



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, JOHANNESBURG)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: NO.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED. YES

22 NOVEMBER 2021

DATE

SIGNATURE

Case No. A96/2021

In the matter between:

COETZER, SUSANNA JACOBA ELIZABETH

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

MILLAR, A J

1. On 15 June 2021, the appellant, a 57-year-old woman, was arrested and charged with contravening the provisions of section 4(1) read with various other provisions of the Prevention and Combating of Trafficking in Persons Act 7 of 2013¹ as well as section 18(2)(b) of the Riotous Assemblies Act 17 of 1956². Both are offences in terms of Schedule 6 of the Criminal Procedure Act.³
2. On 16 July 2021 the appellant applied for bail in the Magistrates Court for the district of Lesedi, held at Heidelberg. The application for bail was refused and the present appeal is against that refusal. The appellant also brought an application for condonation for the late filing of the appeal which was not opposed.
3. The Criminal Procedure Act provides that an accused person is entitled to apply for bail. The Act sets out this entitlement, the procedure and process to be followed⁴. It also sets out the factors to be considered by the court in deciding whether bail is to be granted or not. Germain to the present appeal are the provisions of section 60(11)(a) of the Act which provides:

“(a) 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,

¹ This charge alleges trafficking in persons for the purpose of sexual exploitation and/or forms of slavery or practices similar to slavery and/or child labour.

² This charge alleges incitement, instigation and/or command to procure the killing of the father of the minor who is the subject of the first charge.

³ 51 of 1977

⁴ Section 60

unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;”

4. For purposes of the present appeal then, the issue to be decided is whether the appellant demonstrated “exceptional circumstances” and whether notwithstanding this, the learned Magistrate refused bail.
5. The appellants circumstances which were placed before the court were that she is an unemployed 57-year-old widow who does not have a passport or any assets or relatives outside the Republic. The appellant owns no immovable property in the republic but does own some movables which comprise small pieces of furniture and her personal apparel. She has no investments or savings. She does not have her own place of residence but lives with her son who lives in rented accommodation in Boksburg. She is financially dependent upon her children.
6. The appellant denied the charges against her but chose to exercise her right to silence and went no further than this. She also stated that continued detention would have a detrimental effect on her personally as well as her trial preparation and that the matter was causing financial prejudice to her children who were paying her legal fees.
7. The respondent did not oppose bail and filed an affidavit by the investigating officer confirming this only. The affidavit contained no other relevant information for the

court *a quo*'s consideration.

8. What are exceptional circumstances as envisaged by section 60(11)(a)?

9. It was held in *S v Bruintjies*⁵ :

*"What is required is that the court consider all relevant factors and determine whether individually or cumulatively they warrant a finding that circumstances of an exceptional nature exist which justify his or her release. What is exceptional cannot be defined in isolation from the relevant facts, save to say that the legislature clearly had in mind circumstances which remove the applicant from the ordinary run and which serve at least to mitigate the serious limitation of freedom which the legislature has attached to the commission of a schedule 6 offence".*⁶

And

*"If, upon an overall assessment, the court is satisfied that circumstances sufficiently out of the ordinary to be deemed exceptional have been established by the appellant and which, consistent with the interests of justice, warrant his release, the appellant must be granted bail."*⁷

10. However, in *S v Rudolph*⁸ it was held that "Exceptional circumstances does not mean that 'they must be circumstances above and beyond, and generally different from those enumerated' in ss 60 (4)-(9). In fact, ordinary circumstances present to an exceptional degree, may lead to a finding that release on bail is justified"

⁵ 2003 (2) SACR 575 (SCA)

⁶ *supra* at 577F

⁷ *supra* at 577I

⁸ 2010 (1) SACR 262 (SCA) at 266g-h

11. What is clear is that even if the circumstances are in and of themselves 'ordinary' or 'commonplace'⁹, they may nevertheless when considered holistically and cumulatively be elevated to 'exceptional' circumstances.
12. Besides the appellant's circumstances placed before the learned Magistrate, it was argued before the court *a quo* and this court that the mere fact that the respondent did not oppose bail was, taken together with all the other factors indicative of the weakness of the case against the appellant and constituted an 'exceptional circumstance' which militated for the granting of bail.
13. The mere fact that the respondent did not oppose bail is not in and of itself indicative of a weakness in the respondent's case - the affidavit filed by the respondent contained no information from which it could be inferred that the respondents' case was weak. It could equally be inferred that the respondent's case is not weak and that it had chosen for other reasons not to disclose more at the bail proceedings. This argument was dealt with by the learned Magistrate, and I can find no fault with his reasoning in rejecting it or the authority he relied upon for doing so¹⁰.
14. On consideration of the circumstances of the appellant, I am not persuaded that these taken together, even considering that the respondent did not oppose bail, cumulatively rise to "exceptional"¹¹ and accordingly the appeal must fail.

⁹ See *S v Scott-Crossley* 2007 (2) SACR 470 (SCA) – this case concerned the granting of bail pending an appeal after conviction and so is distinguishable from the present case for this reason. The finding in paragraph 12 is consonant with the approach in *S v Rudolph*.

¹⁰ *S v Mazibuko & Another* 2010 (1) SACR 433 (KZP) at paragraph [23]

¹¹ See *S v Mohammed* 1999 (2) SACR 507 (C); *Director of Public Prosecutions v Nkalweni* 2009 (2) SACC 343 (Tk)

15. In the circumstances, I make the following order:

15.1 Condonation for the late filing of the appeal is granted.

15.2 The appeal is dismissed.



A MILLAR

ACTING JUDGE OF THE HIGH COURT

HEARD ON: 18 NOVEMBER 2021

JUDGMENT DELIVERED ON: 22 NOVEMBER 2021

COUNSEL FOR THE APPELLANT: ADV B THUNGO

INSTRUCTED BY: MNM & ASSOCIATES INC.

REFERENCE: MR K MOKOENA

COUNSEL FOR THE RESPONDENT: ADV MATHEBULA

INSTRUCTED BY: THE STATE ATTORNEY

REFERENCE: