



Expat Counsel

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CRIMINAL LAW IN THAILAND: Part XI Bail and provisional release



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Last week we discussed the fact that after arrest but before trial the police may release a suspect or, pursuant to the procedures we discussed, hold him or her temporarily until trial. We were deluged after the column ran with callers asking about friends or relatives currently being held after arrest. Virtually all wanted to know about the procedure for getting an accused released prior to trial.

If an accused is being held pending trial, he or she — or any interested person such as a parent, child or relative — may file an application with a court for provisional release pending trial.

With whom must this application be filed? This depends on the stage of the proceeding. Generally, if the accused has not yet been formally charged in court, the application must be filed with the police or the public prosecutor.

Even if the accused has not been formally charged, but is held pursuant to a detention

order issued by a court, the application must be filed with the court. If the accused has already been formally charged, the application must be to the court that will try the case.

The official deciding on whether provisional release will be allowed must consider these factors:

- How serious is the charge?
- How reliable is the evidence?
- What are the general circumstances of the case?
- How reliable is the accused?

If bail or security will be required, how reliable is it?

- Once the accused is out will he or she flee?

- Will there be any collateral damage to society from releasing the accused?

Based on the above inquiry, provisional release will not be allowed if the person deciding on it concludes the accused:

- will flee
- will interfere with the evidence in the case
- will cause society any other danger or that the bail or person posting bail is unreliable, provisional release will not be allowed.

Normally, if provisional release is allowed, and the punishment for the offense exceeds imprisonment for five years, the accused must post bail.

This can be done by depositing cash,

securities or having someone else put up some form of security. The accused must sign an oath or affirmation agreeing to the terms of the bail.

With lesser crimes, bail is more discretionary, and many people who are accused of lesser crimes are released without bail upon the signing of an oath or affirmation that they will appear at the trial.

Provisional release is valid during the official inquiry or until the accused is ordered to be detained by a court. Generally it can't exceed three months from the date of release, but it can be extended, with the court's approval, up to as much as six months. ■

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