigation officer since the fatal event of 18 May 2025. The applicant had a reasonable opportunity to adduce evidence. He gave an undertaking in order to align himself with the provisions of the fact. Are those enough in bail proceedings where the accused bears onus? The Court is unfortunately not persuaded that is enough and that he dispensed the onus placed on him. In light of the above the Court is of the opinion that the applicant is a likely candidate to endanger the safety of the public.”

[34] It appears that the basis for the Magistrate to refuse bail is solely based on section 60 (4) (a) as he made a finding that the appellant is a likely candidate to endanger the safety of the public. He failed to provide reasons for coming to such finding. Upon careful reading of the Magistrate’s finding, it appears to me that the Magistrate was conflicted in his decision. He accepted that the unrest and the chaos that took place at Kalbaskraal after the incident where five people were murdered could not be attributed to the appellant. If that was his view, then it could not be said that there is a likelihood that the appellant will endanger the safety of the public as he is not the cause of the unrest and chaos in Kalbaskraal.

⁵ *S v Dlamini, S v Dladla, S v Joubert; S v Schietekat*⁵ (CCT21/98, CCT22/98, CCT2/99, CCT4/99) [1999] ZACC 8; 1999 (4) SA 623; 1999 (7) BCLR 771 (3 June 1999)

[35] Notwithstanding, I could not find that the Magistrate has misdirected himself in refusing bail of the appellant. However, I deemed it necessary to give my reasons why I am of the view that the appellant is not the candidate to be released on bail.

[36] **Firstly;** in considering public safety and public order in terms of section 60 (4) (a) and (e), there is evidence placed on record that the appellant was seen assaulting the victim and thereafter he drove away with him. Pursuant thereto, the victim was never seen again. I accept that there is no direct evidence placed on record that the appellant was behind the unrest and chaos that occurred in Kalbaskraal. However, quite correctly pointed by the State, the chaos came after the disappearance of the victim. It may be so that the appellant was not directly involved in the fights that were taking place there but, in my view, he was indirectly involved through his action of taking the victim away. I accept that he has since moved to Grabouw as his house was demolished but one must not lose sight that even at the time of the incident he had already moved to Grabouw, but he was still implicated in the commission of this offence. It is my view that if released, there is a likelihood that the appellant will endanger the safety of the public.

[37] **Secondly:** in considering whether the appellant will evade trial in terms of section 60 (4) (b), it has been submitted that after the appellant took the victim, the community was looking for him, and they did not know where to find him. The police were also looking for him since 18 May 2025. This resulted in Bartlett applying for a J50 warrant. The appellant was only traced and arrested on 30 July 2025.

[38] The appellant denied evading arrest and submitted that his attorney Mr Hendricks went to the police station to enquire if the police sought for him. He referred to the letter that was written by Hendricks dated 25 June 2025 confirming same. In this letter Hendricks confirms that he was requested by appellant to assist him in the event that he is arrested for another matter for which he was sought.

[39] If the appellant was not aware that the police were looking for him, why ask Mr Hendricks to assist in a matter that he thought he was sought for. Bartlett indicated in his statement that on 12 June 2025 he contacted the appellant's wife asking for his whereabouts. Surely his wife would have told him that the police were looking for him hence he saw the need of asking Hendricks to assist him. Had that not been the case the appellant would not have approached Hendricks particularly in

this regard. Noteworthy, Hendrick's correspondence is addressed almost two weeks after the appellant's wife was contacted by Bartlet. Practically, 12 days had lapsed after Bartlet's enquiry into the whereabouts of the appellant. Given all these surrounding circumstances, I can only find that the appellant was aware that the police were looking for him and he evaded arrest. If released on bail, there is a likelihood that he will evade trial.

[40] **Thirdly;** coming to the consideration of whether the appellant will interfere or influence the witnesses in terms of section 60 (4) (c) the appellant has submitted that he does not know the identity of the witnesses and as such he will not interfere with them. There is further no evidence linking him to the death of the witness. I take cognisance of the fact that there is no evidence linking him to the death of this witness and that there are people already arrested for the murder of that witness. Nor is there evidence tendered that the persons arrested for the death of the witness are associated with the appellant. As such I cannot find that the appellant had interfered with that witness. Even with the threatening of Agulhas by Pallo, that is insufficient to link the appellant to the death of the witness.

[41] However one cannot run away from the fact that the appellant was residing in Kalbaskraal. It has been submitted that Kalbaskraal is a small community. It will not be difficult for him to locate witnesses if he wants to. Moreover, some of the witnesses were in his company when he took away the victim. Further, Agulhas is known to him as from time to time he will communicate with the appellant regarding the appellant's house that was left unattended. Clearly, the identity of the witnesses is known to the appellant. The mere fact that he tried to conceal the knowledge regarding the identity of witnesses is an indication that there is likelihood that he may interfere with them if released on bail.

[42] **Finally;** in considering the interest of justice in terms of section 60 (4), the court weighs the interests of the appellant against the interests of society.⁶ In S v Dlamini⁷, the Constitutional Court held that:

"The interests of justice in regard to the granting or refusal of bail therefore focus primarily on securing the attendance of the accused at the trial and on preventing the accused from interfering with the proper investigation and prosecution of the matter."

⁶ Sections 60 (4), 60 (9) and (10) of the CPA

⁷ S v Dlamini⁷ 1999(2) SACR 51 (CC)

[43] In conclusion, after taking into account the personal circumstances of the appellant, I cannot find that they are enough to satisfy this court that the interests of justice permit his release. It is my view that there is a likelihood that he will endanger the public safety, evade trial or interfere with the witnesses. All of this will have an impact in the investigation and prosecution of the matter. I am unable to conclude that the Magistrate was wrong in finding that the interests of justice do not permit the release of the appellant on bail.

[44] As such there is no basis for me to interfere with the discretion exercised by the Magistrate. The appeal must therefore fail.

ORDER

[45] I accordingly make the following order: -

The appeal against the refusal of bail is dismissed.

S. YAKE

Acting Judge of the High Court

Western Cape Division, Cape Town

APPEARANCES:

For the Appellant:	Ms. I Jansen
	Jansen & Associates Attorneys
	Office 1, Third Floor
	JDN House
	26A Shortmarket Street

Cape Town

For the Respondent:

Advocate L J Badenhorst

Director of Public Prosecutions

115 Buitengracht Street

Western Cape