

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



CASE NUMBER: A395/2015

DATE OF HEARING: 10 DECEMBER 2015

DATE OF JUDGMENT: 11 DECEMBER 2015

In the matter between:

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

.....
DATE

.....
SIGNATURE

DANISA, QUINSELIHLE ERIC

First Appellant

DANISA, MAPHUTHA HENDRICK

Second 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 magistrate sitting in the Protea Magistrates Court, not to release the two Appellants on bail pending their trial. The Appellants were arrested on 7 and 8 August 2015 respectively. An application for bail was brought and refused and a further application based on new facts was equally unsuccessful.

[2] The charges against the Appellants are the following:

- Murder read with section 51 (1) of Act 105 of 1997.
- Unlawful possession of firearms a contravention of section 3 of Act 60 of 2000.
- Unlawful possession of firearms a contravention of section 90 of Act 60 of 2000.

[3] It is settled law that the Appellants have to show exceptional circumstances in order to be released on bail and that it is in the interests of justice that the Appellants be released on bail. 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.

[4] I have had regard to the judgment of the magistrate and can find no misdirection in his reasoning when refusing bail. Moreover, the so called “new facts” upon which the second application for bail was based, were held not to have been new facts. I can find no exceptional circumstances which compel

me to release the Appellants on bail and in my view it would not be in the interest of justice to do so. The court correctly evaluated the circumstances relating to the positive identification of the two Appellants by a witness, ballistic evidence and a confession which is relied upon by the State. I am not persuaded that it is in the interests of justice to release the Appellants on bail.

[5] In the premises the appeal is dismissed.

G. T. AVVAKOUMIDES
ACTING JUDGE OF THE HIGH COURT
GAUTENG LOCAL DIVISION, JOHANNESBURG

Representation for Appellant:

Counsel: J. J. H. Huysamen

Instructed by: R. S. Madzivhandila Attorneys

Representation for the Respondent:

Counsel: A. D. Maharaj

Instructed by: Director of Public Prosecutions