

**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 4090**

**DATE OF QUESTION: 04 NOVEMBER 2022**

**DATE OF SUBMISSION: 18 NOVEMBER 2022**

**Mr H A Shembeni (EFF) to ask the Minister of Justice and Correctional Services:**

1. What are the reasons that municipal officials implicated and arrested for corruption get bail so easily without bail being opposed;
2. Whether the crimes of corruption are not viewed as serious cases against the State; if not, why not; if so, what are the relevant details?

**NW5102E**

**REPLY:**

**APPLICABLE LEGISLATION**

1. **The Constitution**
2. Section 12(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution), states that a person cannot be deprived of his or her freedom arbitrarily or without just cause.
3. Section 35(1)(f) of the Constitution reads:

‘*Everyone who is arrested for allegedly committing an offence has the right (f) to be released from detention if the interests of justice permit, subject to reasonable considerations’*.

1. **Criminal Procedure Act No. 51 of 1977**
2. Section 60(1)(a) of the Criminal Procedure Act 51 of 1977 (the Criminal Procedure Act) states: “*An accused who is in custody in respect of an offence shall be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit”.*
3. Section 60(4) of the Criminal Procedure Act lists the grounds on which it would not be in the ‘interests of justice’ to grant an accused bail. Broadly, these are, where there is likelihood that the accused, if released on bail, would:
4. endanger the safety of the public or any person or will commit a schedule 1 offence;
5. attempt to evade trial;
6. attempt to influence or intimidate witnesses or to conceal or destroy evidence;
7. undermine or jeopardise the objectives or the proper functioning of the criminal justice system; or
8. where in exceptional circumstances, there is the likelihood that the release of the accused would disturb the public order or undermine public peace or security.

These interests must be weighed against the right of the accused to his or her personal freedom, in particular, the prejudice he or she is likely to suffer, if not admitted to bail.

1. It is imperative to note that applications for bail are directed to Presiding Officers who must decide if it is in the interest of justice for an accused to be released on bail (where a person is charged with an offence listed in schedule 5 of the Criminal Procedure Act), or if there are exceptional circumstances for an accused to be released on bail (where a person is charged with an offence listed in schedule 6 of the Criminal Procedure Act).
2. (a) The National Prosecuting Authority (NPA), in articulating its attitude on whether

to oppose bail or not, is guided by the legislative framework set out above, being the Constitution and the Criminal Procedure Act.

The role of the NPA in a bail application court process is to adduce evidence which is intended to assist the court to determine whether the accused is a suitable candidate to be released on bail or not, and to also counter evidence submitted by the accused, where one or more of the grounds stated in Section 60 (4) of the Criminal Procedure Act are established.

Every application for bail is approached and dealt with on its own merits, after careful consideration of the merits of the case.

Where a municipal official or any other person is applying for bail, and one or more of the grounds stated in Section 60 (4) of the Criminal Procedure Act are established, the NPA has a duty to oppose the application for bail and does oppose bail.

It, however, remains the discretion of the court to decide whether the accused is granted bail or not.

1. The NPA views the offence of corruption as serious cases against the State, and the people. This was prioritised in the NPA six (6)-months’ planning process. The NPA endeavours to ensure that criminal prosecutions are initiated against persons if there is sufficient evidence that points to them as having committed offence/s of corruption, once investigations are finalised.

This also relates to allegations of corruption emanating from the State Capture Commission recommendations. In this regard, the NPA undertook, and has fulfilled its public commitment made to Parliament in May 2022, to enroll nine (9) seminal cases related to State Capture by the end of September 2022.

In those six (6) months, the NPA also made significant progress in prosecuting another wave of cases which are of equal importance in its drive to ensure accountability for corrupt activities. Although these cases do not get the same level of public and media attention, they collectively involve billions of rands that have been stolen from the public purse, often by collusion between officials of the State and people in the private sector, and enable the NPA to deal, bit by bit, with corruption across the public and private sectors.

These include several cases being pursued in the provincial divisions by Specialised Commercial Crime Unit (SCCU) prosecutors and other prosecutors tasked with guiding criminal investigations and conducting prosecutions.

Of pertinence in the novel approach to expediting State Capture and complex corruption cases, is the role of the Task Force, which brings together in closer collaboration, key role players in these cases. The Task Force includes several NPA units, including Directors of Public Prosecutions, Asset Forfeiture Unit, Investigating Directorate, Strategy, Operations and Compliance (SOC) Unit as well as the Directorate for Priority Crime Investigations (DPCI). In some cases, working with Counsel from the private sector has also borne remarkable fruits.

The recent enrolment of the seminal cases and other complex corruption cases guided through the Task Force, has therefore been by design and not by default. This has been a collective effort by prosecutors, investigators, analysts and other DPP and NPA staff members with specialised skills and is indicative of the seriousness the NPA views corruption allegations.

1. Further, the 2022/23 Annual Performance Plan (APP) of the NPA provides that, while ensuring justice for the many victims of crime is core to the operations of the National Prosecutions Service (NPS), its priorities include dealing with corruption, fraud, and complex commercial crime.

As such, the NPA recognises that corruption, amongst others, disproportionately affects the poor and vulnerable, and is a burden to the South African economy.