

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



CASE NUMBER: A400/15

DATE OF HEARING: 10 DECEMBER 2015

DATE OF JUDGMENT: 11 DECEMBER 2015

In the matter between:

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

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DATE

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SIGNATURE

SIGASA MZIWAMADODA

Appellant

And

THE STATE

Respondent

J U D G M E N T

AVVAKOUMIDES, AJ

- [1] This is an appeal against the decision of the Roodepoort Magistrates Court 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.
- [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. The magistrate found that there is no evidence against the Appellant (as accused number 3) The Appellant has been charged with some 18 others for robbery and it would appear that a syndication that is involved in theft and robbery has been uncovered by the South African Police Services. However, there is no link to the Appellant. The Appellant has a previous conviction for robbery with aggravating circumstances in respect of which he was sentenced to 15 years' imprisonment by the Randfontein Court in 2000. He was released and served his parole period in full. All the other accused have been released on bail but the Appellant did not bring a bail application with the others at the time.

- [4] The magistrate also noted that no identification parade has been held and this, together with the finding that no evidence exists against the Appellant, as per the record, is sufficient in my view to release Appellant on bail, with certain conditions.
- [5] Moreover, the State conceded that the case against the Appellant is weak and that bail should be granted. Accordingly, I find that it is in the interests of justice to release the Appellant on bail as follows:
- [5.1] Bail is set at R10000.00 (ten thousand rand).
- [5.2] The Appellant is not to contact, or interfere with any of the state witnesses, directly or indirectly.
- [5.3] The Appellant shall report to the Investigating Officer, Sgt Lukhele on Mondays and Fridays between 06h00 and 19h00 at the Kagiso Police Station.
- [5.4] The Appellant shall not leave the Province of Gauteng without the permission of the Investigating Officer.

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: L. Makoko

Instructed by: Director of Public Prosecutions