

---

**10:**

**BAIL**



# 1 Jurisdiction

A Magistrate's Court has jurisdiction to grant bail except when the accused is charged with treason or murder: *s106 CPC*.

An accused charged with murder or treason must be brought before a Magistrate's Court as soon as practicable: *R v Baefaka* [1983] SILR 26 at p29 per Daly CJ. You must remand any accused charged with murder or treason in custody. The accused may then make an application to the High Court.

There is a presumption that an accused is innocent until proved guilty and, therefore, an accused is *prima facie* entitled to bail. See:

- *s10(2)(1) Constitution* – right to personal liberty;
- *s5(3)(b) Constitution*;
- *R v Perfili* (Unrep. Criminal Case No 30 of 1992) per Muria ACJ at p3 – “The common law presumption of innocence is embedded under the Constitution of Solomon Islands and it is done without qualification.... Thus *prima facie*, an accused person is entitled to bail”;
- *John Mae Jino & John Gwali Ta ari v R* (Unrep. Criminal Appeal Case No. 72 of 1999) per Palmer J at p1 – “Bail is a right protected by law (section 106 of the Criminal Procedure Code). The granting of bail by the Court however is discretionary. That means it is not to be unreasonably withheld”;
- *Wells Street Magistrates Court; Ex parte Albanese* (1982) 74 CrAppR 180; [1981] 3 ALLER 769 per Ralph Gibson J at p187 – “The public duty of the Court is to grant bail unless, *inter alia*, it considers that there are substantial grounds for believing that the accused would fail to surrender to custody”.

The prosecution must satisfy you on the balance of probabilities that an accused should **not** be granted bail.

See *ss20, 23 and 106 CPC*, which set out the requirements for bringing an accused before the Court for bail consideration.

See also *s107* (recognisance of bail); *s108* (discharge from custody); *s109* (deposit instead of recognisance); *s110* (power to order sufficient bail when that first taken is insufficient); *s111* (discharge of sureties); *s112* (death of surety); *s113* (persons bound by recognisance absconding may be committed); *s114* (forfeiture of recognisance); *s115* (appeal from and revision of orders); and *s116* (power to direct levy of amount due on certain recognisances).

## **2 Relevant Factors**

There are a number of factors relevant to the grant of bail. These include:

- the protection of the right to personal liberty contained in *s5 Constitution*;
- whether the accused will abscond while on bail;
- the nature and circumstances of the offence charged, including the possibility of a sentence of imprisonment;
- the weight of the evidence against the accused, bearing in mind the presumption of innocence contained in *s10 (2)(1) Constitution*;
- the history and characteristics of the accused, including character, physical and mental condition, family ties, employment, financial resources, length of residence in community, community ties, past conduct, criminal history and record concerning appearances at court proceedings;
- whether at the time of the current offence or arrest, the accused was subject to a sentence or awaiting trial;
- the nature and seriousness of any possible danger to any person or the community if the accused is released;
- whether the accused will interfere with prosecution witnesses and Police investigation;
- the possibility of a repetition of the offence or of further offences;
- any danger posed by the accused to the alleged victim;
- the accused's record of past convictions and any evidence indicating prior failure to appear for scheduled Court hearings;
- the length of any delay;
- the family needs of the accused..

Some relevant case law follows:

### **Absconding**

*R v Kong Ming Khoo* (Unrep. Criminal Case of 1991) per Ward CJ at p3:

“The principal consideration in all bail applications is whether the accused will attend his trial”

Also see *R v Dickson Maeni* (Unrep. Criminal case No. 117 of 1999) per Palmer J at p2.

**Nature of accusation/seriousness of alleged offence**

See:

- *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J at p1;
- *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), Muria CJ at p2;
- *R v Phillips* (1947) 32 CrAppR 47.

**The nature of the evidence to be adduced**

See:

- *R v Kong Ming Khoo* (Unrep. Criminal Case No. ... of 1991), Ward CJ at p3;
- *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J at p1;
- *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), Muria CJ at p2;
- *R v Phillips* (1947) 32 CrAppR 47.

**The severity of the punishment which conviction would entail**

See:

- *R v Kong Ming Khoo* (Unrep. Criminal Case No. ... of 1991), Ward CJ at p3:

“I must also bear in mind that the nature of the offence and the penalty if convicted raise a prima facie risk the accused may try to avoid the trial.”

See also:

- *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J at p1;
- *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), Muria CJ at p2;
- *R v Phillips* (1947) 32 CrAppR 47.

**Whether the accused will interfere with prosecution witnesses and Police investigation**

In *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), at pp 2 and 4:

“Although I am satisfied that if the applicant is released on bail he will not abscond there are other factors that this Court is entitled to consider.

One of these and the main one raised by Prosecution is the possibility of tampering with evidence and interference with prosecution witnesses and investigation.....

It is obviously in the interests of justice that police are allowed the opportunity to investigate all avenues and sources, links and persons properly and that no possibility of interference is permitted.”

See also:

- *R v Kong Ming Khoo* (Unrep. Criminal Case No. ... of 1991), Ward CJ at p3;
- *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J at p2;
- *R v Dickson Maeni* (Unrep. Criminal Case No. 117 of 1999), Palmer J at p2;
- *The State v Tohian* [1990] PNGLR 173 at pp177-178.

However an accused should **not** be held in custody only on the basis that the arresting or investigating officer needs to finalise his or her investigation: see *Peter Hou v The Attorney-General* [1990] SILR 88 at pp 90-91.

### **The possibility of a repetition of the offence or of further offences**

See *R v Kong Ming Khoo* (Unrep. Criminal Case No. ... of 1991), Ward CJ at p3.

See *R v Phillips* (1947) 32 CrAppR 47 at p48:

“Some crimes are not likely to be repeated pending trial and in those cases there may be no objection to bail; but some are, and house-breaking particularly is a crime which will very probably be repeated if a prisoner is released on bail, especially in the case of a man who has a record for housebreaking such as the applicant had. It is an offence which can be committed with a considerable measure of safety to the person committing it.”

### **The length of any delay**

In *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), Muria CJ held at p2:

“The question of delay in bringing an accused person to trial is a relevant factor to be taken into account in considering bail applications. I feel it is particularly important that the liberty of an accused person must be borne in mind in order to minimize any delay in bringing an accused person to trial.”

In *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J held at p2:

“The accused has spent a better part of his time in custody and now that a trial date has been fixed not more than a month away, it needs to be shown that further remand in custody until that time taking all relevant matters into account would be prejudicial to this accused’s interests.”

### The family needs of the accused

In *R v Philip Tagea, Amos Teikagei & Damaris Teikagei* (Unrep. Criminal Case No. 14 of 1995), Palmer J held at p3:

“It has not been shown that his wife and children urgently need him; that if he is not released on bail that something drastic will happen to them.”

## 3 Information to Support Bail Grounds

The prosecution must provide grounds for their opposition to bail.

The following table sets out what information may be needed to support various grounds.

Nature of the risk	Information needed for assessment
Absconding	Fixed address Community ties Employment history Seriousness of the offence Strength of evidence Probable outcome Possibility of surety (or security) Bail history
Commission of further offences	Previous convictions Present situation- alleged offending while on bail? Present Court orders - in breach? complying?
Interference with witnesses	Nature of present offence Relationship of witnesses to accused Vulnerability of witnesses Expressed threats Past interference with witnesses
Danger to victim	Nature of present offence Relationship of victim to accused Vulnerability of victim Expressed threats
Difficulty in preparing report	Likelihood of absconding Accused's mental health, attitude Physical/geographical constraints

## **4 Bail Procedure**



Where the hearing is to be adjourned you may either:

- allow the accused to go at large;
- grant the accused bail;
- remand the accused in custody for the period of the adjournment (which shall not be more than 15 days): *s191 CPC*.

Ask the Police whether they wish to oppose bail. Hear from the prosecution first, then the accused. Evidence may be called if necessary.

If you refuse bail, you must give reasons. Ensure that your reasons are recorded.

If bail has been refused by another Magistrate, and the accused later makes further application, you should refer it to that Magistrate, if available.

If the original Magistrate is not available, in order for you to hear the application the accused must demonstrate a change in circumstances or fresh grounds. If this can not be done then an appeal is the appropriate way to challenge the decision.

## **5 Conditions**

If you grant bail it must be to a particular date. In addition, you may impose further conditions of release, such as:

- reporting to Police at such time(s) and place(s) as ordered;
- any other condition considered reasonably necessary to ensure that the accused:
  - ≡ appears in Court on date to which remanded;
  - ≡ does not interfere with any witness or evidence; and
  - ≡ does not commit any offence while on bail.

Note any conditions you impose as precisely as possible. Examples are:

- “Not in any way to associate with ( )”;
- “Not in any way to communicate directly, or through any other person, with ( ) during the remand period”;
- “To reside at ( *address* )”;
- “To surrender passport to the Police”;
- “To be within address between 7.00 p.m. and 7.00 a.m. daily”;
- “To report to Police (time and place)”.

On any breach of a condition of bail, an accused may be brought back to Court and a warning noted, or bail cancelled or varied.

In *R v Perfili* (Unrep. Criminal Case No. 30 of 1992), Muria CJ held at pp 3-4:

“The common law presumption of innocence is embedded under the Constitution of Solomon Islands and it is done without qualification.... Thus, prima facie, an accused person is entitled to bail. However, the law also allows conditions to be put on the bail in order to secure the attendance of the accused at his trial. Once conditions are imposed on a bail granted, it is for the accused to show that those conditions do not apply to him and that he will attend at his trial.”

See also:

- *R v John Robu, Henry Faramasi, Lency Maenu & Peter Ka abe* (Unrep. Criminal Case No. 29 of 1998), Palmer J at p2;
- *R v Dickson Maeni* (Unrep. Criminal Case No. 117 of 1999), Palmer J at p2;
- *John Mae Jino & John Gwali Ta ari v R* (Unrep. Criminal Case No. 172 of 1999), Palmer J at p2.

## **6 Young Persons**

Special conditions apply to those under 18 years of age. See chapter 16 “Juvenile Offenders”.

## **7 Bail Judgment**

Judgment should contain:

- The charges faced by the accused and the fact that Police oppose bail;
- a summary of the grounds of Police opposition to bail;
- a summary of defence submissions as to the grounds in favour of bail being granted;
- the law on bail, briefly;
- an identification of the facts relevant to the case at hand;
- a conclusion as to whether bail is granted or refused.

**BAIL DECISION FORMAT**

Name:

Age:

The Charge:

The facts alleged:

Summary of the Police reasons for opposing bail:

Summary of the defence reasons for granting bail:

The relevant legal principles:

The relevant facts:

Decision giving reasons which are based on the application of the legal principles to the facts of the case.

Conditions (if bail is granted):

## **8 Bail Remarks**

Sometimes one or more of the following explanations can be included in your remarks to the accused:

- that if he or she fails to comply with any condition of bail, a warrant of arrest may be issued and he or she may be refused further bail and thus in custody until trial;
- that committing a crime while on release may lead to more severe punishment than he or she would receive for committing the same crime at any other time.