# NATIONAL ASSEMBLY QUESTION FOR WRITTEN REPLY

**PARLIAMENTARY QUESTION NO: 2684 DATE OF QUESTION: 03 DECEMBER 2021**

**DATE OF SUBMISSION: 20 DECEMBER 2021**

**Mr M G E Hendricks (Al Jamah-ah) to ask the Minister of Justice and Correctional Services:**

In light of the fact that certain persons (names and details furnished) have been in jail for five years and four months, having been held in detention without trial for 64 months, with the case being endlessly delayed and postponed by the State to hand over details and defending the lawfulness of the arrests, (a) what is the position of his department in holding the specified persons indefinitely behind bars, given the failure by the State to commence with a fair trial and (b) to what degree has the State seemingly allowed foreign intelligence agencies to interfere in the charges brought against the specified persons?

# NW3196E

**REPLY:**

1. The accused formally applied for bail in the Johannesburg High Court on 1 October 2021, which was denied due to the fact that the accused are flight risks and because of the seriousness of the charges levelled against them. The accused are being charged with offences in terms of the Protection of Constitutional Democracy against Terrorist and Related Activities Act (POCDATARA).

The delays in the matter, after its first enrolment on the high court roll, were caused by the various interlocutory applications brought by the accused and the continuous change of legal teams by the accused and not by the State.

The breakdown below reflects the trail of court appearances since 2016 and the reasons for the matter not proceeding.

**HISTORY OF APPEARANCES:**

* 1. The two Accused were arrested on 9 July 2016 and appeared in the Regional Court, Court 13 in Johannesburg on 11 July 2016, where-after the case was postponed until 19 July 2016.
  2. On 18 July 2016, the defence brought a request for disclosure of the case docket in preparation of a bail application.
  3. On 19 July 2016, the case was postponed to 25 July 2016 for a formal bail application.
  4. On 25 July 2016, the Accused changed counsel and a new instructing attorney, Mr. Parak took over from Mr. Shipalana. The case was postponed to 26 July 2016 for the bail application to proceed.
  5. On 26 July 2016, the defence raised the question of the lawfulness of the arrest of the accused and the case was postponed to 29 July 2016, for evidence and legal arguments in that regard.
  6. The State led *viva voce* evidence on 4 – 5 August 2016 and on 15 August 2016. The court ruled that the arrests of the accused in question were lawful.
  7. The defence team filed a review application in the Gauteng Local Division, Johannesburg, against the ruling of the Magistrate. The review application was removed from the Civil Court Roll due to the fact that the papers and record filed by the accused/applicants were not in order. The said review application was not pursued further thereafter.
  8. The case was then remanded to 19 August and thereafter to 25 August 2016 at the request of the Accused, in order to proceed with their bail application.
  9. On 15 August 2016, the case was remanded to continue with the bail application to 25 August 2016. The matter was then postponed to 11 October 2016, on which date the Accused abandoned their bail application and thereafter the matter was postponed on a number of occasions until 17 January 2017 for the purpose of further investigations.
  10. On 17 January 2017, the State requested that the case be remanded for further investigations but, the defence objected and the matter was remanded until 25 January 2017, for a ruling in this regard.
  11. On 25 January 2017, the Court granted the State a postponement until 25 April 2017, for further investigations and for the finalisation of the indictment.
  12. On 25 April 2017, the provisional indictment was served on the accused and the case was remanded until 15 May 2017, for the finalisation of the centralisation application in respect to Count 12.
  13. On 15 May 2017, the Accused brought an application for disclosure of the case docket and the case was remanded until 29 May 2017, for disclosure.
  14. On 28 May 2017, the State disclosed the copies of the docket, and the case was remanded until 5 July 2017, in order to receive feedback with regard to requests for Mutual Legal Assistance.
  15. On 5 July 2017, the case was remanded until 11 July 2017, for further disclosure as the defence requested digital copies of the evidence and further statements.
  16. On 27 July 2017, the case was remanded by agreement until 31 August 2017, for the centralisation certificate, which was due to be issued by the

National Director of Public Prosecutions and to obtain a date for pre-trial in the high court of the Gauteng Local Division, Johannesburg.

* 1. On 31 August 2017, the case was remanded to 20 October 2017, for first appearance in the High Court, Gauteng Local Division, Johannesburg.
  2. On 20 October 2017, in the pre-trial court, the case was remanded until 27 October 2017, on request of the defence team to get instructions from the accused for applications of further disclosure and access to consult with state witnesses.
  3. On 27 October 2017, the matter was remanded until 12 December 2017, for further pre-trial.
  4. On 1 November 2017, the defence team filed a request to consult with 35 State witnesses and the State responded to this request on 16 November 2017, to the effect that the request filed constitutes an irregular step and further that there is no legal obligation on the State to respond to the request filed.
  5. On 8 December 2017, the Accused attempted to file a belated and defective application to compel the State to comply with the Accused’s requests for further particulars and persisted to consult with the witnesses as requested on 1 November 2017.
  6. On 12 December 2017, the case appeared before Her Ladyship Justice Keightely, who made the following order:
     1. That the Accused bring a fresh substantive and supplemented application to consult with the State witnesses and for further information and documentation, not contained in the docket, before January 2018.
     2. The NPA to respond by 7 February 2018.
     3. The Heads of argument to be filed by 16 February 2018.
     4. That the application to be argued on 20 and 21 February 2018.
  7. On 26 January 2018 and on 2 February 2018, the accused failed to file an application for the Constitutional challenge of the Terrorism Laws as per the timelines that the defence team set.
  8. On 12 February 2018, the accused’s instructing attorney send an email to the State indicating that they are abandoning their applications.
  9. On 20 February 2018, the accused again changed their legal team and Mr. Bodania and Adv. Khan SC appeared on behalf of the Accused. The applications were withdrawn on record and the case was remanded until 27 February 2018. The accused were ordered to pay the wasted costs of the counsel appearing on behalf of the South African Police Service.
  10. The case was remanded several times for the digital evidence and issues that the defence experienced concerning the accessibility of the digital evidence. The 3-terabyte hard drive was condensed by the State to a 6GB memory stick and a hard copy of the digital evidence that the State intends to rely on during the trial, was provided to the accused.
  11. On 5 December 2018, the case was postponed to 5 December 2018, to enable the defence to prepare a request for further particulars. During this appearance, the court indicated that if there were any legal challenges regarding the request for further particulars it would have to be adjudicated in the pre-trial court during January 2019.
  12. The case was remanded until 28 January 2019 and by agreement to 27 February 2019 and thereafter to 11 June 2019 on request of the defence team to go through and consider all the evidence. An order was made that the defence team must file any requests they might have by 4 June 2019. The defence did not file any request.
  13. On 11 June 2019, the matter was remanded until 11 September 2019, final for pre- trial. On 11 September 2019 the matter was remanded until 19 September 2019, on request of the defence to take instructions on any possible interlocutory applications they wish to bring before the case is set down for trial.
  14. On 19 September 2019, the case was remanded until 7 October 2019 and 23 October 2019, for the finalisation and authorisation of the further particulars. The State’s reply to the applicants requests for the further particulars were served on the accused on 22 November 2019.
  15. The defence requested that the matter be postponed until 27 January 2020, to serve a request for further and better particulars on the State.
  16. On 27 January 2020, the State was not served with the request but, the defence brought an application for a formal bail application, and the case was remanded 20 March 2020.
  17. On 20 March 2020, the matter was postponed due, to Covid-19 restrictions and level 5 lock down that started on 26 March 2020.The matter was set down for a formal bail application on 26 May 2020.
  18. On 26 May 2020, the matter was heard through Microsoft Teams before Her Ladyship, Justice Mohalelo. The defence team once again raised a late objection that the accused were not present and therefore the bail application could not proceed whilst they were fully aware that the accused could not be brought to court due to the Covid-19 restrictions/ regulations, which were in place at the time. Her Ladyship, Justice Mohalelo struck the bail application off the court roll and held that the matter should be re-enrolled when the matter is indeed ready to proceed.
  19. On 14 September 2020, the matter was postponed for a fresh formal bail application before a new judge on 28 September 2020. On 28 September 2020 the bail applications proceeded before His Lordship, Justice Monama.
  20. On 01 October 2020, the bail applications were denied and the case was postponed provisionally to 23 October 2020, for a directive from the Judge President for a trial date and trial judge.
  21. The case was postponed to 18 January 2021, for plea and trial, a date that was confirmed by the State and the defence team.
  22. On 18 January 2021, Advocate Barnard was not able to attend court due, to exposure to Covid-19 and the fact that she had to self-isolate for a period of 10 days. The defence indicated that they will bring an interlocutory application in relation to irregularities that occurred with the transfer of the case from the Regional Court to the High Court.
  23. On 27 January 2021, the defence team proceeded with the interlocutory application and the matter was postponed to 04 February 2021, for judgement by His Lordship, Justice Mokgoathleng.
  24. On 4 February 2021, His Lordship, Justice Mokgoathleng, dismissed the interlocutory application and the defence proceeded with an application for leave to appeal against the ruling on 05 February 2021.
  25. On 5 February 2021, the application for leave to appeal was also dismissed and the defence team indicated that they wish to file a Petition Application to the Supreme Court of Appeal. The matter was remanded until 17 January 2022. provisional for the outcome of the said application to the Supreme Court of Appeal. The application by the defence team was dismissed by the Supreme Court of Appeal on 25 November 2021.
  26. The delays in the matter, after its first inception on the high court roll, were caused by the various interlocutory applications brought by the accused and the continuous change of legal teams by the accused.
  27. The next court date is 17 January 2022.

1. The State has charged the accused with domestic law and not with international crimes. In this regard, no foreign agency could dictate to the State on domestic law.