



ANALYSIS

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1991, No. 106

An Act to amend the Crimes Act 1961

[21 October 1991]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Crimes Amendment Act (No. 2) 1991, and shall be read together with and deemed part of the Crimes Act 1961 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of December 1991.

2. When bail not allowable—The principal Act is hereby amended by repealing section 318, and substituting the following section:

“318. (1) No one who is charged with any crime against section 73 or section 76 of this Act (which relate to treason) or against section 78 of this Act (which relates to espionage) shall

be granted bail except by order of the Governor-General or a Judge of the High Court.

“(2) No person to whom this subsection applies shall be granted bail, or allowed to go at large, except by order of a Judge of the High Court.

“(3) No person to whom subsection (2) of this section applies shall be granted bail or allowed to go at large unless the person satisfies the Judge on the balance of probabilities that bail should be granted, and, in particular (but without limiting any other matters in respect of which that person must satisfy the Judge under this subsection), that the person will not, while on bail or at large, commit any offence involving violence against, or danger to the safety of, any other person.

“(4) In deciding, in relation to any person to whom subsection (2) of this section applies, whether or not to grant bail to that person or allow that person to go at large, the need to protect the public shall be the paramount consideration.

“(5) Subsection (2) of this section applies to any person (being a person who is of or over the age of 17 years) who is charged with any specified offence (as defined in subsection (7) of this section) and who has 1 or more previous convictions for any specified offence (whether those convictions were for the same specified offence or for different specified offences).

“(6) No person (being a person who is of or over the age of 17 years) who is found guilty of, or pleads guilty to, any specified offence (as defined in subsection (7) of this section) and who has 1 or more previous convictions for any specified offence (whether those convictions were for the same specified offence or for different specified offences) shall, while waiting to be sentenced or otherwise dealt with for the first-mentioned specified offence, be granted bail or allowed to go at large.

“(7) In this section, the term ‘specified offence’ means any offence against any of the following provisions of this Act:

“Section 128 (sexual violation):

“Section 167 (murder):

“Section 168 (murder):

“Section 171 (manslaughter):

“Section 173 (attempt to murder):

“Section 188 (1) (wounding with intent to cause grievous bodily harm):

“Section 188 (2) (wounding with intent to injure):

“Section 189 (1) (injuring with intent to cause grievous bodily harm):

“Section 189 (2) (injuring with intent to injure):

“Section 198A (as inserted by section 3 of the Crimes Amendment Act (No. 2) 1986) (using any firearm against law enforcement officer, etc.);

“Section 198B (as so inserted) (commission of crime with firearm);

“Section 234 (robbery);

“Section 235 (aggravated robbery).”

3. Two new sections (relating to bail) inserted—The principal Act is hereby amended by inserting, after section 319, the following sections:

“319A. Detention while bail bond prepared and signed—Where any person is granted bail by the High Court or a District Court, a Judge or District Court Judge (as the case may require) may direct that the person be detained in the custody of the Court—

“(a) For such time, not exceeding 2 hours, as may be necessary to enable the bail bond to be prepared and signed; and

“(b) If, within that period of 2 hours, the person is not released (whether by reason of having refused to sign the bail bond or for any other reason), for such time as may be necessary to enable the issue of a warrant for the detention of the person in custody.

“319B. Variation of conditions of bail—(1) Subject to subsection (3) of this section, where any person is granted bail by the High Court, any Judge of the High Court may, on the application of the prosecutor or the person granted bail, make an order varying or revoking any condition of bail or substituting or imposing any other condition of bail.

“(2) Subject to subsection (3) of this section, where the High Court has, in granting bail to any person, imposed the condition that the person report to the police at such time or times and at such place or places as the Court orders, any Registrar of the High Court or of a District Court may, on the application of the person granted bail, make an order varying the time or times or the place or places at which the person granted bail is required to so report.

“(3) No application shall be made under subsection (1) or subsection (2) of this section in respect of any bail bond that has been entered into in any case where sureties are required, unless the sureties to the bail bond have consented in writing to the making of the application.

“(4) Where, pursuant to subsection (1) of this section, any Court varies or revokes any condition of bail or substitutes or imposes any other condition of bail, the following provisions shall apply:

“(a) If the person granted bail is present at the Court, the Registrar shall forthwith prepare a new bail bond setting out the conditions of bail as so amended (if any), satisfy himself or herself that the person granted bail understands the conditions of bail, and require that person to sign the bail bond:

“(b) If the person granted bail is not present at the Court, the Registrar of the Court that varied or revoked or substituted or imposed the condition shall send written notice to the person granted bail and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions as so amended (if any).

“(5) If, in any case to which subsection (4) of this section applies, the person granted bail fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person granted bail.”

4. Arrest of absconder—Section 320 of the principal Act (as amended by section 12 of the Judicature Amendment Act 1979 and by section 4 of the Crimes Amendment Act (No. 2) 1980) is hereby amended—

(a) By inserting in the first sentence of that section, immediately before the words “High Court”, the words “Court of Appeal or the”:

(b) By inserting in the second sentence of that section, after the words “bail, or”, the words “, subject to section 318 of this Act,”.

5. Three new sections (relating to breach of bail) inserted—The principal Act is hereby amended by inserting, after section 320, the following sections:

“320A. **Person on bail may be arrested without warrant in certain circumstances**—(1) Where, in respect of any person who has been released on bail by the Court of Appeal or the High Court or a District Court, any member of the Police believes on reasonable grounds that—

“(a) The person has absconded or is about to abscond for the purpose of evading any appearance or further appearance in Court; or

“(b) The person has contravened or failed to comply with any condition of bail,—

the member of the Police may arrest the person without warrant.

“(2) Every person who is arrested under subsection (1) of this section shall be brought before a High Court Judge or a District Court Judge as soon as possible.

“(3) In any such case, the Judge or District Court Judge, on being satisfied that the person had absconded or was about to abscond or has contravened or failed to comply with any condition of bail, shall reconsider the question of bail; and, subject to section 318 of this Act but notwithstanding any other provision of this Act, the person shall thereafter be bailable only at the discretion of the Judge or District Court Judge, as the case may require.

“320B. **Failure to answer bail**—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$2,000 who, having been released on bail by the Court of Appeal or the High Court or a District Court,—

“(a) Fails without reasonable excuse to attend personally at the time and the Court specified in the bail bond or, as the case may require, the notice of bail; or

“(b) Fails without reasonable excuse to attend personally at any time and place to which during the course of the proceedings the hearing has been adjourned.

“320c. **Non-performance of condition of bail bond to be certified by Judge**—(1) Where any person who has been released on bail at any time fails to comply with any condition of bail, any Judge or District Court Judge may certify on the back of the bail bond or, as the case may require, the notice of bail the non-performance of that condition.

“(2) Every certificate given by a Judge or District Court Judge under subsection (1) of this section shall be prima facie evidence, for the purposes of section 320B of this Act, that the person has failed to comply with the condition of the bail bond or, as the case may require, the notice of bail specified in the certificate.”

6. Powers of Court of committal as to custody or bail of accused—Section 323 of the principal Act is hereby

amended by inserting, after the word “may”, the words “, subject to sections 318 and 319 of this Act,”.

7. Bench warrant—Section 350 (2) of the principal Act is hereby amended by inserting, after the words “sittings or”, the words “, subject to section 318 of this Act,”.

8. Motion in arrest of judgment. Sentence—Section 371 (6) of the principal Act is hereby amended by inserting, immediately before the word “If”, the words “Subject to section 318 of this Act,”.

9. New heading and sections inserted—The principal Act is hereby amended by inserting, after section 379A, the following heading and sections:

“Appeal on Question of Bail

“379B. Appeal from decision of High Court relating to bail—(1) Subject to subsections (4) and (5) of this section, this section applies to any decision made (whether pursuant to any enactment or rule of law or otherwise) by any Judge of the High Court whereby—

“(a) Any person is granted or refused bail; or

“(b) Any condition of bail is imposed or substituted or revoked or varied; or

“(c) The imposition of any condition of bail, or any particular condition of bail, is refused; or

“(d) The variation or revocation of any condition of bail is refused.

“(2) Either the prosecutor or the person to whom the decision relates may appeal to the Court of Appeal against any decision to which this section applies.

“(3) For the purposes of this section, the failure of a Judge of the High Court to impose any condition of bail, or any particular condition of bail, on any occasion on which any such condition could lawfully have been imposed shall be deemed to be a refusal to impose such a condition.

“(4) Nothing in this section applies in respect of any decision made in any proceedings for a drug-dealing offence within the meaning of Part II of the Misuse of Drugs Amendment Act 1978.

“(5) Nothing in this section applies in respect of any decision made by a Judge of the High Court if that decision was made on appeal from any decision of a District Court Judge or Justice or Justices.

“379C. Procedural provisions relating to appeal on question of bail—(1) Every person wishing to appeal under section 379B of this Act shall file notice of that person’s intention to appeal with the Registrar of the Court of Appeal within 10 days after the date of the decision to be appealed against.

“(2) Every appeal under section 379B of this Act that is not heard before the date on which the decision appealed against ceases to be of any effect shall lapse on that date, and shall be deemed to have been dismissed by the Court of Appeal for non-prosecution.

“(3) No decision of a Judge appealed against under section 379B of this Act shall be suspended merely because notice of that appeal has been given.

“(4) On any appeal under section 379B of this Act the Court of Appeal may confirm the decision appealed against, or vary it, or set it aside and make such other order as the Court of Appeal thinks ought to have been made in the first place.

“379D. Execution of decision of Court of Appeal—(1) Where, on any appeal under section 379B of this Act against a refusal to grant bail to any person, the Court of Appeal determines that bail shall be granted, the Court of Appeal shall order that the person be released on bail, subject to such conditions as the Court of Appeal thinks fit.

“(2) Where, on an appeal under section 379B of this Act in respect of any condition of bail, the Court of Appeal cancels or amends a condition of bail or substitutes or imposes any other condition, the Registrar of the Court whose decision was appealed against shall send written notice to the person bailed and to every surety (if any) requiring them to attend at a specified time and place for the execution of a fresh bail bond containing the conditions (if any) required to give effect to the Court of Appeal’s decision.

“(3) If, in any case to which subsection (2) of this section applies, the person bailed fails without reasonable excuse to attend at the time and place required, or fails to enter into a fresh bail bond as aforesaid, the Registrar shall refer the matter to a Judge, who may issue a warrant for the arrest of the person bailed.

“(4) If, on an appeal under section 379B of this Act against a grant of bail, the Court of Appeal determines that bail shall not be granted or, as the case may be, should not be continued, a warrant for the detention in custody of the person to whom the determination relates shall be issued out of the Court and

signed by a Judge; and the person who executes that warrant shall ensure that a copy of the notice of the result of the appeal is given to the person arrested when the warrant is executed or as soon as practicable after the warrant is executed.

“(5) Any person to whom subsection (4) of this section applies and who is not in custody may be arrested without warrant by any constable or any officer of a penal institution.”

10. Reserving question of the law—Section 380 (5) of the principal Act is hereby amended by inserting, after the word “shall”, the words “, subject to section 318 of this Act,”.

11. Powers of Court of Appeal where appeal is on question of law—Section 382 (2) of the principal Act is hereby amended by inserting, after the expression “section 379A” (as inserted by section 8 (4) of the Crimes Amendment Act 1966), the expression “or section 379B”.

12. Granting of bail to appellant, and custody pending appeal—Section 397 (2) of the principal Act is hereby amended by inserting, immediately before the words “The Court of Appeal”, the words “Subject to section 318 of this Act,”.

13. Intermediate effects of appeal—Section 399 (6) of the principal Act is hereby amended—

- (a) By inserting in the first sentence, immediately before the words “the Court may”, the words “, subject to section 318 of this Act,”;
- (b) By inserting in the second sentence, immediately after the word “who”, the words “, subject to section 318 of this Act,”.