

Temporary Release in the Saudi Criminal Procedures & Jordanian Law: A Comparative Study

Dr. Khadijah Abdel Hamid Mustafa Al-Qteishat
Assistant Professor at the Laws Department
Faculty of Business Administration
Princess Nourah Bent Abdel Rahman University
Tel. 0596357452

Abstract

Law and order are undoubtedly the most important and primary guarantors of the rights and freedoms of individuals. This is what makes the laws and regulations of criminal proceedings important, in that they are concerned with the achievement of such guarantees. Pre-trial detention or incarceration is one of the most justified measures to restrict human freedom. The law regulates the so-called provisional release of the accused and makes him an alternative to imprisonment in return for many guarantees that prevent the accused from escaping justice or harming public security. Most laws and regulations give wide powers to varying degrees to the competent authorities to issue temporary release decisions. Therefore, this research aims to identify the nature of this procedure and the rules governing it in both the Saudi Criminal Procedure Code and the Jordanian Code of Procedure.

Introduction:

The temporary release of the suspect arrested is considered as being of the most important subject matters for the criminal laws, regulations and procedures being concerned with the rights of individuals and their freedoms in addition to its seeking to maintain the said freedoms and establish the same to the extent necessary. Further, it represents one of the guaranties established by law for the individuals as arresting is deemed to be as a temporary measure pending the investigation that shall result in restricting the freedom of the suspect for a specific period of time according to restrictions set by law. However, and if the reasons for arrest shall be no longer available, then the competent party shall release the suspect and not to keep him arrested for having the said reasons been removed. In fact, the said release is subject to restrictions set by the law and the order regarding its types and the cases set for each type as well as the counter guaranties of the same.

In fact, and based on the fact that the arrest is principally considered as a temporary procedure that is necessary for the investigation resulting in restricting the freedom of the suspect for a specific period of time according to restrictions set by the law, the if the reasons for the said arrest shall no longer be existing, then the competent party should release the suspect and not to keep him arrested for having the reasons been removed

In fact, it may be stated that the arrest, imprisoning and releasing of the suspect are deemed of the most important criminal procedures in general being related to the freedoms of the persons and having a direct impact on them. In addition, the said procedure stands to be as a part or an essential element of the order for which the court action may not be suspended regarding a suspect while retaining him arrested unless the said arrest shall be for another reason or court action other than the one regarding which the order was issued as the issuing of the order means ceasing the procedures of the court action regarding the suspect to whose benefit the order was issued and that keeping the suspect arrested does not mean ceasing the procedures of the criminal court action for him ^[1].

In fact, this means that against the provisional release, then the laws and regulations grant the individual the right to file a temporary release motion pending investigating the acts assigned to him or till referring him to the judicial competent party or otherwise pending delivering the court order in his regard. Hence, the temporary release stands to be of the guaranties secured by the order and the law to secure the rights of the individual and his freedoms

The issue of the research:

The issue of the research is represented in the need to approach the nature of the said procedure and the rules regulating the same in each of the Saudi Criminal Procedures Law and the Jordanian Procedures Law.

[¹] Mohammad Ben Damian Al-Enezi: The Rights of the Suspect Person at the Investigation Stage, First Edition, Halabi Law Publications, Beirut-Lebanon, 2010. P 167.

The significance of the research:

The significance of the research derives from the negative impacts incurred by the arrested suspect out of the arrest on the psychological and social levels as the human efforts were concerted to enact laws that regulate releasing him according to specific restrictions in order to attain the interest of the community which matter has resulted in causing the criminal procedures laws and regulations to include the release regulation to meet the necessities of the human rights who has been vested with the honor of God Who secured maintaining his human rights and dignity.

Further, the temporary release is deemed of the significant matters in the field of the legal and regular study particularly that it coincides with the freedoms of the individuals and their rights for which it is necessary for the laws to seek to maintain the said freedoms and establish the same as necessary. In addition, the order and law are themselves one of the guaranties set for protecting the rights of the individuals and their freedoms.

Objectives of the research:

On view of the issue of the research expressed, then the research aims at approaching the nature of the said procedure and the rules regulating it according to each of the Saudi Criminal Procedures Law and the Jordanian Procedures Law.

The previous studies:

The main previous studies looked through by the researcher may be referred to as follows:

A study (Abdel Wahab Ben Saleh Al-Assaf, 51428), MA Thesis titled: "The Temporary Release According to the Saudi Criminal Procedures Law-A Principal Applied Comparative Study".

A study (Wesam Mohammad Naser, 2010), MA Thesis titled: "Release on Bail According to the Palestinian Legislation-A Comparative Study".

A study (Fahed Ibrahim Al-Hamid, 51424), MA Thesis titled: "The Temporary Release According to the Criminal Procedures Law-A Comparative Study".

Methodology of research:

The researcher adopted the comparative analytical descriptive method for the presentation, analyzing and comparing the legal and regulating provisions as well as to state at the similar and different aspects of the same.

Plan of research:

The research is constituted of two chapters as follows:

First chapter: the nature of the temporary release, its types and the jurisdiction:

- ❖ **First section:** definition of the temporary release
- ❖ **Second section:** types of the temporary release

Second chapter: the guaranties for the temporary release according to the Saudi and Jordanian Procedures Laws:

- ❖ **First section:** the guaranties for the temporary release according to the Saudi Law
- ❖ **Second section:** the guaranties for the temporary release according to the Jordanian Law

First Chapter The Nature of the Temporary Release, its Types and the Jurisdiction

The principle of the rule of law necessitates adopting such regulations and procedures which though they are not completely identical but are much similar which the experience and traditions prevailing at several communities of the world-that have various political systems and economic situations-proved to be necessary for the protection of the individual against the control of the authority and to enable him to enjoy the human dignity^[1].

[¹] Omar Wasif Al-Shareef: The General Theory for the Provisional Arrest, First Edition, Halabi Law Publications, Beirut, 2004. P 385.

In fact, and out of the seriousness of the arrest other than its being an exceptional investigation procedure and not a punishment in addition to its being, by nature, a temporary procedure necessitated by considerations concerned with the interest of the investigation, then, and in case it shall be proved that the said considerations are no longer available, the arrest should be terminated which termination has several form for which the legislator sought to lay down a special regulation for executing it and establishing guaranties for the same in order to secure placing it at a sound scope in confirmation from its part for the rule of the innocence of the suspect who is exposed to such procedure^[1].

In fact, the temporary release is considered of the most important guaranties secured by the criminal procedures regulations ad laws for which this chapter approaches stating at the nature of the temporary release, its types and the jurisdiction.

First section: definition of the temporary release:

The criminal procedures regulations and laws do not include a specific definition for the temporary release while they were satisfied by providing for regulating its provisions leaving the mission of the definition for the jurisprudence that was keen to lay down several definitions which were mostly concerned with the matter of the arrest and its exceptional nature. In fact, the jurisprudence tended to define the temporary release of the suspect as being "releasing the suspect arrested provisionally for investigation for having the imprisonment reasons been removed"^[2].

Further, the temporary release is defined as: "releasing the defendant arrested for investigation by an order delivered by a competent authority after having the considerations for the best interest of the investigation been removed or changed which release shall be on bail or for no bail"^[3].

In addition, and in another definition, then the temporary release is: "releasing the suspect arrested for a criminal action by the authority that ordered his arrest or by a higher authority for having the justifications of the same been removed for a bail or for no bail"^[4].

In fact, and through the definition of arrest, then the nature of the temporary release may be approached as the temporary release is an exceptional procedure allowed by the law for considerations concerned with the interest of the investigation for which, and in case of removing of the considerations, then the said arrest should be removed by the temporary release of the suspect pending the delivery of an order against him or the revealing of other causes necessitating his arrest^[5].

Furthermore, the temporary release was defined as being: "releasing the person detained for a criminal investigation, the suspect being assigned with a charge or being provisionally imprisoned on a temporary basis"^[6].

Respectively, another definition is: "releasing the suspect provisionally imprisoned the non-satisfaction of the causes of the provisional imprisonment or the removal of the same"^[7]. Further, it was defined as being the release left for the discretion of the authority vested by the law with the right to issue the decision in its regard while taking into consideration the valid investigation and the necessities of justice^[8]. Further, it should be taken into

[¹] Mohammad Said Nammour: *The Criminal Procedures Law: Explanation of the Criminal Procedures Law*, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman-Jordan, 2005. P 382.

[²] Wesam Mohammad Naser: MA Thesis titled: *Release on Bail According to the Palestinian Legislation-A Comparative Study*- University of Al-Azhar-Gaza, 2010. P 62.

[³] Mahmoud Najib Hosni: *Explanation of the Criminal Procedures Law*, Dar Al-Nahda Al-Arabia, Cairo, 1988. P 711.

[⁴] Abdel Kader Saber Jarada: *Crime in Principle and Fighting*, Second Edition, Afaq Library, Gaza-Palestine, 2010. P 771.

[⁵] Abdel Wahab Ben Saleh Al-Assaf: *The Temporary Release According to the Saudi Criminal Procedures Law-A Comparative Applied Principal Study*, MA Thesis, Nayef Arab University for Security Science, Riyadh, 1428 Hejra, P 30.

[⁶] Hussam Al-Din Mohammad Ahmad: *Explanation of the Criminal Procedures Law*, First Part, Second Edition, Dar Al-Nahda Al-Arabia, 1996. P 616.

[⁷] Adli Amir Khaled: *Practical Guidelines in Criminal Action*, Al-Quds Press, Alexandria, 2001. P 144.

[⁸] Yousef Al-Faouri: *Releasing on Bail*, Works of the Seminar on the Restrictions of Arrest, Releasing and

consideration that it is subject to the discretion of the investigator or the court for which they may not be restricted except by the interest of the investigation ^[1].

Hence, the status is to distinguish it from the definite release after the execution of the penalty.

However, the release may be carried out at any stage of the action or may be effected after adopting the arrest decision for specific conditions that shall result in the removal of the causes that led to adopting the decision of arresting for which the arrested suspect shall be released then whether the said conditions shall emanate during the stage of investigation, referral or trial ^[2].

However, the researcher believes that the temporary release may be defined as being: an order issued by a competent party by itself or upon the request of the suspect to the effect of releasing the suspect arrested on account of a criminal action for having the causes of arrest been removed which release may be on bail or for no bail and shall be of a temporary evidence.

Second section: types of the temporary release:

The suspect accused of committing a crime may be released if specific conditions shall be met to be assessed by the court provided that it shall be taken into consideration that the matter of releasing shall not be of an impact on the conduct of the investigation and trial while the releasing shall not result in jeopardizing the public security ^[3].

Hence, and in case the causes of the provisional imprisonment shall be removed, then the suspect should be released. In fact, and in principal, the investigator shall be the one who shall assess the removal of the said causes or the subsistence of the same. However, there are cases in which the said assessment shall lapse and that the investigator shall have no choice except to order the release of the suspect. Hence, the release of the arrested person is possible in principle and obligatory in some cases ^[4].

However, the Saudi Criminal Procedures Law and the Jordanian Criminal Procedures Law included provisions that show the cases of the obligatory release and the cases of the possible release.

First: the obligatory temporary release:

The same means that the investigation party shall promptly release the suspect arrested provisionally without having a discretionary power to compare between the imprisonment, release and provisional imprisonment in addition to having no power to reject it or cause it to be conditional upon providing a guarantee without having the suspect so requested himself ^[5].

As for the cases of the obligatory temporary release cases according to the Saudi Law and the Jordanian Law, then the same are represented as follows:

1- The expiration of the arrest term:

No human being may be arrested or imprisoned except upon the order of the authorities concerned with the same according to the Law ^[6].

Hence, and in case the investigator shall issue an order to the effect of arresting the suspect and that the regular term of his arrest expired having no matters newly developed necessitating the continuation of the arrest, then

Standards of the Same, Judicial Institute of Jordan, Amman, 1997. P 141.

[¹] Abdel Hamid Al-Shawarbi: The Guaranties of the Suspect at the Primary Investigation Stage, Maaref Institution, Alexandria, 1988. P 359.

[²] Farouk Al-Kilani: Lectures on the Jordanian Criminal Procedures Law and the Content, Second Part, Eighth Edition, Dar Al-Farabi, Cairo, 1985. P 174.

[³] Edwar Ghali Al-Thahabi: The Criminal Procedures, Third Edition, Ghareeb Library, Alexandria, 1990. P 457.

[⁴] Awad Mohammad: Criminal Procedures Law, First Part, University Culture Institution, Alexandria, 1989, P 540.

[⁵] Abdel Wahab Ben Saleh Al-Assaf: Previous Reference, P 36.

[⁶] The Jordanian Criminal Procedures Law, Article (103).

the investigator should release the suspect as provided for in article (114) of the Saudi Criminal Procedures Law while article (114) of the Jordanian Criminal Procedures Law provided that he term of arrest may not exceed (15) days.

2- The non-existence of a regular or legal cause:

Article (120) of the Saudi Criminal Procedures Law provided that the investigator shall order releasing the suspect if he shall find that his arrest has no cause or for insufficient evidences. In fact, the same was confirmed by article (83) of the Bylaw of the Criminal Procedures Law to the exclusion of those arrested on account of big crimes which means that the obligatory release may not be effected except in small crimes ^[1].

On the other hand, article (130/B) of the Jordanian Criminal Procedures Law provided that the prosecutor shall order the release of the defendant if he shall be arrested and in case he shall consider it necessary to carry out other investigations in the action.

In fact, the Jordanian Law has been remarkable in having differentiated between the types of the crimes of which some may not be principally subject to arrest as if being a violation punished by a fine or an offense which punishment shall be less than six months and that the suspect shall be of a known domicile in which case the arrest should be released for no bail for having no cause for arrest as the said crimes have no risk and that the law includes no provision that allows arresting on their account for which arrest may not be ordered in such cases to the contrary of which the arrest shall be for no cause and that the arrested person should be released immediately.

3- The detaining of the arrested person for a term exceeding the penalty or that the term of his arrest shall exceed six months:

The investigator shall issue an order to the effect of releasing the suspect temporarily after being arrested for six months according to the provisions of article (114) of the Saudi Criminal Procedures Law

Further, the temporary release shall be obligatory also if the term of arrest shall exceed the minimum limit set for the penalty of his crime if the penalty shall be assessed.

As for the Jordanian legislator, then it provided for the temporary release of the suspect after his being detained for a term of more than the penalty or that the term of his arrest shall exceed six months as stated in the provision of article (114) of the Jordanian Criminal Procedures Law.

4- In case of keeping the papers or the action or otherwise having the arrested person satisfied all the rights due from him:

In fact, these are two cases the Saudi Criminal Procedures Law has been unique as Saudi Criminal Procedures Law stated upon several reasons for keeping the action after the investigation. However, some of the said reasons were stated upon explicitly while the same are derived implicitly from the context of the provisions of the law. Further, the said reasons may Sharia, civil or substantive or otherwise based on the non-importance and seeking to attain the public interest. In fact, the said reasons include as provided for by article (124) of the Law to the effect that: "If the investigator, and after the investigation, shall find that the evidences are insufficient for filing the action, then he recommend to the head of the department to keep the action and release the arrested suspect unless being arrested for another cause. However, the order of the head of the department to the effect of supporting the same shall be effective except in big crimes in which case the order shall not be effective unless approved by the president of the investigation commission and the public prosecution department or the delegated person of the same. Further, the order shall include the reasons on which it has been based while the order shall be notified to the person concerned with the private right and if having passed, then the notification shall be made upon the heirs in general at his domicile". Further, article (62) of the same Law stated that: "The investigator, and if he shall deem no basis for conducting the action, then he shall recommend to keep the papers while the head of the department to which the investigator shall be reporting may order to keep them ^[2].

[¹] The Bylaw of the Saudi Criminal Procedures Law.

[²] The Saudi Criminal Procedures Law.

In fact, the Law caused the temporary release to be obligatory in case of issuing an order to the effect of keeping the papers, keeping the action or in case of having the arrested person satisfied all the rights due from him as stated upon in articles (62m 63 and 112) of the same Law.

Second: the possible temporary release

The same is the possible releasing of the arrested suspect which matter is left for the discretion of the authority vested by the Law with the right to issue the order in its regard taking into consideration the valid investigation and the necessities of justice ^[1].

The possible release is left for the discretion of the authority vested by the law with the power to release to the interest of the investigation and hence, and in cases other than those set for the obligatory release, then the investigation authority that issued the arrest order or that vested with the power of the order itself by the authority may issue an order to release the arrested suspect in case it shall be of a belief that the interest of the investigation no longer necessitates keeping him arrested ^[2].

In fact, the possible release in this case shall be left for the concerned party as the causes necessitated that it would issue the order to arrest the suspect shall be the same that shall cause it to release him in case the authority, the issuer of the arrest order, shall consider the removal of the said causes. Hence, the possible release of the arrested person shall be by the initiative of the authority concerned with the investigation in which case the said release shall be in response to the interest of the investigation. However, it may be effected upon the request of the suspect himself as article (120) of the Saudi Criminal Procedures Law provides that the investigator shall order the release of the suspect possibly whether by himself or upon the request of the suspect if he shall find no damage on the investigation and there shall be no fears that the suspect may escape provided that the suspect shall be committed to appear if and whenever so requested. Further, article (121) provided that in case of the possible temporary release that the suspect shall designate a place to be approved by the investigator.

As for the Jordanian legislator, then it allowed the investigation authority to issue an order to the effect of recalling the subpoena (arrest) in the offences and crimes punished by a temporary penalty provided that the suspect shall have an established domicile in the Kingdom while in case of the crimes punished by the imprisonment for life or execution, then the investigation authority may not recall the subpoena (arrest) therein which matter has been expressly provided for according to article (114/4) of the Criminal Procedures Law which allowed releasing the suspect on bail or for no bail whether by the order of the concerned party itself or upon the request of the arrested person provided that the suspect shall designate a domicile in addition to providing a commitment to the effect of appearing before the investigation authorities whenever so requested in addition to attending the hearings of the trial and not to escape the execution of the order delivered against him.

However, the Jordanian legislator distinguished between the possible release in the crimes and the possible release in the offences as it vested the power of releasing in the crimes upon the court while it vested no power upon the public prosecutor even if the investigations shall be conducted before him. Further, it laid down an exception to this rule whereby the court, and in special conditions, may approve the release of the arrested person on bail in the crimes after referring the action to it shall deem the same as being of no hindrance to the progress of the investigation and the trial in addition to not encroaching the public security ^[3].

Further, the Jordanian legislator caused the possible release in the offences as being restricted to the crimes punished by sentencing to jail for a term exceeding two years while in the cases of the crimes punished by sentencing to jail for a term less than two years, then arresting here shall be not allowed. In addition, it allowed arresting in the offences of theft and unintentional hurting if the defendant shall be of no fixed and known domicile as stated by article (114/2).

[¹] Suleiman Abdel Moneim: Criminal Procedures Law, The University Institute for Studies, Publishing and Distribution, Beirut-Lebanon, 1997. P 566.

[²] Abu Amer Mohammad Zaki: Criminal Procedures, University Institutifon for Studies, Publishing and Distribution, Alexandria, 1990, P 216.

[³] Mohammad Said Nammour: Previous Reference, P 384.

Second Chapter

The Guaranties for the Temporary Release According to the Saudi and Jordanian Procedures Laws

The temporary release of the arrested person is deemed of the guaranties secured by the executive regulations and laws for laying down suitable alternatives for the imprisonment and arrest in order to respect his rights and maintain his freedom against wasting or restriction for no legal or civil cause but, however, and against the same, the regulations and laws provided that the suspect shall provide the guaranties to the concerned parties to the effect of his appearance before them in case so requested and not to escape the execution of the court orders if delivered against him. In fact, the said restrictions may be necessary for the temporary release of the suspect and may be possible being subject to the discretion of the competent party. However, the bail is considered as being of the most important civil and legal guaranties set in this regard ^[1].

However, this chapter approaches stating at the position of the Saudi Criminal Procedures Law and the Jordanian Criminal Procedures Law regarding the guaranties of the temporary release

First section: the guaranties for the temporary release according to the Saudi Law:

The Saudi Law decided that the guaranty in case of the temporary release shall be of the guaranties decided by the investigator or the concerned party if he/it shall deem the same as being necessary for which it caused the same to be of two types: a personal guaranty or a financial guaranty.

However, the personal guaranty is defined as being: "A commitment made by a person in which he shall be committed to bring the suspect released upon request and to perform all the obligations imposed upon him if he shall fail the said commitment ^[2].

As for the financial guaranty, then the same is defined as being: "A financial sum to be estimated by the investigator and paid by the suspect or another person to guarantee the performance of the suspect for the obligations imposed upon him whereby they shall be applied to pay the sums incurred by him in case he shall fail the performance ^[3].

Further, the personal guaranty is defined as being a commitment of an individual to the effect of guaranteeing the performance of the suspect for the obligations imposed on him upon the temporary release whereby the guarantor shall pay a specific sum, i.e. the amount of the guaranty in case the suspect shall fail the observance while the financial guaranty is a financial sum to be estimated by the investigator and paid by the suspect or another person to the state treasury to guarantee the performance of the suspect for the obligation imposed on him whereby the same shall be applied to the payment of the sums incurred by him to that effect if failing the performance ^[4].

In fact, the assessment of the value of the financial guaranty shall be left for the competent party which orders the temporary release in which the position of the suspect and his financial condition shall be taken into consideration in addition to considering the risk of the crime and the fears for him to escape as well as the conditions that were taken into consideration when issuing the order to provisionally imprison him. However, the value of the guaranty may be decreased if it shall be shown to the competent authority ordering the release that it has acted beyond the capability of the suspect ^[5].

Nevertheless, the Saudi Criminal Procedures Law does not provide for restricting the guaranty in the temporary release of the suspect but it left the same to the system of the investigation commission, the public prosecution and its bylaw as article (158) of the Draft Bylaw of the Investigation Commission and the Public Prosecution provided that the investigator, and upon the request of the arrested person or by himself, may order releasing the

[¹] Abdel Wahab Ben Saleh Al-Assaf: Previous Reference, P 73.

[²] Mohammad Abdullah Al-Murr: The Provisional Imprisonment- A Comparative Study, First Edition, Dar Al-Fiker Al-Gamie, Alexandria, 2006. P 308.

[³] Hassan Sadiq Al-Marsafawi: Al-Marsafawi in the Criminal Procedures Law, Al-Maaref Institution, Alexandria, 2000. P 500.

[⁴] Edwar Ghali Al-Thahabi: The Criminal Procedures in the Egyptian Legislation, First Edition, Dar Al-Nahda Al-Arabia, Cairo, 1980. P 399.

[⁵] Abdel Wahab Ben Saleh Al-Assaf: Previous Reference, P 90.

suspect provisionally arrested against a guaranty to attend or by a financial guaranty or by both or based upon establishing a domicile for the suspect in specific cases ^[1].

Further, the guaranty was stated upon in the Detainment & Arrest Procedures Bylaw which showed some forms of releasing the suspect on bail including the case in which evidences shall be available that swing having him committed a specific crime but not of the big crimes, then he shall be referred to the competent judicial party after which he shall be released against the commitment to appear, a financial guaranty or by both ^[2].

In fact, the researches believes that the Saudi legislator has vested a wide power upon the investigator to estimate the sufficient and adequate guaranties to temporarily release the suspect in addition to causing the said power to include estimating the value of the guaranty and its type. Further, it vested the investigator with the power to temporarily release against no guaranties in the cases in which it shall be believed to have no necessity to cause the suspect to be subject to guaranties against his release or that the domicile of the suspect itself shall be sufficient to guarantee his appearance if so requested or in case of delivering a court order against him that should be executed.

In fact, and upon estimating it by the concerned party, then the financial guaranty is constituted of two parts as the first part shall be dedicated to be sufficient for the failure of the suspect to appear at any of the procedures of the investigation and the action as well as to show for the execution of the order and performing all the other duties imposed on him while the second part shall be dedicated for the payment of the fees and expenses incurred by the plaintiff in addition to the fees and expenses due to the state as well as the financial penalties that may be ruled to be paid by the suspect.

In addition, the order issued to the effect of the temporary release of the suspect should include determining the said two parts in addition to having the Law allowed to provide the financial guaranty by the suspect or another person but should be provided at once and may not be settled by installments ^[3].

In fact, the Saudi legislator took into consideration the individuals differentiation involved in the financial guaranty as it allowed the investigator, and in case he shall deem that the condition of the suspect shall not allow providing a guaranty, in addition to having no one applied to pay or be committed to pay it, to replace the same by obligating the suspect to show at the police station at specific times to be set for him in the release order taking his special circumstances into consideration such as the type of his work, place of residence, health condition, age and gender ^[4].

In fact, it should be mentioned that the guaranties set by the Saudi Law for the temporary release include banning the traveling but it did not provide for the same leaving the matter for the power of the investigator within the scope of the provisions of article (120) of the Criminal Procedures Law being the person authorized to estimate if the suspect should be banned the traveling together with the necessity to set the said guaranty at the temporary release order.

Second section: the guaranties for the temporary release according to the Jordanian Law:

The Jordanian legislator regulated the provisions of release on bail in the Criminal Procedures Law under the title (the Release) of the third chapter in articles (121-129) for which this Law laid down a set of rules for the temporary release on bail when the Law allowed the public prosecutor to release on bail the person arrested for a crime that constitutes an offence if the investigations are still being conducted before him while he may not release him in crimes.

Further, the Law allowed the court to release the suspect on bail after referring the action to it, during the trial or after the delivery of the order or by the court to which an appeal shall be filed. However, it banned releasing the arrested person to whom a crime shall be assigned being punished by execution, hard permanent works or arrest for life before referral but, however, it allowed the release for the competent court after referring the action to it if it shall find that the same shall be of no impact on the conduct of the investigation and the trial in addition to not encroaching the public security. Further, the Jordanian law allowed appealing the order issued by the public

[¹] Draft Bylaw of the Investigation Commission & Public Prosecution, 1417 Hejra.

[²] Abdel Wahab Ben Saleh Al-Assaf: Previous Reference, P 80.

[³] The Previous Reference, P 91.

[⁴] The Previous Reference, P 93.

prosecutor or the magistrate's judge to the first instant court and to appeal the order delivered by the first instant court to the appeal court ^[1].

In fact, article (126/2) of the Jordanian Criminal Procedures Law provided that: "Each person ordered to be released on bail shall provide a guaranty for the amount decided by the authority issuing the order or to sign a commitment deed for the sum set by the aforementioned authority. Further, it shall be provided at the guaranty deed or the commitment deed that the defendant shall appear at any stage of the investigation and the trial as well as upon the execution of the order and whenever called upon to show ^[2].

Further, article (126/4) of the same Law pointed out that the guaranty or commitment deeds shall be made before the magistrate's judge if he shall be the one issuing the order of the release on bail provided that the solvency of the guarantor shall be certified by the mayor or before the notary public in case the order shall be issued by the public prosecutor or the court provided that the notary public shall certify the solvency of the guarantor to make such guaranty.

However, the papers of the guaranty or the commitment deed shall be added to the minutes after which the concerned judicial party shall issue an order to the effect of releasing the arrested person to be sent to the party that issued the order to arrest him pursuant to the order issued to the effect of his release unless arrested on account of another action ^[3].

In addition, article (126/5) of the Jordanian Criminal Procedures Law provided that: whenever a person who shall have been released on bail shall be called upon to appear, then the guarantor shall be notified to the effect of the necessity to bring the person guaranteed by him and if he shall have been released by a commitment deed, then he shall be notified in person to the effect that he should appear. However, the said notification shall be signed in both cases by the public prosecutor, the president of the court or the magistrate's judge as proper ^[4].

However, and in case of failing the same by the suspect or the failure of his guarantor to bring him, then the same shall result in issuing a subpoena to arrest the suspect, confiscate the amount of the guaranty within a term of three months as from the date of the confiscation order, the payment or for any other reason stated in the subpoena. However, the confiscation order may be revoked or decreased to less than a half if the suspect shall attend or be brought by his guarantor as article (129) of the Jordanian Law provided as follows ^[5]:

1- If acting shall not be made according to the condition set in the guaranty or commitment deed, then the competent court before which the condition should have been performed before it may issue a subpoena against the person released on bail before it and to order his arrest.

2- The competent court shall order to confiscate the cash deposit paid to the order of the treasury or otherwise to pay the value of the guaranty or commitment deed to the treasury if such deposit shall not have been paid.

3- When issuing the aforementioned order or after issuing it, then the court may reduce the amount ordered to be confiscated or paid to less than a half or otherwise to revoke the said order with no restriction or condition if the person released shall appear or be brought by the guarantor before the ruling in the action or within three months as from the date of the order ruling for the confiscation, the payment or for any other reasons to be set in the subpoena.

4- The order to the effect of confiscating or paying any sum to the treasury issued pursuant to the provisions of paragraph (3) shall be enforceable from all the aspects but the person affected by the said order shall be entitled to appeal it as if being an order delivered in a civil action filed by the attorney general against the person against whom the order was issued and that the payment orders shall be executed under the supervision of the execution departments.

[¹] Wesam Mohammad Naser: Releasing on Bail According to the Palestinian Legislation, Previous Reference, P 77.

[²] The Jordanian Criminal Procedures Law.

[³] Abdel Wahab Ben Saleh Al-Assaf: Previous Reference, P 82.

[⁴] The Jordanian Criminal Procedures Law.

[⁵] The Jordanian Criminal Procedures Law.

5- If the guarantor shall pass before confiscating or collecting the amount of the guaranty, then his estate shall be discharged of each and every liability related to the guaranty when the party resolved to provide a guaranty may issue a subpoena or an arrest note against the person guaranteed and upon his attendance or being brought, then he shall be ordered to bring another solvent guarantor or to deposit a cash deposit according to the provisions of paragraph (3) of article (129) to the contrary of which he shall be ordered to be arrested.

In fact, it is shown here that the Jordanian Criminal Procedures Law is remarkable for having banned the release of the suspects to whom any crime necessitating the penalty of execution, hard permanent works or permanent arrest shall be assigned before referring to the competent court by which the legislator restricted the party that issues the temporary release order in such type of penalties. In fact, and though the provision to that effect reduces the burden of the party issuing the release by filing no requests for guarantee to it in such type of crimes that necessitate the said penalty during the said period as if it shall be allowed, then so many release requests shall be filed in such types of crimes, yet some believe that the Jordanian legislator shall review the said matter and not to impose restrictions on the concerned court before the referral even in such type of crimes as, however, and in all cases, the request shall be subject to its discretion and that it shall be the most capable to balance between the matters presented to it according to the incidents offered as the court may not be satisfied by the evidences based on which the suspect has been arrested even if the act shall be punished by execution as the prohibition of the release in the said crimes conflict with the evidence of innocence^[1].

Further, the Jordanian Law has been remarkable in causing the request to be reviewed by checking confidentially which matter is deemed by some as being a failure from the part of the legislator as reviewing the request in an open hearing is better in order to allow the tribunal to which the request is submitted to hear the demands of the parties and to allow the public opinion the opportunity to monitor the procedures.

In fact, it should be mentioned that the Jordanian legislator caused the guaranties of the temporary release to include the place of residence but it did not provide for banning the traveling of the suspect leaving the same for the competent party.

The conclusion:

According to the foregoing, the researcher concluded that the Saudi and Jordanian Laws agreed on the frameworks for regulating the temporary release of the suspect to the effect that they regulated the obligatory and possible ones in addition to having agreed on providing for some of the obligatory temporary release cases and causing the same to be restricted only to the small crimes but, yet, the Saudi Criminal Procedures Law was unique in designating two cases of the obligatory temporary release which is in the case of issuing an order to the effect of keeping the papers, keeping the action or in case of having the suspect satisfied all the rights due from him. Nevertheless, both the Saudi and Jordanian Laws were in agreement to a large extent in terms of assessing the possible temporary release cases.

Further, it has been shown that the Saudi and Jordanian Laws were both on agreement regarding the necessity to have guaranties for the temporary release of the suspect including the two types of the guaranty, i.e. the personal and the financial ones and while the Saudi legislator vested a wide authority upon the investigator to estimate the sufficient and adequate guaranties for releasing the suspect temporarily causing the said authority to estimate the value of the guaranty or its type in addition to having granted the investigator the power to temporarily release against no guaranties in the cases estimated to be of no need to impose guaranties on the suspect against his release or that the place of residence of the suspect shall be itself sufficient as a guaranty for his attendance or in case a court order shall be issued against him and that he shall execute it, yet the Jordanian Law restricted the said authority by specific provisions while the Saudi Criminal Procedures Law did not provide for the bail and the other guaranties except for the restrictions set for the place of residence as it caused the temporary release applicable in the small crimes.

Further, the Jordanian legislator caused the guaranties of the temporary release to include the place of residence but it did not provide for banning the suspect from traveling but left the same to the competent party in which it has been in agreement with the Saudi Law though the Jordanian Law has been of more order in its provisions that addressed the temporary release than the Saudi Law.

[¹] Wesam Mohammad Naser: Release on Bail According to the Palestinian Legislation, Previous Reference, P 78.

Recommendations:

On view of the conclusions arrived at by the researcher, then she recommends as follows:

1- In the Saudi Law, then articles shall be included in the Criminal Procedures Law to regulate the matters of the bail and the guaranties necessary for the temporary release and the mechanisms suitable for estimating it in order not be maintained within the discretion of the competent parties as expanding the scope of their powers shall not secure the protection of the rights of individuals and their freedoms other than being inconsistent with the principle of the rule of law.

2- The necessity that the Saudi legislator shall seek to utilize from the Arab laws and legislations in general and the Jordanian legislation in particular in terms of regulating the matters of the temporary release to support the ensuring of the quality among all the suspects and their rights secured by the Islamic Sharia and international conventions.

3- The Jordanian legislator shall reconsider the restrictions provided for by it which ban the release of the suspects assigned with any charge necessitating the punishment of execution, hard permanent works or permanent arrest before referring to the competent court by which the legislator has restricted the party that issues the temporary release order in such type of penalties in addition to having the same been inconsistent with the principle of innocence is presumed.

4- To cause the Jordanian Law to provide for requesting the guaranty openly and to be approved openly also in order for all the procedures related to the rights and freedoms to be accessible by the public opinion.

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