

---

## **LAW RELATING TO BAIL UNDER INDIAN LAW**

---

Madhu Rani, Research Scholar, Shri Venkateshwara University, Gajraula, Amroha & Dr. Rana Praveen, Research Supervisor, Shri Venkateshwara University, Gajraula, Amroha

### **ABSTRACT**

The criminal procedure code gives only an outline of the provisions of bail, but most of the work is done by the courts themselves. As far as the meaning and definition of bail is concerned it has not been statutorily defined for the purpose of granting bail. Offences have been classified into bailable and non-bailable offences under section-2 of the criminal procedure code. In bailable offences bail can be claimed as a matter of right, whereas in non-bailable offences it is at the discretion of the courts whether to grant bail or not. At the same time, the crime rate is also increasing. Observing this, the Supreme Court has been held that there is an urgent need to make a balance between personal liberty and investigational powers of police. However, not all rights can be absolute and reasonable restrictions can be placed on them.

## **INTRODUCTION**

In India, criminal procedure code, 1973 does not define bail, The term bailable offence and non-bailable offence have been defined in section-2(a) in CRPC as Bailable offences means an offence which is shown as bailable in the first schedule or which is made bailable by any other law for the time being enforce, and non-bailable offence means any other offence. Further section- 436 to 450 set out the provisions for the grant of bail and bounds in criminal cases. The amount of security that is to be paid by the accused to secure his release has not been mentioned in the CRPC.

## **MEANING OF BAIL**

“**Bail is a security** given for appearance of prisoner in order to obtain his release from imprisonment a temporary release of a prisoner upon security one who provide bail.

Wharton’s law lexicon defines bail in following manner, To set a liberty a person arrested or imprisonment, on security being taken for his appearance on a day and at a place certain, which security is called bail, because the person arrested or imprisoned is delivered in to hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from person to which if they have, if they fear his escape, etc. the legal power to deliver him.

## **HISTORY OF BAIL**

The concept of bail can trace back to 399Bc, when Plato tried to create a bond for the release of Socrates. The modern bail system evolved from a series of laws originating in the middle-aged in England. In the magna carta in 1215, the first step was taken in granting rights to citizens. It said that no man could be taken or imprisonment without being judged by his peers or the law of the land. Then in 1275, the statute of Westminster was enacted which divided crimes as bailable and non-bailable also determined which judges and officials could make decisions on bail.

In 1976 the Bail Act 1976 came in to force. It sets out the current and the basic legal position of bail prevailing in England. It lays out that there is a general right to bail, except as provided for under the first schedule of the Act. While there are different grounds for refusing the right to bail depending on the type of offence the two basic grounds for believing that the defendant if released on bail will commit an offence while on bail, bail may be refused.

## **BAIL IN INDIAN CRIMINAL JUSTICE SYSTEM**

During mogul rule, the Indian legal system is recorded to have an institution of bail with the system of releasing an arrested person his furnishing a surety. The use of the system finds reference in the seventeenth century travelogue of Italian traveler manucci. Minacci himself was restored to his freedom from imprisonment on bail only after Mancini furnished a surety under Mughal Law. Mughal period of justice delivery system can be divided in to two. They are faujdar Adalat and nizamat Adalat. However, the form and contents of the British institution of bail were statutorily transported by the passing of code of criminal procedure in 1861, following by its reenactment in 1872,1898,1973,2005 and 2010.

### **OBJECT OF BAIL**

The system of bail establishes adjustment between the states duty to protect its citizen from the onslaught of criminals and the basic principal of criminal law that no person can be convicted unless hid guilt is proved.

The main objective of bail is to remove the restrictive and punitive consequences of pretrial detention of the accused which is made by delivering the accused to the custody of a third-party surety by way of furnishing of surety bonds or to one's self by way of execution of personal bond only. Bail may be ordered to be allowed with appropriate conditions covering three different types of situations.

(a)-Where the custody is deemed to be safe with the accused himself.

(b)-Where it is delivered to the surety, and

(c)-Where it may be given to the state for safe custody.

The supreme court advocated the main purpose behind the grant of bail in the case of *A.R ANTULAY VS R.S NAYAK* was that the consequences of long detention of the pre-trial accused person (who are presumed to be innocent as any other citizen ) detention should be as short as possible undue delay may well result in impairment of the ability of the accused to defend himself. Heater on account of death, Isa appearance in court at the time of trial and that he is also made available for trial or that he is likely to abuse the discretion granted in his favor by tampering with evidence.

## **CATEGORIES OF BAIL**

For the purpose of bail, offences are classified in to bailable and non-bailable offences which are discussed below.

### **BAIL IN BAILABLE OFFENCES**

According to section 2(a) of CRPC bailable offence means an offence that is classified as bailable in the first schedule of the code, or which is classified as bailable under any law. An accused can claim bail as a matter of right if he is accused of committing a bailable offence. The police officer or any other authority has no right to reject the bail if the accused is ready to furnish bail. Under section-436 of the CRPC 1973, A person accused of a bailable offence at any time while under arrest without a warrant at any stage of the proceeding has the right to be released on bail.

### **BAIL IN NON-BAILABLE OFFENCES**

Section-437 A non-bailable offence is defined as any offence which is not a bailable offence can not claim bail as a right. A person accused of non- bailable offences can be granted bail provided the accused does not qualify the following conditions-

- (a)-There are reasonable grounds to believe that he has committed an offence punishable with death penalty or life imprisonment.
- (b)-That the accused has committed a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment of seven years or more instances of a cognizable and non-bailable offence.
- (c)-There are exceptional cases in which law gives special consideration in favor of cases where the accused is a minor, a woman, a sick person etc.

## **DIFFERENT TYPES OF BAIL**

### **REGULAR BAIL-**

When a person commits a cognizable non-bailable offence which are so grave that a police officer can arrest the accused without a warrant or start the investigation without the permission of a court, The police can take him under custody period expires he must be sent to

jail. Section-437 and 439 of the CRPC gives the accused the right to be released from such custody to ensure his presence at the trial.

### **INTERIM BAIL**

This bail is granted as a temporary means and granted for a short period of time, either during the time of pendency of an application or when the application of anticipatory or regular bail is pending before the court.

Interim bail is always conditional and can be extended, but if it expires the accused has been granted an anticipatory bail or regular bail and he fails to pay the amount required for continuing the bail, then he loses his right of freedom and will be taken under custody.

### **ANTICIPATORY BAIL**

Section-438 deals with anticipatory bail. The 41<sup>st</sup> law commission report put forward for the first-time incorporation of a system of anticipatory bail. Anticipatory bail is self-defining. It is a type of bail which is given to someone who is in anticipation of getting arrested for a non-bailable offence by the police. This is an advanced bail mentioned under section-438 of the Act. A person who has been granted an anticipatory bail can not be arrested by the police. Therefore, the said powers are exclusively vested with the court of session and High courts.

### **SECTION-438(2)-**

This section of CRPC provides that, the High court or the sessions court may also impose some conditions while granting the application. The conditions may be as follows-

- (a)-That the person shall make himself available for the interrogation by the police officer as and when required.
- (b)-That the person shall not directly or indirectly make any inducement, threats or promise to any witness.
- (c)-That a person shall not leave India without previous permission of the court.

Accused who has been granted bail need not to appear before the court till the charge sheet is filed and process is issued.

### **SECTION-437(A) OF THE CRIMINAL PROCEDURE**

The amendment act of code of criminal procedure, 2008 inserted a new section 437(A) to provide for the court to require the the accused to execute bail bonds with sureties to appear before the High court and when such court issues notice in respect of the appeal against the judgment of the respective court. The bail bond furnished by the accused under the new section remains in force for six months.

### **POWER OF SESSIONS COURT AND HIGH COURT REGARDING THE BAIL**

Section 439 gives special powers to High court or court of session regarding bail. The period of 90 days or 60 days has to be commuted from the date of detention as per orders of the magistrate and not from the date of arrest by the police consequently, the first period of 15 days mentioned in section-167(2) has to be computed from the date of such detention and after the expiry of first 15 days it should be only judicial custody.

### **CASE LAWS**

#### **AASU VS STATE OF RAJASTHAN (2017) SC-**

In this case supreme court issued a direction that bail applications shall be disposed of normally within one week.

#### **SURESH VASUDEVA VS STATE-**

Section 438(1) applies only to non-bailable offences.

#### **UNION OF INDIA VS NIRALA YADAV (2014)**

Honorable apex court held that magistrate should decide the application for statutory bail on the same day it is filed.

### **CONCLUSION**

The idea of bail is noble idea in criminal jurisprudence. Society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the state. The concern is genuine and the problem is real. To deal with such a situation, a balance approach is needed to meet the ends of justice. The operational mode of bail has also shown that amongst other defects the system of bail suffers from a property-oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from

justice. Indian judiciary faces that increase in the number of under trial prisoners large scale poverty amongst the majority of the population in our country and fragmentation of land holdings is a common phenomenon in rural. India A family consisting of around 7 or 10 members depends on small piece of land for their subsistence, which also is a reason for disguised unemployment. When one of the members of such a family gets charged with an offence, the only way they can secure his release and paying the bail is by either selling off the land or giving it on mortgage. This is the precise reason why most of the under trials languish in jail instead of being out on bail.

There is also a strong need felt for a complete review of the bail system keeping in mind the socio-economic condition of the majority of our population. While granting bail the court must also look at the socio-economic plight of the accused and must also have a compassionate attitude towards them.

**REFERENCE-**

- The Code of Criminal Procedure,1973
- Suresh Vasudeva vs State and Anr. 1977
- Sanjay Chandra vs CBI(2012)
- Aasu vs State of Rajisthan(2017)
- Union of India vs Nirala Yadav (2014)
- Willaim Irvine , II Moghal India (1907)
- J.N Sarkar Mughal Administrative in India (1920)
- Supdt.And L.R vs Amity Jumar Ray Chaudhary (1947)
- (1992)1 SCC 225(280)
- S.S Mhetre vs State of Maharashtra(2010)
- SC on Bail Anticipatory Bail and Quashment vo12,
- Surendra Malik and Sundeep Malik,edi-20
- Criminal Procedure Code,1973,S.N Mishra, edition 2012
- Bail-law and Procedure,Dr.Ashutosh,edition 2021
- The Code of Criminal Procedure, By Ratanlal and Dherrajlal, edition-2004
- <https://www.lawyered.in/legal-disrupt/articles/anticipatorybail.indian-context>.
- <https://www.uslegal-forms.com/>
- <https://www.live-law.in/pdf>
- <https://indian-kanoon.org>