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

Case No: A314/2025
District Court (Cape Town) Case No: 16/530/2025

In the appeal between:

G[...] P[...]

Appellant

and

THE STATE

Respondent

Hearing: 19 February 2026

Judgment: 3 March 2026

Summary: Bail Appeal; Schedule 6; whether exceptional circumstances in terms of section s60(11)(a) of the Criminal Procedure Act 51 of 1977 established; whether ordinary circumstances established to an exceptional degree.

ORDER

1. The appellant's appeal against the refusal of bail is upheld.
2. The decision of the Court *a quo* is set aside and is substituted with an order in the following terms:

"The accused shall be released on bail on payment of an amount of R10 000.00 on the following conditions:

1. The accused attends court on the dates ordered by the court and shall remain in attendance until the case has been finalised unless otherwise ordered by the court.
2. The accused shall not interfere with, or have any contact or communication with, directly or indirectly, the complainant or any of the state witnesses.
3. The accused shall not interfere, directly or indirectly, with the investigation of the charges against him.
4. The accused shall not reside at or attend at 2[...] M[...] Road, Tijgerhof, Milnerton, Cape Town, and shall instead reside at alternative accommodation which is presently The C[...] Hotel, 3[...] H[...] Street, Cape Town.
5. The accused shall not change his residential address without being authorised to do so by order of the Magistrates' court.
6. The accused's undertaking not to apply for a passport is recorded.
7. The accused shall report to the charge office of the South African Police Service Station in Cape Town Central every Monday and Friday between the hours of 06h00 and 19h00.
8. The investigating officers are directed to furnish the station commander of the South African Police Service Station in Cape Town Central with a copy of the court order herein.
9. The station commander of the South African Police Service Station in Cape Town Central or any person designated thereto by him/her, is directed to immediately inform either of the investigating officers should the accused default in reporting as ordered above.
10. The accused may not leave the jurisdictional area of the City of Cape Town, save with the written permission of either of the investigating officers in this matter or, failing that, the court.
11. Bail may be revoked by the court if the accused breaches any of these conditions."

JUDGMENT

Handed down by email to the parties on 3 March 2026

Judgment handed down electronically by circulation to the parties' legal representatives by email and released to SAFLII.

KANTOR, AJ:

1. The appellant is charged with rape, sexual assault and assault with the intent to do grievous bodily harm. The complainant is his daughter.
2. He applied for bail in the Cape Town Magistrates' Court. The application was dismissed on 28 October 2025.
3. He appeals against that decision to this court.
4. This is a difficult matter which brings into sharp focus the balancing of two highly important, but in this context, competing, interests. As held by the Constitutional Court in S v Dlamini & Others 1999 (2) SACR 51 (CC) at paragraph 64, it is an exercise which involves "... the balance between the liberty interests of the accused and the interests of society in denying the accused bail."
5. In the context of the charges in this matter, the interests of society cannot be under-stated. Rape and gender-based violence are serious and heinous crimes permeating our society in the form of an unrelenting and everyday scourge. One need go no further than comments of the Court *a quo* in its judgment: that what it faces on a daily basis was '*shocking*', that it '*happens from the age of a toddler up*

to the age of the last complainant was 84 when raped by her own child and murdered thereafter’ and that ‘there is something wrong with our society.’ This instils a disturbing sense of shock and distress. In S v Chapman 1997 (3) SA 341 (SCA) at 344J, it was held that “Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.”

6. As explored in some detail below, while bail has been made all the more difficult to be granted in respect of these serious offences, it has not been outlawed. Personal liberty is a cherished right protected in our law. At the individual level, it must be considered, on all the cumulative circumstances of the case, in balance with the interests of society. In this regard, see S v Branco 2002 (1) SACR 531 (W) at 533.

The statutory provisions in respect of bail

7. Section 35(1)(1)(f) of the Constitution Act of 1996 provides as follows:

“Everyone who is arrested for allegedly committing an offence has the right ... (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.”
8. Section 60(4) of the Criminal Procedure Act 51 of 1977 (‘the CPA’), to be applied with the factors in section 60(5) to 60(8A) thereof, provides as follows:

“(4) 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 offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;

- (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;"

9. Section 60(9) of the CPA provides as follows:

- "(9) In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely—
- (a) the period for which the accused has already been in custody since his or her arrest;
 - (b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
 - (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;
 - (d) any financial loss which the accused may suffer owing to his or her detention;
 - (e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;
 - (f) the state of health of the accused; or
 - (g) any other factor which in the opinion of the court should be taken into account."

10. Section 60(11)(a) of the CPA provides as follows:

- "Notwithstanding any provision of this Act, where an accused is charged with an offence —
- (a) 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, having 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; [my underlining]

11. Schedule 6 of the CPA sets out the offences which attract the evidentiary burden for an accused in respect of bail provided for in section 60(11)(a) of the CPA. It is common cause that the appellant is charged with an offence contained in Schedule 6 of the CPA. In my view, that common cause position is correct. The consequence of this is that section 60(11)(a) of the CPA is implicated and the onus was on the appellant to establish exceptional circumstances in order for bail to be granted.
12. This means that bail is only to be granted if none of the section 60(4) 'likelihoods' are established, the appellant satisfies the onus on a balance of probabilities of showing that exceptional circumstances exist and that it is in the interests of justice for bail to be granted (section 60(11)(a) of the CPA). S v Petersen 2008 (2) SACR 355 (C) at paragraph 7, Rudolph v S (484/2009) [2009] ZASCA 133; 2010 (1) SACR 262 (SCA) [2010] 2 All SA 178 (SCA) (30 September 2009) at paragraph 9.

The meaning of exceptional circumstances for the purposes of section 60(11)(a)

13. This is core to this appeal.
14. In Petersen it was held at paragraph 56:

"In the context of section 60(11)(a) the exceptionality of the circumstances must be such as to persuade a court that it would be in the interests of justice to order the release of the accused person. This may, of course, mean different things to different people, so that allowance should be made for a certain measure of flexibility in the judicial approach to the question. See *S v Mohamed* 1999(2) SACR 507 (C) at 513f-515f. In

essence the court will be exercising a value judgment in accordance with all the relevant facts and circumstances, and with reference to all the applicable legal criteria."

[my underlining]

15. As to the exercise of a value judgment, see also:

15.1. *S v Sithole and Others* (7032/11) [2011] ZAKZDHC 36; 2012 (1) SACR 586 (KZD) (19 August 2011) at paragraph 20:

"The concept 'exceptional circumstances', which has not been defined, has meant different things to different people. In my view, what is expected of a court is to exercise a value judgment in accordance with all the evidence and applying the relevant legal criteria."

15.2. *S v Botha en 'n Ander* (336/01) [2001] ZASCA 146; [2002] 2 All SA 577 (A); 2002 (2) SA 680 (SCA); 2002 (1) SACR 222 (SCA) (30 November 2001) at paragraph 19:

"Dit is vir die hof om in elke saak in die besondere omstandighede van daardie saak 'n waarde-oordeel te vel of die bewese omstandighede van so 'n aard is dat dit as buitengewoon aangemerkt kan word." [my translation: It is for the court in each case in the particular circumstances of that case to make a value judgment whether the proven circumstances are of such a nature that they can be regarded as exceptional."]

15.3. *S v Porthen* 2004 (2) SACR 242 (C) at paragraphs 12 and 13.

16. In *Dlamini* the Constitutional Court held as follows at paragraph 79 in regard to the above statutory provisions:

"Section 60(11)(a) therefore does not create an onus where nothing of the kind existed before. It describes how it is to be discharged, and adds to its weight. As in the case of reliance on any other right in the Bill of Rights, if accused persons wish to rely on the provisions of s 35(1)(f), they must bring themselves within its ambit ... The court must be satisfied that 'the interests of justice permit' the release from detention ..."

[my underlining]

17. The effect of section 60(11)(a) of the CPA is that the applicant for bail must adduce evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release. As held in Dlamini at paragraph 64:

“These are factors, therefore, which in the past would have been considered in determining whether bail should be granted. However, s 60(11)(a) does more than restate the ordinary principles of bail. It states that where an accused is charged with a sch 6 offence, the exercise to be undertaken by the judicial officer in determining whether bail should be granted is not the ordinary exercise established by sub-ss 60(4) - (9) (and required by s 35(1)(f)) in which the interests of the accused in liberty are weighed against the factors that would suggest that bail be refused in the interests of society. Section 60(11)(a) contemplates an exercise in which the balance between the liberty interests of the accused and the interests of society in denying the accused bail, will be resolved in favour of the denial of bail, unless “exceptional circumstances” are shown by the accused to exist. This exercise is one which departs from the constitutional standard set by s 35(1)(f). Its effect is to add weight to the scales against the liberty interest of the accused and to render bail more difficult to obtain than it would have been if the ordinary constitutional test of the “interests of justice” were to be applied.”

18. The effect of the provision is that there is not an outright ban on bail for Schedule 6 offences: Dlamini at paragraph 74.
19. Exceptional circumstances plainly can include relevant and material circumstances beyond those covered by section 60(4) to (9), but can also reside within the circumstances enumerated therein, as held in Dlamini at paragraph 76:

“Likewise I do not agree that, because of the wide variety of “ordinary circumstances” enumerated in sub-ss (4) to (9), it is virtually impossible to imagine what would constitute “exceptional circumstances”, and that the prospects of their existing are negligible. In requiring that the circumstances proved be exceptional, the subsection does not say they must be circumstances above and beyond, and generically different from those enumerated.”

20. ‘*Exceptional circumstances*’ can therefore be found in the ‘*wide variety*’ of factors ‘*enumerated in sub-ss (4) to (9)*’. The description ‘*wide variety*’ is, in my view, most suitable: there are fifty specific instances enumerated within the rubric of sections 60(4) to (9).¹

21. Rudolph at paragraph 9 (citing Dlamini at paragraphs 64, 76 and 78 and Botha at paragraph 19) holds as follows:

“The section places an onus on the appellant to produce proof, on a balance of probability, that ‘exceptional circumstances exist which in the interests of justice permit his’ release. It ‘contemplates an exercise in which the balance between the liberty interests of the accused and the interests of society in denying the accused bail, will be resolved in favour of the denial of bail, unless “exceptional circumstances” are shown by the accused to exist’. Exceptional circumstances do not mean that ‘they must be circumstances above and beyond, and generally different from those enumerated’ in ss 60(4) to (9). In fact, ordinary circumstances present to an exceptional degree, may lead to a finding that release on bail is justified.”

22. This means that circumstances beyond those enumerated in sections 60(4) to (9) do not have to be established for exceptional circumstances to be established. In this regard, the above *dictum* of the Supreme Court of Appeal establishes that “... *ordinary circumstances present to an exceptional degree will constitute exceptional circumstances.*”

23. What this sentence means, in the context of the other authority quoted above (and further authority dealt with below), is, in my view, a legal lynchpin of this appeal, as will appear from the discussion in this section and the evaluation below.

¹ This count, which is mine, includes each of the provisions below the letter level (eg (a)), such as numerals (eg (i)) and double letters (eg (aa)) as instances and excludes ‘*any other factor*’ instances at the end of some of the sub-sections.

24. As I see it, that sentence can mean evidence through two possible prisms relevant to this matter. The first is uncontroversial, namely that a particular (or more than one) ordinary circumstance of the specific instances enumerated is present to an exceptional degree. An obvious example is the state of health of an accused which may require 24-hour hospitalisation which cannot happen in prison. Another is whether the accused's business which employs fifty persons would collapse in his absence. This is plainly a value judgment to be made by the court.
25. The second possible prism was contentious in argument in this appeal, namely whether the cumulative effect of the existence of a sufficient extent (in overall effect) of the ordinary circumstances in the above sense may reach a point at which it is 'ordinary circumstances present to an exceptional degree'. This will be referred to as the '*Cumulative Effect*'. The words *overall effect* are used because I do not think that this can be a crude scoreboard counting exercise but, ultimately, a value judgment. Some factors *per se* may be of less materiality than others in a particular case or may on the facts thereof be exceptional to much greater degree and almost on their own be decisive of the matter. All of this, too, would plainly be a value judgment to be made by the court.
26. There is authority which appears to be in support of the Cumulative Effect which will now be considered in some detail because it was challenged in argument.
27. Amongst my research prior to the hearing of the matter, I came across the matter of *Makibi v S* (C&R: 332/2010) [2010] ZAECHC 127 (17 December 2010). I provided both counsel with copies of that judgment shortly before the hearing.

Makibi is a matter in which a refusal of bail was set aside on appeal in relatively similar circumstances (there are some differences) and also involving a charge of the rape of a daughter by her father (for another similar matter see Gumbo v S (A130/2017) [2017] ZAGPJHC 147 (12 May 2017)). It was held as follows at paragraph 6 thereof:

“In evaluating the evidence, there can be in my view be little doubt that the magistrate has misdirected herself by only concentrating to find such circumstances over and above those enumerated in s. 60(4)-(9), despite the fact that the evidence clearly established that there was no likelihood that any of the consequences contemplated in s.60(4) would follow upon the release of the appellant on bail.” [my underlining]

28. The words I consider to be key are those underlined. They support the Cumulative Effect mentioned above. The State Advocate submitted that the court was wrong in holding as it did and that the meaning should be limited to the first described above. It was also submitted that the courts should guard against (1) creating a reverse onus and against (2) the distinction between the different tests for bail for Schedule 5 and Schedule 6 offences becoming illusory. I do not see how the Cumulative Effect could result in a reverse onus because, if it applies, it would nonetheless remain the onus of an accused to prove the cumulative effect of ordinary circumstances to an exceptional degree. The Schedule 5 and Schedule 6 point as contended by the State Advocate is more forceful and will be considered further below.

29. Petersen at paragraph 56, quoted above, includes the following: “In the context of section 60(11)(a) the exceptionality of the circumstances ... allowance should be made for a certain measure of flexibility in the judicial approach to the question ... In essence the court will

be exercising a value judgment in accordance with all the relevant facts and circumstances, and with reference to all the applicable legal criteria.” [my underlining]

30. The recognition of a cumulative effect is to be found in S v Bruintjies 2003 (2) SACR 575 (SCA) in which it was held at paragraph 6:

“What is required is that the court consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify his or her release. What is exceptional cannot be defined in isolation from the relevant facts, save to say that the legislature clearly had in mind circumstances which remove the applicant from the ordinary run and which serve at least to mitigate the serious limitation of freedom which the legislature has attached to the commission of a schedule 6 offence.” [words underlined by me]

31. Similarly, in S v DV & others 2012 (2) SACR (GNP) at paragraph 8, the cumulative effect of various circumstances constituted exceptional circumstances.
32. In Hendricks v S CPD case no A714/98 1 October 1998 (unreported) this court held as follows:

“[It was] submitted on behalf of the accused that, in determining whether or not exceptional circumstances have been shown, the cumulative effect of all the circumstances of each particular case must be evaluated and not each individual circumstance, as was done by the Magistrate in the present case. I agree with this submission. In my judgment it is the only sensible and logical approach to the provision in question. It recognises the fundamental fact that, although a series of individual factors, taken in isolation, may not be exceptional, it may well be exceptional to encounter them simultaneously and collectively in combination.”²

² The judgment was in Afrikaans. The translation is that of the author of Bail A Practitioner's Guide 3ed Johan van der Berg at page 100 (the Afrikaans text is quoted in footnote 160 at page 100 thereof). Court staff located the judgment from the court file, for which I am grateful to them. The paragraph quoted began with the words “Adv Erasmus het”. Save for that, and that I would perhaps replace ‘recognises’ in the last sentence of the translation with ‘lends recognition to’, it appears to me that the translation in Van der Berg is accurate.

33. Hendricks was referred to in footnote 103 of Dlamini at paragraph 76 in which it is described as one of “... *three of the unreported judgments that were handed up, namely ... Hendriks v The State an unreported decision of the Cape of Good Hope High Court, case A714/98 (1 October 1998).*” Save for Dlamini not having the ‘c’ in Hendricks as the name is (correctly) spelt in Van der Berg, the citation of the case is the same.
34. Hendricks is a decision of this division which is direct authority for the Cumulative Effect discussed above. I am bound by it unless I consider it to be clearly wrongly decided. I consider its approach to be appropriate, correct and consistent with the above authority. Bruintjies is a decision of the Supreme Court of Appeal which I consider to be of materially the same effect. Accordingly, to consider each individual circumstance only separately or independently, as opposed to evaluating the cumulative effect of all the circumstances of each particular case and making a value judgment thereon, would be a misdirection.
35. Some further support, stated less straightforwardly, can be found in S v H 1999 (1) SACR 72 (W) in which it was held at 77f that:
- “What a court is called upon to do is to examine all the relevant considerations, not individually, but as a whole, in deciding whether an accused person has established something out of the ordinary or unusual which entitles him to relief under s 60(11)(a) of the Act.”
36. Dlamini at paragraph 74 confirmed that section 60(11)(a) does not ban bail for certain offences: “*Section 60(11)(a) does not contain an outright ban on bail in relation to certain offences, but leaves the particular circumstances of each case to*

be considered by the presiding officer. The ability to consider the circumstances of each case affords flexibility that diminishes the overall impact of the provision.” In S v Mohammed 1999 (2) SACR 507 (C) at 515f, this court commented that “Such flexibility and discretion was, I apprehend, one of the factors which saves s 60(11)(a) from constitutional invalidity.” Referring to that decision, it was held in Mququ v S (CA&R78/2019) [2019] ZAECGHC 55; 2019 (2) SACR 207 (ECG) (14 May 2019) at paragraph 6 that “... a measure of flexibility in the judicial approach to the determination of “exceptional circumstances” is permitted.”

37. In Josephs v S 2001 (1) SACR 659 (C), this court held as follows at 668i: “Showing ‘exceptional circumstances’ for the purposes of s 60(11) of the CPA does not posit a standard which would render it impossible for an unexceptional, but deserving applicant to make out a case for bail.”
38. I do not consider the Cumulative Effect to create any onus for the State nor to turn a bail hearing for a Schedule 6 offence into one for a Schedule 5 offence (or to result in the difference between them disappearing), as argued by the State Advocate. Reasons for this are to be found in Dlamini, portion of paragraph 79 of which explains that the onus is on the accused and that section 60(11)(a) “describes how it is to be discharged, and adds to its weight” and portion of paragraph 64 of which, quoted above, which describes the effect of section 60(11)(a) (my underlining): “Its effect is to add weight to the scales against the liberty interest of the accused and to render bail more difficult to obtain than it would have been if the ordinary constitutional test of the “interests of justice” were to be applied.” The way I read this is that it amounts to a

greater level or standard of proof, to be applied to the same evidence, required of an accused to satisfy an onus. Judges and Magistrates routinely do this on a regular basis in both criminal and civil cases. Common examples include: on the same facts, different conclusions can be reached when applying the standards of a *prima facie* case and a balance of probabilities to interim interdicts and final interdicts and also to applications for provisional sequestration or liquidation and final sequestration or liquidation; similarly, on the same facts, different conclusions can be reached when applying the test for a discharge of an accused in terms of section 174 of the CPA and the standard of proof of 'beyond reasonable doubt' should the accused close his/her case without leading evidence. Courts can, and do, come to different decisions on the same evidence based on these different standards of proof.

39. For an example of an application of the principle resulting in there being enough weight in the scales "*which tipped the balance*" in an appellant's favour, see S v Porthen 2004 (2) SACR 242 (C) at paragraph 58 in which accumulated ordinary circumstances were the factors that tipped the balance (or, out another way, resulted in the onus being satisfied).
40. Accordingly, with weight added to the scales, on the same evidence of ordinary circumstances, the court can come to different conclusions on applications for bail involving a charge in respect of a Schedule 6 offence and a Schedule 5 offence. This accords with the flexibility in the enquiry recognised in the authority considered above.

41. In the result, I am of the view, that 'ordinary circumstances present to an exceptional degree' for the purposes of *exceptional circumstances* in section 60(11)(a) of the Act includes the cumulative effect of ordinary circumstances in the sense that, while a series of individual factors, taken in isolation, may not be exceptional, it may well be exceptional to encounter them simultaneously and collectively in combination. In other words, should all, or a sufficiently substantial number, of these ordinary circumstances be established to a sufficiently material degree, a tipping point may be reached (beyond that required for a schedule 5 offence: more *weight on scales*) at which their cumulative weight amounts to *exceptional circumstances* (this is what has been referred to above as the Cumulative Effect). As mentioned, that is plainly a value judgment to be made by the court.

The test on appeal against the decision to refuse bail

42. Section 65(4) of the CPA provides as follows:

"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;"

43. In order for an appeal court to interfere with the decision of a court *a quo* in a bail application, it was held as follows at 220 in *S v Barber* 1979 (4) SA 218 (D) (see also *Panayiotou v S* (CA&R 06/2015) [2015] ZAECGHC 73 (28 July 2015) at paragraphs 26 and 27):

"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 wrongfully. 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 that 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."

44. The approach in this regard was explained in this court in S v Porthen 2004 (2) SACR 242 (C) at paragraphs 8, 9, 14 and 15 as follows (cited in other cases, including Killian v S [2021] ZAWCHC 100 (24 May 2021) at para [8] and Mangombe v S (A75/2025) [2026] ZAGPJHC 91 (6 February 2026) at paragraph 7):

"[8] When considering the extent of an appellate Court's power to interfere with a decision of a lower court entailing the exercise by the lower court of a discretion, it is necessary to know whether the discretion in issue is one in the narrow or wide sense of the term ..."

"[9] Where the lower court has exercised a discretion in the wide rather than the narrow sense the Court of appeal 'is entitled to substitute its view for that of the court which heard the matter and is not precluded from interfering unless it concludes that the lower court has not exercised a judicial discretion'."

"[14] On the issue of the existence of 'extraordinary circumstances' within the meaning of s 60 (11) (a) of the CPA, there is a 'formal *onus*' of proof on the applicant for bail. The ordinary equitable test of the interests of justice determined according to the exemplary list of considerations set out in s 60 (4)–(9) of the Act has to be applied differently. See *S v Dlamini (supra)* in para [61]). In my view, a court making the determination whether or not that *onus* of proof has been discharged exercises a discretionary power in the wide sense of discretion. The appellate Court is, in terms of s 65 (4) of the CPA, enjoined to interfere with the lower court's decision of a bail application if it is satisfied that the lower court's *decision* was wrong."

"[15] Accordingly, in a case like the present where the magistrate refused bail because he found that the appellants had not discharged the *onus* on them in terms of s 60(11)(a) of the CPA, if this Court, on *its* assessment of the evidence, comes to the conclusion that the applicants for bail did discharge the burden of proof, it must follow (i) that the lower

court's decision was 'wrong' within the meaning of s 65(4) and (ii) that this Court can substitute its own decision in the matter."

The material before the court *a quo*

45. The following was amongst the material placed before the court *a quo* by the appellant:

45.1. The appellant has no previous convictions, other pending charges or outstanding warrants.

45.2. He has previously been charged with the offence of negligent/reckless driving. He attended all court appearances required of him and the charges were withdrawn.

45.3. He is 39 years old, is married and had (until his arrest) a fixed address where he lived with his wife, their daughter and mother-in-law.

45.4. He has recorded that he understands that he cannot, and will not, live with any of them because of the pending charges in respect of which his wife and mother-in-law may be witnesses and his daughter is the complainant (although she does not appear to live at their home anymore).

45.5. He supports himself, his wife, his mother-in-law and his daughter (this was the case at the time of the application for bail).

- 45.6. Should he be denied bail he will lose his employment, which will lead to undue financial hardships, not only for him and the complainant but also his wife and her mother who he supports financially.
- 45.7. He has been employed since 2007 after he finished his studies.
- 45.8. He is currently employed as the food and beverage manager at the C[...] Hotel, earning approximately R39 700 'gross' and R30 200 'take home' per month.
- 45.9. His employer confirmed in an affidavit that his employment will be continued pending the determination of his criminal matter.
- 45.10. His employer has also confirmed in an affidavit that he can live at the hotel where he works pending the determination of his criminal matter. This was confirmed in an affidavit by Constable Solomzi Ngunda, one of the two co-investigating officers.
- 45.11. He was informed by his attorney on 28 October 2025 (the date of the bail application) that he (his attorney) had received information from the appellant's step-father that the complainant had apparently left home and moved in with her boyfriend in Brackenfell. He has no personal knowledge whether this is correct.
- 45.12. He records that *'I have in the past disciplined our daughter when she was rude, cheeky, and/or disobedient. I have been advised by my attorney of record that same can technically constitute assault common. I do not know*

what incident or incidents she is referring to. Be that as it may, once we receive the content of the docket, I will be in a position to see what she is alleging in this regard and respond appropriately thereto.'

45.13. He denies any sexual assault or rape of his daughter. He described the allegations as '*sick and untrue*'. He states that '*I do not need to see any allegations in this regard as I know I am innocent*'.

45.14. His step-father deposed to an affidavit on 27 October 2025 in which he recorded that the appellant's mother-in-law:

"Without us asking or prompting her pertaining to the situation she, out of her own accord, informed us the following, namely:

8.1 [The complainant's] plan has backfired;

8.2 She is now apparently staying with a man, presumably a new boyfriend, in Brackenfell and is very happy and wants to introduce the boyfriend to them;

8.3 [The complainant] does not want to proceed with the case and has apparently withdrawn same. In this regard she apparently had a meeting with a one Captain Chetty on Monday, 20 October 2025, and apparently would have seen the prosecutor on the Tuesday or the Wednesday to inform the prosecutor accordingly and discuss the matter.

9. We did not want to discuss the matter with Gavin's mother-in-law as Gavin's attorney informed us not to discuss the matter with her as she may be a potential state witness and it is also an uncomfortable situation for us, to say the least. We terminated the conversation and drove back to Kleinmond." [Gavin' is the appellant]

45.15. He stated as follows in his affidavit in support of his application for bail:

"The allegations made against me by our daughter only now surfaced after my wife recently found toys and lubricants of a sexual nature in our daughter's cupboard. In addition to the above we also found out, to our shock, that our daughter is/was active on a porn site known as Only Fans. There the woman

perform, inter alia, naked sexual acts on themselves and the people who subscribe to this site then pay a fee for being able to watch. Ultimately our daughter also receives payment from either the porn site or its subscribers for the acts she performs and which they watch. I noted that thousands and thousands of rands are paid into her personal account, which she generated from these vile activities.”

45.16. He stated in his affidavit that he knows that the allegations against him are false and that he can only assume that when confronted with the above, she made up a story in order to escape responsibility for her actions and now realises that she has gone too far. He could not think of any other explanation that makes sense at this stage.

45.17. He used to have a passport, but it expired and he no longer has a valid passport. He undertook in his affidavit not to apply for a new passport.

45.18. His mother would assist him with money for bail.

45.19. He will adhere to all bail conditions which may be imposed.

46. The complainant signed an affidavit in which she stated:

46.1. *“When I was a child my father used to beat me with a belt and physically assault me. Started to sexually abuse me from the age of 12 and started to rape me till now.”*

46.2. *“I fear for my safety. I left home and live with a friends family. I am terrified of my father if he is g(r)anted bail he will come looking for me. He will kill me.”*

46.3. *“I don’t have a protection order.”*

46.4. *"My father will find me and kill me. For my safety he should be kept in prison."*

47. The other co-investigating officer, Constable Athini Gandilanga, deposed to an affidavit in which she explained what the complainant had conveyed to her:

47.1. He hit her on her legs with a belt when she forged her father's signature for her test at school when she was ten years old.

47.2. When the complainant misplaced some cooking oil the appellant got angry pushed her 'towards a glass and glass broke'.

47.3. She had been told by the complainant that the family had a rash and the appellant *"... offered to rub victim with ointment, the accused applied the ointment and massage victims body. Accused concluded by removing victim's bra and massaged victim's breasts and ask victim not to tell anyone."*

47.4. In 2021 the appellant and the complainant *"... were alone and he summoned her into 'his room where he undressed victim and climbed on top of her started by sucking victim's breasts and proceeded by inserting his penis inside victims vagina. The rape incident continuously happed that victim lost count and accused would now and then transfer money to victims account. Victim never reported these incident to anyone."*

48. On the second page of the aforesaid affidavit the following was recorded:

"Reasons for OPPOSING BAIL:

- 1) The accused is staying same jurisdictions as victim.
- 2) This is a very serious incident according to our law, accused did this sober minded and multiply times.
- 3) Accused knew very well what he was doing, he did these allegations in different occasions.
- 4) The victim was still a minor accused knew better as he is way older.
- 5) Victim trusted the accused with her life as he is her father.
- 6) Accused took victims innocence.
- 7) There is a likelihood that if accused released on bail he will influence and intimidate the victim and witness.
- 8) Accused told victim not to tell anyone what he was doing to her.
- 9) Accused would transfer money on victims account before or after most incidents.”

49. As I see it, three categories can be identified in these reasons for opposing bail:

49.1. The first consists of item 1) and concerns the fact that the appellant and the complainant live in the same jurisdiction.

49.2. The second consists of items 2) to 6) which relate to the gravity of the charges against the complainant and the impact on the complainant.

49.3. The third consists of items 7) to 9) which relate to the influence and intimidating of witnesses and the complainant.

Evaluation

50. This evaluation is conducted through the prism of the function of an appeal court in respect of bail described above

Whether there was a misdirection on the facts

51. On my reading of the judgment of the Court *a quo*, the real question which was the focus of and determined the application was, in my view, correctly, whether section 60(11)(a) exceptional circumstances were established.
52. In regard to section 60(4)(a) the Court *a quo* recorded (in my view, correctly) that it has to look at the views of the complainant. It then recorded that the complainant had under oath stipulated that she is afraid of the appellant because she feels that he will get to wherever she lives and might hurt her, the Court *a quo* referring to the complainant's version of violence in the sense of hitting and raping her (this is from the affidavit of the complainant which is quoted in paragraph 46 above). The Court *a quo* then recorded (in my view, correctly): "*So the court has to look at that as a factor.*"
53. The Court *a quo* then dealt with other factors (mainly the question of a defence) and nine pages later, it held in the final sentence of the penultimate paragraph of the judgment as follows (the Court *a quo* was addressing the appellant): "*The court finds that there is a real likelihood that if you should be granted bail, you will endanger the safety of the complainant.*"
54. Where, I consider, the court *a quo* erred in the exercise of its discretion, was that nothing further appears to have been considered, and weighed against the factor of what the complainant had said, in reaching this conclusion, despite the court saying that what the complainant had said was, in my view, correctly, *a factor* (i.e. not the only factor in regard to that aspect).

55. There were, however, other considerations and evidence, as appears from the above summary: The court did not consider that the complainant does not allege that there has been any actual threat to her by the appellant in this regard. Nor that she does not allege that there has been any form of communication or contact between them, or even attempted communication or contact. This is consistent with the appellant having made it clear that he knows that he must have no contact with the complainant, his wife and mother-in law and will live elsewhere until the matter is finalised. The court *a quo* recorded in its judgment that “... *there is no evidence previously that you made contact from the prison to them ...*” Accordingly, this appeared to have been implemented. The appellant recorded in his affidavit, with reference to information he received from his attorney and contained in the affidavit of his step-father quoted in paragraph 45.14 above, “*I have no personal knowledge whether or not the above is correct as I am prohibited from contact with my wife, our daughter and my wife’s mother.*” This reinforces his version that he will not have any contact with the complainant. The complainant will be living separately from the appellant. Aside from the charges, the appellant had no history of violence.
56. Accordingly, there is no evidence to support what the complainant says other than the fact of the charges of the very serious crimes laid against her father and her perceptions. I apprehend that this should apply in the case of almost every (if not every) charge of rape which, if it carries overriding effect on this aspect, would result in bail always being denied.

57. Despite the affidavit of the complainant, the aspect of the safety of the complainant being endangered was not recorded as a ground for opposing bail in the affidavits of the investigating officers (see paragraph 48 above). What was raised was the distinct contention that the appellant '*told victim not to tell anyone what he was doing to her*' and there is a likelihood that the appellant will '*influence and intimidate the victim and witness*', which is dealt with below.
58. On my reading of the judgment, the court *a quo* did not take all of these factors into account. I consider the failure to do so to be a misdirection.
59. Taking into account all of the factors, I consider that no likelihood has been established that the appellant will endanger the safety of the complainant and therefore the misdirection was material.
60. To the extent that the sentence quoted in paragraph 53 above from the penultimate paragraph of the judgment of the Court *a quo* may be seen to hold that the likelihood in section 60(4)(a) has been established, I am of the view that the Court *a quo* was wrong in this respect.

Whether there was a misdirection on the law

61. In regard to the core element of exceptional circumstances, as mentioned above, in deciding a bail application, a court exercises a value judgment taking into account all the relevant facts and circumstances, and with reference to all the applicable legal criteria, one of which is whether, individually or cumulatively,

ordinary circumstances exist to an exceptional degree and thereby constitute exceptional circumstances for the purposes of section 60(11)(a) of the CPA. On my assessment of the judgment of the Court *a quo*, it went through each instance considered by it to be relevant and commented thereon in relation to the facts of the case but did not exercise the aforesaid overall value judgment. In failing to do so, the Court *a quo*, in my view, misdirected itself in law.

62. The consequence of this is that, in this appeal, the material before the Court *a quo* must be considered and it is to be determined whether the aforesaid misdirection had a material effect and whether, as a result, the decision of the Court *a quo*, in the opinion of this court, was wrong.

The merits of the defence to the offences with which the appellant is charged

63. There is no obligation on the part of an applicant for bail to challenge the strength of the State's case. However, if he/she chooses to do so, the burden on the applicant for bail is to prove on a balance of probability that he will be acquitted of the charge: *S v Botha* 2002 (1) SACR 222 (SCA) at 230h and 232c, *S v Viljoen* 2002 (2) SACR 550 (SCA) at 556c. There must be a real likelihood of acquittal at trial, which requires 'convincing evidence': *Panayiotou v S* (CA&R 06/2015) [2015] ZAECHGC 73 (28 July 2015) at paragraphs 56 and 57.

64. This would be very difficult to achieve in this matter because it is largely a matter of the appellant's word against that of the complainant, the indications being that there are no other direct witnesses of the incidents in question.
65. A case on the merits is further attenuated for the appellant because, as correctly pointed out by the Court *a quo*, he did not deal with the complainant's version which was recorded in the affidavit of the co-investigating officer referred to and quoted in paragraph 47 above.
66. In my view, this burden of proof has not been satisfied in this matter.
67. I might add that the court *a quo* also found that the appellant satisfied himself with a bare denial. I consider this to be incorrect and a misdirection because the appellants did raise some detailed circumstances which are recorded in paragraphs 45.13 to 45.16 above, but they would not disturb the conclusion in the above paragraph and therefore take the matter no further.
68. Although pressed with some vigour by counsel for the appellant, who appeared for the appellant, whatever shortcomings there may have been in the assessment of the evidence, I am of the firm view that the appellant did not establish a real likelihood of acquittal at trial, with 'convincing evidence'. Much emphasis was placed on the presumption of innocence by counsel for the appellant, but that does not detract from the aforesaid onus and conclusion.
69. In my view, therefore, this aspect is not of assistance to the appellant in this appeal.

70. The relevant statutory factors will now be considered.

Section 60(4)(a): likelihood that the accused will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence

71. There is no evidence in regard to the accused endangering the safety of the public and any particular person. In regard to the complainant, this has been dealt with in paragraphs 52 to 60 above.

72. Insofar as the criteria in section 60(5) are concerned in relation to this section 60(4) aspect:

72.1. Rape and sexual assault are serious and heinous, and themselves are violence against the complainant. The evidence does not suggest any degree of violence towards any others (besides the complainant) implicit in the charge against the appellant (section 60(5)(a)).

72.2. As mentioned above, there is no evidence of a threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person, as opposed to the complainant's fears. This aspect was not raised by the State.

72.3. There is no evidence of any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person. This aspect was not raised by the State.

- 72.4. There is no evidence of any disposition to violence on the part of the accused, as is evident from his past conduct. This aspect was not raised by the State.
- 72.5. Save for the allegations in respect of the charges in question, there is no evidence of any disposition of the accused to commit offences as contemplated in section 60(5)(e).
- 72.6. There is no evidence that section 60(5)(f), prevalence of a particular type of offence, applies.
- 72.7. The evidence showed that section 60(5)(g), commission of previous offences, does not apply.
73. The court *a quo* found that there is a real likelihood that if the appellant were to be granted bail, he would endanger the safety of the complainant. I disagree for the reasons set out in paragraphs 52 to 60 above.
74. In the premise, I am of the view that there is no likelihood as contemplated in section 60(4)(a).

Section 60(4)(b): likelihood that the accused will attempt to evade trial

75. I think that the appellant's personal circumstances and history dealt with above indicate against such a conclusion. This includes his family and emotional ties as well as the fact that he attended all court attendances in another matter which was eventually withdrawn.

76. Save for the nature and gravity of the charges and likely punishment if convicted, which apply in every case of rape, the factors in section 60(6) appear to be in favour of the appellant: He has no money or valid passport and relies on his salary to live (and support his family). He undertook not to apply for a passport. His emotional and family ties appear to be in Cape Town and Kleinmond (where his mother and step-father live). There is no evidence of any assets outside of the country and the evidence before the court suggests otherwise. Whether extradition can *readily be effected* does not appear to be a factor to be taken into account. He has said that he will have to borrow the bail money from his mother who can ill afford to lose it.
77. Strict bail conditions with binding effect and which are enforceable can be crafted, and they ought not to be capable of easy breach. I raised this issue with the parties during argument and they were in all material respects *ad idem* as to the conditions. As to the bail amount, the State Advocate suggested R5 000. Counsel for the appellant countered, unusually, with a higher amount of R10 000. I said that both may be a bit light and I would consider the aspect further. I deal with this aspect of conditions further below, but briefly because it was not materially in issue. The strength of the case against the appellant has been dealt with above and does not appear to militate in either direction.
78. As mentioned, the negative factors for the appellant are the nature and gravity of the charges and punishment should he be convicted. That applies in respect of any charge of rape – which are most serious charges – and I do not understand the legal position to be that they serve to override or effectively nullify all other

factors, as that would in effect result in bail being refused in all cases involving such a charges. Dlamini at paragraph 74 stated this generally: “Section 60(11)(a) does not contain an outright ban on bail in relation to certain offences, but leaves the particular circumstances of each case to be considered by the presiding officer. The ability to consider the circumstances of each case affords flexibility that diminishes the overall impact of the provision.” In State v Mohammed 1999 (2) SACR 507 (C) at 515f this court commented that “Such flexibility and discretion was, I apprehend, one of the factors which saves s 60(11)(a) from constitutional invalidity.”

79. In my view, there is no reasonable prospect of the appellant being a flight risk and there is no basis which establishes a likelihood of an attempt by him to evade trial. While not eliminating the aspect, it was not relied on by the State in its written reasons for opposing bail.
80. In the premise, I am of the view that there is no likelihood as contemplated in section 60(4)(b).

Section 60(4)(c): likelihood that the accused will attempt to influence or intimidate witnesses or to conceal or destroy evidence

81. This is the particular instance which was raised specifically by the State in its written reasons for opposing bail quoted in paragraph 48 above.
82. Being his daughter, who lived with him, the appellant is obviously familiar with the complainant. The same applies to the possible state witnesses, his wife and

mother-in-law who also lived with him. The appellant has explained in his affidavit that he understands that his wife and mother-in-law may, in addition to the complainant, be witnesses in the trial and that he must keep away from them. For example, he recorded that he needs to find somewhere else to live pending the finalisation of the matter and that he has arranged this already, as also confirmed by one of the investigating officers. This approach of the appellant has been extended to his mother and step-father, which is shown by the affidavit of the step-father quoted above. Appropriate bail conditions can serve to entrench and implement what appears to already to be understood to be required to be the case and is being implemented (insofar as communication is concerned, the appellant being in custody: see paragraph 55 above). The content and ambit of conditions, if the appeal is upheld and bail is granted, were not contentious between the parties at any material level, referred to below.

83. While the investigation does not appear to be complete, the main witness (the complainant) has already been interviewed and made a statement. There is no indication that any other possible family witnesses will not co-operate or will be interfered with by the appellant. The contrary appears to emerge from the evidence.
84. As to evidence which may be destroyed or to which the appellant may have access, there is no indication of evidence which may exist and this was not raised.
85. The factors in section 60(7) therefore appear to be mostly in favour of the appellant

86. In my view there is no basis to establish a likelihood or attempt by the appellant to influence or intimidate witnesses or to conceal or destroy evidence.
87. In the premise, I am of the view that there is no likelihood as contemplated in section 60(4)(c).

Section 60(4)(d): likelihood that the accused will attempt to undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system

88. Save for the seriousness of the offence, in my view there is no basis in this respect. The appellant's personal circumstances and history all indicate against such a conclusion. None of the factors in section 60(8) apply against the appellant.
89. While not eliminating the aspect, it was not relied on by the State in its written reasons for opposing bail.
90. In the premise, I am of the view that there is no likelihood as contemplated in section 60(4)(d).

Section 60(4)(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

91. Rape and sexual assault are extremely serious offences which are a terrible scourge in our society. To rape one's daughter is a particularly heinous instance. It goes without saying that this would induce a sense of shock or outrage among any right-thinking persons, as contemplated in section 60(8A)(a).

92. Save for justified and expected general opprobrium in relation to charges of the nature in question, there does not appear to be any basis for there being a *likelihood, in this particular case, that the release of the accused will disturb the public order or undermine the public peace or security* or for the circumstances in section 60(8A)(b)-(e) to arise. There is no indication of any vigilantism or public unrest. This aspect was not recorded as a ground for opposing bail in the affidavits of the investigating officers. Save for the heinous nature of the offences charged, the factors in section 60(8A) do not appear to count against the appellant.
93. The appellant's personal circumstances and history all indicate against such a conclusion.
94. While not eliminating the aspect, it was not relied on by the State in its written reasons for opposing bail.
95. In the premise, I am of the view that there is no likelihood as contemplated in section 60(4)(e).

Section 60(9)

96. In considering the question in section 60(4), the court must weigh the interests of justice against the right of the accused to his personal freedom, as contemplated in section 60(9).

97. The Court *a quo* indicated that the trial would take place in approximately a year. It also indicated that the regional court, where the trial would be held, is inundated. A period of a year in prison before trial is not insubstantial.
98. Counsel for the appellant stated from the Bar that consulting in prison consumes the better part of a day. This was not objected to or contested by the State Advocate.
99. No fault can be attributed for any delay to the appellant or the State.
100. The appellant stands to lose his job if not released on bail. The State Advocate correctly submitted that the evidence showed that he is capable of finding work, should he be acquitted, but, in my view, being out of a job while in prison for a year must carry with it a material element of prejudice.
101. There is no indication that the state of health of the accused is not good.
102. I am of the view that these ordinary circumstances have been established to a sufficient degree of materiality and number with the result that the tipping point has been reached, as contemplated in the authorities considered, at which their cumulative weight amounts to exceptional circumstances for the purposes of section 60(11)(a).
103. Taking into account all of the above in relation to sections 60(4)-(9), I am of the view that none of the 'likelihoods' contemplated in section 60(4) exist, that the cumulative effect of the evidence and the aforesaid provides enough weight in the scales to tip the balance in favour of finding that the ordinary circumstances in

section 60(4)-(9) exist to an exceptional degree and, accordingly, that exceptional circumstances as contemplated in section 60(11)(a) exist.

Whether bail is to be granted

104. There are three aspects: (1) Bail is to be refused if any one or more of the 'likelihoods' in section 60(4) have been established; (2) if not, then the court must determine whether the accused has established exceptional circumstances as contemplated in section 60(11)(a) and (3) if so, whether bail is to be granted in the interests of justice.

105. I have found the first aspect (the section 60(4) 'likelihoods') to not be established and the second aspect (section 60(11)(a) exceptional circumstances) to be established.

106. What then follows is whether, in weighing the interests of justice and the personal freedom of the appellant, bail should be granted. By the nature of the exercise in considering the factors in section 60(4) to 60(9), much of the factual ground for this exercise has already been covered. From the exposition in this judgment, it is my view that none of the 'likelihoods' in section 60(4) have been established and that considered cumulatively the factors enumerated therein establish exceptional circumstances in the exercise of a value judgment.

107. Rape is always extremely serious and heinous, and would involve fear on the part of the complainant, aggravated in the case of a daughter being the victim at the

hands of her father, but I do not understand the legal position to be that a charge of rape *per se*, due to the nature and gravity of the offence and possible punishment, excludes the granting of bail (as held in general terms in Dlamini at paragraph 74; Gumbo and Makibi being examples of bail being granted). I say this because otherwise bail would be impossible to be granted in an instance of a charge of rape, which is plainly not the legal position. Absent a particular ordinary circumstance to an exceptional degree (such as illness or a business employing 50 persons facing ruin), it would, to my mind, be difficult to conceive of bail being granted based on the cumulative effect of ordinary circumstances to an exceptional degree were it not to be granted in the circumstances of this case in which the only factors against the appellant, considered above, are those arising inherently from the charges, which apply to almost all (if not all) such cases, and his good health. If bail is not granted in this instance, it would be an indicator that any healthy person charged with rape where the complainant is terrified of him and thinks he will try to kill her with no basis for that besides the allegations in respect of the charges themselves, must be denied bail.

108. Also apposite to this matter, it was held as follows in paragraph 15 of Makibi (see also Gumbo, these being the most comparable cases): The State submitted that “... *the evidence had established that there is a real likelihood that the appellant will interfere with state witnesses if he were to be released on bail. He referred in particular to the fact that the victim’s mother is the appellant’s common law wife and that he will have some influence over her, being the bread-winner and sole provider of the family. In his view it was not possible for the court to impose any*

conditions which could conceivably alleviate this likelihood. I am however in agreement with the submission made by Ms McCallum, who appeared for the appellant, that conditions which prohibit interference with state witnesses are usually imposed when bail is granted and any attempt by an accused person to interfere with the state witnesses or the investigation of the matter is a crime and may result in the cancellation of the bail. I am in the event of the view that there was no evidence of such likelihood and one is left to speculate about such a possibility.”

109. I engaged the parties as to appropriate conditions to be applied and the appropriate amount of bail, in the event that the appeal succeeded. There was not any material difference between them. Three aspects bear brief mention: (1) The appellant’s counsel suggested that more than one reporting to the police station becomes arduous. The State Advocate did not seem to demur. Having considered the aspect, I think that the appellant should report twice a week, especially because his place of work and residence will be very close to Cape Town Central Police Station (in Josephs, daily reporting was ordered). (2) As to the amount of bail, I considered ordering an amount higher than the larger amount of R10 000 for bail suggested as aforesaid, but on balance decided not to do so. (3) I have added a condition that was not discussed in court, namely that the appellant may not leave the jurisdictional area of the City of Cape Town save with the written permission of either of the investigating officers in this matter or, failing that, the (magistrates’) court. This condition and those contained in the order below have

been largely modelled on those as ordered in the relatively similar matter of Gumbo, and also Makibi.

110. In the circumstances, in weighing the interests of justice and the personal freedom of the appellant, the court concludes that bail is to be granted, subject to the conditions set out in the order below.

Order

111. In the result the appeal is upheld and the following order is granted:

1. The appellant's appeal against the refusal of bail is upheld.
2. The decision of the Court *a quo* is set aside and is substituted with an order in the following terms:

"The accused shall be released on bail on payment of an amount of R10 000.00 on the following conditions:

1. The accused attends court on the dates ordered by the court and shall remain in attendance until the case has been finalised unless otherwise ordered by the court.
2. The accused shall not interfere with, or have any contact or communication with, directly or indirectly, the complainant or any of the state witnesses.
3. The accused shall not interfere, directly or indirectly, with the investigation of the charges against him.
4. The accused shall not reside at or attend at 2[...] M[...] Road, Tijgerhof, Milnerton, Cape Town, and shall instead reside at alternative accommodation which is presently The C[...] Hotel, 3[...] H[...] Street, Cape Town.
5. The accused shall not change his residential address without being authorised to do so by order of the Magistrates' court.
6. The accused's undertaking not to apply for a passport is recorded.
7. The accused shall report to the charge office of the South African Police Service Station in Cape Town Central every Monday and Friday between the hours of 06h00 and 19h00.
8. The investigating officers are directed to furnish the station commander of the South African Police Service Station in Cape Town Central with a copy of the court order herein.

9. The station commander of the South African Police Service Station in Cape Town Central or any person designated thereto by him/her, is directed to immediately inform either of the investigating officers should the accused default in reporting as ordered above.
10. The accused may not leave the jurisdictional area of the City of Cape Town, save with the written permission of either of the investigating officers in this matter or, failing that, the court.
11. Bail may be revoked by the court if the accused breaches any of these conditions.”

A Kantor
Acting Judge of the High Court

Legal representatives:

For the appellant: Mr J Weeber

Instructed by Liddell Weeber & vd Merwe

For the respondent: Adv C Blankenberg