

Statement by DoJ on prosecution procedure

The Department of Justice (DoJ) today (March 5) issued the following statement setting out the general principles, without commenting on the proceedings of an ongoing case, in the handling of prosecutions:

In respect of an application for review of admission to bail lodged by the DoJ yesterday (March 4), it should be noted that the case in question involves application for bail under Article 42(2) of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law). The Court of Final Appeal delivered a judgment on February 9 on how to apply the granting of bail to a person charged with an offence under the National Security Law.

According to section 9H of the Criminal Procedure Ordinance (Cap 221), the Secretary for Justice may apply to a judge (a judge means a Justice of Appeal, a judge of the Court of First Instance and a deputy judge of the Court of First Instance) to review the decision of admission to bail by a magistrate. Section 9J of the Ordinance provides that a person may also apply to a judge to be admitted to bail if his or her bail application has been refused by a magistrate.

In accordance with section 9I of the Ordinance, when the Secretary for Justice indicates that an application for a review of the decision of admission to bail would be lodged under section 9H, the magistrate shall upon application by the Secretary for Justice if the person so admitted is present, order that the person be detained in custody and be brought before a judge.

In general, bail application is heard in chambers (open to public). However, section 9P of the Ordinance shall be observed when making reports of bail proceedings. Section 9P(2) sets out that a report of bail proceedings may contain:

- (a) the name of the person being the subject of those proceedings;
- (b) the offence with which the person being the subject of those proceedings is charged;
- (c) the identity of the court and the name of the magistrate, District Judge or judge, as the case may be;
- (d) the names of counsel and solicitors, if any, engaged in the bail proceedings;

- (e) the result of the bail proceedings and where the person being the subject of those proceedings is admitted to bail subject to any condition under section 9D(2), the details of any such condition;
- (f) where the bail proceedings are adjourned, the date and place to which they are adjourned.

In general, arrested persons are required to be brought up before a magistrate as soon as practicable after they have been charged and detained. The presiding magistrate would have to deal with the issue of bail and to settle the upcoming course of the proceedings. In an event that defendants are prosecuted under the same case, it has to be presided over by the same magistrate in accordance with the procedure.

The DoJ will not tolerate the malicious attacks on the decision which was made in accordance the law, adding that members of the public should refrain from commenting on any case in which the legal proceedings are still ongoing.

Ends/Friday, March 5, 2021