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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: A14/2026

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED

DATE 23 February 2026

SIGNATURE

In the matter between:

MAHLANGU, WANDILE MAWETHU

Appellant

And

THE STATE

Respondent

JUDGMENT

DOSIO J:

Introduction

[1] This is an appeal against the refusal of bail by the Nigel District Court, ('court a quo'), on 17 December 2025.

[2] From the record, it seems that at the commencement of the bail proceedings, it was agreed with the appellant's legal representative that the alleged

offences levelled against him fell under schedule 5 of the Criminal Procedure Act 51 of 1977 ('Act 51 of 1977').

- [3] Both the appellant and respondent filed affidavits in support of and in opposition of the bail application.
- [4] The court a quo held that the appellant had not satisfied the Court that it would be in the interest of justice for him to be released on bail, more particularly, that there is a likelihood that the appellant may attempt to evade his trial and influence or intimidate witnesses as well as destroy evidence.

Facts

- [5] The State alleged that on Sunday 7 December 2025, at about 01h30 at a tavern in Devon, whilst the appellant and deceased were talking to each other, a gunshot was heard inside the tavern and the appellant mentioned that '*he had made a mistake*'. The State witnesses saw the appellant with a firearm on his waist, however, after the shooting the firearm was no longer visible. The deceased was taken to hospital and the scene was cleaned before the police arrived.
- [6] The appellant is charged with:
 - (a) Murder;
 - (b) Possession of an unlicensed fire arm;
 - (c) Possession of ammunition; and
 - (d) Defeating the ends of justice.

Issues not in dispute

- [7] That the appellant was employed at the tavern and resided at the tavern, which is the scene of crime.

Issues in dispute

- [8]
- (a) That the appellant committed the offence.
 - (b) That the eye-witnesses, are known to him.
 - (c) That the appellant will interfere with witnesses or destroy evidence if released on bail.
 - (d) That the appellant is a flight risk.
 - (e) That the appellant's incarceration will impact negatively on his wife and minor child.
 - (f) That the appellant's injuries due to a previous shooting, justifies his release on bail.

Grounds of appeal

- [9] It is alleged the court a quo erred in one or more of the following respects:
- (a) That the appellant had failed to discharge the onus placed upon him which would justify his release on bail.
 - (b) In refusing the appellant's application the court a quo erroneously found that the interests of justice do not permit the release of the appellant on bail.
 - (c) The court a quo erred in failing to attach the necessary weight to the personal circumstances of the appellant as set out in his respective affidavit.
 - (d) The court a quo erred in refusing to release the appellant on bail, despite the absence of evidence of the existence of the factors as stipulated in ss 60(4)(a-e) of Act 51 of 1977.
 - (e) The court a quo disregarded the prejudice that the appellant would suffer as a result of such refusal of bail, specifically since he is gainfully employed and his dependants will suffer.
 - (f) The court a quo erred in paying lip service to the literal meaning of the words 'interest of justice'.
 - (g) The court a quo erred in paying lip service to the fact that the appellant has a permanent place of residence verified by the investigating officer.

Personal circumstances

[10] He was born on the 31st day of January 2004. He is a South African citizen, residing at 9[...] I[...], Devon, in the Gauteng Province. Alternatively, he is willing to relocate to his father's place of abode being No: 7[...] Extention 7, Leslie, Mpumalanga. His postal address is the same as his residential address.

His highest level of education is grade 11 at Thistie Grove Combine School which is in Kingross, Mpumalanga. He has not studied in any college or university. He is unmarried. He has one dependent, a minor child who is one year old. He is currently employed as a bar tender at the tavern where he was earning a salary of R5 000-00 on a monthly basis. His family will take care of the amount to be set for bail. He is a first offender and has no pending cases against him. He owns a motor vehicle to the value of R80 000-00 which the family bought on his behalf. He has no assets outside the Republic of South Africa. He has neither a passport nor travelling documents. He does not have any relatives outside the republic of South Africa. He stated that he intended pleading not guilty at his subsequent trial. Should he be incarcerated his minor child will suffer as he gives parental and financial care to his child as the mother of child is not gainfully employed. If he is further incarcerated it will impede his preparation for his trial. On the date of his arrest, he was in the company of his legal representative and he handed himself over to the police. It was submitted this is a demonstration that he respects the rule of law. Furthermore, it was contended he is not a flight risk and will attend the court proceedings at all material times. His family can afford R3 000-00 bail. As regards his medical condition, he is still receiving medication for gunshot wounds sustained on 17 October 2025.

Evaluation

[11] The provisions of ss 60(4)-(9) of the Act 51 of 1977 apply. These subsections must be construed consistently with s35(1)(f) of the Constitution, which guarantees the right of an arrested person 'to be released from detention if the interests of justice permit, subject to reasonable conditions'.

- [12] In the matter of *S v Smith and Another*¹, the court held that:
‘The Court will always grant bail where possible, and will lean in favour of and not against the liberty of the subject provided that it is clear that the interests of justice will not be prejudiced thereby.’²
- [13] In the matter of *S v Dlamini*³, the Constitutional Court held that:
‘The interests of justice in regard to the granting or refusal of bail therefore focus primarily on securing the attendance of the accused at the trial and on preventing the accused from interfering with the proper investigation and prosecution of the matter’.
- [14] In terms of s 65(4) of Act 51 of 1977, the court hearing the appeal shall not set aside the decision against which the appeal is brought unless such court is satisfied that the decision was wrong.
- [15] This court must consider all relevant factors and determine whether individually or cumulatively they warrant a finding that the interests of justice warrant the appellant’s release.
- [16] In so far as the weakness of the State’s case in a bail application is concerned, the Supreme Court of Appeal in the matter of *S v Mathubela*⁴ held that:
‘In order to successfully challenge the merits of such a case in bail proceedings an applicant needs to go further: he must prove on a balance of probability that he will be acquitted of the charge...’⁵
- [17] In the matter of *S v Bruintjies*⁶, the Supreme Court of Appeal stated that:
‘(f) The appellant failed to testify on his own behalf and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which

¹ *S v Smith and another* 1969 (4) SA 175 (N).

² *Ibid* page 171 para e-f.

³ *S v Dlamini* 1999 (2) SA SACR 51(CC).

⁴ *S v Mathebula* 2010 (1) SACR 55 (SCA).

⁵ *Ibid* para 12.

⁶ *S v Bruintjies* 2003 (2) SACR 575 (SCA).

the Court a quo could assess the bona fides or reliability of the appellant save by the say-so of his counsel'.⁷

[18] Subsection 60(4) of Act 51 of 1977 states:

'(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; or

(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.

[19] Subsection 60(5) of Act 51 of 1977 states that:

'(5) In considering whether the grounds in subsection (4) (a) have been established, the court may, where applicable, take into account the following factors, namely-

(a) the degree of violence towards others implicit in the charge against the accused;

(b) whom the offence in question was allegedly committed or any other person;

(c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;

(d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;

(e) any disposition of the accused to commit-

(i) offences referred to in Schedule 1;

(ii) an offence against any person in a domestic relationship,

(iii) as defined in section 1 of the Domestic Violence Act, 1998; or an offence referred to in-

(aa) section 17 (1) (a) of the Domestic Violence Act, 1998;

⁷ Ibid page 577.

- (bb) section 18 (1) (a) of the Protection from Harassment Act, 2011; or
- (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, as is evident from his or her past conduct;
- (f) the prevalence of a particular type of offence;
- (g) any evidence that the accused previously committed an offence-
 - (i) referred to in Schedule 1;
 - (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) referred to in-
 - (aa) section 17 (1) (a) of the Domestic Violence Act, 1998;
 - (bb) section 18 (1) (a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or
- (h) any other factor which in the opinion of the court should be taken into account.’
[my emphasis]

[20] There is a prevalence of murder that is committed where firearms are used. There is also a high prevalence of illegal and unlicensed firearms.

[21] Section 60(6) of Act 51 of 1977 states that:

- “(6) In considering whether the ground in subsection (4) (b) has been established, the court may, where applicable, take into account the following factors, namely-
- (a) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;
 - (b) the assets held by the accused and where such assets are situated;
 - (c) the means, and travel documents held by the accused, which may enable him or her to leave the country;
 - (d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;

(e) the question whether the extradition of the accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial; (f) the nature and the gravity of the charge on which the accused is to be tried;

(g) the strength of the case against the accused and the incentive that he or she may in consequence have to attempt to evade his or her trial;

(h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;

(i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or

(j) any other factor which in the opinion of the court should be taken into account.”

[my emphasis]

[22] The appellant does not own an immovable property, he only owns a motor vehicle which his family bought on his behalf. The crime for which he is arraigned is serious. If the state decides to charge the accused for premeditated murder he will face a sentence of life imprisonment. If the State charges him for murder in terms of section 51(2) of the Criminal Law Amendment Act 105 of 1997, ('Act 105 of 1977'), he may face a minimum prescribed sentence of 15 years imprisonment. The strength of the State's case, as per the witness statements that have been uploaded, indicate that the appellant and deceased were talking to each other and then a shot went off. The appellant had a firearm in his possession which after the shooting was no longer visible.

[23] Subsection 60(7) of Act 51 of 1977 states that:

“(7) In considering whether the ground in subsection (4) (c) has been established, the court may, where applicable, take into account the following factors, namely-

(a) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;

(b) whether the witnesses have already made statements and agreed to testify; (c) whether the investigation against the accused has already been completed;

(d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;

- (e) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;
 - (f) whether the accused has access to evidentiary material which is to be presented at his or her trial;
 - (g) the ease with which evidentiary material could be concealed or destroyed; or
 - (h) any other factor which in the opinion of the court should be taken into account.”
- [my emphasis]

[24] There are a few witnesses who saw the appellant in possession of a firearm during the week prior to this incident happening. There is even a witness who states he saw a black and silver firearm lying next to the deceased which later disappeared. Most of the state witnesses who saw the appellant and deceased talking to each other before the shot went off were all employees at the tavern and know the appellant. From the address of the respondent, the appellant worked as a manager in this tavern. There is also evidence that the blood was cleaned up after the shooting. The appellant states the shot was fired from outside, whereas the majority of the witnesses say the shot was fired inside the tavern. The fact that a cartridge was removed from the inside the tavern and placed outside the tavern, together with the fact that the blood was immediately cleaned up before the police arrived, shows that the appellant tried to conceal or destroy evidence. Whether the appellant tampered with the scene on his own or with the assistance of his employees will become evident at the trial. It is correct as pointed out by the appellant's counsel that there is no clarity as to what other evidence may be destroyed, however, the fact remains that evidence was tampered with and the firearm used to allegedly commit this crime has still not been retrieved.

[25] It is clear that the majority of the witnesses who saw and heard this shooting, were working in the tavern with the appellant. The fact that these witnesses are known to the appellant indicate that there is a likelihood that they may be influenced by the appellant.

[26] Subsection 60(8A) of the Act 51 of 1977 states that:

'In considering whether the ground in subsection (4) (e) has been established, the court may, where applicable, take into account the following factors, namely-

(a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;

(b) whether the shock or outrage of the community might lead to public disorder if the accused is released;

(c) whether the safety of the accused might be jeopardized by his or her release;

(d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;

(e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or

(f) any other factor which in the opinion of the court should be taken into account.

[my emphasis]

[27] The investigating officer stated in his affidavit that the family of the deceased and community members visited the police station, stating that the appellant must not be released on bail and that if he was released, he would be dealt with. It is clear that the investigating officer also had an objection to the appellant being released on bail. In terms of section 60(10) of Act 51 of 1977, it is for the court considering the bail application to weigh up the personal circumstances of the accused against the interests of justice. It is clear from the affidavit of the investigating officer that if the appellant is released on bail it will illicit shock and outrage in the community and that the family and community will take the law into their own hands. Accordingly, even if the appellant lives in at another address there is no guarantee that the community will not take the law into their own hands an jeopardize the safety of the appellant.

[28] After a perusal of the record of the court a quo, this court finds no misdirection on the part of the court a quo. The appellant did not successfully discharge the onus as contemplated in ss60(11)(b) of Act 51 of 1977. Accordingly, there are no grounds to satisfy this court that the decision of the court a quo was wrong. Accordingly, the requirements of s65(4) of Act 51 of 1977 were not met.

Order

[29] In the result, the appellant's application for bail is dismissed.

D. DOSIO
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

This judgement was handed down electronically by circulation to the parties' representatives via e-mail, by being uploaded to Caselines and by release to SAFLII. The date and time for handed- down to be 11h00 on 23 February 2026.

DATE HEARD: 13 February and 20 February 2026

JUDGEMENT HANDED DOWN: 23 February 2026

APPEARANCES

ON BEHALF OF APPELLANT:

Ms. Y Omar

ON BEHALF OF THE STATE:

Adv. C Mack

Instructed by the Office of the NPA,
Johannesburg