

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case Number: A84/16

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED. ✓	
<div style="font-size: 1.5em; margin-bottom: 5px;">24/3/16</div> <div style="border-top: 1px dashed black; width: 100%;"></div> <div style="font-size: 0.8em; margin-top: 5px;">DATE</div>	<div style="font-size: 1.5em; margin-bottom: 5px;">[Signature]</div> <div style="border-top: 1px dashed black; width: 100%;"></div> <div style="font-size: 0.8em; margin-top: 5px;">SIGNATURE</div>

18/3/2016

In the matter between:

**RANA ABDUL RAUF
MOHAMMAD SHABBIR**

**1ST APPELLANT
2ND APPELLANT**

And

THE STATE

RESPONDENT

JUDGMENT

Fabricius J,

1.

This is an appeal against the order made by Molopa-Sethosa J on 19 May 2015 in terms of Appellants' bail was cancelled and the money forfeited to the State.

2.

Leave to appeal against that order was refused by the learned Judge, but granted by the Supreme Court of Appeal on 14 December 2015.

3.

In my view these proceedings are inherently urgent and therefore require that an order be made today with brief, but concise reasons being given.

4.

The relevant events are the following:

4.1

On 10 January 2014, the learned Judge granted the Appellants (plus one other),

bail of R 10 000 each on a number of conditions, condition 2 reading as follows:

"They do not make contact directly or indirectly with witnesses whom they know,

who have resided on the premises of accused 2's shop". Accused 2 a quo is the

First Appellant herein;

4.2

On 15 May 2015, the State brought an application in terms of the provisions of s.

66 (1) of the *Criminal Procedure Act 51 of 1977* as amended, that bail be

withdrawn on the basis that the said condition had been violated;

4.3

It was alleged that a certain witness received threats not to testify in Court and were

also offered money not to do so;

4.4

The Investigating Officer, Warrant Officer Van den Berg, gave evidence in great detail and was thoroughly cross-examined as well. His evidence comprises some 80 pages of the record. He testified that one of the intended witnesses told him that he was paid not to come to Court. He was also shown a photo of a co-accused who had been murdered;

4.5

He also testified that another witness was repeatedly contacted and intimidated and given information that indicated that she was under observation, and that also led to the discovery of fire-arms in her previous premises;

4.6

Affidavits of Warrant Officer Van den Berg and the other witness, Mrs Meyer, were also handed in as exhibits;

4.7

That comprised the application for the State. The record (p. 182) then indicates that Appellants' Counsel debated the interpretation of s. 66 (1) of the *Criminal*

Procedure Act, and submitted that the State first had to prove its case before there was an onus on the Appellants to answer the allegations against them. Argument on this topic then proceeded, the Court a quo analysed the evidence and made a "Ruling" that the bail be cancelled;

4.8

The learned Judge then said that the State had discharged its onus and that the Appellants could proceed with their evidence. Mr Van der Westhuizen on behalf of the Appellants clearly accepted this state of affairs, if I can term it that (p. 211), and on the next Court day, a Monday, called the Appellants to give evidence;

4.9

This they did by way of written affidavits, exhibits 'F' and 'G'. A further affidavit by a A. Swahib, was also handed in. All were read into the record. The Appellants denied any breach of the said condition and the said Swahib produced a version relating to one of the State witness' conduct which was never put to the Investigating Officer for comment;

4.10

The Court a quo was then addressed on the merits, and gave a fully reasoned judgment which comprises some 19 pages of the record. The Appellants' bail was cancelled and the bail money forfeited to the state.

5.

On behalf of the Appellants it was contended before us that the State had failed to prove its case on the balance of probabilities. I do not agree. The evidence of Mrs Meyer is particularly damning in this context, and the Court a quo analysed it fully. No material misdirection on the facts is apparent to me. Someone on behalf of the Appellants clearly contacted her and intimidated her. This is abundantly clear. There is also no reason to reject the evidence of Warrant Officer Van den Berg, whom the learned Judge found to be a credible and honest witness. There is no basis to interfere with this credibility finding. It must also be noted that the Appellants themselves did not give oral evidence.

7

6.

Appellants' other main point was that the Court a quo "quite irregularly entreated the Appellants' bail before they had even presented their case. This is factually not so as the record will indicate (p. 211). The order was provisional and Appellants' Counsel accepted that, and proceeded with Appellants' case on that basis

7.

The result is that there are no merits in the appeal. It is dismissed.



JUDGE H.J. FABRICIUS

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA

And



JUDGE A. A. LOUW

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA

And

I Agree

A handwritten signature in black ink, appearing to be 'W. Hughes', written over a horizontal line.

JUDGE W. HUGHES

JUDGE OF THE HIGH COURT GAUTENG DIVISION PRETORIA