



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPETOWN**

CASE NO: A112/2026

In the matter between

L KLINK

Appellant

And

THE STATE

Defendant

Corum: PETERS AJ

Heard: 27 July 2026

Delivered electronically: 27 August 2026

ORDER

The appeal against the Worcester District Court's refusal to grant bail is hereby refused.

JUDGMENT

[1] This is an appeal by the Appellant against the refusal of bail by the District Magistrate, sitting at Worcester on 10/2/2026. The appeal is opposed by the respondent.

[2] The appellant, who is accused 8, is charged together with multiple accused of the commission of various offenses totalling 28 counts. It needs to be stressed that the Appellant is only charged with counts 1 (the contravention of section 9(1)(a) of The Prevention of Organized Crime Act, 121 of 1998), 6 and 7 (Murder) together with some of his co-accused.

[3] It was agreed between the parties at the beginning of the bail application that the charges against the Appellant resorts under schedule 6 of the Criminal Procedure Act, 51 of 1977. This will be the same position in this appeal.

[4] The application for bail by the Appellant and the opposition by the State, was done through the filing and reading into the record of statements under oath. The parties thereafter addressed the court, before the learner Magistrate gave Judgment.

[5] The Appellant was arrested on 27/11/2025 after a warrant of arrest (J50), was authorized in his name on 17/11/2025. He handed himself over to the SAPS upon learning that he was being sought. It is alleged against the appellant and his co-accused, in count 1, that they contravened section 9(1)(a) of the Prevention of Organized Crime Act, 121 of 1998, by, being members of the "JCY Worcester" gang, operating under the leadership of accused 1, 2, 3 and 4 in Delft South, wrongfully, unlawfully and wilfully aided and abetted with any criminal activity committed for the benefit of, at the direction of or in association with the "JCY Worcester" gang. The alternative count to count 1 is that they contravened section 9(2)(a) or Act 121 of 1998, by, wrongfully and unlawfully performing any act which was aimed at causing,

bringing about, promoting or contributing towards a pattern of criminal gang activities. Counts 6 and 7, which the State alleges to be the predicate offences, stems from the same incident on 22/01/2014 where two male persons, Riaan Bowers and Bradwin Jacobs, was shot and killed.

[6] The Appellant intends pleading not guilty to all charges proffered against him.

[7] An appeal court's discretion in determining appeals of this nature is fettered by Section 65(4) of the Act, which provides as follows:

"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."

[8] The court must also have regard to the provisions of section 60(11)(a) of the Act which reads as follows:

"(11) Notwithstanding any provision of this Act, where the accused person is charged with an offence - a) referred to, 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 exceptional circumstances exist which in the interest of justice permits his or her release"

This provision places an onus on the applicant for bail to adduce evidence on a balance of probabilities that the interest of justice permits his or her release.

[9] Section 60(4) of the Act provides the following:

"The interest of justice does 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 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 jeopardize 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; or"

It is trite that where a court is satisfied that any of the four grounds set forth in section 60(4) has been established as a probability, a finding that the accused's continued detention is in the interest of justice, is justified.

[10] As mentioned earlier, the Appellant in support of his application for bail, filed an affidavit in which he contends as follows:

(a) that he is unmarried and the father of three minor children of which the oldest two reside with him,

(b) that prior to his arrest he was employed,

(c) that he has previous convictions for Theft, Hindering a police officer, Assault and Possession of drugs.

The Appellant further dealt with the merits of this matter. He specifically places emphasis on the fact that during 2014 he was charged on similar allegations in the Western Cape High Court, where the matter was withdrawn or struck off the role after a state witness alleged that the investigating officer offered him an amount of R5 000,00 in exchange for providing evidence implicating him (the Appellant) in the commission of those offences.

[11] In his affidavit in opposition to the release of the accused, the investigating officer, Warrant Officer Michael Pretorius states that the Appellant was charged in two separate cases of Murder in 2014. The first being Worcester CAS 172/03/2014. The deceased's body was found on 4 March 2014 with several stab wounds. After witnesses came to the fore the Appellant, together with 3 of his co-accused, was arrested. The matter was later withdrawn, in 2016, in the Western Cape High Court due to the fact that the section 204 witness had falsely implicated the accused. Currently it is only the Appellant's co-accused, accused 1, 4 and 5 that are charged again in connection with that incident (count 2). The second matter is Worcester

CAS 824/01/2014 and 883/01/2014. In that matter the one deceased, Bradwin Jacobs, allegedly disarmed a young boy of an unlicensed firearm which was eventually handed over to the police. A leader of the JCY gang wanted to know from a state witness about the whereabouts of the firearm. According to other witnesses the Appellant was also confronted as to why members of the JCY gang visited the house of the deceased, Jacobs, in search of the firearm. The Appellant allegedly replied that the deceased should be taught a lesson. Six months later, on 22/01/2014, the Appellant, some of his co-accused, the two deceased and a state witness drove to a deserted area where the appellant gave an instruction that the deceased must be killed. They were indeed shot and killed on the spot. Although the Appellant and his co-accused were arrested, the matter was however withdrawn in November 2014 in the Worcester District Court. The Appellant and some of his co-accused are now charged again in counts 6 and 7 relating to that incident.

[12] Warrant Officer Pretorius furthermore makes mention of an incident in 2019 where the Appellant and other JCY gang members forced a person to insert plastic pellets containing drugs into his anus. He was then instructed to go to the police station and confess to a murder where the suspect was a high ranking JCY member. After going to the police station and being arrested this person later revealed to the police what had happened to him and showed them visible injuries. The Appellant is currently not charged in connection with that incident, but that evidence will be used at trial to prove that the Appellant is/was a leader in the JCY gang.

[13] The Appellant states that he was arrested and charged on counts 6 and 7 in September 2014. Those charges were later withdrawn. Although he is now charged again, the State's case against him is weak due to the fact that they are relying on the single evidence of a section 204 witness, that is not corroborated. S v Mathebula¹ at paragraph 12 the following is however stated:

"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 on the charges"

¹ S v Mathebula 2010 (1) SACR 55 (SCA).

It is indeed insufficient for the Appellant to simply state that, due to the fact that, the State will depend on a single witness alone to try and sustain a conviction at trial, is simply not enough.

[14] An applicant for bail does not have an unfettered right be released on bail. Section 35(1)(f) of the Constitution provides as follows:

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

In this regard the Constitutional Court in *S v Dlamini, S v Dladla and others, S v Schietekat*² stated in para 6:

"Section 35(1)(f) in its context makes three things plain. The first is that the Constitution expressly acknowledges and sanction 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."

[15] The grounds of appeal are that the learned Magistrate erred, by not placing enough emphasis on the Appellant's personal circumstances, by failing to acknowledge that the considerations outlined in section 60(4)(a) to (e) heavily favoured the Appellant, by assessing all the applicants for bail as one and not individualizing the Appellant, by denying bail for the Appellant on the basis that he has a pending matter and that he would interfere with witnesses or the investigation.

[16] In her judgment the Magistrate indeed misdirected herself by bundling all the applicants for bail together in the evaluation of the charges against them and not individualizing each. The Appellant only faces 3 charges out of 28. The Magistrate was not justified in describing the Appellant as a violent person, based on one

² *S v Schietekat* 1999 (2) SACR 51 (CC).

previous conviction of Assault in 2013. There was furthermore no factual basis for her finding that there is a likelihood that the Appellant would attempt to evade his trial.

[17] At page 1040 to 1041 of the record, in her judgment, the learned Magistrate finds as follows: " It is alleged that accused 8 is the leader of the JCY gang and the affidavit has been made by the state witness who, in his capacity, is a JCY member. And the accused 8 with JCY members was able to force the witness to smuggle drugs and put them, the pellets of drugs, into his anus. And the witness was forced to implicate or to make a statement or to accuse himself about the murder that happened in Roodewal. This shows that accused persons are acting in common purpose in commission of the offenses coordinated, organized criminal conduct which materially aggravated the seriousness of offences and weighed heavily against granting of bail"

[18] I am assuming that what the learned Magistrate meant to find was that the intimidation for a witness by the Appellant, weighed heavily against the granting of bail. Upon being invited to address the court on this aspect, the legal representative of the Appellant argued that the court should not pay much regard to those allegations because it is not substantiated by the State in any of the charges proffered against the Appellant. It should however be remembered that this is an appeal against the refusal of bail, during which the court must have regard to all evidence placed before the court that heard the bail application.

[19] According to the investigating officer this witness will be testifying at the trial of the Appellant and his co-accused with the exclusive purpose of proofing account 1, that the accused performed acts which contributed towards a pattern of criminal gang activities. His injuries can allegedly be independently verified by police officers. This is most damning for the Appellant's aspirations to be released on bail. It proves that there is a real likelihood that, if the Appellant is released on bail, he will not only attempt to influence or intimidate witnesses, but also undermine the proper functioning of the criminal justice system.

[20] In the greatest scheme of things, it is of no consequence that the Appellant is now again charged with counts 6 and 7, which allegedly occurred in 2014. Especially against the background of organised crime sometimes taking time to be detected and investigated properly.

[21] It cannot be found that the learned Magistrate exercised her discretion wrongly in refusing bail for the Appellant. The appeal ought not to succeed.

ORDER

[22] In the result the following order is made:

"The appeal against the Worcester District Court's refusal to grant bail is hereby refused."

PETERS AJ
WESTERN CAPE HIGH COURT

¹ S v Mathebula 2010 (1) SACR 55 (SCA).

¹ S v Schietekat 1999 (2) SACR 51 (CC).

APPEARANCE:

APPELLANT:

ADV MCKERNAN

STATE:

ADV. P J DAMON