



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: 2025-194288

In the matter between:

SIBONGISENI WELCOME BANANA

APPELLANT

and

THE STATE

RESPONDENT

ORDER

On appeal from: the Scottburgh Regional Court (sitting as court of first instance):
The appeal against the refusal of bail is dismissed.

JUDGMENT

PUDIFIN-JONES AJ

[1] This is an appeal against the decision of the Regional Court, Scottburgh, which on 8 April 2025 refused to admit the appellant to bail pending his appeal against conviction and sentence.

Background

[2] On 26 March 2025, the appellant was convicted of one count of rape and two

counts of sexual assault of his stepdaughter. In relation to the count of rape, he was sentenced to life imprisonment. On the remaining two counts, the appellant was sentenced to seven and five years' imprisonment respectively, to run concurrently with the life sentence.

[3] The appellant has exercised his automatic right to appeal to the high court in terms of section 309 of the Criminal Procedure Act 51 of 1977 (CPA) against both his conviction and sentence.

[4] The appellant applied to the Regional Court for his release on bail pending the finalisation of his appeal. The Regional Court refused the application.

[5] Before this court, the appellant contends that the court *a quo* misdirected itself in refusing his application for bail pending his appeal.

The relevant legal test

[6] The powers of this court to interfere with the decision of the lower court in relation to bail are governed by s 65(4) of the CPA. In terms of this section:¹

'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.'

[7] In *S v Porthen and Others*,² Binns-Ward AJ explained that in exercising its discretion in a bail appeal, the appeal court should accord due deference and appropriate weight to the fact that the lower court had exercised its discretion in a particular way.

[8] Given that the appellant was convicted of *inter alia* rape, an offence referred to in Schedule 6 to the CPA, the appellant's application for bail is governed by s 60(11)(a) of the CPA. This section requires the appellant to adduce evidence satisfying the court that "exceptional circumstances" exist which in the interests of

¹ See also *S v Barber* 1979 (4) SA 218 (D) at 220E-H.

² *S v Porthen and Others* 2004 (2) SACR 242 (C) para 11.

justice permit his release. The section primarily addresses unconvicted persons; however it follows that a person already found guilty of a Schedule 6 offence cannot claim the benefit of a lighter test.

[9] While the courts have not defined what constitutes exceptional circumstances, in *S v Petersen*,³ Van Zyl J for a Full Court observed that, generally speaking, the use of the word exceptional is indicative of something “unusual, extraordinary, remarkable, peculiar or simply different”.⁴

[10] Where the appellant has already been convicted and sentenced, one of the factors to be considered is the prospects of success in the pending appeal. The mere existence of the appeal is insufficient. As Navsa JA explained in *S v Oosthuizen and Another*:⁵

‘...There has to be a real prospect in relation to success on convictions and that a non-custodial sentence might be imposed, such that any further period of detention before the appeal is heard would be unjustified...’ (Footnote omitted.)

[11] Relevant here too is the increased risk of abscondment that may attach to a convicted person facing the known prospect of a long sentence.⁶ In *M.K. and Another v S*,⁷ the court observed that once an applicant has experienced prison life and faces a lengthy sentence, the incentive to abscond is significantly magnified.

[12] Against that background, I turn to consider the appeal before me.

Submissions of the appellant and the State

[13] Mr *Edwards*, for the appellant, focused in his address on the prospects of success in the pending appeal in relation to conviction and sentence. Mr *Edwards* submitted that the court *a quo* had misdirected itself by relying on the “corroboration” of facts provided by certain witnesses to ground its conviction. He argued further that the appellant has a reasonable prospect of success on appeal because his conviction was based on the evidence of a single and child witness and that the trial

³ *S v Petersen* 2008 (2) SACR 355(C).

⁴ *Ibid* para 55.

⁵ *S v Oosthuizen and Another* [2018] ZASCA 92; 2018 (2) SACR 237 (SCA) para 29.

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

⁷ *M.K. and Another v S* [2025] ZAGPPHC 439 para 24.

court failed to apply the necessary cautionary rule.

[14] Mr *Edwards* also highlighted the appellant's personal circumstances, namely that he is a 51-year-old businessman earning between R60 000 and R80 000 per month. The appellant owns immovable property and trucks, is a registered taxpayer, and has deep-rooted ties to his community. He is a widower with three biological children, including a 17-year-old daughter for whom he is financially responsible. Taken together with the good prospects on appeal, Mr *Edwards* submitted that these circumstances meet the exceptionality threshold.

[15] The State, represented by Ms *Essack*, opposes bail pending appeal. The State contends that there is no reasonable prospect that another court would interfere with the court *a quo*'s conviction and sentence. Ms *Essack* submitted that the court *a quo* correctly found that the complainant's testimony was satisfactory in all material respects and was consistent with other evidence on the record. She argued that the cautionary rule was correctly applied by the Regional Magistrate, without misdirection.

[16] Ms *Essack* submitted further that the appellant had failed to show the existence of any exceptional circumstances as required by s 60(11)(a) of the CPA, arguing that his ordinary personal and financial ties are neither unusual nor exceptional. Moreover, these factors are far outweighed by the extreme gravity of the appellant's convictions for rape and sexual assault, the absence of reasonable prospects of success on appeal, and the significantly magnified risk of abscondment posed by his sentence of life imprisonment.

Evaluation

[17] In assessing whether the court *a quo* was wrong in relation to the question of bail pending appeal, I consider first the prospects of success in relation to the appeal against conviction and sentence.

[18] The court *a quo* provided clear reasons for its conviction and sentence. It was satisfied with the evidence of the single witness (the complainant) who did not

contradict herself nor leave room for inconsistencies.⁸ While reference was made in the judgment to the evidence of the other witnesses who testified for the State, ultimately the court concluded that “On the evidence in its totality the Court is satisfied that the single evidence of the complainant is clear and satisfactory in all material respects.”⁹

[19] Conversely, the court found the appellant’s version that the complainant had fabricated the allegations against him was “not only so improbable that it cannot be reasonably possibly true but that it is false beyond doubt and his version is rejected.”¹⁰

[20] As to sentence, the court *a quo* correctly weighed up the relevant mitigating and aggravating factors and found that no substantial and compelling circumstances existed to justify a deviation from the prescribed minimum sentence. The approach by the Regional Magistrate reflected a judicious exercise of her discretion regarding the probative weight to be afforded to all the information placed before her.

[21] In the premises, I am not satisfied that the appellant has established good prospects of success in relation to either his conviction or sentence.

[22] Turning to the personal circumstances presented by the appellant, in my view, the standard family and financial ties relied upon do not meet the high threshold of exceptionality. The appellant’s minor daughter remains in the care of her mother, and the appellant’s business interests, while substantial, do not elevate his case above the ordinary run of persons facing incarceration. Moreover, these factors were placed before and considered by the Regional Magistrate in the court *a quo*.¹¹

[23] A further significant factor in this matter is the known prospect of a life sentence. The Regional Magistrate correctly identified that facing life imprisonment is “enough reason for [the appellant] to want to abscond”.¹²

⁸ Judgment, p. 21.

⁹ Judgment, p. 24.

¹⁰ Judgment, p. 25.

¹¹ Bail Ruling, p. 3.

¹² Bail Ruling, p. 3.

Conclusion

[24] Upon an overall assessment, I am not satisfied that the decision of the Regional Magistrate in relation to bail pending appeal was wrong. The Regional Magistrate properly weighed the seriousness of the offences and the severity of the sentence against the appellant's ordinary personal circumstances, and the lack of prospects of success of the appeal. The appellant failed to show the existence of any factors sufficiently out of the ordinary to be deemed exceptional. Consequently, there is no basis for this court to interfere with the judicial discretion exercised by the lower court.

Order

[25] The following order shall issue:

The appeal against the refusal of bail is dismissed.

PUDIFIN-JONES AJ

Case Information

Date of Hearing : 6 March 2026
 Date of Judgment : 13 March 2026

Appearances

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