

BAIL

THE THEORY AND PRACTICE OF APPLICATIONS FOR BAIL



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Outline

- The Theory of Entitlement to bail
 - Common law underpinnings
 - Constitutional basis
 - Statutory basis

Outline

- The Practice
- Application at first instance
- Appeal from the decision of an RM
- Prosecutor's right to appeal
- Bail pending appeal

THE THEORY

RIGHT TO BAIL

- The Constitutional Basis
 - Charter of fundamental rights and freedoms act 2011
 - Section 13 (3) – overview of rights
 - Section 14 (1) – right to liberty
 - Section 16 (5) – presumption of innocence
 - Section 16 (6) – right to due process

THE THEORY

Constitutional Basis

- Charter of fundamental rights and freedoms act 2011
 - Section 14 (3) - person accused is entitled to be released either conditionally or unconditionally
 - Section 14 (4) – Entitled to bail on reasonable conditions

THE THEORY

RIGHT TO BAIL

- The Statutory Basis – The Bail Act
 - Section 3
 1. Entitlement to be granted bail subject to conditions
 2. Bail to be considered within twenty-four hours
 3. Bail where imprisonment not available as sentence

THE THEORY

- The Statutory Basis – The Bail Act
 - Section 3 ctd.
 - 4. Restriction on bail by police
 - 5. Act does not restrict multiple applications for Bail

THE THEORY

The Statutory Basis – The Bail Act

- Section 4(1): Bail may be denied on likelihood of:
 - failure to surrender to custody
 - committal an offence while on bail
 - interference with witnesses
 - obstruction of justice

THE THEORY

The Statutory Basis

- Section 4(2) states:
 - **The person considering bail shall consider:**
 - the nature and seriousness of the offence;
 - the defendant's character, antecedents, association etc;
 - the defendant's record under previous grants of bail;
 - If further inquiries or reports are required;

THE THEORY

The Statutory Basis

- **The person considering bail shall consider ctd.:**
 - the strength of the evidence against defendant;
 - Defendant's failure to surrender to custody;
 - whether the defendant is a repeat offender; or
 - any other relevant factor including the defendant's health profile.

THE PRACTICE

THE APPLICATION AT FIRST INSTANCE

- Main Points
 1. Stress right to personal liberty
 2. Stress restoring the constitutional norm
 3. Consider the allegations
 4. Consider the grounds for refusing bail such as:
 - Absconding bail
 - Interfering with the course of justice
 - Preventing crime
 - Preserving public order
 - Detention to protect the defendant
 5. Are grounds for refusing bail substantial

THE PRACTICE

THE APPLICATION AT FIRST INSTANCE

- Main Points ctd.
 6. Whether imposing conditions can manage the risks
 7. Informing the accused of his right to appeal
 8. Adequate time must be given to the DPP to respond
 9. All material to be placed before the judge

THE PRACTICE

THE APPLICATION AT FIRST INSTANCE

– Counsel for the applicant to take instructions on:

- a. the accused's age, address and occupation;
- b. with whom does the accused live;
- c. can he feasibly live elsewhere (in necessary)
- d. whether the accused has any previous convictions;
- e. the logistics of securing instructions for the trial;
- f. the conditions amenable to the accused;
- g. particulars of available surety; and
- h. the accused's response to the charge.

THE PRACTICE

THE APPLICATION AT FIRST INSTANCE

– Counsel for the prosecution to take instruction on:

- an outline of the allegations;
- the status, especially vulnerability of the witnesses;
- the status of the investigation;
- whether the accused has any previous convictions;
- whether the accused's connections pose any risk;

THE PRACTICE

• THE APPLICATION AT FIRST INSTANCE

– Counsel for the prosecution to take instructions ctd:

- whether the accused is likely to abscond;
- whether the accused is likely to offend while on bail;
- whether the safety of the accused if granted bail;
- the proximity of the witnesses to the accused;

THE PRACTICE

• THE APPLICATION AT FIRST INSTANCE

– Counsel for the prosecution to take instructions ctd:

- whether any conditions would prove effective;
- whether the accused on bail for other offences; and
- the accused's record in respect of bail.

THE PRACTICE

THE APPELLATE PROCEDURE

The relevant provisions:

- sections 8-11 of Bail Act
- part 58 of the Civil Procedure Rules

THE PRACTICE

THE APPELLATE PROCEDURE

Resident Magistrate to:

- give reasons for the refusal;
- advise unrepresented accused of his right to appeal;
- give accused a copy of the reasons for refusal.

THE PRACTICE

THE APPELLATE PROCEDURE ctd.

- authority of judge in chambers
- appeal treated as civil proceedings
- notification to DPP and commissioner

THE PRACTICE

THE APPELLATE PROCEDURE

The principles which guide the procedure at first instance should also guide the court at the appellate level.

THE PRACTICE

THE APPELLATE PROCEDURE

THE PROSECUTION'S RIGHT TO APPEAL GRANT OF BAIL

- granted in 2010
- appeal is to an appellate judge in chambers
- The appeal may be from a decision of either a resident magistrate or a judge of the Supreme Court
- no special procedural rules

BAIL PENDING APPEAL

- on conviction the presumption is displaced
- convicted person to show why he should be granted bail pending appeal
- section 4 (1) (b) of the Act specifically states that bail may be denied pending appeal

BAIL PENDING APPEAL

- Application may be made to presiding judge or R.M. or direct to an appellate judge in chambers
- Appeal from refusal of bail is to an appellate judge in chambers
- Section 13 of the Act stipulates bail prior to conviction
- It is for the convicted person to show that exceptional circumstances exist which warrant the grant of bail.

AN ASIDE

- The Act does permit bail to be considered and granted by police officers and justices of the peace.
- Those persons may not consider bail in cases where the accused is charged with murder, treason or treason felony (section 3(4)).
- Neither can they, normally, consider bail in cases where a person is in custody pursuant to a warrant of arrest issued by a court.

AN ASIDE

In cases of warrants

- Section 2(1) of the Act hints that a warrant may be endorsed for bail.
- Section 7(2) stipulates that the police officer who releases on bail, a person arrested on a warrant of arrest, is to make a record of his decision and deliver it to the accused if so requested.

CONCLUSION

Despite the pressures placed on judicial officers to keep incarcerated, a large percentage of individuals charged with serious offences, the imperative of the Constitution and the Bail Act is that these accused persons are presumed to be innocent of the allegations made against them and are **entitled** to bail pending their trial. Persons who wish to deprive accused persons of their entitlement to bail must provide substantial reasons in support of their stance.

CONCLUSION

- The application process requires careful preparation from all the legal professionals involved.
- It is desirable that there is significant consistency in the approach used by judicial officers,
- The onus is on the prosecuting authorities to justify the denial of the individual's right to bail.
- Resident Magistrates must indicate in their reasons for decision, the bases on which they have refused bail or imposed conditions, so that, in the event of there being an appeal, the judge can properly assess the Magistrate's decision.

Case Study

- Errol D's. defence is that he knew nothing about the incident. He says that he lives in Mandeville with his parents and that he was at home at the time of the robbery. He says that he attends a skills training school at Spur Tree which is near to the border of Manchester and Saint Elizabeth. Exams are imminent and any period of detention would seriously disrupt his studies. He says that his parents can stand surety for him.
- Beresford R's. defence is that he was picked up by the police and coerced into signing a confession. He denies being in possession of the bracelet, which he says, he has never seen. He agrees that his trousers were muddy but that is because he was helping some relatives to plant peanuts on the day before. He says that he lives in Spur Tree, is a carpenter and has three children who depend on him for support. They do not live with him as he lives alone in a rented room. He is not sure who he will be able to get to stand surety for him. He will have to get in touch with his mother to ask for her assistance.

Case Study

- Questions:
- Defence counsel for Errol D. attends at the police station two days after the arrest. Enquiries are made for bail for him but counsel is told that the investigating officer is "off on some days leave" and nothing can be done until he returns. What is to be done?
- As defence counsel, what are the questions to be asked in preparation for the bail application in court?
- As prosecutor, what are the questions to be asked in preparation for the bail application in court?
- The Magistrate grants Errol D. bail but refuses bail for Beresford R. The prosecution want to appeal against the grant of bail. What is to be done?

THANK YOU