

CHAPTER 9
BAIL (ss 58-71)

58 Effect of bail

The effect of bail granted in terms of the succeeding provisions is that an accused who is in custody shall be released from custody upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his bail, and that he shall appear at the place and on the date and at the time appointed for his trial or to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned, and that the release shall, unless sooner terminated under the said provisions, endure until a verdict is given by a court in respect of the charge to which the offence in question relates, or, where sentence is not imposed forthwith 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 5 or 6, the court shall, in considering the question whether the accused's bail should be extended, apply the provisions of section 60(11)(a) or (b), as the case may be, and the court shall take into account –

- (a) the fact that the accused has been convicted of that offence; and
- (b) the *likely* sentence which the court might impose.

[S. 58 amended by s. 2 of Act 85 of 1997 (wef 1 August 1998).]

59 Bail before first appearance of accused in lower court

(1)(a) An accused who is in custody in respect of any offence, other than an offence –

- (i) referred to in Part II or Part III of Schedule 2;
- (ii) against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998); or
- (iii) referred to in-
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011 (Act 17 of 2011); or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official.

[Para. (a) substituted by s. 3 of Act 26 of 1987 (wef 24 June 1987), by s. 1 of Act 126 of 1992 (wef 31 July 1992), by s. 2 of Act 75 of 1995 (wef 21 September 1995) and by s. 2 of Act 12 of 2021 (wef 5 August 2022).]

(b) The police official referred to in paragraph (a) shall, at the time of releasing the accused on bail, complete and hand to the accused a recognizance on which a receipt shall be given for the sum of money deposited as bail and on which the offence in respect of which the bail is granted and the place, date and time of the trial of the accused are entered.

(c) The said police official shall forthwith forward a duplicate original of such recognizance to the clerk of the court which has jurisdiction.

(2) Bail granted under this section shall, if it is of force at the time of the first appearance of the accused in a lower court, but subject to the provisions of section 62, remain in force after such appearance in the same manner as bail granted by the court under section 60 at the time of such first appearance.

59A Director of Public Prosecutions may authorise release on bail

[Heading substituted by s. 3(a) of Act 12 of 2021 (wef 5 August 2022).]

(1) A Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by the Director of Public Prosecutions concerned, may, in respect of the offences referred to in Schedule 7 and in consultation with the police official charged with the investigation, authorise the release of an accused on bail: Provided that a person accused of any offence contemplated in section 59(1)(a)(ii) or (iii) may not be released on bail in accordance with the provisions of this section.

[Sub-s. (1) substituted by s. 3(b) of Act 12 of 2021 (wef 5 August 2022).]

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) the National Director of Public Prosecutions may, after consultation with the Minister, issue directives.

[Sub-s. (2) substituted by s. 3(b) of Act 12 of 2021 (wef 5 August 2022).]

(3) The effect of bail granted in terms of this section is that the person who is in custody shall be released from custody –

- (a) upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail at his or her place of detention contemplated in section 50(1)(a);
- (b) subject to reasonable conditions imposed by the Director of Public Prosecutions or prosecutor concerned; or
- (c) the payment of such sum of money or the furnishing of such guarantee to pay and the imposition of such conditions.

[Sub-s. (3) substituted by s. 3(b) of Act 12 of 2021 (wef 5 August 2022).]

(4) An accused released in terms of subsection (3) shall appear on the first court day at the court and at the time determined by the Director of Public Prosecutions or prosecutor concerned and the release shall endure until he or she so appears before the court on the first court day.

[Sub-s. (4) substituted by s. 3(b) of Act 12 of 2021 (wef 5 August 2022).]

(5) The court before which a person appears in terms of subsection (4) –

- (a) may extend the bail on the same conditions or amend such conditions or add further conditions as contemplated in section 62; or
- (b) shall, if the court does not deem it appropriate to exercise the powers contemplated in paragraph (a), consider the bail application and, in considering such application, the court has the jurisdiction relating to the powers, functions and duties in respect of bail proceedings in terms of section 60.

(6) The provisions of section 64 with regard to the recording of bail proceedings by a court apply, with the necessary changes, in respect of bail granted in terms of this section.

(7) For all purposes of this Act, but subject to the provisions of this section, bail granted in terms of this section shall be regarded as bail granted by a court in terms of section 60.

[S. 59A inserted by s. 3 of Act 85 of 1997 (wef 1 August 1998).]

60 Bail application of accused in court

(1)(a) An accused who is in custody in respect of an offence shall, subject to the provisions of section 50 (6), be entitled to be released on bail at any stage preceding his or her conviction in respect of such offence, if the court is satisfied that the interests of justice so permit.

[Para. (a) substituted by s. 9(a) of Act 62 of 2000 (wef 23 March 2001).]

(b) Subject to the provisions of section 50(6)(c), the court referring an accused to any other court for trial or sentencing retains jurisdiction relating to the powers, functions and duties in respect of bail in terms of this Act until the accused appears in such other court for the first time.

[Para. (b) substituted by s. 4(a) of Act 85 of 1997 (wef 1 August 1998) and by s. 5(a) of Act 34 of 1998 (wef 1 August 1998).]

(c) If the question of the possible release of the accused on bail is not raised by the accused or the prosecutor, the court shall ascertain from the accused whether he or she wishes that question to be considered by the court.

(2) In bail proceedings the court –

- (a) may postpone any such proceedings as contemplated in section 50(6);
- (b) may, in respect of matters that are not in dispute between the accused and the prosecutor, acquire in an informal manner the information that is needed for its decision or order regarding bail;
- (c) may, in respect of matters that are in dispute between the accused and the prosecutor, require of the prosecutor or the accused, as the case may be, that evidence be adduced;
- (d) shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)(a), (b) and (c), require of the prosecutor to place on record the reasons for not opposing the bail application.

[Para. (d) substituted by s. 4(a) of Act 12 of 2021 (wef 5 August 2022).]

[Sub-s. (2) substituted by s. 4(b) of Act 85 of 1997 (wef 1 August 1998).]

(2A) The court must, before reaching a decision on the bail application, take into consideration –

- (a) any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available; and
- (b) the view of any person against whom the offence in question was allegedly committed, regarding his or her safety.

[Sub-s. (2A) inserted by s. 4 of Act 55 of 2003 (wef 31 March 2005) and substituted by s. 4(b) of Act 12 of 2021 (wef 5 August 2022).]

(2B)(a) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), and if the payment of a sum of money is to be considered as a condition of bail, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered or any other appropriate sum.

(b) If, after an inquiry referred to in paragraph (a), it is found that the accused is –

- (i) unable to pay any sum of money, the court must consider setting appropriate conditions that do not include an amount of money for the release of the accused on bail or must consider the release of the accused in terms of a guarantee as provided for in subsection (13)(b); or
- (ii) able to pay a sum of money, the court must consider setting conditions for the release of the accused on bail and a sum of money which is appropriate in the circumstances.

[Sub-s. (2B) inserted by s. 9(a) of Act 66 of 2008 (wef 17 February 2009).]

(3) If the court is of the opinion that it does not have reliable or sufficient information or evidence at its disposal or that it lacks certain important information to reach a decision on the bail application, the presiding officer shall order that such information or evidence be placed before the court.

(4) The interests of justice do not permit the release from detention of an accused where one or more of the following grounds are established:

- (a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence;

[Para. (a) substituted by s. 4(c) of Act 85 of 1997 (wef 1 August 1998) and by s. 4(c) of Act 12 of 2021 (wef 5 August 2022).]

- (b) where there is the likelihood that the accused, if he or she were released on bail, will attempt to evade his or her trial; or
- (c) where there is the likelihood that the accused, if he or she were released on bail, will attempt to influence or intimidate witnesses or to conceal or destroy evidence; or
- (d) where there is the likelihood that the accused, if he or she were released on bail, will 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 will disturb the public order or undermine the public peace or security.

[Para. (e) added by s. 4(d) of Act 85 of 1997 (wef 1 August 1998).]

[Sub-s. (4) amended by s. 9(b) of Act 62 of 2000 (wef 23 March 2001).]

(5) In considering whether the grounds in subsection (4)(a) have been established, the court may, where applicable, take into account the following factors, namely –

- (a) the degree of violence towards others implicit in the charge against the accused;
- (b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person;
- (c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person;
- (d) any disposition to violence on the part of the accused, as is evident from his or her past conduct;
- (e) any disposition of the accused to commit –
 - (i) offences referred to in Schedule 1;
 - (ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) an offence referred to in-

- (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
- (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
- (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

as is evident from his or her past conduct;

- (f) the prevalence of a particular type of offence;
- (g) any evidence that the accused previously committed an offence –
 - (i) referred to in Schedule 1;
 - (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or
 - (iii) referred to in –
 - (aa) section 17(1)(a) of the Domestic Violence Act, 1998;
 - (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or
 - (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or

- (h) any other factor which in the opinion of the court should be taken into account.

[Sub-s. (5) substituted by s. 4(d) of Act 12 of 2021 (wef 5 August 2022).]

(6) In considering whether the ground in subsection (4)(b) has been established, the court may, where applicable, take into account the following factors, namely –

- (a) the emotional, 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 him or her to leave the country;
- (d) the extent, if any, to which the accused can afford to forfeit the amount of bail which may be set;
- (e) the question whether the extradition of the 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;
- (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 he or she may in consequence have to attempt to evade his or her trial;
- (h) the nature and gravity of the punishment which is likely to be imposed should the accused be convicted of the charges against him or her;
- (i) the binding effect and enforceability of bail conditions which may be imposed and the ease with which such conditions could be breached; or
- (j) any other factor which in the opinion of the court should be taken into account.

(7) In considering whether the ground in subsection (4)(c) has been established, the court may, where applicable, take into account the following factors, namely-

- (a) the fact that the accused is familiar with the identity of witnesses and with the evidence which 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 bail conditions prohibiting communication between the accused and witnesses are likely to be;
- (f) whether the accused has access to evidentiary material which is to be presented at his or her trial;
- (g) the ease with which evidentiary material could be concealed or destroyed; or
- (h) any other factor which in the opinion of the court should be taken into account.

(8) In considering whether the ground in subsection (4)(d) has been established, the court may, where applicable, take into account the following factors, namely –

- (a) 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;
- (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 bail conditions or any indication that he or she will not comply with any bail conditions; or
- (d) any other factor which in the opinion of the court should be taken into account.

(8A) In considering whether the ground in subsection (4)(e) has been established, the court may, where applicable, take into account the following factors, namely –

- (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 shock or outrage of the community might lead to public disorder if the accused is released;
- (c) whether the safety of the accused might be jeopardized by his or her release;
- (d) whether the sense of peace and security among members of the public will be undermined or jeopardized by the release of the accused;
- (e) whether the release of the accused will undermine or jeopardize the public confidence in the criminal justice system; or
- (f) any other factor which in the opinion of the court should be taken into account.

[Sub-s. (8A) inserted by s. 4(e) of Act 85 of 1997 (wef 1 August 1998).]

(9) In considering the question in subsection (4) the court shall decide the matter by weighing 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, namely –

- (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 financial loss which 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 which may be brought about by the detention of the accused;
- (f) the state of health of the accused; or
- (g) any other factor which in the opinion of the court should be taken into account.

(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.

[Sub-s. (10) substituted by s. 4(e) of Act 12 of 2021 (wef 5 August 2022).]

(11) Notwithstanding any provision of this Act, where an accused is charged with an offence –

- (a) referred to in Schedule 6, 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 which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;
- (b) referred to in Schedule 5, but not in Schedule 6, 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 which satisfies the court that the interests of justice permit his or her release; or
- (c) contemplated in section 59(1)(a)(ii) or (iii), 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 which satisfies the court that the interests of justice permit his or her release.

[Sub-s. (11) substituted by s. 4(f) of Act 85 of 1997 (wef 1 August 1998) and by s. 4(f) of Act 12 of 2021 (wef 5 August 2022).]

(11A)(a) If the Director of Public Prosecutions having jurisdiction intends charging any person with an offence referred to in Schedule 5 or 6, the Director of Public Prosecutions may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.

(b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.

(c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by a Director of Public Prosecutions under paragraph (a) shall, upon its mere production at such application or proceedings, be *prima facie* proof of the charge to be brought against that person.

[Sub-s. (11A) inserted by s. 4(g) of Act 85 of 1997 (wef 1 August 1998) and substituted by s. 4(g) of Act 12 of 2021 (wef 5 August 2022).]

(11B)(a) In bail proceedings, the accused, or his or her legal adviser, is compelled to inform the court whether –

- (i) the accused has previously been convicted of any offence;
- (ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges;
- (iii) an order contemplated in section 5 or 6 of the Domestic Violence Act, 1998, section 3 or 9 of the Protection from Harassment Act, 2011, or any similar order in terms of any other law, was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, and whether such an order is still of force; and
- (iv) the accused is, or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998.

[Para. (a) substituted by s. 4(h) of Act 12 of 2021 (wef 5 August 2022).]

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

(c) The record of the bail proceedings, excluding the information in paragraph (a), shall form part of the record of the trial of the accused following upon such bail proceedings: Provided that if the accused elects to testify during the course of the bail proceedings the court must inform him or her 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.

(d) An accused who wilfully –

- (i) fails or refuses to comply with the provisions of paragraph (a); or
- (ii) furnishes the court with false information required in terms of paragraph (a),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

[Sub-s. (11B) inserted by s. 4(g) of Act 85 of 1997 (wef 1 August 1998).]

(12)(a) The court may make the release of an accused on bail subject to conditions which, in the court's opinion, are in the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.

(b) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused, and a protection order as contemplated in that Act has not been issued against the accused, the court must, after holding an enquiry, issue a protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply.

[Sub-s. (12) substituted by s. 4(i) of Act 12 of 2021 (wef 5 August 2022).]

(13) The court releasing an accused on bail in terms of this section may order that the accused –

- (a) deposit with the clerk of any magistrate's court or the registrar of any High Court, as the case may be, or with a correctional official at the correctional facility where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or
- (b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63 (1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.

[Sub-s. (13) substituted by s. 9(b) of Act 66 of 2008 (wef 17 February 2009).]

(14) Notwithstanding anything to the contrary contained in any law, no accused shall, for the purposes of bail proceedings, have access to any information, record or document relating to the offence in question, which is contained in, or forms part of, a police docket, including any information, record or document which is held by any police official charged with the investigation in question, unless the prosecutor otherwise directs: Provided that this subsection shall not be construed as denying an accused access to any information, record or document to which he or she may be entitled for purposes of his or her trial.

[Sub-s. (14) added by s. 4(h) of Act 85 of 1997 (wef 1 August 1998) and amended by s. 5(b) of Act 34 of 1998 (wef 1 August 1998).]

[S. 60 amended by s. 2 of Act 56 of 1979 (wef 1 June 1979) and by s. 2 of Act 64 of 1982 (wef 21 April 1982) and substituted by s. 3 of Act 75 of 1995 (wef 21 September 1995).]

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[S. 61 repealed by s. 4 of Act 75 of 1995 (wef 21 September 1995).]

62 Court may add further conditions of bail

Any 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 bail-

- (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 forbidden 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 him under this Act;
- (e) which, in the opinion of the court, will ensure that the proper administration of justice is not placed in jeopardy by the release of the accused;
- (f) which provides that the accused shall be placed under the supervision of a probation officer or a correctional official.

[Para. (f) added by s. 38 of Act 122 of 1991 (wef various dates in respect of different magisterial districts - see Schedule appearing after this Act).]

63 Amendment of conditions of bail

(1) Any court before which a charge is pending in respect of which bail has been granted may, upon the application of the prosecutor or the accused, increase or reduce the amount of bail determined under section 59 or 60 or amend or supplement any condition imposed under section 60 or 62, whether imposed by that court or any other court, and may, where the application is made by the prosecutor and the accused is not present when the application is made, issue a warrant for the arrest of the accused and, when the accused is present in court, determine the application.

[Sub-s. (1) substituted by s. 5 of Act 75 of 1995 (wef 21 September 1995).]

(2) If the court referred to in subsection (1) is a superior court, an application under that subsection may be made to any judge of that court if the court is not sitting at the time of the application.

63A Release or amendment of bail conditions of accused on account of prison conditions

(1) If a Head of Prison contemplated in the Correctional Services Act, 1998 (Act 111 of 1998), is satisfied that the prison population of a particular prison is reaching such proportions that it

constitutes a material and imminent threat to the human dignity, physical health or safety of an accused –

- (a) who is charged with an offence falling within the category of offences –
 - (i) for which a police official may grant bail in terms of section 59; or
 - (ii) referred to in Schedule 7;
- (b) who has been granted bail by any lower court in respect of that offence, but is unable to pay the amount of bail concerned; and
- (c) who is not also in detention in respect of any other offence falling outside the category of offences referred to in paragraph (a),
 - that Head of Prison may apply to the said court for the –
 - (aa) release of the accused on warning in lieu of bail; or
 - (bb) amendment of the bail conditions imposed by that court on the accused.

(2)(a) An application contemplated in subsection (1) must be lodged in writing with the clerk of the court, and must –

- (i) contain an affidavit or affirmation by the Head of Prison to the effect that he or she is satisfied that the prison population of the prison concerned is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of the accused concerned; and
- (ii) contain a written certificate by the Director of Public Prosecutions concerned, or a prosecutor authorised thereto by him or her in writing, to the effect that the prosecuting authority does not oppose the application.

(b) The accused and his or her legal representative, if any, must be notified of an application referred to in subsection (1).

(c) The clerk of the court must, without delay, cause the application to be placed before any magistrate or regional magistrate, as the case may be, who may consider the application in chambers.

(d) The application may be considered in the presence of the accused if the magistrate or regional magistrate deems it necessary.

(3)(a) If the magistrate or regional magistrate is satisfied that the application complies with the requirements set out in subsection (2)(a), he or she may –

- (i) order the release of the accused from custody and, if the accused is present, warn him or her to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the court may, at the time of such order or at any time thereafter, impose any condition referred to in section 62 in connection with such release; or
- (ii) reduce the amount of bail determined under section 60 and, if deemed appropriate, amend or supplement any condition imposed under section 60 or 62.

(b) If the accused is absent when an order referred to in paragraph (a)(i) is made or when bail conditions are amended in terms of paragraph (a)(ii), a correctional official duly authorised by the Head of the prison where the accused is in custody must –

- (i) hand to the accused a certified copy of the said order or of the bail conditions as amended and explain to the accused the import thereof; and
- (ii) return to the clerk of the court a certificate under the hand of that official and signed by the accused, that he or she has handed the certified copy of such order or conditions to the accused and that he or she has explained to the accused the import thereof,

and the mere production to the court of the said certificate shall be *prima facie* proof that the said certified copy was handed and explained to the accused.

(c) The provisions of section 72(2)(a) apply, with the necessary changes, in respect of an accused released in terms of paragraph (a)(i).

(4)(a) The National Director of Public Prosecutions may, in consultation with the Commissioner of Correctional Services, issue directives regarding –

- (i) the establishment of monitoring and consultative mechanisms for bringing an application contemplated in subsection (1); and
- (ii) the procedure to be followed by a Head of Prison and a Director of Public Prosecutions whenever it appears that it is necessary to bring an application contemplated in subsection (1).

(b) Any directives issued in terms of paragraph (a) must be submitted to Parliament before they take effect.

[S. 63A inserted by s. 6 of Act 42 of 2001 (wef 7 December 2001).]

64 Proceedings with regard to bail and conditions to be recorded in full

The court dealing with bail proceedings as contemplated in section 50 (6) or which considers bail under section 60 or which imposes any further condition under section 62 or which, under section 63 or 63A, amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate's court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be *prima facie* proof of such conditions or any amendment or supplementation thereof.

[S. 64 substituted by s. 6 of Act 75 of 1995 (wef 21 September 1995), by s. 5 of Act 85 of 1997 (wef 1 August 1998) and by s. 7 of Act 42 of 2001 (wef 7 December 2001).]

65 Appeal to superior court with regard to bail

(1)(a) An accused who considers himself aggrieved by the refusal by a lower court to admit him to bail or by the imposition by such court of a condition of bail, including a condition relating to the amount of bail money and including an amendment or supplementation of a condition of bail, may appeal against such refusal or the imposition of such condition to the superior court having jurisdiction or to any judge of that court if the court is not then sitting.

(b) The appeal may be heard by a single judge.

(c) A local division of the Supreme Court shall have jurisdiction to hear an appeal under paragraph (a) if the area of jurisdiction of the lower court in question or any part thereof falls within the area of jurisdiction of such local division.

(2) An appeal shall not lie in respect of new facts which arise or are discovered after the decision against which the appeal is brought, unless such new facts are first placed before the magistrate or regional magistrate against whose decision the appeal is brought and such magistrate or regional magistrate gives a decision against the accused on such new facts.

(3) The accused shall serve a copy of the notice of appeal on the attorney-general and on the magistrate or, as the case may be, the regional magistrate, and the magistrate or regional magistrate shall forthwith furnish the reasons for his decision to the court or judge, as the case may be.

(4) The court or judge hearing the appeal shall not set aside the decision against which the appeal is brought, unless such court or judge is satisfied that the decision was wrong, in which event the court or judge shall give the decision which in its or his opinion the lower court should have given.

65A Appeal by attorney-general against decision of court to release accused on bail

(1)(a) The attorney-general may appeal to the superior court having jurisdiction, against the decision of a lower court to release an accused on bail or against the imposition of a condition of bail as contemplated in section 65(1)(a).

(b) The provisions of section 310A in respect of an application or appeal referred to in that section by an attorney-general, and the provisions of section 65(1)(b) and (c) and (2), (3) and (4) in respect of an appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of paragraph (a) of this subsection.

(2)(a) The attorney-general may appeal to the Appellate Division against a decision of a superior court to release an accused on bail.

(b) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the attorney-general appeals in terms of paragraph (a) of this subsection.

(c) Upon an appeal in terms of paragraph (a) or an application referred to in paragraph (b) brought by an attorney-general, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.

(3) If the appeal of the attorney-general in terms of subsection (1) (a) or (2) (a) is successful, the court hearing the appeal shall issue a warrant for the arrest of the accused.

[S. 65A inserted by s. 7 of Act 75 of 1995 (wef 21 September 1995).]

66 Failure by accused to observe condition of bail

(1) If an accused is released on bail subject to any condition imposed under section 60 or 62, including any amendment or supplementation under section 63 of a condition of bail, and the prosecutor applies to the court before which the charge with regard to which the accused has been released on bail is pending, to lead evidence to prove that the accused has failed to comply with such condition, the court shall, if the accused is present and denies that he or she failed to comply with such condition or that his or her failure to comply with such condition was due to fault on his or her part, proceed to hear such evidence as the prosecutor and the accused may place before it.

[Sub-s. (1) substituted by s. 8 of Act 75 of 1995 (wef 21 September 1995).]

(2) If the accused is not present when the prosecutor applies to the court under subsection (1), the court may issue a warrant for the arrest of the accused, and shall, when the accused appears before the court and denies that he failed to comply with the condition in question or that his failure to comply with such condition was due to fault on his part, proceed to hear such evidence as the prosecutor and the accused may place before it.

(3) If the accused admits that he failed to comply with the condition in question or if the court finds that he failed to comply with such condition, the court may, if it finds that the failure by the accused was due to fault on his part, cancel the bail and declare the bail money forfeited to the State.

(4) The proceedings and the evidence under this section shall be recorded.

67 Failure of accused on bail to appear

(1) If an accused who is released on bail-

(a) fails to appear at the place and on the date and at the time –

(i) appointed for his trial; or

(ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or

(b) fails to remain in attendance at such trial or at such proceedings,

the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.

(2)(a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.

(b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.

(c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.

(3) The court may receive such evidence as it may consider necessary to satisfy itself that the accused has under subsection (1) failed to appear or failed to remain in attendance, and such evidence shall be recorded.

67A Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail

Any person who has been released on bail and who fails without good cause to appear on the date and at the place determined for his or her appearance, or to remain in attendance until the proceedings in which he or she must appear have been disposed of, or who fails without good cause to comply with a condition of bail imposed by the court in terms of section 60 or 62, including an amendment or supplementation thereof in terms of section 63, shall be guilty of an offence and shall on conviction be liable to a fine or to imprisonment not exceeding one year.

[S. 67A inserted by s. 9 of Act 75 of 1995 (wef 21 September 1995).]

68 Cancellation of bail

(1) Any court before which a charge is pending in respect of which bail has been granted may, whether the accused has been released or not, upon information on oath that –

- (a) the accused is about to evade justice or is about to abscond in order to evade justice;
- (b) the accused has interfered or threatened or attempted to interfere with witnesses;
- (c) the accused has defeated or attempted to defeat the ends of justice;
- (cA) the accused has contravened any prohibition, condition, obligation or order imposed in terms of –
 - (i) section 7 of the Domestic Violence Act, 1998;
 - (ii) section 10 (1) and (2) of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law,

that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;

- (d) the accused poses a threat to the safety of the public, a person against whom the offence in question was allegedly committed, or any other particular person;
- (e) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;
- (eA) the accused has not disclosed that –
 - (i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;
 - (ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law,

was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force;

- (eB) the accused has not disclosed or correctly disclosed that he or she is or was, at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998;
- (f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
- (g) it is in the interests of justice to do so,

issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be cancelled and that the accused be committed to prison until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that –

- (a) he or she has reason to believe that –
 - (i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice;

- (ii) the accused has interfered or threatened or attempted to interfere with witnesses;
 - (iii) the accused has defeated or attempted to defeat the ends of justice; or
 - (iv) the accused poses a threat to the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person;
- (b) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;
- (c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail;
- (d) the accused has contravened any prohibition, condition, obligation or order imposed in terms of –
- (i) section 7 of the Domestic Violence Act, 1998;
 - (ii) section 10(1) and (2) of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law,
- that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;
- (e) the accused has not disclosed or correctly disclosed that he or she is or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998;
- (f) the accused has not disclosed that –
- (i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;
 - (ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law,
- was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force; or
- (g) it is in the interests of justice to do so,

issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.

[S. 68 substituted by s. 10 of Act 75 of 1995 (wef 21 September 1995), by s. 6 of Act 85 of 1997 (wef 1 August 1998) and by s. 5 of Act 12 of 2021 (wef 5 August 2022).]

68A Cancellation of bail at request of accused

Any court before which a charge is pending in respect of which the accused has been released on bail may, upon application by the accused, cancel the bail and refund the bail money if the accused is in custody on any other charge or is serving a sentence.

[S. 68A inserted by s. 15 of Act 59 of 1983 (wef 11 May 1983).]

69 Payment of bail money by third person

(1) No provision of section 59 or 60 shall prevent the payment by any person, other than the accused, of bail money for the benefit of the accused.

(2) Bail money, whether deposited by an accused or any other person for the benefit of the accused, shall, notwithstanding that such bail money or any part thereof may have been ceded to any person, be refunded only to the accused or the depositor, as the case may be.

(3) No person shall be allowed to deposit for the benefit of an accused any bail money in terms of this section if the official concerned has reason to believe that such person, at any time before or after depositing such bail money, has been indemnified or will be indemnified by any person in any manner against loss of such bail money or that he has received or will receive any financial benefit in connection with the deposit of such bail money.

70 Remission of bail money

The Minister or any officer acting under his or her authority or the court concerned may remit the whole or any part of any bail money forfeited under section 66 or 67.

[S. 70 substituted by s. 11 of Act 75 of 1995 (wef 21 September 1995).]

71 ...

[S. 71 substituted by s. 4 of Act 26 of 1987 (wef 26 February 1988) and by s. 39 of Act 122 of 1991 (wef various dates in respect of different magisterial districts - see Schedule appearing after this Act) and repealed by s. 99 (1) of Act 75 of 2008 (wef 1 April 2010).]