

REPUBLIC OF SOUTH AFRICA



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

Case No: A15/2026
DPP Ref No: 2025/239468

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

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DATE: 28 APRIL 2026

SIGNATURE

In the matter between:

RENDANI NEGOTA

Appellant

and

THE STATE

Respondent

Bail – Appeal – Schedule 5 offences – s 60(11)(b) of the Criminal Procedure Act 51 of 1977 – Onus on accused – Appellant asserting that he is not a flight risk – Structured enquiry under s 60 not displaced – Assessment of State’s case – Weight to be attached to bare denial – Failure to engage with inculpatory affidavits – Whether absence of flight risk decisive

JUDGMENT (BAIL APPEAL)

KUNY J:

- 1 The appellant, a 35-year-old male, is charged in the Roodepoort regional court with attempted murder arising from a workplace shooting that occurred on 21 August 2025. He brought a bail application on 15 September 2025 and was refused bail on 18 September 2025. The regional magistrate's reasons appear from her judgment which forms part of the record. The appellant appeals against this decision.
- 2 At the bail hearing, the appellant presented an affidavit deposed to by him in support of his bail application. He states in that affidavit, *inter alia*:
 - 2.1 He has a fixed address where he has been residing for 15 years.
 - 2.2 He is an armed security guard employed by Fidelity Security Services Group in Roodepoort, earning R6 500 per month.
 - 2.3 He does not own immovable property and does not have any financial interests or assets in any foreign country.
 - 2.4 He has never been convicted of any criminal offence and there are no pending cases against him.
 - 2.5 He was arrested at his home on 22 August 2025 and gave his full cooperation to the police.
 - 2.6 He is unmarried and has a dependent minor daughter. He is the sole

breadwinner for his child and the child's mother.

- 2.7 He has strong emotional family and community ties within the Republic of South Africa.
 - 2.8 He has known of possible charges against him for some time and yet did not in any way attempt to evade prosecution. He voluntarily presented himself to the police and this, he contends, indicates that he will stand trial.
 - 2.9 The trial against him will be extremely complex and he is advised that a trial of this nature will probably last for many months. He needs to be gainfully employed to support his family and finance ongoing legal expenses related to his charges. His continued detention will prevent him from performing his work and duties.
 - 2.10 He has been advised that he is charged with attempted murder. However, he has not yet been provided with a copy of the police docket, and he is therefore not in a position to provide the court with any details relating to his defence in the matter.
 - 2.11 He denies committing the offence and he intends to plead not guilty. He does not have a history of violent conduct as can be seen from the fact that he does not have any pending criminal charges or previous convictions. He is confident that he will be found not guilty and there is no reasonable prospect of him being convicted of any crime.
- 3 The State presented an affidavit from the investigating officer, Sergeant Macheke. He relates the events that led to the shooting of the complainant as set out in two affidavits, one from the complainant and one from K Ndou, a co-employee who was present when the shooting occurred. These affidavits were handed in as exhibits during the bail application.
- 4 Sgt Macheke confirmed the appellant's address and stated that he could be

supervised by his brother at this address. He proposed that, if bail was granted, the appellant be made to report to a nearby police station two or three times per week. Sgt Macheke stated that investigations were ongoing and included obtaining a medical report, video footage and a statement from the employer of the parties concerned.

5 The complainant's affidavit was to the following effect:

5.1 On 21 August 2025 the complainant reported on duty at 17h55 at Casabella Estate, Taylor Street, Roodepoort. He was posted at the guard room next to the estate gate with Officer Ndou and the appellant.

5.2 The day shift officers handed over to them and they started with their night-shift duties. They reported to control and ensured that all cameras were working and that the occurrence book was updated.

5.3 The incident occurred at approximately 20h45. The appellant insisted that the complainant listen to some audio on his phone. He heard the voices of his colleagues. However, he was not interested and he told the appellant so. They ended up having an unnecessary argument.

5.4 Suddenly the appellant stood up from where he was sitting, took out his firearm from his waist holster and placed it on top of the table. The complainant and Ndou were not concerned as they had not provoked him.

5.5 The appellant walked towards his seat, but before he reached it, he punched the complainant in his face. The complainant was astonished and he stood up, wanting to know why the appellant had assaulted him.

5.6 Ndou also stood up and tried to intervene to prevent a fight. He stood between the complainant and the appellant and asked why they were fighting. The complainant responded and said he did not know why he was being assaulted. The complainant became confused and he heard

a firearm being cocked and a gunshot went off. When he looked, he saw the appellant holding the firearm with his left hand.

- 5.7 The complainant saw that he was bleeding from his left lower chest. He could not feel his feet anymore and fell on the chair.
- 5.8 After the shooting, Ndou ran out, and the appellant walked out of the guard room. He remained alone in pain and shock for about 15 minutes. He managed to draw attention to himself by flicking a torch. Fortunately, an unknown male came to the guard room, driving a vehicle. Ndou arrived, and they begged this person to rush the complainant to hospital. Ndou helped him into the vehicle.
- 5.9 At the hospital, the complainant gave his details but then passed out. He only gained consciousness the following day when, according to him, he was lying in a hospital bed with several drips attached.
- 6 The affidavit of K Ndou (handed in as exhibit C) confirms the complainant's account of what happened in all material respects.
- 7 Although the complainant survived the shooting, he was seriously injured. From the investigating officer's affidavit, it appears that after the complainant had been discharged from hospital he was placed in a rehabilitation facility. He states that the complainant was unable to walk and was required to use a wheelchair.
- 8 The court *a quo* concluded that the appellant had not discharged the onus of showing that the interests of justice permitted his release. The regional magistrate's reasons for refusing bail were based on the following:
 - 8.1 The seriousness of the attempted murder charge.
 - 8.2 The fact that a firearm was used to commit the offence.

- 8.3 The severity of the complainant's injuries (it appears that he has been rendered a paraplegic).
- 8.4 The strength of the State's prima facie case against the appellant.
- 8.5 The possibility of a lengthy custodial sentence.
- 9 In his notice of appeal, the appellant raises the following challenges to the decision to refuse him bail:
 - 9.1 The court did not conduct a balanced enquiry into the personal circumstances of the appellant, the interests of justice and the fact that bail conditions could mitigate any risk associated with granting bail.
 - 9.2 The magistrate overemphasised the seriousness of the offence against the appellant's personal circumstances and the fact that he had a fixed address and was not a flight risk.
 - 9.3 The court failed to properly deal with the factors set out in section 60(4) of the Criminal Procedure Act 51 of 1977 ("the CPA") and identify any of them as a basis for refusing bail.
 - 9.4 The court failed to consider bail conditions, and treated disputed allegations as if they were common cause.
- 10 The essence of the appellant's argument is that the unchallenged evidence concerning his personal circumstances demonstrates that he is not a flight risk and therefore, that he should have been granted bail.
- 11 In evaluating the matter, the magistrate, relying on *S v Van Wyk*,¹ reasoned that the State had shown a strong prima facie case, that the appellant faced a

¹ *S v Van Wyk* 2005 (1) SACR 41 (SCA)

potentially lengthy sentence if convicted, and that these factors weighed against bail. She also relied on *S v Mathebula*² for the proposition that until a bail applicant sets up a prima facie case that the prosecution will fail, the State is not called upon to rebut that contention.

PRINCIPLES APPLICABLE TO THE GRANT OF BAIL

- 12 This appeal is governed by section 65(4) of the CPA. The appeal court may not set aside the decision of the lower court merely because it may have approached the matter differently. It may interfere only if satisfied that the decision was wrong. That does not mean that the appeal court must defer to a decision affected by a material misdirection. Where the magistrate misdirected herself on the law, misconceived the facts, failed to have regard to relevant considerations, or reached a conclusion not supported by the evidence, this Court is entitled to interfere and substitute the decision that ought to have been made.
- 13 The offence with which the appellant is charged is attempted murder and, on the basis accepted before the court *a quo*, falls within Schedule 5. The effect of section 60(11)(b) is that an accused charged with a Schedule 5 offence must be detained in custody unless, having been given a reasonable opportunity to do so, he adduces evidence which satisfies the court that the interests of justice permit his release. The onus therefore rests on the appellant, on a balance of probabilities, to show that his release on bail is permitted by the interests of justice.
- 14 That onus does not, however, displace the structured enquiry required by section 60. The court must still consider whether any of the grounds listed in section 60(4) are present. Those grounds include the likelihood that the accused, if released, will endanger the safety of the public or any particular person, commit a Schedule 1 offence, evade trial, influence or intimidate

² *S v Mathebula* 2010 (1) SACR 55 (SCA)

witnesses, conceal or destroy evidence, undermine or jeopardise the proper functioning of the criminal justice system, or disturb public order or undermine public peace or security.

- 15 Sections 60(5) to 60(8A) identify the considerations relevant to each of those grounds. They require the court to have regard, among other things, to the nature and seriousness of the offence, the strength of the State's case, the likely sentence if convicted, the accused's personal circumstances, family and community ties, employment, assets, previous convictions, conduct after the offence, relationship with witnesses, and the risk that release may undermine the administration of justice or public confidence in it.
- 16 Section 60(9) requires a balancing exercise. Even where factors adverse to the appellant are present, the court must weigh them against the prejudice that continued detention will cause to the appellant. That prejudice may include loss of employment, inability to support dependants, difficulty in preparing a defence, and the impact of detention on the appellant's personal and family circumstances. The question remains whether, having regard to all the relevant facts, the interests of justice permit release on appropriate conditions.
- 17 The Schedule 5 onus is therefore important but not mechanical. The seriousness of the offence, the strength of the State's case and the likelihood of a severe sentence are plainly relevant. They may, in an appropriate case, weigh heavily against release. But they must be considered together with the appellant's personal circumstances, the statutory risk factors and the possibility of imposing conditions that adequately address any identified risk. The ultimate enquiry is whether the appellant has shown, on a balance of probabilities, that his release on bail will not prejudice the interests of justice. ³
- 18 The Constitutional Court in *S v Dlamini*⁴ upheld the constitutionality of the bail

³ S v Dlamini, S v Dladla and Others, S v Joubert, S v Schietekat 1999 (2) SACR 51 (CC)

⁴ S v Dlamini (supra)

provisions in section 60 of the CPA. The following important principles were laid down:

- 18.1 Bail involves a judicial balancing exercise between the accused's liberty and the interests of justice. Sections 60(4) to 60(9) are intended to provide judicial officers with demarcated guidelines to be observed in the exercise of their adjudicative functions in relation to bail. The Court confirmed that preventive concerns, such as danger to the public, risk of further serious offending, interference with justice, and public-order concerns, may legitimately be considered.
 - 18.2 The reverse-onus provisions applicable to Schedule 5 and Schedule 6 offences are constitutionally justifiable because they operate in a limited category of cases and the accused must be given a reasonable opportunity to place relevant facts before the court.
 - 18.3 There is no general right to the police docket at bail stage but the prosecution may be required to disclose enough information to give the accused a fair opportunity to meet the bail onus.⁵
 - 18.4 Bail evidence is not automatically inadmissible at trial. There is no inherent breach of the right to silence where an accused voluntarily elects to testify or place evidence before the bail court, provided the trial court remains alert to exclude evidence that would render the trial unfair.
- 19 The following dictum in *S v Dlamini* gives an overarching statement of how a court will approach a bail hearing:
- [11] Furthermore, a bail hearing is a unique judicial function. It is obvious that the peculiar requirements of bail as an interlocutory and inherently urgent step were kept in mind when the statute was drafted. Although it is intended to be a formal court procedure, it is considerably less formal than a trial. Thus the evidentiary material proffered need not comply with the strict rules

⁵ See also *S v Mauk* 1999 (2) SACR 479 (W)

of oral or written evidence. Also, although bail, like the trial, is essentially adversarial, the inquisitorial powers of the presiding officer are greater. An important point to note here about bail proceedings is so self-evident that it is often overlooked. It is that 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.** [emphasis added]

- 20 In *S v Mathebula* the Supreme Court of Appeal held that where an accused seeks to challenge the strength of the State's case in bail proceedings, it is incumbent on the accused to place sufficient evidential material before the court to support that challenge. A bare denial, an unsubstantiated assertion that the State's case is weak, or a version resting only on the accused's say-so will ordinarily not suffice. An accused who says the State's case is weak must produce evidence to show why it is weak. This does not mean that an accused must prove his innocence at bail stage. It means only that, if he chooses to say that the State's case is weak, he must give the court facts showing why that is so.

EVALUATION

- 21 Where an accused is confronted with detailed inculpatory affidavits at bail stage and elects neither to seek a postponement nor to engage with the material allegations, a court is entitled to attach little or no weight to a bare denial and an assertion of likely acquittal.
- 22 In this case the appellant was fully apprised of the facts relating to the attempted murder charge against him from the affidavits of the complainant and Ndou. If he was surprised by these affidavits he should have sought a postponement to consider and respond to them. In the context of the facts presented on affidavit by the State, and the appellant's failure to engage with them in any exculpatory

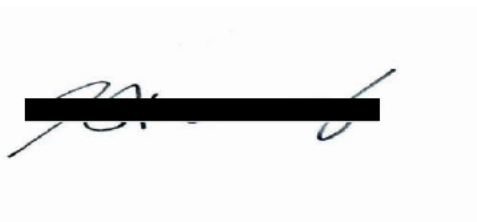
manner, the appellant's assertions that he would be found not guilty and be acquitted, carried no evidential weight.

- 23 A central part of the magistrate's reasoning was that the appellant had elected not to deal with the merits in detail. Although she acknowledged that an accused in a bail application may not have full access to the docket and that it may be unfair to expect him to answer all allegations, she held that where the appellant had asserted his innocence, he should give an explanation, especially where the shooting of the complainant was not denied. The magistrate, correctly in my view, concluded that the appellant was linked to the offence and had not discharged the onus of proving, on a balance of probabilities, that the interests of justice permitted his release.
- 24 The appellant's assertions that he does not have a predisposition towards violence, in the context of the facts before the court together with his failure to offer any explanation as to the circumstances in which the complainant was shot and seriously wounded, carry little weight. On the version presented by the complainant and Ndou, the assault prior to the shooting and the shooting itself were violent acts. There is nothing at this stage to gainsay their sworn statements and, in the absence of any explanation, the section 60(5) considerations weigh heavily against the appellant.
- 25 The absence of a flight risk is important, but not decisive, especially where the seriousness of the offence, the strength of the State's case and potential custodial sentence may affect the overall assessment. The appellant was entitled to remain silent on the merits. However, if he chose to assert that the State's case was weak and that he would in all probability be acquitted at his trial, he had to provide some factual basis for that assertion.
- 26 Although the appellant's fixed address, employment, lack of previous convictions and family responsibilities are important considerations, they do not answer the central difficulty in this case. The State placed before the bail court two direct accounts implicating the appellant in a serious workplace shooting with grave consequences for the complainant. The appellant elected not to

place any factual version before the court explaining the shooting, disputing the central allegations, or showing why the State's case was likely to fail. In those circumstances, the proposed bail conditions, including reporting to a police station and residing with his brother, would not neutralise the factors weighing against release.

27 Accordingly, I make the following order:

- 1 The appeal against the refusal to grant the appellant bail is dismissed.

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JUDGE S KUNY
JUDGE OF THE HIGH COURT
SOUTH GAUTENG HIGH COURT, JOHANNESBURG

Date of hearing: 24 February 2026

Date of judgment: 28 April 2026

Appearances:

For the appellant: Adv S Francis (Chambers, Sandton)

For the State: Adv V Maphiri (Senior State Advocate)