

LCQ4: Law enforcement procedures of Police

Following is a question by the Hon Chan Chi-chuen and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (January 8):

Question:

Since June last year, thousands of members of the public have been granted bail by the Police after being arrested during public events, pending the Police's decisions on whether prosecutions will be instituted against them upon completion of investigations. It is learnt that when reporting to the police stations subsequently, quite a number of them refused to enter into further bail and they were released unconditionally. However, since the Police have so far not informed them whether investigations of the relevant cases have been completed and whether prosecutions will be instituted against them, they and their families are very worried day after day. In this connection, will the Government inform this Council:

(1) of the respective numbers of cases, in each of the past six months, of persons refusing to enter into further bail and their being released unconditionally after such refusal;

(2) of the number of persons in the past five years who were released unconditionally after refusing to enter into further bail and, among them, the number of those who were subsequently prosecuted, as well as the average duration between the dates of their unconditional release after refusal to enter into further bail and the dates on which they were prosecuted; and

(3) whether the Police will, upon deciding not to institute any prosecution against the persons released unconditionally after their refusal to enter into further bail, inform them of that decision expeditiously, so as to relieve them of the psychological burden; if so, of the details; if not, the reasons for that?

Reply:

President,

Members of the public enjoy the freedoms of expression, speech and assembly but they must exercise such freedoms peacefully and lawfully. Since early June last year, more than 1 200 protests, processions and public assemblies have been staged in Hong Kong and many of them ended up in serious violent illegal acts. In the past six months or so, there were rioters unlawfully blocking roads, paralysing traffic, hurling petrol bombs and setting fires at various locations, throwing bricks, wantonly assaulting people holding different opinions, wounding with intent, vandalising and

burning shops, railway facilities and traffic lights, etc., which severely endangered public order and public safety. Under section 10 of the Police Force Ordinance (PFO) (Cap 232), when illegal acts take place, the Police have a statutory duty to take all lawful actions to deal with them.

Under section 50 of PFO, a police officer has the power to apprehend any person who the officer reasonably believes will be charged with or whom the officer reasonably suspects of being guilty of an offence for which a person may (on a first conviction for that offence) be sentenced to imprisonment. When a police officer makes an arrest, the officer must act according to the law and in an appropriate manner.

When a person is arrested by the Police, the police officer will, as soon as possible, inform the person of the fact that he or she is under arrest, as well as the factual grounds and the reasons for the arrest. The arrestee will be brought before the Duty Officer as soon as possible to confirm the legality of the arrest and custody of the arrestee. The arrestee will then be handed over to an investigation team for investigation. Upon completion of preliminary investigation, the Police will, depending on the circumstances of the case, consider:

- (1) charging the arrestee, and detaining the arrestee until he or she is taken to appear before the court, or releasing the arrestee on bail pending his or her appearance before the court. The arrestee will generally not be detained for more than 48 hours;
- (2) in case the Police cannot complete the investigation into the case forthwith, releasing the arrestee on bail, and the arrestee shall appear at the police station at a specified time subsequently; or
- (3) releasing the arrestee unconditionally.

The legal basis and statutory authority for police bail are set out in section 52 of PFO. According to section 52(1) of PFO, an arrestee whom the Police have decided to prosecute may be released on bail, unless the offence appears to the Police to be of a serious nature, or the Police reasonably consider that the arrestee ought to be detained pending his or her appearance before a magistrate (for instance, the arrestee may abscond, repeat the offence, interfere with witnesses, impede the investigation or attempt to obstruct the course of justice). The arrestee shall normally appear before a magistrate at such time and place as is named in the recognisance. Where the arrestee is detained, he shall be brought to appear before a magistrate as soon as practicable.

In addition, according to section 52(3) of PFO, if the Police consider that the investigation into a case cannot be completed forthwith, the arrestee may be released on bail and shall subsequently appear at the police station at such time as is named in the recognisance. When the arrestee appears at the police station, the Police will, based on the progress of investigation for the case, decide to charge the arrestee, grant further bail or release the arrestee unconditionally. Such bail arrangement is necessary

and reasonable because the Police may, on the one hand, maintain contact with arrestees while cases are still under investigation, and on the other carry out further investigations in view of the nature, seriousness and complexity of different cases, such as collecting and handling evidence as well as seeking legal advice, so as to ensure that any decision by the Police to lay charge against any person is made with prudence.

If an arrestee refuses police bail or, having first entered into bail, refuses to be bailed further upon appearing at a police station, and the investigation concerned has not yet been completed, the Police will consider releasing this arrestee. However, releasing the arrestee does not mean that the Police will not charge him or her. If the Police decide to charge the person concerned after conducting investigation, the Police will make an arrest again.

My reply to various parts of the question is as follows:

(1) and (2) From June 9 last year to January 2 this year, the Police had arrested a total of 6 943 persons in major public order events. Various offences were involved, including "taking part in a riot", "unlawful assembly", "arson", "wounding", "assault occasioning actual bodily harm", "criminal damage" , "assaulting police officer", "obstructing a police officer in the execution of the officer's duty", "in possession of offensive weapons", etc. Among the 6 943 arrestees, 1 082 persons already entered into or were in the course of legal proceedings, 338 persons had been released unconditionally, and the cases of 5 523 persons were still under investigation (including those released on bail pending further investigation and those released pending further investigation after refusing to be bailed). The relevant figures with breakdown by month is at Annex. The Police do not maintain other detailed statistics as requested in the question.

(3) The Police will keep the investigation details of individual cases confidential so as not to affect investigation work and collection of evidence, not to mention disclosing the details to the suspects. An arrestee who has entered into police bail shall appear at the police station at a specified time. For an arrestee who has been released pending further investigation after refusing to be bailed, the Police, in accordance with the principle of confidentiality as aforesaid, will not inform the person of the investigation progress of the case concerned. If there is sufficient evidence to prosecute the person for the relevant offence in future, the Police will arrest this person again and charge him or her with the offence.

Thank you, President.