

**Thailand: Southern Border Provinces  
Administrative of Justice**

**Issues related to Section 21 of ISA: a lesson learned on rights to bail<sup>1</sup>**

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**1. A “serious” case being closely watched by public, and bail thus denied**

On 26 June 2012, the public prosecutor filed charges against Mr. Mazabbri Kabuting and four other alleged offenders for “being assembled together to commit an act of violence or to do anything to cause harm to life in order to cause a breach to peace and to inflict fear among people; to collect forces or arms to make preparations for committing terrorism; to make a premeditated attempt on life of officials; to be members of a secret association or a criminal association; to have in possession explosive material without any licenses from competent officials; to transfer explosive material without permission; and to cause an explosion likely to cause injury to the other person or a thing belonging to the other person”. The charges were filed with the Provincial Court of Nathawee. A deposit including land title deeds worth 2.4 million Baht was put up as surety to bail them out. Nevertheless, the Court ordered that “the temporary release (of the accused) shall not be granted since it is a serious case and is being closely watched by public. Fear is abounding that the accused shall evade.”

**2. Background of the case: Section 21 of ISA and the protraction of prosecution**

The case stems from an explosion that took place on 2 April 2011 at a fresh market in Nikhom Thepha, Thepha District, Songkhla province, Southern Thailand. Six rangers were injured as a result of the explosion, as well as seven other civilians. Prior to being charged with this offence, four of the five accused in this case including Mr. Mazabbri Kabuting, Mr. Zubir Sulong, Mr. Sapaeing Waelae, and Mr. Abbrik Sahamankud, had been held in custody from the middle of April 2011 under the Emergency Decree on Public Administration in state of Emergency B.E. 2548 (2005) (Emergency Decree). They had been detained together with five other villagers. Later, relatives of the persons held in custody filed a complaint with the Provincial Court of Pattani to challenge the detention under the Emergency Decree. They claimed that there was no reason for the officials to continue the detention. The Court thus ordered release of the eight persons held in custody under the Emergency Decree including: Mr. Sapaeing Waelae, Mr. Manasae Samaae, Mr. Dolloh Dendayad, Mr. Suriya Waenawae, Mr. Abbrik Sahamankud, Mr. Hamdi Muzor, Mr. Mazabbri Kabuting and Mr. Roheem Lamso.

Despite the release order of the Provincial Court of Pattani, for the eight persons being held in custody, police officers refused to let some of the detainees go, claiming that they were wanted under arrest warrants as per the Criminal Procedure Code (CPC), and had to enter inquiry process of the officers. Mr. Manasae Samaae and Mr. Dolloh Dendayad were advised by security officials to adopt a procedure provided for by Section 21 of the Internal Security Act B.E. 2551 (2008) (ISA) in order to see the cessation of criminal action against them. However, Mr. Manasae and Mr. Dolloh Dendayad refused to enter the process and vowed to fight the charges through a normal criminal justice procedure. **On 22 July 2011**, the public prosecutor of Nathawee filed charges with the Court against Mr. Manasae Samaae and Mr. Dolloh Dendayad related to security and the explosion at the Nikhom Thepha Market on 2 April 2011. Both were granted bail.

The four other persons held in custody: Mr. Mazabbri Kabuting, Mr. Zubir Sulong, Mr. Sapaeing Waelae, and Mr. Abbrik Sahamankud are still accused of committing crimes under the security laws. Similarly, they have received advice from security officials to enter the procedure of ISA’s Section 21. Eventually, security agencies explained during a press release that the four alleged offenders had decided to enter the procedure provided for by ISA’s Section 21 and have been temporarily released on the condition that they have to report themselves to the Court on a regular basis.

**On 14 December 2011**, the four alleged offenders were brought by the public prosecutor of Nathawee to appear before the Court so that the Court could ask if they were willing to receive training, which is a requirement of ISA’s Section 21. Prior to this court appearance, the four alleged offenders had sought assistance and advice from the Muslim Attorney Centre Foundation (MAC), and had since become aware of their rights and had

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<sup>1</sup> The case is being handled by the Muslim Attorney Centre Foundation (MAC)

gained an understanding of the justice process. Some of them complained that they were subjected to coercion and physical abuse to enter the procedure. Thus, the four alleged offenders told the Court that they were not willing to enter the procedure of ISA's Section 21 and would like to defend themselves through a normal criminal justice procedure. The public prosecutor asked the Provincial Court of Nathawee to postpone the case until 23 January 2012, and on that date, the four alleged offenders still insisted on refusing to enter the procedure of ISA's Section 21 to receive training. As a result, the Court adjourned the hearing, dismissed the case, as well as disposed of the case.

The intention of Section 21 of the ISA is to provide training as an alternate venue through which a person who has committed an act of violence, because of his or her immaturity, can reenter society. Successful completion of the training will also put an end to any criminal prosecution against the accused. It is a mechanism devised by the state and used to solve problems in the Southern Border Provinces. Nevertheless, the procedure requires the consent of the alleged offender, and he or she has to act in compliance with all the conditions set forth by the Court in order to be eligible for training. As the four alleged offenders refused to enter this process, they will now have to defend themselves through the normal justice process. After the case was dismissed by the Court, officials have still attempted to persuade the four alleged offenders to enter the training procedure of ISA's Section 21. They have insisted on defending themselves through a normal justice process, even though the prosecution hearing has been postponed four times, from 6 March 2012, to 19 April 2012, to 21 May 2012 and 1 June 2012, without them being informed of the reason. The four alleged offenders continued to report themselves to the public prosecutor regularly and eventually, charges were filed against them, plus another alleged offender, on 26 June 2012. A request was also made for consolidating their cases with the cases against Mr. Manasae Samaae and Mr. Dolloh Dendayad, as the criminal case no. 1572/2554. Also, the public prosecutor objected to a bail request for all four accused. The Court granted both the request for case consolidation and an objection to bail request citing the above reasons.

### **3. Issues of temporary release**

In a criminal suit, it is essential that the presumption of innocence is upheld, and an accused is afforded the right to sufficiently defend him or herself as well as to have a right to temporary release since he or she is presumed to be innocent. The right to temporary release is strongly upheld in the Constitution of the Kingdom of Thailand, and a denial of such a right is reserved for exceptional cases. Section 108/1 of the Criminal Procedure Code (CPC) provides that an order for temporary release shall not be granted should be there any reasonable ground to believe that the following shall happen;

- 1) The alleged offender or accused will evade;
- 2) The alleged offender or accused will go to tamper with evidence;
- 3) The alleged offender or accused will go to cause other danger;
- 4) The insurer or bail principle is not likely to be believed;
- 5) The temporary release may become a hindrance to or cause damage to the ongoing investigation of the inquiry by officials or the proceeding in the court

In this case, three major reasons were cited by the Court to deny the right to temporary release: (1) its seriousness, (2) its being closely watched by public, and (3) fear that the accused shall evade. Only the third reason can be said to be a lawful reason to deny bail. However, given that the four accused had regularly been reporting themselves to the Court and the public prosecutor, as required, since the hearing on Section 21 was still pending, until the postponement of the four other hearings, the evidence strongly suggests that the four accused have every intention of defending themselves through a lawful procedure, and not to evade prosecution. Given the behavior of the accused, it would be difficult for the general public to understand why the Court refused to grant them bail, claiming that they may try to evade prosecution.

Further injustice is revealed in this case when one considers that the other two accused, Mr. Manasae Samaae and Mr. Dolloh Dendayad, whose case began in July 2011 and is now at the stage where the review of evidence is taking place, were granted temporary release. The other four accused are being prosecuted for the same offence, of the same degree of seriousness, but conversely have been denied bail. In this context, the claim that the case is too serious to warrant a granting of bail does not sound credible.

The discriminating practice between the two accused and the other four accused could stem from the fact that the latter were supposed to enter the procedure under ISA's Section 21, but that this process was foiled when the accused later refused to take part in the training. Thus, their case has commanded more attention from the public. However, public attention can never be lawfully cited as a reason to deny a person's temporary release.

Nevertheless, cases of denial of temporary release citing public impression have taken place, though. For example, the case of Mr. Amphon (last name withheld) or “Arkong”, an accused in a lèse majesté case who had reported himself regularly to the authorities, but after the case was filed the Court refused to grant him bail claiming that he might flee. The Court order was made on 18 January 2011 stating that “Reviewing the severity of the charge and the case circumstance which involves an act against the King, the Queen, and the Heir-apparent, one would conclude that it is a serious matter and affects profoundly the feeling of Thai people. Should the accused be temporarily released, it is feared that he might evade. Thus, the bail request is dismissed. And the refusal shall be put in a writ in order that the accused and the bail principle be informed promptly.” Later, Mr. Amphon died while being held in custody in prison. Prior to his death, eight bail requests had been made and all were denied. It should be noted that in any security related case, the Court of Justice often cites the feeling of the people as a reason to deny bail, though it is not a lawful reason and does not reflect the impartiality and independence of the Court.

#### **4. Concluding**

From the beginning, the accused in this case have had little knowledge of the inner workings of the justice system. Given that security related cases in the Southern Border Provinces are complicated and often involve multiple different factors, inappropriate and misinformed defense strategy techniques can be made without proper legal guidance early on. This reality reflects the fact that Thailand’s justice process does not effectively enable all accused persons to have access to lawyers and legal advice at the most critical stages of a case. Efforts made by officials to coerce, persuade and intimidate accused, as well as, the postponement of hearings by the public prosecutor, despite the intention of the alleged offenders to fight the charges constitutes breaches of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment-CAT<sup>2</sup>. Furthermore, the denial of bail request is not based on factual information regarding the case.

The right to a prompt and fair trial includes the right to temporary release, but such a right is not realized in a security related case. The alleged offenders or accused in security related cases do not ask for a reform of the justice process or legal amendment. ***They simply demand that the independence and impartiality of the persons in the justice process is adequately expressed.***

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<sup>2</sup> Thailand has been a state party to the UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) since 1 November 2007.