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**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG**

Not reportable

CASE NO: CAB9/2026

Reportable: NO

Circulate to Judges: NO

Circulate to Magistrates: NO

Circulate to Regional Magistrates: NO

In the matter between:

BLESSING TSHEGOFATSO DISEKO

APPELLANT

And

THE STATE

RESPONDENT

Coram: Matlhape AJ

Heard: 08 May 2026

Delivered: Judgment was handed down electronically by circulation to the parties' legal representatives by email. The date and time for handing down of the judgment are deemed to be 16h00 on 11 May 2026.

Summary: Bail Appeal- section 65(4)- the appeal court should not lightly interfere with the decision of the court a quo- appeal court may only interfere where the decision of the magistrate is wrong.

ORDER

1. The appeal against the refusal of bail is dismissed.
2. The decision of the Magistrate refusing bail is confirmed.

JUDGMENT

MATLHAPE AJ

Introduction

[1] This is an appeal in terms of the provisions of Section 65 of the Criminal Procedure Act 51 of 1977 (“the CPA”) against the decision of Magistrate Van Vuuren at Magistrate Court, Itsoseng, on 12 June 2025, refusing to admit the Appellant on bail.

[2] The Appellant has been arraigned on charges of assault, assault with the intent to do Grievous Bodily Harm, malicious injury to property as well as attempted murder. It is common cause that at the time of the alleged commission of these offences, the Appellant was out on bail in a pending case of murder which is currently before the Regional Court. In that matter, the Appellant has been admitted to bail which was set in the amount of R1000.00.

[3] Subsequent to his arrest, the Appellant launched a formal bail application before the court *a quo*. The aforesaid bail application was governed by the provisions of section 60 (11) (b) as it fell within the ambits of schedule 5, therefore the onus remained with the Appellant to convince the court that the interests of justice permits that he be released on bail.

[4] The issue for determination is whether the court *a quo* erred in concluding that the appellant failed to discharge the onus upon him, to adduce evidence that demonstrates that the interests of justice permit his release on bail.

Contextual background

[5] As indicated herein above, the Appellant has been charged with an offence of assault, Assault with the intent to do Grievous Bodily Harm, malicious injury to property as well as attempted murder. At his first appearance, the State opposed bail against him. He later brought an application for his release on bail before Magistrate Van Vuuren. At his bail hearing, the Appellant proceeded by way of placing his evidence before court through an affidavit. He did not call any witnesses. The State led viva voce evidence of one constable Taunyane.

[6] The Appellant's evidence was to the effect that he is not a flight risk and will not interfere with state witnesses. He also gave an account of his personal circumstances, being that he is a South African citizen with a valid Identity Document, he is a male person of 29 years of age. He resides within the jurisdiction of the court at number 2[...], Zone 2 Extension, Itsoseng, North West Province, since birth. He has two children. He resides at his parental home. He was unemployed at the time of the arrest. He has no previous

convictions, however, he has one pending case of murder before the Regional court.

[7] Constable Taunyane testified that he opposes the release of the Appellant on bail due to the fact that the Appellant resides within the same vicinity as the complainant. The complainant spent four days in hospital after the incident and that he fears for his life, more especially, because just before the alleged incident the Appellant threatened the complainant by saying that “we told you that we will get you”. He testified that the fact that the Appellant has a pending case of murder and he has currently been charged with attempted murder, he is of the view that if released on bail yet again, the Appellant will commit another violent offence. He impressed upon the court that the community has expressed anger towards the Appellant and has petitioned the court not admit him to bail.

Appellant’s grounds of Appeal

[8] The grounds of appeal are as follows:

1. “The Magistrate erred in failing to consider the factors set out in section 60(4) (a-e) of the Criminal Procedure Act.
2. The magistrate erred in not considering the fact that the appellant has no previous convictions.
3. The magistrate failed to apply her mind to the relevant considerations applicable to the interests of justice.

4. The Magistrate erred in not considering the provisions of section 35(1)(f) of the Constitution which entrenches the right of an accused to be released from detention if the interest of justice permits, subject to a reasonable conditions, despite the fact that he has no pending case, but the State failed to adduce evidence that he contravened those bail conditions, as per Mr. Taunyane's testimony, who is not the investigating officer of the case but standing in for Mr. Lefifi.
5. The magistrate erred in that her decision to refuse to admit the appellant on bail was technically a form of a provisional finding of guilt against the appellant, which goes against the well-established principles concerning bail.
6. The Magistrate erred in that her decision to refuse to admit the appellant on bail was technically as a form of anticipatory punishment in that the learned Magistrate made a number of conclusions against the appellant based on the State's version of events which are still to be challenged by the Appellant in the subsequent trial when the investigations are complete.
7. The magistrate erred by failing to consider the main purpose or objectives of bail because the learned magistrate was more concerned about the merits of the case.

8. The magistrate erred in failing to consider the main purpose or objectives of bail because the learned magistrate was more concerned about the merits of the case at the stage of bail application.
9. The magistrate erred in that she wrongly exercised her judicial discretion in the appellants bail application by placing the requirement to prove interests of justice in a Schedule 5 bail application so high to make it impossible for the Appellant to get bail even though the interests of justice clearly called for the release of the appellant on bail.
10. The magistrate has failed to take into account the constitutional rights of the Appellant's minor children, (aged 2 and 3), especially the minor children's best interests, as is required by case law, despite her conclusion that the Appellant has a duty to care towards the two minor children.
11. The learned Magistrate erred in that she ought to have granted the Appellant bail and set appropriate conditions instead of denying bail."

Legal Framework

[9] Section 35 of the Constitution of the Republic of South Africa, 1996 provides that:

‘Arrest, detained and accused persons

(1) Everyone who is arrested for allegedly committing an offence has the right-

(f) to be released from detention if the interests of justice permit, subject to reasonable conditions.’

[10] Bail proceedings are governed principally by section 60 of the CPA. Section 60(1)(a) provides that:

‘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.’

[11] Section 60(4) of the CPA provides that the interests of justice do not permit the release 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 or any 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;
- (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;
- (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;

- (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.’

[12] The provisions of section 60 (11) (b) which states as follows:

“Notwithstanding any provision of this Act, where an accused is charged with an offence referred to –

(a) 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 interest of justice permit his or her release”.

[13] In terms of section 65(4) of the CPA, a court sitting as a court of appeal shall not set aside the decision against which the appeal is brought unless such court is satisfied that the decision was wrong. The section provides:

“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.”

Analysis

[14] The approach of an appeal court in bail matters is well established. In **S v Barber**¹ where the Court held that:

‘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. 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 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 magistrates who had the discretion to grant bail exercised that discretion wrongly.’

[15] Similarly, in **S v Porthen and Others**² the Court reaffirmed that an appellate court may not substitute its own view merely because it would have arrived at a different conclusion.

[16] This court will therefore not approach this matter as if it is a rehearing of the bail application, but will seek to consider whether the Magistrate’s decision in refusing to admit the Appellant to bail was wrong.

[17] The court *a quo* found that the Appellant, having been released on bail in the pending case of murder, still went to commit yet another offence, showing

¹ 1979 (4) SA 218 (D) at 220E–G,

² 2004 (2) SACR 242(C)

disobedience towards the objectives of proper functioning of the criminal justice system.

[18] As can be gleaned from paragraph 11 herein above, Section 60(4)(d) enjoins the Court hearing the bail appeal to consider, *inter alia*, whether 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.

[19] Furthermore, it is trite that in terms of section 60(8) in considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely:-

- (a) The fact that the accused, knowing it to be false, supplied false information at the time of use or her arrest or during the bail proceedings;
- (b) Whether the accused is in custody on another charge or whether the accused is on parole;
- (c) any previous failure on the part of the accused to comply with bail conditions or any indication that he or she will not comply with any bail conditions; or
- (d) any other factor which in the opinion of the court should be taken into account.

[20] If regard is had to the above, it is clear that the magistrate, in making the determination whether or not to admit the Appellant to bail, properly considered the provisions of section 60(4)(d) read together with the provisions of section 60(8). Therefore, the court *a quo*, in exercising its discretion, correctly appreciated the applicable legal principles and carefully considered the evidence placed before it.

[21] The central consideration in this matter is not merely the seriousness of the offences, but rather the Appellant's apparent disobedience to the proper functioning of the criminal justice system because of his propensity for violent conduct whilst already released on bail for another violent offence.

[22] The fact that the Appellant is currently facing a pending murder charge is a highly relevant consideration in determining whether the interests of justice permit his release. More concerning is the allegation that whilst benefitting from the leniency of the criminal justice system through his release on bail in the murder case, he allegedly committed further offences involving violence.

[23] This conduct also directly implicates the provisions of section 60(4)(a) and (d) of the CPA, namely the likelihood that the Appellant, if released, may endanger the safety of the public or commit further Schedule 1 offences, as well as undermine the proper functioning of the criminal justice system, more importantly, the bail system.

[24] The magistrate correctly found that the Appellant failed to place sufficient evidence before the court demonstrating that the interests of justice favour his release on bail. Apart from placing his personal circumstances on record, little was advanced to counter the State's legitimate concerns regarding public safety and the risk of further violent conduct.

[25] In bail proceedings, personal circumstances, although important, do not operate in isolation. They must be weighed against the interests of society and the proper administration of justice. In **S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat**³ the Constitutional Court recognised that the right to liberty is not absolute and may be limited where the interests of justice so require.

[25] The Appellant's residence within the jurisdiction of the court and his status as a South African citizen do not, in the circumstances of this matter, outweigh the substantial concerns arising from the pending murder charge and the commission of further alleged violent offences whilst on bail.

[26] This Court is unable to find that the magistrate misdirected herself either on the facts or the law. On the contrary, the magistrate exercised her discretion judicially and properly considered all relevant factors.

³ 1999(2) SACR 51 (CC)

[27] In the absence of any demonstrable misdirection, this Court is not at liberty to interfere merely because it may have arrived at a different conclusion. The decision of the court *a quo* cannot be said to have been wrong as contemplated in section 65(4) of the CPA.

Conclusion

[28] Having considered the record, the grounds of appeal, and the applicable legal principles, I am satisfied that the magistrate correctly concluded that the Appellant failed to demonstrate that the interests of justice permit his release on bail.

[29] The appeal accordingly falls to be dismissed.

Order

[30] In the result, the following order is made:

- 1.The appeal against the refusal of bail is dismissed.
- 2.The decision of the Magistrate's Court refusing bail is confirmed.

MATLHAPE B

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

Appearances:

Date of hearing: 08 May 2026

Judgment delivered on: 11 May 2026

Counsel for the Appellant: Adv Mbele

Counsel for the Respondent: Mr Ndlovu