

SOUTH AFRICA / JUDGMENT

Sono v S (A124/2020) [2020] ZAGPPHC 288 (26 June 2020)

[2020] ZAGPPHC 288**COURT**

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

A124/2020

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA

Case**number:** A124/2020

26/6/2020

In**the matter between:**

ERNEST
LESIBA SONO
APPELLANT
versus
THE
STATE
RESPONDENT

JUDGMENT

MAKHOB A J

This is an appeal against the refusal of bail by the learned magistrate. The appellant was added as accused number 3 on the 18th March 2020. On the 30th March 2020 the magistrate refused his application to be released on bail.

The two parties namely counsels for both the state and the appellant agreed that the court can decide the matter on the papers and both counsels submitted their heads of arguments.

In the Magistrate Court the appellant did not testify but handed in an affidavit. The State handed in Captain Susanna Jacoba Muller's

affidavit. No oral evidence was led in the court a quo.

It is common cause between the parties that the appellant has a previous conviction and pending cases and he is on bail on these

matters.

In his affidavit when applying for bail, applicant dealt at length about his personal circumstances and his innocence in this case. He did not deal in detail about the allegations against him or the nature of his pending cases.

Captain Muller in her affidavit says that the applicant drove the motor vehicle that carried the stolen cash, an amount of R580 000 was stolen by about 19 armed men. According to Captain Muller appellant after his arrest made a confession and pointings out whereby he implicated himself in the commission of the crime. Items which are as a result of the proceeds of crime were also recovered from the appellant. Appellant has the following pending cases:

- Business robbery (Pretoria North 354/10/2016) appellant is on bail – Pretoria North Magistrate Court.,
- Unlawful possession of firearm – Pretoria North Cas 350/10/2016) appellant is on Bail- Pretoria North Magistrate Court. The appellant implicated himself in the commission of these offences. Furthermore, Captain Muller says that her commander and herself have been threatened by unknown people in regards to this matter. Thus Captain Muller opposed the release of the appellant on Bail.

7. Section 60(11) of the Criminal Procedure Act 51 of 1977 reads as follows:

“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.”
8. It is therefore clear that the appellant has a duty on a preponderance of probabilities to show that exceptional circumstances exist which entitles him to be released on bail. In *S v H* 1999 (1) SACR 72 (W), in this case Labe J concluded on page 77 paragraph e – f that “exceptional circumstances must be circumstances which are not found in the ordinary bail application but pertain peculiarly.....to an accused person's specified application. What a court is called up on to do is to examine all the relevant circumstances.....as a whole, in deciding whether an accused person has established something out of the ordinary or unusual which entitles him to relief under s 60 (11) (a). ”

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9. In *S v Jonas* 1998 (2) SACR 673 (SEC) it was held that exceptional circumstances are established when an accused is able to adduce acceptable evidence that the prosecution's case against him is non-existent or subject to serious doubt.
10. In *S v Mathebula* 2010 (1) SACR 55 (SCH) the court held that an applicant needs to go further and show on a balance of probabilities that he will be acquitted of the charge.
11. It is clear to me that there is a strong case against the appellant. Moreover, appellant has outstanding case of similar nature where he has been released on bail. There are also individuals either sent by him or acting on his behalf that are intimidating the investigating officer and her commander. There is also allegations of the witnesses threatened. This on its own is a good ground to refuse bail.
12. The appellant in his affidavit did not show to the court a quo or this court what are exceptional circumstances in his favour that warrant his release on bail. I am therefore of the view that there is a number of reasons why bail should be refused.
13. The appeal by the appellant to be released on bail is dismissed.

D MAKHOBA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA,

GAUTENG DIVISION

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Prepared on 14 October 2026 · Esheria