

LEGAL AND JUDICIAL

Thunchek in Nepal: Detention vs Bail

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Thunchek (ठुन्चेक) in Nepal is one of the most important stages of a criminal case because it determines whether an accused will remain in **detention** (दण्ड) during trial or be released on **Dharaut** (धारौत), **Jamanat** (जमानत), **bank guarantee**, or on **Tarikh/recognizance** (तारिख). The governing provisions are principally found in **Chapter-7 of the Muluki Faujdari Karyabidhi Sanhita, 2074** ([National Criminal Procedure Code, 2074](#)), particularly Sections 67 to 80.

For a person facing a criminal case in Nepal, understanding **Thunchek vs Bail, Section 67 detention, Section 68 Dharaut/Jamanat, Section 69 Tarikh**, and the factors for fixing bail under **Section 72** is essential.

This article explains the statutory framework based on the provisions you provided, using the terminology commonly searched in Nepal, including **Thunchek, Thuna, Dharaut, Jamanat, Bail, Bank Guarantee, Tarikh and criminal detention**.

[Adalat Lawyers](#) presents this article as general legal information concerning criminal litigation and Thunchek proceedings in Nepal.

What Is Thunchek in Nepal?

Thunchek (ठुन्चेक) refers to the court's decision concerning whether an accused should be **kept in detention or released subject to bail, Dharaut, Jamanat, bank guarantee or Tarikh** during the criminal proceedings.

The statutory framework is found in **Chapter-7, "Provisions Relating to Detention, Bail and Guarantee,"** of the National Criminal Procedure Code, 2074.

The Nepal Law Commission's published text identifies Section 67 as the provision concerning detention, Section 68 concerning Dharaut/Jamanat/bank guarantee, and Section 69 concerning keeping an accused on Tarikh in cases outside Sections 67 and 68.

In simple terms:

Thunchek = the court decides the accused's status during the criminal trial.

The possible outcomes can include:

- **Thuna** (थुना) — detention;
- **Dharaut** (धाराउ) — security/deposit;
- **Jamanat** (जमानत) — guarantee/security;
- **Bank Guarantee** — bank-backed security;
- **Tarikh** (तारिख) — appearance on appointed dates/recognizance, where applicable.

Section 67: When Can the Court Keep an Accused in Detention?

Section 67 is the starting point for understanding Thunchek.

Under Section 67(1), where an accused is charged with specified serious offences and the evidence immediately available indicates that the accused appears guilty or there is a reasonable basis to believe the accused is guilty, the court may remand the accused in detention for trial, giving reasons for the detention.

The provision identifies three principal categories.

1. Offence punishable by life imprisonment

Where the alleged offence can result in **life imprisonment**, Section 67 may apply.

2. Certain Schedule-1 or Schedule-2 offences punishable by more than three years

Section 67 also covers offences under **Schedule-1 or Schedule-2** where the offence is punishable by imprisonment exceeding three years.

3. Attempt, abetment, conspiracy or accomplice liability

The provision also covers attempt, abetment, criminal conspiracy or being an accomplice to the offences falling within the relevant categories.

Therefore, one of the first questions in a Thunchek hearing is:

What exact offence has been charged, and what punishment is legally prescribed for that offence?

Why the Exact Criminal Charge Matters in Thunchek

A common mistake is to discuss bail without first examining the charge.

The court must consider the statutory offence and its punishment.

For example, the defence should establish:

- the exact section under which the accused is charged;
- whether the offence falls under Schedule-1 or Schedule-2;
- the maximum possible imprisonment;
- whether the offence carries life imprisonment;
- whether the allegation concerns attempt or conspiracy;
- whether Section 67 is potentially applicable; and
- whether Section 68 or Section 69 becomes relevant.

This is why a **Thunchek application should be based on the actual charge sheet and evidence**, rather than a generic request for release.

Section 67(2): Other Circumstances Where Detention May Be Ordered

Section 67 is not limited to the offences described in Section 67(1).

The provision also identifies circumstances in which an accused may be remanded in detention.

These include situations where:

The accused pleads guilty

If the accused pleads guilty to the charge before the court, the court may order detention in accordance with the provision.

The accused has no permanent abode in Nepal

Where an accused is charged with an offence punishable by imprisonment of one year or more, has no permanent abode in Nepal, and there is a possibility of absconding and subsequently not being apprehended, detention may be ordered.

Failure to appear pursuant to an arrest warrant

If an accused failed to appear within the prescribed period pursuant to a warrant and is subsequently arrested and produced before the court without a satisfactory reason for the earlier failure, the detention provision may become relevant.

Recent previous conviction

The provision also addresses an accused who was convicted and sentenced to imprisonment within the three years immediately preceding the present charge.

These circumstances can significantly affect a **Thunchek and bail hearing**.

Special Protection Under Section 67(3)

Section 67(3) creates an important exception concerning certain vulnerable accused persons.

Subject to the statutory limitation for offences punishable by imprisonment exceeding ten years, the court may release on Dharaut or Jamanat an accused who is:

- a child;
- infirm due to physical or mental disease;
- a woman whose pregnancy is more than seven months; or
- a person above seventy-five years of age.

The court's discretion must still be considered in light of the statutory conditions.

Accordingly, where one of these circumstances exists, the defence should place appropriate supporting evidence before the court.

Section 68: Bail, Dharaut and Jamanat

Section 68 is central to the bail side of Thunchek.

The provision states that, except in circumstances covered by Section 67, where there is a reasonable ground for proving the charge against the accused, the court may take:

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

and keep the accused on Tarikh.

The Code also requires a bank guarantee to be **unconditional** and capable of being renewed for the period specified by the court.

Therefore:

Section 67 → detention framework

Section 68 → Dharaut/Jamanat/Bank Guarantee framework

Section 69 → Tarikh where Sections 67 and 68 do not apply

This is the basic structure of Thunchek under Chapter-7.

What Happens If the Accused Cannot Furnish Bail?

Section 68(2) is particularly important.

If the accused fails to furnish the Dharaut, Jamanat or bank guarantee required under Section 68, the court shall remand the accused in detention.

In practical terms:

Court orders Jamanat → accused furnishes required security → release

But:

Court orders Jamanat → accused cannot furnish security → detention

Therefore, obtaining a favourable Thunchek order and actually completing the release process are two related but distinct stages.

Section 69: When Is the Accused Kept on Tarikh?

Section 69 provides that where the case does **not fall under Section 67 or Section 68**, once the accused appears before the court, the case should proceed by keeping the accused on **Tarikh**.

This is important because not every criminal case automatically results in either detention or payment of bail.

There is a third statutory possibility:

Tarikh / recognizance.

Thus, the correct legal analysis is not simply:

“Will I get bail?”

It should be:

“Under Chapter-7, does my case require detention, Dharaut/Jamanat, or Tarikh?”

What Factors Determine the Bail or Jamanat Amount?

The amount is governed principally by **Section 72**.

The Code requires the amount of Dharaut, Jamanat or bank guarantee to be fixed reasonably after considering specified circumstances.

These include:

1. Nature and gravity of the offence

The seriousness of the alleged offence is relevant.

2. Financial status

The accused's financial position must be considered.

3. Family condition

Family circumstances are also relevant.

4. Age

The age of the accused is a statutory consideration.

5. Physical condition

The accused's physical condition may also be relevant.

6. Previous conviction

The court considers whether the accused was previously convicted and sentenced.

7. Several offences

The court may consider whether several offences were allegedly committed during the same occasion.

8. Possible sentence and compensation

The sentence imposed or imposable and compensation to be borne by the accused may be considered.

9. Consequences of the offence

The consequences resulting from the alleged offence are relevant.

10. Guilty plea

Whether the accused has pleaded guilty is also identified as a factor.

This means that **there is no universal bail amount in Nepal**.

How to Argue for a Reasonable Bail Amount

If the defence is seeking release on Dharaut or Jamanat, the lawyer should present the relevant Section 72 circumstances systematically.

For example:

Financial condition: Explain the accused's actual financial capacity.

Family condition: Explain dependants and family responsibilities where relevant.

Age/health: Provide supporting documents where applicable.

Previous record: Establish whether the accused has any relevant previous conviction.

Charge: Explain the actual nature and seriousness of the allegation.

Potential sentence: Address the applicable punishment.

Court attendance: Demonstrate the accused's willingness and ability to appear.

A strong Thunchek submission should therefore connect the facts of the accused's case with the statutory factors.

Can the Court Ask for Additional Jamanat?

Yes.

Section 70 provides that if the security already taken subsequently appears insufficient, the court may demand **additional Dharaut, Jamanat or bank guarantee**.

If the accused fails to furnish the additional security, the court may remand the accused in detention.

Therefore, an initial bail order does not necessarily mean that the security requirement can never change.

Can a Court Change a Thunchek Order Later?

Yes.

Section 71 gives the court power to reconsider detention or security at any stage of the proceedings while examining evidence.

The court may:

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- remand the accused in detention under Section 67; or
 - demand Dharaut, Jamanat or bank guarantee under Section 68.

The fact that the accused was not initially detained does not prevent a later detention order merely because the accused was previously released.

This is an important distinction.

Bail is not necessarily permanent until final judgment.

The court can reconsider the accused's status in accordance with Section 71.

Can a Detained Accused Later Be Released?

Yes, potentially.

Section 71(2) provides that if a reasonable basis arises to establish that an accused detained under Section 67 or 68 is not guilty, the court may hear the matter at any stage and order release from detention.

This means that the defence should continue monitoring the evidence throughout the criminal proceeding.

A Thunchek decision at the beginning of a case does not necessarily end every future possibility of release.

Can a Jamanat Amount Be Challenged?

Yes.

Section 73 provides a mechanism for a person dissatisfied with an order concerning:

- detention;
- Dharaut;
- Jamanat;
- guarantee; or
- bank guarantee

to petition the **appeal-hearing court up to one level**.

The statute also contains a special provision concerning the legality of detention in cases involving offences punishable by life imprisonment or imprisonment for five years or more, allowing a petition to an appeal-hearing court beyond one level in the circumstances stated in the provision.

Therefore, an accused who considers a Thunchek order legally improper should have the order reviewed promptly.

Jamanat and Property Security

Section 74 governs the documentation and security arrangements when Dharaut, Jamanat or bank guarantee is taken.

For property-backed guarantee, the court fixes the amount and takes property security corresponding to the amount.

The Code also provides prescribed forms for the relevant deeds.

Where another person furnishes property as guarantee for the accused, that person assumes statutory responsibilities concerning the accused's appearance.

Therefore, a person providing **Jamanat for another accused** should understand the consequences before furnishing property.

What If the Value of the Property Falls?

The Code addresses this situation.

Where the value of property furnished as guarantee subsequently decreases, the person who furnished the guarantee must provide property corresponding to the decreased value.

Thus, property Jamanat is not simply a one-time administrative procedure.

The adequacy of the security can remain relevant throughout the proceeding.

What Happens If the Accused Does Not Appear?

Appearance is one of the central obligations associated with bail and Jamanat.

The prescribed deed contains the condition concerning the consequences if the person fails to appear at the time and place specified by the court.

Section 75 provides for forfeiture of Dharaut where the person who furnished it fails to appear.

Where immovable property has been furnished, the Code provides for recovery/sale mechanisms relating to the amount to be paid, with the remaining property dealt with according to the statutory provision.

Therefore:

Getting bail does not mean the criminal case is finished.

The accused must continue complying with court orders and appearance dates.

Can Bail/Jamanat Be Returned?

Yes, subject to the Code.

Section 76 provides for release or return of Dharaut/Jamanat in specified circumstances.

Where the accused is subsequently detained in a case filed in court, the security furnished before detention is to be released according to the statutory provision.

Where the accused is ultimately **acquitted**, the Dharaut or Jamanat taken during the proceedings is generally to be returned or released, except where otherwise provided by law.

Therefore, the release of security is connected with the procedural outcome of the case.

What Is Section 77 and How Does It Relate to Bail?

Section 77 deals with prolonged detention.

Where a case cannot be adjudicated within **one year from the first date fixed for examination of evidence** and an accused remains detained, the case may proceed by taking Dharaut or Jamanat, subject to the statutory exceptions.

However, this provision does not apply to an accused detained under Section 67 for an offence punishable by:

- life imprisonment; or
- imprisonment of ten years or more.

The statute also provides a special rule concerning recidivists.

Therefore, Section 77 cannot simply be applied to every long-running criminal case.

Maximum Detention Under Section 78

Section 78 establishes an important limitation.

An accused cannot be held in detention for longer than the **maximum period of imprisonment that could be imposed if the charge were proved**, subject to the Code's framework.

This provision should be considered where an accused has spent a substantial period in detention.

A lawyer should compare:

period already detained

with

maximum imprisonment applicable to the charge.

Why the Court's Written Thunchek Order Matters

Section 79 requires a memorandum of order when the court:

- 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 order is accompanied by reasons.

This written order is important for understanding:

- why detention was ordered;

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- why bail was granted;
 - the amount fixed;
 - the security required;
 - the conditions imposed; and
 - potential appellate remedies.

Detention Warrant Under Section 80

Section 80 concerns the warrant for detention.

When a person is detained under the Act, the competent authority is required to detain the person pursuant to the court's detention order and provide a detention warrant containing the reason and legal ground for detention in the prescribed form.

Therefore, detention is not merely an informal administrative act.

It must have a legal basis and corresponding documentation.

Thunchek Process in Nepal: Step-by-Step

A typical **Thunchek process in Nepal** can be understood through the following stages.

Step 1: Criminal case and appearance

The accused appears before the competent court according to the applicable procedure.

Step 2: Identify the charge

The court examines the offence alleged against the accused.

Step 3: Examine Section 67

The court determines whether the statutory grounds for detention are present.

Step 4: Consider Section 68

If Section 67 does not apply, the court may consider Dharaut, Jamanat or bank guarantee.

Step 5: Consider Section 69

Where neither Section 67 nor Section 68 applies, the accused may be kept on Tarikh.

Step 6: Determine the amount

If security is required, Section 72 provides the statutory factors for fixing a reasonable amount.

Step 7: Furnish security

The accused or appropriate guarantor furnishes the required Dharaut, Jamanat or bank guarantee.

Step 8: Execute the required deed

The applicable prescribed document is completed.

Step 9: Release

Once the court's requirements are fulfilled, the accused may be released according to the order.

Step 10: Continue court appearances

The accused must appear whenever required.

What Evidence Matters During Thunchek?

The Code refers to the evidence available at the relevant stage.

Therefore, the defence should examine the prosecution's materials and identify weaknesses such as:

- lack of direct evidence;
- contradictory statements;

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- absence of corroboration;
 - questionable identification;
 - documentary inconsistencies;
 - lack of causal connection;
 - absence of required elements of the offence; or
 - other facts undermining the statutory basis for detention.

The purpose is not to conduct the entire trial at the Thunchek stage.

Instead, the defence should demonstrate why the statutory basis for detention is absent or why release on appropriate security is legally justified.

Why a Strong Thunchek Application Matters

The Thunchek hearing can have a major practical impact on an accused.

A detention order may mean:

- loss of liberty;
- disruption of employment;
- family hardship;
- difficulty preparing the defence;
- prolonged custody during trial.

A properly structured bail application can therefore be important.

The defence should focus on the **statutory test**, rather than simply making an emotional request for release.

Common Mistakes in Thunchek and Bail Cases

Mistake 1: Not checking the exact charge

The punishment attached to the actual offence can determine the Section 67 analysis.

Mistake 2: Treating every criminal case as automatically bailable

The Code creates different categories under Sections 67, 68 and 69.

Mistake 3: Ignoring Section 72

The court must consider specified factors when fixing security.

Mistake 4: Offering an unrealistic Jamanat amount

The security must satisfy the court's order.

Mistake 5: Ignoring previous convictions

Previous conviction is expressly relevant under Section 72 and Section 67 in specified circumstances.

Mistake 6: Missing court dates

Failure to appear can have consequences for Dharaut/Jamanat.

Mistake 7: Assuming the first order can never change

Section 71 expressly allows reconsideration during proceedings.

How Adalat Lawyers Can Assist With Thunchek in Nepal

Adalat Lawyers focuses on litigation and can assist clients facing criminal proceedings involving **Thunchek, detention, bail, Dharaut, Jamanat and bank guarantee**.

A Thunchek strategy should begin by reviewing:

The charge

What exact criminal offence has been alleged?

The punishment

What sentence can legally be imposed?

Section 67

Does the case fall within a statutory category for detention?

Evidence

What evidence is presently available?

Section 72 factors

What facts support a reasonable security amount?

Release mechanism

Should the defence seek:

- Tarikh;
- Dharaut;
- Jamanat;
- bank guarantee; or
- release under another applicable statutory provision?

Appellate remedy

If the order is unreasonable or legally defective, should a petition be considered under Section 73?

These questions should be answered from the actual case file rather than from general assumptions.

FAQs About Thunchek in Nepal

1. What is Thunchek in Nepal?

Thunchek (ठुन्चेक) is the criminal court's determination of whether an accused should remain in detention or be released on Dharaut, Jamanat, bank guarantee or Tarikh during the criminal proceedings. Chapter-7 of the National Criminal Procedure Code, 2074 provides the principal statutory framework.

2. What is the difference between Thunchek and bail?

Thunchek is the broader court process of deciding the accused's status during trial. Bail, Dharaut and Jamanat are possible forms of release/security within that framework. The court may instead order detention or keep the accused on Tarikh where the statutory requirements are satisfied.

3. When can the court order detention under Section 67?

Section 67 applies to specified circumstances, including offences punishable by life imprisonment and certain Schedule-1 or Schedule-2 offences punishable by more than three years, where the statutory evidentiary threshold is met. It also covers specified circumstances such as guilty plea, flight risk in the circumstances stated, failure to appear pursuant to warrant, and recent previous conviction.

4. Can an accused get bail in a Section 67 case?

Section 67 provides the principal detention framework, but **Section 67(3) creates a special possibility** for certain children, infirm persons, women with pregnancy of more than seven months and persons above seventy-five, subject to the statutory limitation concerning offences punishable by more than ten years.

5. How does Section 68 provide bail?

Except in cases covered by Section 67, where there is a reasonable ground for proving the charge, the court may take **Dharaut, Jamanat or bank guarantee** and keep the accused on Tarikh. If the required security is not furnished, Section 68(2) provides for detention.

6. How is the bail or Jamanat amount fixed?

Under **Section 72**, the court must fix the amount reasonably after considering factors including the nature and gravity of the offence, financial and family condition, age, physical condition, previous conviction, several offences, sentence and compensation, consequences of the offence and whether the accused pleaded guilty.

7. Can the court increase the Jamanat amount later?

Yes. **Section 70** allows the court to demand additional Dharaut, Jamanat or bank guarantee if the original security later appears insufficient. Failure to furnish the additional security may result in detention.

8. Can a Thunchek order be challenged?

Yes. Under **Section 73**, a person dissatisfied with an order concerning detention, Dharaut, Jamanat, guarantee or bank guarantee may petition the appeal-hearing court up to one level, subject to the statutory provisions and special rule concerning certain serious offences.

9. What happens if a person released on Jamanat misses a court date?

Failure to appear can result in **forfeiture or recovery of the security** according to the relevant provisions. Section 74 also requires the prescribed deed to contain the relevant appearance obligation, while Section 75 deals with forfeiture of Dharaut.

10. Can a detained accused later be released?

Yes, depending on the circumstances. Section 71 allows the court to reconsider detention or security during proceedings. Section 77 also provides a specific mechanism concerning prolonged detention where a case has not been adjudicated within the statutory period, subject to important exceptions.

Conclusion: Thunchek in Nepal, Detention vs Bail

Thunchek in Nepal is not simply a question of “bail or no bail.” Under Chapter-7 of the **National Criminal Procedure Code, 2074**, the court has a statutory framework for deciding whether an accused should be:

Thuna (detention), Dharaut, Jamanat, Bank Guarantee or Tarikh.

The most important provisions are:

- **Section 67** — when an accused may be detained;
- **Section 68** — Dharaut, Jamanat or bank guarantee;
- **Section 69** — Tarikh where Sections 67 and 68 do not apply;

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- **Section 70** — additional security;
 - **Section 71** — reconsideration at any stage;
 - **Section 72** — factors for fixing the amount;
 - **Section 73** — petition against detention/security orders;
 - **Section 74** — deeds and security;
 - **Section 75** — forfeiture;
 - **Section 76** — return/release of security;
 - **Section 77** — specified prolonged-detention release;
 - **Section 78** — maximum allowable detention;
 - **Section 79** — memorandum of order; and
 - **Section 80** — detention warrant.

The Nepal Law Commission's published text confirms the Chapter-7 framework, including the statutory provisions concerning detention, Dharaut, Jamanat, bank guarantee, Tarikh, additional security and prolonged detention.

The most important practical point is that **the outcome of Thunchek depends on the exact offence, punishment, evidence and circumstances of the accused**. There is no universal rule that every accused must be detained, and there is no universal rule that every accused is entitled to release on payment of a fixed bail amount.

For a person facing a criminal case, the appropriate approach is to examine **Section 67 first**, then determine whether **Section 68 or Section 69** applies, and, where security is required, address the **Section 72 factors** carefully.

For assistance with **Thunchek, Thuna, Dharaut, Jamanat, bail, bank guarantee, criminal detention and criminal litigation in Nepal**, **Adalat Lawyers** can assess the specific case, evidence, charge and applicable procedural remedies.

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