



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No: CC/07/2023

In the matter between

ZANE KILLIAN

APPLICANT

AND

THE STATE

RESPONDENT

Date of Hearing : 25 March 2026

Date of Delivering : 14 April 2026

JUDGMENT

THULARE J

ORDER

The application to be granted bail is dismissed.

[1] This is an opposed bail application on new facts. The applicant's trial is underway before another judge wherein 47 witnesses testified on behalf of the State. In the trial, where the applicant is accused number 2 alongside 14 others, the State case was closed. The indictment itself contained 124 charges. At the close of the State case the applicant was granted discharge on 4 counts and still faced 37 counts. The applicant testified before accused 1 and has already completed his own defence and closed his case. Accused 1 testified and is in the process of cross-examination.

[2] Whilst only facing the charges related to the murder of an investigating officer Lieutenant-Colonel Kinnear (Kinnear), to wit murder, conspiracy to commit murder, contravention of the Interception of Electronic Communications Act and fraud with the alternative charge of obstructing the course of justice, the applicant applied for bail in the regional court, which was refused in March 2021. On 2 May the High Court dismissed the appeal against the refusal to release the applicant on bail. The applicant's case was consolidated with another matter whereafter the applicant faced additional charges alongside his co-accused. The applicant with other co-accused brought a bail application. In so far as the applicant was concerned that application was directed at the additional charges. The applicant abandoned that application. The applicant brought a bail application on new facts in the High Court, which was dismissed in October 2024. Before this court is another bail application based on new facts.

[3] The remaining 37 charges against the applicant are that he conducted or participated in the conduct, directly or indirectly, of the criminal enterprise affairs in contravention of the provisions of the Prevention of Organised Crimes Act, 1998 (Act No. 121 of 1998) (POCA) (count 2); performed acts aimed at causing, bringing about, promoting or contributing towards a pattern of criminal gang activity in contravention of POCA (count 28); unlawful interception of communication (count 46); attempted murder of a legal practitioner (Mr Booth) (count 47); unlawful interception of communication (count 48); murder (Kinnear); unlawful interception of communication (count 50 to 72); money laundering (count 73 to 76), money laundering (counts 78 to 82) and counts 83 to 85.

[4] In essence, the new facts relied upon by the applicant are that after the close of the State case, he applied for discharge and was discharged on four counts which were the conspiracy to commit murder on Mr Booth (count 29); the attempted murder on Andre Naude (count 37), money laundering (count 77) and fraud (count 96). In his view this constituted material change in his position in that the number of counts against him had reduced, the potential sentencing exposure and the weight of the case against him changed and the State no longer persisted with those allegations against him. His personal circumstances, including a son with serious lifelong medical and developmental conditions which included cerebral palsy and autism spectrum disorder with associated learning and neurological difficulties which required stable routine support and hands-on assistance were not new facts. The fact that the child was becoming heavier and that the applicant's father was aging, are incidental to their growth and maturity and were not new facts under the circumstances. It is simply going too far for the applicant to suggest that the fact

that he did not earn an income as he was in custody, which led to his financial dependency on his aged father, was a new fact sufficient to move the scales of justice as regards his bail on the facts. The failure to earn an income and the collapse and closure of a business because of incarceration is the reality faced by most sole proprietors or entrepreneurs.

[5] The applicant alleged receipt, whilst in custody, of chronic medication for depression, bipolar-related symptoms and mood instability, insomnia and severe back pain. It is only the back pain that he attributes to his alleged assault by members of the Anti-Gang Unit at Bellville SAPS at the time of his arrest. Except for the back pain, the other chronic ailments were not new and some had been dealt with as early as in the first bail application in the regional court. Similarly, a stable home and job offer were always available from the first bail application. In respect of the home, it is only the address that has moved, from the home shared with the wife and children to the father's address. On the work front, from the brother and one other to a totally different person who offered stable work.

[6] Detective Captain Pieter Joubert (Joubert) is stationed at the Directorate for Priority Crime Investigations (Hawks), National Priority Violent Crimes Unit, Organised Crime in the SAPS. He is an investigating officer and part of the national task team to investigate the killing of Kinnear, who was attached to the Western Cape Anti-Gang Unit. Kinnear was shot and killed in his official unmarked SAPS vehicle in front of his residence on Friday 18 September 2020 at about 15H00 by an unknown assailant. Kinnear was involved with several high-

profile investigations featuring well-known underworld gang members and affiliates to these gangsters, as well as police corruption matters.

[7] Investigations into his murder led to a cellular and data analytics company based in Gauteng, able to do location-based station (LBS) tracking of cellular devices through their unique cellular number. This service enabled the user to establish the coordinates of a specific cellular number in relation to cell phone towers and in turn, able to identify a specific location of the user of such cell phone. Making use of this particular service was commonly referred to as pinging the specific cellular number. A search and seizure warrant was executed at the residence of the applicant and that of his father where several cellphones were seized and analysed. An authorized section 205 subpoena was served on the said data analytics company, and the applicant was identified as the user of the specific pinging service who had his own username and password. It was established that the applicant as a user had pinged three different cell numbers of Kinnear since 20 April 2020 and that one of Kinnear's cellphones was pinged a total of 2408 times. It was also established that the applicant pinged Kinnear's official cellular phone on the day of his murder, already starting at 02H32 in the morning. From 13H20 the number was pinged almost every 10 minutes and from 14H35 the pings increased to an average of every 3 minutes. Kinnear was shot and killed at about 15H00. At 15H25, only about 25 minutes after the killing, Kinnear's cellphone was pinged for the last time. This was also the last time that the applicant pinged Kinnear's cellphone number or any other cellular number, a pinging which had been done for several months since 20 April 2020, 2408 times. On that day, 18 September 2020, applicant pinged Kinnear for a total of 35 times.

[8] In an initial interview with Joubert, the applicant's version was that he was asked by a person called Mohammed to trace and do surveillance on the wife of Mohammed's movements in Cape Town as she allegedly had an extramarital affair. The applicant's version then was that Mohammed had supplied him with different telephone numbers of his wife and possible boyfriend for him to trace and report back on their location. This request and all subsequent requests for pings, made at different times during the day and night on whatsapp, were made from March or April 2020 until 18 September 2020. The applicant would then do a search via an application on his phone, supplied by the data and analytics company. He would get Global Positioning Sattelite (GPS) coordinates and would send to Mohammed, who used different cellular numbers during this period. The payments for his services were made to his FNB account via eWallet. When he pinged Mohammeds wifes number and that of the boyfriend on the day of the murder, Mohammed had told him that it was to enable the sheriff of the court to seize the wifes car. He last pinged the wifes number at around 12H00 or 13H00 on the day of the murder and assumed that the car was successfully seized as Mohammed never contacted him again.

[9] In a later interview, in the presence of his legal representative, the applicant changed his version, admitted that Mohammed did not exist and that the true identity of the person was Nafiz Modack (Modack), accused 1 in the trial. He also admitted that the payments made to him for all the pings done on Modacks instructions were paid for by Ricardo Anthony Morgan, accused 15 in the trial. Applicant indicated that 90% of the pings he did between March or April 2020 until 18 September 2020 were done at the request of Modack. Applicant knew that some of the numbers he pinged belonged to members of the SAPS. Modack made

him believe that he (Modack) feared for his life from these SAPS members, was harassed by different SAPS members and needed to know when they were on their way to some of his properties. A total of R5 251 029 -00 was deposited into applicants FNB account for the period 19 June 2019 to 26 September 2020, and R2 293 463- 73 of that amount was paid from 2 March 2020 till 26 September 2020, that is, the period he alleged he started doing work for Modack.

[10] On 12 September 2019 at 13H11 the applicant drew a Consumer Trace Report (CTR) of Timothy Lotter (Lotter). The CTR contained information garnered whenever a consumer applied for credit. It provided the consumers personal information including the name, address, contact details, employment, income and next-of-kin details. On 6 January 2020 Lotter was shot and killed at the N1 City Mall, Goodwood. At some stage, Kinnear was the investigating officer of that murder case. The applicant pinged the cellular number of Booth for a total of 658 times from 6 March 2020 until 18 September 2020 when all pings stopped. There was an attempt on the life of Booth on 9 April 2020 where 5 shots were fired at him. It was during the period that the applicant pinged Booth's phone. Applicant pinged Booths phone from 03H35:37 in the morning on the day of the shooting. The shooting occurred at approximately 07H00. The pings stopped shortly after 07H45:11. They continued the next day after the failed attempt to kill Booth and continued until 18 September 2020. The applicant drew a CTR on Booth on 10 April 2020, a day after the failed attempt.

[11] The applicant pinged the cellular number of Jerome Booysen (Booyesen), also known as Donkey, an alleged leader of the Sexy Boys gang. Applicant pinged

Booyesen for a total of 193 times since 6 March 2020 at 09H54:19 up until 17 September 2020 at 11H18:52. Applicant drew a CTR and an identity photo verification report on Kinnear's wife on 20 April 2020 as well as on the 3 phones of Kinnear. The cellphone of the applicant revealed that Kinnear's 3 numbers had been forwarded to the applicant's phone and included a description of Kinnear as Colonel Kinnear Provincial Detective. The applicant pinged the cell number of Sergeant van der Horst, a colleague of Kinnear who assisted Kinnear with investigations for a total of 71 times from 20 May 2020 until 18 September 2020. Cellphone analysis showed that the applicant removed a sim card from the cellular device that he used on the day of Kinnear's murder just after 17H00 the same day.

[12] The information that applicant sourced was forwarded to different cellular phones used by Modack, on the WhatsApp platform. Bradley Goldblatt supplied the location-based service pings to the applicant. Applicant told Goldblatt that he was employed and used the said platforms to ping for Modack. The State case is that the 72% of the pings made by applicant were of people in conflict with or in opposition of Modack. These included members of the AGU in the SAPS who were investigating Modack, prominent alleged underworld figures on which attempts were made on their lives or were murdered as well as witnesses who would have testified against Modack. Whilst the applicant claimed to be a debt collector, none of these individuals had any debt to be collected from them. Financial records of Morgan revealed that large sums of money flowed between him and applicant, with reference Masks. The evidence also revealed money flows between applicant, Morgan and companies called Modack Tactical and Empire Investments, known to be controlled by Modack and his brother Yaseen.

[13] Edward Du Plessis (Du Plessis) is a Captain at the Hawks National Office and was part of the investigating team. He considered downloads from 3 cellphones seized from the applicant. The accused used 1 sim card for two of the phones. On the 3rd phone, applicant swapped sim cards, with one used until 20 September 2020 replaced with another from 21 September 2020 until his arrest. There were CTR reports from Credit Bureau, WhatsApp images which included photos and screen grabs on the downloads which remained after the conversations were deleted on the phone itself. Du Plessis also received a ping list from Goldblatt who was from the company the applicant used for the location-based station tracking of cellular devices. The applicant researched Booth from 10 March and forwarded the information to another user, including Modack. The information sent by applicant included Booth's home and work address, including Booth's whereabouts on different dates and anticipated times of arrival home from where he was located. The downloads also showed that applicant researched Kinnear and his wife, including having 4 cellphone numbers associated with Kinnear. Applicant not only tracked Kinnear by his cellphone but was also involved in the physical surveillance on Kinnear. The research included the period that Kinnear was in Gaunteng, including the Lodge where the investigation team stayed and another member of the team, Horst.

[14] Section 60(11)(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA) provides:

60 Bail application of accused in court

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence-

(a) 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;

The continued detention is the norm in schedule 6 matters. The applicant must satisfy the court that exceptional circumstances exist [*S v Dlamini*; *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* 1999 (4) SA 623 (CC)]. An applicant is required to adduce convincing factual evidence to support any contention that the considerations in sections 60(4)(a) to (e) do not apply in the circumstances of their case [*Conradie v S* (A248/2020) [2020] ZAWCHC 177 (11 December 2020) para 18]. In an application like the present, there must not only be new facts or changed circumstances placed before the court. It must be new facts or changed circumstances that legitimately warrant the granting of bail previously refused [*S v Mpofana* 1998 (1) SACR 40 at 44g-i; *S v Mohammed* 1999 (2) SACR 507 (C); *S v Yanta* 2023 (2) SACR 387 (WCC) at para 12 to 15]. Reshuffling of old evidence or seeking to address problems encountered in the previous application or filling gaps in the previously presented evidence is not enough [*S v Peterson* 2008 (2) SACR 355 (C) para 57; *S v Mbuyane* 2024 JDR 3741 (MM)].

[15] The premeditated and often planned killings of members of the South African Police Services (SAPS), especially those involved in the investigation of organized crime including corruption, as well as the murder of legal practitioners, both prosecutors and defence lawyers, especially those involved in the scientific scrutiny of conduct which tends to include crime including corruption, perceived competitors, State witnesses and all those deemed to be acting against the criminal enterprises, in recent years, require special attention by the courts, as a conscience of society. It was clear that the movement of the person pinged at a particular moment was crucial, which suggested meticulous planning and the centrality of the

role played by the person pinged, the applicant. The evidence set out paints the applicant as an integral part of a criminal enterprise carrying out murders and attempted murders and was also instrumental in the flow of money through ewallet of FNB. He may not have been the one pulling the triggers, but justice demands that he awaits the verdict with patience.

[16] The evidence suggested that the applicant, with his devices and skill, was used to locate, monitor and record movements of the deceased and other persons of interest to Modack. The evidence suggested that the applicant, Morgan and Modack acted with a common purpose to trace and locate Kinnear and Booth. A section 174 discharge on 4 of the 41 charges, where 37 others remain which were very serious and related to a central role in the tracking and surveillance of investigating officers, lawyers, perceived competitors and witnesses, intended to facilitate their killing by an allegedly corrupt criminal enterprise, was not information which may affect the strength of the State case against the applicant. This is a matter where one hopes that the applicant's legal representatives would encourage the applicant's father to approach social workers and the Department of Education in his precinct to investigate the circumstances of the child as regards special educational needs and psycho-social intervention. The facts of applicants discharge in terms of section 174 of the CPA on 4 charges may meet the first leg of the enquiry, in that they did not exist at the time of the previous bail application and must be properly considered in this subsequent hearing [*S v Johannes* 2025 JDR 1638]. However, all the facts and factors considered as a whole fail the second leg of the enquiry, in that they do not legitimately warrant the granting of bail. I am not persuaded that the applicant met the test of new facts as envisaged in an application of this nature. For these reasons I am making the order.

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DM THULARE

JUDGE OF THE HIGH COURT