

**MONTSERRAT**  
**STATUTORY RULES AND ORDERS**  
**S.R.O. 32 OF 2023**

**EASTERN CARIBBEAN SUPREME COURT (BAIL) RULES**

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**THE EASTERN CARIBBEAN SUPREME COURT (BAIL) RULES 2023  
MADE BY THE CHIEF JUSTICE AND TWO OTHER JUDGES OF  
THE SUPREME COURT UNDER SECTION 309 OF THE CRIMINAL  
PROCEDURE CODE (CAP. 4.02) AND SECTION 17 OF THE  
SUPREME COURT ORDER (CAP. 2.01).**

**1. Citation and Commencement**

- (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.

**2. Interpretation**

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 or Territory;

“**Commissioner**” means the Commissioner of Prisons, Director of Correctional Services, Superintendent of Prisons or other person responsible for the administration of

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prisons or correctional facilities in the Member State or Territory;

**“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.

### 3. Overarching principles

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.

### 4. Application of these Rules

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;

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- (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.

**5. Application relating to bail**

- (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 Director of Public Prosecutions;
  - (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 Director of Public Prosecutions, and
    - (iii)* the Commissioner.

**6. Hearing of application**

- (1)** On hearing an application under rule 5, the court may —
  - (a)* grant or refuse bail;
  - (b)* confirm, vary or reverse the decision of the magistrate on bail;

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- (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)* Director of Public Prosecutions; and
  - (e)* Commissioner.

**7. Considerations for the grant of bail**

- (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 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