

CHAPTER 09:06

BAIL



ARRANGEMENT OF SECTIONS

SECTION

PART I

Preliminary

1. Short title
2. Interpretation

PART II

Effect of bail

3. Effect of bail
4. Interests of justice and bail
5. Bail conditions
6. Personal interest conditions
7. Disclosure of previous convictions

PART III

Application for bail

8. Bail before conclusion of examination in magistrate's discretion
9. Bailable offences
10. Verbal application for bail
11. Application for bail after commitment
12. Magistrate to determine whether offence is bailable
13. Refusal of bail from uncertain issue of act committed
14. Bail pending appeal

PART IV

Rights of complainants in bail applications

15. Rights of complainant in bail application where accused is charged with an offence in Schedule III

PART V

Conditions and forfeiture of recognisances

16. Conditions of recognisances
17. Addition of further conditions of recognisances
18. Deposit instead of recognisance
19. On failure of accused to appear at trial, recognisance to be forfeited
20. Power to admit to bail, nature of bail and provision in case of default
21. Excessive bail not to be required

PART VI

Appeal to High Court

22. Appeal to High Court against refusal of bail
23. Power of High Court to admit to bail

BAIL

PART VII

Sureties

- 24. Insufficiency of sureties
- 25. Release of sureties
- 26. Render in court
- 27. Sureties not discharged until sentence or discharge of accused
- 28. Death of surety

PART VIII

Arrest of accused person on bail

- 29. Person released on bail may be arrested if about to abscond

PART IX

Remission of bail

- 30. Remission of bail
- SCHEDULE 1
- SCHEDULE 2
- SCHEDULE 3

Act 4, 2024,
S.I. 19, 2024.

An Act to provide for bail proceedings; and for matters incidental or connected therewith.

[Date of Commencement: 4th March, 2024]

PART I

Preliminary (ss 1-2)

1. Short title

This Act may be cited as the Bail Act.

2. Interpretation

In this Act, unless the context otherwise requires—

“**judicial officer**” means a judge or magistrate;

“**peace officer**” has the same meaning assigned to it in the Criminal Procedure and Evidence Act;

“**public prosecutor**” has the same meaning assigned to it in the Criminal Procedure and Evidence Act; and

“**victim**” in relation to an offence against the person or against property, means a person who directly or indirectly suffered harm, including physical or mental injury, emotional suffering, damage or loss of property, as a result of the commission of the offence, regardless of any familial relationship between that person and the person who committed the offence, and includes, any person who suffered any such harm as a result of that person intervening to assist the person in respect of whom the offence was committed, and, where the victim is deceased, also a dependant of the victim.

PART II

Effect of bail (ss 3-7)

3. Effect of bail

Bail granted in terms of this Act shall have the following effect—

- (a) an accused who is in custody shall be released from custody on payment of, or on the furnishing of a guarantee to pay, the sum of money determined for his or her bail:

Provided that, the accused shall appear at the place and on the date and at the time appointed for his or her trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; and

- (b) the release of the accused shall, unless sooner terminated—

- (i) endure until a verdict is given by a court in respect of the charge to which the offence in question relates, or
- (ii) where the sentence is not imposed immediately after verdict and the court in question extends bail, until sentence is imposed:

Provided that, where a court convicts an accused of an offence contemplated in Schedule 1 or 2, the court shall, in considering the question whether the accused's bail should be extended, apply section 6(2)(a) or (b) and take into account—

- (aa) the fact that the accused has been convicted of that offence; and
- (bb) the likely sentence that the court might impose.

4. Interests of justice and bail

(1) Subject to the provisions of sections 5(3) and 10(1) of the Constitution, an accused who is in custody in respect of an offence is entitled to be released on bail at any stage preceding his or her conviction or acquittal in respect of that offence, only if the court is satisfied that the interests of justice so permit.

(2) The court shall in the interests of justice not permit the release from detention of an accused where one or more of the following grounds are established—

- (a) there is the likelihood that the accused, if he or she were released on bail, may endanger the safety of the public or any particular person or may commit an offence referred to in Schedule 2;
- (b) there is the likelihood that the accused, if he or she were released on bail, may attempt to evade his or her trial;
- (c) there is the likelihood that the accused, if he or she were released on bail, may attempt to influence or intimidate witnesses or to conceal or destroy evidence;
- (d) there is the likelihood that the accused, if he or she were released on bail, may undermine or jeopardise the objectives or the proper functioning of the criminal justice system, including the bail system; or
- (e) where in exceptional circumstances there is the likelihood that the release of the accused may disturb the public order or undermine the public peace or security.

5. Bail conditions

(1) The court shall subject to section 4(2), decide a matter by weighing the interests of justice against the right of the accused to his or her personal freedom and in particular the prejudice the accused is likely to suffer if he or she is 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 the delay;
- (d) any financial loss that the accused may suffer owing to his or her detention;
- (e) any impediment to the preparation of the accused's defence or any delay in obtaining legal representation that may be brought about by the detention of the accused;
- (f) the state of health of the accused;
- (g) the prospects of reconciliation between the accused person and the victim; and
- (h) any other factor that in the opinion of the court should be taken into account.

(2) The court shall in considering whether the ground in section 4(2)(a) has been established take into account the following factors—

- (a) the degree of violence towards others implicit in the charge against the accused;
- (b) any threat of violence that the accused may have made to any person;
- (c) any resentment the accused is alleged or perceived to harbour against any person;
- (d) any disposition to violence on the part of the accused, as is evident from the accused's past conduct;
- (e) any disposition of the accused to commit offences referred to in Schedule 2, as is evident from the accused's past conduct;
- (f) the prevalence of a particular type of offence in the country;
- (g) any evidence that the accused previously committed an offence referred to in Schedule 1 or 2 while released on bail;
- (h) whether the victim of the offence in question objects to bail being granted to the accused; and
- (i) any other factor that in the opinion of the court should be taken into account.

(3) The court shall in considering whether the ground in section 4(2)(b) has been established take into account the following factors—

- (a) the family, community or occupational ties of the accused to the place at which he or she is to be tried;
- (b) the assets held by the accused and where such assets are situated;

- (c) the means, and travel documents held by the accused, which may enable the accused to evade his or her trial;
- (d) the extent, if any, to which the accused can afford to forfeit the amount of bail that may be set;
- (e) the question whether the extradition of the accused could be readily effected if the accused flees across the borders in an attempt to evade his or her trial;
- (f) the nature and the gravity of the charge on which the accused is to be tried;
- (g) the strength of the case against the accused and the incentive that the accused may in consequence have to attempt to evade his or her trial;
- (h) the nature and gravity of the punishment that is likely to be imposed should the accused be convicted of the charges against him or her;
- (i) the binding effect and enforceability of the conditions of recognisance that may be imposed and the ease with which those conditions could be breached; and
- (j) any other factor that in the opinion of the court should be taken into account.

(4) The court shall in considering whether the ground in section 4(2)(c) has been established take into account the following factors—

- (a) the fact that the accused is familiar with the identity of witnesses and with the evidence that they may bring against him or her;
- (b) whether the witnesses have already made statements and agreed to testify;
- (c) whether the investigation against the accused has already been completed;
- (d) the relationship of the accused with the various witnesses and the extent to which they could be influenced or intimidated;
- (e) how effective and enforceable the conditions of recognisance prohibiting communication between the accused and witnesses are likely to be;
- (f) whether the accused has access to evidentiary material that is to be presented at his or her trial;
- (g) the ease with which evidentiary material could be concealed or destroyed; and
- (h) any other factor that in the opinion of the court should be taken into account.

(5) The court shall in considering whether the ground in section 4(2)(d) has been established take into account the following factors—

- (a) the fact that the accused, knowingly, supplied false information at the time of his or her arrest or during the bail proceedings;
- (b) whether the accused is in custody on another charge or whether the accused is on parole;
- (c) any previous failure on the part of the accused to comply with conditions of recognisance or any indication that the accused may not comply with any conditions of recognisance; and
- (d) any other factor that in the opinion of the court should be taken into account.

(6) The court shall in considering whether the ground in section 4(2)(e) has been established, the court may, take into account the following factors—

- (a) whether the nature of the offence or the circumstances under which the offence was committed is likely to induce a sense of shock or outrage in the community where the offence was committed;
- (b) whether the outrage of the community might lead to public disorder if the accused is released;
- (c) whether the safety of the accused might be jeopardised by his or her release;
- (d) whether the sense of peace and security among members of the public may be undermined or jeopardised by the release of the accused;
- (e) whether the release of the accused may undermine or jeopardise the public confidence in the criminal justice system; or
- (f) any other factor that in the opinion of the court should be taken into account.

6. Personal interest conditions

(1) The court has the duty to weigh up the personal interests of the accused against the interests of justice notwithstanding the fact that the prosecutor does not oppose the granting of bail.

(2) Notwithstanding anything to the contrary contained in this Act, where an accused is charged with an offence referred to—

- (a) in Schedule 1, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence that satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release; or

(b) in Schedule 2, and which is not referred to in Schedules 1 and 3, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence that satisfies the court that the interests of justice permit his or her release.

7. Disclosure of previous convictions

(1) The accused, in bail proceedings, shall disclose to the court whether—

- (a) he or she has previously been convicted of any offence;
- (b) there are any charges pending against him or her; and
- (c) he or she has been released on bail in respect of those charges in paragraph (b).

(2) Where the legal practitioner of an accused on behalf of the accused submits the information contemplated in subsection (1), whether in writing or orally, the accused shall be required by the court to declare whether he or she confirms such information or not.

(3) The record of the bail proceedings, excluding the information contemplated in subsection (1), forms part of the record of the trial of the accused following on the bail proceedings, but, if the accused elects to testify during the course of the bail proceedings, the court shall inform the accused of the fact that anything he or she says, may be used against him or her at his or her trial and such evidence becomes admissible in any subsequent proceedings.

(4) An accused who wilfully—

- (a) fails or refuses to comply with any provision of subsection (1); or
- (b) furnishes the court with false information required in terms of subsection (1), commits an offence and is liable on conviction to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

PART III

Application for bail (ss 8-14)

8. Bail before conclusion of examination in magistrate's discretion

(1) Until the warrant for commitment for trial or sentence is made out, and subject to the provisions of sections 5(3) and 10(1) of the Constitution, an accused may not insist on being admitted to bail:

Provided that, when the trial is treason or murder, it shall be in the discretion of the magistrate to admit an accused person to bail before the preparatory examination is concluded.

(2) If the accused person, when admitted to bail before the preparatory examination is concluded, does not appear at the time and place mentioned in the recognisance, the magistrate may declare the recognisance forfeited, adjourn the examination, and issue a warrant for his or her apprehension in accordance with the provisions of the Criminal Procedure and Evidence Act.

9. Bailable offences

A person committed for trial or sentence in respect of any offence except treason or murder may be admitted to bail in the discretion of the magistrate:

Provided that—

- (a) the refusal by the magistrate who has committed any person for trial, to grant such person bail shall be without prejudice to such person's rights under section 22; and
- (b) the magistrate may admit to bail a person under the age of 18 committed for trial on a charge of murder.

10. Verbal application for bail

(1) It shall be competent for the accused at the time of the commitment to apply verbally to the judicial officer granting the warrant of commitment, to be liberated on bail.

(2) Subject to subsection (1), in the case of prosecution at the instance of a private prosecutor, the accused shall at the time of the commitment apply verbally to the judicial officer granting the warrant of commitment, to be liberated on bail.

11. Application for bail after commitment

(1) At any period subsequent to the time of commitment it shall be competent for the accused to make written application to the magistrate who granted the warrant of commitment, or to a magistrate having jurisdiction within the district in which he or she was committed for trial, or to a magistrate having jurisdiction within the district in which he or she is in custody, unless bail has already been refused by any magistrate.

(2) In the case of prosecution at the instance of a private prosecutor, the accused at any period subsequent to the time of commitment it shall be competent for the accused to make written application to the magistrate who granted the warrant of commitment, or to a magistrate having jurisdiction within the district in which he or she was committed for trial, or to a magistrate having jurisdiction within the district in which he or she is in custody, unless bail has already been refused by any magistrate.

(3) Every such written application for bail shall be in a form of a petition and shall be accompanied by a copy of the warrant of commitment or by affidavit that a copy is denied.

(4) When the commitment is on a warrant issued by the High Court it shall only be competent to apply for bail to the High Court.

12. Magistrate to determine whether offence is bailable

(1) A magistrate to whom an application for bail is made under section 8 shall within five days thereafter if the offence is bailable by him or her, fix the amount of the bail to be given, or after consideration of such application may, in his or her discretion, refuse to grant bail.

(2) In determining whether the offence for which the accused has been committed is bailable, the magistrate shall—

- (a) in the ordinary case, take the charge against the accused as he or she finds it on the face of the warrant of commitment;
- (b) consider the nature of the evidence in support of the charge; and
- (c) by an assessment report prepared by a health professional under the Botswana Health Professions Act, and the Nurses and Midwives Act, satisfy himself or herself that the accused is of sound mind.

13. Refusal of bail from uncertain issue of act committed

In cases where a doubt may arise concerning the degree and quality of the offence from the uncertain issue in the case of an injury of which it cannot be foretold whether the victim may die or recover, every judicial officer to whom application for bail is made may refuse to grant the same until all danger to the life of the victim is at an end.

14. Bail pending appeal

(1) Subject to the provisions of section 4 a person, who has been convicted of, and sentenced for any offence, who wishes to apply for bail pending an appeal to an appellate court may be admitted to bail upon satisfying the court of first instance that there is—

- (a) likelihood or reasonable prospects of the appeal succeeding; or
- (b) a delay by the court to process documents for appeal, and the delay is likely to lead him or her serving a whole or substantial part of the sentence.

(2) Notwithstanding the provisions of subsection (1), the court may grant bail where it is satisfied by—

- (a) an assessment report prepared by a health professional under the Botswana Health Professions Act and the Nurses and Midwives Act that the appellant is of sound mind; and
- (b) the applicant that there exist other exceptional or unusual grounds for the application for bail as the court may determine.

PART IV

Rights of complainants in bail applications (s 15)

15. Rights of complainant in bail application where accused is charged with an offence in Schedule III

(1) A complainant of an offence referred to in Schedule 3 shall have the right—

- (a) to attend any proceedings where the question is considered whether an accused who is in custody on a charge of an offence referred to in Schedule 3 should be released on bail or, if bail has been granted to the accused, whether any further conditions of recognisance should be imposed or whether any such conditions of recognisance should be amended or supplemented; and
- (b) to request the prosecutor in proceedings referred to in paragraph (a) to present any information or evidence to the court that might be relevant to any question under consideration by the court in such proceedings.

(2) Where a complainant is a child or a person of unsound mind, the right conferred by subsection (1) vests, notwithstanding that subsection, in the complainant's parent, guardian, social worker or care giver unless that parent, guardian, social worker or care giver—

- (a) cannot be readily reached or cannot be traced without undue delay; or
- (b) is unable or unwilling to attend the bail proceedings in question, and if the right so vests in that parent, guardian, social worker or care giver, this section applies to that parent, guardian, social worker or care giver as if the parent, guardian, social worker or care giver were the complainant.

(3) The person in charge of the police station or any other place where the accused is detained in terms of the Criminal Procedure and Evidence Act on a charge of an offence referred to in Schedule 3, shall as soon as practicable inform the complainant concerned of—

- (a) the place, date and time of the first appearance of the accused in court; and
- (b) the rights of the complainant under subsection (1).

(4) Where an accused, who is in custody on a charge of an offence referred to in Schedule 3, intends to apply to the court for bail on a date or at a time of which the complainant has not been otherwise informed in terms of this section, the accused shall request the person referred to in subsection (3) to inform the complainant accordingly, whereupon that person shall so inform the complainant.

(5) The person who informs, or who is required to inform, the complainant in terms of subsection (3) or (4) shall prepare an affidavit stating—

- (a) whether the provisions of subsection (3) or (4), whichever may be applicable, have been duly complied with and, if they have not been so complied with, the reasons for not complying with any such provision;
- (b) the manner in which the complainant has been so informed; and
- (c) the date and time when the complainant has been so informed.

(6) An affidavit prepared in terms of subsection (5) shall be handed to the presiding officer at the proceedings at which bail is considered, and that affidavit shall form part of the record of the bail proceedings.

(7) Where a complainant is present at proceedings at which bail is considered in respect of an accused who is in custody on a charge of an offence referred to in Schedule 3, and such proceedings are postponed, the court shall inform the complainant of the date and time to which the proceedings have been postponed and of the complainant's rights under subsection (1).

(8) Where a complainant is not present at proceedings referred to in subsection (7), the court shall enquire into the question whether the complainant has knowledge of such proceedings, and shall, if it is—

- (a) satisfied that it is likely that the complainant has knowledge of the proceedings, direct that the matter be dealt with in the absence of the complainant; or
- (b) not so satisfied, postpone the proceedings in order to obtain the presence of the complainant, but, if it is in the interests of justice, with due regard to the interests of the complainant, that the matter be dealt with immediately, the matter may be dealt with in the absence of the complainant.

(9) Where a complainant is not present as contemplated in subsection (8), the prosecutor in the bail proceedings in question shall inform the complainant where—

- (a) bail has been granted to the accused, of the granting of bail and the conditions of recognisance imposed; and
- (b) such proceedings have been postponed, of the date and time to which such proceedings have been postponed and of the complainant's rights under subsection (1).

(10) Subsections (5) and (6) apply with the necessary modifications in respect of a notification given in terms of subsection (9)(b).

(11) The court shall afford the complainant of an offence referred to in Schedule 3 protection under the Domestic Violence Act, where an accused is granted bail.

PART V

Conditions and forfeiture of recognisances (ss 16-21)

16. Conditions of recognisances

(1) The recognisance which is taken on the admission of an accused person to bail under sections 9 to 13 shall be taken by the judicial officer either from the accused alone or from the accused and one or more sureties in the discretion of the judicial officer according to the nature and circumstances of the case.

(2) The conditions of the recognisance shall be that the accused shall—

- (a) appear and undergo any further examination which the magistrate or the Director of Public Prosecutions may consider desirable and also answer to any indictment that may be presented, or charge that may be made, against him or her in any competent court for the offence with which he or she is charged at any time within a period of 12 months from the date of the recognisance;
- (b) also attend during the hearing of the case and to receive sentence; and
- (c) accept service of any summons or warning to undergo further examination and any such indictment or charge, notice of trial, and summons thereon and any other notice under this Act or the Criminal Procedure and Evidence Act at some certain and convenient place within Botswana chosen by him or her and expressed therein.

(3) The recognisance shall continue in force notwithstanding that for any reason, when the trial takes place, no verdict is then given, unless the indictment or charge is withdrawn.

17. Addition of further conditions of recognisances

(1) 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 the prosecutor, add any further condition of recognisance—

- (a) with regard to the reporting in person by the accused at any specified time and place to any specified person or authority;

- (b) with regard to any place to which the accused is not allowed to go;
- (c) with regard to the prohibition of or control over communication by the accused with witnesses for the prosecution;
- (d) with regard to the place at which any document may be served on the accused under this Act;
- (e) which, in the opinion of the court, shall ensure that the proper administration of justice is not placed in jeopardy by the release of the accused; and
- (f) which provides that the accused shall be placed under the supervision of a probation officer.

(2) If an accused who is in custody on a charge of an offence referred to in Schedule 3 is released on bail, the court shall add the following further conditions of recognisance, unless the court finds special circumstances that would make any or all of those conditions inappropriate, which circumstances shall then be entered by the court in the record of the bail proceedings—

- (a) a condition prohibiting any direct or indirect contact with the complainant during the course of the relevant criminal proceedings;
- (b) a condition prohibiting the possession by the accused, while so released on bail, of any weapon specified by the court; and
- (c) where the accused is legally liable to maintain the complainant or any child or other dependant of the complainant, a condition requiring the accused to support the complainant or any such child or other dependant at the same or greater level as before the arrest.

(3) Where the court imposes a condition of recognisance contemplated in subsection (2)(b), any weapon specified by the court that is in the possession of the accused, shall, on the release on bail of the accused, be delivered to the police officer charged with the investigation and be retained in police custody for the duration of such release.

18. Deposit instead of recognisance

(1) When a person is required by any judicial officer to enter into recognisance with or without sureties under any of the provisions of this Act, such judicial officer may, except in the case of a bond for good behaviour, instead of causing such recognisances to be entered into, permit him or her or some person on his or her behalf to deposit such sum of money as the judicial officer may fix.

(2) Conditions in writing shall be made, in respect of deposit of money referred to in subsection (1), of the same nature as the conditions prescribed by this Part in respect of recognisances, and all the provisions of this Part prescribing the circumstances in which recognisances taken from the accused alone shall be forfeited, his or her arrest if about to abscond, and remission of forfeited bail, shall apply with the necessary modifications in respect of any such deposit of money.

(3) Where the charge against the accused person is not one of the offences mentioned in section 28(b)(i) and (ii) of the Criminal Procedure and Evidence Act, any police officer of or above the rank of Sub-Inspector, may, at a police station and at such times as no judicial officer is available, admit to bail an accused person who makes or on whose behalf is made a deposit of such a sum of money as such police officer may in the particular circumstances fix.

(4) The provisions of subsection (1) as to conditions, forfeiture and remission of forfeited bail shall with the necessary modifications apply in respect of a deposit of money made under subsection (3).

19. On failure of accused to appear at trial, recognisance to be forfeited

(1) On the day appointed for the hearing of the case, the prosecutor may, where sufficient proof that a copy of the indictment and notice of trial or, in case of a remittal to a magistrate's court, the summons or warning has been duly served or given and the accused does not appear after he or she has been three times, in or near the court premises, called by name—

- (a) apply to the court for a warrant for the apprehension of the accused; and
- (b) move the court that the accused and his sureties, if any, be called upon their recognisance, and, in default of his or her appearance, that the same may be declared forfeited.

(2) A declaration of forfeiture under this subsection (1) shall have the effect of a judgment on the recognisance for the amounts therein named against the accused and his or her sureties respectively.

20. Power to admit to bail, nature of bail and provision in case of default

(1) When a criminal case before a magistrate's court is adjourned or postponed and the accused is remanded, the magistrate may in his or her discretion, admit the accused to bail in manner herein:

Provided that, the accused shall not be remanded for more than one month if not in custody, or for more than 15 days if in custody.

(2) When a magistrate decides to admit an accused person to bail under this section, a recognisance shall be taken from the accused alone or from the accused and one or more sureties, as the magistrate may determine, regard being had to the nature and circumstances of the case.

(3) The conditions of the recognisance shall be that the accused shall appear at a time and place to be specified in writing and as often as and at such intervals not exceeding one month as may be necessary thereafter within a period of six months, until final judgment in his or her case has been given, to answer the charge of the offence alleged against him or her or the charge of any other offence which may appear to the Director of Public Prosecutions or the prosecutor to have been committed by the accused.

(4) The magistrate may further add to the recognisance any conditions under section 16.

(5) If it appears to the magistrate that default has been made in any condition of a recognisance taken before him or her or if it appears to the magistrate before whom an accused person has to appear in terms of any recognisance entered into before another magistrate that default has been made in any condition of such recognisance, such magistrate may—

- (a) issue an order declaring the recognisance forfeited, and such order shall have the effect of a judgment on the recognisance for the amounts therein named and against the person admitted to bail and his or her sureties respectively; and
- (b) issue a warrant for the person admitted to bail and afterwards, on being satisfied that the ends of justice would otherwise be defeated, commit him or her, when so arrested, to prison until his or her trial.

21. Excessive bail not to be required

The amount of bail to be taken in any case shall be in the discretion of the judicial officer to whom the application to be admitted to bail is made:

Provided that a person shall not be required to give excessive bail.

PART VI

Appeal to High Court (ss 22-23)

22. Appeal to High Court against refusal of bail

Whenever an accused person considers himself or herself aggrieved by the refusal of any magistrate to admit him or her to bail or by such magistrate having required excessive bail, he or she may apply in writing to the judge of the High Court who shall make such order thereon as to him or her in the circumstances of the case seems just.

23. Power of High Court to admit to bail

Except where otherwise expressly provided, the High Court shall have power, at any stage of any proceedings taken in any court in respect of an offence, to admit the accused to bail, whether the offence is or is not one of the offences specifically excepted in section 9.

PART VII

Sureties (ss 24-28)

24. Insufficiency of sureties

If, through mistake, fraud, or otherwise, insufficient sureties have been accepted or if they afterwards become insufficient, the judicial officer granting the bail may issue a warrant of arrest directing that the accused be brought before him or her and may order him or her to find sufficient sureties, and on his or her failing to do so may commit him or her to prison.

25. Release of sureties

(1) All or any sureties for the attendance and appearance of an accused person released on bail may at any time apply to the judicial officer before whom the recognisance was entered into to discharge the recognisance either wholly or so far as relates to the applicants.

(2) On such application being made, the judicial officer shall issue a warrant of arrest directing that the accused be brought before him or her.

(3) On the appearance of the accused pursuant to the warrant or on his or her voluntary surrender, the judicial officer shall direct the recognisances to be discharged either wholly or so far as relates to the applicants and shall call upon the accused to find other sufficient sureties and, if he or she fails to do so, may commit him or her to prison.

26. Render in court

The sureties may bring the accused into the court at which he or she is bound to appear during any sitting thereof and then, by leave of the court, render him or her in discharge of such recognisance at any time before sentence, and the accused shall be committed to prison there to remain until discharged by due course of law; but such court may admit the accused person to bail for his or her appearance any time it deems meet.

27. Sureties not discharged until sentence or discharge of accused

(1) The pleading or conviction of any accused person released on bail as aforesaid shall not discharge the recognisance, but the same shall be effectual for his or her appearance during the trial and until sentence is passed or he or she is discharged.

(2) Subject to subsection (1), the court may commit the accused to prison upon his or her trial or may require new or additional sureties for his or her appearance for trial or sentence, as the case may be, notwithstanding such recognisance.

(3) A commitment under this section shall be a discharge of the sureties.

28. Death of surety

(1) When a surety to a recognisance dies before any forfeiture has been incurred, his or her estate shall be discharged from all liability in respect of the recognisance.

(2) Subject to subsection (1), the accused may be required to find a new surety.

PART VIII

Arrest of accused person on bail (s 29)

29. Person released on bail may be arrested if about to abscond

Where an accused person has been released on bail, a judicial officer may, where he or she sees fit, upon the application of any peace officer and upon information being made in writing and upon oath by such officer or by some person on his or her behalf that there is reason to believe that the accused is about to abscond for the purpose of evading justice, issue his or her warrant for the arrest of the accused, and afterwards, upon being satisfied that the ends of justice would otherwise be defeated, commit him or her, when so arrested, to prison until his or her trial.

PART IX

Remission of bail (s 30)

30. Remission of bail

The President may in his or her discretion remit any portion of any amount forfeited under this Part and enforce payment in part only.

SCHEDULES

SCHEDULE 1

(Sections 3, 5(2)(g) and 6(2)(a) and (b))

Treason.

Murder, when—

(a) it was planned or premeditated;

(b) the victim was—

(i) a law enforcement officer performing his or her functions as such, whether on duty or not, or a law enforcement officer who was killed by virtue of his or her holding such a position, or

(ii) a person who has given or was likely to give material evidence with reference to an offence referred to in Schedule 3;

(c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or having attempted to commit one of the following offences—

(i) rape, or

(ii) robbery, in any of the circumstances contemplated in this Schedule; or

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy.

Rape or defilement—

(a) when committed—

(i) in circumstances where the victim was raped or defiled more than once, whether by the accused or by any accomplice;

(ii) by more than one person, where those persons acted in the execution or furtherance of a common purpose or conspiracy;

(iii) by a person who is charged with having committed two or more offences of rape or defilement; or

(iv) by a person, knowing that he or she has the acquired immune deficiency syndrome or the human immunodeficiency virus;

(b) where the victim—

(i) is a child under the age of 18 years and the accused is the victim's parent, guardian or caretaker or is otherwise in a position of trust or authority over the victim,

(ii) is a physically disabled person who, due to physical disability, is rendered particularly vulnerable, or

(iii) is a mentally ill person as contemplated under the Mental Disorders Act; or

(c) involving—

- (i) the use or wielding of a firearm or any other weapon; or
- (ii) the infliction of grievous bodily or mental harm.

Robbery—

(a) involving—

- (i) the use or wielding of a firearm or any other dangerous weapon, or
- (ii) the infliction of grievous bodily harm, by the accused or any of the co-perpetrators or participants on the occasion when the offence is committed, whether before or during or after the commission of the offence; or

(b) involving the taking of a motor vehicle.

Indecent assault on a child under the age of 18 years, involving the infliction of grievous bodily harm.

SCHEDULE 2

(Sections 5(2)(e) and (g) and 6(2)(b))

Treason.

Sedition.

Murder.

Manslaughter.

Rape.

Defilement.

Indecent assault.

Bestiality.

Robbery.

Assault, when a dangerous wound is inflicted.

Kidnapping.

Arson.

Malicious injury to property.

Breaking or entering any premises with intent to commit an offence.

Receiving stolen property knowing it to have been stolen.

An offence relating to exchange control, corruption, extortion, fraud, forgery or uttering, in each case where the amount or value involved in the offence exceeds P10 000.

An offence under any law relating to the illicit dealing in or possession of precious metals or precious stones, in each case where the value involved in the offence exceeds P5 000.

An offence relating to the illicit dealing in or smuggling of ammunition, firearms, explosives or armament.

An offence relating to the smuggling or trafficking in persons.

An offence relating to money laundering.

An offence relating to the counterfeiting of coins.

Any offence, except the offence of escaping from lawful custody in circumstances other than the circumstances referred to immediately hereunder, the punishment wherefor may be a period of imprisonment exceeding six months without the option of a fine.

Escaping from lawful custody, where the person concerned is in such custody in respect of an offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.

Theft or receiving stolen property knowing it to have been stolen, in each case—

(a) where, in circumstances other than those contemplated in paragraph (b), the amount or value involved in the offence exceeds P10 000; or

(b) where the property involved in the offence is—

- (i) stock as defined under the Stock Theft Act, of a value in excess of P2 000;
- (ii) a motor vehicle as defined under the Motor Vehicle Theft Act; or
- (iii) a firearm.

An offence under any law relating to the illicit—

(a) possession of—

(i) dagga exceeding 115 grams; or

(ii) any other dependence-producing drugs or substances; or

(b) conveyance or supply of dependence-producing drugs or substances.

An offence under the Wildlife Conservation and National Parks Act the fine of which exceeds P5 000.

Any conspiracy, incitement or attempt to commit an offence referred to in this Schedule.

SCHEDULE 3

(Section 15)

Common assault.

Assault with intent to do grievous bodily harm.

Crimen injuria.

Kidnapping.

Malicious injury to property—

(a) owned by the complainant;

(b) jointly owned by the complainant and the alleged offender; or

(c) in which the complainant has a substantial interest.

Theft or receiving stolen property knowing it to have been stolen.

Stock theft.

Murder.

Rape.

Defilement.

Indecent assault.

Robbery where violence or threats of violence are used against the complainant or in the presence of the complainant.

Threat to kill.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.