

IN THE REGIONAL COURT FOR THE REGIONAL DIVISION  
OF KWAZULU-NATAL HELD AT EMLAZI

CASE NO: C/425/2025

DATE: 09-07-2025

In the matter between

THE STATE

and

VAN NIEKERK & OTHERS

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BEFORE : NOT MENTIONED

ON BEHALF OF STATE : MR MAKHUBU

ON BEHALF OF APPLICANT 1: MR TOMLINSON

ON BEHALF OF APPLICANT 2: MR MKHIZE

ON BEHALF OF APPLICANT 3: MR XABA

ON BEHALF OF APPLICANT 4: MR TOMLINSON

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INTERPRETER : NONE

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### **TRANSCRIBER'S CERTIFICATE**

I, the undersigned, hereby certify that **so far as it is audible**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter of:

**STATE // NKOSINATHI PATRICK ZWANE**

|                  |   |            |
|------------------|---|------------|
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| CASE NUMBER      | : | C/425/2025 |
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#### **PROBLEMS EXPERIENCED WITH RECORDING**

1. Some microphones are not working and audio is unclear
2. Mechanical disturbance in a lot of places making it difficult to transcribe.
3. Witness Mic stopped working about halfway through the recording and he became very difficult to hear.

**TRANSCRIBER: JONATHAN KLEINSCHMIDT**



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**PROCEEDINGS ON 09 JULY 2025**

PROSECUTOR: State calls case number C/425/2025 in the matter between the State and Accused 1, Jean Pierre Van Niekerk. Accused 2, Njabulo Brendon Dlamini. Accused 3, Banele Mseleku. Accused 4, Lloyd Clive Ramsbottom. Today's date is 9 July 2025. Appearances are as before, except for clerk of court. Clerk of court today is Mrs Mkhize. Your Worship, this matter is on the roll today for further evidence in respect of the bail application. I have been advised that Mr Batchelor, who was representing Accused 2 in this matter, has sent a notice of withdrawal. However, Your Worship, I believe my colleagues will address the Court in respect of this matter....[inaudible]

COURT: The notice of withdrawal is not filed with the clerk of court, meaning it's not attached to the charge sheet.

PROSECUTOR: It's not attached to Your Worship as yet. But I believe that one of my colleagues will address Your Worship on the matter.

COURT: Okay, maybe I need to ascertain with Applicant 2. Njabulo Brendon Dlamini?

ACCUSED 2: Yes, Your Worship.

COURT: Are you aware that your legal representative, which was Mr Bartaram, is no longer representing you. I'm told you had filed a notice of withdrawal.

ACCUSED 2: Yes, Your Worship, I have, Your Worship.

COURT: And you have since instructed another attorney, or what is the position?

ACCUSED 2: Yes, Your Worship, I have consulted with Mr Mkhize to get assistance in representing me.

COURT: Thank you, Mr Mkhize?

MR MKHIZE: Thank you, Your Worship.

COURT: Can I have your initials, please?

MR MKHIZE: M-S, Your Worship. MS Mkhize.

COURT: MS Mkhize.

MR MKHIZE: That is correct, Your Worship. Your Worship, I confirm that I have been instructed in this matter. Yes, at the eleventh hour, Your Worship. And I further confirm that I have just been furnished with the notice of withdrawal from the attorney who represented the accused. Unfortunately, Your Worship, it was not filed, because I have also just been furnished with it. May I have leave to hand it in, Your Worship, for the purpose of the record?

COURT: You may.

MR MKHIZE: Thank you, Your Worship.

COURT: The Court has just been furnished with a notice of withdrawal with regards to Applicant 2 in these bail proceedings. The same had just been handed to Court. It was not filed with the clerk of court. However, the Court had endorsed that Mr Mkhize had been instructed to represent Applicant 2. Mr Mkhize, otherwise, are you ready to proceed?

Have you familiarised yourself with these bail proceedings?

The matter is partly heard.

MR MKHIZE: Yes, Your Worship, I'm fully aware.

COURT: With regards to your client. He had filed in an affidavit for purposes of his bail application.

MR MKHIZE: That is correct, Your Worship. Your Worship, I have had time to familiarise myself with the record and I am in possession of all the documents necessary, Your Worship.

COURT: Okay, thank you.

MR MKHIZE: And we are ready to proceed with the matter, Your Worship. Thank you, Your Worship.

COURT: The applicants had closed their case and the respondent had handed in an affidavit by the investigating officer and then closed the respondent's case. However, the Court felt that the things that needed to be clarified by the investigating officer, hence the Court, postponed the matter for the investigating officer to be present, so as to clarify certain aspects of his evidence, as there were things that were not clear in the affidavit. So the investigating officer is called by the Court as the witness in these bail proceedings. Mr Dlamini, you may be seated. I'm told the investigating officer is present.

PROSECUTOR: As the Court pleases, Your Worship, that

is the position, Your Worship. If I may call him to come forward.

COURT: You may.

PROSECUTOR: Sargent Khanyase.

COURT: Can you State your full name, Mr Khanyase?

WITNESS: Kenneth Dumisani Khanyase, Your Worship.

COURT: Mr Khanyase, do you have any objections in taking an oath?

WITNESS: No, Your Worship.

COURT: Do you consider the oath to be binding on your conscience?

WITNESS: Yes, Your Worship.

COURT: Do you then swear that the evidence you are about to give will be the truth and nothing else but the whole truth? You may raise your right hand and say, So help me God.

WITNESS: So help me God.

KENNETH DUMISANI KHANYASE(sworn states)

EXAMINATION BY COURT

COURT: Sir, as I've explained, you have been called by the Court as a witness. Do you confirm that you are an investigating officer of this case? The court case number is C/425/2025. You will have the CAS number Amanzimtoti 84/04/2025.

MR KHANYASE: Correct, Your Worship.

COURT: And have you been investigating this matter since

the inception of the matter?

MR KHANYASE: Correct, Your Worship.

COURT: Okay, so you are aware of the charge that all the four applicants are facing?

MR KHANYASE: Correct, Your Worship.

COURT: Okay, you have given an outline of the facts of the case. However, it's not clear the involvement of each applicant in the case. If you can briefly tell the Court the facts of the case.

MR KHANYASE: Your Worship, it's quite, hence then I submitted to the epidemic, but then to be precise, I received the case of a, thank you very much. Excuse me, Your Worship. On 11 April, I was allocated to investigate the case of murder. Of which initially when it occurred, prior to that me being given, I'm the one with my colleague who attended the crime scene, where then the deceased in this matter was found to be lying in this crime scene. Then on 11 April, it was allocated to me to investigate, Your Worship. In the process of my investigation, there was quite a number of witnesses that I had to interview, Your Worship, to ascertain the cause with which the deceased ended up dead. Hence then, I had to go through about 18 witnesses. That includes witnesses from inside the Tetelestai Recovery Centre and outside of the facility. I had to ascertain all the facts pertaining to the death of the deceased and identifying the possible witnesses.

Which is when then most of the witnesses had earlier on feared to come forward, because most of them were from inside the facility itself. Then after obtaining the witness statements, which then implicated some of the intakes inside the Tetelestai Recovery Centre, only then, Your Worship, I effected the arrest. Which is why then, we had this position.

COURT: So that is why it took so long to effect arrest, because the date of the incident, according to the Court document, the charge sheet, it's 9 April 2025 and the date of arrest is, I'm not sure whether this is 25 or 26 June 2025.

MR KHANYASE: Correct Your Worship.

COURT: So it took more than a month.

MR KHANYASE: Correct Your Worship.

COURT: So these witnesses, how were they identified? If you say they were reluctant to give evidence.

MR KHANYASE: Well, I established them after interviewing them, when everybody was being interviewed from inside the Tetelestai Recovery Centre. Only then, what actually then happened, some of them, after they had been interviewed, they were victimised and then let out of the facility. Some were taken by their families and somehow then I managed to get to them and obtain the statements, which then led me to arresting the applicants, Your Worship.

COURT: So they were victimised by whom? By the people at the centre, or by the applicants, or by people that are

unknown?

MR KHANYASE: Your Worship, they were victimised by the people at the centre, with which one of the accused in this case, he, as we speak now, is out on bail for assaulting two of the witnesses who have got their statements in the docket, indicating the same accused before Court. The case is Amanzimtoti CAS 72/6/2025, assault GBH, which has been remanded for 21 July 2025.

COURT: Okay. So basically, that's how the evidence was obtained. But briefly, if you can tell the Court, how were they involved in this murder of the deceased?

MR KHANYASE: Yes, Your Worship. According to the witnesses, Your Worship, the witnesses, they are there together with the accused before Court. They stay there.

COURT: They are all at the centre patients, kind of, at the rehabilitation centre.

MR KHANYASE: Yes, Your Worship. They are all there, but then the accused before Court, the manner in which the facility operates, the intakes are brought in there. Those that then have gone through the rehabilitation and have been processed and seen to be better off than the others, they are then promoted to monitor those that are new intakes in the facility. Then in this instance, the deceased was brought in and then he was to be looked over, monitored by the accused before court.

COURT: Which accused? All of them?

MR KHANYASE: All of them.

COURT: All four of them?

MR KHANYASE: Yes, Your Worship.

COURT: They were monitoring him?

MR KHANYASE: Yes, they were monitoring him.

COURT: So if they are monitored by other patients, are there no people, the officials who are running the centre?

MR KHANYASE: No, Your Worship. There is no, there are no, that facility, it does not, from what I established, it does not, the people that help the facility run are the people that have been identified by the facility to have better recovery than those that are new in the facility. Otherwise, there are no, any professional persons to do what then the rehabilitation is portrayed to be. Like there are no former security guards in the facility, there are no psychologists, there are no nurses, there are no, all this is being done by one of those that have already had time and have been proven and identified by the senior, should I say, by the owner or the management of the facility to be better to look after those that are new. Not qualified, nothing whatsoever that could empower them to look after those. Because in any event, they are there as well, they have been there as well to go get the assistance to come out of the drug addiction.

COURT: Okay, what about the management of the facility?

They do not run the facility or oversee how it functions?

MR KHANYASE: From my knowledge, Your Worship, the person that is supposed to be owning the place is dependent on his brother and his brother and then those, how it goes there, there is a, there are people who are new, they are called intakes, those that are new in the facilities and then once then they've gone through a certain period, they've been proven not to be smoking, not to be doing anything negative, then they are promoted and given a level of being a monitor to look after those that are new and above those then, there are those that are called, there are those that are called the volunteers, the volunteers. The volunteer then reports to the owner or the second to the owner about the running of the facility. There is nobody, there is nobody, nobody that is properly or fully qualified with credentials to run or to look after the intakes who are there then in the pretext to say that they are going to get recovered from the drug addiction.

COURT: Okay, Mr Khanyase, we understand from your perspective how the facility is run. You said the four applicants before court were monitoring the deceased.

MR KHANYASE: Yes, Your Worship.

COURT: Okay, tell us briefly about the facts of the case, how the four applicants are implicated in this matter.

MR KHANYASE: Thank you, Your Worship. Then according to the information that I received or that is here from the

witnesses, the deceased, he didn't want to go from the first day to be there. So by so doing then, in twice attempt, on the first time, he tried to escape, to run away from the facility. But then they caught him, in the process of catching him to bring him back to the facility. He was badly, badly, he was manhandled in a way that was so embarrassing and for the fact that also they feared him, because according to the information he is a well-trained man to defend himself. So he fought them hard. So four of them manhandled him and took him back to the facility and then in the process when they took him to the room called the intake room, they locked him in there. Then again, one of the accused here, he had an altercation with him at which then...[intervenes]

COURT: Sorry, before you go far, that was when? Was that on 9 April, the date of the alleged incident?

MR KHANYASE: No, Your Worship, that was... the accused came there...[intervenes]

COURT: You may refresh your memory from that docket.

MR KHANYASE: Yes, thank you, Your Worship. The accused came there on this...[intervenes]

COURT: No, I mean the manhandling of the deceased when he was trying to escape because you said he was manhandled.

MR KHANYASE: Yes, yes, Your Worship. It was on 7 April when he was manhandled when he tried to escape, Your

Worship.

COURT: Okay.

MR KHANYASE: Yes. It's when then again he had an altercation in a fight with an Accused 4, with Lloyd, where he hit on the right eye. Then late in the afternoon, late in the afternoon, during the day they tried to take him...[intervenes]

COURT: So that would be with Applicant 4.

MR KHANYASE: Yes, yes, Your Worship. Then the accused then took the deceased to a place which is a garage, inside what you call the facility. So they took him there. By so doing, it's established that it's a form of punishment for whoever that has been misbehaving in the facility. So the accused was taken there. Once he's there, they're not giving food, much the same as those dead there. They're giving him porridge, which is no sugar, which is, you know, everything that is being done there, as you are taken there, you are treated as a prisoner. So then everything that is done there is done as a punishment. It's when then the deceased tried to escape and then he was brought back to the intake room. Then on the 8th, on 8 April, according to the witnesses, the four accused before Court, usually they sleep with the other residents in the room to monitor them so that they may behave. But then on that night, the accused were seen, they took their blankets, their beddings and went to sit where the deceased was. But at that time then again, all those that

were with the deceased in that intake room, they were taken out if the deceased was left by himself there.

COURT: Taken out by whom? By the applicants?

MR KHANYASE: By the monitors. They were taken and put in the basement.

COURT: Okay, Mr Khanyase, let's try and digest this. You said the four applicants were monitors, they were monitoring the deceased.

MR KHANYASE: Yes.

COURT: So if you are saying the other intakers were taken out, I'm asking you taken out by whom? Was it by the four applicants or by other persons? You are saying the monitors, so I'm asking whether by these four applicants.

MR KHANYASE: Correct, Your Worship, by these.

COURT: Okay, proceed.

MR KHANYASE: So they were taken to a place where they weren't yet ready to be taken to, which is called the dormitories. Usually dormitories, only the people that say they are those that have been there for a few days or after they have been treated as new intake. Then in that room where the deceased was left by himself, it's a place with a gate, a lockable gate, where nobody then could have an access or could escape out of and then this happened late in the night of 8 April. It's only then, thereafter, after then all the accused had taken their beddings down there late,

according to the witnesses. The place where the witnesses were is just above the place where the deceased and the accused were. So they heard the deceased being assaulted, crying and screaming for help. To such an extent that there is then a period where they heard him groaning, as if it was a hard and deep pain that he must have suffered then. Then, according to the witnesses, they then again saw the accused coming out of the intake room as to where the deceased was. At that time, it was so dark, which usually at that time there is nobody who is allowed to be outside at all and then later, they then saw the accused holding the deceased, helping him walk out of the intake room.

COURT: So who then saw? The witnesses?

MR KHANYASE: The witnesses.

COURT: Okay. So where the witnesses were, it wasn't dark so they could see?

MR KHANYASE: Yes, even though the lights had been switched off at that time by the deceased. There is a point before they took out the deceased. One of the accused saw one of the witnesses standing by the windows. He shouted at him and saying, why are you not sleeping? And then the witnesses then said, he stood by the corner to see everything that was going on down there. It's when then he saw the accused holding the deceased, taking him out, not to the front gate, but to the side gate, which is just behind the building of

the facility. Then the accused then came out and shouted, calling the deceased by the name, saying, "Luke has escaped, Luke has escaped." Meanwhile, their behaviour was not common to that usually they behave at the time if there is somebody that has escaped. According to the witnesses, usually if there is somebody that has escaped, Your Worship, the security guards are called, everybody runs, comes out with the lights, everything. They look, everybody gets to be involved in tracing the person that is said to have escaped. But in this instance, only the accused were with their cellphone touches looking for the deceased. So it's only then, Your Worship, according to the witnesses, they last saw the deceased. Then in the morning of the night, then I was, myself and my colleague were summoned to a crime scene where the deceased was found to be lying dead inside the Mooi Hawens. That is the old age centre, Your Worship. It's just about, it's just across the Tetelestai facility, the facility. If you walk in there, it could take you plus minus two to three minutes to get to that building. Then as we got there, we saw, I found the deceased lying face up, with multiple body injuries, which appeared to have been a physical assault to his body, with a stab wound on his left hip. But it didn't appear to be a knife wound, it appeared to be something bigger than the knife. It was quite open, but deep going inside into the body of the deceased. His face was swollen in

a very way, black on his right, if I remember, on his right hand side. It was swollen, you know, quite dark to show that he had been badly beaten. Then I interviewed the people that were around there, including the security. According to the security, the deceased, had earlier, at about half past one, came there, Your Worship, asked for his cellphone. The security guard told him that he didn't have airtime on his cellphone and then the deceased asked for the water from the security guard. Then the security guard gave him the water. That particular incident, it was captured on the CCTV footage of the old age home and then thereafter then, according to the security guard, after he had given him water, the deceased, he saw him walking up and then he walked down towards the beach and then took a left. That left is leading just across the facility centre. It would appear to me that the deceased may have wanted to go, or maybe then may have wanted to get back there, maybe for some reason to rest or maybe cold or something. So as I looked closer, Your Worship and analysed the factors which led to the deceased, it appears to me that the deceased came down as he came down, the accused had pretended to be going to look for the deceased because then, according to them, the deceased had escaped. So he saw them and he jumped over the fence. It's where then he lost energy, or he lost energy due to the injury sustained as a result of the assault from inside the centre by the accused.

Then he collapsed there and then was found dead in the morning about two to three hours later after the assault incident.

COURT: So at that time, the deceased was with the security guard that is a witness you interviewed. He had no injuries at that time.

MR KHANYASE: According to the security guard, the deceased appeared as if he had been robbed or something. He didn't really analyse him, but he appeared to have had a fight or to have been robbed, according to the statement.

COURT: But he did not notice any injuries or open wounds?

MR KHANYASE: He did. He did notice the face to be swollen, that he was swollen in his face. He had a dark face, which would show him to have been assaulted. It's only then, Your Worship, myself and my colleague, we went around looking for the deceased. The deceased, according to the time, was not known. He was found inside the old age home, where there were no young people staying in there. So we went around, we walked around asking, because we had a photo of him and then we were led to the facility, because it was right across the old age home. We met with the guy that is said to be a volunteer there, Ted Holland. When we showed him the photo, he just immediately identified him to be the deceased and he even called him by the name Tubidu. Then he took him with to the crime scene, where he positively

identified him as Tubidu. He never mentioned anything about the deceased to have escaped from the facility. He never, never mentioned about it and then, thereafter, the deceased was taken to the Park Rynie Mortuary. It's only then, thereafter, Your Worship, when the investigation to determine the causes leading to the death of the deceased.

COURT: So the deceased was discovered, as it was reported, by the people at the retirement home, who had found him.

MR KHANYASE: Your Worship, the deceased was never reported. According to my information, Your Worship, no police were called to say that the deceased had escaped.

COURT: No, no, no. I'm not asking at the centre. I'm asking about the discovery of the body. So there are people at the centre who saw this body lying outside this old age home.

MR KHANYASE: Yes, the witnesses, Your Worship, who have put their statements in the docket, they could see from the dormitories the deceased lying there outside the old age home premises.

COURT: But who called the police?

MR KHANYASE: Early in the morning, there was one lady, Your Worship, that had worked from inside the old age facility of the Mooi Hawens. She was going to resume her duties. That was between 5:00 to 5:25 in the morning and then she came across the deceased lying there. According to her, she

thought that the deceased was just lying there and it was a surprise to her as to how he could have gotten in there. She tried to wake him up. He couldn't respond and then she tried to push, to touch him to see if he could respond. He still never responded and then she confirmed him to be no more and then she went and reported to the Metro. The Metro then called the security guard and then the same security guard who the deceased had earlier on seen at the gate came and confirmed the deceased to be the same person that had come asking for the water and the cellphone. Only then the Metro called the police.

COURT: And so far as the applicants, as they are applying for bail, you have stated that you are opposed to all the four applicants being granted bail. Your reasons are, in brief, they are flight risks.

MR KHANYASE: Correct Your Worship.

COURT: They've got no property and they are all unemployed.

MR KHANYASE: Correct, Your Worship and they are not married.

MR KHANYASE: Correct, Your Worship and furthermore, Your Worship, I fear there's a potential possibility that the accused may go back and interfere with the witnesses and where so, Your Worship, they know where the witnesses stay because they are the ones who pick them from their homes to

bring them to the facility and also, Your Worship, considering the fact that there is already a case going on relating to the fact that they assaulted the witnesses, this time they may not only assault the witnesses.

COURT: Just a moment. You are saying they are the ones that brought the witnesses from their homes to the centre. So they are the ones who are recruiting these people from their homes to come to the centre for rehabilitation. Is that what you are saying?

MR KHANYASE: I'm not sure of the witnesses, how they managed to get it. I would assume that, Your Worship, they get the instruction from the management to go get those people from their homes to transport them to the facility. In that form, then they know where they are staying, Your Worship.

COURT: Okay. But have you verified their addresses except the centre, the TRC, that is the Tetelestai Rehabilitation Centre, where they are coming from, the four applicants?

COURT: No, Your Worship, their original home addresses, Your Worship, are not verified. They stay there in the facility, Your Worship.

COURT: Okay, but did you interview them, where you come from before you were admitted at this centre, so as to verify those addresses, whether they do exist, whether they do have families?

MR KHANYASE: Your Worship, Accused 1 is originally from Vereeniging, which is in Gauteng, Your Worship. From my interview with him, he doesn't even want to go back there. He stated himself that he likes, that this is his home in the facility in Tetelestai. Accused 2 is said to be staying in Bulwer in Pietermaritzburg. However, Your Worship, I've met up with one of the family members, Your Worship, who had said that he could give his address as an alternative address for him. Then Accused 3 and 4...[intervenes]

COURT: So that family member, did he or she actually give you that address to verify, as an alternative address?

MR KHANYASE: Sorry, Your Worship, he gave me just by then, only verbally, Your Worship.

COURT: Verbally?

MR KHANYASE: Yes, but nevertheless, Your Worship, even if I could verify...[intervenes]

COURT: No, no, no, I'm merely asking, I'm not asking the opinion at this stage, I'm asking whether you were given any addresses, or did you verify their addresses, as they are temporarily at the Centre for Rehabilitation?

MR KHANYASE: Correct, Your Worship.

COURT: Okay, so you did not verify that address?

MR KHANYASE: No, Your Worship.

COURT: Okay, let's come to Applicant 3.

MR KHANYASE: Applicant 3 as well, Your Worship. He stays

in the facility.

COURT: Okay.

MR KHANYASE: Though he has the address in Durban North, but he doesn't want to stay in his sister's house in Durban North, Your Worship.

COURT: So what about his home, where he was coming from? He does not want to go back there? Correct, Your Worship. Okay.

Applicant No. 4. Applicant No. 4, he gave me the number of his mother, which I tried to call, Your Worship, to verify. That same afternoon after I had charged them, I tried and tried to get to her. I couldn't get to her, Your Worship, up until this day. I've also tried again. I don't know whether or not, Your Worship, she sees the police number, but I have not verified the addresses, Your Worship. Except to say, they all stay there at the Tetelestai Centre.

COURT: Okay, according to the evidence before Court, Applicant 4 is the one who has got a sister that is staying in Durban North and the sister also testified in court that she is willing to accommodate him if bail is granted and she gave the address of the place in Durban North where the sister is residing. So you were never given this address to verify.

MR KHANYASE: No, Your Worship. I apologise, Your Worship.

I confused Number 4 and Number 5.

COURT: Yes, that is why I'm clarifying for you because I think you are confusing Applicant 3 and 4.

MR KHANYASE: Correct, Your Worship. The one that is Number 4, Number 3, I tried to call their mother, his mother. The number that he gave me, I couldn't get through to her, so that then I could verify just for her knowing him and also his address. Up until this day, Your Worship, I have not verified it, Your Worship.

COURT: Okay. Thank you and insofar as previous convictions and pending cases, we know that in your evidence you said Applicant 1, that is Mr Van Niekerk, has got a pending case in Amanzimtoti.

MR KHANYASE: Correct.

COURT: Any previous convictions?

MR KHANYASE: No, none of them has any previous convictions, Your Worship.

COURT: Okay. So your other reasons for opposing bail, except that they've got no addresses and you say they know where the witnesses are residing as they are the ones who had gone to fetch them from their homes. Any other reason?

MR KHANYASE: Your Worship, I can honestly say, Your Worship, the accused have got nothing to lose by absconding or running away from the case if released on bail. That's much the same as the flight risk. But also the seriousness of the case, Your Worship, the evidence against the accused is

overwhelming. So they are not employed. There's nothing that warrants them to be released on bail, Your Worship. They are healthy. They are young. They are healthy. They can stay and they can be kept in custody, Your Worship, until their trial.

COURT: Okay. Applicant 1, that is Mr Van Niekerk, gave evidence in court that he is married and he has got two minor children. You are not aware of this information?

MR KHANYASE: No, Your Worship, I'm aware of it, but not in that sense. He said, he mentioned to me that they are in separation with his wife and he doesn't want to do anything with her, Your Worship. The only family that he has got is the Tetelestai, not his family in Pietermaritzburg, not his wife, Your Worship.

COURT: So the children, he does not have children?

MR KHANYASE: He never mentioned anything about the children, Your Worship.

COURT: Okay, that is all from me. Any cross-examination? I'll start with the legal representative for Applicants 1 and 4. Mr Tomlinson, any cross-examination? MR TOMLINSON: Thank you, Your Worship.

COURT: Sorry, before you do, I take it everybody is fine with working through tea break, because by the time we started it was already towards 11 o'clock anyway. So I assumed that everybody is fine with working through tea, but if I'm

mistaken, you can just let me know. Okay? I take it everybody is okay. Thank you, you may cross-examine.

CROSS-EXAMINATION BY MR TOMLINSON

MR TOMLINSON: Thank you, Your Worship. Mr Khanyase, you confirmed that you said that you interviewed a lot of witnesses, about 18, is that correct?

MR KHANYASE: That is correct, Your Worship.

MR TOMLINSON: And you said, you confirmed that the witnesses feared to come forward, most feared to come forward.

MR KHANYASE: That is correct, Your Worship.

MR TOMLINSON: Now, I'll put it to you, 18 is quite a large number of witnesses. You said most feared to come forward. How do you explain those that didn't fear to come forward, why they did not come forward and report this murder, which they were eye witnesses too and which took approximately three months for arrests to be made? Can you explain why they would not come forward if you say it was only most of them feared, which means obviously some didn't fear? How do you explain that?

MR KHANYASE: The manner in which we mentioned this murder, it was tried to be hidden under the carpet, in the sense that nobody was allowed to talk about it and it was said that it wasn't you, that it wasn't the deceased that was prompted, that the one that had been mentioned to have

escaped. But also, I think the better reason I can state to say I only managed to get the statement from the witnesses is only because it's either they were chased from there, or they were taken by the family out of their place after hearing about this incident, or they were assaulted and then decided to leave their place. There are still witnesses who, if they're not feared for their life, would still give a statement or testimony to the incident where the deceased ended up being murdered, being dead.

MR TOMLINSON: Now, I put it to you that in terms of your evidence, you mentioned that, if it's correct in terms of my understanding, the witnesses were in a room above the intake room.

MR KHANYASE: Correct.

MR TOMLINSON: So they were in a different room than the intake room, which was underneath them, where the alleged beating took place.

MR KHANYASE: Correct Your Worship.

MR TOMLINSON: So in terms of - Would you confirm they obviously weren't eyewitnesses? Would you confirm they weren't eyewitnesses to the beating?

MR KHANYASE: They weren't?

MR TOMLINSON: Eyewitnesses. They never saw the assault happen. They were in a different room, is that correct?

MR KHANYASE: Yes, they were in a different room. May I

explain this? I've been to that place not just once. I even was taken by the director, should I say, the owner of the place, to the room where the witnesses were standing and I could confirm that it's not hard to determine or to ascertain that whatever that is happening down there, it's just below the room where the witnesses were. It's just below. It's just above the room where - the intake room where the deceased and the accused were. For the fact that it happened, everything happened at that time and the witnesses were standing there at the corner watching everything. It goes to show that the witnesses saw and what they saw, their testimony and they collaborate with the events leading to the assault and death of the deceased.

MR TOMLINSON: But I just want to get clarity on this, because this is very important. These witnesses that were in the room above the intake room where the alleged assaults take place, did they see with their eyes the actual assault take place? The blows and who was directing the blows? Which of the four accused? Was it one of the four accused? Was it two of the four accused? Was it all four of the accused? Because in the affidavit, your affidavit that you submitted, just bear with me on page four, states and this is before Luke was seen at the Mooi Hawens later on in the evening at 1:30 in a seemingly different condition. It says, you stated that they're still in that weak physical state

condition. The eight team accused of one, two, three, and four and the other called Byron went in and collectively assaulted the deceased. Collectively. They all assaulted him. Can you please tell this Court how people who weren't in that room know that information?

MR KHANYASE: Your Worship, this assault of the one that you are talking about, it was one of the final ones. That was not the first incident where the deceased was being assaulted. At the time he was there in the intakes, he had already suffered a severe, a very brutal assault by the same accused and as well, at the time he was assaulted, in that period, there was nobody else in that room except him and the accused. So, when the witnesses, knowing that only the accused, the deceased was there with the accused and the screaming of the voice that they know to belong to the deceased, it was clear, it is clear enough that they were there, they are the ones who had assaulted, who were assaulting the deceased. And as well, later on, after the assault of the deceased, they were seen helping him walk out of the intakes, because he couldn't walk on his own, because of the severity of the assault that had been done, that he had gone through by the accused.

MR TOMLINSON: You said in your testimony that they helped him walk out. Is that correct?

MR KHANYASE: Correct.

MR TOMLINSON: Okay. Then, can you explain to me why your statement says the witness then saw him being carried out to the facility. Is there not a difference between carried out and help him walk out?

MR KHANYASE: Well, I may have said help him walk out. That's what he meant to say. They carried him out. They couldn't, according to the witness, they were holding him to walk out.

MR TOMLINSON: So, according to the witnesses, he was in a condition where he could not walk.

MR KHANYASE: Correct.

MR TOMLINSON: Now, can you explain to this Court, according to your own evidence, that later that night, after not being able to walk, he appears up the road at Mooi Hawens at 1:30 on CCTV, seemingly to the guard, appearing to, that he had just been robbed. But - and you've seen that CCTV footage and I've seen it and I think all the defence counsel have seen it. Did he appear that he was unable or struggling to walk at that stage, or stand?

MR KHANYASE: According to the security guard, they saw him up there, then he had been taken out of the facility. He appeared, that is his analysis, you know, he appeared to have been robbed and when robbed, that's what he says, he couldn't be sure.

MR TOMLINSON: And the security guard you say said his

face was swollen?

MR KHANYASE: Yes, his face was swollen.

MR TOMLINSON: He appeared to have been robbed. But there were no other injuries that this, you confirm there's no other injuries that this security guard observed? Because how far was the security guard away from the deceased when they were at the gate? I'll put it to you that they were literally like half a metre away from each other.

MR KHANYASE: Correct.

MR TOMLINSON: So half a metre is pretty close. It's like this. I think if my measurements are correct.

COURT: Yes, more or less.

MR TOMLINSON: Okay. Give or take a little bit.

COURT: Like an arm's length.

MR TOMLINSON: Yes, so this is not a distant observation. This is up close and how was the light there at the Mooi Hawens gate? Was the light, was there enough light to be able to observe?

MR KHANYASE: According to the security guard again, the point that he saw from what he told me is he saw his face badly injured. Like it appeared that he had been assaulted or had been robbed. That is an observation analysis that he passed to me to say that he appeared that way. He didn't analyse, he didn't give an analysis as to how he came from the bottom from the door up to the gate.

MR TOMLINSON: Okay. And this next piece I would like to get to because this for me is very interesting. I just want to confirm with you, just before the event, just before the deceased passed away, according to your testimony, you say what you believe or assume that he was after being at Mooi Hawens he walked down the road, he saw the TRC A-Team hunting for him. He then jumped over the Mooi Hawens' fence which is, how, describe the fence around Mooi Hawens. Is it a small little fence? Is it a medium fence? Is it a 6 foot 4 high fence?

MR KHANYASE: Just, just, just... Your Worship, I've been to that place 5, 6, 7 times to establish as to how the deceased must have been, must have ended in that position. With that, with so many times that I've been there, I managed to establish that though the fence is high on the other side, there's a road, the public road, the cars are passing by the other side where there is a gate at the level of the premises. If you're coming from the security guard section, you walk down about, say, 20 metres and then take a left, that is leading to the Tetelestai facility. As you go down, if there's a fence, there's a space, there's a portion where the fence is, is high, but not high enough for one, if then they're fearing for their life, cannot jump over. That's where then, that's where then, that's where then I, I established that the deceased must have then seen the accused and then jumped over to, to,

running for his life and then he lost energy, which is where then he collapsed.

MR TOMLINSON: So you're saying that he jumped over this fence?

MR KHANYASE: Yes.

MR TOMLINSON: Lost energy and died?

MR KHANYASE: Yes, yes. He must have lost energy.

MR TOMLINSON: Lost energy and died after, a few minutes before, appearing on CCTV with the only visible injuries being a swollen face.

MR KHANYASE: No.

MR TOMLINSON: Mr Khanyase, tell me, I just want to ask you a simple question. Do you still truly believe that the State has a strong case in this matter, based on actual eyewitnesses that saw the assault, not previous matters and previous assaults, which aren't, we need to find out, is there evidence against these four men that implicate them directly, each one of them, that proves beyond a reasonable doubt that they committed this offence? Do you, can you truly and you're a, you're a policeman with many years of experience, you are not, you are not, you are a seasoned detective, can you truly, in good faith, as an officer of the court, tell this Court that there is a strong case, because this is the issue with bail. One of the exceptional circumstances that I have to show, that my clients have an onus to show, is that if the case

is weak, that is an exceptional circumstance, as stated in the, I think it's in the *S versus Jonas* case. So this is key, this is key to bail. Is it a strong case, is it a weak case? So I'll ask you just that simple question. Do you truly believe that in good faith, that with all this, I don't even want to call it evidence, some of it, do you believe that the State has a strong case for, for the murder of the deceased?

MR KHANYASE: That's the only thing I said.

MR TOMLINSON: That's, that's, that's, that's some answer to my question. Thank you, Your Worship. The Court will just bear with me? No further questions, Your Worship.

NO FURTHER QUESTIONS BY MR TOMLINSON

COURT: Thank you. Mr Mkhize?

CROSS-EXAMINATION BY MR MKHIZE

MR MKHIZE: Thank you Your Worship. Now you, you, you were asked by Her Worship, how each of the applicants is implicated in the commission of this murder. But I want to be specific. Applicant 2, Dlamini, how do you say he's implicated in this matter?

MR KHANYASE: Your Worship, all the accused are collectively implicated in this matter. According to the statement, to the witnesses, they collectively, brutally, even before the time that is, that was the last time of the assault, they collectively, brutally assaulted the accused.

MR MKHIZE: I take it that you would have collected

statements from these witnesses. How many witnesses are we talking about here?

MR KHANYASE: Right now, the witnesses, there are five witnesses, but there are still more witnesses, Your Worship.

MR MKHIZE: And you've been asked this question. I'm sorry if I have to come back to it. The, now this, the so-called witnesses that you're referring to, none of them have indicated in their statement that they actually witnessed the assault. Or are they? You have statements, number of statements for that matter.

MR KHANYASE: Your Worship, each of the witnesses with which I've got statements here, they mentioned, they mentioned the involvement, should I say the ordeal at which the deceased was assaulted by mentioning each, each of the accused here, sorry, Accused 1 by the name, Accused 3 by the name, Accused number - collectively, brutally assaulted the deceased.

MR MKHIZE: And, and just for the completeness of the record, all the witnesses you're referring to, of course, are the, the patients, are patients from the, from the centre.

MR KHANYASE: Correct Your Worship.

MR MKHIZE: And you've also told the court, because I'm interested in this one, you've also informed the, the honourable court that the, the applicants were also seen escorting the deceased out of the premises. Escorting the

deceased in what manner? Physically escorting, carrying, what was the position according to them?

MR KHANYASE: According to the witnesses, Your Worship, they were helping him walk from the intakes from where then he had been assaulted and walking through the, through the, and to the back gate, not to the main gate where then they are, when then they could have officially taken him.

MR MKHIZE: Just, with all due respect, sir, just try and focus to my question. I want to be clear on this one. How was he assisted? How was the deceased assisted? They would have said in the statement, was he being carried, physically carried? Was he assisted while he's walking on his own? Just clarify. You have statements.

MR KHANYASE: They assisted him, Your Worship, assisted him more, holding him by the sides of his body.

MR MKHIZE: So the picture is created that he was unable to walk at the time, on his own.

MR KHANYASE: Correct Your Worship, yes.

MR MKHIZE: How far did they take him? How far? Because they were watching. So how far did they assist him?

MR KHANYASE: They took him to the, to the side gate of the facility.

MR MKHIZE: Okay, we're talking about the side gate now. Is the security guard manning that side gate?

MR KHANYASE: No, Your Worship. There was absolutely no

security guard in those premises, in that facility, Your Worship. Yes.

MR MKHIZE: And around what time was this? According to them, they would have given a rough estimate of the time, what time, what time was this when this was happening, he was being assisted, escorted out of the centre?

MR KHANYASE: Your Worship, the time may not be precise, but he was, according to the witnesses, it was approximately just after 11, towards midnight.

MR MKHIZE: Of course you, you've been, you've been asked by my learned colleague for Applicant 1 and 4, you know that there is also a CCTV footage that is involved here and you've told the court that it was supplied to you. So who actually supplied to you, supplied it to you? Was it not one of the defence legal representatives?

MR KHANYASE: No, Your Worship. I went, I went there myself to, to Mooi Hawens, or the centre and asked for the footage of the, the one that I had, that I have there as evidence.

MR MKHIZE: What was this, right from the onset, when you went there, you requested for the footage? Or at what stage did you request for this footage?

MR KHANYASE: My attempt there was to try and get them as soon as, as soon as I could. Actually, because it was the manager that was not available to, to assist me. But then,

days later, then I went and obtained it, downloaded it, downloaded it for me and then, before then, I've taken the, I've taken the, I've taken the footage to and put it on the CCTV.

MR MKHIZE: Now, you would agree with me that this footage is very critical in this matter. Why? Because it would inform us of the condition of the applicant, of the deceased rather, when he spoke to the security guard at the old age home. So it would give us a picture in what physical condition he was at the time. You agree with me? It's very crucial.

MR KHANYASE: Your Worship, I can, I can say the footage there is the, unfortunately, the only footage that the old age centre could furnish the, the, to the investigation. It does not show the whole body of the deceased, except in the back, if I remember correctly. It does not show the physical, you know, the physical body of the deceased as to how, how he looked or how he must have walked. So, you see, we need to, obviously, obviously, I don't think that's what...[intervenes]

MR MKHIZE: No, that, that I, I gather that, I guess much. You've painted the picture here. Very dim picture of this person was brutally, brutally assaulted and not just assaulted, stabbed as well. How many stab wounds were there according to you?

MR KHANYASE: I personally saw the deceased lying there in the crime scene. Lying face up. About the stab wound,

there's one stab wound which is right on the upper, on the upper hip of the - This is left. But right up here, yes, on the left, on the upper hip of the leg. Just above, just above, just a little bit behind the knee, just as where I'm pointing. But it doesn't appear to be a knife wound. It appears to be something way, way bigger than the knife, the stab wound. So, yes, he did have a wound.

MR MKHIZE: Yes, but you know, you're under oath as well. So, was it just one wound? One stab wound?

MR KHANYASE: Correct Your Worship.

MR MKHIZE: Okay. And, I take it that the security guard that had spoken to the deceased when he was there at the gate, in that condition he was in, or in whatever condition he was, would also have filed a statement to you. Has he, in fact, done so?

MR KHANYASE: Correct, I do have his statement in the docket Your Worship.

MR MKHIZE: Yes and now, from his statement, does he also confirm the injuries as you've outlined? Or what does he say about the injuries because he's the person who spoke to the deceased? What is he saying about the injuries that this person was carrying, was, had on the body?

MR KHANYASE: According to the statement of the security guard, the injury that he saw on the deceased was one on the face that was very clear to see. But then the one that is

below the body, he didn't, he didn't show much analysis. He was, the deceased at the time was wearing a top, was wearing a top T-shirt. So, he didn't go around and look for him to see if he's injured. Now that he saw him on his face being injured, now should you go, you know, try and observe to where he was. He didn't know that he was later going to find him, dead inside the premises after having seen him.

MR MKHIZE: Yes, but this is not, quite not clear, sir. So, was it, was this person not bleeding? According to him, was not even bleeding?

MR KHANYASE: According to the security guard?

MR MKHIZE: Yes.

MR KHANYASE: He only states that his face was swollen, showing to have been assaulted and also, his physical appearance appeared to him to be as if he had been robbed or something. That is what he said to me.

MR MKHIZE: So, he did not even bother to converse with this person. "Why do you look so distressed? Why do you look to be, you know, carrying injuries?" So, he did not even talk to this person?

MR KHANYASE: No, Your Worship. The deceased has come, has come there, if I may explain to you, has come there looking for the phone, to phone somebody in which the guard did not have a chance and then he asked for water. The guard gave him water and then, the deceased then left. There

is nothing more, nothing more other than that the witness is saying about their medical problem.

MR MKHIZE: But, just for the record, have you personally watched that footage, you, as the IO in this matter?

MR KHANYASE: Correct, Your Worship. I did.

MR MKHIZE: And you're saying, are you saying that from the footage it doesn't quite depict the condition of this person, whether this person is injured or he is free of injuries, just from the footage you may have watched?

MR KHANYASE: Your Worship, it appears to me that the footage, the camera, the lenses of the footage, they are from the back at which the deceased was standing. So, they're not, he was standing facing the guard and the camera, the lenses of the surveillance cameras but from the back of the deceased.

MR MKHIZE: No, I gather that. But I'm just saying from your perspective, you look at this person, in the footage, does this person appear to be a person who is carrying injuries, is assaulted brutally, or brutally assaulted, or you say you cannot make out from the footage because he's facing away. Just say from your observation, because you are under oath and you are office of the court.

MR KHANYASE: Correct.

MR MKHIZE: Yes.

MR KHANYASE: I can only say what I've analysed. But

taking from what my analysis would be what the witnesses have said. But really, to say that the footage there is not in colour, that it's black and white, which is, you have normally saw the ...[inaudible] when we have it. And it's very, very short, very, very short to go from step one to step three to step 15 to show and establish or determine or analyse as to the condition of the deceased. The only part that is appearing is the back of the deceased walking and then going. There is no part where it shows him you know, the front side of his body.

MR MKHIZE: I'm going to put it to you, that you're not being truthful with this Court. That when one views that footage, one clearly sees that that person there is free of any injuries and that you're just not being truthful because you know that that footage will swing the case one way or the other. That is why you're not being frank with this Court. I'm suggesting this to you, sir. Comment.

MR KHANYASE: I object to that, Your Worship, for the fact that I've got nothing, nothing, I've got no reason to, you know, to lie about this matter. It's only what is leading me are the facts that appear to have, you know, put it together or that have been given by the witnesses or observed by the witnesses and what happened as a result of the, of the, of ... [inaudible]. So I've got no reason to lie or to fabricate or to make any different stories to, to this case. I can never, I

could never do that, especially under oath.

MR MKHIZE: You've had time to interview a number of witnesses according to you. That is, that includes the applicants before Court. You confirm?

MR KHANYASE: Come again Your Worship?

MR MKHIZE: You have had time to interview the applicants in this matter plus the other people you said, about 18, say, number of, number of people that you've interviewed in this matter. Do you confirm that?

MR KHANYASE: Correct Your Worship.

MR MKHIZE: And when you conducted such interviews, can you just tell the Court who were you with?

MR KHANYASE: I was - the family sought the assistance of the private detective, Brad Nathanson to assist. So when I was interviewing the witnesses, I was with him.

MR MKHIZE: Yes, I'm interested in this Brad Nathanson that you just told the Court, because if I had not asked you about him, you know, this would have been swept under the carpet. So this Brad Nathanson, you say he's the private investigator, instructed by the family.

MR KHANYASE: Correct.

MR MKHIZE: Yes. What was his role during the interviews, specifically, particularly of the applicants? What role did he play?

MR KHANYASE: I can only basically say, what happened is

we just interviewed him. What happened, what did they know about him? ...[inaudible]

MR MKHIZE: And is that the normal procedure, according to your job of interviewing people? Do you take any other person who is not a member of the police, be it a private investigator, whoever, do they assist you during the interviews? Is that normal? Is that even allowed?

MR KHANYASE: Your Worship, I'm a detective, particularly in this case. So whichever assists in determining the facts under which the crime has occurred, lawfully so. It is more than welcome to do. Then this is the case, of course.

MR MKHIZE: And so when you interviewed the applicants, was this now in a view of taking their statements, or what was the position? Did you then take statements, warning statements? What was happening here?

MR KHANYASE: Your Worship the purpose to first interview the witnesses was for me to establish the facts leading to the cause of death of the deceased. I could not, or I did not literally take statements at the time of the interview. So the purpose for the interview is to prove that I can later on approve the statements based on what I did. So it was just the interview to determine the cause leading to the death of the deceased.

MR MKHIZE: Are you saying that subsequent to those interviews you had with Nathanson, that you again had a

second round of interviews with the applicants? Is that what you are saying, sir?

MR KHANYASE: I cannot call it a second round of interviews, because I could not have taken a statement from 18 witnesses at the time. But it's when that interview became very fruitful, because then it's the reason that I have these witnesses. I identified them at that time to be the people that could assist in determining the cause, as I say, with which the deceased ...[inaudible]

MR MKHIZE: I don't know why you're so vague with this one. I'm very clear, simple, straightforward with my questioning. I'm not trying to trick you. My question to you is, let's just focus on the applicants now. Forget about the 18. Did you have another round of interviews with the applicants after? That is now subsequent to the interview that you had assisted by Nathanson.

MR KHANYASE: No, I did not have another interview with the accused, except at the time I was processing, I arrested him for the murder of the deceased.

MR MKHIZE: So you agree with me that you would have made use of whatever information you had collected when assisted by Nathanson?

MR MKHIZE: The reason I could not, the reason I only took the statement from those that I had the statements in the docket is because, you know, from the interviews, I said that

they are the people who could assist in, you know, could assist in the case. The accused, they did not give me the reason to go back to them so that I could obtain the statement to this day.

MR MKHIZE: Now, did you in fact verify or bother yourself in finding out, who this Nathanson is? He says he's a PI or private investigator. Did you in fact verify that? That you were dealing with the private investigator there in the interviewing room? Or did you just take his word for it that he was the PI?

MR KHANYASE: Before I met Brad Nathanson, the next of kin, he is deceased's father and he says that he called me. He notified me that he would, if he is more than obliged to assist in the case and then we followed up, we talked about that until I met him. He came into my office and he told me that...[intervenes]

COURT: Can I say, let's try and be concise here. The question is, did you verify that this person, Brad Nathanson, is a PI? Yes or no?

MR KHANYASE: Yes, of course.

MR MKHIZE: You did?

MR KHANYASE: Yes.

MR MKHIZE: How? How did you do this?

MR KHANYASE: When he came to my office, he showed me his identity and I was convinced that he's a private

investigator. He's a local private investigator.

MR MKHIZE: Yes, but you know, officer, with all due respect, you want to verify the status of a person. Do you just take what he's telling you? Do you not know that there is even a site, a website, where you can go and verify the status of this person? Or do you not deem it important that you do that? Before you involve this person in this very sensitive, high-profile matter, I call it.

MR KHANYASE: Your Worship I was convinced that the was a private investigator ...[inaudible]

MR MKHIZE: Yes, but if I were to put it to you, that we have information at our disposal, verifiable information that the said PI, Nathanson, his status in fact indicates that he is not eligible to practise at this stage, because his membership has for the time being lapsed for want of a better term, lapsed. It indicates that it's still pending. So he's not eligible to practise. Would you say that perhaps, would you challenge that and say that it's not true?

COURT: Okay, let me try to get this. So what are you saying? He does have the qualification to practise as a PI.

MR MKHIZE: That is correct.

COURT: At the moment, it has lapsed.

MR MKHIZE: Yes, yes, Your Worship.

COURT: He is not allowed to practise at this stage.

MR MKHIZE: That is correct, Your Worship. He is, at some

stage, he had his membership that was active, but currently it's not active. As a result, he is not supposed to be practising.

COURT: Do you have any response to that, Mr Khanyase?

MR KHANYASE: Your Worship, ...[inaudible]

COURT: No, no, no. You, because you also verified it. So you should not challenge it. Thank you.

MR MKHIZE: And I want to suggest to you further that what you did, conducting interviews with a person who is not even eligible to practise, let alone him not even being a member of the police, that you were out of line, and that is highly, it's even un-procedural that you do that as a police officer. I want to suggest this to you. Your comment, please, if you will.

MR KHANYASE: Your Worship, ...[inaudible]

MR MKHIZE: And just before I forget this one, the security guard that had spoken to the deceased at the gate there, any reason why the deceased was not assisted by that security guard? Why did he have to go back? If, indeed, he had been assaulted at the centre, why would he then want to go back? Any information in that regard from that security guard?

MR KHANYASE: No, Your Worship. All the security guard says is he asked for the cellphone to make a call to somebody. The security guard did not give it because he did not have airtime to talk, according to the security guard and then he asked for the water. He said he gave him the water,

and he was grateful for that. He said, thank you, and then he left.

MR MKHIZE: Yes and now I just want to, for the moment, focus on applicant number two here. You're opposing bail because he's a flight risk, because he is not married, not employed. But you would agree with me that the people that are there, the patients, of course it goes without saying that the majority of them would be unemployed because they are sorting themselves out there. That is, in fact, the reason why they are there, because they want to sort out their lives. Would you not agree with me?

MR KHANYASE: No I would not agree with you.

MR MKHIZE: Why? Why not?

MR KHANYASE: They are intakes there, ...[inaudible] accused before Court are facing a murder charge, ... [inaudible]

MR MKHIZE: I think you missed my point. You missed my point. I say, the issue of employment, though, that you raise, you come to court and raise the issue of employment. It's neither here nor there, because by virtue of the fact that they are there at the centre, they are there because they have reasons, personal reasons. They want to sort out their lives and then come back to society. Do you get my point or don't you?

MR KHANYASE: The reason, according to the witnesses, the

accused assaulted, the deceased was assaulted, you know, brutally assaulted, because he had tried to escape for freedom, just a mere freedom. He was not running from any case. But the accused, there was more than the reason to escape or to run away, nothing attaches them to be there. Nothing at all, whatever, to attach them to be there. So that then they stay and face the prosecution of the case. But they put all the blame, if then they are released on bail, in the name of the fact that they are going to stay there. To run away to a place where they can never be found.

MR MKHIZE: Okay, I think you don't get my point. I'll move on. Now, did you establish what each of the applicants is in there, in that centre for? Did you in fact bother even to find out why are they in there? Because it would suggest to you, it would then also determine, you know, where they are detained. Whether they go to the general population, whether they are detained, you know, in isolation. You know, did you bother to find out why are they there in that rehab centre in the first place?

MR KHANYASE: From my understanding, from the interviews that I've had with witnesses and other people, the accused are now there just out of volunteer. They are going through a stage in which then they are supposed to be there. That is what I established.

MR MKHIZE: Are you saying that they are there, in other

words, whatever period that they were meant to be there has already lapsed. They are supposed to be back home. Is that what you're saying?

MR KHANYASE: That is what I'm saying.

MR MKHIZE: Now, who tells you this? Who gives you this information? Did you interview the head of the centre?

MR KHANYASE: Yes, I've interviewed him. ...[inaudible]

MR MKHIZE: Now, I mean, specifically, who gave you information that, in fact, their time is over, they should be home? Where do you get this information from? It's simple, sir. Did you interview the head of the centre, you know, about this? Or you just got it from the grapevine, so to speak?

MR KHANYASE: I got this from the witnesses.

MR MKHIZE: You know, I want to suggest to you that you rely too much on these witnesses. They are patients there themselves. You should have gone further. Verify that information. Now, Applicant 2, he is there just in simple terms, you know, from his upbringing, he's had issues with depression, anxiety and so on, I don't want to go into detail of his life, so you did not get that. You did not verify that. Why is there? Applicant 2.

MR KHANYASE: The reason they are there are for substance abuse.

MR MKHIZE: Now, that is one of your problems. Now, that is a problem, all due respect. You assume much of the things.

You assume them. I put it to you, as a matter of fact, that applicant two is there for that reason. Not for drugs, but more of mental nature. I've already outlined it to you. Do you want to dispute that and say he's there for drugs?

MR KHANYASE: I dispute Your Worship, I personally spoke to him. Not once. Then he was there. He is there for the drug. He never said anything. He did not mention anything about mental problems and as well, it's not a mental rehabilitation centre. It's a drug rehabilitation centre.

MR MKHIZE: So you were appraised of this information by the applicant himself, you say. I put it to you, that is not true. That is not correct at all. You're misleading. But I have more information on that. But now, you won't know what medication he's supposed to be taking. You won't know that, will you? For his condition, depression, anxiety, and so forth. You don't know what medication he's supposed to be taking.

MR KHANYASE: Your Worship, I put it this way. In that facility, there is no professional that diagnoses or prescribes the medication or any form of anything to assist the intakes to recover from it. In the process of the interview, I interviewed one of the intakes, who is a qualified nurse from outside, coming from the ...[inaudible], and who is there and they took him, not in the form of the fact that he's been hired to assist the other intakes, as an employee, but he only assists the person there as the intake with the qualification, not that he's

employed as a nurse in the facility. There is no social worker, there is no doctor in the form of a psychologist or psychiatrist. There is nobody. There is not even a security guard. Everything that is done there is done by the owner and the people that have come there to be rehabilitated and then they attend to the people who will assist, who will again conduct the duties of the people who are supposed to be the professionals.

MR MKHIZE: Now, I hate to ask you this question again, yet again, because I have information to the contrary. Who gives you this information? The patients again? The witnesses? Who gave you this information that there are no professionals there?

MR KHANYASE: I know for a fact Your Worship.

MR MKHIZE: I beg your pardon?

MR KHANYASE: I know.

MR MKHIZE: No, you can't just know. You're not working in that facility. You would have retrieved your information from somewhere. Who gives you this information? I have certificates, a number of certificates there, with accreditation of the individuals who are employed there, professionals. So who gives you this information? I'm just asking you to give you a chance to respond. Who gives you this information?

MR KHANYASE: ...[inaudible]

MR MKHIZE: Sir, you're not answering my question, sir,

please. Who gives you this information that you've come to give to court here?

MR KHANYASE: It is the witnesses.

MR MKHIZE: Yes. I want to suggest to you that this is highly, highly incorrect, and that I suggest to you further that you have not done justice to this case, to yourself, by not doing further investigations, but relying on the patients, witnesses. I suggest this to you.

MR KHANYASE: I would like to say that there is no better person to say here, I was treated by Doctor so-and-so, or I was treated by Doctor so-and-so in my recovery, or in the process of my recovery. So then, in that, it serves enough to say there is no professional individual who is assisting, who are there for the purpose of recovery.

MR MKHIZE: Yes. Do you know, as the investigating officer, that there has also been investigation by the Department of Health? Because, you know, when there are matters of this nature, they also become involved. Are you aware that Department of Health have also conducted their own investigation in this matter? As the investigating officer, I thought you should and that they have also filed a report in that regard. Are you not aware of that?

MR KHANYASE: Your Worship, if I may say, right now my focus is only on the investigation of the matter. Other than that, I cannot say much in terms of the social development, or

the health department, or any other department, government department. After this is done, we will try and assure that the place, that the rehabilitation is legally operative. [mechanical interference]

COURT ADJOURNS

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COURT RESUMES

COURT: On resumption, in case number C/425/2025, the bail application, where the applicants are Jean Pierre Van Niekerk. Accused 2, Njabulo Brendon Dlamini. Accused 3, Banele Mseleku. Accused 4, Lloyd Clive Ramsbottom. The bail application is proceeding. The investigating officer is being cross-examined. Thank you. May we proceed.

CROSS-EXAMINATION BY MR MKHIZE CONTINUES

MR MKHIZE: Thank you, Your Worship. Sir, I just want to move on. The Applicant 2, I know that it's a blanket approach. All of them, you want to oppose bail. But you confirm for the record that whatever pending matter that you've outlined here, Applicant 2 is not involved in that one, or is he?

MR KHANYASE: ...[inaudible]

MR MKHIZE: And there's also from your evidence, you've indicated that in respect of Applicant 2, that you have verbally given an address. That is an alternative address and what did you do about that? Did you not verify that address? And if

not, why not?

MR KHANYASE: I was not given...[inaudible]

MR MKHIZE: Sorry, you were not given what?

MR KHANYASE: It was only said to me it was somewhere in Pinetown. No street address.

MR MKHIZE: Now, I have it in his affidavit, as well, is there, a comment, if you will, because there is a comment here. He states that, that is at 2.3, it's indicated that the attorney himself furnished you with the address, this furnished the investigating officer with the address by way of WhatsApp. Just try and filter your memory. Do you not recall an attorney, don't think the attorney would lie, but look beside you. Do you not recall an attorney who represented Applicant 2 WhatsApping you an address in Pinetown, Caversham? It's Caversham Glen, Pinetown, 129 Marine Ridge Drive. Come to your memory, just get back. He says he WhatsApped you this address.

MR KHANYASE: I cannot recall

MR MKHIZE: You cannot recall and it's there. And I want to suggest to you, as well, that even from your evidence that you were verbally given an address, you could not be given an address in Pinetown that is somewhere in Pinetown. They would have given you an address. I suggest to you, it would be strange if a person tells you, I have an address in Pinetown, but they don't give you the exact address. Does it

make sense to you? I mean, would you even accept that? You know, they tell me there's an address, but they're not giving you the exact address.

MR KHANYASE: I spoke to the relative, not to the attorney. I spoke to the relative, not to the attorney, actually. I said, maybe they speak to you to give you a physical address, and that's what they told me, but not to the attorney.

MR MKHIZE: So, you know, that's what we're telling the Court. If you had been given an address, you would have gone and verified it?

MR KHANYASE: Certainly, Your Worship.

MR MKHIZE: You're sure? Have you verified any of the addresses in this matter? Not just Applicant 2. Any other applicant? Have you verified any of the addresses?

MR KHANYASE: Your Worship, one of the accused told me that the attorneys, ...[inaudible]

MR MKHIZE: But you, as an investigating officer in this matter, do you not deem it one of the very crucial elements that you should know? Even for bail application purposes for that matter, you cannot do bail without addresses, can you? I mean, don't you think that it was even incumbent upon you, if they are going to be released from the centre, you even ask them, but where are they going to reside? Is it not important to you as well?

MR KHANYASE: It is very important Your Worship.

MR MKHIZE: Even for bail application purposes for that matter, is it not true?

MR KHANYASE: Your Worship, may I repeat again, the accused were said to be going to be released from the custody of the bail application centre.

MR MKHIZE: But was it not your concern that if they were to be released back there, that there could be witnesses there as well? Was that not one of your concerns?

MR KHANYASE: Yes, your Worship, it is still my concern.

MR MKHIZE: So were you happy with them being released back to the centre?

MR KHANYASE: It's one of the main reasons, Your Worship, that I would object to bail application to them. Of course, whether or not the addresses had been verified, as to where they are staying, I would think it would be objective to their use of bail, based on the severity of the seriousness of the case.

MR MKHIZE: All the more reason why you should have verified the alternative address, but let me move on for the sake of time as well. I want to suggest to you, that you were very hasty, what I suggested, you were very hasty to effect arrest in this matter. In fact, I suggest to you that it was rather premature for you to effect any arrest on anyone in this matter, with the evidence that you have. I want to suggest this to you, what is your comment?

MR KHANYASE: I deny, I am against what you are saying.

MR MKHIZE: Do you do not think, oh, sorry, sorry, you were still saying something, sorry.

MR KHANYASE: The reason I went on and effected the arrest of the accused, because what I heard from the lawyer, based on the text I heard from the lawyer, it did, it does, it did go around to the arrest of the accused and also, again, the fact that, I had the knowledge that they are not going to stay there permanently, in the fact that one of them, one of the people who is indicated in the case, just before I came and effected the arrest, 2019, he already left and went to Pinetown, to a place so, so far away from the Tetelestai. Therefore, with what I have in the docket, and considering all the facts, it, it, it, you know, it warranted that the accused be brought before Court.

MR MKHIZE: And you, I am not sure I was not here on the last occasion, here in court, I have been instructed though, that the, my learned friend, who then appeared for Applicant 2, had indicated to court that Applicant 2 has not had the supply of his medication since he was taken in custody and that the Court had tried to intervene by indicating that he should be supplied with medicine in prison. I am subject to correction to that, but those are my instructions. Were you aware that he was, he is not even taking his medication at this time, because of his detention. That is Applicant 2. They

even complained, complained here in court.

MR KHANYASE: Was not aware of any medication ...  
[inaudible]

MR MKHIZE: And it's my instructions that the medication that he takes is quite a, it's a shade of six medication which cannot be given to anyone but himself. Those are my instructions, that he has to physically go there himself, undergo tests before he's supplied by this medication. You were not aware of that.

MR KHANYASE: No Your Worship.

MR MKHIZE: And I, and finally, I also wish to, I also wish to suggest this to you, that this case as it stands, is not a very solid one as you want to make out here before this Court, that you have a strong case, solid case. I suggest to you that, if anything, the contrary is true of this matter. In other words, you have a weak case against the accused, and that is a fact to be considered in this matter. Any comment, Mr Khanyase?

MR KHANYASE: That would be my opinion on the whole issue, in that sense. But based on the facts that I have, the State has, the State has a case against the accused that they need to answer before Court. The case is very strong against the accused before Court.

MR MKHIZE: And also, just in closing, you, you make, you made a lot of assumptions here when you indicated that the deceased was going back to, to the rehab after he had been

given water at the old age home, that from your, I don't know if your, your opinion, he must have been going back to, to the centre at the time when he would have seen the accused and applicants and then try to flee from them. There's a lot of assumptions there. Do, do you have evidence to, to, to support that?

MR KHANYASE: Your Worship, I, I, as I said earlier when I indicated that the deceased was going back to the old age home, I believe that I'm, I'm, I'm, I'm allowed, I mean, I will give my, my, my ...[inaudible] to the death and the arrest of the accused. That is what then I believe. Based on my analysis, any, any, any witness testimony, that, that is what I believe. It's not an assumption, Your Worship.

MR MKHIZE: No, no, no, it's, it's fine. It's fine, we, we, we can leave that one for argument. But, how many, how many years of service, by the way, do you have, do you have?

MR KHANYASE: 34 years in the police.

MR MKHIZE: And the police as a, as a whole and, and with the detectives?

MR KHANYASE: 34 years.

MR MKHIZE: So you've always been a detective? Thank you, sir. Thank you very much Your Worship, I have nothing further.

NO FURTHER QUESTIONS BY MR MKHIZE

COURT: Any cross-examination from legal representative of

accused 3?

MRS XABA: Your Worship, I just have a few questions. I believe my little colleagues have hashed out.

COURT: I thought everything was covered.

MRS XABA: I don't think it's covered. No, I'll ask maybe three or four questions. Mr Khanyase, I see you have testified that the witnesses that you interviewed say that they were or they are located on the floor above the alleged assault. You said that all the accused collectively assaulted the deceased on the day of the incident or in the evening of the incident.

MR KHANYASE: Correct Your Worship.

MRS XABA: You further said that at this time, these particular witnesses informed you that it was light out and it was very dark.

MR KHANYASE: Come again?

MRS XABA: You said that these particular witnesses informed you that when the alleged assault took place, it was dark, it was light out.

MR KHANYASE: Your Worship, you are still...[inaudible]

MRS XABA: Mr Khanyase, can I just clarify that it was light out at the rehabilitation institution when the alleged assault took place? There were no lights on. Everyone was deemed to have been sleeping at that particular time.

MR KHANYASE: May I clarify something? There is a time

when the lights are turned off, not in the yard, but in the bedrooms, in the dormitories, not in the yard.

MRS XABA: Yes, that is light out. When the assault or the alleged assault took place, the dormitories' lights were off, it was lights out. Everyone was supposed to be asleep at that particular time.

MR KHANYASE: Correct.

MRS XABA: And you agree with me that it was dark. So the whole, all dormitories were dark. This is the bottom floor and the floor that the witnesses were on, it was dark.

MR KHANYASE: Correct.

MRS XABA: The outside, the yard, it was also dark.

MR KHANYASE: No it was not dark. ...[inaudible]

MRS XABA: But Mr Khanyase, you testified that they had to use their cellphones or their cell phone torches to try and establish or to see, to find the deceased after saying that he had escaped. Is that not your testimony?

MR KHANYASE: That is correct Your Worship. There is a testimony of the witnesses that I have here. I would believe that there are portions where there is no light, where they would show the lights to, you know, they would use their torches to display that they are looking for the escapee.

MRS XABA: So you're speculating, Mr Khanyase, so you do not know that for a fact. The witnesses told you that it was dark, hence they needed their cellphones or their cellphone

torches.

MR KHANYASE: No Your Worship. ...[inaudible]

MRS XABA: Let's move on, Mr Khanyase. You said that the witnesses informed you that the deceased was badly beaten. You said that he couldn't walk, he was very weak, and as a result of that he had to be escorted out the side gates, meaning that he didn't have his own power or couldn't in his own capacity walk out on his own.

MR KHANYASE: It's either of the two, I would say. One, it could be either the fact that he was weak and couldn't walk on his own, or the fact that he didn't want to live at all, so he had to be dragged in order to come out of the premises and the otherwise scenario would have occurred in those premises.

MRS XABA: Mr Khanyase, a person who has been badly beaten at a rehab centre by these particular people, what are the possibilities of that very person not wanting to leave the establishment wherein he was beat to the pulp? And furthermore, your evidence was that...[intervenes]

COURT: Okay, what is the question? Because you're putting a lot of statements, so I don't know what is the question. Y

MRS XABA: Your Worship, Mr Khanyase just said that...  
[intervenes]

COURT: Firstly, you said that the deceased was very weak, he could not walk on his own, and he agreed.

MRS XABA: Yes, that is on his version and then he said that

there are two possible occurrences. He said that the one occurrence could have been that he did not want to leave the premises, hence they had to help him or had to manhandle him to get him out the gate and then he said the other one is that he was weak and he couldn't walk on his own because he was badly beaten.

MR KHANYASE: I would like to clarify that what I'm trying to say is that the deceased didn't walk out of that building on his own will, he tried to escape and he was assisted to walk out of that and severely beat him.

MRS XABA: So he was severely beaten up, he was assisted to walk out. Yes, that's the version that you put into the Court. So you said he was assisted to walk out.

MR KHANYASE: Correct.

MRS XABA: You said that the time was approximately something to 11.

MR KHANYASE: Yes, more or less 11:40, something to 12, Your Worship.

MRS XABA: Mr Khanyase, you said it was something to 11, but it's fine. There is surveillance or footage which both my learned colleagues have hashed with you. This surveillance shows time was approximately half past one in the morning and in this surveillance, the deceased, the same deceased who, according to the version of your witnesses, was badly beaten, couldn't walk.

COURT: Okay, so this time it's in relation to what event? The time when he says the deceased was severely beaten, he could not walk on his own, he was assisted to walk out of the centre.

MRS XABA: The clarity of the purpose is Your Worship.

COURT: Because I think the time round about 11 he was talking about, it relates to that.

MRS XABA: Yes, and then from 11, where he was assisted and he left the gate, Mr Khanyase version is that he then went, or there is footage showing him or showing the deceased at the security gate of the old age home. Approximately an hour, two hours later, after he had been escorted out the Tetelestai establishment. At the time, Mr Khanyase, or the video footage shows that he, as you said, he's asking for water and he also asked for a cellphone. You also said that you personally had...[intervenes]

COURT: Okay and that it's the time when the deceased is later at the security gate asking for the cellphone.

MRS XABA: Yes, at the old age home Your Worship.

COURT: Which is nearby.

MRS XABA: Which is nearby, yes. Mr Khanyase, you said you saw this video footage personally. In this video footage, do you see the deceased...[intervenes]

COURT: Okay, give him a chance, you want him to comment about the time differences. Don't give him a lot because he

won't be able to comment. You want him to comment. If he was allegedly escorted or assisted to walk out of the TRC at around about 11. Because now he's seen at around 1:30 when he's at the security gate of the old age home nearby. So, what has been happening all the time? Do you have any knowledge of what was happening all this time? Is that what you want to ask?

MRS XABA: Yes.

MR KHANYASE: I will not be able to say what would have happened then, but the fact is he was taken out of the facility and then he must have looked for a place to sleep or to hide and then he got to the security room. He saw the security room, then he was asked to be assisted. Either at the same point or at the old age home. There could be a difference. There could be a time difference between the time he was taken out of the facility, the TRC, and the time that he's met or is seen to be appearing at the old age home.

MRS XABA: So, let's focus on the footage and after when he was seen by the old age home gate. You said you have seen the footage personally, is that correct?

MR KHANYASE: Correct.

MRS XABA: Does the deceased appear to you as someone who has been beaten to the pulp and as someone who was unable to walk?

MR KHANYASE: Unfortunately, Your Worship, the footage, it

only shows that the deceased was around the area at the time. He was more or less close to the TRC. But it doesn't show the whole physical body of the deceased. It only shows the back of the head because it appears to me that the footage was behind his head when he approached the security guard.

MRS XABA: Mr Khanyase, we've both seen the footage and I agree with you that it shows more or less the back as well as his left side. But looking at the footage, seeing that he was pacing up and down, did the deceased look like someone who needed assistance walking?

MR KHANYASE: ...[inaudible] deceased was assisted to walk out, he was weak and couldn't walk on his own...[inaudible]

MRS XABA: Mr Khanyase, just to clarify, my question to you is, looking at the video footage, this is after he's been assisted, he's left the rehabilitation centre, now that he's at the old age home. Does he appear to you as someone who has been beaten to the pulp and as someone who cannot walk and needs assistance to walk? In that video footage that happened plus minus an hour later.

MR KHANYASE: ...[inaudible]It's not showing the physical movement of the body. It only shows the upper body that, as I said earlier on, the head is part of the face of the deceased. Now, it's not clear to see whether he was limping or he was weak or what condition he must have been in at the time of

the incident.

MRS XABA: Mr Khanyase, you further said that you identified the body and there was a big wound or gash on his upper right hip. Is that correct?

MR KHANYASE: Yes, it was. Maybe in the sense that he was only left with a knife, but it was, yes, in the upper body.

MRS XABA: In the video footage that you see, taking note that you say that there was a wound on the upper right hip, is the deceased physically standing on his own two feet in the video footage? Yes, I understand that it was taken from the back and you can't see correctly, but is he physically standing on his own two feet in the video footage?

MR KHANYASE: Correct Your Worship.

MRS XABA: Thank you, Mr Khanyase. This is the same deceased. Thereafter, you said you interviewed the security guard. The security guard told you that the deceased walked up, then he walked down again to the beach. From there, he took a left. Is that correct?

MR KHANYASE: That is correct Your Worship.

MRS XABA: Later on in that morning is where the deceased's body is then found.

MR KHANYASE: That is correct Your Worship.

MRS XABA: Now, Mr Khanyase, how do you create the nexus between all of the accused and the alleged assault that you say took place and the deceased being seen walking on his

own two feet, walking up and down the road, going to the beach and his murder? Which somewhat implicates all the accused. If you can just create that nexus for us.

MR KHANYASE: He didn't go to the beach. From the Mooi Hawens main gate, he went to the left. He walked down, he goes in the direction of the coast. But then he gets to a stop street, so then either he takes right to the beach or he takes left. That left, the right is going to the beach and the left is going directly to the stop street, which the stop street is right across the Tetelestai Centre. So the deceased took a left, which then is not going to the beach, but is going towards the direction of Tetelestai.

MRS XABA: Mr Khanyase, I put it to you that it was your version that he went down and he took a left, but let us not focus on that. The point is, the deceased was able to walk that distance unassisted, on his own, with all of these, the big stab wound and beaten to the pulp and weakness.

MR KHANYASE: Yes, which is the reason that I was able to speak to the Court that, one of the two reasons that he was assisted out of the facility. As long as he is out of the premises, whether or not he wanted to, he had to leave out of the premises of the care centre.

MRS XABA: You keep on referring to he was assisted out of the premises, so can you try to deal with that? If he was assisted out of the premises, he was able to walk to the

security gates. He was then able to walk down the streets and climb a fence into the old age home's residence, if I may call it that. Is that your version? The same person who was beaten to the pulp with a gash wound on his left hip, which was huge, bigger than a stab wound.

MR KHANYASE: Well, you see, I mean, normally, if you see people, big, fine people, strong people, like Luke Edwards and the other one that is not here, who dies while beating, and you see them approaching you, up the hill, and beating you and you manage to survive, the only chance is to try and run away to save your life. And there is no other way to run away. The only better place where you can find a way to run away from it is to retrieve that person. And I would believe that there is a place where you can do that. MRS XABA: Mr Khanyase, I put it to you that you have not done justice in conducting this investigation leading up to the arrest, the same way that you failed to do justice in verifying the private investigator you worked with. Do you have any comment to that?

MR KHANYASE: ...[inaudible]

MRS XABA: With regards to Accused 3, has any of your witnesses in any of the statements specifically made reference to him being seen assaulting, or has there been anything that's been said by your witnesses that directly points to Accused 3?

MR KHANYASE: ...[inaudible]

MRS XABA: In your witness statements, or in the witnesses that you've interviewed, is there anything that specifically points to Accused 3 as having been seen by any one of your witnesses assaulting the deceased on the day of the incident or the evening of the incident, or being linked somehow to the murder?

MR KHANYASE: Yes Your Worship. ...[inaudible] In all the statements before Court, by my witnesses, have all been linked to the deceased. So each accused, by the name of each accused in the statements before Court, they are linked to the deceased. He's one of them.

MRS XABA: Mr Khanyase, you mentioned something about a pending matter. Do you confirm that Accused 3 is not part of that pending matter?

MR KHANYASE: He's not been mentioned in the motion. He's not been mentioned by the victim and the other witnesses.

MRS XABA: Also, with regards to your investigation, are there any previous convictions that are in particular related to Accused 3?

MR KHANYASE: No, there are no previous convictions.

MRS XABA: And with regards to the verification of the address, can you truly say to this Court that you were not furnished with Accused 3's address? ...[inaudible]

MR KHANYASE: That is the address and also, I asked for the number of the Accused 3's address...[inaudible]

MRS XABA: So there's no other way that you could have gone to the address? Because as far as I know, there was no phone call from you, there was nothing indicating that you wanted to verify the address. What is your comment on that? Also, considering that you're under oath.

MR KHANYASE: No, I didn't call the number of the Accused 3's. I could not get in touch with the person to verify that it was not his address. Several times I tried.

MRS XABA: Mr Khanyase, you said that one of the reasons you're opposing bail is because the old four accused do not have property, they are unmarried, they do not have kids, and according to you, they have nothing to lose. Well, I put it to you that Accused 3 is at the rehab centre. Firstly, his time there has not elapsed. He's still undergoing the programme or treatment. He is fixing his life. He has a family here, including a daughter. So that is someone with something to lose. What is your comment on that?

MR KHANYASE: ...[inaudible] But then again, the accused is facing a serious problem. There is nothing that they could stop him from running away to avoid the prosecution.

MRS XABA: This serious crime which, on your investigation, is not a very strong case. What is your comment on that, regarding the State case and the seriousness of the crime?

MR KHANYASE: Well, based on the testimony that I have heard in the document, the State has a very strong case against the four accused.

MRS XABA: Your Worship, I have no further questions.

NO FURTHER QUESTIONS BY LEGAL REP 3

COURT: Thank you. Mrs ...[inaudible]. You can also cross-examine if you so wish.

PROSECUTOR: The issue, Your Worship, is that it is now lunch hour, and the clerk court has requested to take the adjournment.

COURT: Okay, I am sorry. I lost track of time. So, we have to adjourn for lunch.

COURT ADJOURNS

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COURT RESUMES

PROSECUTOR: At the Court, please Your Worship. State recalls case number C/425/2025, in the matter between the state and Accused 1, Jean Pierre Van Niekerk. Accused 2, Njabulo Brendon Dlamini. Accused 3, Banele Mseleku. Accused 4, Lloyd Clive Ramsbottom. Your Worship, on resumption, I believe we are at a part where the State was supposed to cross-examine the investigating officer, Your Worship.

COURT: Mr Khanyase, you are reminded that you are still under oath.

KENNETH DUMISANI KHANYASE(still under oath)

CROSS-EXAMINATION BY PROSECUTOR

PROSECUTOR: Just a few questions, Your Worship, for the State, just to get clarity in certain aspects. Mr Khanyase, according to the evidence that you have in your docket, based on the witness statement, all four accused before Court were present during the assault of the deceased.

MR KHANYASE: Yes.

PROSECUTOR: Further to that, all four accused were present at the time when the accused was, sorry, when the deceased was escorted or rather assisted out of the premises.

MR KHANYASE: Correct Your Worship.

PROSECUTOR: Is it correct to say that the state is alleging, based on those facts, that all four accused acted in common purpose?

MR KHANYASE: Correct Your Worship.

PROSECUTOR: Let us go back to the issue of the cameras. You mentioned that the deceased was only seen on camera, which does not belong to the rehab centre. It is an old age surveillance camera, is that correct?

MR KHANYASE: Yes.

PROSECUTOR: Just to see clarity, are there any cameras at the rehabilitation centre?

MR KHANYASE: No. Your Worship, at the time when I came there, there were cameras. There were cameras. But then

after I came back again, two weeks or a week later, the cameras were, all the surveillance cameras, the lenses and everything, it was gone. It was all stripped from the TRC.

PROSECUTOR: Was it before or after the arrest of all four accused before Court?

MR KHANYASE: Your Worship, it was after the passing of the deceased.

PROSECUTOR: After the passing of the deceased.

MR KHANYASE: Yes.

PROSECUTOR: So with that being said, would it be safe to say, according to the state, that the centre is tampering with the evidence?

MR KHANYASE: That is correct, Your Worship.

PROSECUTOR: Are the state's witnesses known to the all four applicants before court?

MR KHANYASE: That is correct, Your Worship.

PROSECUTOR: Is there a likelihood that they will interfere with the state's witnesses?

MR KHANYASE: Yes, Your Worship. It is highly likely. Now, considering the fact that one of the accused before Court now has already been, is already attending court, is there not a case where they may have assaulted one or two of the witnesses in this case.

PROSECUTOR: Based on the evidence on that docket, would you say that the State has a strong case against all four

applicants before Court?

MR KHANYASE: That is correct, Your Worship.

PROSECUTOR: They are all linked?

MR KHANYASE: They are all linked with the TRC.

PROSECUTOR: Thank you, Your Worship. No further questions.

NO FURTHER QUESTIONS BY PROSECUTOR

COURT: Thank you. Just to clarify certain aspects of the evidence, after the...[inaudible], the interview of the applicants, when did it take place? The one where you assisted by the PI?

MR KHANYASE: It took place immediately after I received the docket for investigation.

COURT: The would be 11 April. He said you received the docket, you started investigating this matter on 11 April.

MR KHANYASE: Correct, Your Worship. I went to the owner of the facility. I asked that he assist me to help these guys. I asked the permission to talk to these guys first, and I discussed it. Then thereafter, I called the jury of this case.

COURT: Okay, so you spoke to them shortly after that, although unsure of the date.

MR KHANYASE: Correct, Your Worship.

COURT: They were still at the centre. All of them, the four applicants before court, they were still at the centre. MR

KHANYASE: Correct Your Worship.

COURT: And thereafter, they did not leave the centre or escape.

MR KHANYASE: None of them at the centre, Your Worship.

COURT: Up to the time he affected us, which was on the 25th or 26th of June.

MR KHANYASE: Yes, Your Worship. Actually, all of the applicants, five in total, five of them, one of them reported to the information that he had left the facility on the 19th of June, whereas I actually arrested him on the 26th.

COURT: I'm referring specifically to the applicants before court.

MR KHANYASE: To say that they didn't leave the docket.

COURT: They did not. Okay, after the interrogation.

MR KHANYASE: Correct, Your Worship.

COURT: Thank you. All sides have closed their cases. Is there anything that maybe someone would like to ask after the court's questions to the witness?

PROSECUTOR: None, Your Worship.

ATTORNEY: None, Your Worship.

COURT: Thank you. Thank you, sir. You are excused. Okay. ...[inaudible] it's time for closing arguments from Mr. Thomson on behalf of Applicant 1 and 4. Any submissions?

CLOSING ARGUMENT MR THOMLINSON

MR THOMLINSON: Thank you, Your Worship. I'll try and keep it brief and to the point. Your Worship, this is a Schedule 6 offence and for these offences in respect of all applicants, the onus is on the accused to show exceptional

circumstances which, in the interest of justice, would permit the release of the applicants. Your Worship, I have two points to make in terms of exceptional circumstances. As I mentioned, the onus is on my clients, the accused, sorry, Applicant 1 and Applicant 4, to show, the onus is not on the State, to show that there are exceptional circumstances. Your Worship, the first exceptional circumstance I wish to raise is that of personal circumstances.

Your Worship, I submit that the applicant's personal circumstances can be deemed to be an exceptional circumstance. The personal circumstances of both Applicants 1 and 4 is that, as they stated in their evidence, they have confessed and given evidence to the fact that they suffer from drug addiction issues. They voluntarily submitted to treatment, which is commendable, at a rehab facility in an attempt to return to a normal life.

Your Worship, I submit that this is indeed a serious condition, one of drug addiction, which often leads to death. Your Worship, I know in the evidence it may be a contentious thing to say and to make that the local prisons are infested with drugs and vice. But be that as it may, the reality is and I submit that one could almost take judicial notice of the fact that this is the reality. Both Applicants 1 and 4 both gave evidence that they, in a short time, had seen with their own eyes drug deals happening and people using drugs in front of

them. My submission is that they, due to this reality, Your Worship, that their lives are in danger and that in terms of the fact of their personal circumstances, the fact that they are both struggling with this chronic health issue, which is not a normal chronic health issue, that that amounts to exceptional circumstances.

Now, Your Worship, my second leg, the second exceptional circumstances that I wish to submit to the Court is the strength of the State case. Is it a strong case? Is it a weak case? As I alluded to before, *S versus Jonas* case is well known, where they formed the principle, just restated the principle, that the State's either weak case or possibly non-existent case may be an exceptional circumstance. Your Worship, it is my submission and I respect the opinion of the investigating officer, Mr Khanyase, a man of many years' experience. He is not inexperienced. But I do not have the words to express how much I disagree with his opinion that the State has a strong case.

Your Worship, in my opinion, the evidence that has been presented, the State, if it has a weak case at all, has no case. There is circumstantial evidence. There is very weak evidence. There is no - Although there is alleged to be eyewitnesses, Your Worship, those eyewitnesses were, and it's almost ludicrous to the point, were apparently in another room completely so they could not have seen the assault that

happened. The side gate that was alleged where the deceased was taken to, evidence is going to be submitted in trial. That gate actually is impossible to open. It is completely seized and it's impossible to open that gate and then the CCTV footage, which in my humble opinion is the cherry on the top. Because to summarise, as we look at a *prima facie* view of this evidence that has been presented, the State has provided a narrative or a version that the deceased was seriously, he was seriously harmed and that he was so seriously harmed that there was a concern, it says here on page five, that it is clear that the deceased could have died anyway from the intake room because of the extent of his assault injuries. Their view was that he could have died. That's how chronic were his injuries that he received in this intact room. He was of that kind of condition where they were concerned that he was about to die and an hour and a half later, we see on CCTV footage with the bruise on his face.

Your Worship, I think that clearly speaks for itself, Your Worship. Those two versions, those two versions are, it's impossible to marry those two, Your Worship and with this kind of uncertainty, Your Worship, I cannot respectfully agree with Mr Khanyase and it is my submission, an earnest submission, that the State, there's no grounds, there's no grounds for this charge and the State's case, if any, is extremely weak, Your Worship.

In the light thereof, Your Worship, there's also the, there's also the, as Your Worship quickly picked up, the fact that the deceased died on 9 April, but the accused were arrested on 26 June, April, May, June. So we're looking at plus minus three months later that the accused were arrested. This needs to be explained. Where were these witnesses and why did they not come forward sooner?

So Your Worship, my primary submissions, which I have to make before in terms of bail, is in terms of discharging the onus, in terms of showing exceptional circumstances, as I mentioned, personal circumstances, the chronic health condition, as well as the fact that I think it's been clearly, in my humble submission, all the evidence that has been presented to the Court, that if the State's case is extremely weak, Your Worship and just on one final point in terms of the, in terms of the verification of the addresses, there was a problem with and I didn't want to have to rely on the IO's seeming reluctance to go and do a physical inspection, but Your Worship, I submit that evidence has been laid in terms of accused, sorry, applicant, on this applicant one, Van Niekerk, in terms of where he will be going, if granted bail, and for applicant number four, whose sister did provide evidence under oath before the Court, which is my submission, that the court take this into consideration, seeing as the visiting officer didn't do a physical actual visit. So

those are my submissions, Your Worship.

COURT: In regards to applicant number one, the director of the institution, ...[inaudible] to be granted. Can you give me the address again?

MR THOMLINSON: I can, Your Worship. The Court will just bear with me. Your Worship, the physical address is 127 Mersey Road, M-E-R-S-E-Y Road, 127 Mersey Road, Brighton Beach, Bluff.

COURT: Okay, thank you. I do have the address of Applicant 4.

MR THOMLINSON: I know we are in argument, is it too late to hand up some evidence?

COURT: No, then, if it's about the address, because the witness testified about the address, it's just to give the correct name of the address. That would be fine. That's a good reason.

MR THOMLINSON: Your Worship, those are my submissions.

COURT: Okay, thank you. Let's come to Applicant two.

CLOSING ARGUMENT BY MR MKHIZE

MR MKHIZE: Yes, thank you, Your Worship. Your Worship, I won't be long. Your Worship, it's Section 60 (A-E), provides for those factors that the State need to show that they, in fact, exist for the Court to consider refusing or denying bail to the applicants. Your Worship, I submit with respect that the likelihood of those factors materialising was not shown by the

State in any way to be in existence. And, Your Worship, in terms of the of bail legislation, Schedule 6 places the onus on us, on the applicant to adduce those factors which the Court would view as being exceptional.

And, Your Worship, there's various case law in that regard, trying to explain what the exceptional factors are and, Your Worship, I submit with respect that in this case here one only needs look at the facts as they are presented before Court. How the applicants are alleged to have committed the offence, what evidence does the State have in that regard, implicating each of the applicants.

And, Your Worship, I submit with respect that that evidence or the evidence on how the applicants are implicated is very vague. In fact, the officer was given a chance even in cross-examination trying to ask him specifically how Applicant 2 is implicated. All he can say is collectively they are said to have been involved. That is not good enough. He is sitting with statements there of various witnesses who are said to be eyewitnesses. But even those eyewitnesses, Your Worship, are questionable whether they infect eyewitnesses to what because those witnesses did not even see the alleged incident unfold. They cannot say, save to say that they heard a noise overheard a noise and they also saw some of the applicants or applicants escorting the deceased out.

And, Your Worship, what is very crucial in this

matter? Even the investigation in this matter will stand or fall on this evidence of the video footage. It's very crucial that the State in fact acknowledges that there is a presence of this video footage. It's not in dispute. Now, that video footage negates the evidence by so-called eyewitnesses. It sort of crushes it and negates it in totality. Here, this person has been assaulted severely, brutally, you know, whatever, however you want to explain and the next moment, like an hour or more later, the same person is viewed and he's talking to the officer at the gate. It is now about half past one, way subsequent to the initial incident. That cannot be explained.

This person was brutally assaulted, cannot even stand on his own. He's assisted. He's there asking for water and nothing is done about his situation. He's turned, he's, he then turns away. He wants to go back to the very place where he is said to have been assaulted. Now he's moving back towards the place and he's given chase and he's chased after that. Now, Your Worship, this may be more on the merits of the matter, but I submit with respect that it actually talks to the strength or otherwise of the State case in this matter.

My learned colleague has referred the Court to the very famous case law of *State v Jonas*. It's very clear that if the applicants can merely show that there's a weakness in the state case, there's a gap there, that the Court can then view that as an exceptional factor. I ask the Court, I implore this

Court to view that factor because it's a contradiction. View it as a very important factor and it's exceptional in the applicant's case.

Now, talking just briefly about Applicant 2, Your Worship, the State has not shown that he's a flight risk, that he's, you know, as Section 64 (A-E) is concerned, stipulates. There's nothing that has been shown that he will interfere with witnesses, he could commit further offences. He stands here, he has no, even convictions, previous convictions. Neither does he have any pending cases. There is no evidence to suggest otherwise. In fact, there is a case law which indicates that if the State wants to say that he's likely to commit any of those factors listed, that the State should provide evidence in that regard. To say that there's a likelihood of him doing this without providing evidence is not sufficient at all, Your Worship and I ask the Court to rule in the favour of, in particular, Applicant 2.

The other factor, Your Worship, that cannot be negated by the State is the fact that his health is in question here. It forms part of the record that my learned colleague who appeared for Applicant 2 did raise this with the Court that this man is sitting here since his arrest, he's not been provided with any medical supply and it's very serious. His health is an issue here. He suffers depression, anxiety and all sort of mental ailments.

But what happens, he's just arrested, he's sent to a general population of the prison without supplying him with any medication and the State still has the audacity to come to court and say, we want this man to remain in custody further. That is highly, highly unfair and in fact, Your Worship, to state for a fact that the applicant, Applicant 2, even after the Court had indicated in court and record that please assist this man with medication to date, to this date, he's not, no supply at all. So he's just running a risk of relapse. As we stand, as we sit here, he's sitting here without medication and yet the State says, keep this man further in custody. Your Worship and we submit with respect that it's highly unfair and it's against the norms of justice

And lastly, Your Worship, he has stated in his affidavit and there is no evidence to gainsay what Applicant 2 has stated insofar as his health condition is concerned. He is sitting here with a pacemaker. His heart is not pumping normally and even sitting at that place without medication, without everything, it's exacerbating the whole situation. It's there in his affidavit and the State has not let any evident person to gainsay that. And it is trite, Your Worship, that if evidence stands unchallenged that that evidence should then be considered in favour of the applicant by the Court.

Your Worship, I ask that, I submit with respect that Applicant 2 in particular has distracted the owners that is

placed on him. Weakness of the case, how the case is said to have been, his health condition, Your Worship, when one considers Section 60(9), there's a whole lot of factors that are considered in favour of the applicant. I submit that even his health condition must be decided in favour of the applicant, Your Worship and be granted pay and let the matter be investigated further. Those are my submissions, Your Worship.

COURT: One more thing. I assume not to find in my notes, but we first testified about the alternative address for Applicant 2.

MR MKHIZE: Yes.

COURT: Yes, in his affidavit.

MR MKHIZE: Yes, may I just quickly refer the Court to the specific affidavit. May the court just bear with me for a second. Yes, Your Worship, it's number 129, Mariannridge Drive, Carversham Glen, Pinetown..

COURT: Thank you.

MR MKHIZE: Thank you, Your Worship.

COURT: Advocate Xaba, for Applicant 3?

CLOSING ARGUMENT BY MRS XABA

MRS XABA: Your Worship, as provided for in the affidavit that was read on record, it has been stated that Accused 3 is a recovering drug addict. He has worked and is continuously working extremely hard to stay clean. He has been in this

rehab centre from January this year up until now. His programme is not complete, however, he has been clean throughout the duration.

He has an extremely supportive family, as well as a daughter, whom he is working towards being reunited with. May I submit that should the Court refuse bail in this instance, Accused 3 will be sent back to prison, which as my colleague for Accused 1 and 4 has stated, there is a surplus of things like drugs.

Further to that, as I said, he has a daughter, whom he is working extremely hard to be reunited with. Further to that, just to rehash the requirements in terms of Section 64(A-E). Accused 3 is not a flight risk. He is not in possession of any passport. His whole family is based in KZN. As stated again in the affidavit, he intends on being present throughout the trial to prove his innocence. He does not intend on interfering with any witnesses. He will not endanger the public or any particular individual, nor does he intend on committing any Schedule 1 offence. His release will not disturb any public peace. This is someone with no previous convictions. He does not form part of the said assaults that transpired after the investigation or the questioning.

Further to that, moving on to the State's case. The state has failed to show this Court that should bail be granted, it will not be in the interest of justice and that

Accused 3 in this instance is capable of doing any of the things which are stated in Section 64(A-E). The State's case, Your Worship, we've seen is one which is questionable in strength. The state has failed to create a nexus between the accused who were locked in a rehabilitation centre, the death, the subsequent death of the deceased, and the location in where the body of the deceased was found.

That alone, Your Worship, makes the State's case very questionable. There is also video footage which in itself puts the whole State's case to close because, Your Worship, this footage shows, as my learned friend has stated, it shows a person who was beaten to the pulp, who was hurt, who couldn't do anything, who needed assistance, as testified by the investigating officer. The very same person is seen an hour later on his own two feet, standing, asking for water, asking for a cellphone. The very same person is said to have been walking up and down and continuing with whatever it is that he was continuing with. Your Worship, my submission is that on that basis, this video footage in itself, with regards to the State's case, shows that the State has a weak case.

Your Worship, lastly, the IO has stated that the accused are a flight risk and that they have nothing to lose and that they will interfere with the witnesses. Firstly, the investigating officer has testified earlier that the said witnesses have been removed from the rehabilitation centre.

He said that they were chased, they were victimised from the rehabilitation centre. So it's questionable as to how would any of the accused then interfere with the witnesses. Furthermore, there is no intention on the part of the witnesses to interfere with the said witnesses.

Your Worship, we are speaking of someone who did not resist arrest. We are speaking of someone having questioned, did not try to escape the rehab centre or do anything amiss to try and evade the bail hearing to begin with and possibly the trial in the future. Your Worship, I accordingly submit that the interests of justice permit the release of the accused on bail. Furthermore, the accused has discharged its onus as per Section 64 of the Criminal Procedure Act. Those are my submissions, Your Worship.

COURT: Thank you. ...[inaudible]

ARGUMENT BY PROSECUTOR

COURT: As the Court pleases, Your Worship. Your Worship, this is a Schedule 6 bail application and the charge proffered against all four accused is one of murder. State alleges that all four accused were acting in the furtherance of common purpose. Your Worship, State is opposed to bail. Reasons were placed on record through the investigating officer's affidavit as well as his oral evidence before this Court.

Your Worship, in the case of *S v Dlamini*, *S v Dladla*, *S v Jobert* and *S v Schietekat* 1999, Volume 2, South African

Criminal Records, Constitutional Court, the Court affirmed that in a Schedule 6 bail application, the onus is on the applicant to prove on the balance of probabilities that there are exceptional circumstances which, in the interests of justice, permit their release on bail.

Your Worship, based on the evidence before this Court, State is of the view that all four applicants before Court have failed to discharge the onus on them. Your Worship, all four accused before court are facing a serious offence, a charge of murder, and they are aware of same. Therefore, there is a likelihood that they will abate their trial.

Your Worship, based on the evidence that was led by the investigating officer before Court, State is of the view that there is a likelihood that the four applicants would interfere with the State's witnesses as they are known to them and they also know where they reside. State fears for the safety of their witnesses.

Your Worship, State is of the view that all four applicants before Court have no exceptional circumstances. What they have placed before this Court are ordinary circumstances that can be used in any bail application. Your Worship, in the case of *S v. Reddolf*, 2012, Volume 1, South African Criminal Records, in paragraph - page 262, Supreme Court of Appeal stated as follows, "Exceptional circumstances must be something out of ordinary. Mere personal hardships or

ordinary bail consideration cannot be considered as exceptional circumstances.” In *S v. Mbambi*, an unreported case, case number A113/2021, the Court held that the burden of proof is on the applicant to provide exceptional circumstances and also held that normal circumstances or ordinary circumstances does not amount to exceptional circumstances.

Your Worship, in the case of *S v. Jonas and others*, 1998, Volume 2, South African Criminal Records, paragraph - page 677, the Court ruled that the mere fact that the accused stands as the first offender does not automatically constitute exceptional circumstances and that they have dependents. With that being said, Your Worship, in conclusion, State is of the view, Your Worship, that State has a very strong case against all four applicants before Court, no exceptional circumstances, Your Worship and according to the State, Your Worship, the State respectfully submits that bail should be accordingly refused in respect of all four applicants before Court.

COURT: Thank you.

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#### JUDGMENT

COURT: This is a bail application by the four applicants. Thank you. I'm going to pay an attention by the four applicants. Applicant 1, Jean Pierre Van Niekerk. Applicant 2, Njabulo Brendon Dlamini. Applicant 3, Banele Mseleku. Applicant 4, Lloyd Clive Ramsbottom.

This matter falls within the ...[inaudible] of bail legislation and all parties have agreed thereto. Therefore, the onus is on the applicants to adduce evidence to the satisfaction of the Court that exceptional circumstances exist where in the interest of justice, the Court should grant them

bail.

In support of their bail application, Applicants 1 and 4, they testified in the court, their personal circumstances, also stating briefly what is their defence in the case and they were also subjected to cross-examination And they also called witnesses. In the case of Applicant 1, it was a witness to testify about the address that he will relocate to if bail is granted and Applicant 4, also his sister testified, also giving the Court the address that he can relocate to if bail is granted.

Applicant 2 filed an affidavit where he detailed his personal circumstances and in addition, a witness was also called to testify regarding the address if bail is granted that he can relocate to. Applicant 3 also filed an affidavit where he detailed his personal circumstances and also in addition, a witness was also called to testify regarding the address as the address seemingly was not verified.

It will appear to the Court that the matter was not properly investigated for purposes of bail application. It is crucial for purposes of bail application that the addresses of an accused person is verified, especially with the applicants, because what is common with them is that they are all at a rehabilitation centre, which obviously is not their homes or their permanent residence. They are there for treatment, so they've got addresses where they come from, which was

crucial to verify their addresses. There are various ways of verifying addresses.

It would appear that the investigating officer was of the view that because the applicants are facing serious charge, there is no need or it is pointless to verify their addresses, including their original addresses or alternative addresses. So the addresses, neither of the addresses were verified, except that they are all from the Tetelestai Rehabilitation Centre.

Even the criminal profile of the applicants, except for the Applicant 1, on the side of the State, the applicants, their criminal status was not verified. For an example, Applicant 4, he gave evidence to the Court that he has a previous conviction of theft. Although it's 10 years, it's important for purposes of bail application, but it was not verified by the State, so it appears that the matter was not properly investigated for purposes of bail application.

Through evidence transpired that, all the four applicants, they've got addresses where they can stay while the case is pending. With regards to Applicant 1, this was through the witness who is the director of the centre. It's a reintegration rehabilitation centre where he can relocate to his country. I'm grouping Applicant 1 and 4 as they have one legal representative and today we started with them. Applicant 4, through evidence of his sister, the address where

he can relocate to or where he can stay while the case is pending, was given and he does have a family. Although it's a rented place, it appears that the sister has been renting the place for a while and a tax invoice with the rentals, the payment of rentals was given as evidence before the Court and this was not disputed.

With regards to Applicant 2, as I've stated earlier that his aunt testified in Court, giving the Court his address where he can relocate to, which is a fixed address in Pinetown, which is owned by the aunt and the husband where he can relocate to. It is a fixed address and same goes with Applicant 3. He does have an address except that he was a patient at the rehabilitation centre.

It is correct that the onus is on the applicants to produce evidence in the satisfaction of the Court that exceptional circumstances exist where in the interest of justice the Court can grant them bail. Exceptional circumstances are not defined in the legislation. Even the personal circumstances, they can be. It depends on the facts of the personal circumstances. If the personal circumstances are common or unique, they can amount to exceptional circumstances. Even the manner of arrest can amount to exceptional circumstances depending on how the person was arrested.

And looking at the strength of the State case, I'm

mindful of the fact that I'm not sitting at the trial court, I'm sitting at the bail court, but it is the duty of the bail Court to assess the strength of the State case at the time of bail application.

As this is important, it will be an injustice to refuse bail when the State case is very poor. The person may not even stand trial with the case because maybe the case will fall apart or it is clear that the person might be acquitted during trial. So it will be a travesty of justice to refuse bail under those circumstances.

It will appear that there is no direct evidence in this case because in those instances they did not actually witness the assault. They witnessed what is associated or they interpreted as the assault and they are saying the four applicants were in that particular room for the new intakes with the deceased and they could hear the noise and the commotion that the person was being assaulted, but they could not state as to who did what, whether all safe to say collectively, which does not say much to the Court because even for common purpose it is crucial to state what each person did, which shows that he acted with common purpose, in furtherance of common purpose with the other persons.

So here I am just told that they collectively assaulted. As to how they assaulted, with what, where, it is not clear at this stage. It might come clear during the time of

trial, but at the time of, this is when I am assessing the strength of the State case, that is at the time of bail hearing.

I even, because the affidavit was not sufficient, I called the investigating officer, hoping that I will have some answers, but it did appear that this could not be achieved. So it shows that the evidence of the State case is not that strong at the time of the bail hearing and also looking at the manner of arrest, the duration, murder is a very serious offence. Obviously a person, if a person dies, that should be reported to the police and the police must investigate. So if there is a person that is implicated, clearly implicated, the person will be arrested. They don't even need a warrant of arrest, they can face straight arrest.

But if this murder is investigated and there are people who are staying home, who happen to see how the person, who killed or how the person was killed, it leaves one to wonder as to what was happening all this time. If a person is killed, as per the Court documents, on 9 April 2025, and persons who were in the same establishment with the deceased and the so-called witnesses are only arrested on 26 June 2025, about two months down the line, it gives one to doubt if those witnesses are alive and without any further clarification as to why the witnesses are alive.

Even if they have an 18 number, 18 is not a big number, that these witnesses, they could not give an account

of what happened, if they actually saw what happened, so that the police can then do their job. So this alone shows that maybe even the police were not sure as to who is implicated in this matter and if so and how is the person implicated. Hence, such a long time before arrest could have effected.

And on the evidence that is presented, it shows that clearly there is no direct evidence, it's a consensual evidence, which is subject to a lot of qualifying factors during trial. So this shows that the evidence at this time is weak and I'm also looking at the time, the post-mortem report should have been available by now, stating exactly how this person, what is the cause of death, because it should appear that there is this assault and the person is seen walking, seemingly not seriously affected by that assault and shortly thereafter the person dies.

A big open wound, just above the right hip and the person does not know what is the cause of death, what the pathologists have said. This is the evidence that was also important for the Courts to come with the ruling. So in the absence of that, it also leads to a lot of doubts as to how the deceased was killed and in particular the involvement of the four applicants.

That also forms an exceptional circumstance and this applies to all the four applicants. With regards to Applicant 2, the issue of his health was presented to the court through the

affidavit, including the fact that he has a pacemaker. It could not be verified whether the form of treatment that he requires is available in State prison and the Court was informed that he has not received any form of treatment, and the Court made it further that he needs to be given his medication. However, I'm told that this has not yet happened, which puts his life in jeopardy or in danger as he suffers from, including a health condition, as the Court was told that he has a pacemaker and no other evidence to the contrary and he has not received his medication.

So even the health condition of Applicant 2, I find it to be an exceptional circumstance. With regards to Applicant 3 also, there isn't much that is said. The fact that they are all charged with a serious offence, they are charged and they have not been convicted, they are facing a serious charge, I agree, which falls within the ambit of ...[inaudible] bail legislation, and if they are convicted of the offence as is, as murder where the common purpose is alleged, they are facing a length sentence, as correctly stated. However, that does not mean that the person is not entitled to get bail.

What it boils down to is that if exceptional circumstances exist, the person can be granted bail regardless of the fact that the person is charged with a very serious offence. With regards to applicant number four, also there isn't anything that he has got no pending cases, even

the previous conviction that he disclosed to the Court is not relevant to the offence he is charged with, and it is an old, previous conviction, and their presence at the rehabilitation centre, through evidence that is not challenged, they all surrendered themselves as they seek treatment.

The three applicants, except for Applicant 2, because of a drug problem. Applicant 2, because of his condition of depression, as per the evidence which was also not challenged. As this is a two-fold approach, the Court does not end by establishing the existence of exceptional circumstances, the Court has also to check in the presence of exceptional circumstances whether it is in the interest of justice to grant the applicant's bail.

In doing so, the Court is guided by the provisions of Section 60, Subsection 4, Subparagraph 8, Criminal Procedure Act 51 of 1977. I have considered whether there is an action to that if the applicant are released on bail, that we endanger the safety of the person in particular, passing a police agent with one offence. There is no evidence suggesting that.

With regard to Applicant 1, the Court was informed that he had assaulted one of the witnesses. I'm not sure at what stage this happened, but the Court believes that as the applicants may no longer go back to the rehabilitation centre, improper conditions can be put in place and if they are

properly exercised, this can be avoided and the applicants are regarded as flight risks by the investigating officer. However, looking at the duration from the incident to the time of arrest, they have not escaped, although they were interrogated or questioned regarding the offence and obviously, as this incident happened at the institution where they were all patients, they would have known about the incident and they did not run away, or they did not try and escape in any form. So I do not see any evidence to show that there are flight risks.

The fact that they are unemployed does not mean that they are flight risks. The fact that they do not own property does not on its own mean that they are flight risks. One has to look broadly to see if a person is a flight risk or not. There is nothing suggesting that they are a flight risk, especially as I've stated that the period of the death of the deceased and the time they were actually arrested is a very long period. If they really wanted to escape, they would have escaped by this time.

And I've also considered whether there is a likelihood that if the applicants are released on bail, there is temporary evidence that the prosecution will interfere with the cases. I was told that there has been temporary evidence that the cameras were removed from the centre, but there is no evidence that the applicants before Court are the ones that

removed those cameras. The Court was also told that the applicants, especially Applicant 1, will interfere with the state witnesses as he has assaulted one of the witnesses. I've also stated that, unfortunately, I'm not seized with the case for the assault in the circumstances under which the so-called witness was assaulted.

However, I believe that also conditions can be put in place to protect those witnesses as they are known to the applicants as they were all referred to the rehabilitation centre. I've also considered whether if the applicants are released on bail, they will jeopardise the proper functioning of the Criminal Justice System, including that of the bail system. There is no evidence indicating such a likelihood.

I've also considered whether if the applicants are released on bail, this will disturb the public peace and security, much as the applicants are charged with a very serious offence. However, there is no evidence that the community or any community where the incident occurred or maybe people at the centre are being harmed against the will of the applicant, which might disturb the public peace or security if they are released on bail and when balancing the rights to freedom, which is entrenched in the constitution against the interests of justice, I find on the balance of probabilities that the interests of justice favours all applicants to be granted bail subject to conditions.

Also, I have looked at the issue of affordability, different applicants have suggested different amounts. I believe that an amount of R2 000 for each applicant is a reasonable amount I'm taking into account that they are all unemployed as they were at the rehabilitation centre at the time of this incident or their arrest, so I believe the amount of R2000 for each applicant is a reasonable amount. All applicants are ordered not to go back to the Tetelestai Rehabilitation Centre.

Applicant 1 is to go to his alternative address, which is at 127 Nizi Road in Brighton Beach, which is another centre which he had already been admitted to. Applicant 2 is to relocate to his alternative address, which is at 129 Merianridge Drive, Caversham in Pinetown. Applicant 3 is to reside at his residential address, which is at his sister. Applicant 4 is to reside with his sister at 8 Lydia Drive in Klenashni and they will remain in those addresses until that order is changed by the Court. Furthermore, I forgot to mention, all applicants are ordered not to communicate directly or indirectly with any of their witnesses. I'm told that the witnesses, they know the witnesses as they are patients or were former patients at the rehabilitation centre. Directly or indirectly, and they do not assault or threaten to assault, insult or intimidate any of the witnesses.

COURT ADJOURNS

