

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: A223/2020

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO

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DATE

MEERSINGH A.J.

In the matter between:

ROLSTON PILLAY

APPLICANT

and

THE STATE

RESPONDENT

JUDGMENT

MEERSINGH AJ

[1] This is an application for bail in terms of **Section 309(5)** of the Criminal Procedure Act 51 of 1977 pending an appeal on the conviction and sentence to the Supreme Court of Appeal. This Application is brought on affidavit only.

No vive voce evidence was led by either party. The applicant did not give evidence nor did he call any witnesses.

- [2] The Applicant was charged with the murder of a minor boy and was convicted of same in the Benoni Regional Court on the 12th June 2020 and sentenced on the 13th August 2020 to 15 years imprisonment.
- [3] On the same day he was granted leave to Appeal to his conviction and sentence.
- [4] He also brought an application for bail pending the Appeal, This Application was refused.
- [5] He thereafter brought an Appeal in the High Court against the refusal to grant bail. This Appeal was dismissed.
- [6] On the 10th January the Appeal against his conviction and sentence was dismissed before the Honourable Madam Justice Phalane and Motha AJ.
- [7] He thereafter brought an Application for condonation and special leave to appeal regarding his conviction and sentence to the Supreme Court of Appeal. This Application was granted on the 21st April 2022.
- [8] On 12th July 2022, he brought an application for bail pending the appeal to the Supreme Court of Appeal, before the Regional Court Magistrate Cox who dealt with the previous application of 13th August 2020. Bail was refused. He appealed this refusal of bail.
- [9] On 30 September 2022 his appeal was struck from the roll by the Honourable Madam Justice Van Wyk. Her reason being that the application for bail pending the appeal to the Supreme Court of Appeal had to be brought in the High Court instead of the Regional Court.
- [10] The Applicant at all times was duly represented.
- [11] The Applicant has two pending cases :-
 - 1. A Theft case in the Kempton Park Regional Court under case number 1RC149/2019 (Part Heard).

2. Defeating the ends of Justice in the Tsakane Regional Court under case number 164/08/2013.

[12] Section 60(4) of the Act provides that:

“The interests of justice do 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 or any particular person or will commit a Schedule 1 offence; or*
- (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 the 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 jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system;*
- (e) where of 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”.*

[13] Counsel for the applicant submitted that he is a diabetic and on chronic medication which includes insulin medication, blood thinners and cholesterol medication. His submission is that his medical condition is not being properly monitored and treated whilst in prison. In particular, the insulin is supposed to be refrigerated and this is not being adhered to by the prison authorities. He is on medication that is different from that which was prescribed by his doctor. He has written letters to the prison authorities and to the Judges Inspectorate with no response from them.

- [14] It was further submitted that in terms of Section 60 (4) he will not endanger the safety of the public or commit any offence nor does he have a disposition to violence or to commit crimes. He will not evade trial. He considers Actonville to be his permanent place of residence since 2009. The trial has been concluded so there is no chance that he will influence witnesses. Furthermore, he will not jeopardise the proper functioning of the criminal system including the bail system. He will not undermine the public peace or security. It was further submitted that he has prospects of success on appeal based on the special leave to appeal having been granted by two (2) Justices of the SCA who read the record of the case. He is separated from his wife and his two children reside with his parents in Kwa-Zulu Natal. He is willing to surrender his passport. Should he be granted bail he will reside with a distant cousin in Actonville Benoni. He has a number of movable assets the value of which is approximately R730 000.00 which can easily be liquidated in order to pay bail. He also has a pension fund the value of which is approximately R700 000 which has not yet been withdrawn.
- [15] Counsel for the state submitted that the applicant was receiving the medical treatment that was required. Medical records were annexed to the affidavit of one Donovan Naicker who was the investigating officer on the charge of murder. The State submitted that the applicant neglected to collect his medication, needed to be begged to collect same and in some instances a prison warder was sent to fetch him to receive his medication. He was to have been sent for blood test however the applicant refused same saying that he is now feeling well.
- [16] Whilst in prison he contravened prison regulations in that he was found in possession of two cell phones, cell phone chargers and a packet of dagga. He was found guilty at a disciplinary hearing. As at the 31st October 2022 he was facing a new disciplinary enquiry in respect of him allegedly having been found with two sims cards and a box of BB tobacco. He is not a model prisoner and does not follow the rules given to him. The applicant also has pending cases against him :-

1. CAS Number 685/09/19 being the part heard matter on a charge of theft were he allegedly stole R 3 million rand worth of copper. The next hearing for the matter is scheduled for the 10th February 2023. If he convicted on this charge he faces a minimum charge of 15 years in prison.
2. CAS Number 477/01/18 – on a charge of Prevention of the Corruption Act.
3. CAS Number 164/08/13 – on defeating the ends of justice.
4. CAS Number 200/04/2008 – on charge of assault and on a second charge of contravention of the Arms and Ammunition Act.

[17] The state submitted that in all likely hood should the applicant be granted bail he would evade facing trial in respect of the above cases because if found guilty he would be facing a lengthy time in jail. The accused is a flight risk. His wife had left him. His children are residing with his parents. The accused has interfered with witnesses in the murder trial and there is a likelihood that he may do so in the other cases he is facing.

[18] The Legislative scheme for the granting of bail requires the court to determine what the circumstances are in the particular case and then to evaluate them against the standard provided for in the act. See *S vs Mabena* (2006 SCA 132 RSA)

[19] This court in evaluating the evidence had regard to Section 60(6) in considering whether the ground stated in ss (4)(a) and (b) has been established.

[20] The factors in ss 4(a) include : the degree of violence towards others implicit in the charge against him, any threat of violence which he may have made to any person, any resentment he is alleged to harbour against any person , any disposition to violence in his part , as is evident from his past conduct , any disposition to commit offences referred to in Schedule 1 as is evident from his or her past conduct , the prevalence of a particular type of offence , any evidence that the accused previously committed an offence referred to in

Schedule 1 while released on bail, any other factor which in the opinion of the court should be taken into account.

[21] The factors in (b) are : his emotional , family , community and occupational tie to the place of prosecution , his assets and where they situated , his means of travel and available travel documents , whether he can afford to forfeit the amount of money paid in relation to bail, prospects of extradition , the nature and gravity of the offences charged with , the strength of the case against him and the incentive that in consequence he may attempt to evade his trial, whether his extradition could be readily be effected should he flee across the borders of South Africa , the nature and gravity of the likely punishment in the even of the accused being convicted , the binding effect of possible bail conditions and the ease with which they could be breached , and any other factor which in the opinion of the court should be taken into account.

[22] This court also had regard to the Applicant having been granted special leave to appeal to the Supreme Court of Appeal. The mere fact that a sentenced person has been granted leave to appeal does not automatically the operation of his sentence, nor does it entitle him to bail as of right. See *S V Bruintjies (676/2002) [2003] ZASCA 4 (25 February 2003)* and *S v Mthembu 1961 (3) SA 468 (N)*. The court is still required to consider the relevant factors and determine whether individually or cumulatively they warrant a finding that it is in the interest of justice that the Applicant be admitted to bail justifying his release.

[23] The Applicant was charged and convicted of murder which falls under Schedule 5 and therefore the bail application is subject to s 60(11) (b) of the Act. In terms thereof of the Applicant is required to adduce evidence that satisfies the court on a balance of probabilities that it is in the interest of justice that he be released on bail.

[24] Section 60(11) provides that:

[1] *“Notwithstanding any provision of this Act, where an accused is charged with an offence referred to –*

(a) 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 do so, adduces evidence which satisfies the court that the interests of justice permit his release.”

In terms of Section 60(11) the onus falls upon an applicant to adduce evidence which would satisfy the court that exceptional circumstances exist in the interests of justice which would permit his or her release on bail. The Constitutional Court in *S v Dlamini; S v Dladla and Others; S v Joubert; S v Schietekat*¹ stated the following pertaining to exceptional circumstances:

“[75] An applicant is given broad scope to establish the requisite circumstances, whether they relate to the nature of the crime, the personal circumstances of the applicant or anything else that is particularly cogent

The criteria involve the weighing up of the interest of the accused, in liberty against those factors which suggest that bail be refused in the interest of society, taking both trial related and extraneous factors into consideration.

[25] Having considered the conspectus of evidence before this court, in particular, the history of this matter, previous convictions, pending cases, the personal circumstances and the medical conditions of the applicant against the factors for consideration in terms of the Act this court is of the view that the applicant has failed to show, on a balance of probabilities, that in the interests of justice he be released on bail.

[26] It therefore held as follows:

The application for bail is dismissed.

MEERSINGH SD AJ

¹ 1999 (4) SA 624 (CC) at paragraphs 75.

**JUDGE OF THE HIGH
COURT OF SOUTH
AFRICA**

**GAUTENG DIVISION,
PRETORIA**

FOR THE APPLICANT:

RIAAN DU PLESSIS

**LEGAL AID SOUTH
AFRICA**

**FOR THE RESPONDENT:
INSTRUCTED BY**

**ADV G.J.C MARITZ
THE DIRECTOR OF
PUBLIC
PROSECUTIONS**

PRETORIA

DATE OF HEARING:

25 NOVEMBER 2022

DATE OF JUDGEMENT:

29 NOVEMBER 2022