

Local Statutory Instrument of Anguilla 3/2023

Gazette Dated: 5th October, 2023

WEST INDIES ASSOCIATED STATES SUPREME COURT ORDER, 1967 (S.I. 223/1967)

EASTERN CARIBBEAN SUPREME COURT (BAIL) RULES, 2023

In exercise of the powers conferred under section 17 of the West Indies Associated States Supreme Court Order, 1967, (SI 223 /1967), the Chief Justice and two other Judges of the Supreme Court make the following Rules—

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Interpretation**1.** In these Rules—

“bail” includes—

- (a) bail which is granted, in or in connection with proceedings for an offence, to a person who is accused of the offence;
- (b) bail which is granted, in connection with an offence, to a person who is under arrest for an offence or for whose arrest for the offence a warrant endorsed for bail is issued;
- (c) bail which is granted under any enactment for the time being in force;

“child” shall have the meaning ascribed to it in the Child Justice Act or its equivalent enactment in a Member State of Territory;

“Commissioner” means the Commissioner of Prisons, Director of Correctional Services, Superintendent of Prisons or other person responsible for the administration of prisons or correctional facilities in the Member State;

“court” means a master or judge of the High Court;

“court office” means—

- (a) the place where documents are to be filed and processed and includes a Registry of the High Court;
- (b) members of the court staff who carry out work of a formal or administrative nature;

“magistrate” includes a Justice of the Peace;

“offence” means an act, attempt to act or omission to act which is punishable by law in a Member State or Territory;

“person” includes a body, whether corporate or unincorporated;

“vary”, in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions for bail.

Overarching principles**2.** In considering bail, the court shall have regard to following overarching principles—

- (a) that a person accused of committing an offence is presumed innocent until proven guilty;
- (b) the right to liberty enjoyed by every person under the Constitution in each Member State and Territory;
- (c) that bail must not be unreasonably withheld and cogent reasons must be shown for keeping a person accused of committing an offence in custody; and
- (d) that where there are factors militating against the grant of bail, the court must first consider what conditions can be imposed to mitigate, minimise or eliminate the likelihood of these factors.

Application of these Rules

3. These Rules deal with—

- (a) applications to the court to review a decision on bail made by a magistrate;
- (b) applications to vary bail granted by the High Court or to revoke bail granted by the High Court;
- (c) where appropriate, applications for bail made to the High Court; and
- (d) the procedure to be followed by unrepresented or indigent persons seeking bail.

Application relating to bail

4. (1) An application—

- (a) for bail;
- (b) to review the decision on bail of a magistrate;
- (c) to vary bail granted by the High Court; or
- (d) to revoke bail granted by the High Court;

must be made in Form 1 set out in the Schedule to these Rules.

(2) If the applicant is in custody and is unrepresented, the applicant must lodge the application with the Commissioner and all filing fees shall be borne by the applicant.

(3) The Commissioner must immediately file the application at the court office.

(4) If the applicant is represented by a legal practitioner or not in custody, the applicant must file the application at the court office.

(5) An application under this rule may be filed electronically where electronic means for filing have been made available by the court office.

(6) The court office must immediately—

- (a) serve a copy of the application on the Attorney General;
- (b) fix a date, time and place for the hearing of the application; and
- (c) give notice of the date, time and place to—
 - (i) the applicant,
 - (ii) the Attorney General, and
 - (iii) the Commissioner.

Hearing of application

5. (1) On hearing an application under rule 4, the court may—

- (a) grant or refuse bail;
- (b) confirm, vary or reverse the decision of the magistrate on bail;
- (c) where applicable, vary bail fixed by the High Court; or
- (d) revoke bail granted by the High Court.

(2) Within 7 days of the date on which an order under subrule (1) was made or as soon as practicable after the date of the order, the court office must serve a copy of the order on the—

- (a) applicant, if unrepresented;
- (b) Chief or Senior Magistrate, if any;
- (c) magistrate who made the decision under review, where applicable;
- (d) Attorney General; and
- (e) Commissioner.

Considerations for the grant of bail

6. (1) Subject to any enactment in a Member State or Territory dealing with bail, a court granting bail shall consider all the facts and circumstances of the particular case and have regard to principles including—

- (a) whether there are substantial grounds for believing that the accused will abscond if granted bail;
- (b) whether there are substantial grounds for believing that the accused will commit an offence while on bail;
- (c) whether there are substantial grounds for believing that the accused will interfere with witnesses or otherwise obstruct the course of justice, whether in relation to themselves or any other person;
- (d) whether there are substantial grounds for believing that the accused should be kept in custody for their own protection or, if they are a child, for their own welfare.

(2) In determining whether any of the circumstances specified in subrule (1) exist in relation to an applicant, the court shall take into account the factors including—

- (a) the nature and seriousness of the offence;
- (b) the strength of the prosecution's case against the applicant;
- (c) the applicant's character, antecedents and community ties;
- (d) the applicant's record with regard to the fulfilment of their obligations under any previous grants of bail;
- (e) the applicant's health profile as evidenced by a report from a medical practitioner; and

- (f) any other factors which appear to be relevant.

Bail applications for indigent and unrepresented persons

7. (1) A person who is indigent and unrepresented may make an application for bail using Form 2 set out in the Schedule to these Rules.

(2) An applicant must complete all sections of the bail application form, unless there is information that is unknown to them in which case the applicant must indicate by writing “unknown” in the relevant section of the form.

(3) An applicant must sign the bail application form by writing their full name or where unable to do so by making an “X” as their mark.

(4) The bail application form should be signed or marked in the presence of a witness who must be either a commissioner for oaths, a justice of the peace, a prison or correctional facility officer or a police officer.

(5) After the bail application form has been signed by the applicant in the manner required by subrules (3) and (4), the witness should sign the relevant part of the form and affix a seal or stamp, as appropriate.

(6) Once completed and signed, the bail application form must be given to the relevant prison authorities who must then make the necessary arrangements for the application to be sent to the court office for filing and processing.

Assistance by the Commissioner

8. Where an unrepresented applicant makes an application for bail, the Commissioner shall take reasonable steps to assist the applicant in communicating with any proposed sureties identified by the applicant.

Waiver of bail application fees for indigent and unrepresented persons

9. The requirement for the payment of any fees relating to a bail application does not apply to an indigent person who is unrepresented.

Bail application forms

10. Copies of the bail application form must be made available at the prison and correctional facility in each Member State and Territory for use by persons in custody to which these Rules apply.

Application of Rules to Anguilla

11. These Rules apply to any criminal proceedings taking place in any court in Anguilla but where there is a conflict then the Bail Act, 2021 and the Criminal Procedure Act R.S.A. c. C150 takes precedence.

Citation and commencement

12. (1) These Rules may be cited as the Eastern Caribbean Supreme Court (Bail) Rules, 2023.

(2) These Rules shall come into effect in the Member States and Territories of the Eastern Caribbean Supreme Court on the 9th day of October, 2023.

SCHEDULE**FORM 1**

(Rule 4(1))

APPLICATION FOR BAIL OR TO REVIEW, VARY OR REVOKE BAIL**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

A.B.

Applicant

and

C.D.

Respondent

TAKE NOTICE that the Applicant, [Name of Applicant] hereby applies for:

[a review by the High Court of the decision of His/Her Honour [Name of Magistrate] on bail given on the.....day of..... 20... at the District/Magistrate's Court situate at [location of District/Magistrate's Court]

OR

[a variation of the terms and conditions of bail fixed by the Hon. Justice [] on the [] day of [] at the High Court situate at [location of High Court]

OR

[the grant of bail]

The details of the order made in relation to bail are as follows:

{recite the details of the bail conditions...}

The order which is sought is that:

{set out the details of the order or the variation of the conditions of bail being sought ...}

The grounds on which it is contended that the decision on bail be varied or revoked are as follows:

{set out in precise terms the grounds on which the order should be revoked or varied}

[An affidavit in support accompanies this application]

Dated

Signed

[Legal practitioner/s for the] Applicant
NOTICE:

This application will be heard by the Judge in Chambers on the.....day of.....,20.. at
a.m./p.m. If you do not attend this hearing an order may be made in your absence.

OR

The Judge in Chambers will deal with this application by..... – N.B. This notice of
application must be served as quickly as possible on the respondent to the application.

The office of the High Court is at [xxx xxx xxx], telephone number xxx-xxxx, email address [xxx
xxx xxx]

The office is open between [..... am.] and [.....p.m.] toexcept public
holidays.

FORM 2

(Rule 7(1))

BAIL APPLICATION FORM

FOR INDIGENT AND UNREPRESENTED PERSONS

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
CASE NO:**

Length of time in custody so far: _____

Date when you were placed on remand: _____

Surname: _____ Given Names: _____

Alias: _____ Date of Birth: _____

Age: _____ Male ☐ Female ☐Name of Parent/Guardian (if under 18) and phone number:
_____Home address:

Nationality: _____ Immigration Status (if non-national): _____

Identification Number (Driver's License, National Identification, or Passport):
_____Whereabouts of Passport (include name of person who can get it and their phone number):
_____Occupation – type of work:
_____Name of employer and place of work (if any):

Work phone number: _____

Offence(s) for which bail is sought (attach charge sheet if available):

Date(s) of offence(s):

Date(s) when charge(s) laid: _____

Police station and name of arresting officer(s): _____

Name(s) of co-accused (if any):

List of Crimes for which you have been charged at this time:

Have you applied for Bail before and been denied? Yes ☐ No ☐

If yes, Judge or Magistrate who refused Bail:

Date(s) bail refused: _____

Reasons given for the refusal of bail:

Reasons for this application. Explain: (a) Why the court should grant you bail.

(b) If this is not your first application for bail, what further information or legal argument,

if any, has become available since the last bail decision was made.

Date of next court appearance and where:

List all matters for which you were on bail at the time of your arrest:

State whether you have complied with previous bail conditions and if not, why not:

Previous convictions:

Name of possible surety(s):

Address of surety(s):

Telephone number of surety(s): _____

Community ties of surety(s):

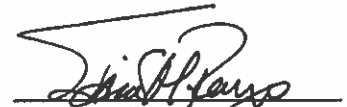
The statements in this form of four pages are true to the best of my knowledge and belief and I sign the form knowing that if it is tendered in evidence I shall be liable to prosecution if I have wilfully stated anything I know to be false or do not believe to be true.

Applicant's signature or mark if signature not possible:

Date: _____

Before Commissioner for Oaths or Justice of the Peace, Prison Officer, Prison Official or Police Officer (sign and print name and stamp/seal where applicable):

Made this ^{4th} day of October, 2023.


Chief Justice


Justice of Appeal


High Court Judge