CRIMINAL LAW

Bail

Bail is an amount of money paid to ensure the temporary release of someone who has been arrested for an alleged criminal offence. Get an overview of the most important information you need about the law surrounding bail in SA by reading this QuickLaw guide.

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For all your bail answers, follow our guide below:

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3. Where can a person apply for bail?
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1. What is bail?

- Bail is an amount of money paid to ensure the temporary release of someone (“accused”) who has been arrested for an alleged criminal offence.
- The general rule is that the release on bail should be in the interests of justice.
- The purpose of bail is to ensure that the accused will attend all his/her future court appearances.

2. What information should be obtained from the accused once s/he has been arrested?

- When was the accused arrested?
- What was the accused arrested for?
- Where is the accused being detained?
- What is the case number?
- Who is the investigating officer?
- What is the personal information of the accused, such as his/her name, surname, residential address, identity number, place of work, marital status, number of children, next of kin and whether s/he is on chronic medication?

3. Where can a person apply for bail?

The accused or his/her legal representative can apply for bail at the police station before the accused's first court appearance, or at court.

4. What should a person do if bail is granted at the police station?

- The amount set by the police official should be paid and the accused will be released from custody. The person paying the bail should be in possession of their identity document/passport.
- The police official will give a receipt and notice indicating the alleged criminal offence together with the date and time the accused should appear at court.

5. What happens at the hearing of the application for bail in court?

- The court may at the hearing of the application for bail:
- postpone the application for 7 days or less;
- obtain further information that is needed in order to make a decision regarding bail; or
- require the prosecutor to place on record reasons for opposing the application.
- The accused or his/her legal representative is compelled to inform the court whether the accused has been convicted previously of any criminal offence or whether s/he is currently out on bail in respect of any other alleged criminal offence.

6. What should a person do if bail is granted at court?

- The court may release the accused on bail at any stage before his/her conviction, provided that the interests of justice permit the release of an accused or that there are exceptional circumstances that exist, for example, where the accused has an illness that prevents him/her from being detained.
- The court may set an amount to be paid for bail or release the accused on warning. The court may also impose certain conditions to the release, such as for the accused to report to the nearest police station once a week or to be placed under correctional supervision.
- If the court decides to set an amount for bail, it should be paid at the clerk of the court and the person who paid the amount must be provided with a receipt.

7. Under what circumstances can bail be denied?

- The court will not release the accused on bail where the following grounds are present:
    - there is a chance that the release of the accused will endanger his/her own safety, the safety of the public or any other particular person;
    - there is a chance that the accused will avoid his/her trial;
    - there is a chance that the accused will attempt to influence or intimidate witnesses, or hide and/or destroy evidence;
    - there is a chance that the accused will undermine or endanger the functioning of the justice system including the bail system; or
    - there is a chance that the accused will disturb public order or undermine public peace and security.

8. What will happen if the accused does not appear at court, or comply with the conditions of bail?

- If the accused does not attend court on the date and time allocated, or fails to comply with the conditions set for bail, the accused’s bail will be cancelled and the bail money will be forfeited to the State, unless the accused can give the court good reasons why s/he failed to appear or to comply with the conditions.
- Where the accused failed to appear in court, a warrant of arrest will be issued.

9. What happens to the amount paid for bail after the trial has been finalised?

- The person that made payment of the bail money should keep the original receipt in safe keeping and when the trial has been finalised, collect the amount paid by presenting the original receipt to the clerk of the court and his/her identity document/passport.

10. What are the rights of the accused?

- An accused has the right to:
    - legal representation;
    - be informed that s/he is entitled to bring an application for bail;
    - be informed of his/her right to remain silent and the consequences of not remaining silent;
    - be informed that s/he may not incriminate him/herself;
    - be informed of the reason for his/her arrest;
    - be brought before a court within 48 hours (weekend and public holidays excluded) after his/her arrest or on the first court date after the expiry of such period should the 48 hours expire over a weekend; and
    - a speedy and fair trial.

11. How can LegalWise assist you?

Should you require an explanation of your rights on this topic, please contact your nearest LegalWise Branch , call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or to join visit our join now page.

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