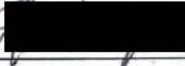


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number: A62/2026

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED: <input checked="" type="radio"/> YES / <input type="radio"/> NO
03/06/2026	
DATE	SIGNATURE

In the matter between:

**FANNIE EZEKIEL NKOSI**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT**

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**MOSOPA, J**

BAIL APPEAL

[1] The appellant is aggrieved by the Pretoria North Magistrate's Court decision of refusal to grant him to bail, on the 22 April 2026, now appeals against such decision in terms of section 65(1) of Act 51 of 1977 (hereinafter the "Act").

[2] It was agreed in the bail application stage by the parties that the charges levelled against the appellant, mainly the charge relating to unlawful possession of a stun grenade, resorts under Schedule 5 of the Act and as a consequence the bail application was dealt with under Schedule 5 of the Act. This will be the same position in this appeal matter.

[3] The appellant's arrest on the 2 April 2026 at his home, was preceded by a search with a warrant, following his suspension from work on the 28 March 2026. One of the conditions attached to his suspension, was that he must return all the state issued equipment to the South African Police Service (hereinafter the "SAPS"). As a sequel to the search, the appellant returned certain equipment to the police, which amongst others, included his service issued pistol and the R5 rifle together with ammunition.

[4] There were certain items issued to the appellant in terms of SAPS form 108 printout like the cleaning kit of the pistol, router, safe, baton, etc, that were not returned. At the time the appellant indicated that he would return them at a later stage. Upon the search conducted at his premises a large amount of ammunition was seized, licenced firearms, original case dockets found in the Wendy house, stun grenade, and cash in the amount of R52 700, 00, amongst others. This search and seizure was preceded by another search at the appellants' place, with a warrant, by a different police unit from the one which conducted the April 2026 search, members of the Kwazulu-Natal, Serious and Violent Crime Unit, in which an amount of R385 070, 00 was seized, on the 8 October 2025.

[5] When the state issued equipment was seized by the police on the 2 April 2026, the appellant was on suspension. Also 6 9mm empty or used cartridges were found in his possession.

[6] The appellant is arraigned on the following charges;

6.1 Unlawful possession of explosives;

6.2 Failure to affix or mount the safe to a wall or floor to safeguard firearms and ammunition;

- 6.3 3 counts of failure to safeguard firearms;
- 6.4 3 counts of failure to safeguard ammunition;
- 6.5 2 counts of possession of ammunition;
- 6.6 3 counts of failure to safeguard ammunition;
- 6.7 4 counts of defeating and obstructing the administration of justice;
- 6.8 5 counts of theft; and
- 6.9 2 counts of acquisition, possession or use of proceeds of unlawful activities in contravention of section 6 read with sections 1 and 8 of POCA.

[7] The appellant intends pleading not guilty to all the charges levelled against him by the respondent when his trial matter commences.

[8] The appeal court's discretion in determining appeals of this nature is fettered by Section 65(4) of the Act which makes the following provision:

"[4] 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 opinion the lower court should have given."

[9] Also of importance is what is provided by section 60(11) (b) of the Act,

"[11] Notwithstanding any provision of the 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 adduce evidence which satisfies the court that the interests of justice permit his or her release."

[10] The above provision places the onus on a bail applicant to adduce evidence on the balance of probabilities which satisfies the court that the interests of justice permit his or her release. A duty to adduce evidence must not be interpreted as a demand

for the presentation of oral evidence. A party who is called upon to adduce evidence, should be permitted to adduce evidence in terms of the normal relaxed rules of evidence, which have traditionally been applied in bail applications, (see *S v Hartslief 2002 (1) SACR 7 (T)*). It is acceptable for affidavits to be received in bail applications. (see *S V Pienaar 1992 SACR 7 (T)*).

[11] The SCA in *S v Mathebula 2010 (1) SACR 55 (SCA)* at para 12, Heher JA, stated,

“[12] But a state case supposed in advance to be frail may nevertheless sustain proof beyond a reasonable doubt when put to the test. In order to successfully challenge the merits of such a case in bail proceedings an applicant needs to go further, he must prove on a balance of probability that he will be acquitted of the charges. That is no mean task, the more especially as an innocent person cannot be expected to have insight into matters in which he was involved only on the periphery or perhaps not at all. But the state is not obliged to show its hand in advance, at least not before the time when the contents of the docket must be made available to the defence. Nor is the attack on the prosecution case at all necessary to discharge the onus, the applicant who chooses to follow that route must make his own way and not expect to have it cleared before him. Thus, it has been held that until an application has set up a *prima facie* case of the prosecution failing there is no call on the State to rebut his evidence to that effect.”

[12] Section 35(1) of the Constitution provides the arrested, detained and accused person certain rights and section 35(1)(f), provides,

“[1] everyone who is arrested for allegedly committing an offence has the right-  
  
(f) to be released from detention if the interest of justice permits, subject to reasonable conditions.”

[13] When dealing with the above provision, the Constitutional Court in *S v Dlamini, S v Dladla and others, S v Schietekat 1999 (2) SACR 51*, (hereinafter “Dlamini”) at para 6 stated:

“[6] Section 35 (1) (f), in its context, makes three things plain. The first is that the Constitution expressly acknowledges and sanctions that people may be arrested for allegedly committing offences and may for that reason be detained

in custody. The Constitution itself therefore places a limitation on the liberty interest protected by section 12. The second is that notwithstanding lawful arrest, the person concerned has a right, but a circumscribed one, to be released from custody subject to reasonable conditions. The third basic proposition flows from the second and really sets the normative pattern for the law of bail. It is that the criterion for release is whether the interest of justice permits it. What that term means both in the Constitution and section 60 of the CPA, is central to much of this judgment and will be thrashed out later. All that need be said at this stage is that section 35(1)(f) postulates a judicial evaluation of different factors that make up the criterion of the interests of justice, and that the basic objective traditionally ascribed to the institution of bail, namely; to maximise personal liberty, fits snugly into the normative system of the Bill of Rights. It is accordingly important that the rules of that institution which are said by some to be at odds with those values, be scrutinised systematically."

[14] The appellant in support of his release on bail, filed on affidavit, and averred that,

14.1 that he has been appraised of charges levelled against him and he intends pleading not guilty to such charges. He did not commit offences that he is charged with and they are fabricated against him,

14.2 he resides at the address the police arrested him from and was born on the 11 September 1982, a South African citizen,

14.3 he is married and has one minor child who is born out of that marriage relationship,

14.4 he does not have relatives nor businesses outside the borders of the Republic,

14.5 he earns a salary of R16 500 as a police sergeant and has immovable properties to the value in excess of R500 000, 00.

[15] The appellant further dealt with the merits of this matter to a great length, and I will consider that when I analyse the totality of the evidence before me.

[16] The respondent also in opposition to bail filed an affidavit and averred,

16.1 that, the appellant was arrested following unlawful activities discovered during the execution of the search and seizure warrant at his place,

16.2 the search was done first at the appellant's main bedroom and found that the rifle safe was not mounted to the wall or on the floor and several firearms and ammunition was found inside that safe,

16.2.1 under the mattress in the main bedroom found a .38 revolver and failed to produce a licence for that firearm,

16.2.2 in the same bedroom a rifle was found and not locked up in the safe,

16.2.3 inside his white Volkswagen Passat motor vehicle parked at the premisses, a pistol with eleven rounds of ammunition was found, two rifle magazines with ammunition and 4 revolver ammunition found inside the ashtray of that vehicle,

16.2.4 original case dockets were found in the Wendy house, at the appellants' address,

16.2.5 stun grenade, which was tested and found to be functional,

16.2.6 cash in the amount of R52 070, 00, and,

16.2.7 South African Police Services issued leg irons.

[17] The state to a great length dealt with the evidentiary material seized when the original dockets were seized, an aspect which I will consider when dealing with the evidence in totality. Also dealt with what they referred to as reasons to why the appellant must not be permitted to bail.

[18] In contention, Mr Potgieter on behalf of the appellant did not pursue all the grounds that appellant raised in his notice of appeal, but the Magistrate was mainly criticised for not properly applying the bail law and also considered trial matters in a bail application, mainly relating to the credibility finding she made at the bail stage.

[19] The appellant's right to be presumed innocent in the bail stage is enshrined in the Constitution. This is a right that Mr Potgieter contended that it was taken away from the appellant when he was denied bail. In support of a right to be presumed innocent contention, Mr. Potgieter referred me to Article 11(1) of the Universal Declaration of Human Rights (hereinafter "UDHR"), ratified by the Republic of South Africa, which makes the following provision:

"Article 11(1) – Everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to law in a public trial at which he has guarantees for his defence."

[20] Principle 36 of the UDHR, provides,

"A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

[21] Section 39(1)(b)–(c) enjoins court, when interpreting the Bill of Rights, to consider international law and also consider foreign law. Section 35(3)(h) of the Constitution provides for the similar protection and provide that:

"[3] Every accused person has a right to a fair trial which includes the right –  
(h) to be presumed innocent..."

[22] On a proper reading of the Magistrates' judgment, it is difficult for one to come to that conclusion that such right was taken from the appellant as there is nothing in the judgment that suggests that. The magistrate when denying the appellant bail stated, "this court has carefully balanced the applicants' constitutional rights, his personal circumstances, the presumption of innocence, and the interest of justice." In *Dlamini (supra)* paragraph 10, the Constitutional Court, stated that, the grant or refusal of bail is unmistakably a judicial function. In a bail application the enquiry is not really concerned with the question of guilt. By merely denying the appellant bail does not entail interference with a bail applicant's right to be presumed innocent, but the Magistrate was exercising the discretion she possessed. The nature of the enquiry here, is to assess if the Magistrate correctly exercised the discretion she had.

[23] Section 35(1)(f) presupposes a deprivation of freedom, by arrest, that is constitutional. This deprivation is for the limited purpose of ensuring that an arrest is duly and fairly tried. This limitation is justified by section 36 of the Constitution.

[24] Mr. Potgieter further contended that the magistrate misdirected herself by denying the appellant bail and failing to consider certain conditions of bail as an alternative to the refusal, by considering correctional supervision and/or house arrest as a suitable condition as enjoined by section 62(f) of the Act. The aforesaid section makes the following provision:

“[62] Any court before which a charge is pending in respect of which bail has been granted, may at any stage, whether the bail was granted by that court or any other court, on application by the prosecutor, add any further condition of bail -

(f) which provides that the accused shall be placed under supervision of a probation officer or a correctional official”

And according to Mr. Potgieter, this is mainly for the monitoring of the bail applicant. The Magistrate did not consider any of the bail conditions provided *supra*, as alternative to refusal of bail.

[25] The provision of the above section is plain, an alternative can be considered by court, at any stage in the event bail is granted. The above does not state that, in the event that bail is to be refused, the bail court must consider the alternative as provided. Mr. Potgieter's reliance on the above provision is in my considered view, misplaced.

[26] When considering the release of a bail applicant in the interests of justice, as is required of the appellant to show *in casu*, one has to consider the consideration stipulated on section 60(11)(b) of the Act. Apart from that section 60(4)-(9) and what is required by section 35(1)(f) of the Constitution must also be considered. Section 60(4)(e) of the Act expressly postulates that it is to come to play only in exceptional circumstances (*Dlamini*) and only in those rare cases where it is really justified.

[27] The magistrate was criticised in finding that the appellant will endanger the public and such finding is a credibility finding taking into consideration that the appellant is denying such allegations. The magistrate misdirected herself and failed to

consider the fact that the respondent alleges that those firearms were seized by the police and are no longer in possession of the appellant. Such, credibility finding is premature as it is the trial matter issue after assessing all the evidence, before it has to make such determination.

[28] In the judgment when dealing with what the appellant referred to as credibility finding, the magistrate made the following pronouncement;

“The applicants’ case is characterised by bare denials and unsubstantiated assertions. He has failed to provide a credible explanation for possession of police docketts and SAPS equipment. He has also failed to provide satisfactory evidence of unlawful storage of the firearms and ammunition. He has also not provided any assurances that he will not interfere with the administration of justice.”

[29] The magistrate was correct, in my view when she also found that,

“Issues relating to the admissibility of evidence, credibility of witnesses and the ultimate determination of guilt or innocence fall within the exclusive domain of the trial court where such matters will be fully ventilated”

[30] I am, therefore at *ad idem* with Mr. Potgieter’s submission that credibility finding is the domain of the trial court, a view that the magistrate possessed at the time of the determination of bail application. However, the magistrate is competent to make a credibility finding during a bail hearing, strictly within the context of the inquiry, rather than to determine the bail applicant’s guilt or innocence. That must be assessed to determine whether the release of the bail applicant would be in the interests of justice. That is basically what the magistrate did and did not exercise a discretion that she lacked.

[31] In considering “the interests of justice”, which permits the release of a bail applicant on bail, one has to consider the jurisdictional factors indicated in ss 60(4)(a) –(e), read with section 60(8A) and section 60(9) of the Act. Jurisdictional factors in ss 4(a)-(e) were dealt with by the magistrate in her judgment as it is a requirement.

[32] It was contended by the appellant that the respondent in opposing bail, stated that there is a possibility that the appellant when released on bail, he may commit

schedule 1 offence, whereas the test is a likelihood. Further that the States' case is based on a suspicion for what was stated in the affidavit opposing bail that, the potential for a lengthy prison sentence creates a suspicion to evade bail. The cash amounts found suggests that the appellant has access to unexplained financial resources that could assist in evading prosecution.

[33] In support of this contention, Mr. Potgieter referred to *Dlamini* wherein the following was stated:

“The important proviso throughout is that there has to be a likelihood, i.e. a probability, that such risk will materialise. A possibility or suspicion will not suffice.”

But it is further stated in *Dlamini* that, still dealing with that concept:

“At the same time, a finding that there is indeed such a likelihood is no more than a factor, to be weighed with all others, in deciding what the interests of justice are. That is not constitutionally offensive, nor does it resemble detention without trial, the reprehensible institution really targeted when one speaks of preventative detention. Absent a proper basis for the original arrest, it will be set aside. But if there were a proper basis for the original arrest, it will be set aside. But if there was a proper cause, one cannot justify release solely on the absence of trial-related grounds.”

[34] Despite the use of the words “possibility” and “suspicion” by the respondent, the magistrate found on the “likelihood”. Two search and seizures were conducted at the appellant’s place, one in October 2025 and the other in April 2026, at the time of arrest of the appellant and in each operation large sums of money were seized. In each occasion the appellant allegedly failed to give plausible explanation of the source of such cash, given the fact that as a police officer he earns the amount of R16 500, 00. He did not disclose other business interests to his employer. This kind of conduct in itself, creates a likelihood of committing a Schedule 1 offence whilst released on bail. The appellant knew after money was seized in the first search operation, that one does not have to keep unexplained source of cash in his premises and that is unlawful. He goes on and keeps another unexplained source of cash when a second operation was conducted at his premises.

[35] The Magistrate findings that the respondent has a strong case was attacked by the appellant on the ground that, it is based on a suspicion. The safe in which the firearms was found, was supposed to be fixed to the wall or mounted to the floor. As already stated elsewhere in this judgment photographs taken at the time of the operation, formed the basis of evidence provided by the respondent. Exclusionary rules pertaining to evidence in trial matters, is not applicable in bail applications. The evidentiary material proffered need not comply with strict rules of oral or written evidence. When photographs were introduced into evidence, there was no objection raised by the appellant. There was no indication that the search and seizure warrant legality will become a subject of attack at trial. The inference that can be made from this silence is that there will be no attack of such at trial.

[36] Illegal ammunition, licenced firearm not safeguarded, and a stun grenade, were found at the time of such operation. The appellant is depicted in one of the photographs presented as evidence, and most importantly, he was legally represented at that stage. No confirmatory affidavit was presented by his counsel, if wrong things were done at the time of such search and seizure, especially with regard to the fact that his cameras at his place were tampered with.

[37] Finding by the Magistrate on that score, cannot be faulted and the respondent succeeded in proving the strength of its case against the appellant. I am alive to the fact that the court must lean towards the liberty of the bail applicant even if it is alleged that the State has a strong case, but this is not applicable *in casu*. The respondent did not only allege a strong case against the applicant, but showed by way of evidence that the state has a strong case against the applicant.

[38] Criticism was also levelled at the Magistrate's finding that there is a likelihood that the appellant will interfere with witnesses. This is based on the fact that majority of the State witnesses will be police officers. But the enquiry does not end there, the appellant was found in possession of police docketts, and several names of the suspects are mentioned in those docketts. The State alleges that the appellant shielded such criminals from prosecution as he did not conduct further investigations upon receiving those docketts wherein fingerprints were lifted and CCTV footages provided and robbed firearms recovered. Such individuals will be called as witnesses against the appellant. Basically, what that means, is that their identities are known to the

appellant; and that despite evidentiary material linking those individuals to the commission of the offenses, the appellant made it a point that they are not successfully prosecuted for the crimes allegedly committed.

[39] The appellants contention that the exhibits seized in the April 2026 operation, were at all material times present on the October 2025 operation lacks merit. Search and seizure warrant of October 2025 when large amounts of cash was found at the appellant's place was for a different purpose as the one of April 2026. The search and seizure warrant of the 8 October 2025, authorised the police to only seize the following items, cell phones, sim cards, memory sticks, SD cards, external hard drives, tablet, computers, desktop computer, laptops and data or data message of any email server of the appellant in terms of section 29(1)(a) of the Cybercrimes Act, 19 of 2020.

[40] I am alive to the fact that seizure of money is not mentioned, but it was seized. However, such search and seizure warrant authorises the police to seize any "article" on reasonable grounds believed to be concerned or connected with commission of an offence in contravention of POCA, and I presume that such police officers acted on such authority.

[41] *Mathebula* (supra) places an obligation on the appellant, in his affidavit to prove on a balance of probability that he will be acquitted of the charges levelled against him. He failed to explain why he returned ammunition that was not issued to him by SAPS. He failed to deal with the fact that he was found in possession of the police issued equipment after he was directed to return this equipment during his suspension notice. The fact that he was, as part of the suspension, not to enter his workplace cannot stand. After his suspension he went to his workplace to return certain state issued equipment and met with the police officer at basement to return such items. He does not explain why he failed to further adopt the same approach. Police leg irons were found at his place. Although he disputes the fact that a stun grenade is found at his place, it is one of the items depicted in the photographs taken immediately at his place. He fails to explain why lots of unlicensed ammunition was found at his place and most importantly why he failed to provide a licence for such ammunition knowing that one cannot possess ammunition without a licence. Despite photographs depicting his safe showing that it is not mounted to either the wall nor floor, he insists that such is mounted.

[42] The appellant contradicted himself in his affidavit relating to the whereabouts of his passport. He averred that the passport is with the investigating officer, a fact that was denied by the respondent, and on the other hand, that he was in the process of handing such passport to the police. In argument, Mr. Potgieter indicated that such passport was with the counsel who did the bail application, only such passport to be produced by his instructing attorney in court.

[43] The Magistrate considered what is mentioned in section 60(4)(e) of the Act, the likelihood, in exceptional circumstances, that the release of the appellant will disturb public order or undermine the public peace or security. This is meant to protect the members of the community interests in the event the appellant is released on bail. In refusing bail under this jurisdictional factor, the Magistrate stated that:

“This matter has attracted significant public attention. The applicant is a member of SAPS and the allegations against him involve serious misconduct and abuse of office. The release of the applicant in these circumstances would likely undermine public confidence in the criminal justice system. While this court does not rely on media narratives, the objective seriousness of the allegations and the applicant’s position are sufficient to conclude that his release would disturb public order.”

[44] To this end, Mr. Potgieter contends that there is no public outcry and the Magistrate misdirected herself in relying on subsection 60(4)(e) to deny the appellant bail. As that must be considered in exceptional circumstances. The Act does not define what “exceptional circumstances” entails, but what is important is what has been said in *Dlamini* at para 57,

“[57] It is important to note that ss (4) (e) expressly postulates that it is to come into play only “in exceptional circumstances.” This is clear pointer that this unusual category of factors is to be taken only in those rare cases where it is really justified. What is more, ss (4) (e), also expressly stipulates that a finding of such exceptional circumstances has to be established on a preponderance of probabilities (“likelihood”). Lastly, once the existence of such circumstances has been established, para (e) must still be weighed against the consideration enumerated in ss (9) before a decision to refuse bail can be taken... The Judicial officers will therefore rely on this ground with great circumspection in the knowledge that the Constitution protects the liberty interests of all... The limitation of the right is therefore as narrowly tailored, as possible

to achieve the compelling interests in maintaining public peace and meets the requirement of proportionality between this purpose and the nature of the right.”

[45] The Magistrate is criticised for when establishing the existence of ss (4)(e) did not consider ss 8A, by weighing it against ss (4)(e) before refusing bail. Subsection 9 enjoins court, where applicable, to consider;

45.1 whether the nature of the offence or the circumstances under which the offence is committed is likely to induce a sense of shock or outrage in the community where the offence is committed,

45.2 whether the shock of the community might lead to public disorder if the accused is released,

45.3 whether the safety of the accused might be jeopardised by the release of the accused,

45.4 whether the sense of peace and security among members of the public will be undermined or jeopardised by the release of the accused,

45.5 whether the release of the accused will undermine or jeopardise the public confidence in the criminal justice system, or

45.6 any other factor which in the opinion of the court should be taken into account.

[46] The Magistrate without mentioning the provisions of 60(8A), recognised that the appellant is being accused of serious offences. The fact that he is a police officer and abused his trust. This is against a backdrop that a police officer keeps a large amount of unexplained cash, he keeps unlawful ammunition. There is also fired cartridges seized, where there is no evidence that such has been reported to the SAPS. Unexplained possession of State issued equipment after he returned some to the police after his suspension. Despite the fact that he promised to return some of the equipment according to 108 registers of SAPS, he failed to do that. This, in my considered view, the magistrate when denying appellant bail, she wanted to protect community interests. Inferences drawn by the Magistrate is based on evidence presented at bail court.

[47] The factors indicated in section 60(8A) are factors which may, not must, be taken into account by the court in deciding the grounds in section 60(4)(e) (see *S v H 1999(1) SACR 72 (W)*). These must not be interpreted to mean that public opinion must or can be elevated to the point where facts and applicable legal rules must be ignored. The rule of law must prevail. It would be constitutionally unacceptable to permit otherwise. (see commentary on the Criminal Procedure Act, Du Toit et al page 9-49, and also *S v Nel and others 2018(1) SACR 576 (GJ)*).

[48] The Magistrate found that the prospects of a lengthy sentence in an event of a conviction, can serve as an incentive to evade trial, looking at the seriousness of the offences. Further that the appellant has not placed sufficient evidence before the bail court that he will stand trial. In contention, Mr. Mphahlele for the respondent submitted that the ease, that the appellant can be in possession of large sums of money, can assist him to evade trial if permitted to bail. The appellant disclosed that he does not have ties outside the Republic, but the bail court found that such, is outweighed by the gravity of the charges he faces. In total 490 rounds of ammunition (different calibres) were found in possession of the appellant. There is also additional ammunition that he returned to SAPS, including more R5 rifle ammunition than what he was issued with. He also returned ammunition, which is not SAPS issued, as it lacked the identifying mark at the back of such ammunition.

[49] The appellant was never released on bail before this arrest, and there is no evidence that he behaved in a particular manner whilst on bail. But his conduct including up to this time of arrest indicates otherwise. Hence, he is charged with unlawful possession of ammunition.

[50] Section 60(4) is instructive, provides that bail must not be granted, unless the interests of justice permits, where it is established that grounds set out in (a)-(e), exists. The Magistrate found that all the grounds stated exist and refused to permit appellant to bail. I cannot agree with Mr. Potgieter that the Magistrate did not properly apply the law, in refusing appellant bail.

[51] The court in *S v Barber 1979 (4) SA 218 (D) at 220 E-H*, when explaining the courts powers on bail stated,


“It is well known that the powers of this court are largely limited where the matters comes before it on appeal and notes a substantive application for bail. This court has to be persuaded that the Magistrate exercised the discretion which he has wrongly. According, 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. I think it should be stressed that, no matter what this court’s own views are, the real questions whether it can be said that the Magistrate had the discretion to grant bail but exercised that discretion wrongly.”

[52] I see no reason to interfere with the judgment of the bail court, as the Magistrate did not exercise her discretion wrongly. This appeal ought not to succeed.

Order

[53] In the result, I make the following order,

53.1. The appeal against the Pretoria North Magistrates’ Court refusal to grant appellant bail, is hereby refused.

  
\_\_\_\_\_  
**MOSOPA J**  
**JUDGE OF THE HIGH COURT**  
**PRETORIA**

## **APPEARANCES**

1. For the Applicant: Adv Potgieter

Instructed by: Malebye and Maleho INC

2. For the Respondent: Adv Mphahlele

together with Adv Sekhonyana

Instructed by: Director of Public  
Prosecution Pretoria

Date of hearing: 26 May 2026

Date of Judgment: 03 June 2026