

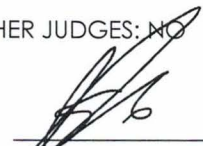


**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) NOT REVISED.

05/02/2021  
DATE

  
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SIGNATURE

**CASE NO: A134/2020**

In the matter between:

**NKOSINATHI MABASO**

First Appellant

**AMBROSE SHAKONG**

Second Appellant

and

**THE STATE**

Respondent

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**JUDGMENT**

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This judgment was handed down electronically by means of email and uploading onto Caselines. The date on which it is handed down is 05 February 2021

**YACOOB J:**

1. The appellants appeal the decision of the Regional Court dismissing their bail applications on 13 August 2020. The appellants have been charged with two counts of robbery with aggravating circumstances and possession of an unlicensed firearm and ammunition. They were arrested together with a third co-accused, who was granted bail at the same hearing on 13 August 2020 because the evidence against him was considered by the magistrate to be weaker.
2. The appellants are charged with schedule 6 offences. Section 60(11) of the Criminal Procedure Act provides that an accused person charged with a schedule 6 offence must, in order to be successful in a bail application, “adduce evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release”.
3. It is trite that keeping accused persons in custody while awaiting trial is an infringement of their rights to freedom of the person and the right to be presumed innocent. It also limits their rights to continue with their lawful pursuits. However for certain offences the legislature has determined that unless there are exceptional circumstances the interests of society prevail over the rights of the individual accused.
4. Exceptional circumstances include when an accused person adduces evidence that the case against him or her “is non-existent or subject to serious doubt”.<sup>1</sup> The appellants submit that they have done this by adducing evidence regarding the events of the night on which they were arrested, which cast serious doubt on the

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<sup>1</sup> *S v Jonas* 1998 (2) SACR 673 at 678.

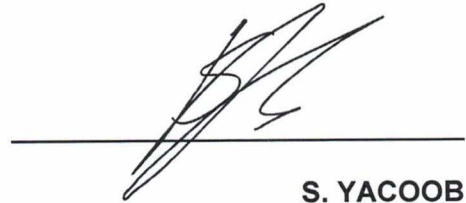
case against them. In addition they allege that there were irregularities with the identification parade that was held, which again, it is submitted, cast serious doubt on the state's case. It was also submitted that, because the magistrate found there was little evidence against accused number three, he should have found the same regarding the appellants.

5. In addition the appellants rely on their personal circumstances. It was submitted both that their personal circumstances are exceptional and that the magistrate failed to weigh their personal circumstances against the interest of the state. However, since the appellants are charged with schedule 6 offences, section 60(11) means that this weighing exercise only happens for them once exceptional circumstances have been established.<sup>2</sup>
6. The evidence adduced by the appellants in the affidavits filed in the bail application contains a number of inconsistencies, irrelevancies and unsupported allegations. Even the affidavit of the corroborating witness suffers from these flaws. I am unable to find in the appellants' favour that their evidence casts serious doubt on the state's case.
7. Nor, in my view, are the allegations made regarding the flaws in the identity parade procedure of the nature which raise a glaring red flag and require this court at this stage to consider that the procedure may have been so unfair that it cannot be relied upon.

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<sup>2</sup> *S v Yanta* 2000 (1) SACR 237 at 243h-j

8. The fact that the magistrate granted bail to the appellants' co-accused is an indication that the magistrate considered the evidence and the interests of justice, and did not simply deny the appellants bail as a matter of routine.
9. The appellants' previous convictions for similar offences is certainly relevant to the magistrate's enquiry, and I am satisfied that he did not overemphasise them.
10. I am not satisfied that the decision of the magistrate denying the appellants bail was wrong.
11. For these reasons, the appellants' appeals against the decision of the magistrate refusing their bail applications is dismissed.



**S. YACOOB**

**JUDGE OF THE HIGH COURT**

**GAUTENG LOCAL DIVISION, JOHANNESBURG**

**Appearances**

Counsel for the appellant: M Nemaunzeni

Instructed by: Kganedi Attorneys

Counsel for the State: AD Maharaj

Date of hearing: 03 February 2021

Date of judgment: 05 February 2021