



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

Not Reportable

Case No: CAB07/2026

Trial Court Case No: B174/2025

In the matter between:

CLEMENT VUYISILE MAZABANE

Appellant

And

THE STATE

Respondent

Date heard: 08 May 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 10h00 on 20 May 2026.

Summary: Criminal law –Appeal against bail proceedings governed under schedule 6 of the Criminal Procedure Act 51 of 1997 – accused previously convicted of schedule 5 offence, two previous conviction and an harassment order at hand, application for bail refused at court a quo–on the basis that appellant failed to discharged proof that exceptional circumstances exist which warrant the appellant to be released on bail, application for bail appeal at this court, Interests of justice and prospects of success favouring bail – section

60(4) (a) – (e) read together with subsection 8(A) (a) to (e) of Criminal Procedure Act 51 of 1977 as amended- Essential existing exceptional circumstances unproved – Appeal stands to be dismissed.

JUDGMENT- BAIL APPEAL

MNYOVU AJ

Introduction

[1] This is an appeal by the appellant, Clement Vuyisile Mazabane (the appellant), against the judgement of the Learned Magistrate Mr A. Abrahams, sitting at Lichtenburg Magistrate's Court, in which the court dismissed the appellant's application to be released on bail. The appellant was legally represented at the bail hearing before the magistrate.

[2] The appellant is the South African citizen charged for murder of the 36 year old, female person, named F[...] M[...], his girlfriend, read with the provisions of section 51 (1), Schedule 2 Part 1/ Section 51(2), Schedule 2 Part II of the Criminal Law Amendment Act 105 of 1977, and read further with the provisions of Section 256 and 258 of the Criminal Procedure Act 51 of 1977.

[3] The appellant was further charged for being in possession of a dangerous weapon to wit 02 x knives (PANGAS), According to the charge sheet, the accused is guilty of the offence of contravening the provisions of section 3(1) read with Section 1,2,3(2) of the Dangerous Weapons Act 15 of 2003 and read further Section 250(1) of the Criminal Procedure Act 51 of 1977.

Grounds for Appeal

[4] The grounds of appeal as noted in the Notice of Appeal are as follows:

(1) *The learned magistrate erred and misdirected himself when he held and/or decided that the Appellant did not, on a balance of probabilities, adduce evidence proving the existence of exceptional circumstances warranting his release on bail.*

(2) *the learned magistrate erred and misdirected himself when he held that the release of the accused will lead to shock and outrage in the community in terms of Section 60(4) (e) read together with subsection 8 (A) (a) to (e) of the Criminal Procedure Act 51 of 1977 as amended,*

(2.1) *In doing so, the Learned magistrate erred by disregarding the fact that the community petition which was handed in at court and admitted as an exhibit was completed by community members of Boikhutso and Blydeville and two alternative address were provided outside the area of petition signatories and as such irrelevant to the appellant*

(2.2) *The learned magistrate erred by disregarding the fact whether indeed the community members that had completed the petition truly reside at the two provided alternatives address provided by the appellant at Burgersdorp and Itsoleng which as a result not read on record.*

(3) *The learned magistrate erred and misdirected himself when he held that the state case against the appellant was strong and in doing so totally disregarded the evidence of the Investigating officer to the effect that the state's case is relatively weak against appellant.*

(3.1) *In doing so, the learned magistrate erred by disregarding the discrepancies which riddled the state's case at the bail application stage wherein the state does not have evidence at their disposal which indicate that the appellant has committed such an offence.*

(4) *the learned magistrate erred in finding that the appellant had a propensity to commit schedule 1 offences and in doing so disregarded the evidence placed on record to the effect that the appellant has never been released on bail then arrested and convicted whilst out on bail.*

(4.1) *the learned magistrate erred in finding that the appellant had a propensity to commit schedule 1 by doing that he disregarded the evidence that his two previous*

convictions has passed the ten (10) year's period and that he qualifies to be awarded expungement should he apply for one.

(5) the learned magistrate erred and misdirected himself by not properly considering the personal circumstances of appellant in terms of section 60(9) of the Criminal Procedure Act 51 of 1977 and giving undue weight to the evidence of the state to the detriment of the appellants personal circumstances.

(6) the learned magistrate erred and misdirected himself by not properly considering the written submissions made on behalf of appellant and blatantly indicating on record that he only considered same as normal circumstances.

(6.1) In doing so, the learned magistrate did not take into account such written submissions to their full flavour and in making his findings, the learned magistrate did not thereby consider the totality of facts which have been placed before him.

(7) the learned magistrate erred and misdirected himself by not considering the evidence of the investigating officer to the effect that the appellant is not flight risk and would indeed stand his trial.

(7.1) in doing so, the learned magistrate disregarded the main purpose of bail which is to secure the attendance of an applicant at trial and bail should not serve as punishment.

(8) the learned magistrate erred and misdirected himself by not considering the evidence of the investigating officer to the effect that the alleged offence took place at night at the primary resident of the appellant and of which the issue of the eyewitness was only introduced during the cross examination thereby subjected to doubt.

(8.1) the learned magistrate misdirected himself in believing that the appellant is required to put his full version to the state witness as if bail must be treated like a trial.

(9) the learned magistrate erred and misdirected himself by not considering that none of the factors listed in section 60(4) (a)– (e) of the Criminal Procedure Act 51 of 1977, are not in existence and in the absence of such, the interests of justice thereby permit the release of the appellant.

(10) *the learned magistrate erred and misdirected himself by not considering the weakness of the state case, coupled with the fact that the appellant is not a flight risk, constituted exceptional circumstances warranting the appellant's release from custody.*

*(10.1) In doing so, the learned magistrate totally disregarded the case of **Mooi v S** which in essence indicates that the weakness of the state's case coupled with the fact that the appellant is not a flight risk constitutes an exceptional circumstance which warrants him release from the custody.*

(11) *the learned magistrate erred and misdirected himself by not considering that the strong personal circumstances of the appellant, when currently considered constituted exceptional circumstances warranting his release on bail.*

(12) *the learned magistrate erred and misdirected himself by not properly analysing the evidence of the investigating officer in that it was placed on record that there is forensic evidence outstanding which makes the state case at this moment weak and full of doubt.*

(13) *the learned magistrate erred by not properly considering the evidence of the investigation officer to the effect that state witnesses are fearing the release of the appellant without any tangible evidence to that effect which make the same irrelevant to the appellant.*

(13.1) In doing so, the learned magistrate became a rubber stamp of the views of the investigating officer without there being objective facts placed before it.

(14) *the learned magistrate erred by not properly considering the evidence of the investigating officer to the effect that the interests of justice permit appellant release on bail despite countless and baseless reasons for opposition of the appellant's release on bail.*

Magistrate's reply to grounds of appeal

[5] It is clear that the clerk of the criminal court was served with notice of appeal on 15 April 2026, subsequently the learned magistrate replied to grounds in notice of appeal as follows:

A. SHOCK AND OUTRAGE OF THE COMMUNITY AND PROPENSITY TO COMMIT SCHEDULE ONE AND DUTY TO CROSS-EXAMINE

5.1 *The evidence of the investigating officer was left unchallenged that the Appellant has a propensity for violence in that he was charged twice for assault with the intent to cause grievous bodily harm on people that did the appellant no harm, pleaded guilty to both charges, which he paid fines.*

5.2 *Furthermore, the investigating officer testified that the appellant informed him during interview that during his arrest he sustained injuries from his uncle and family of the deceased, for which he opened a criminal case against them, the investigating officer did not see any visible injuries on the appellant, this evidence was neither disputed in cross-examination nor mentioned in appellant's affidavit. Appellant failed to comply with the principles of cross-examination as held in President of the Republic of South Africa and Others v South African Rugby Football Union and Others 2000(1), 1999 (10) BCLR 1059 (CC)-paras 33; 61-63,*

5.3 *The court was satisfied that the evidence of the community leader Nonsisi Mlambo that the community of Boikhutso fear the appellant and the manner in which the deceased, who was an intimate partner of the appellant was murdered, shocked the community.*

5.4 *The court was further satisfied that the evidence of the investigating officer, the community leader Nonsisi Mlambo and the signed petition was sufficient and relevant and constituted exceptional circumstances that the safety of the community is at risk and that there is a probability that the appellant will interfere with the State witnesses, the court a quo relied on case law, De Jager v Attorney-General, Natal, and Another 1967 (4) SA 143 (D) at 149G-H and Phadi and Another v S (A1/2024) [2024]ZAFSHC 169 (3 June 2024) -paras 41 and 44.*

5.5 *Regarding the petition the court further refer to case law Mgumbi v S (A214/2021) [2022] ZAWCHC 35 (16 March 2022) -para 23, held that in this case, the court decided on the submissions made by the legal representative from the bar, it must be emphasised that argument from the bar is not evidence and it is not given under oath, it is merely a persuasive comment by the parties or legal representative with regard to questions of fact or law. Argument does not constitute evidence, and cannot replace evidence. Mabobo v Minister of Home Affairs 2011 JDR 104(LT at para 13".*

5.6 *Therefore, the version put to the State witnesses regarding the petition and the subsequent closing submissions made by the appellant's legal representative, does not constitute evidence, as no mention was made thereof in the affidavit filed by the*

appellant in his bail application. The court a quo refer to the case of Moyo v S (A147/2024) [2025] ZAGPJHC 3 (9 January 2025)-para 7.

5.7 *Regarding the audience in the public gallery, the court a quo did not consider that as a factor regarding the safety of the public or the probability of the appellant interfering with the state witnesses, the court a quo heeded the caution expressed in Moyo v S (A147/2024) [2025] ZAGPJHC 3 (9 January 2025)- para 14 and Member of the Executive Council (MEC) for the Department of Roads and Transport, Eastern Cape v Ndlazi, In re Ndlazi v Member of the Executive Council (MEC) for the Department of Roads and Transport, Eastern Cape (815/08) [2019] ZAECMHC 25 (21 May 2019)-para 12 held that “ Facts are facts and they mean what they say, nothing less nothing more. They may not be added to in argument”*

5.8 *The appellant indeed mentioned in his affidavit that he has two alternative addresses but elected not to read one out in open court, only inference to be drawn therefrom is that the general public should not know about those alternative addresses as their knowledge thereof will probably jeopardise the safety of the appellant.*

B. WEAK STATE CASE AND DISCREPANCIES

5.9 *the court a quo relied on number of case laws, firstly, S v Feyen (A60/2008) [2008] ZAWCHC 16 (5 March 2008)- paras 11 were it was held that “ the probative value of the affidavit evidence will depend on the totality of the facts and the extent to which the content is disputed” it goes further in paragraph 12 held that “the content of an affidavit is not subject to being tested under cross-examination, viva voce evidence, on other hand , is subject to such testing, by virtue of this distinction, when the two conflict, the viva voce evidence is likely to carry more weight and is likely to be preferred over the content of the affidavit, subject to former having positively endured the rigours of cross-examination” .*

5.10 *the court a quo further supported its reliance above by stating that this legal exposition was explicated in Mathebula v S (431/2009) [2009] ZASCA 91; 2010(1) SACR 55 (SCA); [2010 1 AII SA 121 (SCA) (1) (September 2009) in relevant part, in paragraphs 11-12 and 15, the court by relying to those paragraphs 11 -12, and 15 of the Mathebula case, it concluded that the appellant failed to satisfy the test, the oral evidence of the investigating officer that the State have eye- witnesses that the*

appellant was present during the incident where violence was exerted on the appellant's partner in their domestic relationship, this evidence was not contested.

5.11 the court *a quo* applied the dictum in *Ntoni and Others v S* (5646/2018P) [2018] ZAKZPHC 26 (21 June 2018) - paras 25 that “ *A presiding officer must weigh up the personal interests of the appellant against the interests of justice as it appears from all the evidence presented, and paras 40 held that “ in deciding whether the appellants had discharged the onus, one cannot read their affidavits in isolation and only have regard to their personal circumstances. One must have regard to the affidavit of the investigating officer in relation to the offences and the circumstances of their arrest. One must weigh up their version of a bare denial as against the version put up by the respondent. This must be considered in deciding whether they had discharged their respective onus”.*

5.12 with regard to appellant's medical condition for bail application, the court *a quo* relied in *S v Van Wyk* 2005 (1) SACR 41 (SCA) at 45H-J, it was held that where the accused does not receive proper medical attention whilst in detention, other legal remedies are at her or his disposal and, in general, bail is not remedy for the actions and omissions of the prison authorities, the medical condition of the accused must be weighed against other factors and must not be in isolation.

5.13 The appellant did not provide any medical evidence of his health to substantiate his claim that he needs medical attention and merely relied on his *ipse dixit*, although the appellant submitted in his affidavit that he received medical attention for his serious back injury at Pretoria Hospital and was transferred to the Johannesburg Hospital for at least two occasions, medical evidence was therefore available to the appellant, yet it was not part of the appellant's affidavit. The court *a quo* refer to recent case law *Lubbe v S* (Bail Appeal) (A208/2025) [2026] ZAGPPHC 140) 2 March 2026- para 19 and *Potgieter v S* (A33/2019) [2013]–10/2/5/1(2019/36) [2021] ZAGPJHC 436 (23 August 2021)-para 30 “ *the applicant's required medical condition on its own, does not warrant his release on bail, and Keevy v S* (A66/2013) [2013] ZAFSHC 53 (2 April 2013- Para 21 it was held that appellant's medical condition does not qualify in itself as a factor that constitutes exceptional circumstances, although, if more reliable and acceptable evidence was placed on record, it might possibly have been taken into consideration with other factors to prove exceptional circumstances” in this matter the court find that the personal circumstances of the appellant are not exceptional circumstances, guided by the

dictum in S v Scott-Crossley 2007 (2) SACR 470 SCA - para 12, that “personal circumstances which are really ‘common place’ can obviously not constitute exceptional circumstances for the purposes of section 60 (11) (a) , the court found no discrepancies in the evidence of the State.

5.14 *Regarding the ground of appeal that the weakness of the state’s case coupled with the fact that the appellant is not a flight risk constitutes an exceptional circumstances, it is respectfully submitted that in Mooi v S [2012] JOL 29148 (SCA) from paras “11-12, the facts on those paragraphs revealed an inclination contrary to the reluctance to stand trial, in the circumstances the apparent weakness of the State’s case, taken together with a history of not avoiding his trial, the court below was wrong in not concluding that the appellant has succeeded in showing that exceptional circumstances are present that, in the interest of justice, permits his release”*

Legal principles

[6] From the grounds of appeal raised, the appellant had the duty or the onus to prove on a balance of probabilities and adduce evidence to satisfy the magistrate that exceptional circumstances existed, which in the interests of justice, entitled the appellant to be released on bail, failing which he would be detain in custody.

[7] The jurisdictional requirement for the appeal court to interfere with the decision of the learned magistrate is set out in Section 65(4) of the Criminal Procedure Act 51 of 1977 (“the CPA”) which provides that: “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 against 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”.

[8] It should be noted that in a bail application, the enquiry is whether the interests of justice permit the release of the accused on bail. The “interests of justice” criterion requires a weighing up of the interest of the accused’s liberty, against those factors which suggest that bail be refused, unless ‘exceptional circumstances’ are shown by the accused to exist.

[9] This exercise is one which departs from the constitutional standard set by section 35(1) (f), its effect is to add weight to the scales against the liberty interest of the accused and to render bail more difficult to obtain than it would have been if the ordinary constitutional test of the ‘interests of justice’ were to be applied.¹

[10] Accordingly, this court as a court of appeal must determine whether the appellant has discharged the burden placed on him and most importantly, whether the learned magistrate exercised his discretion wrongly. This principle was expressed by the court in *S v Barber*²² as follows: “*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 substance 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 unfair interference with the magistrate’s exercise of his discretion. 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*”.

Court a quo bail application

[11] It is trite that in any bail application, evidence can be presented through oral testimony or in an affidavit which will address the applicant’s circumstances such as amongst other things, the details of the applicant’s address, employment, family and community ties, including giving reasons why the applicant should be released on bail and whether the applicant is not a flight risk.

[12] It is common cause that the bail was being opposed by the state, perusal of the record shows applicant presented an affidavit to the court in support of his bail application, in which crucial factors have to be considered in terms of section 60 of the CPA in his affidavit.

[13] It can be gleaned from the reading of the record that when the bail application was made on behalf of the appellant by his legal representative, Mr Masibi addressed the court on the aspect of the nature offence, in that the appellant was previously convicted of schedule 5

¹ *S v Dlamini, S v Dladla & Others, S v Schietekat* [1999] ZACC 8, 1999 [2] SACR 51 (CC) at para 64.

² 1979 (4) SA 218 (D) at 220E – F.

offence, and now the accused was charged under schedule 6 offence, which required the appellant to present crucial factors relating to bail as outlined in Section 60 (4) (a) –(e) of the CPA.

[14] In light of the above, the only inference to be drawn is that the appellant did depose to an affidavit in support of his bail application before the magistrate, on 5 January 2026, but most importantly, he placed his existing exceptional circumstances on record before the Court as follows:

“I therefore humbly submit that taking into account the aforesaid, it would be in the best interest of justice that I be granted bail, and the following are the exceptional circumstances in that, I will attend the matter consistently and diligently to its finalisation, without any default. I have no history of breaking the bail conditions, and I have no warrant of arrest against me. My children depend on me financially and I also play a role in assisting my father financially. During January 2024, I was seriously injured at work while on duty, as the pitbulls in the white residential area, as a garbage collector, chased me, and before I fell down, I hit a [indistinct] by my shoulder, as a result, my back got seriously injured and I was taken to Pretoria Hospital and transferred to Johannesburg Hospital for medical attention.

It was recommended by doctors that my employer to give, or offer me a position that is [indistinct] and I started working as secretary in the office of the municipal manager. I confirm to this court that since my arrest, I have visited medical attention twice, if not thrice, crying of my back pains. The prison [indistinct] the injuries and my back were most of the time from sleeping, if not sitting on the floor.

I further confirm that I did not receive my salary for November 2025 since I am no longer going to work, and the same has affected the living conditions at home, where my family depends on me financially. I was staying together with my family and I am the only one who is taking care of my children, since their mother has passed away. I do confirm that the complainant is the mother of my children, and I loved her, and I wanted to make her my wife, as lobola had already started between the families.

My continued detention prevented me from attending her funeral and afford my children moral support in these difficulties. I have been in custody for over three months and the investigations are still not completed. I wish to place on record that I am not a member of any gangster groups in my society. I have received information from one of the inmates who have been in detention, shared the information with me

that the brother of the complainant instructed them to deal with me. The same gang leader, Xolo, who is the brother of the complainant in this matter, is now arrested. I am fearing for my life as I do not have freedom to protect myself against a gang leader who wants to take my life, as he thinks I did the same to the complainant in this matter.

I further state that since my arrest, my daughter has been disorientated, and I confirm that she is being arrested twice for the first time ever in her life, charged with drinking under influence of liquor.

[15] In the light of the above, the court *a quo* admitted the affidavit as **Exhibit A**, the investigating officer, Sergeant Kgopolang Mokgape who was a state witness presented his evidence in the form of oral (*viva voce*) evidence, which the court heard. The investigating officer testified and advanced numerous reasons before the court why he is opposing the bail, the reasons were as follows:

15.1 shock and outrage of the community and the propensity to commit schedule one offences, the appellant has a history of provoking and attacking, provoking members of the community with bottles, iron rod, *crimen injuria* of a police officer on duty, intimidation and malicious damage to property, there is evidence to all these effects, all these offences are of assault with intent to do grievous bodily harm, the appellant's cases were either withdrawn and others convicted and sentenced to fines, the case numbers 324/9/2006, 19/12/2011, 26/10/2012, 76/10/2012, 22/2/2017, 197/9/2020, 302/01/2022, 30/8/2024;

15.2 the incident that had occurred in the community, the manner the deceased had died under cruel death, the appellant did not show any human, even though he was involved in a romantic relationship with the deceased. As such the Ditsobotla, Lichtenburg and Boikhutso communities made campaigns to demonstrate that they are against domestic violence as it is very rife in their areas, the death of the deceased has caused so much shock, not that they judge the appellant, but rather, opposing his release, by taking actions obtaining petition to from community to oppose his release. A total of 86 signatories with the names and contact numbers was obtained;

15.3 after the incident the eldest daughter of the appellant who is around 18 or 19 years has been affected by the death of her mother and resorted into alcohol abuse, the eldest

daughter has also expressed to the social workers, during her sessions that the manner her mother died has caused her to abuse of alcohol. The other two children are attending sessions for counselling with social workers, the release of the appellant on bail will disturb the process, the children are struggling to accept the death of their mother. Not a single member from the appellant's family has complained about the appellant's incarceration;

15.4 the issue of appellant's injuries during the interview, the investigating officer testified that the appellant never showed or informed him that he sustained when he compiled the form during his arrest, he only informed him of the injuries he sustained from the deceased's uncle and family, and he opened a case regarding the assault;

15.5 the issue of the appellant being intimidated in the cells by the deceased's brother, was very new to the investigating officer, as the appellant always provokes and harass people, and some of those people are municipal employees where the appellant is employed;

15.6 Sergeant Mokgape further testified that there are four witnesses that have already given their statements, two from the four are employed from applicant's employ and reside at Boikhutso, where applicant resides, all those witnesses are afraid of the appellant, and there are eyewitnesses in this case, as it is a very serious offence, if he is released on bail, there is likelihood that the appellant will evade trial.

[16] After Sergeant Mokgape's testimony, the petition was handed in to the court and admitted as **Exhibit B**. The defence, Mr Masibi started his cross-examination to the state witness, there was an interaction between the state witness and the defence lawyer, in cross-examination as gleaned on the records, with regard to eyes witnesses and the petition handed to court. It appears from the record that the appellant's affidavit never disclosed the petition, and the risks that there are eyewitnesses that are well known to him, all the appellant was concentrated to was to obtain his freedom, and continue his life without consideration of the community.

[17] The state further called the state witness Nonsinsi Mlambo, who testified because of the petition that was disturbed amongst the members of the community, the intention of the petition to oppose the bail, as gleaned on the records the defence lawyer for the appellant treated the cross-examination of the state witness as ordinary trial, the lining of cross-

examining and questioning to the state witnesses was very intimidating and disrespectful than to prove on the balance of probabilities that the appellant has existing exceptional circumstances that permits him to be released on bail.

[18] On the other hand, subsection 8A (a)– (e) of the Criminal Procedure Act 51 of 1977 as amended which is more relevant to the case of the appellant was never addressed by his legal representative in his affidavit. In this appeal, the learned magistrates reply to the appellant's grounds of appeal as alluded in paragraph 5 of this judgement, the reply is clear and concise, and in line with the proceedings in the bail application.

Analysis

[19] Having perused the record of the court *a quo*, reading through the judgement of the learned magistrate, having read the grounds of appeal and the reply to the grounds of appeal and having both counsels before me in appeal court, there is nothing which suggest that the magistrate misdirected himself. The fact that the appellant's counsel failed to put crucial factors that there are existing exceptional circumstances that permits the appellant to be released on bail, based on the shock and outrage of the community, propensity to commit schedule one offences, and to prove to the court that the charges against the appellant by the state are weak, especially where there is a risk that the appellant may interfere with witnesses, because of appellant's disposition to the community, I am of the view that interests of justice do not permit the appellant to be released on bail.

[20] It may very well be that the appellant is a South African citizen, he has children, he has two alternative addresses, however, he is no longer a breadwinner because of his incarceration, his medical condition or situation does not prove any existing exceptional circumstances, nothing is unusual by being sick or being unemployed, the appellant is feared by the community, he attacks and provokes the community, and his colleagues thus making it improbable for him to return to the society while standing for trial, what cannot be avoided is the fact that the appellant has failed to discharge the onus of proof to establish exceptional circumstances that favours his release on bail-in the interest of justice. I therefore do not agree with the submission made on behalf of the appellant.

[21] What is of importance is that the grant or refusal of bail is a discretionary decision under judicial control and as such, judicial officers have the ultimate decision as to whether or not, in the circumstances of a particular case, bail should be granted. The court *a quo* in its Reply to the grounds of appeal referred to several relevant case laws in support of the test in weighing the oral evidence of the investigating officer and that of the appellant in his affidavit. There are no grounds to satisfy this court that the decision of the learned magistrate was wrong. I cannot find any basis to interfere with the decision of the learned magistrate, therefore, I cannot find any fault with the conclusion that the appellant is the danger to the community read with subsection 8(A) (a) to (e). Similarly, I concur with the magistrate's finding that the appellant failed to satisfy the court that the interests of justice permit his release.

[22] Consequently, it is my considered view that releasing the appellant on bail under the above-mentioned circumstances would, to my mind, not be in the interest of justice as it is likely to undermine the criminal justice system including the bail system itself.

Order

[23] In the premises, the following order is made:

23.1 The appeal is dismissed.

B F MNYOVU
ACTING JUDGE
NORTH WEST DIVISION, MAHIKENG

Appearances:

For the appellant: Adv. S.N. Masibi

Instructed by: S.N MASIBI INC

For the respondent: Adv. N.S. Mabale

Instructed by: Office of the Director of Public Prosecutions,
MMABATHO