

# BAIL ACT

AN ACT TO PROVIDE FOR RELEASE ON BAIL OF PERSONS SUSPECTED OR ACCUSED OF BEING CONCERNED IN COMMITTING OR OF HAVING COMMITTED AN OFFENCE; TO PROVIDE FOR THE GRANTING OF ANTICIPATORY BAIL AND FOR MATTERS, CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows

Act Nos,

7 of 2021

Short title.           **1.** This Act may be cited as the Bail Act, No 30 of 1997.

Grant of bail to be the guiding principle in implementing this Act.           **2.** Subject to the exceptions as hereinafter provided for in this Act, the guiding principle in the implementation of the provisions of this Act shall be, that the grant of bail shall be regarded as the rule and the refusal to grant bail as the exception.

Provisions of this Act not to apply in respect of offences committed under certain laws.           **3.**(1) Nothing in this Act shall apply to any person accused or inspected of having commuted, or convicted of, an offence under, the Prevention of Terrorism (Temporary Provisions) Act. No 48 of 1979, Regulations made under the Public Security Ordinance or any other written law which makes express provision in respect of the release on bail of persons accused or suspected of having committed, or convicted of, offences under such other written law.  
  
(2) Where there is a reference in any written law to a provision of the Criminal Procedure Code Act, No 15 of 1979 relating to bail, such reference shall be deemed, with effect from the date of commencement of this Act, to be a reference to the corresponding provision in this Act.

Persons committing or           **4.**  
  
A person suspected or accused of being concerned in committing, or

concerned in the commission of a bailable offence to be released on bail.

having committed a bailable, offence, shall, subject to the provisions hereinafter provided, be entitled to be released on bail.

Persons committing or concerned in the commission of non-bailable offence to be released at the discretion.

5.

Subject to the provisions of section 53, a person suspected or accused of being concerned in committing, or having committed a non-bailable offence may at any time be released on bail at the discretion of the court.

Release of persons when a bailable offence is being investigated by the police.

6.(1) Where an offence being investigated by the police is a bailable offence, the officer-in-charge of the police station shall not be required to forward the suspect under its custody before the Magistrate having jurisdiction over such offence, but such officer shall not later than twenty-four hours of the suspect being taken into custody, release him on a written undertaking and order such suspect to appear before the Magistrate on a given date:

Provided that where the officer-in-charge is of the opinion that public reaction to the alleged offence being investigated is likely to give rise to a breach of peace he shall forward the suspect in custody before a Magistrate having jurisdiction over such offence, and the Magistrate shall thereupon make an order under section 7 or section 14 as he may consider appropriate.

(2) A suspect released by an officer-in-charge of a police station on a written undertaking given by such suspect under subsection (1), who fails to appear before the Magistrate on the given date, shall be guilty of an offence under this Act and shall on conviction after summary trial, be punished with simple imprisonment for a term not exceeding six months or with a fine not exceeding one thousand rupees or with both such imprisonment and fine and the Magistrate shall in his discretion order the release of such suspect on bail subject to conditions as specified or remand him to custody, as the case may be,

Manner in which a person suspected or accused of a bailable or non-bailable offence

7.(1) Whenever any person suspected or accused of, being concerned in committing or having committed, a non-bailable or bailable offence appears, is brought before, or surrenders, to the court having jurisdiction, the court may release such person -

(a) on an undertaking given by him to appear when required;

- may be released on bail.
- (b) on his own recognisance;
  - (c) on his executing a bond with one or more sureties;
  - (d) on his depositing a reasonable sum of money as determined by court; or
  - (e) on his furnishing reasonable certified bail of the description ordered by court: Provided that where the person has appeared before court on summons and is ordered to be released, he shall be enlarged on his own recognisance or on his giving an undertaking to appear when required, unless for reasons to be recorded, the court orders otherwise.
- (2) Where any person is required to execute a bond, under paragraph (c) of subsection (1), the court may permit such person to deposit a sum of money to the credit of the account of the court at the appropriate bank, in lieu of executing such bond.
- (3) Where any person is released on his executing a bond under paragraph (c) of subsection (1) with one or more sureties, such person shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed.

Discharge from custody. 8. As soon as the bond has been executed under paragraph (c) of subsection (1) of section 7 the person for whose appearance it has been executed shall be released; and where he is in prison, the court releasing him on bail shall issue an order of release to the officer in charge of the prison and such officer shall on receipt of the order release him.

Power to order sufficient bail when that first taken is insufficient. 9. If through mistake, fraud, or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do, may commit him to prison.

Determining whether a person is a sufficient surety. 10. In determining whether a person is a sufficient surety for the purpose of paragraph (c) of subsection (1) of section 7, the court shall have regard to the question whether such person is likely to be able to secure the attendance of the person suspected or accused, in terms of the bond.

Quantum of bond. 11. (1) Where any court is required to determine the amount of a bond to be executed, the sum of money to be deposited or the certified bail to be furnished by any person under paragraph (c) (d) or (e) of subsection



(1) of section 7 as the case may be, it shall do so with due regard to the nature of the offence the suspect or accused is alleged to have committed, and the punishment specified therefor by law, and to the means of such suspect or accused and the amount so determined shall not be excessive.

(2) Where a suspect or accused has not been released on the ground that a bond for the amount determined by court has not been executed whether by himself or by a surety or that the sum of money required to be deposited has not been deposited or that the certified bail required to be furnished has not been furnished, the court may at any time while he is in custody, reduce the amount so determined.

Person released to give address at which notices and process may be served on him.

12.(1) Where any person is released on bail he shall give to the court or officer taking such bail, an address at which service of all notice and processes may be served upon him and if thereafter, he cannot be found or for any other reason service on him cannot be effected, any notice or process left for him at such address shall be deemed to have been duly served upon him.

(2) Where for the purposes of subsection(1) a person gives an address which to his knowledge is false, he shall be guilty of an offence under this Act and shall on conviction after summary trial, be punished with simple imprisonment for a term not exceeding six months or with a fine not exceeding one thousand rupees or to both such imprisonment and fine.

No bail for an offence Punishable with death except by a judge of the High Court.

13.A person suspected or accused of being concerned in committing or having committed, an offence punishable with death or with life imprisonment, shall not be released on bail except by a Judge of the High Court.

Reasons for which court may refuse bail or cancel a subsisting order for release.

14.(1) Notwithstanding anything to the contrary in the preceding provisions of this Act, whenever a person suspected or accused of being concerned in committing or having committed a bailable or non-bailable offence, appears, is brought before or surrenders to the court having jurisdiction, the court may refuse to release such person on bail or upon application being made in that behalf by a police officer, and after issuing notice on the person concerned and hearing him personally or through his attorney-at-law, cancel a subsisting order releasing such person on bail if the court has reason to believe:

- (a) that such person would:
    - (i) not appear to stand his inquiry or trial;
    - (ii) interfere with the witnesses or the evidence against him or otherwise obstruct the course of justice; or
    - (iii) commit an offence while on bail; or
  - (b) that the particular gravity of, and public reaction to, the alleged offence may give rise to public disquiet.
- (2) Where under subsection (1), a court refuses to release on bail any person suspected or accused of being concerned in or having committed an offence or cancels a subsisting order releasing such person on bail, the court may order such suspect or accused to be committed to custody.
- (3) The court may at any time, where it is satisfied that there has been a change in the circumstances pertaining to the case, rescind or vary any order made by it under subsection (1).

Reasons to be given for refusal cancellation rescinding or varying an order relating to granting of bail.

15. Where a court refuses to release on bail any person, suspected or accused of, or being concerned in committing, or having committed, any offence, or cancels a subsisting order releasing a person on bail or rescinds or varies an order releasing a person on bail or rescinds or varies an order reasons for such refusal, cancellation or rescission or variation as the case may be.

No person to be detained for more than twelve months in custody.

16. Subject to the provisions of section 17, unless a person has been convicted and sentenced by a court, no person shall be detained in custody for a period exceeding twelve months from the date of his arrest.

How period of detention may be extended.

17. Notwithstanding the provisions of section 16, on application made in that behalf by the Attorney General at, the High Court holden in any zone or a High Court established under Article 154P of the Constitution may, for good and sufficient reasons that shall be recorded, order that a person who has not been convicted and sentenced by a court, be detained in custody for a period in excess of twelve months: Provided that the period of detention ordered under this section, shall not in any case exceed three months at a time and twelve months in the aggregate.

Discharge of sureties.

18.(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to the court to discharge the bond either wholly or so far as it relates to the applicant or applicants.

(2) On such application being made the court shall issue a warrant of arrest directing that the person so released be brought before it,

(3) On the appearance of such person pursuant to the warrant or on his voluntary surrender, the court shall direct the bond to be discharged either wholly or so far as it relates to the applicant or applicants and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to custody.

(4) A surety may at any time arrest the person for whose attendance and appearance he is a surety where such person is absconding and forthwith bring him before the court, which shall thereupon discharge such surety's bond and shall call upon such person to find another sufficient surety, and if he fails to do so shall commit him to custody.

(5) If the court is satisfied that the surety is a person who habitually stands surety for persons on whom bail is ordered and that the application to have himself discharged is without adequate cause, it shall be lawful for the court to impose a fine not exceeding one thousand five hundred rupees on such surety and in default of payment, to commit him to prison for a period not exceeding six months' simple imprisonment.

Appellant to be released on giving security.

19.(1) Where an appeal against an acquittal by a Magistrate's Court is preferred, the court may issue a warrant directing that the accused be arrested and brought before it and may commit him to prison pending the determination of the appeal or release him on bail.

(2) When an appeal has been preferred from a conviction by a Magistrate's Court the court from which the appeal is preferred may having taken into consideration the gravity of the offence and the antecedents of the accused, refuse to release the appellant on bail.

(3) Where on an appeal preferred from a conviction by a Magistrate's Court, an appellant is ordered to be released on bail upon entering into a recognisance in such sum and with or without surety or sureties, the appellant may if the court from which the appeal is preferred thinks fit, instead of entering into a recognizance give such other security by deposit of money with such court or otherwise as that court may deem sufficient.

(4) Upon the appellant's entering into such recognizance or giving such other security as aforesaid he shall be released from custody.

(5) Such recognizance may if the appellant is in prison be entered into before the superintendent or jailer of the prison and if so entered into shall be as valid in all respects as if it had been entered into before the court from which the appeal is preferred; and for this purpose the court shall endorse on the warrant of committal the amount and nature of the security which is to be given in case an appeal is preferred.

(6) When a person sentenced to a term of rigorous imprisonment has preferred an appeal, but is unable to give the required recognizance or other security, he shall be detained in custody without hard labour until the judgment of the court to which the appeal has been preferred is made known to the superintendent of the prison.

Release on bail upon acceptance of appeal from High Court.

20.(1) When an appeal against an acquittal by a High Court is preferred, the court may issue a warrant directing that the accused be arrested and brought before it and may commit him to prison pending the determination of the appeal or release him on bail.

(2) When an appeal against a conviction by a High Court is preferred, the High Court may subject to subsection (3) release the appellant on bail pending the determination of his appeal. An appellant who is not released on bail shall, pending the determination of the appeal, be treated in such manner as may be prescribed by rules made under the Prisons Ordinance.

(3) Where the accused is sentenced to death, execution shall be stayed and he shall be kept on remand in prison pending the determination of the appeal.

(4) The time during which an appellant pending the determination of his appeal is released on bail and (subject to any directions which the court to which the appeal is preferred may give to the contrary on any appeal) the time during which the appellant if in custody is specially treated as an appellant under this section, shall not count as part of any term of imprisonment under his sentence, and, any imprisonment of the appellant whether it is under the sentence imposed by the High Court or the court to which the appeal was preferred shall subject to the directions or order of the court, to which the appeal was preferred be deemed to be resumed or to begin to run as the case requires, if the appellant is in custody, as from the day on which the appeal is



determined and, if he is not in custody, as from the day on which he is received into prison under the sentence.

- Anticipatory bail. 21.(1) When any person has reason to believe that he may be arrested on account of his being suspected of having committed, or been concerned in committing, a non-bailable offence he may with notice to the officer in-charge of the police station of the area in which the offence is alleged to have been committed, apply to the Magistrate having jurisdiction over the area in which such offence is alleged to have been committed, for a direction that in the event of his arrest on the allegation that he is suspected of having committed, or been concerned in the commission of, such offence he shall be released on bail.
- (2) An application made under subsection (1) shall be accompanied by an affidavit made by the applicant.
- (3) The court to which an application under this section is made, shall forthwith on receipt of the application, fix a date for inquiry into the application, which date shall not in any event be later than seven days from the date of the application, and shall issue notice of such date to the applicant and the officer in charge of the police station.
- (4) On the date fixed for the inquiry, the court, after hearing the applicant personally or by his attorney-at-law, and the officer-in charge of police station, if he is present, shall forthwith make order on the application, recording the reasons for making such order.
- Conditions to be attached to order. 22.(1) Whenever a Magistrate makes an order that in the event of the arrest of the applicant he shall be released on bail it may attach such conditions to the order as it may think fit, in the light of the facts of the case, (including conditions prohibiting the applicant from leaving Sri Lanka or requiring the applicant to surrender his passport to court), and shall specify
- (a) the non bailable offence or offences in respect of which the order is made ; and
- (b) the manner in which bail shall be furnished by the applicant at the time of his arrest.
- (2) Where a Magistrate in making an order under section 21, prohibits the applicant from leaving Sri Lanka, he shall forthwith notify the Controller of Immigration and Emigration of such fact.

- Effect of person released on anticipatory bail being thereafter arrested.
23. Where an order as prayed for by an applicant is made under section 21, and the applicant is thereafter arrested for an offence specified in the order or any other offence constituted by the acts constituting the offence specified in the order, the applicant shall be entitled to be released forthwith on bail on his furnishing bail in the manner specified in the order and on his complying with the conditions, if any, attached thereto.
- Conditions subject to which anticipatory bail may be granted.
24. Where a person is released on bail in pursuance of an order made under section 21, such person
- (a) shall make himself available for interrogation by a police officer, as and when required, provided that such interrogation shall not under any circumstances whatsoever be between 6 p.m. in the evening and 6 a.m. in the morning;
- (b) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade that person from disclosing such facts to the court or to any police officer;
- (c) shall not directly or indirectly tamper with any evidence in the case, or otherwise obstruct the course of justice.
- A police officer may interrogate or arrest on a warrant an applicant in respect of whom an application under section 21 is pending.
25. The fact that an application made under section 21 is pending before any court shall not affect or prejudice, the right of any police officer to interrogate the applicant with respect to any offence specified in the application made under section 21, or the right of the officer in charge of a police station to apply to that court or any other court having jurisdiction in the case, for a warrant for the arrest of the applicant for any such offence or the power of any such court to make any order (including an order for detention) on any such application for a warrant.
- Issuing of warrant requiring presence of persons released on anticipatory bail.
26. (1) The Magistrate who made the order under section 21 or a Magistrate otherwise having jurisdiction in the case requiring presence may, upon application made by the officer in charge of the police station investigating the offence, issue a warrant requiring the presence in court, of the applicant in whose favour such order had been made, for reasons which shall be recorded by such Magistrate,
- (2) Where a warrant is issued under subsection (1) and upon the appearance of the applicant in court, in response thereto, the Magistrate may, for reasons which shall be recorded, make such order as he deems

appropriate with regard to the detention of such person, notwithstanding any direction given earlier with regard to bail: Provided, that the Magistrate may at any time revoke or vary such order for reasons to be recorded.

Provisions of this Act to prevail in case of conflict or inconsistency.

27. The provisions of this Act shall have effect notwithstanding anything to the contrary in the Criminal Procedure Code Act, No. 15 of 1979 and in any other written law, other than the Release of Remand Prisoners Act, No. 8 of 1991 and accordingly, in the event of any conflict or inconsistency between the provisions of this Act and such other written law, other than the Release of Remand Prisoners Act, No. 8 of 1991, the provisions of this Act shall prevail.

Sinhala text to prevail in case of inconsistency.

28. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Interpretation.

29. In this Act, unless the context otherwise requires

'bailable offence' means an offence which is described in column 5 of the First Schedule to the Code of Criminal Procedure Act, No. 15 of 1979, or by any other law, as being bailable ; and

'non-bailable offence' means an offence which is described in column 5 of the First Schedule to the Code of Criminal Procedure Act, No. 15, of 1979, or by any other law, as being non-bailable ;

[2, 7 of 2021]

## SCHEDULE

(Section 2)

Column I	Column II	Column III
<i>Sections Amended</i>	<i>Repeal</i>	<i>Insert</i>
6(2)	one thousand rupees	fifteen thousand rupees
12(2)	one thousand rupees	ten thousand rupees

18(5)	one thousa nd five hundre d	twenty five thousand rupees
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