

CHAPTER VI

CONCLUSION AND PROPOSALS FOR REFORM

The evidence accumulated in this paper indicates that the present administration of the bail system in the Lower Courts is in a highly unsatisfactory state. Accused persons appearing at their trial or for sentence from custody are at a significant disadvantage in comparison with the non-custody cases.

The view that a Court which knows that an offender has already been locked up in prison for even a short time might be more easily be moved towards leniency where the alternative might have been a short custodial sentence cannot be supported by statistics. A reference to Tables 5.5, 6A & B & 7A & B indicate that an accused who was remanded in custody either pending trial or sentence was more likely to receive a custodial sentence.

Much has been said of the effectiveness of the method devised by the Vera Foundation in indentifying "safe risks" among offenders for release on bail. The method devised by the Foundation to assess an accused person's eligibility for release on bail aims at determining this suitability by reference to certain standardised criteria relating mainly to his family, home, residence in

the area, employment, previous record, if any and other factors bearing on his community roots. This method is based on an assessment by points on the various community roots criteria. For example, 3 points are awarded if the accused lives with his family and has weekly contacts with the other family members. Two points are given for living with the family or having weekly contacts with other family members and 1 point for living with a non-family member. If the offender scores 5 points, he is regarded as qualifying for a recommendation to the Court that he be given bail on his own recognizance. The judge is however free to accept or reject it. The effectiveness of this method can be gauged from the following facts. At the end of the three-year trial period, 3505 persons had been released under this procedure, of whom only 1.6 per cent failed to appear as compared with the normal 3 per cent absconding rate. Apart from its effectiveness in indentifying "good risks", its other advantages are obvious. It standardises bail practices in the Courts by ensuring that bail decisions are made on the basis of a basic minimum of information about the accused.

There are certain reasons however which makes a complete transplattation of this method into our bail system quite impossible. The Vera Foundation method is useful only in a bail system which has as its principal objective the presence of the accused at his trial. This objective is in fact the only legitimate consideration that a Court in the United States can consider when deciding questions of bail.

But in the context of the Malaysian bail system, a points system modelled on the lines of the Vera Foundation is inapplicable when other factors are also considered to be relevant. For example, the Vera Foundation method will not be able to ascertain the probability of further offences being committed by the accused while on bail.

Having rejected the method devised by the Vera Foundation, other measures to improve the administration of the bail system in the Lower Courts will have to be considered. It is a fair view that the practise and policy of the Lower Courts is to grant bail to as many accused persons as is compatible with the due enforcement of the law. However this aim will go unfulfilled if steps are not taken to assist the accused person in finding sureties, where they are required to do so by their bail conditions. It will be recalled that nearly 59 per cent of the accused persons who were offered bail were remanded in custody because of their inability to provide a surety

In this connection, several suggestions can be offered. One is that more extensive use should be made of release on personal bond. From a study of the 2124 cases, the writer discovered that only 2 accused persons were released on personal bond¹²⁹. To facilitate an increase in the use of the personal bond procedure, Magistrates and Presidents should perhaps be given the powers to incorporate

¹²⁹This figure does not include the 1092 students who were released on personal bond on a charge under s.147 of the Penal Code.

some deterrent conditions in bail bonds to reinforce the likelihood of re-appearance. These may take the form of a requirement that the accused person reports himself to the police station regularly, that he should reside at a particular address and that he should notify the police when there is a change of address or restrictions could be placed on his movements after a certain time.

Bail with sureties should only be required of those accused persons who present a clear social danger or who exhibits an intention to abscond. These may be gathered by an enquiry into the circumstances attending their arrest. For those who are "good risks" they should only be required to execute a personal bond for their appearance. A greater use of the personal bond can only inject more fairness into the bail system, thus ending the iniquity of releasing only those accused persons who can offer sureties and detaining those who cannot in custody to suffer the collateral disadvantages.

Where sureties are required, every reasonable opportunity should be provided to the accused to contact persons likely to stand surety for him. In this connection, telephone facilities should be made readily available to the accused. It would be better still if the accused can be warned before the first Court appearance of the desirability of sounding out possible sureties in advance.

Since the problems associated with bail arise only when a suspect is arrested, police powers of arrest should be made more precise with a clear bias towards more extensive use of the summons procedure. The police should be given wider powers to summons "on the spot."

To enable Magistrates to exercise their discretion in a more common sense manner, Friedland¹³⁰ suggests the following criteria:

- 1) Previous convictions for absconding from bail,
- 2) Previous convictions for an indictable offence committed while awaiting trial for an indictable offence,
- 3) The bringing of a subsequent charge for an indictable offence alleged to have been committed while the accused was waiting trial for an indictable offence,
- 4) Serious risk of intimidating witnesses,
- 5) Serious risk of absconding.

At present, Magistrates and Presidents continue to use the crime charged (and in cases where a specific amount is involved), that amount, as the principal criterion in setting bail. It clearly appears that of the factors least taken into account is the accused person's ability to find sureties of the amount contemplated.

The criteria for granting bail and setting bail amounts should be clearly spelled out. There is at present too much uncertainty as to the relative importance of the

¹³⁰Friedland loc cit p. 188

various relevant considerations. There are also differences of opinion as to which of these criteria can properly be regarded as independent principles justifying the denial of bail. These factors should be clarified.

Such a revision of the administration of the bail system would go along way to enable Courts to avoid the possibility of unwittingly discriminating against certain accused persons merely because they cannot find sureties. This can only serve to enhance the notion of "justice" in our legal system.