LEGAL AND JUDICIAL

How to Challenge Bail & Detention Orders in Nepal

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How to challenge a bail or detention order in Nepal is an important question for an accused who has been ordered into **Thuna (□□□□)**, required to furnish **Dharaut (□□□□)**, **Jamanat (□□□□□)** or a **Bank Guarantee**, or who believes that the amount fixed by the court is excessive or otherwise unreasonable.

Under **Chapter-7 of the [National Criminal Procedure Code, 2074] (Muluki Faujdari Karyabidhi Sanhita, 2074)**, the principal provisions governing detention, bail, Dharaut and Jamanat are **Sections 67 to 80**. Most importantly, **Section 73 expressly provides a remedy before the appeal-hearing court against a Thunchek, detention, bail, guarantee or bank-guarantee order**.

This article explains **how to challenge bail and detention orders in Nepal**, based specifically on the statutory framework you provided, including **Section 67, Section 68, Section 71, Section 72 and Section 73**, and explains the practical relationship between **Thunchek, Thuna, Dharaut, Jamanat and appellate remedies**.

Adalat Lawyers presents this article for general legal information concerning criminal litigation in Nepal.

What Is a Bail or Detention Order in Nepal?

At the **Thunchek (□□□□□)** stage, the criminal court determines how an accused will remain during the pendency of the criminal case.

Depending on the circumstances and applicable provisions, the court may:

- order **Thuna (detention)**;
- require **Dharaut (□□□□)**;
- require **Jamanat (□□□□□)**;
- require a **Bank Guarantee**; or
- keep the accused on **Tarikh/recognizance**.

Chapter-7 of the National Criminal Procedure Code, 2074 is specifically titled **"Provisions Relating to Detention, Bail and Guarantee."** The Nepal Law Commission's text places Sections 67–80 within this Chapter.

Therefore, when an accused wants to challenge a **Thunchek order**, the first task is to identify exactly what the lower court ordered and under which statutory provision.

The Most Important Provision: Section 73

The central statutory provision for challenging a detention or bail order is **Section 73**.

In substance, Section 73 provides:

> A party dissatisfied with a **Thunchek order or the Dharaut, Jamanat or Bank Guarantee fixed under Chapter-7** may make an application to the **appeal-hearing court up to one level**.

There is also an important proviso.

Where the issue concerns the **illegality of a detention order** in a case involving an offence punishable by:

- **life imprisonment**, or
- **five years or more imprisonment**,

the provision permits an application to an **appeal-hearing court more than one level above**, in the circumstances specified by the Code.

This makes Section 73 the principal statutory route for challenging a Chapter-7 **Thunchek, detention, Dharaut, Jamanat or Bank Guarantee order**.

What Can Be Challenged Under Section 73?

Section 73 is broader than simply challenging “bail.”

A dissatisfied party can challenge:

1. Thunchek order

If the accused has been ordered into detention or released subject to security, the relevant order can be challenged.

2. Detention order

If the accused believes that the order sending him or her to **Thuna** is legally improper, Section 73 may provide a remedy.

3. Dharaut amount

If the court has fixed an unreasonable **Dharaut** amount, the party may seek review by the appeal-hearing court.

4. Jamanat amount

An accused may challenge an excessive **Jamanat** requirement.

5. Bank Guarantee

The requirement or amount of a Bank Guarantee can also fall within the Section 73 remedy.

The Nepal Law Commission expressly identifies these categories in Section 73.

Section 67: First Determine Whether Detention Was Legally Justified

Before challenging a detention order, the defence should carefully examine **Section 67**.

Section 67 provides circumstances in which the court may remand an accused in detention for trial.

Under Section 67(1), the provision concerns cases where the accused is alleged to have committed:

- an offence punishable by **life imprisonment**;
- an offence under Schedule-1 or Schedule-2 punishable by **more than three years' imprisonment**; or
- attempt, abetment, criminal conspiracy or being an accomplice to the relevant offences.

The provision applies where the immediately available evidence shows the accused as guilty or provides a reasonable basis to believe the accused is guilty, and the court must state reasons for detention.

Therefore, a detention challenge should not simply state:

> “The accused should be released.”

It should identify **why the statutory requirements for detention under Section 67 are not satisfied**.

Challenging Detention Under Section 67

A lawyer challenging **Thuna** should examine several questions.

Question 1: What is the exact offence?

The precise statutory offence must be identified.

Question 2: What punishment is prescribed?

The maximum punishment can determine whether Section 67 is relevant.

Question 3: Is it a Schedule-1 or Schedule-2 offence?

This can be important under Section 67(1)(b).

Question 4: Does the evidence meet the statutory threshold?

Section 67 refers to the evidence immediately available and the reasonable basis for believing that the accused is guilty.

Question 5: Did the court provide reasons?

Section 67 expressly refers to detention being ordered **with reasons**.

Question 6: Does Section 67(2) apply?

The defence should also consider the special circumstances specified in Section 67(2).

This structured approach can form the basis of a Section 73 petition.

Section 67(2): Additional Grounds for Detention

Section 67(2) provides additional circumstances in which the court may remand an accused in detention.

These include circumstances where:

- the accused has admitted the offence and, after assessment of the facts and evidence, detention appears reasonable;

- an accused charged with an offence punishable by one year or more has no permanent residence in Nepal and there is a possibility of absconding;
- the accused failed to appear pursuant to an arrest warrant and subsequently cannot provide a satisfactory reason; or
- the accused had been convicted and sentenced to imprisonment for another offence within the relevant three-year period.

Accordingly, a detention challenge should address **the specific ground relied upon by the lower court** rather than treating Section 67 as one single test.

Section 68: When Bail, Dharaut or Jamanat May Apply

If the case does not fall within Section 67, **Section 68** becomes important.

Section 68 provides for the court to take:

- **Dharaut**;
- **Jamanat**; or
- **Bank Guarantee**

where the statutory conditions are met.

The Code also provides that the Bank Guarantee must be unconditional and renewable for the period specified by the court.

If the accused fails to furnish the required security, Section 68(2) provides that the accused shall be remanded in detention.

Therefore, if an accused has been detained merely because the required security could not be furnished, the legal strategy may involve examining both:

1. whether detention/security was correctly ordered; and
2. whether the amount fixed was reasonable under Section 72.

Section 69: Tarikh Instead of Detention or Bail

Section 69 should not be overlooked.

Where the case does not fall within Sections **67 or 68**, the accused is to be kept on **Tarikh** after appearing before the court.

This means that the statutory framework is not simply:

Detention vs Bail.

There can also be:

Tarikh / recognizance.

Accordingly, where a person has been ordered to furnish security even though the case arguably falls under Section 69, this may become a relevant issue in challenging the order.

Section 71: A Bail Order Can Change Later

Section 71 is particularly important for both the defence and prosecution.

The court may, **at any stage of the proceedings**, while examining evidence:

- detain the accused under Section 67; or
- demand Dharaut, Jamanat or Bank Guarantee under Section 68.

The Code specifically states that merely because an accused was not initially detained, or because security was not initially taken, this does not prevent the court from subsequently ordering detention or requiring security.

Therefore:

> **An initial bail order does not necessarily remain unchanged throughout the trial.**

Conversely, Section 71(2) provides an important route toward release.

If a reasonable basis arises showing that an accused detained under Section 67 or Section 68 is not guilty, the court may hear the matter and order release from detention at any stage of the proceedings.

Challenging an Excessive Bail Amount Under Section 72

Sometimes the accused is not ordered into detention but faces an extremely high **Dharaut or Jamanat** amount.

Section 72 becomes important.

The Code requires the amount of Dharaut, Jamanat or Bank Guarantee to be fixed **reasonably**, taking specified circumstances into account.

The relevant matters include:

- nature and gravity of the offence;
- financial status of the accused;
- family condition;
- age;
- physical condition;
- previous conviction;
- whether several offences were committed on the same occasion;
- sentence imposed or imposable;
- compensation;
- consequences resulting from the offence;
- whether the accused pleaded guilty; and
- specified circumstances involving vulnerable persons.

The defence should therefore explain **why the amount is disproportionate when measured against these statutory considerations**.

Section 72(2): Direct Remedy Against an Unreasonable Bail Amount

Section 72(2) is especially useful where the problem is not detention itself but the **amount of Dharaut, Jamanat or Bank Guarantee**.

It provides that where a party demonstrates to the appeal-hearing court that the amount demanded is **less or excessive and therefore unreasonable**, the appeal-hearing court may hear the matter and order the amount to be increased, reduced or otherwise modified.

This creates a clear statutory mechanism for challenging an unreasonable security amount.

For example, if an accused is technically released but the Jamanat amount is financially impossible to furnish, the defence may need to challenge **the amount**, not merely request “bail.”

Section 73 vs Section 72: What Is the Difference?

This distinction is important.

Section 72

Deals specifically with the **reasonableness of the amount** of:

- Dharaut;
- Jamanat; or
- Bank Guarantee.

Section 73

Provides a broader remedy for a person dissatisfied with:

- detention;
- bail;
- Dharaut;
- Jamanat;
- guarantee; or
- Bank Guarantee orders under Chapter-7.

Therefore, a lawyer should identify the exact grievance before drafting the application.

Who Can Challenge the Order?

Section 73 refers to the **party dissatisfied with the order**.

Depending on the circumstances of the case, the relevant party may be the accused or another party entitled to challenge the particular order.

The precise procedural standing and filing requirements should be determined from the case record and applicable court practice.

For an accused, the most common issues are:

“Why was I detained?”

or:

“Why is my Dharaut/Jamanat unreasonably high?”

Where Is the Petition Filed?

The statutory language of Section 73 refers to the **appeal-hearing court**.

The appropriate forum depends on:

- the court that issued the original Thunchek order;
- the nature of the case;
- the applicable appellate structure; and
- the specific issue being challenged.

Therefore, it is not safe to assume that every Section 73 petition is filed in the same court.

The correct appellate forum should be confirmed from the actual case and original order.

Can a Detention Order Be Challenged Beyond One Level?

This is one of the most important parts of Section 73.

The general rule is:

> **A person dissatisfied with a Chapter-7 Thunchek/detention/bail/security order may petition the appeal-hearing court up to one level.**

However, the proviso creates a special rule where the issue is the **illegality of detention** and the offence is punishable by:

- **life imprisonment**, or
- **five years or more imprisonment**.

In such circumstances, Section 73 permits a petition to an appeal-hearing court **more than one level**.

This should not be confused with an automatic right to appeal every bail decision through unlimited levels.

The statutory proviso is specifically concerned with the **illegality of the detention order** and the seriousness of the offence.

How to Draft a Petition Challenging Detention

A strong petition should identify the legal defect clearly.

A useful structure is:

1. Case details

State:

- case number;
- court;
- parties;
- accused;
- offence; and
- date of Thunchek order.

2. Original order

Identify precisely what the lower court ordered.

For example:

> “The accused was remanded in detention under Section 67.”

or:

> “The court ordered Jamanat of NPR .”

3. Statutory provision relied upon

Identify the relevant provision, such as:

- Section 67;
- Section 68;
- Section 71;
- Section 72; or
- Section 73.

4. Grounds of challenge

Explain why the order is legally or factually unsustainable.

5. Evidence

Refer to the evidence relevant to the detention/bail question.

6. Relief requested

Clearly state what the accused wants:

- release from detention;
- Dharaut;
- Jamanat;
- reduction of Jamanat;
- Bank Guarantee;

- modification of the order; or
- another legally available remedy.

Strong Grounds for Challenging a Detention Order

Depending on the facts, possible statutory arguments can include:

The case does not fall within Section 67

If the offence does not meet the statutory category relied upon by the court, that should be addressed.

The evidentiary threshold is not satisfied

Section 67 refers to the immediately available evidence and reasonable basis for believing the accused is guilty.

Section 67(2) has been incorrectly applied

If detention was based on one of the circumstances in Section 67(2), the defence should challenge whether that circumstance actually exists.

Relevant personal circumstances were ignored

Age, physical condition and other statutory considerations may be important.

The order lacks adequate reasoning

The Code expressly contemplates reasons for detention.

Section 68 is applicable

Where Section 67 does not apply, the defence may argue for release on appropriate security.

Section 69 is applicable

Where neither Section 67 nor Section 68 applies, Tarikh may be the statutory position.

Challenging an Excessive Jamanat: Practical Strategy

If the court has granted release but fixed an excessive Jamanat amount, the application should not merely say:

> "The amount is too high."

Instead, the defence should demonstrate why it is **unreasonable under Section 72**.

For example:

Financial capacity

Show the actual financial circumstances of the accused.

Family circumstances

Explain relevant family responsibilities.

Age and health

Provide supporting evidence where relevant.

Previous record

Clarify whether the accused has previous convictions.

Nature of the allegation

Address the seriousness and actual circumstances of the offence.

Potential sentence

Explain the applicable statutory punishment.

Compensation

Where relevant, address the compensation component.

The objective is to persuade the appeal-hearing court that the original amount should be **reduced or modified**.

What Documents Should Be Reviewed?

Before challenging a Thunchek order, the lawyer should obtain and carefully examine:

- FIR/complaint;
- charge sheet;
- statement of the accused;
- prosecution evidence;
- relevant documents;
- original Thunchek order;
- detention order, where applicable;
- bail/Jamanat order;
- property documents, where security was ordered;
- medical documents, where health is relevant;
- evidence concerning residence;
- evidence concerning financial condition; and
- previous court orders.

The **exact wording of the original order** is particularly important.

Why the Written Order Matters

Section 79 requires the court to prepare a memorandum of order when it:

- remands an accused in detention;
- releases an accused;
- takes Dharaut;
- takes Jamanat;
- takes Bank Guarantee;
- modifies or alters security; or
- releases an accused under Section 77.

The memorandum is accompanied by reasons.

Therefore, the original written Thunchek order should be carefully examined before drafting a challenge.

The appellate court needs to know **what the lower court actually decided and why**.

Detention Warrant and Section 80

Section 80 concerns the **detention warrant (□□□□□ □□□□□)**.

Where a person is detained under Chapter-7, the competent authority must detain the person pursuant to the court's order and provide the detention warrant in the prescribed form, stating the legal basis and reason for detention.

Accordingly, a detention challenge should also consider whether the detention documentation corresponds with the court's order and statutory requirements.

What Happens After Filing a Challenge?

The exact procedure can depend on the court and nature of the application.

Broadly, the appellate court considers:

1. the original order;
2. the legal provisions;
3. the evidence relevant to the Thunchek issue;
4. the grounds raised by the applicant; and
5. the relief requested.

The appellate court may determine whether the detention/security order should remain, be modified, or otherwise dealt with according to law.

For an excessive security amount, Section 72(2) expressly allows the appeal-hearing court to alter or modify the amount where it finds the amount unreasonable.

Can the Prosecution Challenge a Bail Order?

The statutory wording of Section 73 refers to a **party dissatisfied with** the Chapter-7 order.

Therefore, the challenge mechanism is not necessarily limited to an accused seeking release.

Depending on the circumstances, a party may challenge an order granting or refusing detention/security.

The precise standing and remedy should be assessed from the particular case.

Can the Court Later Detain Someone Who Was Granted Bail?

Yes.

This is expressly contemplated by **Section 71**.

Even if the accused was initially released, the court may subsequently reconsider the accused's status while examining evidence and may order detention under Section 67 or require security under Section 68.

The earlier release itself does not prevent later action.

This is why compliance with every court order and appearance date is essential after release.

What Happens If the Accused Fails to Furnish Security?

Section 68(2) provides that an accused who fails to furnish the required Dharaut, Jamanat or Bank Guarantee shall be remanded in detention.

Therefore, if the court fixes a security amount that the accused cannot practically furnish, an immediate legal assessment is important.

A Section 72/73 remedy may be relevant where the amount is alleged to be unreasonable.

What Happens If the Accused Misses Court?

The consequences can be serious.

Under Section 74, the bail/bond documentation contains a condition concerning appearance at the time and place specified by the court.

Section 75 addresses forfeiture where a person who furnished Dharaut fails to appear.

Thus, a person released on **Dharaut or Jamanat** should treat every court date as mandatory unless the court has otherwise ordered.

Can Bail Be Returned After Acquittal?

Yes, subject to the statutory provisions.

Section 76 provides that where an accused is ultimately **acquitted**, the Dharaut or Jamanat taken during the proceedings is to be returned or released, except where otherwise provided by law.

Where an accused is subsequently detained in a case after having furnished security, the Code also addresses release of the earlier security.

Section 77: Prolonged Detention as Another Possible Issue

A separate statutory issue arises where a detained accused's case has not been adjudicated within the period specified in Section 77.

Where the conditions of Section 77 are satisfied, and the case cannot be adjudicated within **one year from the first date fixed for examination of evidence**, the case may proceed by taking Dharaut or Jamanat.

However, Section 77 contains significant exceptions, including certain offences punishable by **life imprisonment or ten years or more**, where the accused is detained under Section 67.

Therefore, Section 77 should be considered separately from the Section 73 challenge.

Section 78: Maximum Period of Detention

Section 78 provides an important statutory limitation:

> An accused cannot be detained for a period exceeding the maximum term of imprisonment that could be imposed if the charge is proved.

This provision should be considered where the accused has spent a substantial period in custody.

A lawyer should compare:

the period already spent in detention

against

the maximum imprisonment applicable to the charge.

Thunchek Challenge: Key Legal Checklist

Before challenging a detention or bail order in Nepal, ask:

About the offence

- What exact offence is charged?
- What is the maximum punishment?
- Is it a Schedule-1 or Schedule-2 offence?
- Is life imprisonment possible?
- Is imprisonment of five years or more possible?
- Is imprisonment of ten years or more possible?

About detention

- Which subsection of Section 67 was applied?
- What evidence was relied upon?
- Did the court provide reasons?
- Does Section 67(2) apply?

About bail

- Was Section 68 applied?

- What amount was fixed?
- Was Dharaut, Jamanat or Bank Guarantee ordered?
- Is the amount reasonable under Section 72?

About the remedy

- Is Section 72(2) applicable?
- Is Section 73 applicable?
- Which is the proper appeal-hearing court?
- Is the special proviso concerning serious offences applicable?

About the accused

- Does the accused have previous convictions?
- Does the accused have a permanent residence?
- Are there health or age considerations?
- What is the financial condition?
- Are there family circumstances relevant under Section 72?

How Adalat Lawyers Can Help Challenge Bail and Detention Orders

Adalat Lawyers is a litigation-focused law firm in Nepal assisting clients with criminal litigation and related procedural matters.

A detention or bail challenge should be handled by first examining the **actual Thunchek order**, rather than relying on a generic bail template.

The legal review should cover:

1. Charge analysis

Identify the exact offence and punishment.

2. Section 67 analysis

Determine whether the detention criteria have been properly applied.

3. Evidence analysis

Assess whether the immediately available evidence supports the statutory detention standard.

4. Section 68 analysis

Determine whether release on Dharaut, Jamanat or Bank Guarantee is legally available.

5. Section 72 analysis

Challenge an excessive or unreasonable security amount.

6. Section 73 remedy

Identify the appropriate appeal-hearing court and formulate the petition.

7. Section 71 review

Where circumstances or evidence have changed, consider whether a fresh release application is appropriate.

8. Section 77/78 review

Where detention has become prolonged, assess the statutory limits and exceptions.

FAQs: Challenging Bail & Detention Orders in Nepal

1. How can I challenge a detention order in Nepal?

Under **Section 73 of the National Criminal Procedure Code, 2074**, a person dissatisfied with a Chapter-7 detention or Thunchek order may make a petition to the **appeal-hearing court up to one level**. Special provision exists for challenging the illegality of detention in certain serious offences punishable by life imprisonment or five years or more.

2. Which section allows challenge of a bail order in Nepal?

Section 73 is the principal provision allowing a dissatisfied party to petition the appeal-hearing court regarding an order of detention, bail/bond, guarantee or Bank Guarantee under Chapter-7.

3. Can I challenge an excessive Dharaut amount?

Yes. **Section 72(2)** specifically allows a party to approach the appeal-hearing court where the Dharaut, Jamanat or Bank Guarantee amount is excessive or insufficient and therefore unreasonable. The court may alter, reduce, increase or modify the amount.

4. Can I challenge a Jamanat amount?

Yes. A **Jamanat** amount can be challenged under the Chapter-7 framework. Section 72 requires the amount to be fixed reasonably after considering specified factors, while Section 73 provides a petition mechanism against the relevant order.

5. Can a detention order be challenged more than one level above the original court?

In the special circumstances stated in **Section 73**, yes. Where the question concerns the illegality of detention in an offence punishable by **life imprisonment or five years or more imprisonment**, the Code permits a petition to an appeal-hearing court beyond one level.

6. What should I argue against a Section 67 detention order?

The defence should examine whether the offence actually falls within Section 67, whether the evidence satisfies the statutory threshold, whether the specific grounds in Section 67(2) exist, and whether the court adequately stated the reasons and legal basis for detention.

7. Can a person granted bail later be detained?

Yes. **Section 71** permits the court, at any stage of the proceedings while examining evidence, to order detention under Section 67 or require Dharaut, Jamanat or Bank Guarantee under Section 68. The initial release does not permanently prevent later reconsideration.

8. What happens if I cannot pay the Jamanat fixed by the court?

If the required Dharaut, Jamanat or Bank Guarantee is not furnished, **Section 68(2)** provides for detention. If the amount is unreasonable, the defence should promptly consider the remedies under **Sections 72(2) and 73**.

9. Can bail/security be returned if the accused is acquitted?

Generally, yes. **Section 76(2)** provides that Dharaut or Jamanat taken during the case should be returned or released if the accused is ultimately acquitted, except where otherwise provided by law.

10. Does long detention create a right to release?

Section **77** provides a specific mechanism where a case cannot be adjudicated within one year from the first date fixed for examination of evidence, subject to important statutory exceptions. Section **78** also limits detention to the maximum imprisonment that could be imposed if the charge were proved.

Conclusion: How to Challenge Bail & Detention Orders in Nepal

A **Thunchek, Thuna, Dharaut or Jamanat order is not necessarily the end of the legal process** .

The National Criminal Procedure Code, 2074 establishes a specific statutory framework for challenging these orders.

The key provisions should be read together:

- **Section 67** — detention of the accused;
- **Section 68** — Dharaut, Jamanat and Bank Guarantee;
- **Section 69** — Tarikh/recognizance;
- **Section 70** — additional security;
- **Section 71** — detention or security can be reconsidered during proceedings;
- **Section 72** — factors for fixing a reasonable amount;
- **Section 73** — petition to the appeal-hearing court;
- **Section 74** — deeds and security;
- **Section 75** — forfeiture;

- **Section 76** — return/release of security;
- **Section 77** — specified prolonged-detention release; and
- **Section 78** — maximum allowable detention.

Most importantly, **Section 73 provides the principal statutory mechanism for challenging a Chapter-7 detention, bail, Dharaut, Jamanat, guarantee or Bank Guarantee order.**

A successful challenge should therefore be built around the **specific statutory error or unreasonableness in the original order**. The defence should identify the exact offence, applicable punishment, evidence, Section 67 grounds, Section 72 factors and appropriate Section 73 remedy.

For an excessive **Dharaut/Jamanat**, the focus should be on **reasonableness under Section 72**.

For an allegedly unlawful **Thuna/detention order**, the focus should be on **Section 67 and the legality of the detention**, together with the remedy provided by Section 73.

For changed circumstances during trial, **Section 71** may provide another route for seeking release.

For prolonged detention, **Sections 77 and 78** should also be examined.

Adalat Lawyers can assist with the assessment and preparation of legal remedies concerning **Thunchek, detention, bail, Dharaut, Jamanat, Bank Guarantee and criminal litigation in Nepal**, based on the actual case record and court order.