

**IN THE HIGH COURT OF SOUTH AFRICA  
EASTERN CAPE DIVISION, GRAHAMSTOWN**

**Case no. CA & R 160/2018**

**Date heard: 11/7/18**

**Date delivered: 13/7/18**

**Not reportable**

**In the matter between:**

**ANELE DANGALA**

**Appellant**

**and**

**THE STATE**

**Respondent**

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**JUDGMENT**

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**Plasket J:**

[1] The appellant was arrested, with two other men, on charges of robbery with aggravating circumstances, the unlawful possession of firearms and possession of property suspected of being stolen. He and his co-accused applied unsuccessfully, in the Magistrate's Court, Fort Beaufort, to be released on bail. The appellant now appeals against that refusal.

[2] Section 65(4) of the Criminal Procedure Act 51 of 1977 (the Act) provides that a judge hearing a bail appeal may only set aside a decision appealed against if he or she 'is satisfied that the decision was wrong'.

[3] Robbery where a firearm is used is listed in Schedule 6 to the Act. That means that in terms of s 60(11)(a) of the Act, an accused may only be released on bail if he or she adduces evidence that satisfies the magistrate that exceptional circumstances exist that permit the accused's release on bail in the interests of justice. The charge sheet states that aggravating circumstances were present in the robbery in this case because a firearm was used.

[4] The magistrate found that the robbery was a Schedule 6 offence and that, principally on the basis of the strength of the State case and the seriousness of the charges, the appellant had not discharged the onus placed on him by s 60(11)(a) of the Act. The issue I am required to determine is whether she was wrong in this regard.

[5] On 1 May 2018, personnel of Fidelity Guards who were delivering cash to a supermarket in Fort Beaufort were robbed by a number of men armed with firearms. (It would appear that two firearms may have been used.) They stole five cannisters containing R200 000 in cash and two firearms that had been in the possession of the Fidelity Guards personnel. They made off in a white Renault Clio motor vehicle that had been stolen in Port Elizabeth. They transferred their loot from the Clio into a white Toyota Avanza motor vehicle, which was owned by accused number 1, and drove to the appellant's home.

[6] The police arrived as accused number 1 and the appellant were leaving the house. On seeing the police they tried to run away but were stopped and arrested. When the house was searched, accused number 2 was found hiding under a bed. Cannisters with about R57 000 and four firearms were also found. Two of the firearms were those that had been stolen from the Fidelity Guards personnel at the supermarket, while the other two had been stolen elsewhere. When the appellant was searched, R800 in new bank notes with serial numbers in sequential order, was found hidden in his underpants.

[7] The appellant did not testify orally in the bail application. Instead, he filed an affidavit in which he undertook not to prejudice the case in any way and to attend his trial. He also set out his personal circumstances, all of which were favourable. The

investigating officer, warrant officer Riaan Baardman, testified and was cross-examined. As the appellant's evidence was not tested by way of cross-examination, the magistrate was correct in her view that she should accord his evidence less weight than she would have if he had testified orally and been cross-examined.

[8] Having taken into account the strength of the State case, the prescribed sentence of 15 years imprisonment for a first offender convicted of robbery with aggravating circumstances and the consequent increased risk that the appellant would not attend his trial, the magistrate concluded that the appellant had not adduced evidence to satisfy her that exceptional circumstances existed to justify his release on bail.

[9] It was argued that the magistrate misdirected herself in not enquiring into the best interests of the appellant's minor child. I am of the view that while the interests of the minor child may be a factor that points in the direction of granting bail, where other factors point overwhelmingly against the granting of bail, it cannot, on the facts of this case, make a difference to the outcome.

[10] In my view, the magistrate's judgment is a careful and thorough judgment that deals with the facts and issues in detail. I am not able to say that she is wrong in her conclusion that the appellant's bail application had to be dismissed. Indeed, I am of the view that she is correct.

[11] The appeal is dismissed.

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C Plasket

Judge of the High Court

**APPEARANCES**

For the appellant:

M T Solani

Grahamstown Justice Centre

For the respondent:

D Els

Director of Public Prosecutions, Grahamstown