

Provisions of Bail in India

Anuj

Anujrtk@gmail.com

Meaning of the term Bail

Bail is the release of a person who is under arrest or who has already appeared in court, in exchange for a promise to appear in court whenever he will be asked to appear. A person who is in custody, because he or she has been charged with an offence or is involved in pending criminal proceedings, may apply to be released on Bail. Normally, in signing a bail agreement a person undertakes that he will be present every time the matter is in court until the proceedings are finished and will also comply with the conditions set out in the agreement as to conduct while on Bail and Concerned Authority may forfeit a specified sum of money if the person fails, without proper excuse, to comply with any term or condition of the agreement.

Indian Constitution: Indian law stresses the principles of presumption of innocence. The principle embodies freedom from arbitrary detention and serves as a bulwark against punishment before conviction. More importantly, it prevents the State from successfully employing its vast resources to cause greater damage to an un-convicted accused than he/she can inflict on society. While considering bail applications of the accused, courts are required to balance considerations of personal liberty with public interest. The Supreme Court has laid down in its judgements, "Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigation gamble decisive of a fundamental right. After all, the personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by law."

Bail to foreign nationals: The courts have also held that foreign nationals cannot be deprived of the right to seek bail. The Delhi High Court observed, "Law does not permit any differentiation between Indian Nationals and Foreign citizens in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the court can impose different conditions which are necessary to ensure that the accused will be available for facing the trial. It cannot be said that an accused will not be granted bail because he is a foreign national."

The Code of Criminal Procedure, 1973 does not define bail, although the terms bailable offence and non-bailable offence have been defined in section 2(a) of the Code. A Bailable offence is defined as an offence which is shown as bailable in the First Schedule of the Code or which is made bailable by any other law, and non-bailable offence means any other offence. A person who is arrested for a 'bailable' offence may secure bail at the police station, while those who fail to secure police bail and those arrested for non-bailable offences have to secure bail in court.

Bail Provisions Under Code of criminal procedure, 1973: Sections 436 to 450 set out the provisions for the grant of bail and bonds 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 Code. Thus, it is left to the discretion of the court to decide what amount to be taken as bond. The Supreme Court of India has delivered several cases wherein it has reiterated that the basic rule is - bail and not jail. One such instance came in State Of Rajasthan, *Jaipur v. Balchand @ Bailey* which the Supreme Court decided on 20 September 1977, and held that the basic rule is bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. The bench of Krishnaiyer, V.R. had observed that when considering the question of bail, the gravity of the offence involved and the heinousness of the crime which are likely to induce the petitioner to avoid the course of justice must weigh with the court. Taking into consideration the facts of the case the apex court held that the circumstances and the social milieu do not militate against the petitioner being granted bail.

When a person accused of a crime is arrested, his statement is recorded and information such as the name, residence address, birthplace, charges filed are noted. The police officer may also check back the criminal record if any in the police station and ask for fingerprints to file a case against the accused. Under the Code of Criminal Procedure 1973 (First Schedule), offences have been classified as "bailable" and "non-bailable" offences. In the case of bailable offences, if the accused produces proper surety, and fulfils other conditions, it is binding upon the Investigating officer to grant bail. However, in case of a non-bailable offence, the police cannot grant bail; it can only be granted by a

Judicial Magistrate/Judge. The Investigating Officer must produce the accused before the Judicial Magistrate / Judge concerned within 24 hours of his arrest. At that time, the accused has a right to apply for bail. Depending upon the facts of the case, the judge decides whether bail should be granted. If bail is granted the accused must deposit money with the court. Generally, for lesser crimes, a standard amount is asked to be deposited for awarding the bail.

Bail Under 437 CRPC, 1973: There are some conditions put under section 437 of the Cr.P.C. wherein bail can be requested even for a non-bailable offence. In non-bailable cases, bail is not the right of the accused, but the discretion of the judge if regards the case as fit for the grant of bail, it regards imposition of certain conditions as necessary in the circumstances. Section 437(3) elaborates the conditions set by the law to get bail in non-bailable offences. The sub-section says that when a person accused or suspected of the commission of an offense punishable with imprisonment which may extend to seven years or more or of an offense under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abatement of, or conspiracy or attempt to commit, any such offense, is released on bail under sub-section (1). However, for that, the Court has the power to impose any condition which it considers necessary. Some conditions that the court may place while granting bail are to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or otherwise in the interests of justice

Anticipatory Bail: Under Indian criminal law, there is a provision for anticipatory bail under Section 438 of the Criminal Procedure Code. Anticipatory bail is a direction to release a person on bail, issued even before the person is arrested. Law Commission of India in its 41st report recommended to incorporate this provision in procedure code. This provision allows a person to seek bail in anticipation of an arrest on accusation of having committed a non-bailable offence. Anticipatory Bail is granted by court of session or High Court of the state.

On filing anticipatory bail, the opposing party is notified about the bail application and the opposition can then contest the bail application in court (public prosecutor can also be used to do this).

The applicant must show by disclosing special facts and events that he or she has reason to believe, that he or she may be arrested for a non-bailable offence so that the court may take care to specify the offence or offences in respect of which alone the order will be effective and it is not a blanket order covering all other offences. Under the CRPC amendment of 2018 there is no anticipatory bail involving the arrest of any person on accusation of having committed an offence under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.

Bail Under 439 CRPC, 1973: In case of non-bailable offences, as per section 437 CrPC and Section 439 CrPC, the grant or refusal of the bail is a matter of discretion of the court which means bail can be granted by the court. Only condition is that it cannot be demanded as a right by the accused. A High Court or Court of Session may direct that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-Section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that Sub-Section;

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code, give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.

1A. The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of section 376 or section 376AB or section 376DA or section 376DB of the Indian Penal Code.

A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

REFERENCES

- [1] State versus Govind Lal, 1966 CrLJ 746 Raj
- [2] Gurubachhan Singh versus state 1978 CrLJ 129 SC
- [3] Suman Pandey Versus State of Uttarparadesh 2007 SCC 364
- [4] Sukhwant Singh Versus State of Punjab 2009 SCC 559

- [5] Article 21 Constitution of India
- [6] Article 22 Constitution of India- Protection against arrest and detention in certain cases
- [7] Code of criminal procedure, 1973
- [8] Gurubaksh Singh Cibia versus State of Punjab AIR 1980 SC 1632
- [9] SS Mhetre versus State of Maharastra SCC 694 2011
- [10] State Of Rajasthan,Jaipur v. Balchand @ Bailey
- [11] THE CRIMINAL LAW (AMENDMENT) ACT, 2018