

**THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**



**CASE NUMBER: A388/15**

**DATE OF HEARING: 10 DECEMBER 2015**

**DATE OF JUDGMENT: 11 DECEMBER 2015**

In the matter between:

(1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED.

.....  
DATE

.....  
SIGNATURE

**BOHULA, KOKETSO**

Appellant

and

**THE STATE**

Respondent

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**J U D G M E N T**

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**AVVAKOUMIDES, AJ**

- [1] This is an appeal against the decision of the regional magistrate sitting in the Regional Division at Wynberg not to release the Appellant on bail pending trial. The Appellant is charged with one count of robbery with aggravating circumstances read with section 51 (2) of the Criminal Law Amendment Act 105 of 1997, unlawful possession of firearms a contravention of section 3 of Act 60 of 2000 and unlawful possession of firearms a contravention of section 90 of Act 60 of 2000.
- [2] It is settled law that the Appellant has to show exceptional circumstances in order to be released on bail and that it is in the interests of justice that the Appellant be released on bail, in respect of the first count. See: section 60 (11) (a) of Act 51 of 1977 and *S v De Kock* 1995 (1) SACR 299 (T). It is equally so that a court sitting on appeal shall not set aside the decision against which the appeal is brought unless the court of appeal is satisfied that the decision was wrong.
- [3] I have had careful regard to the judgment of the magistrate in his reasoning when refusing bail. I cannot find any misdirection on the part of the magistrate. The Appellant has 6 pending cases of robbery against him in this court. Warrant Officer Odendaal testified at the hearing that the Appellant has six robbery charges against him which were committed at different places. The Appellant is in the process of negotiating a plea bargaining on these outstanding cases. The trial court stated that the Appellant has a propensity to commit robbery. The State however in its heads of argument, submitted that

an agreement is in place but would not expound on what this agreement entails, except to say that it is in terms of section 204 of the CPA.

[4] In *FJ Sewela v The State* reported as [2010] ZASCA 159 the court held that:

*“In determining whether an applicant for bail, may, if released on bail commit further offences, a court, not being blessed with some prophetic foresight, can legitimately rely on the past alleged conduct of such an applicant. The appellant’s alleged conduct points to a possibility which cannot be said to be remote or fanciful that he is likely to continue to commit further crimes should he be released on bail. To release the appellant on bail under these circumstances would, to my mind, not be in the interests of justice as it is likely to seriously undermine the criminal justice system including the bail system itself. I have no doubt that it will seriously undermine and erode the confidence of the right thinking members of society in our criminal justice system. See s 60 (4) (d) of the CPA. The regional magistrate found that the appellant had failed to prove, on a preponderance of probabilities, as is required by s 60 (11) (b), that the interests of justice permit his release on bail. I cannot find any fault with this conclusion. It is trite that the powers of an appeal court to interfere with the decision by another court to refuse bail are circumscribed by s 65 (4) of the CPA. It is not as if the court of appeal has carte blanche. A court of appeal can only set aside such a decision if it is satisfied that it is wrong. S v Barber 1979 (4) SA 218 (D) and S v Faye 2009 (2) SACR 210 (TK).*

[5] In this case however the state submitted that its case against the Appellant is weak because the security guards that were chasing the Appellant did not identify the Appellant when he was apprehended in the house of a woman into which he ran, when chased. I do not agree with this submission. The Appellant's version is that when he heard shots being fired between the police and the robbers, he walking merely walking down the street, but as soon as the shots were fired, he ran into the house of a woman. The security guards that apprehended him in the woman's house also found gloves and a jacket of the Appellant on the couch of the woman's home. The Appellant was still wearing a bandana balaclava around his neck. The probabilities against the Appellant are overwhelming and I am accordingly not persuaded that the Appellant has shown any exceptional circumstances to be released on bail and neither is it in the interests of justice to do so.

[6] In the premises the appeal is dismissed.

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**G. T. AVVAKOUMIDES**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Representation for Appellant:

Counsel: Attorney M. V. Matsepe

Representation for the Respondent:

Counsel: M. L. Gcaba

Instructed by: Director of Public Prosecutions