



THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NO: A24/2026

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHERS JUDGES: NO	
(3) REVISED	
DATE	SIGNATURE
24/03/2026	[Signature]

In the matter between:

RYAN MITCHELL GROBLER

Appellant

and

THE STATE

Respondent

JUDGMENT ON BAIL APPEAL

NEMAVHIDI AJ:

Neutral Citation: *Grobler v The State* (A24/2026) [2026] ZAGPJHC 215 (11 March 2026)

Introduction

[1] This is an appeal in terms of section 65(1)(a) of the Criminal Procedure Act 51 of 1977 ("the CPA"). The appellant appeals against two decisions of the Regional Court, Johannesburg: the

refusal of his bail application on 31 October 2025, and the subsequent ruling on 23 February 2026 in which the learned regional magistrate refused to admit an affidavit tendered by the appellant on the basis that it did not constitute "new facts" as contemplated in section 65(2) of the CPA.

[2] The appellant is a 33-year-old male who is one of six accused persons facing a battery of extremely serious charges in the regional court. These charges arise from an incident that occurred on 9 March 2025. The State alleges that the complainant was lured to a meeting under the guise of engaging with a so-called "Sharia Court" aligned to ISIS. Shortly after leaving the meeting, he was accosted by armed men, violently assaulted, and forced into a Toyota Prado. He was taken to 51 Patrol Street, Johannesburg, where he was unlawfully detained under armed guard. Later that day, during a police rescue operation, shots were fired from the premises at the police, who returned fire. One of the assailants was shot and killed.

[3] The charges against the appellant are extensive and include: kidnapping (count 1), assault with intent to do grievous bodily harm (count 2), pointing of a firearm (count 3), robbery with aggravating circumstances (count 4), unlawful possession of firearms and ammunition (counts 5-10), murder (count 11), and multiple counts of contravening the Protection of Constitutional Democracy Against Terrorist and Related Activities Act 33 of 2004 (POCDATARA), including committing a terrorist act (counts 12 and 30). The charges fall under Schedules 5 and 6 of the CPA.

[4] The appellant was initially arrested on 25 August 2025 on unrelated charges under case number 41/812/2025 (alleged theft of motor vehicle and possession of counterfeit goods). While in custody, he was subsequently charged in the present matter on 6 September 2025. He has not been granted bail in the unrelated matter.

The Bail Proceedings a quo

[5] The bail application was heard in the Regional Court, Johannesburg, on 10, 15, and 28 October 2025, with judgment delivered on 31 October 2025 refusing bail. It was common cause that the application was governed by section 60(11)(a) of the CPA, as the appellant is charged with Schedule 6 offences. The onus was therefore on the appellant to adduce evidence on a

balance of probabilities to satisfy the court that exceptional circumstances exist which, in the interests of justice, permit his release.

[6] The State opposed bail primarily through the affidavit of the investigating officer, Warrant Officer Corne Oosthuizen. The investigating officer did not testify viva voce; his evidence was presented by way of affidavit. The State's case against the appellant rested on two main pillars:

6.1. Identification evidence: The complainant allegedly identified the appellant as the front passenger in the Toyota Prado involved in the kidnapping. This identification occurred months after the incident when the complainant was shown a photograph forwarded by an unidentified third party. The description relied upon was that of a "white male with short hair and a beard."

6.2. Financial links: Payments were allegedly made upon instructions from Accused 1 into the bank account of the appellant's company, "Mock Ford," purportedly in payment for jobs done for the syndicate.

[7] The State raised concerns in terms of section 60(4) of the CPA, contending that the appellant was a flight risk, a danger to the public, and that his release would undermine the proper functioning of the criminal justice system. These concerns were based on:

7.1. The serious nature of the charges and the lengthy terms of imprisonment the appellant faces if convicted.

7.2. The appellant was on bail in another matter (in Durban) at the time of these offences.

7.3. The appellant had another pending matter in Johannesburg (CAS 980/08/2025) for which he was not granted bail.

7.4. The appellant was found to have been untruthful regarding properties registered in his name and regarding his cooperation with investigators in providing access to his cellular telephones.

7.5. The appellant had a valid passport and ties to Mozambique through his wife, a Mozambican national.

[8] The appellant testified in his own defence. He denied any involvement in the offences, relying on the alleged weakness of the State's case. He challenged the reliability of the

photographic identification, pointing to its suggestive nature and the absence of a formal identification parade. He presented evidence regarding his personal circumstances: he is a businessman, a father of minor children, and his incarceration was causing financial and personal hardship to his family. He claimed he would stand trial and offered to surrender his passport.

[9] In a comprehensive judgment, the learned magistrate evaluated the evidence. She considered the appellant's personal circumstances but found that they were not out of the ordinary and did not constitute exceptional circumstances. She found that the appellant was not a credible witness, pointing to contradictions regarding his properties and his lack of full cooperation with the police. She assessed the strength of the State's case and found that, at the bail stage, there was *prima facie* evidence linking the appellant to the offences through the identification (which was admissible at the bail stage) and the objective documentary evidence of the financial trail. She concluded that the appellant had failed to discharge the onus resting on him and that his release would jeopardise the proper functioning of the criminal justice system.

The Application on New Facts (23 February 2026)

[10] Following the refusal of bail, the appellant's legal representatives conducted further investigations. Approximately four months later, on 23 February 2026, the appellant sought to place further evidence before the court. The proposed evidence consisted of:

10.1. Photographic alibi evidence purporting to confirm the appellant's presence at his residence in Westville on the date of the kidnapping.

10.2. Confirmatory affidavits from third parties, including family members, a property agent, and a mechanic.

10.3. Banking records and other documentary material.

[11] When the defence attempted to read the appellant's affidavit into the record, the magistrate refused to receive it. She required counsel to provide a summary of the proposed evidence. After hearing the summary, she ruled that the evidence sought to be introduced was not "new" as it pertained to the appellant's whereabouts on the day of the kidnapping—an

issue that had been the subject of extensive cross-examination during the initial application. She found that the evidence existed at the time of the first application or could have been discovered with reasonable diligence, and that it was an impermissible attempt to fill gaps in the case presented in the first application.

The Appeal

[12] The appellant's grounds of appeal against the refusal of bail can be summarised as follows:

12.1. The magistrate materially misdirected herself in assessing the strength of the State's case, particularly by accepting unreliable photographic identification evidence and treating untested hearsay allegations as fact.

12.2. She erred in finding that the appellant was a flight risk or a danger to the public, as no evidence established the risks contemplated in section 60(4).

12.3. She overemphasised the seriousness of the offences and failed to properly evaluate the appellant's personal circumstances.

12.4. She failed to properly balance the appellant's right to liberty against the interests of justice.

12.5. The murder charge is legally unsustainable as the fatal shot was fired by police, and the State cannot establish common purpose against the appellant.

[13] Regarding the ruling on new facts, the appellant contends:

13.1. The magistrate committed a procedural irregularity by refusing to admit the affidavit before determining whether the facts were new.

13.2. The evidence does qualify as new facts, as it only became available after further consultation and investigation.

13.3. Cumulatively with the original record, this evidence demonstrates that the interests of justice permit his release.

The Respondent's Submissions

[14] The respondent submitted a point *in limine* that this court should not have regard to a 79-page affidavit filed by the appellant on 9 March 2026, as it was not before the court *a quo*. The

respondent further submitted that the magistrate correctly applied the law, properly exercised her discretion, and that no misdirection had been shown. Regarding the new facts, the respondent argued that the facts existed at the time of the initial application and that the application was an impermissible attempt to patch up the shortcomings of the first application.

The Legal Framework for a Bail Appeal

[15] The powers of a court sitting on appeal against a refusal of bail are governed by section 65(4) of the CPA, which provides:

"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 opinion the lower court should have given."

[16] The test is well-established. An appeal under section 65(4) is not a rehearing. The appellate court's power to interfere is limited. In *S v Barber*¹ 1979 (4) SA 218 (D) at 220E-G, Hefer J held:

"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 wrongly. 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 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."

[17] Interference is only justified if the court a quo exercised its discretion capriciously, or upon a wrong principle, or has not brought its unbiased judgment to bear on the matter, or has

¹ 1979(4) SA 218 (D) at 220E-G

misdirected itself on the facts or the law to such an extent that its decision is vitiated. See *S v Mpulampula* ²2007 (2) SACR 133 (E) at 136e and *S v Jacobs* ³2011 (1) SACR 490 (ECP) at para 18.

[18] In *S v Porthen and Others* ⁴2004 (2) SACR 242 (C), the court distinguished between a "wide" and "narrow" discretion, holding that the determination of whether an onus of proof has been discharged entails exercising a discretionary power "in the wide sense." This means that if this court is satisfied that the lower court's decision was wrong, it is entitled to substitute its own decision. As articulated in *Killian v S* (A87/2021)⁵ [2021] ZAWCHC 100 and followed in *Pillay v S* (2025-189869) ⁶[2025] ZAKZDHC 82, where the appellate court concludes that the accused has in fact discharged the onus, it must follow that the lower court's decision was wrong within the meaning of section 65(4).

The Onus and Standard in Schedule 6 Bail Applications

[19] Section 60(11)(a) of the CPA provides that in the case of an accused who is charged with an offence 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.

[20] The Constitutional Court in *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat* ⁷1999 (2) SACR 51 (CC) affirmed the constitutionality of this provision. The court held that the heightened threshold for bail in serious offences is justified by the need to protect the public, uphold the integrity of the justice system, and ensure the proper administration of justice. Kriegler J held that the limitation on the right to liberty in section 35(1)(f) of the

² 2007 (2) SACR 133 (E) at 136e

³ 2011 (1) SACR 490 (ECP) at para 18

⁴ 2004 (2) SACR 133 (C)

⁵ 2021 ZAWCHC 100

⁶ 2025 ZAKZDHC 82

⁷ 1999 (2) SACR 51 (CC)

Constitution is reasonable and justifiable in an open and democratic society, given the "deplorable levels of violent crime" in the country .

[21] "Exceptional circumstances" are not defined in the Act. In *S v Petersen* ⁸2008 (2) SACR 355 (C) at 371c, the court held:

"On the meaning and interpretation of "exceptional circumstances" in this context there have been wide-ranging opinions, from which it appears that it may be unwise to attempt a definition of this concept. Generally speaking "exceptional" is indicative of something unusual, extraordinary, remarkable, peculiar or simply different. There are, of course, varying degrees of exceptionality, unusualness, extraordinariness, remarkableness, peculiarity or difference. This depends on their context and on the particular circumstances of the case under consideration.

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."

[22] The enquiry is a unitary one. As held in *Solomons v S* (CC23/2018) ⁹[2019] ZAWCHC 38, the court does not first determine whether exceptional circumstances exist and then separately determine whether the interests of justice permit release. All factors, including those listed in section 60(4)-(9), must be weighed together in a holistic assessment.

The Strength of the State's Case

[23] A central plank of the appellant's argument is that the State's case is fundamentally weak. He contends that the photographic identification is inherently unreliable, that the murder charge is legally unsustainable as the fatal shot was fired by police, and that the State's reliance on common purpose is speculative.

⁸ 2008 (2) SACR 355 (C) at 371c

⁹ 2019 ZAWCHC 38

[24] In *S v Mathebula*¹⁰ 2010 (1) SACR 55 (SCA), the Supreme Court of Appeal held that to successfully challenge the merits of the State case in bail proceedings, the applicant must prove on a balance of probability that he will be acquitted of the charge. Heher JA stated at paragraph [12]:

"To successfully challenge the merits of the State case in bail proceedings, the applicant must prove on a balance of probability that he will be acquitted of the charge. Until an applicant had set up a *prima facie* case of the prosecution failing there was no call on the State to rebut his evidence to that effect" .

[25] The court further held in *Mathebula* at paragraph [11] that an accused who relies on affidavit evidence which is not open to test by cross-examination presents evidence that is "less persuasive." The vulnerability of unsupported alibi evidence was noted as "notorious and dependent on the court's assessment of the truth of the accused's testimony" .

[26] In the present matter, the magistrate did not accept the identification evidence as proven fact. She correctly approached it as *prima facie* evidence linking the appellant to the case, which is permissible in bail proceedings. The financial trail, consisting of objective documentary evidence of payments from a co-accused to the appellant's company, provides corroboration. The magistrate cannot be said to have materially overstated the strength of the State's case.

[27] Regarding the murder charge and common purpose, the appellant's argument is premature. The doctrines of common purpose and *dolus eventualis* are complex and their application will be determined at trial based on all the evidence. The State is not required at the bail stage to prove its case beyond a reasonable doubt. The mere fact that the fatal shot was fired by police does not automatically exonerate the appellant if the State can prove that he was part of a common enterprise that foreseeably led to the death. As held in *S v Thebus and Another* 2003 (6) SA 505 (CC), common purpose can be established through active association or prior agreement. The financial links and the identification, if accepted by the trial court, could form the basis for such a finding.

¹⁰ 2010 (1) SACR 55 (SCA)

The Section 60(4) Risk Factors

[28] The appellant argues that the State failed to establish any of the risk factors contemplated in section 60(4). I disagree. The magistrate conducted a thorough analysis of these factors and her findings are supported by the evidence.

[29] In *S v Dlamini* (supra), the Constitutional Court held that the risk that the detainee would endanger a particular individual or the public at large is a legitimate consideration in the "interests of justice" test. The court stated that section 60(4) provisions are "not intended as deeming provisions at all but as pointers towards the categories of factual findings which could ground a conclusion that bail should be refused" .

[30] The magistrate found:

30.1. Flight risk: The appellant faces extremely serious charges carrying lengthy terms of imprisonment. He has a valid passport and ties to Mozambique. He was on bail in another matter when these offences were committed, demonstrating a disregard for judicial supervision. In *S v Vermaas* ¹¹1996 (1) SACR 528 (T), it was held that an accused who applies for bail is unlikely to admit that he intends to abscond, and the court must assess the objective factors.

30.2. Risk of further offences: The appellant committed these offences while on bail in Durban. He was arrested for the present matter while in custody for another matter in Johannesburg for which he was not granted bail. This demonstrates a propensity to offend and a lack of respect for the criminal justice system.

30.3. Undermining the criminal justice system: The magistrate found the appellant was not truthful regarding properties registered in his name and regarding his cooperation with investigators. His failure to be candid with the court is a factor that weighs heavily against him. In *S v Mathebula* (supra), the court held that "parroting the terms of s 60(4) does not establish any of the grounds, without the addition of facts that add weight to the appellant's ipse dixit" .

¹¹ 1996 (1) SACR 528 (T)

[31] The appellant's personal circumstances, while sympathetic, do not outweigh these risk factors. In *S v Vermaas* (supra), it was held that the personal hardships of detention are experienced by many accused persons and do not, on their own, constitute exceptional circumstances.

Evaluation of the Magistrate's Discretion

[32] The appellant has identified several alleged misdirections. I have carefully considered each of them.

[33] Regarding the identification evidence, the magistrate did not err. She was aware that the identification arose from a photograph and not a formal parade. However, at the bail stage, the court is not required to evaluate the reliability of evidence as if at trial. The magistrate correctly treated the identification as *prima facie* evidence linking the appellant to the case, corroborated by the financial trail. In *S v Matshwe* (CA 118/05) ¹²[2006] ZANWHC 11, the court emphasised that photographic identification must be treated with caution, but that is a matter for trial.

[34] Regarding the treatment of hearsay evidence, the appellant relies on *K.Y.M v S* (CAB20/2024) ¹³[2025] ZANWHC 140 and *Solomons v S* (supra) for the proposition that untested affidavit evidence has less probative value than viva voce evidence. This is correct. However, the magistrate was alive to this distinction. She considered that the appellant testified and was cross-examined, while the investigating officer did not testify. She nevertheless found the appellant's evidence to be lacking in credibility and the State's evidence, though untested, to be sufficient to establish a *prima facie* case and the section 60(4) risks. This was a finding within her discretion.

[35] The appellant's credibility was central to the magistrate's assessment. She found contradictions regarding his properties and his cooperation. In *S v Mathebula* (supra), the court held that an accused's bare denial of complicity, without more, is insufficient. The magistrate

¹² 2006 ZANWHC 11

¹³ 2025 ZANWHC 140

was entitled to reject the appellant's version based on the contradictions revealed during cross-examination.

[36] The magistrate did not treat the seriousness of the charges as determinative. She considered it as one factor among many, which is entirely proper. In *S v Mpulampula* (supra), the court acknowledged that the seriousness of the offence is a relevant consideration.

[37] Having reviewed the record, I am not persuaded that the magistrate misdirected herself in any material respect. She conducted a thorough and balanced assessment of all the evidence. She correctly applied the onus. Her findings of fact are supported by the evidence. Her conclusion that the appellant failed to discharge the onus of proving exceptional circumstances was one that a reasonable court could reach. Her decision was not wrong.

The Ruling on New Facts

[38] Section 65(2) of the CPA provides that if new facts have arisen, an accused may apply for bail again. The term "new facts" refers to facts which were not before the court at the time of the original application and which are materially different in character from those previously presented. See *S v Mohammed* ¹⁴1999 (2) SACR 507 (C) and *S v Petersen* ¹⁵2008 (2) SACR 355 (C).

[39] In *S v Petersen* (supra) at 371e-f, Van Zyl J held:

"When, as in the present case, the accused relies on new facts which have come to the fore since the first, or previous, bail application, the court must be satisfied, firstly, that such facts are indeed new and, secondly, that they are relevant for purposes of the new bail application. They must not constitute simply a reshuffling of old evidence or an embroidering upon it. "

[40] In *S v Vermaas* (supra), the court held that a bail application on new facts is not an extension of the old application. The court must compare the old and new facts to determine if the latter are truly new.

¹⁴ 1999 (2) SACR 507 (C)

¹⁵ 2008 (2) SACR 355 (C)

[41] The appellant argues that the magistrate committed a procedural irregularity by refusing to admit the affidavit before determining whether the facts were new. He relies on *Mia v S* (A198/2025) ¹⁶[2025] ZAFSHC 365 and *Obinyeluba v S* (BA01/2024) ¹⁷[2024] ZALMPPHC 73 for the proposition that a court must first receive the evidence to determine if it is new.

[42] While it is generally prudent for a court to receive the evidence, a refusal to admit evidence that is patently not "new" does not constitute a reviewable irregularity. The court is entitled to assess the nature of the proposed evidence to determine its novelty. In this case, the magistrate required counsel to summarise the proposed evidence. The summary revealed that the core of the new evidence was an alibi for the appellant's whereabouts on 9 March 2025—placing him at his residence in Westville.

[43] The issue of the appellant's whereabouts on that day was the central feature of the bail proceedings. The appellant testified at length and was cross-examined on this very point. The proposed alibi evidence was known to him at the time of the first application. It is not a new fact; it is a belated attempt to bolster his version with corroborating witnesses and documents that were available but not procured timeously.

[44] In *S v Le Roux en Andere* ¹⁸1995 (2) SACR 613 (W), the court held that where evidence was available to the applicant at the time of the previous application but was not adduced, it cannot be relied on in a later application as new facts. This principle applies squarely to the present matter.

[45] Furthermore, the appellant's argument that there has been a lack of progress in the investigation is not borne out by the record. The State indicated that investigations were ongoing and that another accused had been added. The mere passage of time, without more, does not constitute a new fact justifying a fresh bail application. As noted in the De Rebus article on bail applications on new facts, the State's inability to investigate the case *could* be a new fact, but only where there is clear evidence of delay or failure. Here, the appellant's own

¹⁶ 2025 ZAFSHC 365

¹⁷ 2024 ZALMPPHC 73

¹⁸ 1995 (2) SACR 613 (W)

application for a section 342A postponement was dismissed, and the State was given three months to finalise investigations, indicating that progress is being made.

[46] The magistrate was therefore correct in finding that the evidence tendered did not constitute new facts. Her ruling was in accordance with established jurisprudence.

Conclusion

[47] The appellant has failed to persuade this court that the decision of the court a quo to refuse bail was wrong. The magistrate exercised her discretion judicially and on a proper conspectus of the evidence. She correctly applied the onus and the legal principles governing Schedule 6 bail applications. Her findings on the risk factors under section 60(4) are supported by the evidence.

[48] Similarly, the magistrate was correct in finding that the evidence tendered on 23 February 2026 did not constitute new facts. The proposed evidence was either available at the time of the first application or pertains to issues that were fully canvassed in those proceedings. To permit such evidence now would be to allow the appellant to piecemeal his case and circumvent the finality of bail proceedings, which is precisely what the "new facts" jurisprudence seeks to prevent.

[49] The balance between the liberty of the individual and the interests of society is a delicate one. In this case, the scale tips firmly in favour of the interests of justice. The serious nature of the charges, the *prima facie* evidence linking the appellant to a violent, organised criminal enterprise, his lack of candour with the court, and his demonstrated propensity to offend while under judicial supervision all compel the conclusion that his continued detention is justified.

Order

[50] Consequently, the following order is made:

1. The appeal against the refusal of bail handed down by the Regional Court, Johannesburg, on 31 October 2025 is dismissed.

2. The appeal against the ruling of the Regional Court, Johannesburg, delivered on 23 February 2026, refusing to admit the appellant's affidavit as constituting new facts, is dismissed.



NEMAVHIDI AJ
Acting Judge of the High Court
Gauteng Division, Johannesburg

DATE OF HEARING: 18 March 2026
Date of judgment: 24 March 2026
Counsel for Appellant: Adv W J Burger
Instructed by: MW Joosub Attorneys
Counsel for Respondent: Adv N Kowlas
Instructed by: NPA