



JUDICIAL DISCRETION IN THE MATTER OF BAIL UNDER INDIAN LEGAL SYSTEM

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Abstract: India being a democratic nation governs itself through the rule of law conferring numerous rights to its citizens. Bail is one such right inherent under article 21. In reference *Gudikanti Narasimhulu Case* AIR 429, 1978 SCR (2) 371 Justice, V R Krishna Iyer said “bail is the rule and jail is the exception and is based on the principle of presumption of innocence until proven guilty. Prisons and its administration are primarily the responsibility of states and UTs. In 2024, Indian prisons had a total of 573,220 prisoners although capacity is 436,266 resulting in overcrowding of 131.4%. 75.8% of under trial prisoners of the total prison population, with 434,302 awaiting trial. This put a question mark on bail provisions. Recently Legislature passed *Bhartiya Nagrik Suraksha Sanhita, 2023* replacing Criminal Procedure Code, 1973 to improve the conditions of prisons in India. The present research paper has been written with the objectives to understand factors governing criminal justice system and bail patterns in India, to critically analyze the judicial trends and judicial discretion relating to bail. Research methodology adopted for the present research work is doctrinal and materials have been collected for this study both from primary and secondary sources which include Acts, legislations, bylaws, ordinances, reports, and various judgments pronounced by the Hon’ble Supreme Court of India and the other High Courts in India.

Key words- *Bail, Article 21 Under-trial, judiciary, Bhartiya Nagrik Suraksha Sanhita, 2023*

Introduction

India being a democratic nation governs itself through the rule of law conferring numerous rights upon its citizens. Bail is one such right inherent under being amended time and again during the post-independence period. In *Gudikanti Narasimhulu and Ors vs. Public Prosecutor, High Court of Andhra Pradesh*¹ Justice, V R Krishna Iyer defined the ambit of judicial discretion by saying that “bail is the rule and jail is the exception”². This right isn’t absolute and is based on the principle of presumption of innocence i.e. an individual is considered innocent until proven guilty.

Asim Pandey (2015)³ in his book emphasized on connection between right to bail and the personal liberty of a person under Article 21 of Constitution of India, 1950

Janak Raj Jai (2015)⁴, in his book elaborated that the well-established principle of granting bail is typically the norm, and denying it should be an exception which should only be curtailed through lawful procedures established by law.

P.V Ramakrishna and Jai Shanker Dubey (2016)⁵ in his book explained the concept of law of bail, bonds, arrest, and detention.

M.R. Mallick (2014)⁶ by his book illuminates various aspects of bail law such as how bail is granted, bail as a matter of right, cancellation of bail, concept of anticipatory bail, etc., comprehensively with the help of the

¹ AIR 429, 1978 SCR (2) 371

² AIR 2447, 1978 SCR (1) 535

³ Asim Pandey, ‘*Law of Practice and Procedure*’, 2nd ed., Lexis Nexis, Delhi, 2015

⁴ Janak Raj Jai, ‘*Bail Law and Procedures*’, 6th ed., Universal Law Publishing, 2015

⁵ P.V Ramakrishna and Jai Shanker Dubey, ‘*Law of Bails*’, 9th ed., Universal Law Publishing, 2016

⁶ M.R. Mallick, ‘*Bail Law and Practice*’, 5th ed., Eastern Law House, 2014

latest judgments.

Ratanlal and Dhirajlal (2017)⁷ in their book stressed upon the dynamic nature of law which keeps on changing according to the growth of society. The same goes for the criminal law system of the country. With the help of this book, the author attempts to draw attention toward the shift in the accused-oriented approach to victim-oriented.

Justice M.L. Singhal (2007)⁸ in his work meticulously compiles cases where bail has been granted or denied by the Supreme Court and High Courts of India under the Indian Penal Code, 1860, and other minor criminal acts.

Justice A.B. Srivastava and Dr. H.P. Gupta (1999)⁹ in their work have extensively emphasized on individual liberty of accused persons as paramount and argue against their confinement in fetters or behind iron bars.

Prisons and the administration of prisoners are primarily the responsibility of individual states and union territories, according to the Ministry of Home Affairs. In 2024, Indian prisons had a total of 573,220 prisoners, with 436,266 capacity. This resulted in a high overcrowding rate of 131.4%. Undertrial prisoners made up 75.8% of the total prison population, with 434,302 individuals awaiting trial. About 573,220 prisoners were lodged in Indian jails as of December 31, 2022 whereas total authorized capacity of Indian prisons was 436,266 inmates. Prisons in India were overcrowded to the extent of 131.4%. 434,302 prisoners were undertrials, representing 75.8% of the total prison population¹⁰. This put a question mark on bail provisions. A significant portion of the Indian prison population is due to slow trials and the denial of bail. One distressing aspect of criminal justice administration in India is the excessively large number of under-trial prisoners remaining in jails. Keeping this in mind, the present research paper has been written with the following objectives namely, to understand the factors governing the criminal justice system and bail patterns in India, to critically analyze the judicial trends and judicial discretion in India relating to Bail matters and the challenges faced by them. Research methodology adopted for the present research work is doctrinal and materials has been collected for this study both from primary and secondary sources which include Acts, legislations, bylaws, ordinances, reports, and various judgments pronounced by the Hon'ble Supreme Court of India and the other High Courts in India.

Concept

The word "bail" is derived from the old French verb *baillier*, which means to give or deliver. The word is also related to the Latin word *bajulare* meaning to bear burden.¹¹

Historical Evolution of Bail System

The concept of bail dates back to 399 BC when Plato attempted to secure a bond for Socrates' release.. Following the collapse of Rome in the fifth century, the Germanic tribes of the Angles, Saxons, and Jutes came to Britain, bringing with them the blood feud as the main form of conflict resolution. This kind of "justice" proved to be harsh and brutal, leading these tribes to adopt an alternative legal system centered on making amends for wrongs by first compensating with products and then with money. The concept of "wergeld," which refers to "man price" or "man payment" and is often more widely called a "bot," was the basis for this remuneration. Thus initially, the main goal of setting bail was to prevent blood feuds. However, with development of public legal processes and the establishment of jails, the role of bail evolved into a means of allowing conditional release.

Evolution of Bail in England

In common law, bail refers to the release or setting free of an arrested or imprisoned individual after any civil or criminal proceeding, based on the promise of their appearance on a specified date and place entrusted to those who pledge themselves as bailers to ensure timely appearance of the individual.¹² Bail was mandatory in all summary cases and in all misdemeanours, except those treated as felonies.¹³ The judges used to travel throughout the nation on circuit to hear cases. In order to guarantee that the individual would show up for the hearing on the scheduled date, they were released after obtaining a surety. The idea of monetary bail gradually

⁷ Ratanlal & Dhirajlal, 'The Criminal Procedure Code', 7thed., EBC Publishing, Lucknow, 2021

⁸ Justice M.L. Singhal, 'Bail Referencer: Bail Cases under the Indian Penal Code and Minor Criminal Acts', Law Publishing House, 2007

⁹ Justice A.B. Srivastava and Dr. H.P. Gupta, 'Law of Arrest and Bails', 1st ed., Modern Law House, 1999

¹⁰ Ministry of Home Affairs, 'National Crime Record Bureau Prison Statistics', 2022, [www. ncrb.gov.in, availableat:https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyarwise2022/1701613297PSI2022ason01122023.pdf](https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyarwise2022/1701613297PSI2022ason01122023.pdf) (last accessed on 27/6/2024)

¹¹ P.V. Ramakrishna, 'Law of Bails', 9th ed., Universal Law Publishing, 2016, at p.39

¹² M.R. Mallick, 'Bail Law in India', 5th ed., Eastern Law House, 2014, at p.54

¹³ Supra Note 5, at p.66

gained acceptance, and the under-trial parties in question were requested to provide a bond that would forfeit if they failed to appear in court.¹⁴

The Magna Carta of 1215 marked the first step in granting rights to citizens. Up to 13th century, local sheriffs set the terms under which a defendant may be held until trial or freed with assurances that he would return and had the sovereign power to hold or release suspects. In 1275, the Statute of Westminster was enacted, which categorized offenses as bailable and non-bailable and specified which judges and officials could make bail decisions. In 1677, the Habeas Corpus Act was added to the Petition of Right of 1628, granting defendants the right to be informed of the charges against them and whether those charges were bailable.¹⁵ In the 1689 Bill of Rights, Parliament established that bail must be reasonable, a principle later incorporated into the American 8th Amendment to the Constitution in 1791.¹⁶

Evolution of Bail in America

In Connecticut, Delaware, Georgia, Maine, Maryland, and Rhode Island, colonial charters granted colonial Americans the same legal rights as those enjoyed under English law, without amendments.¹⁷ In 1682, Pennsylvania adopted its own Frame of Government of Pennsylvania, providing that “all prisoners shall be bailable by sufficient sureties, unless for capital offences.” New York adopted Pennsylvania's bail system as a model, allowing bail in all cases except for charges of treason and felony.¹⁸ Thus we can say that presumptions favouring pre-trial release through payment of bail had already become strong in American legal custom by the time of the Republic's founding. The English common law was used by the United States Supreme Court in 1872 to clarify the obligations and liabilities of sureties who have a defendant under their custody.¹⁹ United States Congress passed the Judiciary Act, 1789 stating that “bail shall be admitted, except where the punishment may be death”²⁰. There existed commercial bondsman's firm functions which provide that if the defendant lacks the means to pay bail or cannot find a willing or financially capable family member or friend, they can opt for a commercial surety.²¹

Congress enacted the Bail Reform Act of 1966, which declared that “the sole purpose of bail laws must be to assure the appearance of the defendant” and adopted a policy that no one, “regardless of their financial status,” may “needlessly be detained pending their appearance.”²² The Bail Reform Act of 1984 went a step further and provided that judges making bail decisions could, for the first time, take into account “the nature and seriousness of the danger to any person or the community that would be posed by the person's release.” Thereby allowing “dangerousness” inquiry.²³

Evolution of Concept of Bail in Australia

In Australia, it is mandatory to consider granting bail to individuals accused of offenses punishable with six months of imprisonment and following factors must be considered-accused's background, community ties, criminal history, familial involvement in criminal activities, previous court appearance records, nature and severity of the offense, strength of evidence, potential penalties, community safety, likelihood of re-offense, cases of domestic violence while on bail

Evolution of Concept of Bail in Canada

The Canadian bail system traces its origins to the British legal system, with legislation established in 1869 and subsequently amended by The Bail Reform Act, 1960 which empowers police to release accused individuals before their court appearance, so as to ensure justice except if there is a risk of them fleeing, or granting bail would undermine public confidence in the justice system.²⁴ Unlike direct arrest systems, Canada operates on a summons process. In cases where the police deem it unnecessary to arrest the accused to ensure

¹⁴ ibid

¹⁵ Urvashi Saikumar, ‘India System Of Bail – Anti Poor’, www.legalserviceindia.com, available at: https://www.legalserviceindia.com/articles/bail_poor.htm#:~:text=It%20also%20determined%20which%20judges,him%20were%20bailable%20or%20not (last accessed on 12/12/2023)

¹⁶ Janak Raj Jai, ‘Bail of Law and Procedures’, 6th ed., Universal Law Publishing, 2015, at p.43

¹⁷ Supra note 20, at p.80

¹⁸ Supra note 20, at p.80

¹⁹ id, at p.78

²⁰ Supra note 25, at p.20

²¹ John-Michael Seibler and Jason Snead, ‘The History of Cash Bail’, 2017, www.heritage.org, available at: <https://www.heritage.org/sites/default/files/2017-08/LM-213.pdf> (last accessed on 1/01/2024).

²² Supra note 34

²³ Supra note 25, at p.25

²⁴ ibid

their appearance in court, they may issue a notice of appearance instead of making an arrest.²⁵

Table 1.1

Synoptic view of offences where bail is generally granted and where it is not typically granted in India

Category	Offences where Bail Generally Granted	Offences where Bail Generally Not Granted
Offences against Individual	Simple Assault (Section 352 IPC)	Murder (Section 302 IPC)
	Voluntarily Causing Hurt (Section 323 IPC)	Rape (Section 376 IPC)
	Criminal Intimidation (Section 506 IPC)	Kidnapping for Ransom (Section 364A IPC)
	Negligent Act Endangering Life (Section 336 IPC)	Culpable Homicide not amounting to murder (Section 304 IPC)
	Causing Death by Negligence (Section 304A IPC)	Attempt to Murder (Section 307 IPC)
	Wrongful Confinement (section 342)	Trafficking of Person (section 370 IPC)
Offences against State and Public Tranquility	Unlawful Assembly and Rioting (section 143, 147 IPC)	Treason (section 121 IPC)
	Rioting (section 147 IPC)	Conspiring to commit certain offences against the State (section 121A of IPC)
	Public servant negligently suffering prisoner of State of war in his custody to escape (Section 129 IPC)	Collecting Arms with Intent to Wage War section (122 IPC)
	Affray (section 160 IPC)	Assault on President or Governor etc., with intent to compel or restrain the exercise of any lawful power (section 124 IPC)
	Incitement to Violence (section 153 IPC)	Sedition (section 124A of IPC)
Offences against Property	Criminal Misappropriation of Property (section 403 IPC)	Robbery (section 392 IPC)
	Cheating (section 417 IPC)	Dacoity (section 395 IPC)
	Mischief (section 426 IPC)	Theft (section 379 IPC)

Table 1.2

Synoptic View of Pendency in Bail Applications in Various High Courts in India from 01.07.2022 to 30.06.2023

S.No.	Name of the High Court	Bail Application Pendency	
		As on 01.07.2022	As on 30.06.2023
1	High Court of Allahabad	42275	28461
2	High Court of Andhra Pradesh	143	218
3	High Court of Bombay	6562	5939
4	High Court of Calcutta	6654	7624
5	High Court of Chhatisgarh	2359	1517
6	High Court of Delhi	1781	2032
7	High Court of Gauhati	424 (Principal bench)	415 (Principal bench)
		03 (Kohima bench)	10 (Kohima bench)
		01 (Aizwal bench)	06 (Aizwal bench)
		22 (Itanagar bench)	09 (Itanagar bench)
8	High Court of Gujarat	3342	2839
9	High Court of Himachal Pradesh	953	1144
10	High Court of Jammu & Kashmir And Ladakh	482	564
11	High Court of Jharkhand	4108	6254
12	High Court of Karnataka	3332	2941
13	High Court of High Court of Kerala	3023	2983
14	High Court of Madhya Pradesh	4932	4443
15	High Court of Madras	3054	1089
16	High Court of Manipur	13	15
17	High Court of Meghalaya	03	07
18	High Court of Orissa	10952	7214
19	High Court of Patna	23183	8765
20	High Court of Rajasthan	5127	6534
21	High Court of Telangana	77	123

22	High Court of Tripura	02	07
23	High Court of Uttarakhand	1167	1381

Adopted from: Annual Report of the Supreme Court of India, 'Indian Judiciary Annual Report(2022-23)', www.sci.gov.in, available at: main.sci.gov.in/Annual report/ (last accessed on 23/01/2022).

Evolution of Concept of Bail in India

During Mughal Rule -The Indian legal system historically employed a practice of bail, where an arrested person could secure release by providing a surety. This system is documented in the seventeenth-century travelogue of the Italian traveler Manucci²⁶, During the British regime East India Company gained control over Nizamat Adalats and other Fouzdary Courts in the mofussil areas, leading to integration of English criminal law and procedures into the Indian legal system. During this period, criminal courts utilized two well-defined forms of bail for releasing individuals in custody: zamanat²⁷ and muchalka.²⁸

Colonial Influence and British Legal Framework-British colonial rule beginning in the 17th century and consolidating in the 18th century can be considered as period of evolution of the bail system in India²⁹ with introduction formal concept of bail, lineated its provisions in the CrPC, 1861 under Sections 496 to 502³⁰ and established the role of judicial discretion which laid the foundation for the modern Indian bail system.

Early Post –Independence Period - Law Commission Reports

Law Commission of India 41st Report-It emphasized that bail is a matter of right if the offence is bailable, bail is a matter of discretion if the offence is non-bailable except in case of woman, a minor under 16 years old, or a person who is sick or infirm. The Court of Session and the High Court have broader discretion in granting bail including for offenses punishable by death or life imprisonment³¹.

Law Commission of India 48th Report -It focused on anticipatory bail which should be exercised only in exceptional cases. And final order should be issued only after notifying the public prosecutor and should be notified to the superintendent of police to facilitate compliance and monitoring.³²

Law Commission of India 154th Report- It deals with the issue of bail, anticipatory bail and sureties and supported the presumption of innocence of an accused till found guilty”³³

Legislative Provision

International scenario The broad principles on which bail system is based are as follows-

1. Presumption of Innocence unless proven guilty
2. Right to Liberty, Security of person and Prohibition of Arbitrary Detention
3. International Standards on right to speedy and fair trial

²⁶ William Irvine, 'Moghul India', 1907, at p.198

²⁷ Zamanat involved securing release through sureties who undertook responsibility for the accused by depositing a written deed with the court.

²⁸ Supra note 54 .Muchalka, on the other hand, required a solemn engagement or written declaration, typically serving as a compulsory or penal bond obtained from subordinates under coercion

²⁹ Elizabeth Kolsky, 'Codification and the Rule of Colonial Difference: Criminal Procedure in British India' Law and History Review, vol.23, 2005, at p.632

³⁰ For details see, Sections 496-502, CrPC. 1861

³¹ The Law Commission of India, '41st Report on The Code of Criminal Procedure 1898', (1969) p.315, www.lawcommissionofindia.nic.in, available at: <https://lawcommissionofindia.nic.in/> (last accessed on 25/02/2023)

³² The Law Commission of India, '48th Report on Some Questions Under The Code of Criminal Procedure Bill', (1970), at p.10, www.lawcommissionofindia.nic.in, available at: <https://lawcommissionofindia.nic.in/> (last accessed on 25/02/2023)

³³ The Law Commission of India, '154th Report on The Code of Criminal Procedure 1973' (1996), at p.21, www.lawcommissionofindia.nic.in, available at: <https://lawcommissionofindia.nic.in/> (last accessed on 25/02/2023)

Table 1.3
Presumption of Innocence unless proven guilty

Universal Declaration of Human Rights, 1948	Article 11(1) ³⁴ provides that anyone accused of a criminal offence must be presumed innocent until proven guilty.
International Covenant on Civil and Political Rights, 1966	Article 14(2) ³⁵ states that everyone accused of a criminal offence has the right to be presumed innocent until proven guilty
Convention on the rights of the child, 1990	Article 40(2)(b)(i) ³⁶ States that every child alleged or accused of violating the penal law has the right to be presumed innocent until proven guilty
Standard minimum rules for the treatment of prisoners, 2015	Rule 84(2) ³⁷ States that those prisoners who have not been convicted are presumed innocent and should be treated accordingly.
European convention on human rights 1953	Article 6(2) ³⁸ states that every person accused of a criminal offence is to be presumed innocent until proven guilty in accordance with the law.

Table 1.4
Right to Liberty, Security of person and Prohibition of Arbitrary Detention

Universal Declaration of Human Rights, 1948	Article 9(1) ³⁹ states no one shall be subjected to arbitrary arrest or detention and be deprived of their liberty except in accordance with established legal grounds and procedures. .
Convention on the rights of the child, 1990	Article 37(b) ⁴⁰ stipulates that no child should be unlawfully or arbitrarily deprived of their liberty
International convention on the elimination of all forms of racial discrimination, 1969	Article 5(b) ⁴¹ ensures the right to personal security and protection from violence or physical harm,
U.N. body of principles for the protection of all persons under any form of detention or imprisonment, 1988	Principle 9 ⁴² states that authorities responsible for arresting, detaining, or investigating a person should use powers granted to them by law subject a judicial review. Principle 12 (1) ⁴³ mandates the thorough documentation of grounds and time of arrest ,their initial presentation before a judicial or

³⁴ For details see Article 11(1) of the UDHR . Also available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights/en/about-us/universal-declaration-of-human-rights> (last accessed on 25/04/2024)

³⁵ For details see Article 14(2) of the International Covenant on Civil and Political Rights. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last accessed on 25/04/2024)

³⁶ For details see Article 40(2)(b)(i) of the *Convention on the Rights of the Child*. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last accessed on 25/04/2024)

³⁷ For details see Rule 84(2) of the *Standard Minimum Rules for the Treatment of Prisoners*. Also available at: https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf&ved=2ahUKEwjV27zAoJWHAXWkslYBHccBDIsQFnoECBgQAQ&usq=AOvVaw0uuxM0QiDPBRX3JDjR0ZqW (last accessed on 25/04/2024)

³⁸ For details see Article 6(2) of the ECHR. Also available at : <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-6-right-fair-trial#:~:text=Article%206%3A%20Right%20to%20a%20fair%20and%20public%20hearing&text=In%20the%20determinati on%20of%20his,impartial%20tribunal%20established%20by%20law.> (last accessed on 25/04/2024)

³⁹ For details see Article 9(1) of the International Covenant on Civil and Political Rights. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last accessed on 25/04/2024)

⁴⁰ For details see Article 37(b) of the *Convention on the Rights of the Child*. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (last accessed on 25/04/2024)

⁴¹ For details see Article 5(b) of the International Convention on the Elimination of all Forms of Racial Discrimination. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial> (last accessed on: 25/04/2024)

⁴² For details see Principle 9 of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on: 27/04/2024)

⁴³ For details see Principle 12(1) of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on: 27/04/2024)

	another authority, details of the involved law enforcement officials, and specific details place of custody. Principle 12(2) ⁴⁴ provide that these records must be provided to the detained person or their legal representative Principle 13 ⁴⁵ states that upon arrest, detention, or imprisonment, individuals must promptly receive information about their rights. Principle 36(2) ⁴⁶ emphasizes that the arrest or detention of an individual during investigation and trial should only occur for the purposes of administering justice, based on grounds, conditions, and procedures established by law..
European convention on human rights ,1953	Article 5(1) ⁴⁷ affirms that everyone has the right to freedom and personal security except procedures established by law:

Table 1.5

International Standards on right to speedy and fair trial

Universal Declaration of Human Rights,1948	Article10 ⁴⁸ guarantees that everyone has the right to a fair and public ensuring equality for all.
International covenant on civil and political rights ,1966	Article 9(3) ⁴⁹ stipulates that anyone arrested or detained for a criminal offence must be promptly brought before a judge or another legally authorized officer with judicial powers. Article 14(1) ⁵⁰ In any criminal case or legal dispute concerning their rights and obligations, everyone has the right to a fair and public hearing Article 14(3)(c) ⁵¹ guarantees the right to a trial without unnecessary delays

⁴⁴ For details see Principle 12(2) of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on:27/04/2024)

⁴⁵ For details see Principle 13 of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on:27/04/2024)

⁴⁶ For details see Principle 36(2) of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on:27/04/2024)

⁴⁷ For details see Article 5(1) of the ECHR. Also available at : <https://www.equalityhumanrights.com/human-rights/human-rights-act/article-6-right-fair-trial#:~:text=Article%206%3A%20Right%20to%20a%20fair%20and%20public%20hearing&text=In%20the%20determination%20of%20his,impartial%20tribunal%20established%20by%20law.> (last accessed on 25/04/2024)

⁴⁸ For details see Article 10 of the UDHR . Also available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights/en/about-us/universal-declaration-of-human-rights> (last accessed on 25/04/2024)

⁴⁹ For details see Article 9(3) of the International Covenant on Civil and Political Rights. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last accessed on 25/04/2024)

⁵⁰ For details see Article 14(1) of the International Covenant on Civil and Political Rights. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last accessed on 25/04/2024)

⁵¹ For details see Article 14(3)(c) of the International Covenant on Civil and Political Rights. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (last accessed on 25/04/2024)

Table 1.6

U.N. body of principles for the protection of all persons under any form of detention or imprisonment

European convention on human rights ,1953	Under article 5(3) arrested or detained person have right to trial and released pending trial subject to conditions.
	Principle 11 ⁵² states that no person shall be detained without having an opportunity to be heard by a judicial or other authority. Principle 37 ⁵³ states that a person arrested on a criminal charge must be promptly brought before court who will decide on the legality of the detention. No person shall be held in detention pending investigation or trial unless authorized by written order of such an authority. Principle 38 ⁵⁴ asserts that an individual detained on a criminal charge has the right to a trial within a reasonable period or to be released while awaiting trial.

National laws and Concept of Bail**Constitutional Guarantee of Personal Liberty⁵⁵ and Right against Arbitrary**

Arrest and Detention⁵⁶-Under Article 21⁵⁷ Constitution protects individual liberty and further underscored the importance of a fair and just bail system. Article 22⁵⁸ provides safeguards such as the right to be informed of the grounds of arrest, the right to consult and be defended by a legal practitioner, and the right to be produced before a magistrate within 24 hours of arrest which are instrumental in preventing arbitrary arrests and detentions and had indirect implications for the bail process

Individual Freedom versus Public Safety- The law of bail reconciles conflicting interests of individual liberty and societal welfare aiming to protect society from the risks posed by those accused of crimes while also upholding the fundamental principles of criminal justice, including the presumption of innocence until proven guilty and the sanctity of individual liberty.⁵⁹

Right to Speedy Trial- When criminal trials and subsequent appeals are unduly prolonged, without any fault on the part of the accused, it grants them the right to seek bail.⁶⁰

Right To Free Legal Aid Article 39-A⁶¹ in the Constitution, acknowledges that it's the State's duty to offer free legal aid to financially disadvantaged individuals⁶² including right to bail.

Bail under Criminal Procedure Code, 1973 -Section 2(b) of ⁶³ Bhartiya Nagrik Suraksha Sanhita, 2023⁶⁴ defines "bail" as release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a

⁵² For details see Principle 11 of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on: 27/04/2024)

⁵³ For details see Principle 37 of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on: 27/04/2024)

⁵⁴ For details see Principle 38 of the U.N. body of principles for the protection of all persons under any form of detention or imprisonment. Also available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention#:~:text=from%20imprisoned%20persons.,Principle%209,a%20judicial%20or%20other%20authority> (last accessed on: 27/04/2024)

⁵⁵ For details see Article 21 of The Constitution of India, 1950

⁵⁶ For details see Article 22 of The Constitution of India, 1950

⁵⁷ For details see Article 21 of The Constitution of India, 1950

⁵⁸ For details see Article 22 of The Constitution of India, 1950.

⁵⁹ *SiddharamSatlingappaMhetre v. State of Maharashtra* AIR 2011 SC 312

⁶⁰ Vivek Berwal, 'Assessing the Practicalities of the Right to Speedy Trial', *Jus Corpus Law Journal*, Vol. 4, Issue no. 4, 2024, pp. 60-70

⁶¹ For details see Article 39-A of The Constitution of India, 1950

⁶² Dr. J.N Pandey, 'Constitutional Law Of India', 56th ed., Central Law Agency, 2019, at p.491

⁶³ For details see Section 2(b) of Bhartiya Nagrik Suraksha Sanhita, 2023 (Act 46 of 2023)

⁶⁴ Hereinafter referred to as BNSS, 2023

bail bond.”

BNSS, 2023⁶⁵ was enforced on July 1, 2024,.It has 531 sections; 160 sections of the old law have been changed, 15 new sections have been added, and 15 sections have been repealed. It amends provisions on bail, expands the scope of property seizure, and alters the powers of police and Magistrate

Table 3.2

Synoptic view of sections of BhartiyaNagarikSuraksha Sanhita2023 and corresponding sections of The Criminal Procedure Code,1973

	Old Section CRPC, 1973	New Section BNSS, 2023	Changes
In what cases is bail to be taken	436	478	The word “bond” has been added with bail. With inclusion of sections 135(3) or section 492 of BNSS,2023 in the 2nd proviso to section 478.
The maximum period for which an undertrial prisoner can be detained	436A	479	The words “or life imprisonment” appearing after the words “not being an offence for which punishment of death” are added to section 479(1). The words "Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bail by the Court if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law:" are added in the form of the proviso to section 479(1). Sub-sections (2) and (3) are inserted into section 479 of BNSS, 2023
When bail may be taken in case of a non-bailable offence	437	480	The first proviso to section 480(1) (ii) mentions the words “such person is a child”, instead of “sixteen years”has been added.. The words “for police custody beyond the first fifteen days” appearing after the phrase “witnesses during investigation” are added to the third proviso to section 480

Direction for grant of bail to a person apprehending arrest	438	482	. Sections 65, 70(2) of BNS, 2023 are mentioned in section 482(4)
			IPC, 1860 BNS,2023
			376(3), 376 AB 65
			376 DA, 376 DB 70(2)
Special powers of High Court and Court of session regarding bail	439	485	Sections 64 or 70 of the BNS,2023 are mentioned in the 2 nd proviso to section 485 of BNSS2023, instead of

⁶⁵ For details see BharatiyaNagarikSurakshaSanhita, 2023

			sections 376(3), 376 AB, 376 DA, 376 DB of the IPC, 1860. Section 64 or 66 or 70 of the BNS, 2023 are mentioned in section 485(1A) BNSS 2023, instead of sections 376(3), 376AB, 376 DA, 376 DB of the IPC, 1860
Amount of bond and reduction thereof	440	486.	Change in Section number
Bond of accused and sureties Amount of bond and reduction thereof	441.	486	Change in Section number
Declaration by sureties	441A	488	Change in Section number
Discharge from custody	442	489	Sections 480 or 482 are mentioned in section 489 of BNSS, 2023, instead of sections 436 and 437 of CRPC, 1973
Power to order sufficient bail when that first taken is insufficient	443	490	Change in Section number
Discharge of sureties	444	491	Change in Section number
Deposit instead of recognizance	445	492	Change in Section number
Procedure when bond has been forfeited	446	493	Sections 125, 136, 401 are mentioned in section 493(5) BNSS 2023.
Cancellation of bond and bail bond	446A	494	Change in Section number
Procedure in case of insolvency or death of surety or when bond is forfeited	447	495	Change in Section number
Bond required from minor	448.	496	Change in Section number
Appeal from orders under section 446.	449.	497	Change in Section number
Power to direct levy of amount due on certain recognizance	450	498	Change in Section number

Kinds of Bail

The Code of Criminal Procedure, 1973 along with Bhartiya Nagrik Suraksha Sanhita, 2023 outlines detailed provisions regarding bail, which includes various types

Table 3.1

Synoptic view of provision regarding Bail under CrPC, 1973

Section No.	Type of Bail
Section 478, BNSS, 2023 Section 436, CRPC, 1973	Bail in Bailable Offences
Section 480, BNSS, 2023 Section 437, CRPC, 1973	Bail in Non-Bailable Offences
Section 482, BNSS, 2023 Section 438, CRPC, 1973	Anticipatory Bail
Section 482(1), BNSS, 2023 Section 438(1), CRPC, 1973	Ad-interim Bail
Section 430, BNSS, 2023 Section 389, CRPC, 1973	Bail after Conviction
Section 193(2), BNSS, 2023 Section 167(2), CRPC, 1973	Bail on Default

Bail in Bailable Offences Section 436(1)⁶⁶ provides bail to a person arrested or detained without warrant by officer in charge of a police station, or appears or is brought before a Court, and is prepared to give bail. This section also provides for legal aid to indigent person unable to furnish surety by way of execution of bond within a week.⁶⁷

Section 436(2)⁶⁸ CrPC, 1973 denies bail to a person who fails to adhere to bail bond conditions with respect to time and place of attendance. If he surrenders voluntarily the magistrate cannot reject his bail application as they are under the judicial custody. SHO or the court must inform of the grounds of arrest and their right to bail and release an individual from custody if he executes personal bond subjected to Section 50(2)⁶⁹.

Bail in non-bailable Section 437(1)⁷⁰ provides that if a person is accused or suspected of committing a non-bailable offence and is arrested or detained without a warrant by the police they may be released on bail provided except if there are reasonable grounds to believe that he has committed or an offence punishable by death or life imprisonment or previously convicted an offence punishable by death, life imprisonment, or imprisonment for seven years or more except if someone is under sixteen, a woman, or someone who is sick or infirm. For offences punishable by death, life imprisonment, or imprisonment for seven years or more, the Court must allow the public prosecutor to be heard while granting bail.⁷¹

Conditions that can be posed under section 437(4)⁷² while granting bail includes must not commit an offense of similar nature, must not try to influence any person familiar with the case to withhold facts from the Court or police, or tamper with evidence etc. Moreover Court under section 437(5)⁷³ if deems necessary, order the re-arrest and custody of the person. Under section 437(6)⁷⁴ if a trial for a non-bailable offence before a Magistrate isn't finished within sixty days from the date of evidence collection, and the accused has been in custody the entire time, the Magistrate must release them on bail, unless there are written reasons for keeping them in custody. Further under section 437(7)⁷⁵ after trial of a person accused of a non-bailable offence and before delivering judgment, if the court finds reasonable grounds to believe that accused is not guilty, he shall be released from custody. The accused, if detained, must execute a bond without sureties to appear and hear the judgment.

Anticipatory Bail Sec 438(1)⁷⁶ provides that if a person believes they might be arrested for a non-bailable offence, they can apply to the High Court or the Court of Session for anticipatory bail.

Section 438(2)⁷⁷ empowers the High Court or the Court of Session to issue direction under Section 438(1) and 437(3) thereby imposing necessary conditions while granting bail based on the facts of the case. Under Section 438(1B)⁷⁸ the applicant seeking anticipatory bail must be present at the final hearing and when the final order is passed, if the Court deems their presence necessary

As per section 438 (3)⁷⁹ if the person is arrested without a warrant by a police officer based on the accusation, and such person is ready to provide bail either at the time of arrest or while in custody, he shall be released on bail.

Blanket Anticipatory Bail - Section 438⁸⁰ of the Criminal Procedure Code, 1973 should not be interpreted to allow bail "whenever arrested for whichever offence whatsoever." Such a broad directive should be avoided as it would provide blanket protection for any alleged unlawful activity.

⁶⁶ For details see Section 436(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁶⁷ As added by Code of Criminal Procedure (Amendment) Act, 2005

⁶⁸ For details see Section 436 (2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁶⁹ Section 50(2) mandates that the police officer must inform the arrested person accused of a bailable offence, about their entitlement to bail in consonance with Article 22 of Constitution of India, 1950

⁷⁰ For details see Section 437(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷¹ As added by Code of Criminal Procedure (Amendment) Act, 2005

⁷² For details see Section 437(4) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷³ For details see Section 437(5) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁴ For details see Section 437(6) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁵ For details see Section 437(7) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁶ For details see Section 438(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁷ For details see Section 438(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁸ For details see Section 438(1B) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁷⁹ For details see Section 438(3) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁰ For details see Section 438 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

Bail after conviction:

Section 389(1)⁸¹ and 389(2)⁸² addresses the situation where a convicted individual can obtain bail from an appellate court after filing a criminal appeal. Section 389(3)⁸³ pertains to situations where the trial court itself can grant bail to a convicted accused, allowing them to file an appeal.

Ad interim bail -Under Section 438(1)⁸⁴ Interim bail can be granted when the court is convinced of its necessity and may be issued at any stage of a case through the court's inherent power.

Bail on Default (Compulsive Bail) -Under (Section 167(2)⁸⁵ If the investigation agency fails to file a charge sheet within 60 days (or 90 days for offences punishable with death or imprisonment of at least 10 years), the accused is entitled to be released on bail..⁸⁶

Maximum Period for which an Under-trial Prisoner can be detained

Section 436A⁸⁷ states that if an under-trial prisoner, except for those accused of crimes punishable by death, has been held for a period extending to one-half of the maximum imprisonment term prescribed for the alleged offence, they should be released upon furnishing a personal bond, with or without sureties as per section 438(1)⁸⁸, after listening to the Public Prosecutor and recording its reasons in writing.

Provision conferring Special Power on High Court or Sessions Court regarding Bail - Section 439⁸⁹ grants unrestricted special powers to the High Court and Sessions Court to grant bail and extend to granting bail even in cases of offences punishable by death or life imprisonment without any limitations. If the offence falls under Section 437(3)⁹⁰, which includes offences punishable with imprisonment of seven years or more, or offences under Chapter VI, Chapter XVI, or Chapter XVII of the Indian Penal Code, 1860, or involves abetment, conspiracy, or attempts to commit such offences, the court may impose any necessary conditions as specified in that subsection. However, before granting bail to a person accused of an offence exclusively triable by the Court of Session or punishable with life imprisonment, the High Court or Sessions Court must give notice of the bail application to the Public Prosecutor, unless it is deemed impractical to do so for recorded reasons.

Section 439(1)(b)⁹¹ stipulates that any condition imposed by a Magistrate when granting bail to a person can be set aside or modified by the High Court or the Court of Session. Section 439(1A)⁹² provides that 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, 1860. Section 439(2)⁹³ allows for the cancellation of bail. The High Court or the Court of Session can order the arrest and detention of any person who has been released on bail under chapter XXXIII

Cancellation of Bail - Section 437(5) of the CrPC, 1973⁹⁴ states that any court granting bail can order the person to be arrested and committed to custody. Similarly Section 439(2) of the CrPC, 1973⁹⁵ specifies that a High Court or Court of Session can direct that any person released on bail under chapter XXXIII be arrested and committed to custody. Therefore, the High Court or Court of Session has the power to cancel bail. It is to be noted that rejecting a bail application and cancelling an already granted bail are different. It is easy to reject a bail application in a non-bailable case than to cancel an already granted bail as the later requires reviewing an earlier decision and is generally allowed if new circumstances arise which makes it impossible for accused to be free during trial.⁹⁶ However if bail has been granted illegally or improperly through arbitrary judicial

⁸¹ For details see Section 389(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸² For details see Section 389(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸³ For details see Section 389(3) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁴ For details see Section 438(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁵ For details see Section 167(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁶ ParulThapaliyal, 'Default Bail and Charge-Sheet', www.ujala.uk.gov.in, available at: <https://ujala.uk.gov.in/files/12.pdf> (last accessed on 12/04/2024)

⁸⁷ For details see Section 436-A of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁸ For details see Section 438(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁸⁹ For details see Section 439 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹⁰ For details see Section 437(3) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹¹ For details see Section 439(1)(b) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹² For details see Section 438(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹³ For details see Section 439(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹⁴ For details see Section 437(5) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹⁵ For details see Section 439(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

⁹⁶ State (Delhi Admn) v. Sanjay Gandhi, 1978 CrLJ 952

discretion it can be cancelled even without new circumstances arising.⁹⁷ But if the accused has not abused their freedom the court may choose not to cancel the bail.⁹⁸

Moreover the authority to cancel bail rests with the court which granted it, not with a police officer. Bail granted by a police officer cannot be cancelled by a magistrate's court. In such cases, the powers of the High Court or Court of Session under Section 439 must be invoked to cancel the bail. The power to cancel bail can generally be invoked under the following circumstances such as If bail has been issued without proper deliberation, If bail has been issued in violation of substantive or procedural laws, misuse of liberty after bail has been granted or new circumstances have evolved in the case. Bail in cases falling under the first and second category can only be cancelled by superior courts. In the third and fourth category, the court that initially granted bail has the authority to cancel it.

Cancellation of Bail in Bailable offence

Chapter XXXIII of the Code of Criminal Procedure, 1973 authorizes the court to cancel the bail of an accused person in a bailable offence only on the ground such as misuse of liberty or tampering with evidence leading to forfeiture of the bail concession granted to the accused which can be exercised in the interest of justice when appropriate.

However, under Section 436⁹⁹ of the CrPC, 1973 bail cannot be cancelled at a later stage, except as provided in Section 436(2)¹⁰⁰, which allows cancellation if the person fails to comply with the conditions of the bail bond regarding attendance at specified times and places. Therefore, both the Court of Session and the High Court have been expressly empowered to cancel bail granted under Section 436 of the CrPC, 1973 if the applicant can demonstrate sufficient grounds to justify the cancellation of such bail order before the court.

Cancellation of Bail in Non-Bailable Offence

Section 437(5)¹⁰¹ CrPC, 1973 grants authority to a court other than the High Court or the Court of Session that has released a person on bail under section 437(1)¹⁰² or section 437(2)¹⁰³ of CrPC, 1973 to direct the arrest of that person and commit them to custody if deemed necessary. The term "court other than the High Court or Court of Session" includes a Magistrate before whom any person accused or suspected of committing a non-bailable offence appears or is brought under arrest. Therefore, under sub-section (5) of Section 437, CrPC, a Magistrate has the power to order the arrest and custody of a person whom the Magistrate has previously released on bail.

The Magistrate may exercise his power to cancel the bail granted by him and to recommit the accused to jail under any one or more of the following circumstances, namely:

- while on bail the accused commits the very same offence for which he is being tried or has been convicted;
- he is hampering investigation of the case;
- he is tampering with the evidence and threatening the witness.
- he runs away to a foreign country or goes underground or beyond the control of his sureties;
- he commits acts of violence, in revenge, against the police and the prosecution witnesses.¹⁰⁴

Cancellation of Bail by High Court or Session Court

Section 439(2)¹⁰⁵ of the CrPC, 1973 provides broad authority, empowering the High Court or the Court of Session to cancel bail granted to any accused under this chapter. This includes bail granted under sections 436, 437, 438, and even 439 of the CrPC, 1973. However, the hierarchical structure of courts implies a limitation: if bail is granted by the High Court under Section 439, the Sessions Court cannot cancel it unless the High Court specifically reserves such power in the bail order itself.

Under Section 439(2), the High Court has the authority to remand to custody a person who was released on bail under Chapter XXXIII by any court, including the Court of Session, if it deems it appropriate to do so. It should be clarified, however, that a Court of Session cannot cancel bail that was previously granted by the High Court unless new circumstances emerge during the trial proceedings after the accused has been granted

⁹⁷ *State of Maharashtra v. Anand Chintaman Dighe*, 1991 CrLJ 1945.

⁹⁸ *Parakshita Pradhan v. Bairagi Pradhan*, 1991 CrLJ 1519 (Ori HC)

⁹⁹ For details see Section 436 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰⁰ For details see Section 436(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰¹ For details see Section 437(5) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰² For details see Section 437(1) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰³ For details see Section 437(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰⁴ *Public Prosecutor v George Williams*, 1952 CrLJ 213

¹⁰⁵ For details see Section 439(2) of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

bail by the High Court. In cases where a Court of Session has granted bail to an accused person, the state has two options. First, if new circumstances arise which were not previously known to the state and the Court of Session, the state may approach the Sessions Judge to reconsider the bail. Alternatively, the state may approach the High Court, being the superior court under Section 439(2), to remand the accused to custody.

Table 1.6

Procedure for bail

Bail Application Form	It is a legal document submitted to a court to request the release of an individual who has been arrested or is in custody. Form includes applicant's details, details of the case, details of arrest, lawyer's details, and grounds for bail.
Identification Documents	The surety must provide a government issued identity document, such as a passport, Aadhaar card, driving license, PAN card, or voter ID card.
Address Proof	Documents verifying current residence such as such as a Ration Card, electricity bill, landline telephone bill, or property tax receipt.
Financial Information:	Evidence of financial capacity to meet bail requirements: Bank Passbook Salary Slips Income Tax Returns
Surety Information	Affidavit of Surety: A sworn statement guaranteeing the defendants appearance in court.
Surety's Financial Documents	Evidence of financial stability to support the bail amount
Legal Documents	Specific documents related to the case: FIR (First Information Report) ,Charge Sheet Previous Bail Orders (if applicable) Court Orders or Judgments
Biometric Information:	Fingerprints and photographs of the defendant are often required
Additional Requirements for Specific Cases:	Property Bond: Property title deed or other proof of ownership. Cash Bond: The full bail amount in cash.Bail Bond: Bail bond agreement from a licensed bail bondsman

Bail bond - A bond signifies an obligation or a promise given to secure a prisoner's release and guarantee their appearance in response to legal proceedings.¹⁰⁶ Section 441¹⁰⁷ provides for release of person on bail after execution of bond for an amount deemed sufficient by the police officer or Court by sureties ensuring that the person attends at the specified time and place and continues to do so until directed. Section 442¹⁰⁸ of provides that once the bond has been signed, the person for whom it was executed will be released promptly. Section 443¹⁰⁹ states that if insufficient bail sureties are accepted due to mistake, fraud, or other reasons or inadequacy, the court can issue an arrest warrant. Section 444¹¹⁰ provides that any or all sureties may at any time request a Magistrate to release them from the bond, either wholly or so far as relates to the applicants. Upon receiving such a request, the Magistrate will issue an arrest warrant Upon the person's appearance pursuant to the warrant or upon their voluntary surrender, the Magistrate may discharge the bond either completely or in part as requested by the sureties and require the person to find new adequate sureties, and failure to do so may result in their imprisonment.

Forfeiture of bond- Section 446¹¹¹ of the Code of Criminal Procedure discusses two categories of bonds: one for appearance or the production of property under the Code, and the other for any other purpose specified in the Code. Both categories are treated equally regarding forfeiture. The section outlines the procedure for forfeiting such bonds. The court where the appearance or property is to be presented, or to which the case is transferred thereafter, or in the case of the second category of bonds, the court that accepted the bond or any subsequently transferred court, or a first-class Magistrate's court, may ascertain the forfeiture and require the person bound by the bond to either pay the penalty or provide justification. If sufficient justification is not provided and the penalty not paid, the court will recover it as if it were a fine imposed under this Code, following the provisions of section 421. The court has the discretion to remit part of the penalty. If a surety dies before the bond is forfeited, their estate is released from liability. If a person who has provided security under Sections 106, 117, or 360 is convicted of an offence that breaches their bond conditions or a bond under

¹⁰⁶ *Black's Law Dictionary*, 9th Edition, pp. 160-161.

¹⁰⁷ For details see Section 441 of The Code of Criminal Procedure, 1973 (Act 2 of 1974). It is to be noted that The bond and the bail bond contemplated by sections 436, 437, 438(3) and 441 are to be given in the Form no 45 as prescribed in second schedule.

¹⁰⁸ For details see Section 442 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹⁰⁹ For details see Section 443 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹¹⁰ For details see Section 444 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

¹¹¹ For details see Section 446 of The Code of Criminal Procedure, 1973 (Act 2 of 1974)

Section 448, a certified copy of the court's judgment can be used as evidence against their surety or sureties. If this judgment is used, the court will assume the offence was committed by the person unless proven otherwise. When the bond executed by a surety is an undertaking to produce an accused in court on being called upon to do so, in the absence of any notice calling upon the surety to produce the accused, it cannot be said that the surety has failed to perform the conditions of the bond or that the bond has been forfeited.¹¹²

Bail under Special Law- It is to be noted that in the Code of Criminal Procedure, 1973, bail provisions do not apply if alternative bail procedures are established by other laws, such as

The Narcotic Drugs and Psychotropic Substances Act, 1985

The Maharashtra Control of Organized Crime Act, 1999.

The Unlawful Activities (Prevention) Act, 1967¹¹³

Conversation of Foreign Exchange and Smuggling Activities Act, 1974¹¹⁴

The Juvenile Justice (Care & Protection of Children) Act, 2015

Money Laundering Act, 2002¹¹⁵

Bail under the Essential Commodities Act, 1955¹¹⁶

Judicial intervention

Evolution of Bail Principles- In the leading case of *Ranjit Singh v. State of Punjab*¹¹⁷, Supreme Court emphasized on the principle bail not jail and held that bail should not be withheld as a form of punishment & that it should be granted unless there are compelling reasons to believe the accused would abscond or tamper with evidence.

Right of Bail and Speedy trial under Article 21¹¹⁸-*Maneka Gandhi v. Union of India*¹¹⁹, while not directly dealing with bail, this case expanded the extent of Article 21 to include the right to individual liberty, emphasizing that any procedure established by law for depriving an individual of their liberty must be fair & just. However, the huge pile of load on our Courts hinders this process. If an accused person is denied his personal liberty which is not "just, reasonable, and fair" would pave the way to enforce one's right by approaching the High Court or Supreme Court through Articles 226¹²⁰ and 32¹²¹ respectively.

Principles governing the grant and cancellation of bail - In the leading case of *Deepak Yadav v. State of U.P.*¹²² court considered following as mandatory while evaluating a bail application and exercising its discretion such as T likelihood of the prosecution resulting in a conviction, The seriousness of the charge nature of the accusation, severity of the potential punishment, strength of the evidence supporting the accusation, risk of the accused fleeing if released on bail, risk of witness tampering, the likelihood of the offense being repeated, accused opportunity to prepare their defence and access legal counsel, health, age, and gender of the accused, The character, behavior, means, position, and standing of the accused.

Default Bail - In *Uday Mohan Lal Acharya v State of Maharashtra*¹²³ the court held that

The court should not give strict interpretation so as to defeat the right to default bail. It is the duty of the accused to move the default bail application upon completion of 60 days or 90 days without which default Bail is not granted to him

¹¹² *Manindra Kumar Majumdar v Emperor* AIR 1943 Cal 236 .

¹¹³ Hereinafter referred to as UAPA, 1967

¹¹⁴ Hereinafter referred to as COFEPOSA, 1974

¹¹⁵ Hereinafter referred to as PMLA, 2002

¹¹⁶ Hereinafter referred to as EC Act, 1955

¹¹⁷ 1959 AIR 843; Also see *Gudikanti Narasimhulu v. Public Prosecutor* (1978) 1 SCC 240, *Rajasthan v. Balchand* (1977) 4 SCC 308, *Amarjit Singh v. State of Punjab* AIR 1988 SC 2013, *Kalyan Chandra Sarkar v. Rajesh Ranjan* AIR 2005 SC 972, AIR 2011 SC 312; Also see *Jai Prakash Singh vs State of Bihar* 2012 CrLJ 2101: AIR 2012 SC 1676

¹¹⁸ For details see Article 21 of The Constitution of India, 1950

¹¹⁹ 1978 AIR 597. Also see *Kamlapati vs. State of West Bengal* AIR 1979 SC 777, *Sanjay Dutt v. State of Maharashtra* (1995) 1995 SCC (6) 189, *Amol Vithal Vahile vs. State of Maharashtra* Criminal Appeal No. 545/2024. Also see *Akhtari Bi v. State of M.P* AIR 2001 SC 1528, *Hussainara Khatoon v. Home Secretary, State of Bihar* AIR 1979 SC 1360

¹²⁰ For details see Article 226 of The Constitution of India, 1950

¹²¹ For details see Article 32 of The Constitution of India, 1950

¹²² (2022) 8 SCC 559; Also see *Gurucharan Singh v State (Delhi Administration)* AIR 1978 SC 179, *Prasanta Kumar Sarkar v. Ashis Chatterjee* (2010) 14 SCC 496, *Ranjit Singh v. State of M.P* (2013) 116 SCC 797, *Mansab Ali v Irsan*, 2003 SCC (Cri) 399, *Tauseef Ahmed v State of U.P* 2006 (56) ACC 371 (375) (All), *Abdul Pasit v Mohd. Kadir Chaudhary* (2024) 4 SCC 222. Also see *Nityanand Rai vs State of Bihar* 2005 AIC 510, *Mahesh Singh vs State of U.P* 1991 (28) ACC 563 (564) (All), *State of U.P vs Karunakar* 1994 (31) ACC 189 (191) (All), *Rizwan Akbar Hussain Syed vs Mehmood Hussain* (2007) 10 SCC 368

¹²³ AIR 2001 SC 1910. Also see *Sanjay Dutt vs State of Maharashtra* (1994) 5 SCC 402, *CBI v Nirmala Yadav* 2014 (9) SCC 457

Maximum period for which undertrial prisoners can be detained (Sec436A¹²⁴ of The Criminal Procedure Code, 1973)

In the leading case of *Satender kumar Antil vs Central Bureau Of Investigation* ¹²⁵ the court held that it is mandatory to release the accused who has completed half the period unless the court deems proper to extend the custody beyond that period for recorded reasons.

Subordinate Court cannot hear bail application where the same is pending before Superior Court

In the landmark judgment *Attar Singh vs State*¹²⁶ it was held that where the accused deliberately did not mention in the bail application before the Sessions Judge that he had already filed an application before the High Court for bail, the accused was guilty of fraud and concealing the material facts, and the Sessions Judge would be justified in canceling the bail application.

Grant of bail by Sessions Judge on second bail application after refusal of the bail by the High Court.

In *Mohan Lal vs. State of UP*¹²⁷ it was held that after the rejection of the bail application by the High Court on merits, the Sessions Judge who has concurrent power to grant bail under Section 439 can entertain the bail application of the accused provided new substantial ground for bail has arisen and a reasonably long interval has also elapsed after the last order of rejection of bail.

Successive applications for bail not barred

In *Runu Roy vs. State of Assam*¹²⁸ it was held that there is no statutory bar in entertaining the second anticipatory bail application.¹²⁹

Anticipatory Bail

Susila Aggarwal and others v State (NCT of Delhi) and another ¹³⁰ court held that anticipatory bail is an extension of the right to life and liberty under Article 21 of the Constitution, 1950. Anticipatory bail can be granted in all offences excepting statutory exclusions for an unlimited period until the conclusion of trial or it can also be for a limited purpose. There cannot be blanket protection for anticipatory bail rather it should be for a specific offence subjected to normal or specific conditions even when charge sheet has been filed or summoned has been issued by the court or charges have been framed by the court. For anticipatory bail the lodging of an FIR is not necessary.

Conclusion

Recent trends indicate a significant surge in the number of undertrial prisoners despite India's robust criminal justice system. Although the Constitution, treated as the grundnorm, emphasizes liberty and equality, India continues to struggle with high rates of under trial prisoners and the establishment of a uniform bail reform system.

Suggestions

- The right to legal aid is inherently derived from Articles 14, 21, and 39A of the Constitution of India, Once an arrest is made it should be made mandatory to inform the nearest legal service authority of any arrests to ensure that indigent arrestees receive the necessary legal aid.
- Prison authorities should regularly send reports to the nearest Legal Services Authority concerning the detention of under-trial prisoners who have been unable to secure bail.
- Legal aid facilities should be provided during preliminary procedures, and efforts should be made to ensure the speedy trial of the accused.
- Clear and justified guidelines for granting or refusing bail must be established to prevent potential abuse of authority by judges. Moreover under Section 440 Criminal Procedure Code, 1973 must be strictly followed.

¹²⁴ For details see section 436A Of The Criminal Procedure Code ,1973

¹²⁵ (2022) SCC 51

¹²⁶ 1991 (28) ACC 83 (86) (All)

¹²⁷ 1995 (32) ACC 159 (161, 162) (All), Also see In *Ram Bhawan vs. State of U.P* 1996 (33) ACC 414 (416) (All), *Attar Singh vs State* 1991 (28) ACC 83 (86) (All)

¹²⁸ 2006 (36) AIC 742 (746, 747) (Gauh); Also see *Netranath Venkatesh vs State .*, 2001 (452) ACC (Summary of cases) 3 (Kant), *Kalyan Chandra Sarkar vs Rajesh Ranjan.*, 2005 Cri Lj 944: AIR 2005 SC 972, *State of Maharashtra vs. Budhikota Subha Rao.*, AIR 1989 SC 2292

¹²⁹

¹³⁰ AIR 2020 SC 831; Also see *Gurbaksh Singh Sibbia v State of Punjab* 1980 AIR 1632, *Siddharam Satlingappa Mhetre v. State of Maharashtra* AIR 2011 SC 312

- The language of Sections 436 and 436A of the Criminal Procedure Code, 1973 should be revised and simplified so as to avoid imposing excessive or unreasonable sureties.
- There is a need for explicit guidelines and criteria for bail approval, minimizing the scope for subjective interpretation by individual judges. This could contribute to a more uniform application of bail laws across different cases.
- In addition to procedural reforms, there is a need for addressing the socio-economic elements that often play a part in bail determinations. In many cases, individuals with limited financial means find it challenging to secure bail, leading to a disproportionate impact on vulnerable populations. Future directions may include measures to ensure that bail decisions do not disproportionately affect the economically disadvantaged, fostering a more equitable & just structure
- Careful consideration must be given to avoid reinforcing biases or compromising individual rights. Striking the right balance between technological advancements & safeguarding civil liberties is crucial in shaping the future of bail adjudication.
- To address delays in the adjudication process, reforms may focus on introducing timelines for bail hearings.
- Streamlining the appellate process for bail decisions can further expedite justice, ensuring that individuals are not unduly held in custody pending the outcome of their appeals
- Collaboration among legal practitioners, scholars, & policymakers is essential for effective reforms.
- Implementing programs that address the underlying issues contributing to alleged criminal behavior can enhance the effectiveness of bail as a pretrial intervention. Future directions may involve collaborative efforts with social services to provide necessary support to those awaiting trial