

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**S v Dlamini**

**Case CCT 21/98; 22/98**

**Decided on 3 June 1999**

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**Media Summary**

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*The following media summary is provided to assist in reporting this case and is not binding on the Constitutional Court or any member of the Court.*

The judgment deals with four cases that raise challenges to the constitutional validity of provisions of the Criminal Procedure Act 55 of 1977 (the CPA) relating to bail. The cases are the following:

*Dlamini* was convicted of murder and robbery in the Natal High Court in spite of his constitutional objection to the use by the prosecution of a statement he made when applying for bail. On appeal to this court he challenged the trial court's rejection of his objection. Dladla and four co-accused were charged with several counts of murder allegedly committed in the course of a taxi war in Soweto. They tried fruitlessly to have access to the police docket, and were refused bail in the magistrates' court. With the support of the Deputy National Director of Public Prosecutions and because of the importance of the questions involved, direct access to the Constitutional Court was granted to test the constitutionality of provisions of the CPA which imposed more stringent requirements for the grant of bail, and blocked access to the docket. *Joubert* and *Schietekat* were appeals by the state against constitutional rulings in the Cape High Court invalidating certain bail provisions of the CPA.

In a unanimous judgment by Justice Kriegler, the Court considered the general principles of bail and the nature, effect and constitutionality of major amendments to the bail laws governing -

the general test to be applied in considering the grant of bail;

the various categories of factors that may be taken into account, especially factors not related to the likely conduct of the accused;

special provisions applicable in cases involving certain very serious charges;

access by the accused to the police docket for purposes of a bail application;

the use of the record of the bail proceedings against the accused at trial.

The appeal by Dlamini was dismissed, as were the constitutional challenges in *Dladla*'s case. The state's appeals in the other two cases were upheld. The judgment reached the following conclusions:

1. The Constitution and the amendments to the CPA, have provided a norm and a guide for judicial officers charged with the task of applying the bail provisions.
2. While persons may be arrested and detained for allegedly having committed offences, they are entitled to be released on reasonable conditions if the interests of justice permit.
3. The procedure laid down in the CPA is handy for deciding whether the interests of justice permit release, and for fixing conditions of release.
4. A bail application is relatively informal, inherently urgent and serves a short-term purpose; the issue is not the guilt of the accused, but where the interests of justice lie in relation to bail. The court is to act as pro-actively and inquisitorially as may be necessary.
5. The essential exercise is to use the CPA's check-list of relevant factors for and against the grant of bail, keeping in mind the use of conditions to minimise risks.
6. Where the public peace is a factor, the court should carefully consider whether exceptional circumstances which would justify the denial of bail are indeed present.
7. Likewise, where very serious crimes are involved, the court should be careful to ensure that the right to bail is not in fact barred by the effect of the special provision applicable to such cases. The accused is entitled to a reasonable opportunity to make out a case for bail.
8. Although the accused's guilt may be relevant in a bail application, the central issue is whether the interests of justice permit the release of that accused on bail. Abuse by the prosecution of the right to cross-examine on that issue may result in the evidence being excluded later at the trial.
9. Whether or not the bail record may be used at trial is governed by fair trial principles.
10. Bail serves the liberty interest of the accused, but also the public interest by reducing the high number of awaiting trial prisoners and the number of families deprived of a breadwinner.

The judgment of the Court was delivered by Kriegler J and was concurred in by the other members of the Court.