

Critical Study of Bail Provision under Code of Criminal Procedure, 1973 With Reference to Judicial Decisions in India

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Abstract: 'Bail' is gotten from the old French verb 'baillier' which means to 'give or convey'. Bail in English Common law is the liberating or setting at freedom a man captured or detained on security or on surety being taken for his appearance on certain day and place named. The concept of bail is an important aspect of the Indian legal system; there are mainly three types of bail offered in India, which are regular bail, interim bail, and anticipatory bail.

The system of bail enables the accused persons to avoid imprisonment and protects them from inhuman treatment by the police officers e.g. interrogation pressure, fear of torture, etc. which is unfortunately prevalent in law enforcement and investigative agencies. Moreover, bail reduces the prison population and reduces the workload of the prisons, speeding up the judicial system..

Keywords: Bail, Criminal Justice System, non-bailable offences, Criminal Procedure Code 1973, crucial to the accused

I. INTRODUCTION

The concept of bail, which is a fundamental part of Indian criminal jurisprudence. Bail is the release of prisoners as per the judge's decision.

Exoneration of a person from an offence for a specified period on terms and conditions. When the police go to arrest or detain a person, the person files an application for bail in a court or police station, application depends on its merit, accused commits bailable offense he gets bail from police station or court but accused commits serious offense he has to file bail in court. There are mainly three types of bail offered in India, which are regular bail, interim bail, and anticipatory bail. Investigation not completed within 90 days then the person filed default bail.

The act of releasing an arrested or imprisoned person on condition that he furnish security to appear at a specified time and place, known as bail, as the party arrested or imprisoned is surrendered to the oblige. Make yourself or as necessary a surety for its proper form, so that it may be safely protected.

Judicial discretion is never arbitrary and always operates through well-defined and predictable channels, even when it appears to be granted in broad terms by a statute. It is an appeal to the judicial discretion of the judge. Discretion should be exercised in accordance with well-established legal principles, not in conflict with them. With this in mind, the purpose of this article is to examine several aspects of judicial discretion in bail situations, including pre-arrest bail. In this context, an attempt has also been made to clarify the 'scope and scope' of bail rules by providing historical context and various judicial interpretations. It would be useful to state the scope of this study.

The Law Lexicon Defined:

Bail as the security for the appearance of the accused person on which he is released pending trial or investigation.

The Black Law's Dictionary Defined:

bail as to procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/her to the jurisdiction and judgment of the court.

II. HISTORICAL BACKGROUND

Kautilya's Arthashastra also states that the ideal is to avoid pre-trial arrest so the concept of bail was prevalent in ancient India as well. During the Mughal period in the 17th century, bail was in the form of 'Muchalka' and 'Jamanat'. Bail can be traced as early as 399 BC, when Plato first tried to create a bond to free Socrates. During the Middle Ages, circuit courts in Britain created a system of bail. The concept of modern bailment originates mainly from all medieval laws.

Now, bail is governed by the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Act'). Bailable is not clearly defined in the Act but the terms bailable offense and non-bailable offense are defined under Section 2(a). Section 436, Section 437, Section 438, Section 439, provisions relating to bail have been laid down under the Act.

III. METHOD

Doctrinal method relying upon secondary data.

Further application of this data-gathering method has made it possible to consult various authentic sources of data which have helped to collect accurate numerical data on Bail provision in India. This helped in drawing proper conclusions from the data collected in this study.

The data is collected from various book, journals, websites.

IV. DISCUSSION

For the purpose of bail offences are classified bailable and non-bailable offences which are discussed below:

Bailable offences: According to Section 2(a) of CrPC bailable offence means An offence which is bailable in Schedule First or bailable under other laws in force is a bailable offence.

Non-bailable offences: A non-bailable offence is one in which bail cannot be granted as a matter of right unless ordered by a court. It depends on its nature, it is serious in nature. In such cases, the accused can seek bail under Section 437 and Section 439 of the Code of Criminal Procedure, 1973. These are serious offenses as opposed to bailable offences. E.g.(Extortion, Rape, Murder etc.) Non-bailable offenses carry a sentence of three years or more.

There are mainly three types of bail offered in India, which are –

REGULAR BAIL – Section 439 of the Code of Criminal Procedure (CrPC) provides for the provision of granting regular bail to accused individuals who are in custody. The primary purpose of regular bail is to secure the release of the accused during the pendency of the trial, ensuring their presence in court as and when required, while also taking into account the principles of justice and the protection of society.

To obtain regular bail under section 439 of the CrPC, the following factors are generally considered:

1. **Nature of the offense:** The court examines the nature and gravity of the offense alleged, considering whether it involves harm to society or an individual, and whether it is bailable or non-bailable.
2. **Strength of the evidence:** The court evaluates the strength of the evidence available against the accused. If the evidence is strong and there is a likelihood of the accused tampering with evidence or influencing witnesses, bail may be denied.
3. **Antecedents of the accused:** The court takes into account the criminal record of the accused, if any, and considers whether there is a likelihood of the accused committing further offenses or absconding.
4. **Possibility of flight:** The court assesses whether there is a likelihood of the accused absconding if released on bail, based on factors such as the accused's financial resources, social ties, and their propensity to evade justice.
5. **Substantial grounds for the accused's detention:** The court examines whether there exist any substantial grounds justifying the continued detention of the accused. If the court finds that there are no such grounds, it may lean towards granting bail.

It is important to note that the decision to grant or deny regular bail rests with the discretion of the court, which takes into consideration the specific circumstances of each case. The legal provisions and guidelines governing regular bail vary in different jurisdictions, so it is advisable to consult a qualified legal professional who can provide guidance based on the relevant laws applicable in your jurisdiction.

INTERIM BAIL – Interim bail refers to temporary or provisional release granted to an accused person before the final determination of their case. It is regulated under the Code of Criminal Procedure (CrPC) in India.

According to Section 439 of the CrPC, the court has the power to grant interim bail to an accused person during the pendency of their trial. Interim bail is usually granted in situations where the court deems it necessary to temporarily release the accused, considering factors such as the accused's health, age, or the need to attend an urgent matter.

The procedure for obtaining interim bail may vary from case to case and depends on the discretion of the court. Generally, the accused or their legal representative will file a bail application before the court, stating the grounds on which interim bail is sought. The court will then examine the merits of the case and determine whether temporary release is appropriate.

It's important to note that interim bail is different from regular bail. Regular bail is granted for a specific period or until the final determination of the case, while interim bail is temporary and is intended to provide relief to the accused until a final decision is reached.

It is advisable to consult with a legal professional who can provide specific guidance tailored to your particular case and jurisdiction.

ANTICIPATORY BAIL –Anticipatory bail is a provision under the Code of Criminal Procedure (CrPC) that allows a person to seek bail in anticipation of being arrested. The purpose of anticipatory bail is to safeguard a person's individual liberty and protect them from unnecessary harassment and detention by the police.

Under Section 438 of the CrPC, a person can apply for anticipatory bail before they are actually arrested or apprehended. The application is usually filed in the high court or sessions court having jurisdiction over the offense. The court, after considering factors such as the nature and gravity of the offense, the possibility of the accused absconding or tampering with evidence, and the need for custodial interrogation, may grant anticipatory bail with certain conditions.

If the court grants anticipatory bail, it means that the person will be protected from arrest by the police for a specified period, subject to compliance with the conditions set by the court. If the person violates any of these conditions, the anticipatory bail can be canceled, and the person may be arrested.

It is important to note that anticipatory bail is not an absolute right, and the court has the discretion to grant or reject the application based on the facts and circumstances of the case. It is advisable to consult a lawyer who specializes in criminal law for specific advice and guidance regarding anticipatory bail in your jurisdiction.

Investigation Not Completed Within 90 Days.

DEFAULT BAIL – section: 162(2) refer to default bail. Default bail is a right to bail that accrues to an accused person when the police fail to complete investigation within a specified period. It is also known as statutory bail. In Ritu Chhabaria v. Union of India it was observed that filing an incomplete chargesheet without completing the investigation does not extinguish the accused's right to default bail.

Cases:

In Brijmani Devi v. Pappu Kumar it was observed that the court must exercise discretion in a judicious manner and in accordance with established principles of law having regard to the crime alleged to be committed by the accused as well as keeping in mind the purity of the trial, while considering a bail application.

In Gokul Singh v. State of M.P it was held that the prosecution was not responsible for the delay caused in the trial and hence, the accused cannot be granted bail on grounds of such delay.

In Makhijani Pushpak Harish v. The State of Gujarat the Apex Court set aside an order for the pre-condition of furnishing bank guarantee which was imposed on the accused by the Trial Court and the High Court while issuing bail.

Cancellation Of Bail:

Under Section 437(5) of CrPC, the court which has granted bail can cancel it, if found necessary under certain conditions. Per Section 439(2), the Sessions Court, High Court, or Supreme Court can, suo moto, cancel the bail granted to the accused and transfer the accused to custody. Per Section 389(2), an appellate court can also cancel the bail of the accused and order the accused to be arrested and sent to custody.

A) GROUNDS FOR GRANTING BAIL:

Nature and facts of the offence.
Punishment not exceeding 1 to 3 years for the accused.
Age of accused less than 16 years
Medical problems

B) GROUNDS FOR REFUSAL OF BAIL:

Nature and facts of the offence.
Accused Sentenced to more than 7 years.
Death penalty.
Murder and rape cases.
POCSO cases.

V. CONCLUSION

The concept of bail is an important aspect of the Indian legal system, There are mainly three types of bail offered in India, which are regular bail, interim bail, and anticipatory bail. Investigation not completed within 90 days then the person filed default bail. The purpose behind section 438 is to protect the liberty of an individual and to free the innocent speaker from the ground. Granting bail to a repeat offender is a miscarriage of justice.

According to section 439, the District Court and the High Court have the power to grant bail. The said Chief Court takes full cognizance of the incident and grants bail. This bail is applicable till the trial.

Interim bail is granted to a leader or a big businessman or a famous actor to protect him from many false cases. Bail is regularized or rejected after thorough enquiry.

The factor that while granting bail, the accused needs to furnish the bail bond, is somehow still discriminatory in the present society. The 154th Law Commission Report of India considered the same issue that the bail system discriminates against the poor and poor are not able to furnish the bail bond on account of their poverty but for the wealthier persons, it would be easy to secure a bail bond as they can afford for the bail.

VI. SUGGESTIONS

When it comes to making suggestions for bail, it's important to consider the specific circumstances of the case and the individual involved. However, here are a few general suggestions that may help in bail proceedings:

- 1. Provide evidence of strong community ties:** Demonstrating strong community ties, such as employment, family relationships, or community involvement, can show that the individual is unlikely to flee or pose a risk to the community if granted bail.
- 2. Offer a suitable surety:** If possible, propose a responsible and trustworthy person who is willing to act as a surety for the individual. This can help assure the court that the person will comply with bail conditions.
- 3. Suggest reasonable bail conditions:** Propose bail conditions that address the concerns raised by the court while still allowing the individual to maintain employment, support their family, or receive necessary medical care. This can help alleviate any potential flight risk or threats to public safety.
- 4. Present a strong legal argument:** Have a skilled legal representative present a persuasive argument for bail, outlining any relevant legal principles, precedents, or mitigating factors that support the granting of bail.

It's important to note that bail decisions are ultimately up to the discretion of the court, and these suggestions may vary depending on the jurisdiction and the specific details of the case. Consulting with a qualified attorney is always advised to navigate the bail process smoothly.

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