

[CAPTION]

MOTION TO LET TO BAIL

The Defendant, by counsel, respectfully requests this Court to release the Defendant on a reasonable bail. In support of the Motion, the Defendant states the following:

1. On [insert date], the State charged the Defendant with Murder.
2. On [insert date], the Defendant was arrested on the charge of Murder without bond, and has remained in custody.
3. The State filed an Affidavit of Probable Cause supporting the charge of Murder. *See attached Affidavit herein incorporated and referenced as Exhibit A.*
4. The Defendant is entitled to bail unless the State can establish that he more likely than not committed murder. Fry v. State, 990 N.E.2d 429, 448 (Ind. 2013).; I.C. 35-33-8-2; Ind. Const, art. I, § 17.
5. The Affidavit of Probable Cause illustrates that the presumption that the Defendant committed the murder is not strong nor is the State's proof evident.
6. The Affidavit of Probable Cause omits relevant facts that would show that the presumption that the Defendant committed the murder is not strong and that the State's proof is weak.
7. The Defendant requests a hearing at which he can present evidence showing that the State's proof is not evident and the presumption that the Defendant committed the murder is not strong.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to schedule a bond hearing, and thereafter, release the Defendant on a reasonable bond, and for all other relief just and proper in the premises.

(Signature)

CASE LAW

CASEBANK B.2.h

Fry v. State, 990 N.E.2d 429 (Ind. 2013) (when a defendant charged with murder or treason seeks bail and the State seeks to deny it, the State bears the burden of proving by a preponderance of the evidence that the proof is evident or the presumption strong).

Satterfield v. State, 30 N.E.3d 1271 (Ind.Ct.App. 2015) (Defendant charged with murder had right to present evidence related to his affirmative defense at bail hearing).

Phillips v. State, 550 N.E.2d 1290 (Ind. 1990) (although the denial of bond was moot, a Defendant charged with murder is entitled to procedural due process hearing that guarantees bail will not be denied unreasonably or arbitrarily).

Morris v. State, 332 N.E.2d 90 (Ind. 1975) (it was not error for the trial court to deny a motion for bail without hearing where the Defendant failed to submit a memo or brief in support of the motion).

Rohr v. State, 917 N.E.2d 1277 (Ind.Ct.App. 2010) (despite affidavit of five-year-old victim's mother claiming that she had lied and misled police and that she did not witness Defendant beat the victim and she herself had beat him, the presumption of guilt was sufficiently strong to affirm trial court's denial of bond).

B.S. v. State, 966 N.E.2d 619 (Ind.Ct.App. 2012) (because Defendant rebutted the presumption of guilt required to hold her without bail, trial court abused its discretion by denying bail; Defendant proved that the evidence that her ingestion of rat poison killed her unborn child was weak).