

SOUTH AFRICA / JUDGMENT

Maponyane v S (CAB 07/2022) [2022] ZANWHC 26 (2 September 2022)

[2022] ZANWHC 26

COURT

North West High Court, Mafikeng

BEFORE

Petersen

CASE / FILE NUMBER

CAB 07/2022

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CASE

NUMBER: CAB 07/2022

Reportable:

NO

Circulate

to Judges: NO

Circulate

to Magistrates: NO

Circulate

to Regional Magistrates: NO

In

the matter between:-

KEVIN

ALLASTER

MAPONYANE

APPELLANT

AND

THE

STATE

RESPONDENT

JUDGMENT

PETERSEN J

Introduction

- [1] This is an appeal by the appellant, who appears with a co-accused and cited as accused 1 in the court a quo, against the refusal of bail by the Acting District Court Magistrate, Potchefstroom.
- [2] The appellant, with his co-accused is charged with Attempted Murder, Robbery read with the provisions of section 51(2) of the Criminal Law Amendment Act, Act 105 of 1997, Kidnapping, Pointing of a Firearm, Possession of a firearm and Possession of Ammunition.

The grounds of appeal

- [3] The grounds of appeal are set out as follows in the Notice of Appeal:

"1. It is respectively submitted that the Learned District Court Magistrate erred in one or more of the following respects:

1.1 The Learned Magistrate found that the Appellant had failed to discharge the onus placed upon him in that he found that the Appellant had failed to prove on a balance of probabilities the existence of exception circumstances which would justify his release on bail.

1.2 The Learned Magistrate in refusing the Appellant's Application erroneously found that the interest of justice do not permit the release of the Appellant on bail.

2. The Learned Magistrate erred in one or more of the following respects:

2.1 The Learned Magistrate erred in failing to attach the necessary weight to the personal circumstances of the Appellant as set out in his respective Affidavit.

2.2 The Learned Magistrate erred in refusing to release the Appellant on bail despite the absence of evidence of the existence of the factors as stipulated in Section 60(4)(a -

e) of Act 51 of 1977.

2.3 The Learned Magistrate disregarded the prejudice that the Appellant would suffer as a result of such refusal as referred to in Section 60(9) of Act 51 of 1977.

2.4 The Learned- Magistrate seemingly overemphasized the gravity of the offences as well as the strength of the State's case, notwithstanding the presumption of innocence of the Appellant as enshrined in our Constitution.

2.5 The Learned Magistrate disregarded the irreparable prejudice that the Appellant will suffer as a result of the Learned Magistrate's refusal as referred to in Section 60(9) of Act 51 of 1977.

2.6 The Learned Magistrate further erred in paying lip service to the literal meaning of the words "interest of justice". It is submitted with respect that the "interest of justice" require that the liberty of the individual weighs substantially more than the subsequent deprivation thereof

2.7 The Learned Magistrate erred in failing to find that the Appellant will suffer severe prejudice in that he is a gainfully employed person. It is submitted with respect that in the circumstance, the life and livelihood of the Appellant has been placed in jeopardy, notwithstanding the presumption of his innocence in terms of the Constitution.

2.8 The Learned Magistrate erred in failing to find that extreme financial prejudice will be suffered by the Appellant as well as his dependents by not being able to earn a living and/or to make payment of his and/or their monthly expenses and commitments on his and/or their behalf

2.9 The Learned Magistrate erred in failing to find that Appellant is the main provider and/or one of them in regard to his minor children and failed to take into consideration the principles as set out in the Constitutional Court judgment of *S v M* [2007] ZACC 18; 2007 (2) SACR 539 (CC).

2.10 The Learned Magistrate erred in paying lip service to the fact that the Appellant has a permanent place of residence which was in fact verified by the Investigating Officer. It is submitted with respect that as a result thereof there is no likelihood that the Appellant is a flight risk and will not stand his trial.

2.11 The Learned Magistrate erred in finding that the fact that the Appellant has pending matters in the High court that have combined as into one, and the fact that the alleged pending matters are said to have been committed over different periods Appellant as a likelihood to commit further crimes if released on bail. It is submitted with respect that the said pending cases have as yet not been tested at the trial. Further that the circumstances and merits of each of the pending cases were not before court to justify an adverse ruling against the granting of bail in favour of the Appellant.

2.12 The Learned Magistrate erred in finding that "from the two conflicting versions", the court has to consider that, that being the situation, and therefore the version of the investigating officer ought to carry the day since it was oral evidence rather than that of the Appellant which is on affidavit. It is submitted with respect that such finding has been made purely by accepting the prima facie evidence of the Commanding Officer Warrant Officer Khumalo against that of the prima facie version given by the Appellant in this regard. These reasons are mutually destructive and will need to be tested at the trial court.

2.13 The Learned Magistrate erred in finding that based upon the case against the Appellant, that the "case is not clear". It is submitted that this was not one of the factors that would lean towards the denial of bail. It is submitted further with respect that even though there may be a prima facie case against the Appellant, the version of the Appellant is reasonable possibly true, prima facie his affidavit, and that equal weight ought to be attached to the evidence of the Investigating Officer as well as the Appellant. In this regard, it is submitted with respect that the presumption of innocence coupled with the precious rights to liberty of the Appellant ought to have

culminated in the Learned Magistrate releasing the Appellant on bail.

2.14 The Learned Magistrate did not find that there is evidence of possible interference with the investigation sufficient to result the court denying the Applicant of the Appellant. It is submitted with respect that although such evidence existed prima facie from the testimony of the Investigating Officer, the denial of such interference by the Appellants should carry equal weight and the evidence of the Investigation Officer should not be accepted above that of the Appellants. It is submitted with respect that other than the ipse dixit of the Appellant, as no evidence existed specifically in regard to him

personally interfering with the State's case. It is further submitted with respect that an appropriate condition of bail would serve to alleviate any concerns that the Investigating Officer may have in regard to such possible interference.

2.15 The Learned Magistrate erred in not finding that the version of the Appellant may be credible. It is submitted with respect that prima facie, the said explanation of the events as provided by the Appellant, is reasonably possibly true and the Learned Magistrate erred in failing to make such a finding.

2.16 The Learned Magistrate erred in finding that the fact that the Appellant and the complainant were in contact with each other on that given day, and therefore that something akin to guilt on the part of the Appellant happened sufficient to justify a finding that the case against the Appellants was necessarily strong. It is submitted with respect that the Appellant has never denied having had contact with the complainant, however, the circumstances

regarding such contact had adequately set out by the Appellant in his Affidavit and prima facie these circumstances are reasonably possibly true.

2.17 The Learned Magistrate erred in that despite finding it might be that the Applicant had fetched the complainant or it could be as the complainant had said that he had been kidnapped and assaulted, that this justifies the Honourable court a quo in refusing to release the Appellant on bail. It is submitted with respect that this in itself is sufficient to confirm that either of the versions of the State and that of the Appellants may be reasonably possibly true. As a result the Appellant in light thereof ought to have been granted bail, pending the outcome of the trial where the respective versions will be tested.

2.18 The Learned Magistrate erred in finding that the Court cannot see that there are any circumstances that are not ordinary but also that will force the court to lean in favour of not granting bail to the Appellant. It is submitted with respect that the evidence of the Appellant as set out in his Affidavit has established on a balance of probabilities the existence of exceptional circumstances and as a result, the Honourable Court ought to have released the Appellant on bail. It is submitted with respect that the Learned Magistrate ought to have found that there are exceptional circumstances which justify his release on bail.

2.19 The Learned Magistrate erred in not acknowledging the apparent weaknesses in the State's case and in attaching more weight to the purported strength of the State's case than legislatively permitted during a bail application.

2.20 It is respectfully submitted that the Court a quo ought not to have refused bail as a result of "a possibility or a risk" that one of the factors stipulated in Section 60 (40) (a -

- e) of the Act 51 of 1977 might be present. It is submitted with respect that the Court a qua had to be convinced on a balance of probabilities, based upon the evidence adduced, that a likelihood exists.

(S v Swanepoel 1993 (1) SACR 31 (0))

(S v Stanfield 1997 (1) SACR 221)

(S v Dlamini and Others [1999] ZACC 8; 1999 (2) SACR 51 (CC)).

2.21 It is further submitted with respect that even in the event that a strong case against the Appellant existed, this was no reason to refuse the Appellant bail as the Learned Magistrate erred in failing to acknowledge that bail is non penal in character.

2.22 The Learned Magistrate erred in failing to find that the mechanism of bail is to provide for pre-trial liberty of those individuals who may eventually at the conclusion of their trials be acquitted. It therefore flows as a consequence that bail ought to be granted in an appropriate case even to those who admit their guilt and who intend to plea guilty.

2.23 It is submitted with respect that it is trite law that even where the State's case is strong and to the extent that the conviction is not only possible but even probable, it still remains "a factor" to be considered and to never in itself constitute a bar to the grant of bail.

See Bail a Practitioner's Guide. Johan Der Bergh, 2nd Edition. Juta 2001. Page 97, paragraph 71.

(S v Branco 2002 (1) SACR 531 (W)).

It was held that despite the finding that the Appellant's version had no reasonable prospect of being acceptable, the Appellant was admitted to bail and further Cachalia A. J (as he then was) remarked as follows:

"it must be born in mind that any court seized with a problem as to whether or not to release a detainee on bail must approach the matter from the perspective that freedom is a precious right protected by the constitution. Such freedom should only be lawfully curtailed if the interest of justice so required. (Sees 35 (1) (f) of the Constitution, which entitles any arrested or detained person to be released from detention if the interest of justice permit subject to reasonable conditions."

The fundamental objective of the institution of bail is in a democratic society based on freedom as to maximize personal liberty. A proper approach to a decision in a bail Application is that

"the Court will always grant bail where possible and will lean in favour of not against the liberty of the subject provided that it is clear that the interest of justice will not be prejudiced thereby."

2.24 The Learned Magistrate erred in not finding that upon a conspectus of probabilities that the Appellant had discharged the onus placed upon him and that the interest of justice permitted the release of the Appellant.

2.25 The Learned Magistrate erred in not granting bail to the Appellant pending the outcome of the Trial."

The applicable bail schedule and onus

[4] It is common cause that the bail application of the appellant resorted within the ambit of section 60(11)(a) of the Criminal Procedure Act which provides that:

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

(a) 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 interests of justice permit his or her release".

The appeal in this Court

[5] An appeal against the refusal of bail is governed by section 65(4) of the Criminal Procedure Act 51 of 1977 ("the Criminal Procedure"), and 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."

[6] The sentiments expressed in *S v Barber*[1] are apposite:

"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 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 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 magistrate who had the discretion to grant bail exercised that discretion wrongly.' (my emphasis)

[7] It being common cause that the bail application resorted within the ambit of Schedule 6 of the Criminal Procedure Act, the appellant bore the onus to prove exceptional circumstances justifying his release on bail. In particular, an onus was placed on the circumstances appellant to adduce proof on a balance of probabilities that exceptional exist which in the interests of justice permit his release on bail. In *S v Rudolph*[2], Snyders JA stated as follows in this regard:

"It contemplates an exercise in which the balance between the liberty interests of the accused and the interests of society in denying the accused bail, will be resolved in favour of the denial of bail, unless "exceptional circumstances" are shown by the accused to exist. Exceptional circumstances do not mean that 'they must be circumstances above and beyond, and generally different from those enumerated' in ss 60(4) to (9). In fact, ordinary circumstances present to an exceptional degree, may lead to a finding that release on bail is justified."

[8] The case for the appellants is premised predominantly on his personal circumstances and an allegation that the State's case against him is weak. In particular, it is contended that the court a quo should have found his version of events disclosed in the bail application be probable as opposed to that of the State.

[9] In respect of the State's case and the conduct of a bail application, the sentiments of the Supreme Court of Appeal in *S v Viljoen*[3] are apposite in the present appeal:

"[24] Daar is twee algemene aspekte wat in verband met borgaansoeke en -appelle kommentaar verdien.

(Loosely translated by this Court: There are two general aspects in respect of bail applications that merit comment.)

[25] Die eerste is die kritiek wat in die onderhawige appel teen die geleerde Regter a qua deur die appellant se regsverteenwoordigers uitgespreek is omdat hy, ten aansien van die appellant se bewerings dat hy deur polisie- beamptes aangerand is, gese het dat dit 'n kwessie is wat beter deur die Verhoorhof bereg kan word. Dit is wet so dat in sommige van die hierbo genoemde uitsprake (sien veral *S v Jonas* (supra) en *S v Mauk* (supra)) gese is dat waar in 'n bestrede borgaanzoek die beskuldigde feite aanvoer wat prima facie op sy of haar onskuld mag dui, die Staat nie bloot kan terugsit en geen weerlegging aanvoer nie. Dit volg uit die gewone en welbekende bewysregtelike beginsels betreffende die weerlegging van 'n prima facie-saak. Ek wil egter twee voorbehoude op hierdie uitgangspunt in borgaansoeke noteer. Die eerste is dat waar 'n beskuldigde wat met inagneming van dit wat reeds op rekord is, nie eers 'n prima facie- saak kan uitmaak nie, daar geen plig op die Staat rus om weerleggende getuienis aan te voer nie. Die tweede, en meer belangrike, voorbehoud is dat daarteen gewaak moet word om van elke borgaanzoek 'n uitgerekte verhoor v66r die strafverhoor te maak ..."

(Loosely translated by this Court: The first is the criticism in the present appeal of the learned Judge a quo by the appellants' legal representatives, because he in light of the appellant's allegations that he was assaulted by members of the police, said that it was an issue to be adjudicated by the Trial Court. It is so that in some of the decisions above (see in particular *S v Jonas* (supra) en *S v Mauk* (supra)) it was said that where accused adduces facts which prima facie point to his or her innocence, the State cannot simply sit back and adduce nothing in rebuttal. This follows from the ordinary and well-known principles of evidence regarding the rebuttal of a prima facie case. I wish, however, to note two reservations in bail applications.

The first is with reference to an accused faced with evidence already on record, not being able to make out a prima facie-case, in which case there is no duty on the State to adduce evidence in rebuttal. The second, and most important reservation, is that caution must be had not to turn every bail application into drawn-out trial before criminal trial ..."

[10] In the prevailing authority on bail applications which resorts within the ambit of Schedule 6 of the Criminal Procedure Act, the following was said in *S v Mathebula*[4] in respect of an applicant for bail who seeks to challenge the strength of the State's case:

"...In order successfully to 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 charge: *S v Botha* 2002 (1) SACR 222 (SCA) at 230h, 232c; *S v Viljoen* 2002 (2) SACR 550 (SCA) at 556c. 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; as to which see *Shabala/a & Others v Attorney-General of Transvaal and Another* [1995] ZACC 12; 1996 (1) SA 725 (CC). Nor is an 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 applicant 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: *S v Viljoen* at 561f-g."

(my emphasis)

[11] In *Mathebula*[5] Bosielo JA further emphasized the following in respect of personal circumstances of an applicant for bail:

"The remainder of the personal factors urged on us, are neither unusual or such as singly or together warrant release of the appellant in the interest of justice. Parroting the terms of subsec (4) of s 60, as he did, does not establish any of those grounds, without the addition of facts that add weight to his ipse dixit."

The evidence adduced at the bail application

The appellant

[12] The appellant adduced evidence by way of affidavit and the State relied on the oral evidence of the investigating officer.

[13] The evidence of the appellant as set out in his bail affidavit can be succinctly summarised as follows:

He is a 30 year old South African.

He resides at House[....], [....] Avenue, M[....], Potchefstroom.

No evidence is adduced on his relationship status, if any. He has three (3) children, whose ages are unknown and are allegedly financially dependent on him. It is not stated with whom the children reside.

He is employed in his father's business, J Maponyane Sand and Crushers (Pty) Ltd, as a manager, earning R13 000.00 per month.

He has no previous convictions but he has a pending matter in the High Court, sitting at Klerksdorp. The nature of the pending matter is not disclosed the appellant. The pending matter is, however, inter alia, for Murder.

This is the extent of the appellant's personal circumstances as set out in the bail affidavit.

The appellant maintains that the following constitutes exceptional circumstances. The business is headed by his father, crumbling and on the verge of being closed as a result of his father's age and health. Employees of the business are seeking other employment. He maintains that he is the only one who can increase operations at the business, if released on bail. All expenses, which are not identified by the appellant, including the financial support for his children he maintains is under threat if he is not released on bail and the business closes down. Having been informed of the right to remain silent at his bail application, he elected to disclose the basis of his defence as follows.

"MERITS

9. I have been advised by my Legal representative that I do not have to deal with the merits of the case for the purposes of bail application. However, I submit that it is appropriate to deal with merits in this application, particularly with the fact that the investigations have not been completed and it might take considerable long time before they completed.

9.1 I submit that on the evening of the day of the incident, I was together with accused number two at my Father's place of business attending to administration work, and whilst busy I heard noises and footsteps emerging from the trucks and TLB which were parked inside the yard. I therefore asked my co-accused to go with me outside to inspect what is the cause of the noise.

9.2 I then pressed the panic button to alert security, as we proceeded to the trucks. Accused 2 was in possession of a sjambok. I saw three men, two of which were fiddling with the TLB and one was at the Truck strapping off the battery from the truck. As we approached them two attacked us with objects that appeared to be knives. We then confronted them and they ran and jumped over

the fence and the complainant in this matter was busy fiddling with the truck, who then attacked us with a crowbar and we were then forced to use force to subdue him and apprehend him. He, however, managed to jump the fence and ran to nearby houses. It is during that process of defending ourselves and my father's property that he sustained injuries.

9.3 I submit that upon the arrival of security official, this men and the complainant herein had already ran away to the nearby houses.

9.4 I submit that the assault on the complainant was to protect us from attack and to protect my/our business properties. I further intend to plead not guilty to the chargels preferred against me..."

The respondent

- [14] The evidence of the investigating officer on the merits of the State's case testified that the incident transpired between 13 and 14 February 2022 from 12 midday until 04h00am the following morning. The complainant allegedly visited his friend, who is a witness in this matter, in Ikageng. The appellant and his co-accused arrived at the house of the witness so referred to, driving a Toyota Double Cab vehicle. The appellant confronted the complainant about R300.00 cash which he owed him and the victim informed him that he did not have money but would repay the money.
- [15] The appellant and his co-accused left and around 23h00pm on the evening of 13 February 2022 arrived in the same vehicle at the complainant's girlfriend's house shop where the complainant and the witness had gone to visit. The appellant once again confronted the complainant about the R300.00 cash and an amount R105.00 cash that the witness owed him. An argument ensued between the appellant and the complainant about the money owed.
- [16] The appellant instructed his co-accused to fetch two sjamboks, which he had named "Piet" and "Pietertjie". The appellant sat on a chair at a table and placed a firearm on the table. When the appellant's co-accused arrived with the sjamboks they proceeded to perpetrate an assault on the complainant. The appellant's co-accused searched the complainant and the witness and took cellphones from them. The appellant then instructed the complainant and the witness to accompany them. They refused to go but with the firearm in possession of the appellant still visible, they accompanied him. The complainant attempted to run away and as he did that he heard the firearm being cocked and the appellant threatened to shoot him if he ran. The complainant was instructed to get onto the back of the vehicle as he was bleeding accompanied by the witness. The appellant, his co-accused, the witness and the complainant then left.
- [17] The appellant drove around Extension 7 in Ikageng and stopped at a Tavern and they eventually proceeded to the appellant's house. At the appellant's house, he instructed his co-accused to disarm the alarm at the house and to lock the house. With the complainant and the witness in the house with the appellant and his co-accused, where a further assault was perpetrated on them. The complainant in particular was made to lay on his stomach on the

ground when the appellant's co-accused assaulted him with a wet cloth. The appellant instructed his co-accused to stop the assault and to give the complainant drugs. The complainant was given drugs to smoke including drugs that were cooked and sniffed, with the appellant commenting that the complainant was now a junkie.

- [18] The complainant attempted to run away but he was kicked by the appellant, with his co-accused joining in. The appellant further struck the complainant with a pool cue and an empty bottle and he was alleged to have been stabbed with the bottle. The complainant managed to lock himself in the bedroom of the appellant. The appellant pressed the panic button for the alarm and broke open the bedroom door. The complainant ran and hid in the toilet. The appellant's co-accused left the house and proceeded to fetch a firearm and started shooting at a wall in the house. The complainant managed to run out the door of the house which was left open by the co-accused, ran away, heard shots being fired at him and took up hiding in a neighbour's yard.
- [19] Upon arrival of the police, the complainant emerged from hiding and presented himself to the police to show them his injuries all over his body. An ambulance was summoned by the police and the complainant was consequently admitted at Potchefstroom hospital. Out of fear the complainant took to hiding under a bed at the hospital until he was discharged into the care of his mother. The complainant, who has a background in Information Technology, which is hampered by an injury he sustained to his left eye as a result of the assault.
- [20] According to the investigating officer as far back as 15 March 2022, the investigation was all but completed.
- [21] In dealing with allegations made by the appellant and the provisions of section 60(4) of the Criminal Procedure Act 51 of 1977, the investigating officer disputed a contention that the appellant's father was sick and could not attend to his business. It was pointed out that the appellant's father was in fact in court on the date of the bail application and had been at every other postponement. On the allegation that the appellant has three children, the investigating officer testified that one of the mothers confirmed that she has two children with the appellant. According to the latter, the appellant had not maintained his children since August 2021 and had only received a once off amount of R2000.00 from the appellant's father, when she enquired about payment of school fees and what the children were expected to eat without the appellant making payment.
- [22] The appellant it was confirmed has no previous convictions but a pending case in the Circuit Court of this Division on which he is on bail. The pending case emanates from three different incidents, where the appellant had on each occasion been granted bail. The charges emanating from the respective incidents include murder and three separate charges of possession of unlicensed firearms, which account for a six firearms. Bail was granted to the appellant for the latter two firearm charges on different occasions whilst on bail. The appellant is alleged to have threatened the witnesses in this matter with death if they were to open cases against him, which they did nonetheless.

Discussion

- [23] The appellant in the main assails the State's case as being weak and takes issue with, *inter alia*, the contention that he has a propensity to commit offences and that there has been interference with a witness by his father.
- [24] The evidence of the appellant on the merits when juxtaposed against that of the State is diametrically opposed. It is clear that the reliability and the credibility of those versions can only be tested at trial. Whilst the appellant relies heavily on his disclosure of his version of events as setting up exceptional circumstances, it falls gravely shy of the sentiments expressed in *Mathebula supra*, that "... In order successfully to 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 charge." In this matter the State presented rebutting evidence through oral testimony of the investigating officer on the merits of the charges in circumstances where it was re-iterated in *Mathebula supra* "Nor is an 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 applicant 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. "
- [25] In the final analysis the appellant did nothing in his application for bail to set up a *prima facie* case of the State's case against him failing, save to take issue with the version of the State witnesses. The dispute in respect of the versions of the appellant and the State is a matter which a trial court would be best posed to adjudicate. It is not an issue which the bail court was called upon to pronounce, lest it be accused of making provisional findings of guilt or innocence.
- [26] The appellant against the presumption of innocence regularly finds himself in conflict with the law, being released on bail on very serious charges and being arrested whilst on bail. That in itself undermines the proper functioning of the bail system and contributes to bringing the administration of justice in to disrepute in the eyes of society affected by the audacity and horror of serious crime in our Country. That witnesses are terrified of the appellant is evident from the evidence of the investigating officer.
- [27] In the present appeal, the personal circumstances of the appellant is neither unusual or such as singly or together, in my view, to warrant the release of the appellant in the interest of justice.
- [28] In the final analysis the order of the Magistrate refusing the admission of the appellant to bail cannot be said to have been wrong.

Order

- [29] In the result the following order is made:

The appeal against the refusal of bail is dismissed.

A H PETERSEN

JUDGE OF THE HIGH COURT,

APPEARANCES

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DATE OF HEARING 26

August 2022

DATE OF JUDGMENT 02 SEPTEMBER 2022

[1] 1979 (4) SA 218D at page 220 E-H.

[2] 2010 (1) SACR 262 (SCA) at paragraph [9].

[3] 2002 (2) SACR 550 (SCA) at 561G-I, paragraph [25].

[4] 2010 (1) SACR 55 (SCA) at paragraph [12].

[5] At paragraph [15].

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