

THE BAIL (AMENDMENT) BILL
(No. XXVII of 2011)

Explanatory Memorandum

The object of this Bill is to amend the Bail Act so as to make further and better provision in relation to, *inter alia*—

- (a) the prompt hearing and determination of bail applications;
- (b) the factors to be taken into account by a Court when assessing the risks involved in deciding whether or not to release a defendant or detainee on bail;
- (c) the conditions that may be imposed by a Court for release on bail, including subjecting the defendant or detainee to an electronic monitoring mechanism; and
- (d) the liability of a person released on bail to be arrested for breach of a bail condition.

Y. N. VARMA
Attorney-General

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Bail Act to make further and better provision in relation to the principles applicable to bail and related matters

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Bail (Amendment) Act 2011.

2. Interpretation

In this Act –

“principal Act” means the Bail Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended by deleting the definition of “defendant” and replacing it by the following definition –

“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;

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended by deleting the words “Subject to” and replacing them by the words “Notwithstanding any other enactment and subject to”.

5. New section 3A inserted in principal Act

The principal Act is amended by inserting, after section 3, the following new section –

3A. Hearing of bail applications

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

6. Section 4 of principal Act amended

Section 4 of the principal Act is amended –

(a) in subsection (1)(a)(ii), by deleting the words “not exceeding 1,000 rupees”;

(b) in subsection (1)(b) –

(i) in subparagraph (i), by deleting the word “or”;

(ii) by adding, at the end of subparagraph (ii), the word “or”;

(iii) by adding the following new subparagraph –

(iii) for the preservation of public order;

(c) by repealing subsection (2) and replacing it by the following subsection –

(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.

7. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) by inserting, after subsection (2), the following new subsection –

(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.

- (b) in subsection (3), by deleting the word ‘Where’ and replacing it by the words ‘Subject to subsection (2A), where’;
- (c) by repealing subsection (5).

8. Section 7 of principal Act repealed and replaced

Section 7 of the principal Act is repealed and replaced by the following section –

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 6 p.m.;
- (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.

(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.

9. Section 12 of principal Act amended

Section 12 of the principal Act is amended –

- (a) in the heading, by deleting the words “**during weekend**”;
- (b) by repealing subsection (1) and replacing it by the following subsection –

(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.

- (c) in subsection (2), by deleting the words “the weekend” and replacing them by the words “his release”.

10. Section 22 of principal Act amended

Section 22 of the principal Act is amended –

- (a) in paragraph (a)(ii), by deleting the words “not exceeding 1,000 rupees”;
- (b) by deleting the words “5,000 rupees and to imprisonment for a term not exceeding 2 years” and replacing them by the words “50,000 rupees and to imprisonment for a term not exceeding 5 years”.

11. New section 23 inserted in principal Act

The principal Act is amended by inserting, after section 22, the following new section –

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.

12. Various sections of principal Act amended

(1) Sections 4(1), 6(1), 6(2), 9(1), 13(2) and 14(1) of the principal Act are amended by deleting the words “A Judge or a Magistrate” and “a Judge or a Magistrate” and replacing them by the words “A Court” and “a Court”, respectively.

(2) Sections 4(1)(a) and 4(1)(b) of the principal Act are amended by deleting the word “he” and replacing it by the word “it”.

(3) Sections 4(3), 5(1)(b), 5(2)(b), 9(2)(b), 9(3), 9(3)(a) and 9(3)(b) of the principal Act are amended by deleting the words “the Judge or Magistrate” and replacing them by the words “the Court”.

(4) Sections 8(1) and 8(2) of the principal Act are amended by deleting the words “the Magistrate” and replacing them by the words “the Court”.

13. Consequential amendments

(1) The Criminal Appeal Act is amended, in section 16(2), by inserting, after the word “appeal”, the words “, in accordance with the Bail Act”.

(2) The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –

(a) by repealing section 61;

(b) in section 67B, by deleting the words “upon his entering into a recognisance in such sum with or without sureties as the Judge may determine conditioned for his appearance, within 3 days after the judgment of the Supreme Court, before the Court which had convicted or sentenced him unless the conviction or sentence is quashed by the Supreme Court” and replacing them by the words “in accordance with the Bail Act”.

14. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
