

THE

B A I L

DILEMMA

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In the heart of South Africa's legal system, the issue of bail, like parole, sparks intense debate. Many believe that once a person has been arrested, they should remain behind bars until their trial commences, a sentiment that extends far beyond South Africa's borders. Others feel that bail serves as a crucial lifeline, allowing the accused to await trial outside a cell in a correctional centre, provided they do not threaten society, especially victims or witnesses or the integrity of the judicial process. The rules are clear: obey the law, attend all court proceedings and avoid criminal activity. Yet, for some, temptation proves stronger than the conditions set for their freedom. When bail conditions are violated, the system's ability to balance justice and fairness is called into question.

In the heart of South Africa's justice system, bail remains a fundamental principle, ensuring that people are treated as innocent until proven guilty. The concept of bail is not unique to South Africa but is a cornerstone of justice systems across the world. When a person is accused of a crime, keeping them detained prior to their trial has serious legal, practical and human rights implications, not only for the accused but also for their family and society. That is why many accused persons are granted bail, allowing them temporary freedom under specific conditions.

Bail is essentially a written promise that the accused will return to court on a set date. It can also be granted to those who have been found or pleaded guilty while awaiting sentencing. According to the Department of Justice and Constitutional Development, South African law dictates that no one may be detained without trial*. Typically, an accused person is kept in police custody or at a correctional centre until the trial is concluded, ensuring their presence in court (Department of Justice and Constitutional Development, nd). This is where bail serves its critical function by allowing an accused person to be released from custody while awaiting trial, ensuring their return to court without unnecessary detention.

The Criminal Procedure Act 51 of 1977 (the CPA) governs the bail process, which involves a thorough assessment of various factors before a decision is made. The denial of bail is not meant as a form of punishment but as a legal tool that balances the accused's rights with the interests of justice. It offers people an opportunity to continue their daily lives while awaiting trial, provided they do not pose a threat to public safety or the judicial process. Bail requires a monetary payment as a guarantee that the accused will adhere to all court proceedings and conditions set by the court (Gantana, 2024).

Bail is however not granted automatically and entails a process where the accused needs to provide evidentiary proof why bail can be granted while the State should demonstrate valid reasons why it should be denied. This nuanced process ensures that justice is upheld while protecting both the accused and society at large (Via, 2019).

South Africa's justice system faces significant case backlogs, leading to long delays in court proceedings. Bail helps to mitigate these delays by allowing accused persons to maintain their freedom while waiting for trial. Without bail, many accused persons would face prolonged pre-trial detention, which not only disrupts their personal and professional lives but also places a financial burden on the State. Bail enables accused persons to keep their jobs, support their families and sustain their livelihoods. However, it also comes with challenges, particularly regarding compliance with bail conditions. A truck driver, for example, recounted his struggles in adhering to his reporting conditions: "I have to report Monday, Wednesday and Friday, but I'm a truck driver. I have no problems with coming in to report, but I couldn't make it because I was working. When I went in to report, they arrested me ..." (Gately and Rock, 2024).

Dr Gérard Labuschagne, a former head of the SAPS Investigative Psychology Section, emphasised the common misunderstandings about bail. Many people assume that being granted bail means that the case is dismissed. However, bail aims that the accused will return for trial and not interfere with witnesses or evidence. "In minor crimes, the starting point is that the person will get bail, while the prosecution must prove why they should not. In more serious cases, the starting point is the opposite, the accused should not get bail unless the defence can prove otherwise. It is not unusual for bail to be denied initially but then granted on appeal when new facts emerge," he stated (Via, 2019).

The purpose of bail must always be evaluated in relation to the purpose of pre-trial detention. While it provides a means for accused persons to continue their lives outside of custody, it is carefully regulated to ensure justice is served. The CPA outlines specific criteria to guide courts in determining whether granting bail aligns with the interests of justice (Omar, 2016). Ultimately, the system seeks a delicate balance, protecting the rights of the accused while safeguarding public interest and upholding the integrity of the legal process.

The bail money

When an accused person is granted bail, they pay a sum of money that serves as a financial guarantee for their compliance with the conditions set by the court. This bail money is either refunded or forfeited based on the outcome of the trial and the accused's adherence to the bail conditions. If the accused attends all

required court appearances and abides by the conditions, the money is refunded at the conclusion of the case, regardless of whether they are found guilty or not. However, if the accused fails to appear in court, breaches bail conditions or attempts to abscond, the bail money is forfeited. In such situations, the court may issue a warrant of arrest while the funds are retained by the State (Gantana, 2024).

Section 60(6) of the CPA aims to strike a balance by considering the accused's ability to forfeit the bail amount and whether they have the means or travel documents (passports) that would enable them to leave the country (Omar, 2016).

The accused person must secure a receipt upon paying bail, as this serves as proof of payment, necessary for any potential reimbursement once the trial concludes. In addition to the bail payment, the accused receives a written notice specifying the court's location, the date and time of their mandated appearance and any other conditions, such as reporting regularly to a specific police station. This notice ensures that the accused understands and meets his or her legal obligations while on bail (Burnett Attorneys and Notaries, 2024).

To maintain a positive standing, the accused must embody the role of a model citizen, fulfilling all obligations and showing commitment to legal accountability. This may include adhering to conditions such as curfews, regular check-ins, restrictions on contacts or locations, drug and alcohol testing and remaining at a designated address (Gately and Rock, 2024). Above all, the accused must attend all court hearings as scheduled. Missing a court appearance can lead to the bail being revoked and further legal consequences. Section 67A of the CPA makes it a criminal offence for an accused person to fail to appear in court on the date they are required to do so while released on bail. By honouring court dates, the accused demonstrates his or her commitment to the legal process (Burnett Attorneys and Notaries, 2024).

Types of bail

In South Africa, the bail system is designed to fit the severity of the crime and the criminal background of the accused. There are several types of bail, each with its own conditions.

For minor offences, such as common assault, petty theft, drunk and disorderly conduct and public nuisance, **police bail** can be granted directly by the police without a formal court hearing. In these cases, the accused can pay the bail amount at the police station and is then released pending their court appearance (Gantana, 2024 and Martin Vermaak Attorneys, nd). In terms of section 59(1) of the CPA, such police bail may be granted by **"any police official of or above the rank of (a) non-commissioned officer***, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official".

As a matter of interest, in terms of section 72 of the CPA, an accused may also be released on police warning under more or less the same conditions as specified in section 59(1) of the CPA **supra**.

When it comes to really serious crimes such as aggravated assault, robbery and rape, so-called **Schedule 2 bail** may be granted. The Criminal and Related Matters Amendment Act 12 of 2021 came into

operation on 5 August 2022 and **inter alia** amends some of the Schedules to the CPA as well as certain other provisions of the CPA.

A new section 60(11B) is inserted by Act 12 of 2021 **into** the principal CPA. In subsection (11B), paragraph (a)(iii), reference is expressly and by name made to the Domestic Violence Act 116 of 1998. Likewise, in "new" section 60(5)(e) and (g) and section 60(12)(b) of the CPA, reference is also expressly and by name made to the Domestic Violence Act 116 of 1998, as well as to "protection orders".

As far as gender-based violence and femicide (the killing of a female person on the basis of gender identity as a female) are concerned, a brand-new Act namely the National Council on Gender-Based Violence and Femicide Act 9 of 2024, came into operation on 15 November 2024. For a brief discussion of this Act, see Pollex in **Servamus**: November 2024.

One of the purposes of this Act 9 of 2024 is stated in section 2, which provides as follows:

"2. The purpose of this Act [9 of 2024] is to provide a legislative framework -

- (a) for the establishment of the Council as a statutory body, which acts through its Board and is responsible for providing strategic leadership on the elimination of gender-based violence and femicide in South Africa ..."

This Act 9 of 2024 provides for only one offence namely a contravention of section 21(3) which is about the illegal use of the name of the "National Council of Gender-Based Violence and Femicide".

These amendments **supra** are apparently to make tougher bail conditions for crimes related to gender-based violence. This came following concerns that offenders were being granted bail too easily whereafter they continued to commit crime. However, time will tell about the effectiveness of the stricter rule in granting bail (Van Deventer, 2023). For Schedule 5 offences, the accused must apply for bail in court, where they have to prove that their release would serve the interests of justice. The court will consider factors such as the seriousness of the crime, the likelihood of the accused fleeing, their criminal history and whether they might interfere with witnesses or investigations (Gantana, 2024).

For more serious crimes, **prosecutor's bail** may be granted where the Director of Public Prosecutions (DPP) or a prosecutor authorised thereto in writing by the DPP has the authority in terms of section 59A of the CPA to grant bail before the accused even appears in court. After reviewing the case with the investigating officer, the DPP and/or prosecutor assesses the risks involved and determines whether bail should be granted. This type of bail can be granted for offences listed in Schedule 7 of the CPA including public violence; culpable homicide; bestiality as contemplated in section 13 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; assault, **inter alia**, involving the infliction of grievous bodily harm (GBH); arson; housebreaking, whether under the common law or a statutory provision, with intent to commit an offence; malicious injury to property; and any offence in terms of any law relating to the illicit possession of dependence-producing drugs and more (Martin Vermaak Attorneys, nd).

Schedule 6 bail applies to the most serious crimes, such as murder, rape, sexual assault or armed robbery. For these offences, the accused must demonstrate "exceptional circumstances" to justify being released on bail. This requires a high burden of proof and the court will only grant bail in rare cases, such as in the presence of severe illness or extraordinary personal circumstances (Gantana, 2024).

The type of bail required depends on several factors. The severity of the offence plays a significant role - minor crimes might qualify for police or prosecutor's bail, while more serious offences require formal bail hearings in terms of Schedules 5 or 6 of the CPA. The accused's criminal history will also be taken into consideration (Gantana, 2024).

An accused person with prior convictions or bail violations is likely to face stricter conditions or might be denied bail altogether. If an accused person has been granted bail for another charge, the court will carefully assess the risks of granting bail again. In certain cases, such as when a person has been convicted of a Schedule 1 of the CPA offence but faces a similar charge, a Schedule 5 bail application is required (Gantana, 2024). An article published in **De Rebus** in July 2022, explains that if an accused person is alleged to have committed an offence listed in Schedule 5 of the CPA while on bail for an offence also listed in Schedule 5, the accused will be required to apply for bail in terms of section 60(11)(a) of the CPA. Similarly, if an accused person is alleged to have committed an offence listed in Schedule 1 of the CPA while on bail for an offence also listed in Schedule 1, the accused must apply for bail in terms of section 60(11)(b) of the CPA (Padavattan, 2022).

Bail or no bail

A court has to determine whether there are factors justifying the release of the accused, based on the principle of "the interests of justice". This judgment involves considering various categories of interests, which may sometimes conflict. The court must weigh the rights of the accused relating to the presumption of innocence and the right to not be deprived of liberty without just cause, against the rights of society to safety and security. The interests of the criminal justice system must also be considered to ensure that the investigation and prosecution are not hindered.

According to section 60(4) of the CPA, a court must assess whether such release should be denied based on the following grounds:

- "(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public or any particular person or will commit a Schedule 1 offence; or
- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or
- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or
- (e) where in exceptional circumstances there is the likelihood that the release of the accused will disturb the public order or undermine the public peace or security."

If there is no evidence suggesting that the accused would endanger people or the community, interfere with witnesses or obstruct justice in any way, there is no valid reason to limit the accused's freedom. The court should use these factors as guidelines, while maintaining flexibility to ensure fairness and justice. The list provided in section 60(4) of the CPA is not exhaustive and other relevant factors may be considered. Ideally, these factors should be weighed against each other and the presence of one factor alone should not automatically lead to a denial of bail (Omar, 2016).

Paying bail and committing more crime

In recent years, a troubling trend has emerged where accused persons who have been granted bail have committed further offences including violent offences. This issue is particularly prominent in Australian courts, where breaches of bail orders became the third most common offence in 2022 and 2023, accounting for 10% of adult court appearances. This has caused significant concern, as these breaches not only consume valuable court time and resources but also fuel the belief that those who breach bail conditions are likely to commit more crimes, often violent ones, thereby jeopardising public safety (Gately and Rock, 2024).

A disturbing pattern is also emerging in the UK, where it was reported that nearly 900 000 offences, including serious crimes such as murder, kidnapping and child rape, were committed by accused who were out on bail between 2010 and 2023 (Syal, 2023). In South Africa we often hear that those who are accused of serious crimes had been granted bail continuing with their criminal careers, while awaiting trial. A case that comes to mind happened in May 2024, when Elia Maeko, accused of the murder of five-year-old Ditebogo Junior Phalane during a hijacking in Soshanguve, was out on bail for other violent crimes at the time of the incident. Maeko also has a prior conviction for assault GBH (Mitchley, 2024).

The danger posed by people granted bail for violent offences was further highlighted in August 2024 when an 11-year-old girl was tragically murdered in Hendrina, Mpumalanga, by a man who was out on bail for the murder of another person in February 2024. His bail had been set at only R5000 (Francke, 2024). These incidents emphasise the risks associated with granting bail to people accused of violent crimes and the potential for further harm to the community.

Paying bail and skipping the country

It is astonishing that people with the means or connections, such as having family abroad, are being granted bail, particularly for serious Schedule 5 and 6 offences. Time and again, it is revealed that some of these accused persons flee the country, such as what happened in the case of Gerhardus Jansen van Vuuren, who had murdered his former girlfriend, Andrea Venter, on 2 May 2011. He was arrested and charged, with both of his bail applications being opposed. Dr (former Brig) Gerard Labuschagne's testimony highlighted Jansen van Vuuren's repeated violations of protection orders which Andrea had obtained against him in 2008, suggesting that he would likely disregard bail conditions, as he had done with protection orders. Despite this objection, Jansen van Vuuren repeatedly applied for bail citing new excuses each time. After several rejections, he appealed to the South Gauteng High Court, where Judge Fritz van Oosten disagreed

with Dr Labuschagne's assessment that Jansen van Vuuren was a flight risk and granted him bail of R15 000. Shockingly, neither Dr Labuschagne nor the investigating officer was present in court during the bail hearing, and it remains unclear how the bail was granted. This judge must have misinterpreted Dr Labuschagne's testimony, questioning the assertion that Jansen van Vuuren was likely to evade trial. When he read the judgment pertaining to the bail application, the judge stated: "... the view expressed by Brig Labuschagne which was heavily relied on by the court **a quo** as a ground for refusing bail, that 'any individual who has already exhibited a tendency to ignore legal restrictions, such as protection orders, poses a high risk to ignore other legal restrictions, such as bail or parole conditions'. I do not think that the view can unreservedly be accepted in the circumstances of this case: Labuschagne has not interviewed Van Vuuren, he has evidently not considered the lapse of time between the protection order and the incident and moreover in particular, the conduct of Van Vuuren outside the sphere of a strained relationship. In this regard an affidavit by the employer of Van Vuuren was filed stating that he maintained sound inter-work relationships with staff members and that he coped well under stressful circumstances. I am accordingly not prepared to accept as a generalised conclusion that Van Vuuren constitutes a high risk of evading trial."

The trial, initially set for January 2012, was delayed numerous times, with one of the postponements relating to Jansen van Vuuren's psychiatric evaluation. In June 2012, he was deemed fit to stand trial. However, he requested another evaluation by his private psychiatrist. Eventually, his trial was scheduled for 20 May 2013. But on that date, Jansen van Vuuren failed to appear in court resulting in a nationwide manhunt for him. It was discovered that he had fled to Brazil, using a false identity. After his arrest in Brazil in 2013, the extradition process began, despite the lack of an extradition treaty between South Africa and Brazil. The process was further delayed by the translation of documents. In 2016, the investigation team learned that Jansen van Vuuren had been released from Brazilian custody by a judge, despite the pending extradition order (Geldenhuis, 2019). His whereabouts remained unknown until his re-arrest in Brazil in 2020, leading to his extradition and subsequent life sentence in South Africa in August 2022 (Monama, 2022).

Similarly, in the case of Jurgen Vandekerke, a Belgian national, who was accused of raping and murdering 20-year-old Chantelle Barnard in Benoni, bail was granted, despite the court having knowledge that the accused has a Belgian passport. Chantelle's mother discovered her body in his house on the same day she went missing, resulting in Vandekerke's arrest the same evening. During his first bail hearing, he opted not to apply for bail due to a large group of protesters outside the court, so angry that the court feared for his safety. Bail was denied several times because Vandekerke, because of his Belgian citizenship, was considered a flight risk. Eventually, on 3 January 2012, the High Court granted him bail of R20 000. A week after being placed under house arrest, the prosecutor received an e-mail informing them of an issue. On the day of his court appearance, 9 September 2013, the prosecution learned that Vandekerke had fled. He left a letter for his parents apologising for not saying goodbye and explaining that he had to escape because his defence team warned him he could face a minimum sentence of 25 years' incarceration for a crime he claimed he did not commit. He blamed his estranged wife for the

incident. On 15 January 2020, Vandekeere returned to South Africa and surrendered at Benoni Police Station. His trial began on 1 September 2020, at the Gauteng High Court sitting in Benoni, as a Circuit Court where he pleaded not guilty: 11 witnesses testified, but Vandekeere chose not to take the stand. On 15 September 2020, he was sentenced to two life terms for the 2011 rape and murder of Chantelle Barnard as well as five years' incarceration for defeating the ends of justice - both sentences were set to run concurrently (Via, 2019).

Another high-profile case involved Michael Lomas, a former Eskom contractor arrested in 2021 on more than 60 fraud and corruption charges related to over R1.4 billion in funds at the Kusile Power Station. After being granted bail, he fled to the UK. In September 2024, he was extradited to South Africa, arriving in a wheelchair under heavy police escort (Kupemba, 2024). His poor health had initially been used to delay his extradition and became central to his bid for bail. In January 2025, Lomas cited acute dizziness, causing black-outs and falls that resulted in injuries while in custody, claiming that these symptoms are due to his neck. The dizzy spells and suicidal tendencies he mentioned in his South African court appearance on 17 January 2025, were not new as they had been addressed during the extradition process, where a UK court had ruled that he could be extradited. Despite using his health issues to avoid extradition, Lomas was applying for bail on the same grounds. The State argued that Lomas should remain in custody until the trial resumes, citing the National Prosecuting Authority's (NPA) commitments to the UK court. These include providing Lomas with a single cell containing a bed, toilet, tap with hot and cold water, electricity, ventilation, heating, natural light and a clean environment, as well as access to primary healthcare and psychiatric assessment and treatment (Cruywagen, 2025). On 17 March 2025, the South Gauteng High Court granted Lomas R2 million bail and he was required to surrender both his United Kingdom passport and his South African identity document to the investigating officer. The trial has been postponed to July 2026.

The case involving Shepherd Bushiri, a self-proclaimed prophet renowned for his "miracles" and lavish lifestyle, also made headlines especially since he was granted bail in South Africa in a case involving alleged fraud and money laundering (BBC, 2020). Bushiri and his wife, Mary, along with seven accomplices, were accused of laundering at least R73 million (Mashego, 2024). In November 2020, he violated strict bail conditions by fleeing to his home country, Malawi. From there, Bushiri claimed that there had been attempts on his life and accused South African authorities of failing to provide adequate protection. He described his decision to skip bail as "a tactical withdrawal meant to preserve lives" (BBC, 2020). In March 2025, a Malawian court ordered that Bushiri and his wife must be extradited to South Africa after they had fled the country in 2020.

The question is, how many others, who were granted bail, have fled the country and vanished without a trace?

Is electronic monitoring the answer?

In South Africa, where crime rates are alarmingly high, many accused persons are granted bail, raising concerns about whether they will adhere to their bail conditions. The issue of overcrowding in correctional facilities is one of the most pressing challenges facing

correctional systems worldwide. To address these concerns, some jurisdictions have turned to electronic monitoring as a means of tracking accused released on bail or probation.

Electronic monitoring uses a global positioning system (GPS) to record an offender's movements and location by fitting a tag, resembling a wristwatch, around the offender's ankle. This technology is aimed at ensuring that accused persons appear in court for trial and do not commit further offences or flee the country. Several benefits of electronic monitoring have been identified, including:

- Effective management of certain categories of offenders.
- Increased public confidence in the criminal justice system.
- Reduction of the negative impact of custodial sentences on offenders.
- Decreased offender population in custody (De Ruiter and Hardy, 2018).

Electronic monitoring can be implemented at various stages of the criminal justice system, including:

- The pre-trial stage, as a condition of or alternative to bail.
- The primary sentencing stage.
- The post-sentencing stage (De Ruiter and Hardy, 2018).

South Africa has launched a pilot project for electronic monitoring in March 2012. On 9 April 2014, the Bloemfontein Regional Magistrates' Court conditionally released a 50-year-old paraplegic remand detainee from Grootvlei Correctional Centre, where he had been incarcerated since 2011. His bail condition required electronic monitoring by the Department of Correctional Services (DCS) (South African Government, 2014).

Despite its potential, electronic monitoring for remand detainees was implemented in fewer than ten instances before the contract between DCS and the service provider was cancelled. The original contract had a limited capacity of tagging 1000 accused persons but was ultimately terminated following a presidential investigation led by then-President Jacob Zuma into the procurement of the electronic monitoring system. As a result, the effectiveness and impact of electronic monitoring in South Africa remain inconclusive (De Ruiter and Hardy, 2018).

South Africa introduced stricter bail conditions for domestic violence cases a few years ago.

In 2024, the New South Wales (NSW) government also reported to be pushing for stricter bail conditions, specifically for those accused of serious domestic violence offences. The difference is that in terms of the new regulations, accused persons who have been granted bail in such cases must wear an ankle bracelet monitor equipped with GPS tracking. This decision was made in response to several high-profile domestic violence cases, including the tragic death of 28-year-old Molly Ticehurst, allegedly murdered by a former partner who had been released on bail. NSW Premier Chris Minns acknowledged the limitations of electronic monitoring, highlighting that some offenders remain undeterred by consequences (Dole, 2024).

Electronic monitoring presents an opportunity to manage offenders more effectively while addressing overcrowding in correctional centres. However, its success depends on proper implementation, transparency in procurement and the recognition that some high-risk offenders may require stricter measures.

Public and victims' response to bail

Many people have the opinion that accused persons have more rights than law-abiding citizens, which is why it is understandable that communities express frustration when serious offenders are granted bail. This sentiment was explored in September 2024 on **eNCA's Soapbox** morning show, where South Africans were asked how they felt about granting bail to those accused of serious crimes. The response was unanimous, **people felt unsafe** knowing that people who have been arrested for violent crimes were being released on bail. If normal citizens felt this way, one could only imagine the fear and distress experienced by victims and their families.

This fear was a grim reality for the Venter family in the case of Gerhardus Jansen van Vuuren, **supra**. Andrea Venter's parents, Dries and Annatjie, lived in constant fear after Jansen van Vuuren had repeatedly threatened to harm them. He had often warned Andrea that if she ever tried to leave him, he would kill her parents. He told her: "I'm coming to kill your parents, and if you let the police catch me, I've got enough people outside the jail who would help me, and they will come for you and your parents. They will rape you, they will kill your parents." Despite these threats, Jansen van Vuuren was granted bail - and used the opportunity to flee the country, leaving the Venters devastated. Dries and Annatjie longed for justice for their daughter, whose life had been turned into a nightmare by Jansen van Vuuren. When he was finally arrested in Brazil, Annatjie told a journalist, "I only hope and pray that I am still alive when he comes back to South Africa. It will not change anything, but I must see how he will be judged and sentenced". Tragically, Annatjie never had the chance to witness justice being served, as she passed away on 28 January 2016, still mourning the loss of her beloved daughter (Geldenhuys, 2019).

A similar struggle for justice was endured by Chantelle Barnard's family. Her mother, Suzette, was relentless in her efforts to keep her daughter's case in the public eye, ensuring that people never forgot Chantelle or the man accused of her murder, Jurgen Vandekerke, **supra**. Seven years after Chantelle's death, Suzette reached out to **Huisgenoot** with the aim of publishing an article, hoping to keep the public aware that Jurgen remained free. She vowed to see him brought to justice, stating: "My mission is to see him behind bars, broken as he broke her." The pain of losing her daughter haunted her daily and the gruesome scene of Chantelle's murder played in her mind repeatedly. Over the years, Suzette dedicated herself to tracking Jurgen, who had fled the country after being granted bail, by creating posters and using social media to bring him back to court (Via, 2019).

These examples reflect the suffering of families who not only lost their loved ones but were also denied the closure of seeing justice served. The granting of bail to those accused of heinous crimes continues to be a contentious issue, leaving many to question whether the rights of victims and their families are being overshadowed by the legal protection offered to the accused.



In the delicate balance of justice, the CPA seeks to uphold the rights of the accused while ensuring fairness in bail decisions. However, the

concerns of victims, their families and communities cannot be ignored. The fear and uncertainty that come with an accused person being out on bail highlight the need for a justice system that not only protects individual rights but also considers public safety. Striking this balance remains a challenge, one that requires continuous evaluation to ensure that justice is served to all who are affected by crime.

More relevant case law regarding bail

1. **S v Zane Killian, Case No CCT/2023, High Court Cape Town, dated 17 October 2024 (WCC)**

Killian is one of the accused persons charged, *inter alia*, with the murder of the late Lt-Col Charl Kinnear. After being a remand detainee for four years, Killian again, for the second time, was refused bail by the High Court in Cape Town.

2. **S v Fisonti, Case No CC 72/2019, High Court, Cape Town dated 15 May 2023 (WCC)**

See Pollex in **Servamus**: January 2024. According to Pollex, this is an informative, instructive and educational judgment regarding bail. So much so that Pollex suggests that the verbatim (word for word) judgment must form part of the study and/or learning material at relevant training courses.

3. **Naidu v Minister of Police and the NDPP - 2017 (1) SACR 441 (GP)**

See Pollex in **Servamus**: December 2018. This Naidu matter is about an early, premature release on parole by Mr Marius Michaels. At the time, Pollex discussed this Naidu matter together with the matter of **DW v Minister of Police and Another 2017 (1) SACR 441 (GP)**. In the latter matter Mr Tsietsi Samuel Msiza had multiple previous convictions, including several convictions of rape, to his name. At the time he was again a remand detainee but who was released on bail "of some R1000.00". On 26 October 2011, a 22-year-old female student who was still a virgin (the complainant), was subjected in her home to the most horrific attack by Msiza during which she was also raped by him.

Accordingly, the complainant instituted a civil damages claim before the High Court in Pretoria against the Minister of Police as well as the National Prosecuting Authority (the NPA) on the basis of the failure by the relevant prosecutors and investigating officers to ensure that Msiza was kept behind bars as he posed a clear threat to the community. The said court gave judgment in favour of the complainant and ordered the Minister of Police and the NPA to pay jointly and severally the amount of R6 830 377.25 to the complainant, as well as to pay the legal costs of the complainant.

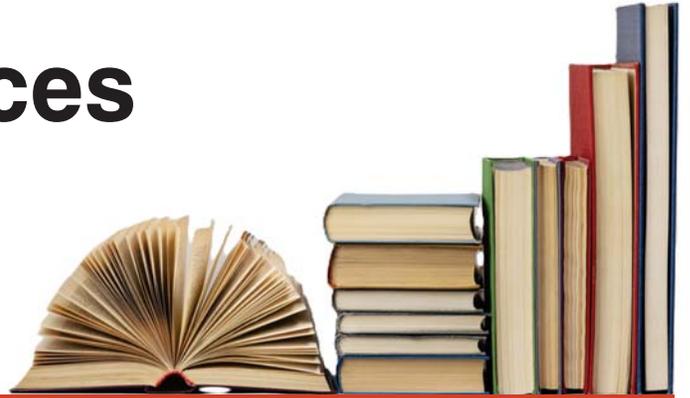
Glossary of terms

- * "Detention without trial". Note, however, section 37(6) of our Constitution which provides for "detention without trial" during a state of emergency.
- * "Non-commissioned officer" means in layman's language a "warrant officer or sergeant". See Pollex in **Servamus**: February 2019.

Editor's note

The list of references is published from p76 to p77.

Lists of references for **ARTICLES**



THE BAIL DILEMMA

Article published from p22 to p27

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