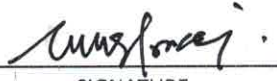


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, SITTING AT BENONI

Case Number: **CC10/22**

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED:
24 DECEMBER 2025	
DATE	SIGNATURE

In the matter between:

**THE STATE**

And

**ABRAHAM HERCULES ENGELBRECHT**

**1<sup>st</sup> Applicant**

**PIETER EGBERT STANDER**

**2<sup>nd</sup> Applicant**

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**JUDGMENT**

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- **This judgment was handed down electronically by circulation to the parties. It was forwarded to the parties' legal representatives by e-mail on the 24 December 2025 at 10h00.**

Ismail J:

[1] The two applicants were convicted of murder on the 2<sup>nd</sup> of December 2025. Pursuant to the conviction they immediately applied for bail pending sentence.

[2] They premised their applications by means of filing affidavits. Their affidavit was read into the record and a signed copies of their affidavits were marked Exhibit AA and exhibit BB respectively.

[3] Having been convicted of murder which was a schedule 6 offence. The applicants were to show on a balance of probabilities that 'exceptional circumstances' exist which permit their release on bail. – See *S v Dlamini, S v Dladla and others, S v Joubert, S v Scietekat* 1999 (2) SACR 51 at 84a.

[4] The court in its verdict found that the applicants acted in common purpose when they killed the deceased a young student activist during the apartheid are. Both applicants were members of the South African Police at the time. The uncontroverted evidence was that the deceased was shot at least 9 times, four times by one Johan Marais, an erstwhile co-accused, and five times by the second applicant. At the time of the shooting the deceased person posed no threat to the applicants as he was unarmed.

[5] Mr Engelbrecht in his affidavit stated that he could pay in an amount of R3000 - R5000 as bail. He was previously released on warning. He stated that he attended his trial on each and every occasion he was ordered to appear in court. He was prepared to surrender his passport and that the court could attach such conditions to his bail as the court deemed necessary. He stated that he was not a flight risks.

[6] Mr Stander handed up a detailed affidavit which was marked exhibit BB, wherein he submitted his personal details and his assts, which comprised a house which he valued at R4m, which had a bond of approximately R940 000 still owing to the bank. The equity in the property was worth at least R3m. It was suggested that he would apply for a second bond on the property hoping to raise at least R2m which he could use as bail. He also stated that he owned a 5 series BMW valued at R800 000,00 however, he still owed the bank which financed the vehicle some money.

More importantly he stated in his affidavit that he was pursuing a claim against a US company for damages; he suffered whist in Iraq. He was employed by the US company as a security person during the war in that country. He averred that if he was not released on bail his claim against the company which he was suing would be affected and that he would be prejudiced as a consequence of his incarceration.

[7] Applicant also alluded to his health condition, and he stated that he was scheduled to have an operation during January 2026.

[8] The court postponed the matter in order to permit the second applicant's attorney and legal team an opportunity to canvass the issue pertaining to acquiring a second bond to be registered over the property in order for him to raise money for bail.

[9] The respondent was up to that stage amenable to the court fixing bail in the sum of R100 000,00.

[10] When the matter resumed on the 11 December 2025, an affidavit was handed on behalf of the second respondent, deposed to by his partner. In summary the affidavit alluded to the fact that the bank was not prepared to register a second bond over the property as both the second respondent and his partner were unemployed and therefore they would not be able to meet or pay the monthly bond re-payments.

[11] In exhibit BB1 it was suggested that an amount of R500 000 could be raised by the second applicant's partner and another family member as bail for the second applicant.

[12] The court enquired from second applicant's counsel regarding the work or activities he performed in Iraq whilst working for the US company then. When this issue was raised the court got the impression that the second applicant was employed as a mercenary in Iraq during that period. The court was told that he worked as a security person who escorted business people in Iraq during that period. It also appears that the second applicant was also in Afghanistan during the war in that country.

The second applicant could not be questioned regarding his activities in those two countries which were embroiled in war and conflict. This information was given on affidavit, and he could not be asked questions pertaining to his work in Iraq and Afghanistan. The explanation was tendered from the bar through his counsel.

[13] It is trite that that evidence tendered by way of affidavit is acceptable as evidence during bail proceedings- see *S v Hartlief* 2002 (1) SACR 7 (T) and *S v de Kock* 1997 (2) SACR 171 (T) where evidence is provided by affidavit its probative value is not as strong as when it is given viva voce. The evidence tendered in the witness box can be tested by cross-examination whereas if it is tendered by means of an affidavit it is not.

If exhibit BB was accepted at face value, the impression was that there was R3m equity in the house and that a bond could be registered for a loan on the property in order to be utilised as bail. Upon further scrutiny it turned out that the second applicant and his partner would not have been able to service the bond instalments if a second bond was registered.

[14] The court was also concerned with the second applicant's links to the US and in particular to his ties to the US company. I raised the issue with the second applicant's counsel whether in light of his conviction on a charge of murder, the second applicant

would not seriously entertain going to that country in the light of that country's invitation for certain people from RSA to seek refugee status in the US. Adv Wyngaard's response was that those rights were being offered to Afrikaner farmers only. This response was made from the bar, and the second respondent did not take the opportunity to personally testify on this aspect.

[15] A troubling feature is that the applicant has contacts with the US. He had acquired employment through US companies in the past, to work in foreign countries. Now that he is convicted of a serious charge where the likelihood of imprisonment is more likely than not, would he not be inclined to evade facing a jail term by seeking 'freedom' elsewhere. I don't say that this is inevitable, but it is a possibility which cannot be overlooked or ignored. It is a factor which this court cannot myopically ignore. The second applicant might seek greener pastures elsewhere rather than spend his time in custody.

[16] It should not be construed that the court has made a factual finding in this regard but rather that the court considers this as a factor which should be considered together with other factors. The second applicant has after all secured work in the past in some war-torn countries, and this proposition may be a possibility he might pursue.

[17] Mr Marais, the erstwhile accused, who pleaded guilty to the offense of murder was sentenced to fifteen years imprisonment for this crime. In *S v Moeti* 1991 (1) SACR (B) where it was said that an applicant for bail must convince that there is a 'reasonable possibility that the appeal will avert imprisonment'

In *S v Hlongwane* 1989 (4) SA 79 (T) at 102 E-G the court held if it is so that the appellant has no prospect of avoiding imprisonment, the only value of bail is to the appellant. He would gain postponement and not avoidance, (A chance to take to flight is not a legitimate advantage). A court will not allow bail procedures to frustrate punishment procedures which have been duly formalised. See also: *Beetge v S* [2013] ZASCA 1 at para [6]

[18] The term exceptional circumstances has not been defined, however the courts have several matters given examples of what would constitute exceptional circumstances. In *S v Jonas 1998 (2) SACR 677 (SEC)* the court held that the fact that the state's case against the accused was weak or doubtful was an exceptional circumstance.

Equally so where the accused had a cast solid alibi it would constitute an exceptional circumstance.

In *casu* the applicants have been convicted of a cold-blooded murder. Although the Criminal Law Amendment Act 105 of 1997 was not promulgated when the offence was committed, sentences for such crimes in 1987 could be punished by means of a death sentence during the apartheid era. Such a sentence was deemed to be unconstitutional in 1995- see *S v Makwanyane and Another 1992 (2) SACR 1 (CC)*.

[19] What must be borne in mind, is that whilst bail is not penal in nature-as was stated in *S v Archeson 1991 (2) SA 805 (NSC)* and *S v Stanfield 1997 (2) SACR 221 at 233 g-i*. These cases dealt with the granting of bail where the applicant is presumed to be innocent, in terms of section 35 of the constitution. The applicants in this matter have been convicted of a crime situated at the apex of the pyramid of crimes prevalent in this country. There has been a sea change in their circumstances, and the landscape of their circumstances have changed. The presumption of innocence no longer applies to them in view of the court's findings.

[20] The prosecution was criticised for changing its attitude regarding the granting of bail. On the 2<sup>nd</sup> of December 2025 they were amenable to bail being granted in the sum of R100 000 subject to stringent conditions, however when the matter resumed on the 11 December 2025 the state was opposed to bail being granted. Mr Okes submitted that the state was being disingenuous by changing its initial position by opposing bail.

[21] The provisions of section 60 (1) reads:

*“Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has a duty, contemplated in subsection (9), to weigh up the personal interest of the accused against the interest of justice”*

[22] Bail proceedings are sui generis. The court adopted an inquisitorial view when it determined whether bail ought or ought not to be granted. See *S v Dlamini; S v Dladla; S v Joubert; S v Schietekat* 1999 (2) SACR 51 CC at para [11]. I considered the prevailing facts and circumstances of the applicants upon them being found guilty of the crime of murder. As stated in *Dlamini; Dladla et al* when the court has to determine whether bail should be granted in respect of a schedule 5 or 6 offence it must be subject to judicial scrutiny. The court must be convinced that there are exceptional circumstances for the release of the applicants on bail where it's a schedule 6 offence.

[23] Whilst the court is duty bound to consider the submissions of the parties; it must be satisfied that the *onus* has been discharged on a balance of probabilities. The court should not merely rubber stamp the view of one or other party. It should apply its mind judiciously in determining whether bail ought or ought not to grant bail.

[24] I have given this matter serious thought, and I have to consider the rights of the applicants, to be released after conviction, and the possibility of them fleeing in conjunction with the interest of society and the administration of justice. I am of the considered view that in the light of the convictions and the possible sentences which might be imposed, that it would not be in the interest of justice to grant bail.

[25] Accordingly both applicants' application to be released on bail is refused and they are remanded into custody.



**MHE Ismail**

**Judge of the High Court**  
**24 December 2025**

**APPEARANCES:**

For the first Applicant : Mr Mosia instructed by the State Attorney

For the second Applicant : Adv Wyngaard instructed Mr J P Okes of  
Kruger and Okes Inc Benoni.

For Respondent : Adv Mogotsi, Adv Devana and Adv Kabini  
Office of DPP - Pretoria

Date of hearings : 2<sup>nd</sup> December and 11 December 2025

Judgment delivered : 24 December 2025.