



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

JUDGMENT

Reportable / Not Reportable

Case no: A19/2026

In the matter between:

C[...] D[...] S[...]

First Appellant

T[...] D[...] S[...]

Second Appellant

and

THE STATE

Respondent

Coram: Honourable Acting Justice SI Smith

Heard: 19 February 2026

Delivered: 20 February 2026

Neutral citation: The State *versus* C[...] D[...] S[...] & another (Appeal Case no A19/2026) [2026] ZAWCHC ... (19 February 2026)

This judgement is delivered electronically by circulation to the parties' legal representatives' email addresses and will be deemed to have been delivered on 20 February 2026.

ORDER

The appeal against the refusal of bail for the first and second Appellant is dismissed.

JUDGMENT

INTRODUCTION

[1] This is an appeal against the refusal to grant bail to the Appellants by the District Court Magistrate, Cape Town.

[2] The Appellants are charged with 25 counts. The State alleges that the Appellants committed sexual and pornographic acts with their biological daughters, aged 3 and 8 years old, during February 2020 and April 2025. The charges include rape, attempted sexual assault, making of and distributing pornographic videos of the children, taking of nude photographs of the children, sexual grooming, using a child for child pornography, compelled self-assault /masturbation, compelling a child to

witness self-masturbation, possession of child pornography and abuse or neglect of a child.

[3] It is common cause that the Appellants are charged with offenses that fall within the ambit of Schedule 6. The Appellants are therefor subject to Section 60(11)(a) of the Criminal Procedure Act 51 of 77 (CPA), which provides that where an accused is charged with an offence referred to in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, haven been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release.

[4] The appeal against the refusal of the Appellants application for bail comes before this court in terms of section 65(4) of the CPA which reads:

“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 is wrong, in which event the Court or Judge shall give in its opinion what the Lower Court should have given”

[5] Section 60(4) of the CPA reads as follows:

“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, any person against whom the offense in question was committed, or any other particular person or will commit a Schedule 1 offense;

- (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”*

The case for the Appellants is premised on the fact that the Magistrate erred in concluding that:

1. both Appellants did not discharge the onus on them to prove that there are exceptional circumstances that, in the interest of justice, permit their release.
2. there is a likelihood that both Appellants will endanger the safety of their two minor children.
3. that there is a likelihood that both Appellants attempt to evade their trial.
4. that there is a real likelihood that the appellants would influence or intimidate the witnesses, especially the two minor children.
5. the Appellants will jeopardise the proper functioning of the criminal justice system.

FACTS

[6] The Federal Bureau of Investigation (FBI), during 2025, alerted the South African Authorities that two adults linked to Dizzy's Pub and Restaurant in Camps Bay are involved in child pornography images distributed on websites. The images identified the two Appellants and their minor daughters (MV1 and MV2) engaging in explicit sexual conduct.

On the 10th of June 2025 the South African Police executed a search warrant at the home of the Appellants. Laptops, cellular phones and other evidence were seized. The Appellants and their minor children were identified from the images received from the FBI.

Due to some of the images found on the devices during the search, the two Appellants were arrested and brought before court on 12 June 2025. The children were placed in a foster home for a short while, until the Children's Court, Cape Town, placed them in the care of a safety parent on 22/6/2025. The safety parent is the sister of the second Appellant. In the judgement, Magistrate V. Duimelaar, ordered that there will be no contact whatsoever between the Appellants and their two minor daughters (MV1 and MV2) ¹

[7] The Appellants contended that the refusal of bail is based on insufficient evidence, and undue consideration of community perceptions, the well-being of the minor children, the health issues of both the Appellants, the strength of the States case, the Appellants status in respect of their income and employment and the ability and willingness of the Appellants to stand their trial. They further contended that this

¹ Judgement of Magistrate V. Duimelaar, Children's Court, Cape Town, delivered on 22/06/2025 p. 597 of Bundle

was at the expense of their constitutional rights to the presumption of innocence and liberty.

Applicable law and analysis

[8] To determine if the Applicants have, on a balance of probabilities, established the existence of extraordinary circumstances, the court must consider the facts of the specific case. Facts that may be sufficient in one matter, may not be sufficient to justify the release on bail in another matter.

[9] The court hearing the appeal should be at liberty to undertake its own analysis of the evidence when considering if the onus placed on the Appellant by Section 60(11) of the CPA, was discharged. ²

[10] The “*exceptional circumstances*” as referred to in Section 60(11)(a), is generally speaking, something unusual, extraordinary, remarkable, peculiar or simply different.³ All the evidence has to be considered to establish if exceptional circumstances are present in a specific case.

[11] The exceptionality of the circumstances must persuade the court that it would be in the interest of justice to release the accused on bail. ⁴

[12] The Court seized with the bail application cannot evaluate and make a finding on the evidence of the matter. That is the duty of the trial court. However, during the bail hearing, it is imperative for the court to hear the State on the merits, to determine

² S v. Porthen and Others 2004(2) SACR 242(C) at p. 248(e) and 249 (c - e)

³ S v. Petersen 2008(2) SACR 355 p. 370(j)

⁴ Petersen p. 371

the strength of the States case. The State, in this matter, is relying on witnesses, real evidence (video and photographs) and medical evidence on the gynaecological examination of MV1 and MV2. The medical evidence in respect of both MV1 and MV2 supports the allegations made by the State. The State has a strong prima facie case against both the Appellants.

[13] The charges against the two Appellants, by the mere nature thereof, will induce a sense of shock and public outcry, nationally and internationally.

[14] Both the Appellants have a fixed address. The first Appellant is gainfully employed. Both the Appellants have strong family ties in South Africa. They have a multitude of friends in South Africa and abroad. Despite their positive personal circumstances, they are facing charges of a very serious nature that is sanctioned with life imprisonment. The travelling documents of the Appellants was at the time of the bail hearing in the possession of their Legal Counsel. Even if their travelling documents are handed over to the authorities, the nature of the charges against the Appellants will always be an incentive to evade their trial. They have the financial means to do so.

[15] The real evidence that the State is relying on is evidence that is accessible from an electronic device like a cellular phone or a laptop. Access to these sites can be obtained remotely.

[16] Due to the biological relationship between the Appellants and MV1 and MV2, given their young age and the fact that they are placed with a family member, there is a real likelihood that the Appellants, if they are released on bail, will influence and, or intimidate the State witnesses and place their safety at risk.

[17] The medical condition of both the Appellants was properly vetted during the bail hearing. Pollsmoor prison is aware and attending to the medical issues.

[18] The contention by Counsel for the defense that the probation officer (Mazeka) reported positively on contact between the Appellants and their minor daughters, is flawed. It is very clear from Mazeka's first report ⁵ that it will not be in the best interest of the children to return to the care of the Appellants. During the bail hearing the Magistrate requested Mazeka to interview MV1 and MV2 again in respect of contact with the Appellants.

[19] In Mazeka's final report ⁶, requested by the bail Court, she advised that any contact, between the Appellants and MV1 and MV2, that the Bail Court may consider, be approached with "*extreme caution*". It was not her recommendation that contact be established. Mazeka also advised that the children miss their parents, but that due to their innocence and young age do not understand the seriousness of the offenses perpetrated against them.

[20] Maseka further states in her final report that contact between the appellants and MV1 and MV2, "*may further contribute to possible trauma and skewed development potential as they might be further exposed to emotional, manipulated and distorted norms around nudity*".

[21] The best interest of a child is paramount, but not absolute. The relationship of children's rights in relation to other rights contained in the Bill of Rights may require that their ambit be limited.⁷

⁵ Exh "J" dated 24/06/2025, p 518 of Bundle (2)

⁶ Exh "P" dated 08/09/2025, p 584 of Bundle (2)

⁷ S v M 2007(2) SACR 539 CC

[22] This court is seized only with the appeal against the findings of the District Court Magistrate, Cape Town.

[23] I need to mention that this Court, as the Upper Guardian of minor children, find the allegations of the State, in respect of the behavior of the safety parent, (referred to in the judgment of the Children's Court and in the Bail Application), of grave concern.

[24] It is imperative that the National Prosecuting Authority, in conjunction with the South African Police, the investigating officer and social worker Mazeka, diligently monitor the situation to ensure not only the safety and well-being of MV1 and MV2, but also to ensure that the investigation by the authorities seized with bringing this matter to trial, is not impeded.

[25] The real evidence handed to this Court in a sealed envelope on 18 February 2026, was not viewed. A description thereof was given during the bail hearing. The sealed envelope was handed back to Advocate Kortje of the Office of the Director of Public Prosecutions for safekeeping.

[26] This Court is not persuaded that the Magistrate hearing the bail application, has exercised her discretion wrongly by refusing bail for both the Appellants. The Appellants have not discharged the onus placed on them by Section 60(11) of the CPA. This Court not likely to interfere with the refusal of bail for the first and second Appellant.

ORDER

[27] The appeal against the refusal of bail for the first and second Appellant is dismissed.

S I SMITH

ACTING JUDGE OF THE HIGH COURT

Appearances

For the Appellant/s: Mr. William Booth

For the Respondent: Adv. EA Kortje