



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

**JUDGMENT**

Case no: A277/2025

Piketberg Magistrates' Court Case no: A329/2025

**J[...]** **B[...]**

**APPELLANT**

And

**THE STATE**

**RESPONDENT**

**Coram:** Magona-Dano AJ

**Heard:** 27 November 2025

**Order:** 28 November 2025

**Reasons:** 17 February 2026

**Summary:** Bail appeal - Schedule 6 - exceptional circumstances - personal circumstances with community ties and support - specific contribution to the community - independent witnesses and support – the strength of the State's

case - error in finding likelihood to contravene in terms of S60(4) of the Criminal Procedure Act

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## **ORDER**

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1. The appeal against the refusal of bail by the Piketberg Magistrate's Court, under case A329/2025, made on 29 October 2025, is hereby upheld, and the order of the court a quo refusing bail is set aside.
2. Bail is set for the Appellant in the amount of R2000.00 (Two thousand Rands), and he is to be released upon payment of the bail amount.
3. The following bail conditions will apply:
  - 3.1 The Appellant shall ensure that he attends all further Court appearances until finalisation of the matter.
  - 3.2 The Appellant shall not have any contact with the complainant and witnesses, directly or indirectly, pending the finalisation of the matter.
  - 3.3 The Appellant is ordered to sign at the Piketberg SAPS once a week, every Wednesday between the hours of 9 am and 7 pm.
  - 3.4 The Appellant will reside at an alternative address, being no 1[...] N[...] Goedverwacht, and will only enter the Piketberg area for purposes of his employment at Blaauw Cut and Style Unisex in De Trek Street, as well as when having to sign at the Piketberg Police Station as is needed in terms of this order.
  - 3.5 The Appellant shall not leave the Western Cape Province without the written consent of the investigating officer or his duly authorised delegate or successor.

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## **REASONS**

**INTRODUCTION**

[1] This is an appeal against the whole of the judgment of the learned Magistrate E. Kaptein, delivered on 29 October 2025 under Piketberg Magistrates' Court Case Number A329/25, refusing to admit the Appellant to bail.

[2] On 28 November 2025, the matter was heard before me and this Court handed down an order in this matter, the terms of which were communicated to the parties. At that time, the Court indicated that the reasons for the order would follow.

[3] These are the reasons for the order that was granted.

[4] In preparing these reasons, I have had due regard to the written heads of arguments of the parties and, where helpful, have adopted or adapted portions thereof. I am grateful to Counsel for their clear heads of argument.

**RELEVANT FACTUAL BACKGROUND**

[5] The Appellant stood charged with two counts of rape of a minor child. The State alleged that on 02 April 2023 until June 2025, as well as in July 2025, the Appellant did unlawfully and intentionally commit an act of sexual penetration with L.A, a 13-year-old female child (stepdaughter of the

Appellant) by inserting his fingers in her vagina and touching her breast without her consent. The Appellant was arrested on 05 September 2025 and had been appearing in the aforesaid court.

[6] On 19 September 2025, the Appellant's bail application was heard, and it ran for a number of days. The charges were classified to fall under a Schedule 6 offence, and the provisions of Section 60(11)(a) of the Criminal Procedure Act 51 of 1977 (“the CPA”) applied.

[7] On 29 October 2025 judgment was delivered by the Magistrate where bail was denied.

[8] Disgruntled by the decision on 05 November 2025, a notice of appeal was lodged in this court, bringing an application for the appeal of the Magistrate’s decision that refused him bail.

[9] The Appellant’s grounds of appeal can be summarized as follows:

- a. The Magistrate erred in finding that no exceptional circumstances existed in the interests of justice that permitted this release.
- b. There was no factual basis for the refusal of bail.
- c. Section 60(4) risks that were relied on were speculative.
- d. There was no evidence of interference with witnesses or public danger.
- e. Appellant’s material personal circumstances were ignored.
- f. Continued detention was disproportionate.
- g. The State’s case was shown to be weak.

- h. Section 62(f), additional conditions were overlooked and ought to have been considered to grant bail.
- i. Section 60(3) was not applied where the court lacked sufficient evidence before it.
- j. Failure to properly balance the interests of justice and the liberty right under section 35(1)(f) of the Constitution of the Republic of South Africa, 1996 (“the Constitution”).
- k. The Magistrate’s discretion was therefore misdirected.
- l. Exceptional circumstances were established, taking into account the above factors cumulatively.

[10] I turn now to look at the evidence that was placed before the court a quo.

### **SUMMARY OF FACTS**

[11] The Appellant gave the following evidence by way of affidavit, that:

- a. He is a 53-year-old South African citizen with a fixed address. He lives in a rental house where he resides with his wife, whom he has been married to for the past 3 years (the mother of the complainant). He has 3 dependents aged 6, 11 and 13 yrs old. He has an alternative address in Goedeveiwacht.
- b. He has been a stepfather before, first to his ex-wife’s and then his ex-girlfriend’s older children. He never committed, and neither was he ever accused of ever committing the offences he is accused of in this case.
- c. He was arrested on 4 September 2025 based on the charges made against him by the complainant. Since his arrest he has been living in an overcrowded prison cell, and his health has gone bad; his high

blood pressure skyrocketed to the point that he had to be attended to medically in prison, and he also has a pre-existing heart condition.

- d. He is not a flight risk; he has extended family residing in the Northern Cape. He has been employed at Blaauw Cut and Style Unisex for the past six years as a managing director and the main barber.
- e. He has previous convictions, one of selling liquor without a license. It has been more than 10 years since he pleaded guilty and was sentenced to a fine of R150. He also has a common assault conviction, which was 10 years ago, where he pleaded guilty and was sentenced to a wholly suspended sentence and another common assault of six years ago, where he pleaded guilty and was sentenced to a wholly suspended sentence.
- f. He has no pending cases other than the present case being investigated by the South African Police Service (“SAPS”), no warrants outstanding for his arrest and no parole conditions or protection orders against him.
- g. There is no likelihood that he will interfere with any of the witnesses or the evidence, nor the likelihood that he will commit further offences while on bail.
- h. There is no likelihood that his release on bail will undermine or jeopardise the proper functioning of the criminal justice system.
- i. He is prepared to submit to any bail condition that the court intends to impose.

[12] The charges against him, he testified that:

- a. The charge sheet lacked specific dates and explanations as to how these incidents took place over the alleged two-year period. To him, this does not make sense.
- b. That in any case his defence would be that of a denial of all allegations of rape or indecent touching because he has never inserted his fingers into the complainant's vagina or touched her breasts.
- c. He's known the complainant since she was 5 years old in 2016, when he met the complainant's mother. He took her as his own daughter; she even called him Dadda. He and the complainant's mother decided to have a suitable and stable accommodation, generate income to rent or buy a house for themselves and their children.
- d. At all times, they provided for the complainant and the maternal grandmother since the child lived with the grandmother. In 2021, he and the complainant's mother found a rental home with 3 bedrooms and got married. They then intended to take the complainant. The grandmother was not happy that they would take the child, which caused a feud between them and her, so much so that the wife had to consult social workers, where the child ended up having to sleep over at their house every other week.
- e. He submitted that the charges arise from family conflict and financial disputes following his cessation of financial support to the complainant's maternal grandmother. That the complainant always respected him, he could not think of any other reasons for the made-up charges but could recall two incidents in February and June 2025 that took place, which made the child angry, but still, these were incidents that were ordinary incidents.

[13] The incidents were as follows:

- a. The first incident occurred in February 2025 and involved an altercation between a couple, Roxanne and her partner, who were tenants residing in the Appellant's house. The complainant was present at the time. The incident upset the complainant, prompting her to seek comfort from Aunt Monica, a neighbour. Julian, who also resided in the Appellant's house at the time, informed the Appellant and his wife of the incident and its impact on the child, as they had previously been unaware of it. Upon returning home, the complainant's mother collected her, spoke with her about the incident, and apologized for what she had experienced involving the couple.
- b. Another incident occurred in June 2025, on the day of their church confirmation outing. On that morning, the Appellant woke to a commotion between the complainant and her mother, which left the child angry. While being taken to the nearby church, the child exited the vehicle in an agitated state and later returned home exhibiting the same behaviour, at which point the Appellant's wife attended to her. The following morning, the complainant left for school still angry. The Appellant intervened and stopped his wife, who wished to address the child at that time, asking that she not upset the child further and instead speak to her after school. That evening, the complainant sent a message to the Appellant's wife stating that she no longer wanted to live with them.
- c. The father of the complainant has been involved in the child's life since 2025. He telephoned the Appellant's wife to inform her that a social worker wanted to meet with them. Following a meeting with the social worker in August, which involved the whole family, including the grandmother and step-grandfather, the child was given the opportunity to choose whom she wished to live with. She chose to live



with her grandmother. They painfully accepted this decision and helped her pack her clothing, embraced one another, said their goodbyes, and the child then told them she was sorry ( to the appellant and her wife) and left.

- d. The Appellant highlighted that since the complainant's father, Mr B[...] C[...], became involved in her life in 2025, problems started to arise. Although he had neither assisted in raising the child nor provided support to the child over the years, he began to establish a relationship with her after his other daughter started attending the same school as the complainant. Thereafter, difficulties within the Appellant's household involving the child began to escalate. Mr C[...] advocated for the child to go live with the maternal grandmother, the appellant's wife confronted him via phone message telling him not to create problems where there were no problems.

### **Appellant's Supporting Evidence**

[14] Further letters and some affidavits from various community leaders within Piketberg were handed in as part of the record in support of the appellant granted bail, which included:

- a. Letters from an Executive Mayor, a School Principal, a Pastor from the Appellant's church, a Pastor Emeritus, affidavits from neighbours, and from senior members of the community were submitted collectively. The letters presented the Appellant as a respected, community-oriented individual with strong moral standing, positive influence, and no prior record of misconduct within the community.
- b. The references further portrayed him as a provider, a mentor, and a local contributor, reinforcing his case that he was not a danger to the community, unlikely to abscond, and enjoys strong community support.

- c. The affidavits from the Appellant's wife and employees of the Barber shop reinforced his case that he had strong family, community, and economic ties to Piketberg and the surrounding areas. An example which was confirmed by the beneficiaries were that he supported the youth that are drug dependent, he would find them a rehabilitation centre, give them a home and also employment on their return to help them become better members of society.
- d. The statements collectively portrayed him as a stable, law-abiding citizen, committed husband and father, stepfather and a community employer whose detention caused undue prejudice to innocent dependents and employees.
- e. These affidavits further supported the submission that the Applicant posed no flight risk, would not interfere with witnesses, and that less restrictive bail conditions could adequately safeguard the interests of justice.

**The State's case opposing bail**

[15] The State also led evidence by way of affidavits from various witnesses, some of which I summarise hereunder.

[16] The first was that of the Investigating officer, Sgt. Salomon Koning, wherein he testified that:

- a. He confirmed the Appellant's personal particulars as specified above, including the alternative address, which was verified. The owner of that house, being his aunt, confirmed that she would have no problem accommodating him.
- b. He confirmed the Appellant's previous convictions, with corrections: three convictions for dealing in liquor, for which the Appellant was sentenced in 2011, and one conviction for assault with intent to cause

- grievous bodily harm, for which he was sentenced in 2017 to a fine or, alternatively, direct imprisonment, wholly suspended for five years.
- c. He then made averments regarding the allegations brought against the Appellant, as reported to him (addressed below). The allegations included the Appellant touching the child's breast and inserting his finger in her vagina over a period of time between 2023 and 2025. The last incident was in July 2025. He also licked the child's vagina on this day. It was alleged that the incidents always occurred when the child's mother was away for work in Moorreesburg.
  - d. The J88 was obtained after the child was examined by a doctor, it reflected no injuries.
  - e. A petition from members of the community, as well as a letter from a Gender Based Violence Association, was submitted demanding that the accused not be released on bail.

[17] The affidavit of Mr B[...] C[...], the complainant's biological father, was also submitted, detailing multiple reports from the child of fear and distress caused by the appellant, the involvement of the Department of Social Development, and the eventual discovery of the child's written disclosure of sexual abuse in September 2025. He strongly urged that bail be refused to protect the complainant from further trauma and possible intimidation.

[18] In the social worker's affidavit, Ms Andolene Somers makes averments regarding her intervention with the child and the school social worker in May and August 2025, at the request of Mr C[...]. The child was troubled by having to choose between living with her mother and stepfather or with her grandmother and step-grandfather, as well as by the strained relationship she was experiencing with her mother. This issue was resolved when the child was

granted the opportunity to choose whom she wished to live with. There were never any allegations of sexual assault made by the child or by anyone else during these sessions.

[19] Roxanne Titus, a former tenant in the Appellant's house until April 2025, stated in her affidavit that the Appellant had a good, father-and-daughter-like relationship with his stepdaughter, although she described it as unusually close. She further stated that, at times in 2025, she witnessed arguments between the Appellant and the child in her presence. During these arguments, the child would always say that she wanted to go live with her grandmother. On one occasion the child told Ms Titus that the Appellant refused to allow her to go live by her grandmother. She also observed that the child became emotionally withdrawn. In her second affidavit, Ms. Titus referred to alleged incidents that purportedly took place notably after she no longer lived with the Appellant, and in some respect also contradicted some content of her first Affidavit.

[20] The affidavits of Mrs E[...] S[...], the grandmother, confirmed that the child wanted to live with her. She stated that she observed changes in the complainant's mood and that the child wrote in a book about the alleged sexual assault, which she then gave to Ms Danae, a neighbour, to read to her. Mrs S[...] thereafter contacted the child's father, Mr C[...], which led to a case being opened at the police station. Mrs S[...] denied reporting the allegations of sexual assault to her mother, Ms V. A[...], the complainant's great-grandmother. She also denied being financially dependent on the Appellant.

[21] The affidavit of the complainant's mother, Ms S[...] A[...], confirms that the Appellant had a close relationship with the complainant and that the child confided in him more than she did in her. She also described the domestic

circumstances and the strained relationship between herself and her own mother, Mrs S[...], the grandmother of the complainant. Ms S. A[...] stated that she heard about the allegations from her own grandmother sometime in August 2025 the latter kind to have been told by Mrs S[...] her daughter. However, the grandmother (Mrs S[...]) denied ever disclosing such allegations to the great-grandmother, Ms V. A[...], and she assured the family that there were no such allegations against the Appellant and they need not worry.

[22] An online petition was submitted by the State to support the opposed bail application.

[23] A letter from an NGO was also submitted condemning gender-based violence and urging the Court not to grant bail, considering the seriousness of the offence and the risk to the minor victim and public confidence in the justice system.

### **Appellant's Replying Affidavit**

[24] The Appellant, in summary, replied stating the following:

- a. Mr B[...] C[...] is a GBV activist in the local area who adopts a blanket approach to organizing online petitions opposing bail applications in sexual offence cases. He is well known in the community, and individuals often sign his petitions without knowing the accused person or the facts of the case. As the complainant's father in this matter, his petitions lack objectivity. Furthermore, his testimony contradicts that of the Social Worker regarding, inter alia, the dates/disclosure of the alleged incident in 2025. It is submitted that he is intent on ensuring that the case proceeds at all costs; however, these issues are matters to be challenged at trial.

- b. Ms. Roxanne Titus's affidavits contained untruths, and she is a disgruntled former tenant who was asked to vacate the Appellant's house due to disagreements between her and the Appellant and his wife regarding her behavior and lifestyle in the presence of the children. She moved out in April 2025.
  - c. Mrs. S[...], the grandmother, provided testimony that was contradictory to her first affidavit and included additional facts that appear improbable, particularly regarding the timing and circumstances under which the child allegedly disclosed the incidents. Furthermore, the version differs from that of her own mother, Mrs. V[...] A[...]. There was no supporting evidence obtained from Ms. V. A[...].
  - d. Notably also no affidavit was handed over to by Ms Danae, the neighbour to whom the child allegedly gave the book to read, in which the disclosure of sexual assault by the Appellant was purportedly made.
- The Appellant averred that the above demonstrates weaknesses in the State's case.

### **ISSUES TO BE CONSIDERED**

[25] This Court must determine the following issues:

- a. Whether the court a quo exercised its discretion judicially.
- b. Whether the Magistrate's refusal of bail was based on a proper and judicial exercise of discretion.
- c. Whether material misdirection and reliance on speculative considerations justify interference by this Court.
- d. Whether the interests of justice permitted the granting of bail.
- e. Whether, on a proper consideration of the totality of the evidence, including the Appellant's personal circumstances, community standing,

and the availability of appropriate bail conditions, continued detention was justified.

### **LEGAL POSITION**

[26] The appeal to this Court was in terms of Section 65 of the CPA. Section 65(4) of the CPA provides that:

“(4) 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.”

[27] In *S v Barber*<sup>1</sup> the court held at 220E-H:

“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.”

[28] In *S v Porthen and Others*<sup>2</sup> this Court decided, with reference to *S v Botha*<sup>3</sup>, that the appeal court’s powers to consider an appeal against the refusal of bail in terms of Section 65(4) are not to be constrained by the decision in *Barber*.<sup>4</sup> 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 CPA.

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<sup>1</sup> 1979 (4) SA 218 (D).

<sup>2</sup> 2004 (2) SACR 242 (C).

<sup>3</sup> 2002 (1) SACR 222 (SCA).

<sup>4</sup> At paras [16]-[17].

[29] Kriegler J in the Constitutional Court judgment of *S v Dlamini S v Dlamini, S v Dladla and Others; S v Joubert; S v Schietekat*<sup>5</sup> emphasised the need for a cautious approach and highlighted the limited field of application in refusing bail on account of the provisions of Section 60(4)(e) and (8A).

[30] This clearly postulates the need for exceptional circumstances in this regard, which is indicative that the application of these sections should be limited to rare cases where the circumstances are justified. Furthermore, even if such exceptional circumstances are established in respect hereof, they must be weighed against Section 60(9) before a decision to refuse bail is taken.

[31] The strength of the State's case has been held to be relevant to the existence of 'exceptional circumstances.'<sup>6</sup>

[32] *S v Rudolph*<sup>7</sup> confirms that a strong rootedness in the community constitutes an exceptional circumstance.<sup>8</sup>

## **DISCUSSION**

[33] It is trite that a bail decision involves the exercise of discretion by the court of first instance. An appellate court will not interfere merely because it would have come to a different conclusion. It will, however, interfere where it is shown that the discretion was not exercised judicially, or that the court a quo committed a misdirection in law or on the facts.

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<sup>5</sup> CCT21/98, CCT22/98, CCT2/99, CCT4/99) [1999] ZACC 8; 1999 (4) SA 623 (CC); 1999 (7) BCLR 771 (CC); 1999 (2) SACR 51 (CC) (3 June 1999).

<sup>6</sup> *S v Botha en 'n Ander* 2002(1) SACR 222 (SCA) at para [21], *S v Viljoen* 2002(2) SACR 550 (SCA) at para [11].

<sup>7</sup> 2010 (1) SACR 262 (SCA).

<sup>8</sup> At para 10.



[34] The Magistrate properly considered the facts of this case and correctly found no grounds that Section 60(4)(a) and (b) were likely to be committed by the Appellant if he were to be released on bail.

[35] Section 60(4)(c), (d), and (e), however, were the main reasons the Magistrate denied bail. I believe that his decision on each was incorrect and I address these individually below.

[36] It is apposite to quote all of Section 60(4) which provides:

‘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 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

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system;

(e) 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; or [sic]’.

[37] The offences listed in Schedule 1 to the Act include murder, culpable homicide, rape, sexual assault, assault when a dangerous wound is inflicted, and arson.

[38] I turn now to consider the provisions of these sections and to compare and apply the above-mentioned case law, which has led this court to intervene, having found the Magistrate's decision to be incorrect.

[39] In my view, the Magistrate was wrong in making a finding that the Appellant had failed to show that, in the interests of justice, there were exceptional circumstances that warranted his release on bail.

**With regards to section 60(4)(c) - alleged likelihood he may interfere or intimidate witnesses**

[40] Mr Filton, for the Appellant, made submissions that the State opposed bail based on allegations that the Appellant may interfere with witnesses, whilst they led no evidence to support this. The fact that the Appellant knew the complainant and maybe some of the other witnesses, without placing any evidence before the court, circumstantial or direct, supporting this ground, was wrong.

[41] Further submissions were that the State sought the Appellant's incarceration for fear he might influence witnesses, solely because he resided in the same community as the witnesses and was the stepfather of the complainant, being married to her mother. This, it was submitted, was an incorrect approach, as there was no evidence that he had attempted, or would attempt, to influence any witnesses.

[42] Mr Snyman, for the State, repeated that the Appellant would influence the state witnesses and that the Magistrate's finding was correct. The Appellant was held in high esteem in the Piketberg and Berg River Municipality, and therefore,

he would use his influence, as well as that of the biological mother of the child, to intimidate or interfere with witnesses.

[43] I have considered these submissions and was of the view that the Magistrate attached too much weight to these factors, which seem to suggest that the Appellant, because of his connection with high esteemed members of the community, may go in cohort with these individuals to influence witnesses. This finding, however, was not supported by evidence and constituted a speculative leap rather than a reasoned inference grounded in objective facts.

[44] Section 60(4)(c) of the CPA requires proof of a real likelihood of interference with witnesses. Such a likelihood must be established on the basis of concrete conduct or demonstrable facts. In my view, the mere existence of positive community standing or associations with respected individuals does not, without more, translate into a propensity to obstruct the administration of justice.

[45] The evidence placed before the court a quo was deposed to by pastors, a school principal/educator, senior community members and public office-bearers, all of whom provided letters/sworn testimonies regarding the Appellant's character and contribution to society. These deponents were independent witnesses; some took an oath giving their evidence by way of affidavit and must have had a full appreciation of the legal consequences of false testimony.

[46] To suggest, in the absence of any evidence, that the Appellant may utilise his relationship with such individuals to influence witnesses not only amounted

to conjecture but also carried the troubling implication that these community leaders were themselves susceptible to manipulation or prepared to compromise their integrity.

[47] Moreover, to treat positive community relationships as a risk factor is to invert the logic of bail jurisprudence. Good character, social accountability and respected community ties are ordinarily regarded as stabilising factors that mitigate, rather than heighten, the risk of unlawful conduct. To hold otherwise would mean that the more responsible and socially integrated an accused person is, the greater the perceived danger he poses — an approach that is neither rational nor consistent with constitutional values.

[48] In the circumstances, the Appellant's ties with principled and respected community members and being a responsible husband and stepfather ought properly to have been regarded as reducing the likelihood of interference with the administration of justice. The Magistrate was incorrect to find otherwise.

[49] Furthermore, the Appellant was described in various witness affidavits as a responsible stepfather and caregiver, deeply involved in the well-being of children and vulnerable youth. This profile remained fundamentally incompatible with the suggestion that he posed a danger to the integrity of the judicial process.

[50] The Appellant's role as a caring stepfather and a supportive spouse demonstrated responsibility and moral restraint, not a disposition to interfere with witnesses.

[51] In my view, it was incorrect for the Magistrate to also regard the relationship between the Appellant, his wife, and the complainant as a risk factor, suggesting he might interfere with witnesses.

[52] The overwhelming community support shown, I found, to be wholly inconsistent with the notion that the Appellant would act in a manner that subverts justice. A person who has earned the trust of almost an entire community over many years is not reasonably likely to jeopardize that standing by interfering with witnesses.

**With regards to Section 60(4)(d) - allegation that there is a likelihood he will undermine or jeopardize the objectives or the proper functioning of the criminal justice system, including the bail system.**

[53] Mr Filton submitted that the Magistrate erred in finding that the Appellant had done nothing in response to the report made by the complainant, alleging sexual abuse by her paternal uncle. The Appellant's evidence was that he informed the mother of the child, his wife, who confirmed this in her affidavit.

[54] The issue regarding the Appellant's SAP69, which minimized his previous convictions, was a mere error; he did not dispute that he had previous convictions.

[55] Mr Snyman submitted that the investigating officer testified before the Magistrate, showing that the release of the Appellant on bail would bring the criminal justice system into disrepute and jeopardize the proper functioning of the system, and that the Appellant cannot be trusted.

[56] I agree with Mr Filton's argument; the Magistrate erred on the facts, the mother of the child confirmed that the allegations of sexual assault by a paternal uncle were reported to her by the Appellant. Therefore, there was no evidence to support the Magistrate's finding that the Appellant had been withholding reporting this serious crime to reflect that he has a propensity to jeopardize the proper functioning of the justice system.

[57] Furthermore, I noted that the Magistrate also considered the Appellant's failure to disclose his previous conviction for assault with intent to cause grievous bodily harm and relied on it against him.

[58] In my view, the Appellant had disclosed his previous convictions, although the record later showed some inaccuracies. Any inconsistencies in the Appellant's disclosure of previous convictions were clarified on record by the investigating officer. There is no evidence of deliberate non-disclosure. At most, the discrepancy reflects a lapse of memory rather than an intention to mislead the court. Once the correct information was before the court, no adverse inference was justified.

**With regards to Section 60(4)(e): allegation that he might undermine public confidence.**

[59] Mr Filton submitted that the Magistrate misdirected himself to conclude that the Appellant's release would disturb public order or undermine public peace and security. The commotion that took place during the tea break of the bail application was unjustifiably considered, and the Magistrate erred in treating community sentiments as determinative and decisive in refusing bail. There was no factual or legal basis placed before the Magistrate to conclude that the Appellant would pose a threat to the public.

[60] Mr Snyman argued that the personal circumstances of the Appellant did not constitute exceptional circumstances; the Magistrate's findings cannot be faulted.

[61] In my view, the evidence reflected that the Appellant has played a meaningful role in assisting with the rehabilitation of drug-dependent youth by assisting them to access rehabilitation programmes and offering them employment in the hair salon. Therefore, his contribution to crime prevention and social stability is tangible and measurable.

[62] Public confidence in the criminal justice system is not enhanced by the automatic refusal of bail, but by decisions that are rational, fair, and grounded in evidence.

[63] Detaining an accused who enjoys overwhelming community confidence, who has a proven record of social upliftment, and who has no history of violence or intimidation, risks creating the very perception of injustice which Section 60(4)(e) seeks to prevent. A single conviction for assault with intent to cause grievous bodily harm does not make him violent.

[64] His continued incarceration would have deprived the community of a positive influence and a stabilizing presence. Far from promoting public confidence, such detention may have been perceived as disproportionate and unjust. In my view, the Magistrate's decision under the above provision was wrong as he failed to weigh in the above factors for consideration in the application of his discretion.

## The Charges

[65] There is no obligation on the part of the applicant for bail to challenge the strength of the state's case. It is not necessary to do so in order to establish exceptional circumstances.

[66] Exceptional circumstances warranting the release of an applicant on bail can be established without challenging the strength of the State's case.<sup>9</sup> However, if an accused person challenges the strength of the State's case against him in the bail proceedings, then in that event the challenge attracts a burden of proof to show that there is a real likelihood that he will be acquitted at trial.<sup>10</sup>

[67] In this instance, the Appellant did indeed seek to challenge the strength of the State's case. His argument for a finding that exceptional circumstances existed, entitling him to be released on bail, relied inter alia on the assertion that the State's case was not as strong as alleged. He submitted that there was no medical evidence to support the alleged offence, the discrepancies in the evidence of State witnesses, a lack of direct evidence, uncertainty regarding the dates on which the alleged offences were committed, and that much of the evidence was speculative and the complainant was a single witness.

[68] Further, his personal circumstances, together with the fact that he would not evade trial and that he would not interfere with witnesses, established exceptional circumstances as required. However, in order to enable the court to

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<sup>9</sup> *S v Mathebula* 2010 (1) SACR 55 (SCA) at para 12.

<sup>10</sup> *S v Mathebula* (supra).



conclude that the State's case was weak or that he was likely to be acquitted, he was required to adduce convincing evidence to establish this.<sup>11</sup>

[69] This he did; the Magistrate in his judgment even made a finding that he did not have enough evidence before him to determine the strength of the State's case against the Appellant and therefore would not be able to determine whether, if released, he would attempt to evade trial or commit further offences. Refusing bail under the circumstances where the strength of the State's case was in doubt was a misdirection by the Magistrate.

[70] In that regard, I find that the court a quo placed undue and disproportionate emphasis on the provisions of Section 60(4)(c),(d) and (e) of the Act, without properly weighing these considerations against the overwhelming personal, social and community circumstances of the Appellant, as well as the substantial prejudice he stands to suffer should bail continue to be refused. The possibility of a conviction remains doubtful.

[71] I also examined several factors that highlighted errors in the Magistrate's decision.

### Gender Based Violence

[72] Mr Snyman made submissions with regard to Gender Based Violence ("GBV") cases, noting that such cases remain a pandemic in the country, in support of the Magistrate's decision. He submitted that this court needed to be sensitive to these considerations and should dismiss the appeal.

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<sup>11</sup> *S v Mpulampula* (supra) at 135h; *S v Mathebula* (supra).

[73] Mr Filton replied that the constitutional rights of an accused person must not be weighed out of the scale of justice in matters of this nature, even though the country is faced with a number of GBV cases, which he agreed needed to be harshly dealt with.

[74] It is so that the Magistrate also took into consideration the circumstances in the country regarding GBV cases. A signed petition was handed in court against the bail application, and there was also a petition supporting that the court grant bail.

[75] In my view, protecting complainants in GBV matters is essential, but that protection must be achieved through evidence-based safeguards, such as appropriate bail conditions, rather than through the denial of bail based on hypothetical possibilities.

[76] The presumption of innocence remains a cornerstone of our criminal justice system. Sensitivity to the complainant must coexist with fairness to the accused. In my view, one cannot be sacrificed for the other, and the facts of each case will differ and must be judged accordingly.

[77] The Magistrate was enjoined, in considering the interests of justice in terms of Section 60(4), in particular (c), (d) and (e), not to unduly elevate their significance but to assess them in conjunction with the factors contained in Section 60(9). A failure to do so would conflict with the jealously guarded right to freedom entrenched in our Constitution.<sup>12</sup> Moreover, it remained necessary for the court to enquire as to whether the ‘likelihood’ referred to

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<sup>12</sup> Section 35(1)(f).

in Section 60(4) existed, even if exceptional circumstances were found.<sup>13</sup> In my view, and as reflected above, such a likelihood did not exist.

### Evidence by affidavit

[78] The Magistrate made an adverse finding against the Appellant for presenting his bail application by way of affidavit.

[79] It has been held in a plethora of cases that bail proceedings are *sui generis* and are not subject to the strict rules of trial procedure.<sup>14</sup> Evidence may lawfully be placed before the court by way of affidavit.<sup>15</sup>

[80] There is no legal requirement that evidence in bail proceedings must be given *viva voce*. The court is enjoined to consider the totality of the information placed before it, whether presented orally or by affidavit, in determining whether the interests of justice permit the granting of bail.<sup>16</sup>

[81] Having held the use of affidavits against an accused amounted to penalising him for exercising a lawful procedural choice and was inconsistent with the constitutional guarantees of fairness, dignity and equality before the law. Bail proceedings are concerned with the assessment of risk, not with the determination of guilt.<sup>17</sup>

[82] An accused person cannot be prejudiced for exercising a lawful procedural right.<sup>18</sup> Findings in bail proceedings must be grounded on facts and

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<sup>13</sup> *S v Mohammed* 1999 (2) SACR 507 (C).

<sup>14</sup> *S v Dlamini; S v Dladla; S v Joubert; S v Schietekat* 1999 (4) SA 623 (CC).

<sup>15</sup> *S v Botha en 'n Ander* 2002 (1) SACR 222 (SCA); *S v Hlongwa* 1990 (4) SA 375 (N).

<sup>16</sup> *S v Mathebula* 2010 (1) SACR 55 (SCA).

<sup>17</sup> *S v Dlamini* supra; *S v Rudolph* 2010 (1) SACR 262 (SCA).

<sup>18</sup> *S v Acheson* 1991 (2) SA 805 (Nm).

not conjecture.<sup>19</sup> The Appellant used an admissible tool to present his evidence by way of affidavit.

[83] Accordingly, the reliance on affidavits in the present matter was entirely proper and should not have been treated as a factor counting against the Appellant. There exists no legal basis upon which a recognised and lawful procedural method can be transformed into an adverse consideration in deciding whether the interests of justice permit the granting of bail.

[84] Therefore, it was my view further that the Magistrate also misdirected himself in making an adverse decision against the accused due to his mere election to proceed by affidavit.

#### Alternative address and bail conditions

[85] The Magistrate further failed to consider that any perceived concern relating to the Appellant's place of residence or his presence in the area where the alleged incident occurred could easily and effectively have been addressed through appropriate and stringent bail conditions. The Magistrate, in his decision on the point of financial harm and alternate address, held that:

“The defence in the alternative argued that the Court must consider bail and release the accused and order that the accused resides in Citrusdal. This argument does not make any sense. Even if the Court does consider bail and orders that the accused resides in Citrusdal until finalisation of this matter, the accused and his family would in any event suffer financially as the accused will not be able to attend his barbershop and commence employment.”<sup>20</sup>

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<sup>19</sup> *S v Bruintjies* 2003 (2) SACR 575 (SCA).

<sup>20</sup> Page 27 line 18-25, Bail proceedings Judgment dated 2025-10-29.

[86] I believe conditions such as restricting the Appellant's movement, requiring him to live at an alternative address, and allowing access only for work would have effectively managed any risk without needing continued detention.

[87] Bail conditions exist precisely to balance the protection of the administration of justice with the preservation of the accused's liberty. The failure to consider such less restrictive measures constituted a material misdirection, as incarceration should always remain a measure of last resort.

#### Financial prejudice

[88] In addition, and perhaps lastly, the court a quo did not properly engage with the extensive and concrete financial prejudice flowing from the accused's continued detention. The Appellant is employed as a manager his incarceration placed him losing his employment and therefore his salary. This was not a speculative harm but a real and imminent consequence, supported by evidence placed before the court. His wife already had to sell her own business to pay for legal fees and to support the household.

[89] The Magistrate made a cursory note on the financial prejudice issue, stating that:

“This Court failed to agree with the defence that if bail is denied, the accused and more specifically his family will suffer financially.”<sup>21</sup>

[90] The Magistrate failed to engage the evidence placed before him on this, which included, amongst other things, that the closure or disruption of the

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<sup>21</sup> Page 27 line 15-17, Bail proceedings Judgment dated 2025-10-29.

Appellant's business had far-reaching consequences beyond the Appellant himself, as it would affect:

- a. His minor children and his wife, who stood to suffer severe financial and emotional hardship as a direct result of the loss of income.
- b. His sister, who has minor children, is partially dependent on him; she lost her husband recently and would likewise be prejudiced.
- c. Furthermore, the Appellant employs several individuals whose livelihoods, and the well-being of their families, were dependent on the continuation of his business. The refusal of bail, therefore, affected not only the Appellant but a wider circle of innocent persons who relied on him for survival.

[91] The cumulative effect of this financial and social prejudice was not properly weighed against the speculative risks relied upon by the Magistrate.

[92] The interests of justice require a proportional response. Where risks can be managed through tailored bail conditions, and where detention would result in widespread and irreversible harm to innocent dependants, continued incarceration becomes excessive and unjust. In my view, that is the position in this case.

[93] In that regard, I found that the Magistrate misdirected himself by preferring detention over release with reasonable and practical bail conditions, and by failing to attach due weight to the substantial financial hardship that would be suffered by the Appellant, his family, his dependants, his employees and their families.

[94] In my view, this omission constituted a further misdirection, warranting interference with the refusal of bail.

[95] Another factor that the Magistrate failed to carefully consider was that this matter was already affecting the Appellant's health. His hypertension required medical attention while he was in custody. This medical condition should have been taken into account, as it persuaded this court that it was in his interest to be released on bail.

### **CONCLUSION**

[96] In considering the evidence presented in the court *a quo* and the reasoning of the Magistrate, I am of the view that he misdirected himself materially on both the facts and the law.

[97] In these circumstances, and in terms of Section 65(4) of the CPA, this court is empowered to set aside the decision of the Magistrate and to substitute the decision that the lower court should have given.

[98] Having considered the evidence led by the accused and the state in the court *a quo*, I am satisfied that the accused discharged the onus of establishing exceptional circumstances and that the interests of justice permit his release on bail.

[99] I was further satisfied that the basis of opposition by the State would be adequately addressed by the imposition of appropriate bail conditions.

[100] These are the reasons that led this court to grant the order marked X, as stipulated above.

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**MAGONA-DANO, AJ  
ACTING JUDGE OF THE  
HIGH COURT OF SOUTH  
AFRICA, WESTERN CAPE  
DIVISION, CAPE TOWN**

**Appearances:**

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|---------------------|---------------------------------------|
| For the Appellant:  | Adv. M Filton                         |
| Instructed by:      | Borchards Attorneys Inc.              |
| For the Respondent: | Adv. L Snyman                         |
| Instructed by:      | DPP (Director of Public Prosecutions) |