

**IN THE HIGH COURT OF
GAUTENG DIVISION,**



**SOUTH AFRICA
JOHANNESBURG**

CASE NO: 2023-049795

1. Reportable: No
2. Of interest to other judges: No
3. Revised

Wright J
26 May 2023

In the matter between:

JOHANNES CHRISTOFFEL POTGIETER

APPLICANT

and

**THE HEAD OF CORRECTIONAL CENTRE
MODDERBEE**

1ST RESPONDENT

**THE NATIONAL COMMISSIONER OF CORRECTIONAL
SERVICES**

2ND RESPONDENT

**THE ACTING DEPUTY REGIONAL COMMISSIONER
RESPONDENT
OF CORRECTIONAL SERVICES GAUTENG**

3RD

**THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

4TH RESPONDENT

Neutral Citation: *Johannes Christoffel Potgieter v The Head of Correctional Centre Modderbee & 3 Others* (Case No: 049795/2023) [2023] ZAGPJHC 584 (26 May 2023)

JUDGMENT

WRIGHT J

1. The applicant is a man who was convicted of fraud on 10 May 2023. He is held at Modderbee prison awaiting sentence. He seeks an order that he be allowed compassionate leave, under section 44 of the Correctional Services Act, to attend his daughter's wedding tomorrow, Saturday 27 May 2023.
2. At the trial, the applicant was legally represented. In the present application, the applicant is represented by the same attorney.
3. The application was launched yesterday, 25 May 2023, some 15 days after conviction and the refusal of bail pending sentence. The respondents are presently legally represented but have not been given a fair chance to file answering papers. The NPA has not been cited as a party as it should have been.
4. He says that he attended at court for his trial on some 30 occasions prior to conviction and that he is not a flight risk.
5. He says that bail was revoked on conviction. It appears that a bail application, brought after conviction, on 10 May 2023, was refused on that day. He says that the present case is neither a bail application nor a bail appeal.
6. He says that section 44 should be read to include prisoners awaiting sentence. The section seems expressly applicable only to sentenced offenders, but I do not decide the point.

7. The founding affidavit is silent on details regarding the conviction. From the bar, the attorney for the applicant said that it was one count, involving between R700 000 to R800 000, one corporate victim and not from a position of trust. The statement was made from the bar that the applicant is a first offender.
8. I do not decide either the question of urgency or that of the merits.
9. The non-joinder of the NPA is a serious fault in the application. The applicant's attorney admitted from the bar that he has the relevant prosecutor's email address. The application was not even emailed to the prosecutor dealing with the matter.
10. Adv Chabane, for the respondents asked me to dismiss the application on the ground of non-joinder but in the rushed circumstances it is in my view, preferable to remove the matter from the roll on the ground of non-joinder.

ORDER

1. The matter is removed from the roll for lack of joinder of the NPA.
2. The applicant is to pay the respondents' costs.

GC Wright

Judge of the High Court

Gauteng Division, Johannesburg

HEARD : 26 May 2023

DELIVERED : 26 May 2023

APPEARANCES :

APPLICANT Mr L Nolte

Instructed by Nolte Inc Attorneys

011 788 0188

nakka@couzyns.co.za; steff2@nolteinc.co.za;

lourens@nolteinc.co.za

RESPONDENTS Adv VJ Chabane

Instructed by State Attorney

Mmapula.makghamatha@dcs.gov.za;

thembi.gwamanda@dcs.gov.za;

luckyboy.mathiba@dcs.gov.za; CPrhiri@justice.gov.za