



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

REASONS

Not Reportable

Appeal Case No: A182/25

Lower Court Case No: D599/25

In the matter between:

CLAYTON MUGGELS

APPELANT

and

THE STATE

RESPONDENT

Coram: MGENGWANA AJ

REASONS FOR ORDER GRANTED ON 19 FEBRUARY 2026

MGENGWANA, AJ

Introduction

[1] This appeal against the refusal of bail by the Regional Magistrate Court of Paarl served before me on 19 February 2026. The bail appeal was dismissed on the same day. After the dismissal thereof, the Court was requested on the same day to furnish the parties with reasons for the dismissal. These reasons follow hereunder.

[2] The Appellant, a thirty-three-year-old male, is facing nine charges which are as follows:

- (a) Five charges of common assault;
- (b) One charge of *crimen iniuria*;
- (c) One charge of assault with intent to inflict grievous bodily harm; and
- (d) Two charges of rape.

The application for bail in the court *a quo*

[3] On 8 July 2025, the application for bail was made on behalf of the Appellant in terms of section 60(11)(a) of the Criminal Procedure Act 51 of 1997 (“the CPA”). The application was refused. On 1 October 2025, another application for bail based on new facts was also refused. In both instances, the Appellant was legally represented.

[4] It was agreed between counsel for the Appellant and for the Respondent that this application relates to an offence that falls under Schedule 6 of the CPA and, as such, has to be determined in terms of section 60(11)(a) of the CPA. Section 60(11)(a) of the CPA provides that in a case where the accused person 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 that he or she be released on bail.

[5] In the bail proceedings, the Appellant testified in person and did not call any witness to support his evidence. The Respondent, in opposing the granting of the bail, called Sergeant Kellerman, the investigating officer in the matter, whose evidence was also led *viva voce*.

Findings of the court *a quo* in the application of bail

[6] In refusing bail on the 10th day of July 2025, the Magistrate found as follows:

- (a) That there is a *prima facie* case of rape, regardless of the Accused's allegation that it came into play on the eleventh hour of the proceedings.
- (b) That the court could not find any exceptional circumstances in the evidence that was led by the Accused.

- (c) That if the Accused is released on bail, he will endanger the safety of the public.
- (d) That the court cannot ignore the fact that the Accused has been charged with various incidents of domestic violence that took place over a period of three years (between 2022 and 2025).

The bail application on new facts

[7] On 5 September 2025, the Appellant made another bail application based on two alleged new facts, namely:

- (a) That the investigating officer, Mr. Kellerman, has been replaced by an IPID investigator. The Appellant went on to submit that this is crucial as Mr. Kellerman was not independent as he had attended training with the Appellant in KwaZulu-Natal.
- (b) That counts one and two were known to him just before the bail application commenced in court. He goes on further to say that he was not charged at the police station for rape and no buccal sample was taken from him. According to him, this is an irregularity that should not have been countenanced by the court hearing the bail application.
- (c) That he has opened cases of his own against the complainant for criminal investigation.

- (d) That the complainant did not disclose the full extent of her complaints. That he has suspicion that additional statements of the complainant are used to change the bail schedule of this matter in the same docket.
- (e) That he is reliant on medication because he has a medical condition which requires him to be on special diet which Correctional Services may not be able to provide and this will cause him substantial prejudice.
- (f) That he sustained a spinal cord fracture and a spinal cord contusion with monoparesis injury on duty in 2021 with ongoing sequelae.
- (g) That he was diagnosed with mood and anxiety disorder for which he takes regular medication.
- (h) That his incarceration causes his assets to depreciate and incur arrears. The house and the car are incurring arrears which may result in their eventual repossession.
- (i) That he does not possess a firearm if not on duty.
- (j) That the case lodged by Ms. Stacey Jansen was withdrawn.
- (k) The rest of the new facts relate to the weak evidence that the State has in its charges against the Accused.

[8] Written submissions were handed to the magistrate on 17 September 2025 and the magistrate delivered judgment on 1 October 2025. Before delivering the judgment, the magistrate made the following findings:

- (a) That the parties had reached an agreement prior to the commencement of the initial bail proceedings that there is a Schedule 6 offence among the Accused's charges.
- (b) That the medical evidence relating to the Accused's state of mind is to his detriment because subsequent to the diagnosis of mood and anxiety disorder he was requested to hand in his on-duty firearm.
- (c) That it is not the duty of the bail court to venture into the strength or weakness of the technical evidence that will be presented to the trial court during the ventilation of the charges levelled against the Accused.
- (d) That new facts cannot be facts that were known at the time of the bail application but it can only be facts that happened since the first refusal of bail.

[9] Based on the afore-going, bail on new facts was denied as the magistrate found that no new facts were presented to court and that no exceptional circumstances existed for his release on bail.

The grounds of appeal to the application for bail and bail application on new facts

[10] The grounds of appeal advanced in the Appellant's appeal are that the magistrate erred in the following respects in relation to refusal of the bail:

- (a) In finding that the Appellant will not comply with strict bail conditions.
- (b) In finding that the Appellant is a danger to society.
- (c) In finding that the release of the Appellant will undermine the proper function of the criminal justice system, whereas the Appellant's constitutional rights to liberty were infringed.
- (d) The magistrate also erred in placing undue emphasis on the seriousness of the offence and finding that personal circumstances do not warrant the granting of bail in the interest of justice.
- (e) Appellant and his family have compelling and special circumstances.
- (f) The magistrate misdirected and erred in denying the Appellant's bail as the Appellant is not a danger to the community.
- (g) The Appellant has no previous convictions or other pending cases.
- (h) The Appellant presented new facts and the State presented no evidence to disprove or led any evidence to the contrary. It was a misdirection to not consider the new facts as proven, and to consider bail afresh.
- (i) The magistrate erred in not giving due weight to the personal circumstances of the Appellant which in the interest of justice permits his release:

- (i) He has no previous convictions and outstanding cases.
- (ii) He has a fixed address alternative address.
- (iii) He is gainfully employed and faces occupational detriment.
- (iv) He co-operated and when requested reported.
- (v) He has dependents and is the main breadwinner.

Applicable law and legal principles

[11] Appeals to the Superior Courts against refusal of bail are governed by the provisions of section 65 of the CPA. Section 65(4) of the CPA reads as follows:

‘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 or his opinion the lower court should have given.’¹

[12] In *S v Barber* 1979 (4) SA 218 (D) at 220 E–H, Hefer J held the following:

‘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

¹ Section 65(4) of the Criminal Procedure Act 51 of 1977.

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.'²

[13] This approach was also followed by Jaftha J who held as follows at 372 G-I in *S v Vanqa* 2000 (2) SACR 371:

'The appeal has been lodged in terms of s 65(4) of the Criminal Procedure Act 51 of 1997 which enjoins the Court hearing the appeal not to interfere with the magistrate's decision unless it is satisfied that such decision was wrong. It is only in that event that the Court of appeal is empowered to substitute the decision of the lower court with a decision which in its opinion the lower court should have given. It is quite clear from the provisions of the subsection that the duty to satisfy the appeal Court that the lower court's decision was wrong is borne by the appellant. It is clear that the power of the Court of appeal to interfere is heavily circumscribed and is limited to decisions proved to be wrong only. The fact that the appeal Court could have granted bail had it been the court of first instance does not justify the interference.'³

In essence, this court's power to interfere with the court a quo's decision to deny the Appellant bail is very much limited and this limitation has been deliberately brought about by the lawmakers themselves which gives this court very little space to move.

[14] Section 60(11)(a) of the CPA which governs bail applications in relation to Schedule 6 offences reads as follows:

'Notwithstanding any provision of this Act, where an accused is charged with an offence referred to in Schedule 6, the court shall order that the accused be detained

² *S v Barber* 1979 (4) SA 218 (D).

³ *S v Vanqa* 2000 (2) SACR 371 (Tk).

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 interest of justice permit his or her release.’⁴

This provision makes it clear that the onus is on the Appellant to lead evidence that clearly shows that it is in the interest of justice for the court to release him on bail. It also needs to be taken into consideration that inherent in this provision is the decision of the legislature to limit the Appellant’s right to freedom first, and then move the onus to him to show the existence of exceptional circumstances which in the interest of justice should result in the court releasing him on bail.

[15] Section 60(4)(a) – (e) of the CPA reads as follows:

‘The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;

(b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or

(c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence;
or

⁴ Section 60(11)(a) of the Criminal Procedure Act 51 of 1977.

(d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or

(e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security.⁵

Section 60(5) – (8A) elaborate further what the court needs to take into account when considering each of the grounds outlined above.

[16] Section 60(9) of the CPA reads as follows:

‘In considering the question in subsection (4) the court shall decide the matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors, namely-

(a) the period for which the accused has already been in custody since his or her arrest;

(b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;

(c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;

(d) any financial loss which the accused may suffer owing to his or her detention;

(e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;

⁵ Section 60(4)(a) – (e) of the Criminal Procedure Act 51 of 1977.

⁶ Section 60(9) of the Criminal Procedure Act 51 of 1977.

(f) the state of health of the accused; or

(g) any other factor which in the opinion of the court should be taken into account.⁶

This provision enjoins the court to weigh up the interests of justice against the Appellant's right to his personal freedom and any prejudice he is likely to suffer should he be kept in custody.

[17] Further, in assessing the interests of justice, the court is enjoined to approach this issue with the spirit of the Constitution in mind. In particular, the court is guided by the provisions of section 35(1)(f) of the Constitution, which provides that everyone who is arrested for allegedly committing an offence has a right to be released from detention if the interests of justice permit, subject to reasonable conditions. Further, the principle of presumption of innocence of a person facing criminal charges operates in favour of an accused person until his guilt has been established in court.⁷

[18] However, Steyn J stated the following in *S v Mbaleki*:

‘[14] I need however to also deal with the perception out there that the presumption of innocence had a role to play at the consideration of bail. In *S v Dlamini, S v Dladla and Others*, our Constitutional Court unanimously decided that the right to be presumed innocent is not a pre-trial right but a trial right.’⁸

[19] Moseamo AJ stated the following in *S v Shabangu* with regard to the consideration of merits in a bail application:

⁷ The Constitution of the Republic of South Africa Act 108 of 1996.

⁸ *S v Mbaleki* 2013 (1) SACR 165 (KZD).

‘[19] In *S v Van Wyk* 2005 (1) SACR 41 (SCA) at para 6 it was stated that the function of the court in a bail application is to prima facie determine the relative strength of the State’s case and not to make a provisional finding of guilt or innocence.

[20] From the above it is clear that the court will consider the strength or weakness of the State’s case against the appellants. The issue of guilt or innocence of the appellants will be dealt with by the trial court. Therefore the reliance by the appellants on the appellants’ right to be presumed innocent until proven guilty does not have a bearing on the bail application proceedings.’⁹

[20] In *S v Petersen* 2008 (2) SACR 355 (C), Van Zyl J writing for the full bench held as follows when dealing with the meaning of “exceptional circumstances”:

‘[55] 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.

[56] 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. See *S v Mohamed* 1999(2) SACR 507 (C) at 513f-515f. In essence the court will be exercising a value judgment in accordance with all the relevant facts and circumstances, and with reference to all the applicable legal criteria. See in this regard the judgments in *S v H* 1999 (1)

⁹ *S v Shabangu* 2014 JDR 2171 (GP).

SACR 72 (W) at 77*b-i*; *S v Dlamini*; *S v Dladla and Others*; *S v Joubert*; *S v Schietekat* 1999(2) SACR 51 (CC) par [75]-[79] at 89*a-90h*; *Herbay v S* [1999] 2 All SA 216 (W) at 222*d-j*; *S v Botha en 'n Ander* 2002 (1) SACR 222 (SCA) par [19] at 229*i-230d*; *S v Yanta* 2000 (1) SACR 237 (TK) at 241*f-242d*; *S v Bruintjies* 2003 (2) SACR 575 (SCA) par [6] at 577*c-i*.¹⁰

[21] De Waal AJ also held as follows in *Solomons v S*:

‘What is required in respect of Schedule 6 offences is that the Court consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify the release of the accused. What is exceptional cannot be defined in isolation from the relevant facts, save to say that the legislature clearly had in mind circumstances which remove the applicant from the ordinary run.’¹¹

[22] In *S v Petersen* 2008 (2) SACR 355 (C), Van Zyl J also held as follows when dealing with the meaning of “new facts”:

[57] 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. See *S v De Villiers* 1996 (2) SACR (T) at 126*e-f*. The purpose of adducing new facts is not to address problems encountered in the previous application or to fill gaps in the previously presented evidence.

[58] Where evidence was available to the applicant at the time of the previous application but, for whatever reason, was not revealed, it cannot be relied on in the later application as new evidence. See *S v Le Roux en Andere* 1995 (2) SACR 613 (W) at 622*a-b*. If the evidence is adjudged to be new and relevant, then it must be considered in conjunction with all the facts placed before the court in previous

¹⁰ *S v Petersen* 2008 (2) SACR 355 (C).

¹¹ *Solomons v S* [2019] 2 All SA 833 (WCC).

applications, and not separately. See *S v Vermaas* 1996 (1) SACR 528 (T) at 531e-g; *S v Mpofana* 1998 (1) SACR 40 (Tk) at 44g-45a; *S v Mohamed* 1999 (2) SACR 507 (C) at 511a-d.¹²

Analysis of the court a quo's decision to dismiss the bail application in both applications

[23] The Appellant spent a lot of time during his bail application dealing with his personal circumstances instead of discharging the onus placed on him by section 60(11)(a) of the CPA i.e. that exceptional circumstances exist that show that it will be in the interest of justice to release him on bail. In this regard the magistrate found as follows: '[t]hat I cannot find as exceptional circumstance there is no medical evidence there is no other evidence that I can find in favour of the accused. The long and short of it is that the Court is not satisfied that the burden of proof or the onus was discarded (discharged)'¹³ is telling, it makes it clear that the Appellant has failed to furnish the court a quo with evidence showing the existence of exceptional circumstances which show that it would be in the interest of justice for the court a quo to release him on bail.

[24] Besides the aforementioned, the magistrate went further to find that there is a likelihood that the accused will endanger the safety of the public if he is released on bail. The magistrate came to this conclusion by looking at the "repeated offences" that the accused is currently charged with and which had taken place over a long period of time. So, according to the magistrate's conclusion, it would have not been in the interest of justice to release the

¹² *S v Petersen* 2008 (2) SACR 355 (C).

¹³ Page 59 of the transcript of 10 July 2025 line 4-8.

Appellant on bail especially if one looks at the provisions of section 60(4)(a) of the CPA.

[25] In an attempt to address the concern raised by the magistrate that no medical evidence was presented to court as proof of the existence of exceptional circumstances, the Appellant returned to court on 5 September 2025 armed with documentary proof that he had been diagnosed of various medical conditions for which he is still taking medication. The Applicant sought to package this evidence as new facts but the magistrate correctly found that the evidence relating to various medical conditions of the Appellant was not evidence based on new facts as these various medical conditions were within the knowledge of the Appellant when he made the first bail application on 10 July 2025 but were for some other reason not presented to the magistrate. The revelation of the Appellant's acquittance with Sergeant Kellerman, the investigation officer who testified on behalf of the State in opposition to the Appellant's bail application, on the basis that they attended a training course together in KZN could not be admitted as a new fact as the training predated the bail application as well.

[26] Even when the Appellant returned to the court a quo on 5 September 2025, the Appellant again dismally failed to show the court that exceptional circumstances which compelled the court to release him on bail are in existence.

[27] Therefore, taking into account what has been said in the four preceding paragraphs, this court cannot fault the court a quo's refusal to grant the Appellant bail even on the "new facts". That having been said, this court has not been persuaded that the magistrate in the court a quo exercised his

discretion incorrectly and because of that his decision has to be interfered with and that is why this court dismissed the appeal against refusal of bail.

TJ MGENGWANA
Acting Judge of the High Court

APPEARANCES:

For the Appellant: Mr. A Paries

Instructed by : Holmes Attorneys

For the Respondent: Ms. C. Smit

Instructed by: Director of Public Prosecutions: Western Cape

