

# HIGH COURT OF JUSTICIARY

## PRACTICE NOTE

No. 1 of 2012

### Interim Liberation

1. The purpose of this practice note is to inform practitioners of the court's understanding of, and approach to, the granting of interim liberation.
2. Section 112 (2) (a) (ii) of the Act of 1995 provides that where the appellant has not lodged a note of appeal the application for bail must set out the proposed grounds of appeal. The purpose of this provision is to allow the court to make an assessment as to whether the grounds are arguable. However, even if that is done, section 112 (2A) provides that it is only in "exceptional circumstances" that interim liberation should be granted in advance of the note of appeal. The court will, ordinarily, be justified in refusing an application *in hoc statu* pending the result of the sift; this will be especially so where there is no report from the judge dealing with the grounds of appeal
3. The issues mentioned in paragraph 2 do not apply where leave to appeal has been granted. That being said, the grant of leave to appeal does not provide an "automatic passport" to liberation. The onus is on the appellant to demonstrate circumstances justifying the grant of liberation pending a hearing on the appeal and the court will take into account the strength of the grounds of appeal before determining whether it is in the interests of justice to grant the application
4. It is not a good reason for granting an application for interim liberation only to state that, if it were not granted, any sentence may have been served by the

time of any appeal hearing, albeit that that is a factor in deciding whether to grant liberation in short sentence appeals.

5. The court will bear in mind that the presumption of innocence ceases to apply after conviction. Although in summary cases the grant of leave to appeal is likely to be a strong indicator that liberation ought to follow, the same consideration does not apply with equivalent force in solemn cases, where the appellant stands convicted of what is likely to be a serious offence. Indeed, interim liberation should not be granted where (i) the appellant poses a danger to the public; or (ii) the appellant is likely to abscond or otherwise interfere with the course of justice
  
6. Where a person has been in custody pending trial, it will not normally be appropriate to grant that person interim liberation following upon their conviction. In this situation, the appellant will already have been deemed unsuitable for bail and, unless circumstances have changed since the refusal of bail, the same considerations which justified refusal of bail ought to apply with greater force, in the absence of the presumption of innocence, at the stage of interim liberation.

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27<sup>th</sup> February 2012