



**THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Reportable/**Not Reportable**

Case no: A2026-013849

In the matter between:

DAWID NAGEL

First Appellant

WILLEM RAS

Second Appellant

GADIFELE PETER MOGAPE

Third Appellant

and

THE STATE

Respondent

Neutral citation: *Nagel and 2 Others v The State* (A2026-013849) (08 May 2026).

Coram: Tyuthuza AJ.

Heard: 24 March 2026.

Delivered: 08 May 2026.

Summary: *Criminal Law –Section 65 of the Criminal Procedure Act 51 of 1977 – Appeal against refusal of bail – Appeal court may set aside refusal to grant bail where decision is wrong – Whether interests of justice permit appellants’ release on bail – Appellants’ previous convictions – Appellants’ pending cases – Likelihood to*

evade trial – Likelihood to commit further schedule 1 offences – Likelihood of interference with witnesses – Strong prima facie case against appellants – Appeal dismissed.

ORDER

1. The appeal against the refusal of bail is dismissed.
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JUDGMENT – BAIL APPEAL

Tyuthuza AJ

Introduction:

- [1] The appellants allegedly acted in common purpose and were charged with 10 counts namely; cyber fraud, cyber forgery, cyber uttering, impersonating a police officer, restricted activity involving culling of protected species, restricted activity involving specifically animal transportation, possession of unlicensed firearm, possession of ammunition without a licence, fraud and display of a number plate which is not applicable to the said vehicle.
- [2] The appellants were arrested on 4 December 2025 and have been in custody since. On 17 December 2025, the appellants launched their bail applications in the Upington Magistrates' Court. The bail applications were opposed by the State. All three appellants were legally represented.
- [3] On 23 December 2025, the court *a quo* refused bail in respect of the appellants. This is an appeal against the court *a quo*'s decision lodged in terms of section 65 of the Criminal Procedure Act¹ ("the CPA").
- [4] Subsequent to the filing of the notice of appeal, the State launched an application in terms of section 65(2) of the CPA, which application was heard and adjudicated on 27 February 2026 by the court *a quo*. The parties have

¹ 51 of 1977.

supplemented their written submissions to include the aforementioned proceedings.

Grounds of appeal:

[5] The grounds of appeal, in sum, are that the court *a quo* erred in:

- 5.1. finding that the State succeeded in proving that the appellants are a flight risk;
- 5.2. finding that there is a likelihood that if the appellants are released on bail, they will attempt to interfere with the witnesses;
- 5.3. finding that there is a likelihood that if the appellants are released on bail, they will endanger the safety of a particular person or the witnesses; and/or commit a schedule 1 offence, especially in regard to the first and second appellants;
- 5.4. finding that there is a likelihood that if the appellants are released on bail, they will attempt to evade their trial as a result of the strength of the State's case;
- 5.5. making no finding in terms of section 60(4)(a)–(e) as to why the appellants' bail was denied;
- 5.6. finding that the appellants did not prove that the interests of justice permit their release on bail; and
- 5.7. failing to properly consider the factors listed in section 60(4)(a)–(e) and subsection (9) of the CPA.

[6] The above grounds of appeal were dealt with in the appellants' heads of argument which were filed in February 2026 prior to the application on 27 February 2026. Subsequent to the section 65(2) proceedings in February 2026, the appellants supplemented their grounds of appeal to include the following:

- 6.1. that the court *a quo* erred in considering other counts other than count 1 and count 2; and

- 6.2. that the court *a quo* erred in considering the second and third appellants' bail applications under schedule 5, they ought to have been considered under schedule 1.

Judgment of the court a quo:

- [7] In refusing bail for the first appellant, the court *a quo* relied on his previous convictions and the fact that he was found guilty on 17 charges in August 2017, and that some of those charges are relevant to this matter. The court *a quo* found that if the first appellant is released on bail, there is a likelihood that he will commit other offences, based on his past conduct. Further that there is a likelihood that if he is released on bail, he will interfere with the State witnesses. In respect of the second appellant, the court *a quo* relied on the fact that he has pending cases, that he was supposed to appear on a matter on 8 December 2025 for stock theft, and the fact that he is allegedly identified on a matter in Colesberg for theft of rhino horns. In respect of the third appellant, the Court indicated that he does not have any previous convictions or pending cases, but was of the view that the third appellant would commit a schedule 1 offence if he is released on bail.
- [8] The court *a quo* refused bail on the basis that the appellants could evade trial. In this regard, the court *a quo* found that the State had a strong case against the appellants based on the evidence before it. The court *a quo* further found that if the appellants were ultimately convicted and sentenced on these charges, they could serve a long sentence of imprisonment. It further concluded that there is a likelihood that if the appellants were released on bail, they would attempt to influence or intimidate witnesses or hide/destroy evidence. The court emphasised that the witnesses were concerned for their safety and feared for their lives. In respect of the first and second appellants, the court concluded that there is a likelihood that they would endanger the safety of a particular person or witness, and/or commit a schedule 1 offence if released on bail. The court *a quo* concluded that the appellants failed to satisfy the court, on the balance of probabilities, that the interests of justice permit their release on bail.

Proceedings in the court a quo:

- [9] The appellants elected not to adduce oral evidence but filed affidavits in support of their bail applications.
- [10] Mr Nagel, the first appellant, provided the following information: he is 48 years old. He is engaged. He has four children aged 9,14,15, and 16 who reside with him and his fiancée. His children, fiancée and his parents are dependent on him. He is residing at 4[...] C[...] Street, Pretoria Gardens, Pretoria and has been residing there for 6 years. He is in good health. His highest level of education is an N3 certificate. He is self-employed and earns R30 000.00 monthly. He owns six vehicles which are worth R500 000.00. He has no pending cases against him. He has four previous convictions and was arrested on 4 December 2025. He intends to plead not guilty to the charges levelled against him. He has no relationship with the State witness. He employs several individuals, and his detention would negatively impact not only his dependants, but his employees too. He further states that his last conviction was six years ago thus showing rehabilitation and a sustained period of law-abiding conduct. That if he is granted bail, he would be able to afford R3000.00 and report to the Pretoria Police Station every Friday between 06:00 and 18:00.
- [11] Mr Willem Ras, the second appellant, stated in his affidavit that he is 47 years old and presently residing at 7[...] P[...] L[...], Fred Messenger (Pretoria). He has been residing at this address for two years. He is married and has four children aged 20, 18, 17 and 13 who reside with him and his wife. His wife and children are fully dependent on him. His highest level of education is also an N3 certificate. He is employed and earns a monthly income of R15 000.00. He owns a vehicle to the value of R40 000.00. He is in good health. He has one previous conviction and one pending matter. He was arrested on 4 December 2025 and intends to plead not guilty to the charges levelled against him.

- [12] Mr Gadifele Peter Mogape, the third appellant, stated as follows: he is 43 years old and is residing at 2[...] V[...] Crescent, Island Estate, Hartebeespoort Dam and has been residing at this address for three years. He is unmarried and has four children aged 12, 10, 8 and 6 who currently reside in Pretoria with their mother. His fiancée, with whom he resides, also has four children. All the eight children, his fiancée and his parents are dependent on him. His highest level of education is grade 10. He is employed and earns a monthly income of R15 000.00. He owns a house to the value of R300 000.00. He is in good health. He has no previous convictions and no pending cases. He was arrested on 4 December 2025 and intends to plead not guilty to the charges. He has no relationship with the State witness. If he is granted bail, he can afford the amount of R3000.00 and is able to report to the Hartebeespoort Police Station every Friday.
- [13] It is so that parroting the terms of section 60(4), without the addition of facts that add weight to the applicant's *ipse dixit*, does not establish any ground to be released on bail.² It is significant that in their affidavits, the appellants simply regurgitated the provisions of section 60(4)(a)–(e) of the CPA, without elaborating thereon. Further evidence was, however, led on behalf of the appellants, in confirmation of their addresses, financial obligations and employment. Undoubtedly, “evidence” as envisaged in section 60(11) of the CPA, for which a bail application is an opportunity to adduce, refers to the available body of facts and information which indicate that the proposition by an applicant, that the interests of justice permit their release, is a valid and true proposition. The legislature could not have intended that an applicant could simply repeat the findings which the legislature set out for consideration, and not provide the facts upon which such findings could be made.³
- [14] On behalf of the State, the investigating officer- Renier Daniel Visser, led *viva voce* evidence. He testified that Mr Nagel was convicted on 4 August 2017 in one matter where there were several charges. He has five previous

² *S v Mathebula* 2010 (1) SACR 55 (SCA) para 15; see also *Kgatle v S* [2023] JOL 60451 (GJ) para 22.

³ *S v Motsi* 2023 (1) SACR 218 (WCC) para 28.

convictions and one pending case. He testified that Mr Nagel will commit an offence if he is released on bail and that the charges were serious. He testified that Mr Nagel attended to some of the witnesses addresses, and that the witnesses feared for their lives. He further testified that the charges against Mr Nagel are similar to those he was charged with in 2017. Further that the appellants were found in possession of a falsified police appointment certificate with Mr Nagel's face on it, as well as a reflector jacket, hand- cuffs, police forensic bags and dockets, and also a name tag. Mr Visser further testified that the police are in possession of two commissioned statements confirming that Mr Nagel pretended to be a police official. He further testified that Mr Nagel would not stand trial in that he had previously escaped from lawful custody on two occasions. He testified that Mr Nagel was released on parole in September 2024.

[15] It is Mr Visser's testimony that the second appellant (Mr Ras) has four pending cases, three of which are for stock theft and one for theft of other goods. The latter theft matter was postponed to 12 January 2026. Whilst the appellant was supposed to appear in Brits for one of the matters in respect of stock theft on 8 December 2025, he was in custody then. He testified that in a span of three months, four cases were opened against Mr Ras. He testified that Mr Ras knows where the complainants are residing as he was at their place of residence. He further testified that at the time of arrest, a rhino horn was found in the vehicle in which the appellants were travelling. Finally, that Mr Ras was positively identified as an accused in Colesberg CAS41/10/2025, a matter wherein rhino horns were stolen from a complainant.

[16] In respect of Mr Mogape, the third appellant, Mr Visser testified that he has no previous convictions and no pending cases. He further testified that the third appellant is implicated in two theft matters which are still under investigation. Further that the State has information, including witness statements, regarding the charges against the appellants. He testified that the appellants were arrested on 4 December 2025 in a Ford Ranger bakkie in Uppington, and that the number plate of the motor vehicle belonged to another Ford Ranger bakkie. Two loose number plates were found in the vehicle, and the third

appellant indicated that the vehicle belonged to his sister. He testified that they found licenced firearms, but not belonging to the appellants, and a rhino horn in a sealed police forensic bag inside the vehicle. The first appellant was also found with a forged police appointment certificate in his possession. The appellants were also in possession of a police name badge, a police jacket, handcuffs, a laptop full of documentation, a clean police docket, as well as unused police forensic bags. Mr Visser concluded that, despite the fact that it was in the early stages of investigation in this matter, the State has a strong *prima facie* case against the appellants.

Proceedings in the court a quo on 27 February 2026:

- [17] The State brought an application based on new facts, which facts the State alleged it was not privy to at the time that the appellants launched their bail application.

- [18] During those proceedings, after much objection from the appellants, the State proceeded to read the statement of Detective Dobola into the record. In sum, he alleged therein that on Saturday, 18 January 2026, he received information that the appellants had planned to kill warrant officer Visser for opposing their release on bail. The court *a quo* found the information to be relevant and further found that the information would not reverse its decision on 23 December 2025 to deny the accused bail. Thus, the court's decision on 23 December 2025 stood.

Analysis of the appeal:

- [19] In terms of section 12(1)(a) of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), a person cannot be deprived of his or her freedom arbitrarily or without just cause. Section 35(1)(f) of the Constitution provides that "everyone who is arrested for allegedly committing an offence has the right to be released from detention, if the interests of justice permit, subject to reasonable conditions."

- [20] Section 65(4) of the CPA directs, in the following terms, how an application in terms of section 65(1) ought to be dealt with:

“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.”

- [21] Section 65(4) of the CPA is drafted in peremptory terms. The decision of the court *a quo* cannot be set aside on appeal unless the appeal court is satisfied that it was wrong. Thus, if this Court is satisfied that the impugned decision was wrong, this Court shall set aside that decision and substitute it with the decision which, in its opinion, the court *a quo* ought to have made. In order to succeed, the appellants will have to show that the court *a quo* wrongly weighed up the points for and against the granting of bail; or that it overemphasised aspects which militate against the granting of bail, whilst aspects in favour of the appellants to be granted bail were not given sufficient weight.⁴

- [22] The court *a quo* dealt with the application for bail on the basis that the parties agreed that the bail would fall within the ambit of schedule 5 to the CPA. However, at the hearing of the matter in this Court, it was agreed between the parties that the bail application in respect of the second and third appellants fell within the ambit of schedule 1 to the CPA, and thus ought to have been dealt with as such. In light thereof, it follows that the correct test which should be applied in relation to the second and third appellants is as set out in section 60(1)(a) of the CPA which provides as follows:

“An accused who is in custody in respect of an offence shall, subject to the provisions of section 50(6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, *if the court is satisfied that the interests of justice so permit.*” (Own emphasis.)

⁴ *Msimango v S* [2025] ZAGPPHC 1119 para 16; *See also S v Zondi* 2020 (2) SACR 436 (GJ) para 14.

- [23] In light of the previous convictions in respect of the first appellant, section 60(11)(b) places an *onus* on the first appellant to prove, on a balance of probabilities, that the interests of justice permit his release on bail. Section 60(11)(b) of the CPA provides as follows:

“Notwithstanding any provision of this Act, where an accused is charged with an offence- . . .(b) referred to in Schedule 5, but not 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 the interests of justice permit his or her release.”

- [24] Section 60(4) of the CPA provides that:

“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
- (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.”

[25] It is common cause that if one or more of the jurisdictional grounds mentioned in the above subsection are established, the appellants would not be entitled to be admitted to bail. The court must be satisfied, on the evidence, that there is a real likelihood, and not a speculative or remote possibility, that one or more of the grounds enumerated in section 60(4) of the CPA will occur if the accused is released on bail.⁵ This can only be achieved if the court properly considers and evaluates all the relevant evidence, well informed of the applicable standard of proof as well as the party upon whom the *onus* rests, before reaching its conclusion in respect of each appellant.

[26] In the matter of *S v Smith and Another*⁶, it was held that:

“ . . . [T]he Court will always grant bail where possible, and will lean in favour of, and not against, the liberty of the subject, provided that it is clear that the interests of justice will not be prejudiced thereby.”

[27] Where the court *a quo* has indeed misdirected itself materially on the facts and/or the legal principles, the court of appeal may consider the issue of bail afresh. Interference is also justified where the lower court “overlooked some important aspects” in coming to the decision to refuse bail.⁷

[28] In my view, it is apparent from the record that the court *a quo* engaged with the statutory grounds as set out in section 60(4)(a) to (e), and weighed those considerations against the evidence tendered by the appellants.

[29] The court hearing the bail application must express a balanced value-judgment, taking into account the grounds in section 60(4) of the CPA. In

⁵ *Botha v S* (Bail Appeal) (BA 03/2025) [2025] ZALMPPHC 49 (19 March 2025) para 18; see also *S v Diale and Another* 2013 (2) SACR 85 (GNP) para 14.

⁶ 1969 (4) SA 175 (N) at 177E– F.

⁷ *S v Alehi* 2022 (1) SACR 271 (GP) para 21.

general, the reasons for refusal of bail can usually be found in one of two considerations, or both, namely: (1) whether the accused will abscond; and (2) whether the granting of bail will lead to interference with the investigation and/or prosecution.⁸ These considerations entail a projection of future conduct, taking into account past conduct.⁹

[30] It is evident from Mr Visser's testimony and further police investigations that, the appellants are at least *prima facie* part of a syndicate and that the State has a *prima facie* case against them. The three appellants were arrested together on 4 December 2025 in Upington. They were driving a Ford Bakkie with a number plate that belonged to another vehicle. Two other number plates were found in the vehicle. According to the third appellant, the vehicle they were found driving belonged to his sister. Inside the vehicle, the police found two licenced firearms which do not belong to the appellants. A rhino horn in a sealed police forensic bag was also found. The first appellant had a forged police appointment certificate in his possession and a name badge. A police jacket, handcuffs, a laptop, a clean police docket and a lot of unused police forensic bags were found in the appellants' possession. The State also has witnesses' statements linking the appellants to the charges.

[31] The appellants did not take the court *a quo* into their confidence, they failed to deal with the merits of the matter and chose to remain silent, despite the evidence which was before the court *a quo*. In *S v Mathebula*,¹⁰ the Supreme Court of Appeal ("the SCA") instructively observed thus:

"In the present instance the appellant's tilt at the State case was blunted in several respects: first, he founded the attempt upon affidavit evidence not open to test by cross-examination and, therefore, less persuasive . . ."¹¹

In *S v Bruintjies*,¹² the SCA further stated as follows:

⁸ *Hiemstra's Criminal Procedure*, Issue 2 at 9 – 12.

⁹ *S v Thornhill* 1998 (1) SACR 177 (C) at 182E– G.

¹⁰ 2010 (1) SACR 55 (SCA) para 11.

¹¹ See also *Van Biljon v S* [2025] JOL 68999 (GJ) paras 19 – 20.

¹² 2003 (2) SACR 575 (SCA) at para 7(f).

“The appellant failed to testify on his own behalf in the trial and no attempt was made by his counsel to have him testify at the bail application. There was thus no means by which the Court *a quo* could assess the *bona fides* or reliability of the appellant save by the say-so of his counsel.”

[32] During the evidence of Mr Visser, it became clear that the first appellant has numerous previous convictions, and two of those are for escaping from lawful custody. The second appellant has three pending matters. He is also implicated, and has been positively identified, as an accused in another matter where rhino horns have been stolen. The third appellant had three pending theft cases. It is concerning that the first and third appellants failed to disclose all this information in their affidavits, and opted to conceal this evidence from the court *a quo*. I find this to be serious omissions, which further affect the appellants’ prospects of being released on bail. It is important when applying for bail that all the facts be placed before court to determine if it is in the interests of justice for the appellants to be released on bail.

[33] I am of the view that the circumstances contemplated in section 60(4) present themselves based on the following considerations:

33.1. The appellants are a flight risk and there is a likelihood that they will attempt to evade their trial if they are released on bail. The first appellant has previously been convicted on two occasions for escaping from lawful custody. A J50 was issued in respect of the third appellant on two occasions. The appellants have no family or occupational ties, and do not own assets, in Upington (where they are to be tried) or in the Northern Cape Province. It is also clear from the pending matters that the appellants’ only link to the Northern Cape Province is through the offences they have allegedly committed.

33.2. There is a likelihood that the appellants will commit further schedule 1 offences. The appellants’ propensity to commit schedule 1 offences is

evidenced by their previous convictions and/or the pending cases against them, which are similar to the charges which they face *in casu*.

33.3. There exists, at the very least, a well-grounded fear of interference with the State witnesses. The appellants attended to the residences of the witnesses, personified themselves as police officers, and were armed. Thus, it is clear that the appellants are aware of the witnesses' residence, and this has caused fear amongst the witnesses. Therefore, I am of the view that if the appellants are released on bail, a reasonable possibility exists that the appellants will interfere with the witnesses or attempt to influence or intimidate those witnesses.

33.4. According to the evidence led on 27 February 2026, the appellants have allegedly plotted and planned to have someone monitor the movements of the investigating officer in order to ultimately kill him. These are serious allegations, which in my view further demonstrate that a likelihood exists that the appellants, if released on bail, would undermine or jeopardise the objectives or proper functioning of the criminal justice system.

[34] On a conspectus of the evidence, the court *a quo* was correct to find that it was not in the interests of justice to permit the appellants' release on bail. In light of the prevalence of the above-mentioned factors; the first appellant has failed to adduce evidence to satisfy this Court that the interests of justice permit his release on bail, and this Court is also satisfied that the interests of justice do not permit the release of the second and the third appellants on bail.

[35] In the premise, I make the following order:

1. The appeal against the refusal of bail is dismissed.

T TYUTHUZA
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION

Appearances

For the Appellant:	Mr. K Juries
Instructed by:	Kenneth Juries & Associates
For the Respondent:	Adv. R Steyn
Instructed by:	Director of Public Prosecutions