

Mauritius

## Bail Act

Act 32 of 1990

Legislation as at 30 June 2017

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# Mauritius

## Bail Act Act 32 of 1990

Commenced on 14 February 2000

*[This is the version of this document at 30 June 2017.]*

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Bail Act.

#### 2. Interpretation

In this Act—

"**defendant**"—

- (a) means a person who is under arrest and is charged before a Court with having committed an offence; and
- (b) includes a person—
  - (i) who has been committed to stand trial;
  - (ii) who, following a conviction, has given notice of appeal or applied for judicial review; or
  - (iii) in the course of whose trial a question of law has been reserved for the opinion of the Court of Criminal Appeal;

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

"**recognisance**"—

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

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

"**serious offence**" means—

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

"**surety**" means a person referred to in [section 5](#) (1) (b).

*[S. 2 amended by s. 3 of Act [21 of 2004](#); s. 3 of Act [34 of 2011](#) w.e.f. from 1 January 2012.]*

## Part II – Bail

### 3. Right to release on bail

Notwithstanding any other enactment and subject to [section 4](#), every defendant or detainee shall be entitled to be released on bail.

*[S. 3 amended by s. 4 of Act [34 of 2011](#) w.e.f. from 1 January 2012.]*

### 3A. Hearing of bail applications

The Court shall endeavour to hear and determine any application for bail within the shortest delay.

*[S. 3A inserted by s. 5 of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

### 4. Refusal to release on bail

- (1) A Court may refuse to release a defendant or a detainee on bail where—
  - (a) it 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;
    - (iii) interfere with witnesses, tamper with evidence or otherwise obstruct the course of justice, in relation to him or to any other person;
  - (b) it is satisfied that the defendant or detainee should be kept in custody—
    - (i) for his own protection;
    - (ii) in the case of a minor, for his own welfare; or
    - (iii) for the preservation of public order;
  - (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 considering whether or not to refuse bail on any ground mentioned in subsection (1), the Court shall decide the matter by weighing the interests of society against the right of the defendant or detainee to his liberty and the prejudice he is likely to suffer if he is detained in custody, taking into account every consideration which, in its opinion, is relevant, including—
  - (a) the period for which the defendant or detainee has already been in custody since his arrest;
  - (b) the nature and gravity of the offence with which the defendant or detainee is or is likely to be charged and the nature and gravity of the penalty which may be imposed on him;

- (c) the character, association, means, community ties and antecedents of the defendant or detainee, including any non-compliance with any condition imposed for his release on bail with respect to any other offence; and
  - (d) the nature of the evidence available with regard to the offence with which the defendant is charged.
- (3) Where a request for the release on bail of a defendant or detainee is objected to, the Court 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.

*[S. 4 amended by ss. 6 and 12 of Act 34 of 2011 w.e.f. 1 January 2012.]*

### **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 Court 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 Court is satisfied that there is reasonable ground to believe that the defendant or detainee is likely to breach a condition of his recognisance.

- (2A) Where a Court is satisfied that a defendant or detainee is unable to provide surety, it shall impose such other conditions of a non-financial nature as it considers appropriate.
- (3) Subject to subsection (2A), 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) —

*[S. 5 amended by s. 4 of Act 21 of 2004; s. 2 of Act 14 of 2009 w.e.f. 30 July 2009; subsection 7 and 12 (3) of Act 34 of 2011 w.e.f. from 1 January 2012.]*

## 6. Recognisance in money or money's worth

- (1) Where, in relation to a serious offence, a Court 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 Court.

*[S. 6 amended by s. 12 (1) of Act 34 of 2011 w.e.f. 1 January 2012.]*

## 7. Other conditions for release on bail

- (1) A Court may impose as a condition of release on bail that the defendant or detainee resides at a specified address and notifies the Court immediately of any change of address.
- (2) A Court may impose such other conditions of a general or specific nature as it thinks fit for the release on bail of a defendant or detainee, requiring him to do or not to do any act, in order to secure that—
  - (a) he surrenders to custody or appears before a Court as and when required;
  - (b) he does not commit an offence while on bail;
  - (c) he does not interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person;
  - (d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the Court in dealing with him for the offence.
- (3) Conditions imposed under subsection (2) may include—
  - (a) the reporting in person by the defendant or detainee at a specified time and place or to a specified person or authority;
  - (b) restriction of the places to which the defendant or detainee may go;
  - (c) restriction of the movement of the defendant or detainee after 6pm;
  - (d) the prohibition of, or control over, communication by the defendant or detainee with witnesses for the prosecution or potential witnesses for the prosecution;
  - (e) the supervision of the defendant or detainee by a probation officer.
- (4) (a) Subject to paragraph (c), a Court may, at the request of the prosecutor, order a defendant or detainee, to whom paragraph (b) applies, to comply with a requirement imposed for the purpose of securing the electronic monitoring of his compliance with any other requirement imposed on him as a condition of bail.



- (b) This paragraph applies to a defendant or detainee who—
  - (i) (A) is not resident in Mauritius; or
  - (B) is liable, on conviction for an offence with which he has been charged, to penal servitude or to imprisonment for a term exceeding 2 years; and
  - (ii) is a person whom a police officer not below the rank of Superintendent has reasonable grounds to believe is likely to leave Mauritius.
- (c) A Court shall not impose on a minor an electronic monitoring requirement, except in such circumstances as may be prescribed.

*[Sub-s. (4) not in operation.]*

- (5) A Court before which a charge is pending in respect of which bail has been granted may at any stage, whether the bail was granted by that Court or any other Court, on application by any party, vary or add a condition of bail.
- (6) A recognisance entered into under this Act shall apply to any condition of bail imposed by a Court under this section.

*[S. 7 repealed and replaced by s. 8 of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

## 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 Court, otherwise a suitable person.
- (2) In considering the suitability of a proposed surety, the Court 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.

*[S. 8 amended by s. 12 (4) of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

## 9. Discharge of surety

- (1) A surety may apply to a Court 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 Court his inability to do so.
- (3) Where a surety is discharged, the Court shall order that the person for whom he stood surety shall be arrested, and shall be remanded in custody unless—
  - (a) the Court 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 Court may think fit to impose for his release on bail.

*[S. 9 amended by s. 12 of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

## 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

- (1) Where a detainee arrested in respect of an offence cannot practicably be brought 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 grounds for believing that the detainee, if released, is likely to fail to comply with subsection (2), to tamper with evidence, to interfere with witnesses, to commit another offence or to put his own security at risk.
- (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 his release.
- (3) A detainee who fails to comply with subsection (2) may be arrested without a warrant.

*[S. 12 amended by s. 9 of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

## 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 Court, lapse 72 hours after it has been notified to the defendant or detainee.

*[S. 13 amended by s. 3 of Act [11 of 2002](#) w.e.f. 25 May 2002; s. 12 (1) of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

### 14. Prohibition order

- (1) A Court 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.

*[S. 14 repealed and replaced by s. 4 of Act [11 of 2002](#) w.e.f. 25 May 2002; amended by s. 12 (1) of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

### 15. \*\*\*

*[S. 15 repealed by s. 5 of Act [11 of 2002](#) w.e.f. 25 May 2002.]*

### 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.
- (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.
- (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.

*[S. 16 amended by s. 6 of Act [11 of 2002](#) w.e.f. 25 May 2002.]*

## 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, Court 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 courtroom, shall or shall not be able to be heard, or seen and heard, by the defendant or the detainee;
  - (c) who, in the courtroom, 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;
  - (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 50,000 rupees and to imprisonment for a term not exceeding 5 years.

*[S. 22 amended by s. 10 of Act [34 of 2011](#) w.e.f. 1 January 2012.]*

## 23. Liability to arrest for breaking conditions of bail

- (1) Where a person who has been released on bail and is under a duty to surrender into the custody of a Court fails to surrender to custody at the time appointed for him to do so, the Court may issue a warrant for his arrest.
- (2) Where a person who has been released on bail absents himself from the Court without leave at any time after he has surrendered into the custody of the Court, and before the Court is ready to begin or resume the hearing of the proceedings, the Court may issue a warrant for his arrest.
- (3) A person who has been released on bail and is under a duty to surrender into the custody of a Court may be arrested without warrant by a police officer in a case where the person was released on bail with one or more surety or sureties, where a surety notifies the Police in writing that the person is unlikely to surrender to custody and that, for that reason, the surety wishes to be relieved of his obligations as a surety.
- (4) A person arrested pursuant to subsection (3) shall be brought as soon as reasonably practicable before the Court which released him on bail.

- (5) Where a person is arrested pursuant to this section, the Court shall determine whether to release him on bail subject to the same or different conditions or to remand him in custody.

[S. 23 inserted by s. 11 of Act [34 of 2011](#) w.e.f. 1 January 2012.]

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.

26. \*\*\*

## Schedule (Section 5 (4))

### Republic of Mauritius

#### Recognisance for the appearance of a party charged to stand trial

Cause No.:

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 am.

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 Court Officer

\_\_\_\_\_

Before me Magistrate