

CHAPTER THREE

POST ARREST PROCEDURES

- **After the arrest of a person, the major procedures are bail, remand and habeas corpus.**
- **There is a possibility for the individual detained to be released by the police or taken to court within the limit of time set by the law.**
- **The court may either permit or deny the bail question and order remand. Appeal lies from such a decision.**
- **In case a person is detained unlawfully, one may request ***habeas corpus***.**

Remand

Initial Appearance

- Due process requirements mandate that within a reasonable time after arrest, the suspect must be brought before a magistrate and given formal notice of the charge. Such notice occurs at the initial appearance.
- At this time the accused is also notified of his or her legal rights, and bail is determined for those who did not receive temporary release during the booking phase.
- For some kinds of minor offenses, such as being drunk and disorderly, or in cases in which a simple citation has been issued, summary trials and sentencing are conducted at this initial appearance, with no further court processing.
- In other situations, the magistrate presiding at the initial appearance may determine that the available evidence is not sufficient to warrant further criminal processing and consequently may dismiss the case.

The Judicial Decision to Release

- An arrested person must promptly be taken before a magistrate, who is a judge at the lowest level of the judicial hierarchy and who makes a determination that probable cause exists. The magistrate will use a standard of probable cause that is a bit tougher than that of the police officers.**
- For one thing, the magistrate has more time to view the evidence, to reflect, and then to decide than the police officer had at the scene of the crime.**
- The magistrate must also repeat the Miranda warning and then whether to release the defendant on bail or on percentage bail, to release on recognizance or ROR (no bail is required on condition that the defendant appears for trial and remains law-abiding in the meantime); to release the defendant in to some one's custody; or to detain the defendant in jail pending further proceedings.**

Release on Bail

- **Persons accused, convicted or under arrest for an offence may be granted bail, which means they are released under a duty to attend court or the police station at a given time.**
- **There is a general presumption in favour of bail for unconvicted defendants, but there are some important exceptions.**
- **Bail need not be granted where there are substantial grounds for believing that, unless kept in custody, the accused would fail to surrender to bail, or would commit an offence, interfere with witnesses or otherwise obstruct the course of justice.**
- **In assessing these risks, the court may take account of the nature and seriousness of the offence and the probable sentence, along with the character, antecedents, associations and community ties of the defendant.**

- **Bail can be granted subject to conditions, such as that the accused obtain legal advice before their text court appearance or that the accused or a third party give a security (which is a payment into court that will be forfeited if the accused fails to attend a court hearing).**
- **When a defendant fails to attend court any money held by the court is immediately forfeited and it is up to the person who paid that money to show it should not be forfeited.**

Forms of Bail

- In the UK there are three types of bail namely:
- Police Bail where a suspect is released without being charged but must return to the police station at a given time.
- Police to Court where having been charged a suspect is given bail but must attend his first court hearing at the time and Court given
- Court bail where having already been in court a suspect is granted bail pending further investigation or while the case continues

Right to bail

Bail by a court

- **Under current law, a defendant has an absolute right to bail if the custody time limits have expired and otherwise ordinarily a right to bail unless there is sufficient reason not to grant it.**
- **The main reasons for refusing bail are that the defendant is accused of an imprisonable offence and there are substantial grounds for believing that the defendant: will abscond; will commit further offences whilst on bail; or will interfere with witnesses.**
- **The court should take into account: the nature and seriousness of the offence or default (and the probable method of dealing with the defendant for it), the character, antecedents, associations and community ties of the defendant, bail record, and the strength of the evidence.**
- **The court may also refuse bail for other reasons.**

Habeas Corpus

- Habeas Corpus (literally, in Latin, “you have the body”) is the procedure by which a person illegally detained may obtain release from such detention. It is a civil remedy, although in most cases the person seeking release from custody is detained on a charge of a criminal offence.
- It is available, either by statute or constitutional provision, in every state, but it is generally considered an extraordinary remedy, to be used only when other adequate procedure exists to protect the petitioner’s rights. It is not a second chance to litigate the case or a substitute for normal appeal procedures.
- In England and United States, this procedure is proved very valuable in protecting individuals from arbitrary restraint by government officials.

- **In Ethiopia, an application for habeas corpus comes within the exclusive jurisdiction of the High Court.**
- **It may be made by any person who has been restrained otherwise than in pursuance of an order duly made under the law.**
- **On receiving the application, the High Court immediately issues a summons directing the person having custody over the restrained person to appear together with the person restrained on day to be fixed in the summons and to show cause why the restrained person should not be released.**
- **If the court concludes that the restraint is unlawful, it must order the immediate release of the person in custody, and the custodian must immediately release him.**
- **Read Arts 177 – 179 of the Civil Procedure Code of Ethiopia.**

CHAPTER FOUR

PROSECUTION AND PRELIMINARY INQUIRY

Investigation and the Initial Decision to Prosecute

Prosecution - One of the key activities undertaken in the criminal procedure.

- **The powers of the police - In England and Wales, as previously mentioned, the police have a double function: they not only investigate the alleged offence, but also take the first steps in instituting a prosecution.**
- **In England, unlike in France (or even Scotland) they do not have to report their actions to the public prosecutor, much less get his permission to take any particular course of action.**