

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES

2 March 2026
DATE

SIGNATURE

APPEAL CASE NO: A208/2025

In the matter between:

RUDOLF CORNELIOIUS LUBBE

Appellant (Applicant)

and

THE STATE

Respondent

JUDGMENT: BAIL APPEAL

(The matter was heard in open court and the representatives of the Appellant and the State addressed the court. Judgment was reserved and the parties were informed that the judgment will be handed down by uploading it onto CaseLines and a copy thereof will be forwarded to the representatives via the email addresses supplied. The date of email will be deemed the date of the judgment.)

BEFORE: HOLLAND-MUTER J:

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[1] The appellant was arrested and appeared in the Regional Court for the regional division of Gauteng held at Pretoria. The appellant and Shantelle Oosthuizen were arrested and charged with three charges namely conspiracy to commit murder, attempted murder, premeditated murder and the possession of an unlicensed firearm and ammunition.

[2] Both the appellant and Oosthuizen abandoned their initial bail applications on 12 August 2024. The matter was postponed several times before the appellant brought another bail application. He appeared in person and handled his own bail application.

[3] The appellant was informed that due the seriousness of the charges against him, that the charges were within the provisions of Schedule 6 of the Criminal Procedure Act 51 of 1977 (CPA). In terms of section 60(11) of the CPA an accused in custody for schedule 6 offences shall remain in custody unless having been given a reasonable opportunity to adduce evidence which satisfies the court that exceptional circumstances exist which in the interest of justice permits his release on bail.

[4] The appellant was informed of the provisions of section 60 (11) and that the onus is upon him to prove exceptional circumstances for the court to consider his release on bail. He elected to present his evidence by way of a written affidavit. This affidavit consisted of 404 handwritten pages which he read into the record during the bail application.

[5] The prosecutor presented the evidence of the police officer in charge of the investigation, Captain Smit ("Smit"), by affidavit. Dr Mirriam Tsatsi testified about her consultations she had with the appellant in the prison and the advice she gave. The gist of her evidence was that the condition of the appellant was

not that serious that he undergo an emergency operation regarding the hernia suffered. She was satisfied to refer him to the Kalafong Provincial Hospital and that the necessary operation would be done when needed. Her opinion was that the medical condition of the appellant was not that serious to receive emergency treatment. She mentioned to the appellant that should he request private medical care it could be done but that there was a mere suggestion in this regard. The court is satisfied that the medical condition of the appellant was not that serious to be held as exceptional to consider his release from custody.

[5] The Magistrate denied the appellant's bail application and a Notice of Appeal was filed with the clerk of the Magistrate's Court. The appellant filed an amended Notice of Appeal on the 20th of October 2025 with the Registrar of the High Court in Pretoria. This amendment consists of 24 pages setting out the grounds for the appeal. The appellant alleges that the Magistrate erred in finding that the appellant failed to discharge the onus upon him to prove that there are exceptional circumstances in the interests of justice permitting his release on bail. The appellant moves for condonation of the late filing thereof. After consideration of the request, condonation was granted and the hearing proceeded on the merits.

[6] The appellant elected to place his evidence in support of his request to be released on bail on record by affidavit before the Magistrate. The affidavit consisted of 404 pages. The court deems it not necessary to deal with every aspect raised in the affidavit in detail but to address what is applicable to discharge the onus in section 60(11) of the CPA.

THE APPEAL:

[7] Dr Curlewis acting on behalf of the appellant, and listed what are deemed to be "exceptional circumstances" to be considered in favour of the appellant to discharge the onus. This includes the following:

- * the appellant's asthmatic and allergic condition;
- * the appellant's need for an urgent hernia operation;
- * the appellant's foot problems and the need for custom (special) inner soles for his shoes;
- * the appellant's hypertension and need for specialised medication;
- * the alleged weak case against the appellant;
- * the appellant's age, lack of previous convictions, stable family life and willingness to abide with bail conditions; and
- * the effect of the appellant's further detention on his mother's health.

[8] The appellant further averred that it is "just and equitable" to be granted bail because:

- * he will not endanger public safety and/or commit a schedule 1 offence;
- * he will stand his trial;
- * he will not destroy or conceal evidence;
- * he will not interfere with the police investigation;

- * he will not undermine or interfere in the functioning of the justice system; and
- * his release will not disturb public order, peace and security.

[9] During bail proceedings where the accused is charged with an offence falling within the ambit of schedule 6 the accused will start by adducing evidence to satisfy the court that exceptional circumstances exist which in the interest of justice permits his release. See section 60(11)(a). The evidence may be *viva voce* by the accused and/or other witnesses, or it may be presented on affidavit. The state will thereafter present evidence to counter or rebut that of the accused, which may also be done *viva voce* or by affidavit.

[10] The accused should bear in mind that, when electing to adduce evidence by way of affidavit, he runs a real risk in circumstances where the onus is borne by him. Comrie J in **S v Tshabalala [1998] 3 All SA 411 (C)** held that ***"The only practical and convincing way in which the appellant could counter the foregoing was by tendering viva voce evidence. ... and ... the risk of self-incriminating may exist but it was a risk the appellant should have run in the circumstances"***.

[11] The argument on behalf of the appellant that because the evidence of Captain Smit was tendered on affidavit and not subject to cross examination is unfortunately a double-edged sword because the appellant also elected to tender his evidence on affidavit. None of the witnesses on affidavit could be cross examined. In **S v Kilian [2021] ZAWCHC 100** in par 13 it was held that: ***"In cases where section 60(11) applies, there is consequently a true onus on the appellant to prove facts establishing exceptional circumstances, and the appellant should be well advised to give oral evidence in support of his application for bail. This seems to me to follow, because -differing from the position in which the Plascon-Evans Rule is applied- the discharge of the onus is a central consideration in section 60 (11) applications. If the facts are to be***

determined on paper, the State's version must be accepted where there is a conflict, unless the version appears improbable".

[12] The version of the appellant is to state the least, a very comprehensive but mostly self portraying of alleged innocence. He presents himself as the knight in shining armour who comes to the rescue of those in and around his life. He wants to rehabilitate Oosthuizen (his co-accused) from drug abuse, from her relationship with Louis Harmse, to have compassion with the now deceased Jacques Freitag and to shelter him. He in a lavish way portrays how he provides them with food, shelter and comfort. Underlying to his compassion is his obsession to win over Oosthuizen and in no uncertain terms describes how he lures her to his place for sexual purposes. On his own version he stalks her at Harmse's place with promises, food and favours. He states how he developed a total plan to win back the love of his life.

[13] The appellant further mentions the continuation of his total onslaught plan is to show Harmse that he (Harmse) is not worthy of the second accused (Oosthuizen). He uses the second accused to provide him with a lot more information and proof of Louis Harmse's continuing life of crime. The record on p 84 and further is clear of his motive and grudge he has against Harmse and to use information to finally end Harmse's relationship with the second accused.

[14] The appellant collected information of alleged criminal activities by Harmse to take Harmse legally down that he was reassured that violence will never be considered as an option to derail Harmse. He lured Oosthuizen away from Harmse with fake emergency work at his place to have another passionate few hours with her before going back to Harmse. She worked for the appellant and he made use of this to satisfy her at his place. On his own version he was no saint and had what he called a total onslaught plan to get rid of Harmse.

[15] The appellant on his own version made use of false names for Harmse, Freitag and ultimately himself and the second accused in Sabie to hide their

identification. He was very sparingly with the truth when questioned by Captain Smit on the whereabouts of Freitag on the last time he saw Freitag. He did not mention to Smit that there was an incident with Freitag on the fatal day at the cemetery and that several gunshots were fired by the appellant towards Freitag in alleged self-defence.

[16] He fails to mention to Smit that he booked Harmse under a false name for lodging at the Joos Bekker Caravan park earlier. He falsified medical documentation at the Steve Biko Hospital when Harmse was admitted and had to undergo serious medical procedure for a head injury, the injury caused by Freitag. He backtracks on the agreement with Freitag to get rid of Harmse and avers he requested Freitag not to continue with the request by the appellant that Freitag give Harmse a few slaps to deter him. There is the version by Oosthuizen that she informed the appellant that Freitag wanted the money (R 18 000-00) he was promised to deal with Harmse and this led to the meeting with Freitag at the cemetery where the fatal shooting of Freitag took place. A cemetery is a rather earie place to meet a person knowing the person wants payment for "work done". The appellant destroyed the firearm used to get rid of incriminating evidence to prevent being found in possession of an unlicensed firearm.

[17] He gives different versions on why he and accused 2 suddenly left Pretoria whilst partly questioned by Smit. The interview was suspended when the information of a body in the vicinity of the cemetery was received. Smit's version is that he interrupted the interview to go to where the body was found and that the interview was about the missing person of Freitag.

[18] The appellant's version of the Sabie visit is suspect. According to him he needed a brake away from Pretoria and the plan was to book into a guesthouse. It is then strange why the camping tent was available if a guesthouse was the place to be. The excuse for the false name is difficult to buy. It is strange why he feared Harmse finding them there in view of his compassion with Harmse after the assault by Freitag and the serious head injury sustained by Harmse. Although

a bail application is not a mini trial, the contradictions by the appellant should count against him when considering whether he convinced the court to consider his release.

[19] The exceptional circumstances levelled by the appellant to be considered in his favour with respect is nothing more than the ordinary circumstances in almost every bail application. There is little if any medical information to substantiate his claim that he needs urgent medical attention. The affidavit by Dr Shepton is that he did not diagnose the appellant with chronic Asthma. Again, evidence on affidavit about the condition of the appellant is untested but contradicted and in view supra regarding the onus to prove cannot be dealt with as in the Plascon-Evans Rule. Dr Tsatsi's evidence is attacked by the Appellant as biased because it was not in his favour. He should have presented medical evidence to the contrary to prove the urgency of the medical operation he argues to be exceptional.

[20] There is no evidence to substantiate the appellant's averment that the smoking by other inmates and that the appellant's intestines could be "constricted" at any given moment. There is no evidence that the appellant must undergo an emergency hernia operation and again Dr Tsatsi disputes his averment. A similar argument for special inner soles for his shoes is not supported by medical evidence. His hypertension complaint is another example of the appellant beating around the bush without any proven medical evidence.

[21] The argument that the state failed to provide any written confirmation in terms of section 60(11)(A)(c) to confirm that the charges are schedule 6 offences is neither here nor there. It was never in contention that such certificate was necessary. It was never an issue that the appellant was charged under schedule 6. In terms of section 60(11)(A)(a) such certificate *may* issue a written confirmation to the effect that it is intended to charge the accused with an offence in schedule 6. It was not raised during the bail application and to try to introduce it now is somewhat optimistic and unconvincing.

[22] It is further not the forum to debate the strength of the case against the appellant. On his own version he shot Freitag, although in self-defence. There is a serious charge to be answered. This argument lacks any persuasion.

[23] The issue of a stable family, a newly born grandchild, an ailing mother and a dog at home in the court's view does not amount to exceptional circumstances.

[24] The following aspects weighs negative against the appellant: (i) he is not afraid to give false names to unsuspected people. (ii) He on his own version worked with a total onslaught plan to get rid of Harmse as contender for accused number 2 in his life. (iii) His negotiations with Freitag to do something with Harmse and (iv) destroying the firearm and intimidation of Harmse. (v) He is a flight risk as already demonstrated with his disappearance to Sabie when things became close and hot.

[25] When his version is considered, taking into account the onus he bears and the evidence of Smit and others, the version of the appellant falls far short to be accepted and to reject the other versions. The court is satisfied that the version by Smit was to the point without any serious negative considerations. Has no reason to mislead the court and the criticism levelled against his version has no substance.

[26] Section 65(4) of the CPA is clear that a court or judge hearing a bail appeal shall not set aside the decision which is appealed unless the court or judge is satisfied that the decision was wrong.

[27] In **Sanji Majali v State Case No 41210/2010 GHJ ON 19 /7/2011** considered the position in section 60 of the CPA which governs bail principles and held that although section 35 (3) of the Constitution provides that every accused person and in bail applications the presumption of innocence operates in favour of the accused even if the case against him was strong, but the rights in the Bill of Rights

may be limited if the interests of justice requires so. No right is unlimited. The court is of the view that the interests of justice militate against the release of the appellant on bail

[27] The refusal of bail is also not pre-empted punishment but the court must consider all facts applicable. See **Madlozi v The State Case No A 278/2021 Gauteng High Court Pretoria par 21**. The court is of the view that the appellant has failed to discharge the burden laid upon him in schedule 6 of the CPA.

ORDER:

The appellant's bail appeal is dismissed.



HOLLAND-MUTER J
21/31/2026
Judge of the Pretoria High Court

Appeal was heard on 30 January 2026

Written judgement handed down and sent by Email to the representatives on 2 March 2026

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