

LAW ON BAIL

Chapter XXXVIII of the Criminal Procedure Code provides the general law on bail.¹ An accused can be released on personal bond where he has to surrender himself to the bond by appearing at the date, time and place mentioned in the bond or released on bail where he will need a surety or more to ensure his appearance.

A matter of bail is determined in the light of whether the accused was charged with a bailable offence or a non-bailable offence. The Criminal Procedure Code defines what is a 'bailable offence' and what is a 'non-bailable offence'. Therefore, it is clear that the matter of bail is related to the charge with which an accused person is preferred. Literal definition of the words 'non-bailable offence' suggests that when a person is charged with a non-bailable offence, he is not to have his freedom until he is acquitted. Even though section 388 (1) of the Criminal Procedure Code refers to non-bailable offences, bail should not be refused just because the offence is said to be non-bailable. The term 'non-bailable' is not equivalent to the term 'unbailable' where bail is prohibited absolutely. The court is given a complete discretion under section 388 to decide whether to allow bail in the case of a non-bailable offence.

His Lordship Dato' Vincent Ng has considered this issue of the exercise of discretion by a Judge in granting or refusing bail in *Soo Shiok Liong v Pendakwa Raya* [1993] 2 CLJ 657 where His Lordship stated that the Courts have always leaned in favour of admitting an accused person to bail. His Lordship went further to state that 'in setting the quantum of bail, the primary consideration in deciding the issue is to decide, having due regard to the circumstances of the case that the amount imposed would not be excessive but be sufficient to secure attendance of the applicant.'²

Bail is never designed to be punitive in nature against the applicant; it is merely to warrant appearance of the applicant at the place, date and time stated in the bond. Therefore, quantum of bail should be reasonable and non excessive, failing which it will defeat the purpose of bail, in the event the Court is prepared to release him on bail. If the amount of bail is excessive, it might cause difficulties to the applicant in getting suitable sureties to post bail as fixed by the court, especially for a person of 'meagre means'³.

His Lordship in *Soo Shiok Liong* laid down some factors for consideration in setting the quantum of bail bond as follows, which however is not exhaustive⁴:-

1. The nature and gravity of the offence and the severity and degree of punishment which conviction might entail; One of the relevant, but not overriding factors to be considered;
2. The quantum should be higher in the case of non-bailable offences;

¹ Section 387 of the Criminal Procedure Code relevant to bailable offences and section 388 relevant to non-bailable offences.

² Held [5] of *Soo Shiok Liong v Pendakwa Raya* [1993] 2 CLJ 657; Section 389 of the Criminal Procedure Code

³ *Soo Shiok Liong v Pendakwa Raya* [1993] 2 CLJ 657 at page 661, paragraph c of the left column

⁴ *Soo Shiok Liong v Pendakwa Raya* [1993] 2 CLJ 657 at page 660, paragraph a-i of the right column

3. An excessive quantum may defeat the granting of bail;
4. Whether there is a likelihood of the applicant absconding if the bail quantum is set at too low;
5. Bail is not intended to be punitive but only to secure the attendance of the Accused at the trial therefore that amount of the bond must be fixed with the regard to the circumstances and must not be excessive;
6. Conditions set in granting the bail such as surrender of traveling documents should also be taken into consideration in reducing the quantum of bail;
7. Cooperation given by the Accused should also go to abate the quantum of bail;
8. The quantum of bail should not be set so prohibitively high as to have the effect of incarcerating the Accused before he is convicted of the crime; and
9. Factors for consideration in setting the quantum of bail bond-application of the Court's mind in considering such factors to be reflected in the judge's records.

The Court should be prepared to grant bail, as the denial of bail has the effect of punishing an accused before he is proven guilty of the charges against him, where he may be kept under remand for months, even years before the completion of the trial, where at the end of the trial he may be found to be not guilty and subsequently acquitted. This is against the cardinal principle and basis of criminal law that is '*presumed to be innocent until proven guilty*'. A quantum of bail which is excessive results in the inability of the accused to post bail which has the same effect, as the accused may find difficulty in securing a bailor acceptable by the court posting bail on the amount fixed.

Bail should only be refused when [there are reasons to believe or there are allegations made that if bail is granted](#), the applicant may abscond or obstruct the prosecution in any way; there is danger that the offence will continue or repeated; there is danger of witness or the prosecution evidence being tampered with. However, mere allegation of the same is not sufficient and there must be some information or evidence on record indicating the possibility.

His Lordship Dato' Vincent Ng has expressed his beliefs against the deprivation of ones liberty until proven guilty. Justice must not only be done but must be seen to be done.

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