

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

Case Number: A91/2025

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED: YES / NO
<u>31/03/2026</u>	<u>[REDACTED]</u>
DATE	SIGNATURE

In the matter between:

SINGH, RUSHIL

Applicant

and

THE STATE

Respondent

JUDGMENT

MALINDI J

Introduction

[1] This matter commenced with the applicant and his deceased sister being charged with 2 counts of forgery, 2 counts of uttering and 1 count of fraud, alternatively theft. The offences are alleged to have been committed during

January and April 2021 and in furtherance of a common purpose, with the sentencing provisions of Section 51(2) of the Criminal Law Amendment Act 105 of 1997 being applicable.¹

- [2] The applicant is therefore facing Schedule 5 offences.
- [3] In August 2024 the applicant and his co-accused lodged a formal bail application before the Specialized Commercial Crime Court, held at Palm Ridge, court which application was dismissed on the 28 August of the same year. The proceedings were adjudicated on the strength of affidavits filed by both the applicants and the prosecution. It was agreed between the parties that the offences that the applicant's fell under Schedule 5 to the Act. Accordingly, the applicant bore the onus at the bail hearing to satisfy the court that the interests of justice permit his release on bail.
- [4] This is a second application for bail on new facts. The applicant's two previous bail applications were unsuccessful before this court. Consequent upon dismissal of the said bail applications, the applicant pursued appeal processes. The appeal in respect of the first bail application failed in the High Court. The appeal in respect of the second bail application, which was an application for bail on new facts, suffered the same fate in the High Court. The applicant instituted appeal processes in the Supreme Court of Appeal. For reasons that are not altogether very clear, the application was either withdrawn or never heard.
- [5] An appeal against the dismissal of the first bail application was heard on the 19th of September 2024 and dismissed on the 25 September 2024 by Dosio J. The applicant subsequently brought a second application based on new facts and it suffered the same fate. On the 16th of March 2026 he appealed against this decision, and it was dismissed by Kuny J on the 19th of March 2026.²

Bail application on new facts

¹ CaseLines section 010-28, paragraph 8.

² CaseLines section 010-26, paragraphs 1-4.

- [6] The appellant's application is based on the grounds that Learned Magistrate Kheswa misdirected herself by her failure to engage in all the factors set out in section 60(4)(a) to (e) of the criminal procedure act 51 of 1977, and/or that she paid lip service thereto.
- [7] The alleged new facts are as follows:
- 7.1. Incomplete investigations;
 - 7.2. The right to freedom and the right to be presumed innocent;
 - 7.3. Personal circumstances and the minor child;
 - 7.4. Strength of the State's case;
 - 7.5. That the appellant is not a flight risk;
 - 7.6. The nature and gravity of punishment;
 - 7.7. Lengthy trial;
 - 7.8. That Investec is malicious and failed to conduct due diligence;
 - 7.9. Previous legal representatives
- [8] The refusal of bail by the Learned Magistrate was confirmed on appeal by Dosio J who could not find that the Learned Magistrate was wrong in her judgment. Kuny J held that what was argued to be new facts in a subsequent application for bail before the Learned Magistrate was a regurgitation of the same facts argued differently. The appellant failed therefore on appeal to this court in his endeavour to be released on bail on this basis Kuny J held also that some allegations of new facts were known to the applicant when he first applied for bail and were admitted then. Alleged new facts should not have been known to an accused when he or she first applied for bail.
- [9] In buttressing the Learned Magistrate's judgment, Dosio J said the following:
- "the Constitution permits the denial of personal liberty in circumstances where the interests of justice require that a person's right to liberty be limited. Section 36 of the Constitution relates to the limitation of the rights enshrined in the Constitution and*

allows such limitation. In the matter of S v Steyn³, the Constitutional Court held that section 12 of the Constitution guarantees everyone's right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause. However, the Constitution does not create an unqualified right to personal freedom".⁴

- [10] Furthermore, Kuny J stated that he would adjudicate the alleged new facts as argued and concluded that they neither qualify the applicant for release on bail nor are they new facts. He utilized the definition of "*new facts*" as meaning "*the facts discovered after the bail application*", or changed circumstances after the unsuccessful bail application.

New facts in this Court

- [11] The applicant alleges that new facts have come to light after the previous refusals of bail, that is:

11.1. Contents of the deceased accused 1's laptop which tend to exonerate him.

11.2. Since the commencement of the trial:

11.2.1. A witness has conceded that the applicant was not the perpetrator of the crimes.

11.2.2. The state is still to complete investigations as to how the applicant was involved in engineering the crimes.

11.3. The applicant's mother's ill health has deteriorated.

- [12] The applicant submits that this court can consider bail as the court of first instance on these issues even if they do not constitute "*new facts*".

³ S v Steyn 2001 (1) SACR 292 SA.

⁴ CaseLines section 009-109 at paragraph 53 of Dosio J's bail appeal judgment.

- [13] Stringent bail conditions, it is submitted, including an increase in bail amounts to ensure the appellants attendance of trial.
- [14] Procedurally, the applicant ought to have gone back to the original court before the Learned Magistrate for consideration of these newly emerged facts for her to consider whether they impact her previous judgment. However, now that he elected to come directly to the High Court, like Kuny J, I will entertain the application.
- [15] I must state therefor that I am bound by the judgments of Dosio J and Kuny J. The question is therefore whether if these facts were placed before magistrate Kheswa they would modify her views to the degree of her allowing bail she had previously refused in its original form and after new facts were placed before her.
- [16] The “*new*” facts set out in paragraph 12 above are not facts that can be regarded as “*new facts*”. The truth or otherwise of the contents of the deceased accused 1’s laptop are not new to the applicant. They are facts that have always been in his head. They are not new by emerged facts. Mr Dean Prins’s alleged concessions in his evidence remain subject to further investigation and other evidence. What Mr Prins’s evidence amounts to will be decided at the end of the trial. Lastly, his mother’s ill health is not a new condition. It was anticipated from the onset that his mother’s condition would remain the same or worsened as she is of advanced age. It is not a changed circumstance.
- [17] I have come to the conclusion therefore that the judgments of Dosio J and Kuny J are binding in as far as they upheld the Learned Magistrate’s judgments on bail and new facts refusal of bail. For example, the new facts as presented before me do not alter their findings that the applicant is a flight risk
- [18] Therefore I make the following order:
1. The application is dismissed.



G MALINDI, J
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION
JOHANNESBURG

APPEARANCES

For the Applicant:
Instructed by:

Adv D Moodliyar
Moodliyar & Bedeshi Attorneys

For the Respondent:
Instructed by:

Adv FR Mhlongo
National Prosecuting Authority, JHB

Date of hearing:
Date of order:
Date of judgment:

27 January 2026
27 January 2026
31 March 2026