



## VOLUME 5: JANUARY-MARCH 2024

# CITIZEN CORNER

QUARTERLY CIRCULAR BY POLICE CIVILIAN OVERSIGHT AU-



### UNDERSTANDING THE RIGHT AND PURPOSE OF BAIL

Some members of the public may become outraged when they are made aware that certain accused persons are granted bail. But perhaps, they forget or are unaware that an accused person is always considered innocent until proven guilty. And, an accused person not only has the right for bail to be considered, they also have the right for bail to be granted too! In this issue, we will discuss what Bail is all about.

#### What is Bail?

This means a person, who has been charged for an offence, can be released from custody until the next court date and most importantly, until trial. Once bail is being considered, it means that a person has been charged. And, according to **Section 3(1) of the Bail Act**, every person charged with an offence is entitled to be granted bail.

#### The Right to Bail

Jamaica's **Charter of Fundamental Rights & Freedoms [Section 14 (4)]** states that any person who is awaiting trial and is detained in custody is entitled to bail unless enough evidence shows for denying such person bail and keeping them in police custody.

**The Bail Act** declares that a person who is charged with an offence should not be held in custody for longer than 24 hours without bail being considered. This does not mean that bail has to be granted..

#### Who can grant Bail?

Three persons are empowered by law to grant Bail:

- ◆ Judge (usually at Court);
- ◆ Justice of the Peace (JP); or
- ◆ JCF Member (Sub-Officer/Officer)

Although everyone has a constitutional right to freedom and the presumption of innocence, **the Bail Act** allows for a police officer to grant bail to a person (Station Bail), unless the person has been taken into custody on a charge of murder, treason or treason felony. In such cases, only a judge is empowered by law to grant bail to a person, who has been taken into custody on a charge of murder, treason or treason felony.

#### The Purpose of Bail

Bail is designed to release a person from custody once the relevant tribunal is satisfied that the person will appear before the court for the matter for which they have been charged. This is in keeping with the presumption of innocence in that any person who has been charged with a criminal offence is deemed to be innocent until proven guilty, or having pleaded guilty.

#### Bail Conditions

The factors that must be considered when awarding or refusing bail are provided for in the Act.

**Section 4(2)** of the Act outlines these factors which include the following:

- ◆ the nature and seriousness of the offence;
- ◆ the defendant's character and associations and community ties;
- ◆ the strength of the evidence against him/her;
- ◆ whether the defendant is a repeat offender; and
- ◆ any other factor, which appears to be relevant, including the defendant's health.

If the court finds that there are substantial grounds for denying bail, the court may impose certain conditions which it believes

will adequately manage the risks that may arise.

Some commonly known conditions which may be imposed on a person to whom bail has been granted include:

- ◆ requiring the person to live at a particular address;
- ◆ surrendering their travel documents to the police; and
- ◆ reporting to a police station at certain times (for instance once per week)

Failure to abide by the conditions imposed by the court can lead to a person being arrested and brought back into police custody.

#### When can Bail be denied?

A person's right to bail is protected by the law to the point that a judge, JP or JCF Member cannot deny bail without substantial reasons.

**Section 4** outlines that bail may be denied to an individual where there are substantial grounds for believing that, if released on bail, the accused person would:

- ◆ fail to surrender to custody;
- ◆ commit an offence while on bail;
- ◆ interfere with witnesses; and/or
- ◆ whether the defendant is a repeat offender; and/or
- ◆ obstruct the course of justice.

If the defendant is charged with an offence allegedly committed while on bail, or where the court finds that the defendant should be kept in custody for his/her own safety, bail may be denied. Notwithstanding this, the Act affords the defendant the right to make an application for bail on each occasion that he appears before the court.