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**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO: CA&R 03/2026

In the matter between:

INGANATHI FANDESO

First Appellant

SINETHEMBA MASOMA

Second

Appellant

MTHETHELELI MNGCOBO

Third

Appellant

SHEILA BOSMAN

Fourth Appellant

and

THE STATE

Respondent

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
.....	
DATE	SIGNATURE

JUDGMENT

POTGIETER J

[1] This is an appeal in terms of section 65(1) of the Criminal Procedure Act, 51 of 1977 ('the CPA'), against the refusal of the appellants' bail application on 19 December 2025 by the KwaMaqoma (Fort Beaufort) Magistrate's Court.

[2] The first, second, and third appellants were represented by Mr. Mgangatho and the fourth appellant by Mr. Pendani, while the state was represented by Mr. Mqeke.

[3] The first, second, and third appellants are arraigned on two charges of attempted murder, it being alleged that on 28 November 2025 and at Lower Blinkwater in the district of KwaMaqoma, the accused, acting in common purpose, shot Lungisa Bosman several times with a firearm and on the same date and at the same place shot at Micbisi Bosman with a firearm. The fourth appellant is arraigned on a charge of conspiracy to commit murder, it being alleged that on 28 November 2025 and at Lower Blinkwater in the district of KwaMaqoma, the appellant conspired with her co-appellants to kill Lungisa Bosman. She is further charged with the unlawful possession of a firearm and ammunition, it being alleged that on 30 November 2025 and at [...] K[...] Street, Makhanda, the appellant possessed a Z88 pistol and one live round of ammunition.

[4] The undisputed background to the matter, briefly, is that the complainants in respect of the attempted murder charges are the husband and brother-in-law, respectively, of the fourth appellant, who are residing in the village of Lower Blink Water in the district of KwaMaqoma. On 28 November 2025, at approximately 17:30, unknown black males entered the house of the fourth appellant's husband, Mr Lungisa Bosman, and asked to buy a goat, whereupon Mr Bosman indicated that he was not selling his goats but could show them the house in the village where they could buy a goat. As they were leaving the house, one of the males was seen taking out a firearm and started shooting at Mr Bosman, who sustained five bullet wounds and was hospitalised. He survived the ordeal. The assailants ran to a nearby white VW Polo vehicle, and the vehicle immediately sped off after the three assailants got in. The registration number of the vehicle was K[...], and it had a conspicuous white sticker with the letters VW on its rear window. A description of the car was given to all the police patrol vehicles. Later that evening, at approximately 22:00, the vehicle was stopped near Makhanda with four male occupants. The third appellant was the driver. A spent cartridge case was found underneath one of the car seats, and the white VW sticker on its rear window was covered with brown Sellotape. All four occupants were arrested and charged with attempted murder. Each one of them was in possession of a cellular phone. The fourth appellant was subsequently arrested, and an unlicensed Z88 pistol and one live round of ammunition were recovered from a bedroom at [...] K[...] Street, Makhanda.

[5] As indicated, the appellants brought an application to be admitted to bail. This was opposed by the state. The appellants each submitted an affidavit in support of their application, and the state submitted the affidavit of Captain Fete, the commander of the KwaMaqoma detectives, where the dockets relating to the charges against the respective appellants are being dealt with.

[6] The affidavits of the appellants briefly summarised set out their personal circumstances and dealt with each one of the factors set out in section 60(4) of the CPA relevant to the granting of bail, indicating that none of these factors apply to them. They chose not to deal with the merits of the case in the affidavits. Save for the third

appellant, who has a relevant previous conviction, the appellants have no pending cases or outstanding warrants of arrest against them, while the first, second, and fourth appellants have no previous convictions.

[7] The affidavit of Captain Fete confirms the brief background set out above, and contains the following further details. The offence is very serious, given the fact that one of the complainants nearly lost his life. The scene of the crime was visited, and spent cartridges were collected. Witnesses were interviewed, and statements were obtained from them. Further investigation revealed that the victim was shot at the instructions of his wife, who is the fourth appellant. The latter was found at Makhanda with an unlicensed firearm, which is believed to be the weapon that was used to shoot the victim. The cellular phone records of all the appellants show that they were all present in the vicinity of the crime scene at the time of the incident. The vehicle belonging to the fourth appellant is shown in the footage from the cameras fitted along the road following the car of the assailants. Both vehicles travelled together from Makhanda to KwaMaqoma and then to Lower Blinkwater on the day of the incident. The first and second appellants were identified in a photo identification parade by three witnesses as part of the group of males who were at the victim's house when he was shot by one of them. The police were unable to confirm the address of the first appellant, who gave a false name on being arrested. He gave another false name when he was detained at the KwaMaqoma police station. The third appellant also misled the police in that he falsely indicated that he had no previous convictions when he was charged. The fourth appellant indicated that she stays at 1[...] A[...] Street, Makhanda. She is in the process of purchasing the property at [...] K[...] Street, Makhanda, and has already moved into that property. This is where she was found. When she was arrested, the unlicensed firearm was recovered from her bedroom. When the police visited the house at 1[...] A[...] Street, Makhanda, it was confirmed that she no longer stays there and has moved to her new address at [...] K[...] Street. The affidavit further indicates that this type of crime is prevalent in the relevant magisterial jurisdiction and that there were nine such crimes reported in the area for the year 2025. Firearms were used in all these cases, and people died in some instances as a result. Members of the relevant community feel

unsafe in the circumstances, and the public order will be disturbed if the appellants are released on bail. The relevant community structures have indicated their dissatisfaction with the high level of crime in the area and expressed satisfaction concerning the arrest of the appellants. All the appellants know the witnesses in the case, and releasing them on bail will jeopardise the safety of the witnesses. The fourth appellant is the wife of the one victim, and the available information indicates that she had gone to great lengths to organise the shooting of the victim and went further by driving with the assailants to show them where the victim stays. Releasing her on bail, even subject to conditions, would not stop her from enlisting others to continue with the abortive attack. The ballistic investigation of the firearm and the spent cartridge cases found on the crime scene has not yet been finalised.

[8] The magistrate had regard to all the evidence and concluded that it was not in the interests of justice to release the appellants on bail. This was also for the protection of the victims of the incident.

[9] The appellants accept that the onus rests on them to establish on a balance of probabilities that the interests of justice permit their release on bail. They contend that the magistrate erred and misdirected himself in various respects and was wrong in not admitting the appellants to bail. I return to this below.

[10] It is trite that the approach to be followed in this matter is set out in section 65(4) of the CPA. The magistrate's decision can only be set aside if this court is satisfied that it was wrong. Determining a bail application is in the nature of exercising a discretion. It is instructive to refer at the outset to the illuminating *dicta*, with which I am in full agreement, appearing from the decision of a full bench of the then Witwatersrand Local Division of the High Court in *Ellish & Others v Attorney General Witwatersrand Local Division* 1994(4) SA 835 (W) at 841D – 842B (freely translated and paraphrased from the excellent original Afrikaans text), relating to the task of the presiding officer in bail applications, which I am bearing in mind in dealing with the present appeal. Those *dicta*

are to the following effect: There can be no doubt that bail applications are *sui generis* or unique proceedings. The issue concerns the probable future conduct of the detainee; would he stand his trial, would he probably interfere with state witnesses or undermine the administration of justice, would he probably commit further offences while awaiting trial? The presiding officer has a duty to see that justice is done and must ensure that the right of the detainee to be released is balanced against the right of the community to see the detainee stand his trial and justice, taking its course. The presiding officer cannot sit passively by while the contending parties argue away. The interests of the state and the accused do not coincide. The accused is focused on his liberty, while the prosecution is focused on an eventual conviction. This conflict will not necessarily help to determine what is truly in the interests of justice. It is ultimately the task of the presiding officer to ensure that justice is done. The question of whether justice would be served or undermined is a weighty issue. It entails a value judgment that enlists the assistance of all the knowledge of the law and of human nature at the disposal of the presiding officer. The reasoning required of a presiding officer concerns the probable future conduct of the accused, which is to be determined with reference to information relating to the past and the present. He must venture a prediction in the light of his own knowledge of human nature and the available information. What is to be determined is not a fact or set of facts, but merely a prospect, which is speculative in nature, even though it is based on proven facts.

[11] The court is required to exercise a value judgment in accordance with all the evidence and to apply the relevant legal criteria as prescribed in section 60(4) of the CPA (cf *S v Mbaleki* 2013(1) SACR 165 (KZD) at para 11).

[12] As indicated, it is not in issue that the first, second, and fourth appellants bear the onus on a balance of probabilities of establishing that the interests of justice permit their release on bail. The third appellant has to satisfy the onus to establish the existence of exceptional circumstances permitting his release on bail.

[13] The matter has to be approached based on the assumption that the decision of the magistrate was correct and should not be interfered with unless the appeal court is 'satisfied' (the Afrikaans equivalent is 'oortuig') that it was wrong [*S v Mbele & Another* 1996(1) SACR 212 (W) at 221 h-j (*'Mbele'*)]. It is for the appellants to satisfy the court that the magistrate was wrong. As the court indicated in *S v Barber* 1979(4) SA 219 (D) at 220E-H, '... 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. ... Without saying that the magistrate's view was actually the correct one, I have not been persuaded to decide that it is the wrong one.' (emphasis supplied)

[14] This court is exercising a wide discretion and is at liberty to undertake its own analysis of the evidence in considering whether the appellants have satisfied the onus resting on them [*S v Porthen & Others* 2004(2) SACR 242 (C) at paras 14 & 16 (*'Porthen'*); *S v Botha en n Ander* 2002(1) SACR 222 (SCA) at paras 21–27 (*'Botha'*)].

[15] Bail applications go to the question of deprivation of the fundamental right to personal liberty and courts are required to be mindful of this constitutional guarantee in exercising their discretion with regard to the granting of bail (*Porthen* at para 17).

[16] In order to interfere on appeal, it is necessary to find that the court *a quo* misdirected itself in some material respect in relation to either fact or law (*Panayiotou v S* [2015] ZAECHGHC 73 (28 July 2015) at para 27; *S v Ali* 2011(1) SACR 34 (ECP) at para 14; *S v Mpulampula* 2007(2) SACR 133 (ECD) at 135 d & 136 e). The proper approach is summarised as follows by the full court in *Zondi v S* 2020(2) SACR 436 (GJ) at paras 13–14:

[13] ... this court can only conclude that the court *a quo* was “wrong” if it considers all the relevant aspects for and against the granting of bail to the appellant. If this court is then of the view that the court *a quo*, in light of all these circumstances, should have granted bail to the appellant, the only conclusion would then be that the court *a quo*’s decision was wrong.

[14] Thus, to be successful in this appeal the appellant will have to show that the court *a quo* overemphasised aspects which militate against the granting of bail, whilst aspects in favour of the appellant were not given sufficient weight. It speaks for itself that if this court cannot conclude that the court *a quo* wrongly weighed up the points for and against the granting of bail, this court would not be at liberty to consider the issue of bail afresh. The court *a quo*’s decision will have to stand.

(emphasis supplied)

[17] The phrase ‘*interests of justice*’ in the context of bail applications in terms of section 60 of the CPA has been explained as follows by the constitutional court in *S v Dlamini*; *S v Dladla & Others*; *S v Joubert*; *S v Schietekat* 1999(2) SACR 51 (CC) at para 49 (‘*Dlamini*’):

‘ ... the basic enquiry remains to ascertain where the interests of justice lie. In deciding whether the interests of justice permit the release of an awaiting trial prisoner, the court is advised to look to the five broad considerations mentioned in paras (a) to (e) of ss (4), as detailed in the succeeding subsections. And, it then has to do the final weighing up of factors for and against bail as required by ss (9) and (10).

Subsections (4), (9) and (10) of s 60 should therefore be read as requiring of a court hearing the bail application to do what courts have always had to do, namely to bring a reasoned and balanced judgment to bear in an evaluation, where the liberty interests of the arrestee are given the full value accorded by the constitution.’

[18] The constitutional court put it as follows in *Dlamini supra* at para 75: ‘An applicant is given broad scope to establish the requisite circumstances, whether they relate to the

nature of the crime, the personal circumstances of the applicant, or anything else that is particularly cogent’.

[19] I proceed to assess the arguments presented on behalf of the 1st – 3rd appellants on the one hand and of the fourth appellant on the other. I should indicate at the outset that Mr. Mqeke, on behalf of the State, submitted that there is no merit in the arguments advanced on behalf of the appellants who have failed to establish that the magistrate committed a material misdirection or to adduce evidence that the interests of justice permit their release on bail. There is no need to list his specific contentions, which largely coincide with the conclusion to which I have come with regard to the appeal.

[20] It was submitted on behalf of the first, second, and third appellants (‘the appellants’) that the magistrate did not properly consider the factors set out in section 60(4)(a) – (e) of the CPA. In my view, there is no merit in this contention, as it clearly appears from the judgment that the magistrate was fully aware of and had due regard to these provisions. It was further contended that the investigating officer misled the court when he said that both vehicles had the same registration number. There is no basis in the evidence or otherwise to support this contention, which implies that this information was factually incorrect and deliberately meant to mislead the court. The information was not controverted. Counsel for the appellants then contended that the investigating officer misled the court when he said that the first appellant did not have previous convictions. While this information is incorrect, there is no basis for concluding that the investigating officer was deliberately misleading the court as opposed to simply being mistaken or misinformed. In any event, this item of information would otherwise have been to the advantage of the appellant, but it was corrected at the hearing of the bail application. It was also submitted that the magistrate erred in finding that all the appellants gave false information. As things stand, it was only the first appellant who gave false information concerning his proper name. Insofar as the verification of the addresses of the appellants is concerned, I agree that there is no basis for finding that the appellants gave false information in this regard. It was merely that there was no one at the addresses that they had given who could verify the information. The third

appellant, however, appears to have given incorrect information in this regard, as the report obtained at the address he had given stated that he was no longer living there and that he was living at a different address. Nonetheless, it does not appear that this aspect weighed heavily with the magistrate in refusing bail. The safety of the victims and witnesses appears to have been the predominant consideration relied upon by the magistrate. The magistrate was then criticised for not finding in the case of the third appellant that there were exceptional circumstances present. These being that he was not seen at KwaMaqoma, was not pointed out at the photo identification parade, and the state's case is accordingly weak against him. He is gainfully employed and supports his wife and children. The investigating officer erred in this regard, in stating that the third appellant is not employed and is supported by his wife. The source of this information is questionable since there was no one at home when the police visited the residential address of the third appellant. There is again no merit in this contention in that the evidence indicates that the third appellant was the driver of the vehicle (when it was stopped near Makhanda) that was transporting the alleged assailants and was, on the probabilities, waiting in the vehicle when the attack occurred. The fact that he was not seen on the crime scene or pointed out at the identification parade accordingly does not necessarily indicate that the state has a weak case against him. He was found driving the get-away car shortly after the incident and the other three occupants of the car were pointed out as the attackers at a photo identification parade held a few days later. It was also submitted that it is speculative to suggest that the safety of the victims or witnesses would be at risk should the appellants be released on bail. In my view, the magistrate was fully entitled to rely on the evidence of the investigating officer to this effect for the reasons more fully explained below in dealing with the case of the fourth appellant. The fact that the appellants had no outstanding warrants for their arrest or that there is no evidence that they had at any stage failed to attend court was dealt with in their affidavits. The magistrate was clearly aware thereof in making his decision. It was also submitted that there was no evidence that the appellants would evade their trial or commit further offences, and that they are not flight risks. It was further contended that the magistrate failed to have regard to the presumption of innocence, or to consider appropriate conditions to address any concerns relating to the release of the appellants

on bail, or to attach sufficient weight to the personal circumstances of the appellants, or to the fact that they did not have passports or relatives living outside of the country. The short answer is that the magistrate explicitly dealt with the fact that bail conditions would not eliminate or sufficiently reduce the risk to the safety of the victims and witnesses should the appellants be released on bail. There is furthermore no basis for concluding that the magistrate failed to consider the other considerations raised by the appellants' attorney. It was accordingly submitted on behalf of these appellants that the magistrate was wrong in refusing bail and that bail should be granted to them, subject to appropriate conditions. I proceed to deal with the case of the fourth appellant.

[21] It was argued by Mr Phendani on behalf of the fourth appellant that the magistrate erred by failing to exercise his discretion properly or to consider the principle that refusal of bail should not be used as a form of anticipatory punishment and that bail would ordinarily be granted unless this is likely to prejudice the ends of justice. Moreover, that pre-trial release allows the applicant to keep the fabric of her family intact and maintain her employment and family ties.

[22] The above submissions are based upon the following grounds. The magistrate was not entitled to rely on the contents of the affidavit of Captain Fete in deciding the bail application in the absence of any evidence, having been led. The submission does not accord with the applicable law. In the matter of *Ex parte Lee: In re Rex v Lee* 1948(1) P.H., H30 referred to with approval (and quoting the Prentice-Hall reported decision in full) in *R v Mtatsala & Another* 1948(2) SA 585 (D) at 591–2, the court relied heavily, in refusing bail, on the affidavit of a detective that there were reasonable grounds for believing that witnesses would be tampered with by the applicant if she was released on bail. In *S v Maharaj* 1976(3) SA 205 (D) at 209B-C the court said the following in refusing bail, '... there is evidence on oath from a sergeant in the police (whom I have no reason to disbelieve) which would found a reasonable belief that both appellants had attempted to remove [two witnesses] to achieve a situation where they would not be available as witnesses for the State'. In the same vein, the court in *Mbele supra* (at 221b-d) referred with approval to and cited the following passage from *S v*

Hlongwa 1979(4) SA 112 (D) at 113H-114A: '[D]epending on the circumstances the court may rely also on the investigating officer's opinion that the accused will interfere with State witnesses, if released on bail, even though his opinion is unsupported by direct evidence'. The court reiterated that the 'opinion of the investigating officer based on information received' is a relevant factor to be weighed with any other factors (*at 115A-B*). It follows that the magistrate was not erring as a matter of principle in relying on and attaching the weight that he did to the affidavit of Captain Fete. He cannot be faulted in this respect. After all, the appellants settled to present their case by means of affidavit evidence (as the magistrate correctly indicated) not open to test by cross-examination and it should be added, therefore less persuasive (*S v Mathebula* 2010(1) SACR 55 (SCA) at para 11). The SCA indicated in the same case (*at para 12*) that 'In order successfully to challenge the merits of such a [State] case in bail proceedings an applicant needs to go further: he must prove on a balance of probability that he will be acquitted of the charge'. This the appellant (and I should add her co-appellants) palpably failed to do.

[23] Counsel further submitted that the magistrate erred in deciding the bail application (without hearing viva voce evidence) on the basis (as appears from the affidavit of Captain Fete) that the applicant was residing at [...] K[...] Street and not (as averred in the appellant's affidavit) at 1[...] A[...] Street, Makhanda. The magistrate properly relied in this regard on the affidavit of Captain Fete to the effect that the applicant was arrested at [...] K[...] Street, where the unlicensed firearm was found in her bedroom, and that she was no longer residing at the time at 1[...] A[...] Street. I should add that Mr Mqeke indicated that the ballistics report has come to hand and it links the firearm to the spent cartridge cases found at the crime scene in Lower Blinkwater. Mr Mgangatho and Mr Phendani chose not to respond to this information.

[24] A further ground relied upon was that the magistrate was not entitled, in the absence of any evidence having been led, to draw conclusions and pronounce on the strength of the state's case. Again, the magistrate was properly relying on the said affidavit of Captain Fete for his conclusion in this regard, which he was perfectly entitled

to do. Importantly, the appellant chose not to deal with the merits of the case, in particular why her cell phone was receiving signal from the cell phone tower close to the crime scene around the time of the incident; nor why her vehicle was shown on the footage of the roadside cameras following a vehicle fitting the description of that of the assailants around the time of the incident from Makhanda to KwaMqoma and then to Lower Stillwater. She had an opportunity to do so in response to the averments in the affidavit of Captain Fete after it was read into the record. The same goes for the dispute about her residential address referred to above.

[25] Similarly, counsel asked rhetorically how the magistrate drew the conclusion and pronounced that the appellant would go and kill the complainant (her husband), who was fighting for his life in hospital, without any evidence having been led, and in circumstances where the complainant attended the bail hearing. It was submitted that this conclusion is without merit and based purely on speculation because the appellant is a first offender who has never been charged with any offence, and has no propensity to commit schedule 1 offences. The previous answer, of course, also applies in this regard.

[26] It was finally submitted that the magistrate violated the applicant's right to a fair hearing in that he did not even consider her submissions that she was at risk of losing her employment and failed to attach any weight to her personal circumstances. The short answer is that this submission is not borne out by the record. These factors were set out in the applicant's affidavit, which was duly placed before the court and were clearly considered by the magistrate.

[27] Counsel referred to the following statement in the matter of *Dlamini supra* (at para 11) and submitted that the interests of justice permit the release of the fourth appellant on bail:

'An important point to note here about bail proceedings is so self-evident that it is often overlooked. There is a fundamental difference between the objective of bail proceedings and that of the trial. In a bail application the enquiry is not really

concerned with the question of guilt. That is the task of the trial court. The court hearing the bail application is concerned with the question of possible guilt only to the extent that it may bear on where the interests of justice lie in regard to bail. The focus at the bail stage is to decide whether the interests of justice permit the release of the accused pending trial; and that entails, in the main, protecting the investigation and prosecution of the case against hindrance.'

[28] Having given due consideration to the principles set out above, the evidence on record, and the submissions of the parties, I am not persuaded that the magistrate was wrong in finding that there was a reasonable possibility (I would add a probability) of the applicants tampering with or prejudicing the safety of the complainants and the state witnesses, if released or in having regard to the nature and gravity of the offences and thus refusing bail. It follows that the criticism levelled at the magistrate by the appellants is misguided and that they have failed to establish that the interests of justice permit their release on bail. The third appellant in particular failed to establish any exceptional circumstances permitting his release on bail in the interests of justice. His personal circumstances are not unusual or extraordinary. There is accordingly no merit in the appeal.

[29] In the result, the appeal is dismissed.

D.O. POTGIETER

JUDGE OF THE HIGH COURT

APPEARANCES

For the 1st, 2nd and 3rd appellants: Mr Mgangatho, Instructed by: Mgangatho Attorneys,
7 Somerset Street, Makhanda

For the 4th appellant: Adv Phendani, instructed by: Yandiswa Sonamzi
Attorneys, Office No. 4, Grandview Office Park, B52
Grandview, Beacon Bay, East London

For the respondent: Adv Mqeke, instructed by: Director of Public
Prosecutions, 94 High Street, Makhanda

Date of hearing: 25 March 2026

Date of delivery of judgment: 26 March 2026