

Malawi

Bail (Guidelines) Act

Chapter 8:05

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Bail (Guidelines) Act

Chapter 8:05

Assented to on 17 July 2000

Commenced on 17 July 2000

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to provide for guidelines to be followed by the police and courts when granting bail in criminal cases

1. Short title

This Act may be cited as the Bail (Guidelines) Act.

2. Application

This Act shall apply to all criminal cases where the granting of bail is considered by the police and courts under section 118 of the Criminal Procedure and Evidence Code.

[Cap. 8:01]

3. Bail guidelines

In considering whether to grant or refuse bail, a police officer or a court, as the case may be, shall be guided by the principles, factors and other matters, constituting Guidelines on Bail, specified in the Schedule.

Schedule (Section 3)

Guidelines on bail

Part I – Bail by the police

1. Where a person has been arrested, whether with or without warrant, but the most Senior Police Officer at the police station where he or she is detained is not satisfied that there is sufficient evidence to charge him or her, then the most Senior Police Officer should release him or her either unconditionally or on bail.
2. When a person has been arrested and is then charged at the police station, the most Senior Police Officer must decide whether to keep him or her in custody till he or she can be brought before the court or to release him or her on bail.
3. Bail should not be granted to a person arrested for an offence punishable with death such as treason, murder, rape, armed robbery, and burglary.
4. Where a person has been remanded in custody by a court, the police should not grant bail to that person.
5. The principles which the police should take into account in deciding whether or not bail should be granted include—
 - (a) the likelihood of the accused failing to appear for further inquiry or for his or her trial;

- (b) the likelihood of the accused committing an offence while on bail; and
 - (c) the likelihood of the accused interfering with witnesses or tampering with evidence or otherwise obstructing the course of justice.
6. In considering whether the principles stated above have been established, the police shall take into account the following factors—
- (a) the nature and the seriousness of the offence;
 - (b) the strength of the evidence against the accused;
 - (c) the sentence which the offence may carry upon conviction;
 - (d) the character, antecedents, associations and community ties of the accused;
 - (e) the safety and protection of the accused; and
 - (f) the state of health of the accused, as certified by a medical practitioner.
7. Where the accused is a juvenile the police shall, in addition, consider the following factors—
- (a) the welfare of the juvenile;
 - (b) whether it is necessary in the interest of the juvenile to remove him or her from association with any undesirable person; and
 - (c) whether the release of the juvenile will defeat the ends of justice.
8. Any bail conditions given to the accused should not be unreasonable.
9. In all cases where bail is granted or refused the police shall record that fact.
10. Where bail is refused, the police shall—
- (a) give the accused reasons for the refusal; and
 - (b) inform the accused of his or her right to apply to a court for bail.

Part II – Bail by the courts

1. A person arrested for, or accused of, the alleged commission of an offence is entitled to be released, with or without bail, any stage preceding his or her conviction in respect of the offence, unless the court finds that it is in the interests of justice that he or she be detained in custody.
2. In bail proceedings the court shall deal with such proceedings expeditiously but may postpone the proceedings to allow the accused or the prosecutor to adduce evidence or further information.
3. If reliable or sufficient information is not before the court, the court may order its production.
4. The principles which the court should take into account in deciding whether or not bail should be granted include the following—
 - (a) the likelihood that the accused, if released on bail, will attempt to evade his or her trial; and in considering this principle the court may, where applicable, take into account the following factors—
 - (i) the nature and the seriousness of the offence for which the accused is to be tried;
 - (ii) the strength of the case against the accused and the temptation that he or she may in consequence attempt to evade his or her trial;
 - (iii) the nature and the severity of the punishment which is likely to be imposed should the accused be convicted of the offence against him or her;
 - (iv) whether the accused is in custody on another charge;

- (v) the emotional, family, community or occupational ties of the accused to the place at which he or she is to be tried;
 - (vi) the assets held by the accused and where such assets are situated;
 - (vii) the means and travel documents held by the accused which may enable him or her to leave the country;
 - (viii) the extent, if any, to which the accused can afford, to forfeit the amount of bail which may be fixed, thereby inducing him or her to jump bail;
 - (ix) whether the extradition of die accused could readily be effected should he or she flee across the borders of the Republic in an attempt to evade his or her trial; and
 - (x) any other factor which in the opinion of the court should be taken into account;
- (b) the likelihood that the accused, if he or she were released on bail will attempt to influence or intimidate witnesses to conceal or destroy evidence; and in considering this principle the court may, where applicable, take into account the following factors—
- (i) the fact that the accused is familiar with the identity of witnesses and with the evidence which they may bring against him or her;
 - (ii) whether the witnesses have already made statements and agreed to testify;
 - (iii) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;
 - (iv) whether the investigation against the accused has already been completed;
 - (v) how effective and enforceable bail conditions prohibiting communication between the accused and witnesses are likely to be;
 - (vi) whether the accused has access to evidentiary material which is to be presented at his or her trial;
 - (vii) the ease with which evidentiary material could be concealed or destroyed;
 - (viii) the fact that the accused, knowing it to be false, supplied false information at the time of his or her arrest or during the bail proceedings;
 - (ix) any other factor which in the opinion of the court should be taken into account;
- (c) the likelihood that the accused, if he or she were released on bail, will endanger the safety of the community or any particular person or will commit an offence; and in considering this principle the court may, where applicable, take into account the following factors—
- (i) the degree of violence towards others implicit in the charge against the accused;
 - (ii) any threat of violence which the accused may have made to any person;
 - (iii) any resentment the accused is alleged to harbour against any person;
 - (iv) any disposition to violence on the part of the accused as is evident from his or her past conduct;
 - (v) any other factor which in the opinion of the court should be taken into account;
- (d) in exceptional circumstances, the likelihood that the release of the accused will disturb, the public order or undermine the public peace or security; and in considering this principle the court may, where applicable, take into account the following factors—
- (i) whether the nature of the offence or the circumstances under which the offence was committed is such that the release of the accused is likely to induce a sense of shock or

- outrage in the community, where the offence was committed, and whether the shock or outrage of the community might lead to public disorder if the accused is released;
- (ii) whether the safety of the accused might be jeopardized by his or her release;
 - (iii) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused; and
 - (iv) any other factor which in the opinion of the court should be taken into account.
5. Where the accused is a juvenile, the court shall, in addition, consider the following factors—
- (a) the welfare of the juvenile;
 - (b) whether it is necessary in the interest of the juvenile to remove him or her from association with any undesirable person; and
 - (c) whether the release of the juvenile will defeat the ends of justice.
6. In applying the principles stated in this Part, the court shall weigh the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice he or she is likely to suffer if he or she were to be detained in custody, taking into account, where applicable, the following factors—
- (a) the period for which the accused has already been in custody since his or her arrest;
 - (b) the probable period of detention until the disposal or conclusion of the trial if the accused is not released on bail;
 - (c) the reason for any delay in the disposal or conclusion of the trial and any fault on the part of the accused with regard to such delay;
 - (d) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation which may be brought about by the detention of the accused;
 - (e) the state of health of the accused, as certified by a medical practitioner; and
 - (f) any other factor which in the opinion of the court should be taken into account.
7. Any bail conditions given to the accused should not be unreasonable.
8. In all bail proceedings, the State should be served with notice of such proceedings.
9. Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty to weigh up the personal interests of the accused against the interests of justice.
10. Where the accused has been refused bail he or she may bring a fresh application before the same magistrate or court, or another magistrate or court, only if there has been a change of circumstances since the earlier application.
11. Where the circumstances have not changed, the accused may proceed by way of appeal setting out the grounds upon which the lower court is alleged to have erred.
12. No application for bail in any case pending before a subordinate court shall be entertained by the High Court unless bail was refused in the subordinate court.