

BAIL

Act 32 of 1999 - 14 February 2000

Amended 11/02; 21/04

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PART I – PRELIMINARY

- 1 Short title**

This Act may be cited as the Bail Act.
- 2 Interpretation**

In this Act –

“defendant” means a person who is under arrest and is charged before a court with having committed an offence;

“detainee” means a person who is under arrest upon reasonable suspicion of having committed an offence;

“release on bail” means the release from custody of a person who is under arrest on condition that he enters into a recognisance;

“recognisance” –

 - means a recognisance entered into in accordance with section 5(1)(a);
 - includes a recognisance entered into by a surety;

“serious offence” means –

 - an offence punishable by penal servitude;
 - an offence under any of the provisions of the Dangerous Drugs Act other than section 34.

[Repealed and replaced 21/04]

“surety” means a person referred to in section 5(1)(b).

PART II – BAIL

3 Right to release on bail

Subject to section 4, every defendant or detainee shall be entitled to be released on bail.

4 Refusal to release on bail

(1) A Judge or a Magistrate may refuse to release a defendant or a detainee on bail where –

- (a) he is satisfied that there is reasonable ground for believing that the defendant or detainee if released is likely to –
 - (i) fail to surrender to custody or to appear before a Court as and when required;
 - (ii) commit an offence, other than an offence punishable only by a fine not exceeding 1,000 rupees;
 - (iii) interfere with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to him or to any other person;
- (b) he is satisfied that the defendant or detainee should be kept in custody –
 - (i) for his own protection; or
 - (ii) in the case of a minor, for his own welfare;
- (c) the defendant or detainee, having been released on bail, has –
 - (i) committed an act referred to in paragraph (a); or
 - (ii) breached any other condition imposed on him for his release;
- (d) the defendant or detainee is charged or is likely to be charged with a serious offence;
- (e) there is reasonable ground for believing that the defendant or detainee has –
 - (i) given false or misleading information regarding his names or address; or
 - (ii) no fixed place of abode;
- (f) a detainee has failed to comply with section 12(2).

(2) In making a determination under subsection (1), the Judge or Magistrate shall have regard to such considerations as appear to the Judge or Magistrate to be relevant, including –

- (a) the nature of the offence and the penalty applicable thereto;
- (b) the character and antecedents of the defendant or detainee;
- (c) the nature of the evidence available with regard to the offence.

(3) Where a request for the release on bail of a defendant or detainee is objected to, the Judge or Magistrate shall place on record the written reasons for his determination thereon.

(4) (a) Where a Magistrate has ordered the release on bail of a defendant or a detainee notwithstanding an objection by the Commissioner of Police or the Director of Public Prosecutions on any of the grounds set out in this section, the Commissioner of Police or the Director of Public Prosecutions, as the case may be, may, within 7 days of the determination of the Magistrate, apply to the Supreme Court for an order setting aside the decision of the Magistrate to release the defendant or detainee.

(b) Where, immediately after ordering the release of the defendant or detainee, the Magistrate is notified by the Director of Public Prosecutions that an application under paragraph (a) is being made and that a stay of execution is required, the Magistrate shall stay execution of the order and remand the defendant or detainee until the Supreme Court determines the application.

(5) Pending the determination of an application made under subsection (4)(a), the Supreme Court may, where the defendant or detainee has been released on bail and no stay of execution has been sought under subsection (4)(b), on motion made by the Director of Public

Prosecutions, order that the decision of the Magistrate be stayed and that the defendant be apprehended and remanded in custody

(6) A defendant or a detainee whose release on bail is refused under subsection (1) shall be remanded in custody for a period not exceeding 21 days, after which the defendant or detainee shall be brought again before the Court.

(7) Where a defendant or detainee has been remanded by the Magistrate under subsection (4)(b) and the Commissioner of Police or the Director of Public Prosecutions fails to apply to the Supreme Court within 7 days as provided in subsection (4)(a), the defendant shall forthwith be brought before the Magistrate who shall thereupon release him on bail as originally ordered by the Magistrate.

PART III – CONDITIONS FOR RELEASE ON BAIL

5 Recognisance and surety

- (1) A defendant or detainee who is released on bail –
 - (a) shall be released on his own recognisance to appear before a court for his trial, for any proceedings preliminary to trial or otherwise as he may be required to do;
 - (b) may, subject to subsection (2), be required to provide such number of sureties as the Judge or Magistrate deems necessary to guarantee his appearance in the manner specified in paragraph (a) and his compliance with any other condition imposed for his release on bail.
- (2) A defendant or detainee shall not be required to provide surety unless –
 - (a) the charge or the arrest relates to a serious offence; or
 - (b) the Judge or Magistrate is satisfied that there is reasonable ground to believe that the defendant or detainee is likely to breach a condition of his recognisance.
- (3) Where a defendant or detainee refuses to enter into a recognisance or to provide surety, he shall be remanded in custody.
- (4) A recognisance shall be in the form set out in the Schedule.
- (5) No detainee or defendant shall, in respect of the provision of recognisance or surety for his release on bail for –
 - (a) an offence under section 34 of the Dangerous Drugs Act; or
 - (b) an offence punishable by any fine not exceeding 10,000 rupees or any term of imprisonment not exceeding 2 years or by such a fine and term of imprisonment,be liable to pay any sum under any enactment relating to court fees or costs.

[Added 21/04]

6 Recognisance in money or money's worth

(1) Where, in relation to a serious offence, a Judge or Magistrate has reasonable grounds, whether by reason of the magnitude of the financial or other benefit arising from or related to the commission of an offence or otherwise, to believe that a defendant or detainee is likely to fail to surrender to custody or to appear before a court as and when required, he may order that a recognisance shall be in such amount as he considers reasonable in the circumstances.

(2) An order made under subsection (1) may, on good cause shown, be discharged or varied by a Judge or a Magistrate.

7 Other conditions for release on bail

A Judge or a Magistrate may impose such other conditions of a general or specific nature as he thinks fit for the release on bail of a defendant or detainee, requiring him to do or not to do any act, and any recognisance shall apply to any such condition.

8 Qualifications of surety

(1) No person shall stand as a surety unless he is of age, swears an affidavit as to his means and is, in the opinion of the Magistrate, otherwise a suitable person.

(2) In considering the suitability of a proposed surety, the Magistrate shall have regard to

- (a) his financial resources;
- (b) his character and antecedents;
- (c) whether he appears, or is reputed, to be a professional surety;
- (d) his proximity to or relationship with the person for whom he is to be surety;
- (e) his readiness to comply with the obligations of a surety; and
- (f) his age and the state of his health.

(3) A person may be examined on oath before he is accepted as a surety.

9 Discharge of surety

(1) A surety may apply to a Judge or a Magistrate to be discharged from his obligations as a surety.

(2) No surety shall be discharged from his obligations unless he –

- (a) brings and surrenders before the court the person for whom he stood surety; or
- (b) explains to the satisfaction of the Judge or Magistrate his inability to do so.

(3) Where a surety is discharged, the Judge or Magistrate shall order that the person for whom he stood surety shall be arrested, and shall be remanded in custody unless –

- (a) the Judge or Magistrate is satisfied that the discharge was not due to any act of the person arrested that would warrant his not being released on bail; and
- (b) the person arrested agrees to any condition which the Judge or Magistrate may think fit to impose for his release on bail.

10 Estreatment of recognisance

(1) Where a recognisance referred to in section 6 has been taken for the appearance of a person and that person does not surrender to custody or appear before a court as and when required, the court shall order the recognisance to be estreated, unless the court is satisfied that there are reasonable grounds explaining his failure to surrender to custody or to appear before court in which case the court may on the day of such failure or the following day, reinstate the recognisance if already estreated.

(2) Where a recognisance has been estreated pursuant to subsection (1), the amount of the recognisance shall, even if it exceeds the jurisdiction of the Court, be recoverable from the person who entered into the recognisance or from any surety in the same manner as if it were a fine lawfully imposed by the Court.

(3) (a) The Attorney-General may, on good cause shown, remit in whole or in part the amount of an estreated recognisance.

(b) Where the Attorney-General has received a petition for the remission of an estreated recognisance, he may require the Court to stay the recovery of any amount due thereon for a period which shall not exceed 3 months.

11 Termination of recognisance

Subject to section 9, where a person has been released on bail, any recognisance entered into by him or by a surety shall lapse where the person –

- (a) is convicted or acquitted of an offence arising from the facts in respect of which he was arrested or detained; or
- (b) is sooner discharged by an order of the Court.

PART IV – RELEASE ON PAROLE

12 Release on parole during weekend

(1) Where a detainee arrested in respect of an offence, other than a serious offence, is likely to spend Saturday and Sunday or any part thereof, in custody before his first appearance before a Magistrate, he shall be released on parole unless a police officer not below the rank of Assistant Superintendent certifies in writing that he has reasonable ground for believing that the detainee, if released, is likely to fail to comply with subsection (2) or to commit another offence.

(2) Where a detainee is released pursuant to subsection (1) he shall surrender to the custody of the police, at the police station where he was detained, on the first working day after the weekend.

(3) A detainee who fails to comply with subsection (2) may be arrested without a warrant.

PART V – PROHIBITION AGAINST DEPARTURE

13 Interim restriction on departure

(1) Where a police officer not below the rank of Assistant Superintendent certifies in writing that a defendant or a detainee should be prevented from leaving Mauritius, he may require the Immigration Officer to prohibit the departure of that person, and the Immigration Officer shall take all necessary steps to comply with the request.

(2) Any restriction imposed pursuant to subsection (1) shall, unless otherwise ordered by a Judge or a Magistrate, lapse 72 hours after it has been notified to the defendant or detainee.

[Amended 11/02]

14 Prohibition order

(1) A Judge or a Magistrate may, upon application made by the Commissioner of Police and being satisfied that an order should be made preventing defendant or detainee from leaving Mauritius, make an order to that effect.

(2) An order made under subsection (1) shall -

- (a) remain in force until the disposal of the charge against the defendant or detainee;
- (b) be inserted in the record of the court before which the defendant is charged or the detainee is brought.

(3) The clerk of the court specified in subsection (2) (b) shall immediately after an order is made under this section, inform the Immigration Officer in writing.

[Repealed and replaced 11/02]

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[Repealed 11/02]

16 Variation of order

(1) A person against whom an order has been made under section 14 may apply to the court before which his case is pending for a variation of the order.

[Repealed and replaced 11/02]

(2) Where an application is made under subsection (1), the Court may vary the order if it is satisfied that it is necessary to do so –

- (a) to avoid loss or prejudice to the applicant;
- (b) to avoid damage or loss to the applicant's property;
- (c) because of the health of the applicant or his next of kin; or
- (d) in such other cases as the Court thinks fit.

[Amended 11/02]

(3) Where a court makes a variation order under subsection (2), the court may -

- (a) on being satisfied that there are sufficient reasons for so doing, allow the applicant multiple departures from, and returns to, the country within a period specified by the Court;
- (b) impose on the applicant such other terms and conditions as it deems fit.

[Added 11/02]

PART VI – BAIL AND REMAND COURT

17 Interpretation of Parts VI and VII

In this Part and in Part VII “Court” means the Bail and Remand Court established under section 18.

18 Establishment of Court

(1) There shall be a Bail and Remand Court which shall be a court of record and have an official seal.

(2) The Chief Justice shall assign one or more Magistrates to exercise jurisdiction in the Court.

(3) The Master and Registrar shall post to the Court such number of Court Officers, ushers and other public officers as may be required for the proper discharge of the Court’s functions.

19 Jurisdiction of court

Notwithstanding any other enactment, the question whether a defendant or a detainee shall be released on bail or remanded in custody shall, except where the question arises in the course of proceedings before another court or it is otherwise impractical to do so, lie within the exclusive jurisdiction of the Court.

PART VII – LIVE VIDEO AND TELEVISION LINK

20 Live video and television link

(1) Notwithstanding any other enactment, the court may, in its discretion, order a defendant or a detainee who is in custody to appear before it, through such live video or live television link system as may be approved in writing for the purpose of any proceedings by the Chief Justice in relation to –

- (a) an application for his release on bail; or
- (b) an extension of his remand in custody.

(2) The Court may, where an order is made under subsection (1), determine –

- (a) who may or may not be present at the place where the defendant or the detainee is appearing;
- (b) who, in the court-room, shall or shall not be able to be heard, or seen and heard, by the defendant or the detainee;
- (c) who, in the court-room, shall or shall not be able to hear, or to see and hear, the defendant or the detainee.

(3) The Court shall, in making an order under subsection (1) and while conducting any proceedings referred to therein, comply with its duty to ensure that there is a fair hearing in the matter.

PART VIII – MISCELLANEOUS

21 Agreement to indemnify surety

(1) Where a person agrees with another to indemnify that other person against any liability which he may incur as a surety, he and that other person shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) An offence under subsection (1) shall be committed –

- (a) whether the agreement is made before or after the person to be indemnified becomes a surety;
- (b) whether or not he becomes a surety; and
- (c) whether or not the agreement contemplates a compensation in money or money’s worth.

22 Other offences

Any person who –

- (a) having been released on bail –

- (i) fails to surrender to custody or to appear before a court as and when required;
- (ii) commits an offence other than an offence punishable only by a fine not exceeding 1,000 rupees;
- (iii) interferes with a witness, tampers with evidence or otherwise obstructs the course of justice, in relation to him or to any other person; or
- (iv) breaches any other condition imposed on him for his release on bail;
- (b) having stood as a surety, fails to take all reasonable steps to ensure that the person for whom he stood as surety –
 - (i) surrenders to custody;
 - (ii) appears before a Court as and when required; or
 - (iii) complies with any other condition imposed for his release on bail;
- (c) leaves Mauritius in breach of an order made under Part V;
- (d) contravenes this Act in any other manner,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 2 years.

23-24-

25 Rules

- (1) The Chief Justice may, for the purposes of this Act, make such rules as he thinks fit.
- (2) Any rules made under subsection (1) may provide for the payment of fees or the levying of charges.

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SCHEDULE
(section 5(4))

REPUBLIC OF MAURITIUS

Cause No:

**RECOGNISANCE FOR THE APPEARANCE OF
A PARTY CHARGED TO STAND TRIAL**

IN THE DISTRICT COURT OF
.....acknowledges himself to be indebted to the State in the sum of Rs.....

UPON condition that the said..... do personally appear before the District Court of on the at 09.30 a.m. and on any other date/s to be thereafter fixed and any other Court/s of the Island until the final disposal of the case there and then to answer a charge of having on the day of committed the offence of, and does not depart the Court without leave, then this recognisance shall be null and void, otherwise to remain in full force.

SIGNATURES OR MARKS OF PRINCIPAL AND SURETY

Principal.....
Surety (if any)

.....
Surety (if any)

TAKEN and ACKNOWLEDGED after due interpretation at the District Court of, this
..... day of

Interpreted by me

Before me

Court Officer

Magistrate
