REPUBLIC OF SOUTH AFRICA

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

**CASE NO: 04168/2017
DATE : 27 FEBRUARY 2017**

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

27.2.17
DATE

SIGNATURE

In the matter between:

**THE DIRECTOR OF PUBLIC PROSECUTIONS,
GAUTENG LOCAL DIVISION, JOHANNESBURG** **APPLICANT**

and

THE MAGISTRATE : KAGISO **FIRST RESPONDENT**

OLIVIER, PETRUS JOHANNES **SECOND RESPONDENT**

J U D G M E N T

WRIGHT J

1. In this review application the DPP seeks to set aside the order of the first respondent granting bail to the second respondent in the amount of R5 000 with conditions on 12 December 2016. The second respondent has been charged with sexual assault. The allegation in the founding affidavit is that the second respondent had, prior to 12 December 2016 been denied bail after a formal application. The allegation is further that on 12 December 2016 the first respondent, of his own accord raised the question of bail, discussed the matter with counsel for the second respondent in court and then granted bail without affording the prosecutor an opportunity to oppose bail. The trial was postponed to 7 March 2017.

2. There is an unsigned statement by the first respondent. The first respondent states correctly that the prosecutor was given an opportunity to say why the case should not have been struck off the roll. In fact the case was not struck off the roll. The first respondent does not deny that bail was granted without affording the prosecutor an opportunity to oppose bail.

3. The failure to give the prosecutor an opportunity to oppose bail constitutes an irregularity and the granting of bail falls to be set aside. It follows that the second respondent should be arrested and brought before a Magistrate forthwith. I cannot accede to a prayer that the second respondent is to remain in custody until the trial is finalised. In the present circumstances the second respondent cannot be prevented from applying for bail.

ORDER

1. The Magistrate's order of 12 December 2016 granting bail to the second respondent is set aside.
2. The second respondent is to be arrested and brought forthwith before a Magistrate.
3. The prayer a) for an order that the second respondent remains in custody pending the finalisation of his trial is dismissed.
4. No order as to costs.

GC WRIGHT J
JUDGE OF THE HIGH COURT,
GAUTENG LOCAL DIVISION,
JOHANNESBURG

MAKHANYA J
I agree. It is so ordered.

On behalf of the Applicant:	Adv R Bester
Instructed by:	DPP
On behalf of the Respondents:	No appearance
Date of Hearing:	27 February 2017
Date of Judgment:	27 February 2017