RIGHT TO BAIL :
SPECIAL EMPHASIS ON CRIMINAL OFFENCES IN MALAYSIA.

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PREFACE

The primary purpose of the study is to analyse the developements of the law of bail in Malaysia, focusing on when bail is granted or refused depending on the offence committed by the accused person whether it is a bailable or non-bailable offences. The study also laid down grounds and principles which guide the courts when exercising their discretion in relation to bail. Throughout this project paper, emphasis placed on Malaysian statutes, cases and criminal offences committed.

Chapter I of this project paper deals with the meaning and the nature of the bail, its origin from the pre-Norman England and its developements in Malaysia.

Chapter II deals with the bailable offences, its term and the application of section 387 of the CPC.

Under Chapter III the aim of discussion is on section 388 of the CPC regarding the non-bailable offences. The chapter also discussed the grounds taken into consideration by the courts when exercicing their discretion in granting or refusing bail to a non-bailable offences.

CONTENTS.

1.2. Historical background to the institution of bail.

Origin

Bail is believed to have evolved from a practice which goes back to Pre-Norman England and its history could be traced from the beginning of the reign of Edward I. In those days, it was the sheriffs who had the power of arrest and bail and the administration of justice was in their hands.

At that time arrest meant imprisonment untill the sheriff was disposed to hold his tourn or in more serious offences, until the arrival of the justices which often took years. Due to the unsanitary conditions in the prisons many prisoners died. Any frequent escapes of the prisoners, the sheriffs were held responsible by having to pay heavy fines.

The sheriff, as representative of the crown and principal administrator of criminal justice, often admitted persons to bail. This is so to avoid the costly and troublesome burden of being personally responsible for the prisoners. Apart from that the sheriff also found a pecuniary advantage which could be obtained in allowing bail. The sheriffs made release on bail a lucrative business because they were not within the direct control of any judicial authority.

Their powers were almost exercised unchecked. However, they were subject to two writs that is the writs of de homine replegiando where sheriff was compelled to release on bail a prisoner whom it was his duty to release. The second writ is de manucaptione that is a surety for the appearance of the prisoner. This two writs commanded the sheriff to deliver the prisoner unless he had been taken at the command of the king for offences which according to the law made him irreplevisable. Lack of any systematic approach to release prisoners on bail induced the sheriffs to abuse their powers. Bail was granted to the prisoners on their own recognizance with the imposition of security or on the assurance of a third party that he will assume responsibility for the prisoner's appearance at the trial.

Due to the ill-defined discretionary powers and great abuses by the sheriffs, The Statute Of Westminster, 1275[5] was codified. It laid down a list of bailable and non-bailable offences and was the basis of determining what offences were bailable for more than five and a half centuries. The statute listed thirteen types of cases in which bail was not to

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5. 3 Edw. IC 15.