

IN THE HIGH COURT OF SOUTH AFRICAGAUTENG LOCAL DIVISION, JOHANNESBURGCASE NO: A20/2025DATE: 05.03.2026

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES : NO

(3) REVISED



SIGNATURE

DATE: 17 March 2026

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In the matter between

KHETHUKUTHULA RADEBE

Appellant

and

THE STATE

Respondent

J U D G M E N T

KUNY, J:

20 This is the matter of Radebe, Khethuthukula and the State, case A20/2025. Judgment in this matter is as follows.

[1] This is an appeal in terms of section 65 of the Criminal Procedure Act 51 of 1977 ("the CPA") against the refusal of bail by the regional court. The

appellant stands charged with murder and robbery with aggravating circumstances arising from a hijacking of a motor vehicle driven by the deceased, Mr Khulusa, a ride-hailing driver who was subsequently discovered to have been fatally shot.

[2] It is common cause that the charges fall within the ambit of Schedule 6 to the CPA. In terms of section 60 (11)(a) an accused charged with a schedule 6 offence shall be detained in custody unless he adduces evidence which satisfies the Court that exceptional circumstances exist which, in the interest of justice, permit the release on bail.

[3] The scope of an appeal against the refusal of bail is limited. Section 65(4) of the CPA provides that the Court hearing the appeal shall not set aside the decision of the Court *a quo* unless satisfied that the decision was wrong. The appeal court therefore does not rehear the bail application afresh, but determines whether the magistrate exercised her discretion improperly, or reached a conclusion not justified by the evidence. See *S v Barber* 1979 (4) SA 218 (D) at 220 E – G.

[4] The concept of exceptional circumstances has been

considered in a number of decisions. In *S v Petersen* 2008 (2) SACR 355 (C) at paragraph 55 the Court explained that exceptional circumstances are circumstances which are unusual, extraordinary or remarkable, when measured against the ordinary run of bail applications. The enquiry is a holistic one which requires the Court to consider the totality of the evidence.

10 [5] The appellant relied principally on his personal circumstances. He stated that he is married, that he has minor children who depend on him financially, and that he is employed as a protection officer earning a monthly income. He further asserts that he has no previous conviction, and that he would comply with any conditions of bail imposed by the Court.

[6] The appellant also advanced the version intended to explain his presence in the hijacked vehicle.
20 According to him, he had requested transport and was travelling in the vehicle when unknown perpetrators stopped the vehicle and robbed both him and the driver. He alleged that he too was assaulted during the robbery, and that he remained in the vehicle after the perpetrators fled.

[7] The essence of the appellant's explanation is that he

happened to be present at the scene by unfortunate coincidence and that his arrest resulted from him being at the wrong place at the wrong time.

[8] The State opposed bail through the affidavit of the investigating officer Sergeant Baloyi. The officer described how the hijacked vehicle was traced through a tracking system shortly after the incident. Police found the coordinates provided by the tracking company and located the vehicle in White City, Jabavu.

[9] When the police arrived they found the appellant seated in the driver's seat of the hijacked vehicle. Upon searching him they discovered two cellular telephones. The appellant was unable to unlock one of the devices, while the police were present, the phone rang and the caller identified himself as being from the tracking company. The caller confirmed that the device belonged to the hijacked vehicle.

[10] A further search of the vehicle revealed a firearm concealed inside the vehicle. The serial number corresponded with the firearm license issued in the appellant's name. The firearm contained live cartridges. These discoveries directly link the appellant to the vehicle and to property belonging to

the deceased.

[11] The investigation subsequently established that the deceased had been fatally shot and that his body had been dumped some distance away. The investigating officer indicated that the hijacking, the recovery of the vehicle, and the discovery of the deceased's body, occurred within a relatively short timeframe.

10 [12] The investigating officer further stated that the appellant provided different residential addresses, some of which could not be verified. The officer expressed the view that the appellant had not been candid regarding his place of residence.

[13] The magistrate evaluated the evidence placed before the Court and concluded that the appellant had failed to demonstrate the existence of exceptional circumstances, as contemplated in section 60 (11)(a).

20 The magistrate held that the appellant's personal circumstances were ordinary and did not meet the threshold required in Schedule 6 offences.

[14] The magistrate also considered the *prima facie* strength of the State's case. The fact that the appellant had been found seated in the hijacked vehicle, that he was in possession of the deceased's

cellular telephone, and that a firearm linked to him was found in the vehicle constituted powerful circumstantial evidence connecting him to the offence under investigation.

[15] It is well-established that possession of recently stolen property may give rise to a strong inference of involvement in the underlying offence, particularly where no satisfactory explanation is provided. At the
10 bail stage such circumstances are capable of demonstrating that the State's case is *prima facie* strong.

[16] In evaluating the appellant's explanation, the magistrate concluded that it was improbable when measured against the objective facts. An explanation that amounts to no more than an assertion that the accused was at the wrong place at the wrong time does not, without more, constitute exceptional
20 circumstances.

[17] The difficulty confronting the appellant is that the objective facts point in the opposite direction. He was discovered seated in the driver's seat of the hijacked vehicle, he was found in possession of the deceased's cellular telephone, and a firearm linked to him was found concealed in the vehicle. These

circumstances undermine the plausibility of his explanation.

[18] Bail proceedings do not involve a determination of guilt. However, courts are entitled to consider the *prima facie* strength of the State's case when assessing whether the interests of justice permit release. See *S v Mathebula* 2010 (1) SACR 55 (SCA).

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[19] The appellant did not satisfy the regional magistrate that the State's case is exceptionally weak or that an acquittal is likely. In schedule 6 matters an accused who relies on alleged weakness of the State's case must demonstrate such weakness on a balance of probabilities.

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[20] In my view, the appellant's reliance on employment, family responsibilities, and the absence of previous convictions, does not constitute exceptional circumstances. Such circumstances are not unusual, and have been held not to satisfy the statutory threshold.

[21] Having regard to the totality of the evidence, I am not persuaded that the magistrate committed any misdirection, or that her conclusion was wrong. On

the contrary, the record demonstrates that she applied the correct legal principles and exercised her discretion judicially.

[22] The appellant therefore failed to discharge the burden imposed him by section 60 (11)(a) of the CPA. The interests of justice do not permit his release on bail.

[23] In the circumstances, the appeal must fail, and I
10 make the following order:

[23.1] The appeal against the refusal of bail is dismissed.



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KUNY, J

JUDGE OF THE HIGH COURT

DATE: 17 MARCH 2026

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

K RADEBE // THE STATE

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