

Describe how both the police and magistrates decide matters relating to the granting of bail to a person awaiting trial

Bail is the release of a criminal defendant in exchange for security to insure his/her appearance in court on the day and time appointed. The form of security given in exchange for bail is usually in the form of money yet can also be surety, where by a person unrelated to the charge in question will stand as assurance that the criminal defendant will appear at court on the appointed day. Every person brought before a court in criminal proceedings has a right to presume unconditional bail.

There are, however, exceptions to these presumptions. In the case of an indictable offence where the defendant is charged with a very serious offence, for example murder and s/he has been previously charged with such an offence in the past. A very rare occurrence is the charge of treason by which no bail is granted and a number of dormant statutes come into effect.

When considering the granting of any form bail, be it conditional or unconditional, the parties involved must consider the answers to a set of questions that outline whether or not the defendant should be granted bail. These include considerations with relation to the seriousness of the offence and the strength of evidence against it. Also taken in to account are the kind of sentence likely to be issued if the defendant is found guilty and the general nature of the individual as a person. Once these basic questions have been applied to the case and no other factor outside of these basic considerations apply a basis in which bail can be refused or granted is formed. Often the factors questioned above are enough to make a decision as to whether bail will be granted, there is then the case of deciding what from the bail should take, whether it be conditional or unconditional and other factors relating to that, there are however more intricate details that are relevant in some cases of bail that must be taken into consideration, with the emphasis upon re-offending.

Having formed a general image of the defendant's nature and chance of bail, further considerations have to be made in order to ensure that there is a secure by which the prosecution can guarantee that the defendant will be present at court on the appointed day and time. If there is no such restriction applied to the bail then it is formally unconditional bail, yet further measures are taken such as the availability of a secure address, this applies for any form of bail.

Where defendant has previously offended, apart from this act in itself counting against him/her, whether or not bail was granted on that occasion and whether there was any conditions applied and were those conditions followed. If a previous has been committed it and be used as a indicator as to whether here is a chance that further offences might be committed. A more serious scenario is that when a previously convicted defendant applying for bail has in a previous bail measure absconded thus breaking the certain degree of trust involved in the issuing of bail. If this is the case the chance of bail being granted on the repeat occasion is slimmed significantly by the mere fact that offending while on bail the first time is just as likely to occur on nay repeat occasion. This breach of bail conditions will not only count as offence in itself but will also increase in severity as a result of the scenario of it, having been committed while on bail. A further measure which can, at times, be influential is the considering of the possible obstruction of witnesses by the defendant while on bail. This is can be assessed by the magistrates simply by considering the nature of the case and strength of the evidence as well as any previous threats to witnesses or a characteristic within the defendant that my suggest an attempt to obstruct the witness.

Once a decision has been made whether or not to award bail one of three things can happen. If bail is refused on the basis of the above mentioned factors then the defendant will be remanded in custody until his/her appointment time in court. However, if bail is granted then it will either be conditional or unconditional as previously stated. With a conditional bail the measures taken will reflect the severity of the case in most cases, where in a more restrictive bail will be imposed upon a more seriously accused defendant. These conditions can vary from surety and money as explained earlier to confiscation of passport documents or being commanded to report to a local authority station between intervals. The idea behind these is not only to prevent the defendant from absconding but also to prevent re-offending and perversion of justice through witness obstruction and other such actions.

The granting of bail is indeed a sensitive issue in that in a sense it judges the defendant without allowing a defence. The awarding of bail is a compromise between a custodial remand and being at liberty, and the conditions imposed serve to regulate the difference. Conclusively my feeling is that bail is as a whole, although deemed a human right, to be presumptuous of a good human nature. Despite the argument that it is a human right as an innocent defendant remanded in custody will receive nothing in the form of compensating his/her time at liberty lost, a more efficient court system would reduce the delay in court trial and thus remove the need for bail which in itself costs time and money. It cannot be said that no bail should be granted, even though in a personal level zero tolerance seems to be the only prevailing manner with which to deal with crime, because of those who will be remanded in custody for their innocence. However, can those few not endure this, let's call it an injustice, and as a result contribute to what would be a declining crime rate.