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Bail Jurisprudence in India and Abuse of Criminal Process

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Bail Jurisprudence in India and Abuse of Criminal Process

ABSTRACT

Bail occupies a central and often contentious place within the Indian criminal justice system. Rooted in the tension between an individual's right to personal liberty and society's legitimate interest in public safety, the law of bail has evolved considerably through legislative enactments and judicial interpretation. This paper examines the conceptual foundations, statutory framework, and judicial approach to bail in India, with particular emphasis on the constitutional guarantees enshrined in Articles 21 and 22, the classification of bailable and non-bailable offences under the Code of Criminal Procedure, 1973 (Cr.P.C.), and the doctrine of anticipatory bail under Section 438.

KEYWORDS

Bail, Personal Liberty, Article 21, Anticipatory Bail, Non-Bailable Offences, Under-Trial Prisoners, Criminal Procedure Code, Judicial Discretion, Surety, Constitutional Rights.

1. BAIL AND PERSONAL LIBERTY UNDER ARTICLE 21

Bail and Personal Liberty under Article 21 Article 21 of the Constitution of India guarantees that "no person shall be deprived of his life or personal liberty except according to procedure established by law." Bail represents one of the most vital expressions of this right. The Supreme Court of India has repeatedly held that the denial of bail amounts to a deprivation of liberty and must be justified on compelling grounds. In *Sanjay Chandra v. CBI*, the Court remarked that pre-trial incarceration without justification violates the presumption of innocence and the right to life and liberty. The judicial interpretation of Article 21 has expanded to include fair trial, legal aid, and bail as integral parts of the right to liberty. In *Hussainara Khatoon v. State of Bihar*, it was observed that indefinite detention of undertrials due to inability to furnish bail was unconstitutional.

Statutory Framework:

The Code of Criminal Procedure, 1973 (CrPC), codifies bail provisions under Sections 436 to 439:

- Section 436 deals with bailable offences, where bail is a matter of right.
- Section 437 outlines conditions for non bailable offences, placing discretion with magistrates.
- Section 438 (introduced later) provides for anticipatory bail, a unique safeguard where a person can seek bail before arrest.
- Section 439 gives High Courts and Sessions Courts special powers to grant or deny bail.

These provisions aim to distinguish the severity of offences and allow judicial discretion while preventing unnecessary custodial detention. However, criticisms persist regarding inconsistent application, especially when economic or political status influences bail decisions.

1.1 Judicial Interpretations And Landmark Cases

Judicial interpretation has been the lifeblood of bail justice in India. Over the decades, the Supreme Court has played a transformative part in expanding, clarifying, and at times reconsidering the principles governing the entitlement and denial of bail. Through corner judgments, Indian courts have continuously reiterated the indigenous accreditation under Article 21, icing that bail isn't withheld arbitrarily and that particular liberty remains consummate.

One of the foremost and most influential cases is *Gudikanti Narasimhulu v. Public Prosecutor*, where Justice V.R. Krishna Iyer famously observed that bail is the rule, jail is the exception, marking a turning point in the court's understanding of pre-trial detention. This case introduced a more philanthropic and rights centric interpretation of bail, emphasizing that denial should be predicated in real threat, similar as lamming or tampering with substantiation, and not bare allegations. The Court held similar detention to be a violation of Article 21 and emphasized that the procedure established by law must be fair, just, and reasonable. This ruling brought the plight of thousands of poor undertrials into mainstream legal converse and laid the root for legal aid reforms in India.

Eventually, in *Satender Kumar Antil v. CBI*, the Court laid down comprehensive guidelines for bail in cases where chargesheets aren't filed on time. It reiterated the principle that liberty can not be offered on the balcony of detention and corroborated judicial responsibility in bail opinions. The judgment tried to organize bail procedures and ensure that courts apply their discretion uniformly and naturally.

In *Sanjay Chandra v. CBI*, the Court stressed the significance of

the presumption of innocence and remarked that bail shouldn't be denied simply because of the soberness of the blameworthiness. The Court emphasized that pre-trial imprisonment shouldn't be used as a discipline and that profitable offences, however serious, don't automatically justify denial of bail if no flight threat exists.

Another watershed judgment is *Arnesh Kumar v. State of Bihar*, where the Court blamed the mechanical apprehensions made by police in cases under Section 498A of the Indian Penal Code. The Court issued specific guidelines stating that arrest shouldn't be automatic and that police must record reasons before denying bail. This case underlined procedural fairness and the need to cover liberty from arbitrary administrative conduct.

2. BAIL AS A CONCEPT

The Supreme Court of India, while elucidating the jurisprudential foundation of the right to bail, has observed that:

- a. The right to bail is grounded in a distinct legal philosophy.
- b. It occupies a central position in the administration of criminal justice.
- c. The concept of bail emerges from the need to balance two competing considerations of restriction of an accused person's liberty and the progressive expansion of human rights jurisprudence.
- d. No individual should be detained merely to inflict an unwarranted or anticipatory punishment based on a presumption of guilt.

2.1 Historical Evolution of Bail

The institution of bail traces its origin to England, where it developed out of practical necessity. In earlier times, the justice system lacked structural refinement. Judicial officers frequently travelled from place to place, resulting in prolonged delays in trials. Consequently, many undertrial prisoners suffered in deplorable prison conditions, and several died before their cases were adjudicated. This situation necessitated the development of a mechanism for provisional release pending trial.

Initially, English sheriffs exercised discretionary authority to release accused persons either on personal recognizance or on the assurance of a third party, with or without sureties. In 1275, the practice of granting bail by sheriffs was formally regulated under the Statute of Westminster, which prescribed conditions for pre-trial release and curtailed the arbitrary powers of sheriffs, particularly regarding the sufficiency of sureties. The statute recognized that when a surety assumed responsibility for the accused's appearance subject to forfeiture of his property, it acted as a strong deterrent against absconding.

Subsequently, the power to grant bail was transferred to justices in 1360–61. The Habeas Corpus Act further laid down procedural safeguards concerning detention and bail, particularly in cases involving grave offences such as treason or felony. Later, the Bill of Rights established protection against the imposition of excessive bail. Over time, the grant or refusal of bail became a structured judicial function, governed by statutory limitations, culminating in the enactment of the Bail Act, which significantly modernised bail jurisprudence in England.

2.2 Development of Bail in India

In India, the framework governing bail was originally codified under the Code of Criminal Procedure during British colonial rule. The colonial regime designed the procedural law primarily to safeguard administrative control, often at the cost of individual liberties. Although the Code of Criminal Procedure replaced the 1898 Code, the essential structure concerning bail, particularly the classification of offences into bailable and non-bailable categories, remained largely unchanged.

Recently, the Bharatiya Nagarik Suraksha Sanhita (BNSS) has substituted the 1973 Code. Provisions relating to bail and bail bonds are now contained in Chapter XXXV. However, despite procedural refinements, the broader objective of liberalising bail jurisprudence has arguably not been realised to a substantial degree, as the traditional bifurcation between bailable and non-bailable offences continues.

2.3 Conditions for Grant of Bail under BNSS

Section 480(3) of the BNSS empowers courts to impose conditions while granting bail, including:

- a. Ensuring the accused's attendance in accordance with the bail bond.
- b. Preventing the commission of similar offences during the period of bail.
- c. Prohibiting any attempt to influence witnesses or obstruct the course of justice.
- d. Forbidding tampering with evidence.

Further, Section 479 of the BNSS seeks to rationalise bail for undertrial prisoners subjected to prolonged incarceration. It provides that:

- a. A first-time offender may be released upon completion of one-third of the maximum prescribed sentence.

- b. Bail may be considered upon the report of the jail superintendent.
- c. Bail may be denied where multiple investigations, inquiries, or trials are pending against the accused.

2.4 Classification of Bail

From a functional perspective, bail is categorised as follows:

- a. Regular Bail – Granted in bailable offences by police authorities; in non-bailable offences, it is granted by courts subject to judicial discretion.
- b. Interim Bail – Temporary release granted pending adjudication of an application for regular or anticipatory bail.
- c. Anticipatory Bail – Pre-arrest bail granted to a person apprehending arrest.
- d. Temporary Bail – Granted for a limited duration on specific grounds such as medical emergencies, family obligations, or humanitarian considerations.

3. JUDICIAL PRONOUNCEMENTS ON BAIL AS A FUNDAMENTAL RIGHT

In *Prem Prakash v. Union of India*, the Supreme Court clarified that the maxim “bail is the rule and jail is the exception” is essentially a restatement of Article 21 of the Constitution of India. The Court emphasised that indefinite incarceration pending trial, particularly when proceedings are unlikely to conclude expeditiously, amounts to a violation of the fundamental right to life and personal liberty.

Similarly, in *Bikramjit Singh v. State of Punjab*, the Court held that the right to statutory bail under Section 167(2) of the 1973 Code is not merely procedural but forms part of the constitutional guarantee of personal liberty under Article 21.

Thus, contemporary bail jurisprudence in India reflects an ongoing tension between safeguarding societal interests and preserving individual liberty, with constitutional values serving as the guiding framework.

4. PRINCIPLES GOVERNING GRANT AND DENIAL OF BAIL

In India, the rules for granting or denying bail are based on a delicate balance between the rights of the accused and the needs of the justice system. Although the fundamental procedural parameters are outlined in Sections 436 to 439 of the CrPC, judicial discretion largely determines the outcome of bail

applications. Indian courts have reiterated that, guided by constitutional jurisprudence values and evolving, this discretion must be exercised judiciously and not arbitrarily.

The discretionary power of courts is central to bail decisions, particularly in non-bailable offences. In non-bailable cases (Section 437), the judge's evaluation of various factors like the nature of the offense, the possibility of the accused fleeing justice, tampering with evidence, or influencing witnesses, determines the outcome. However, bail is a right in bailable offenses (Section 436 CrPC). However, Article 21 of the Constitution, which stipulates that deprivation of personal liberty must be fair, just, and reasonable, also binds courts. The case of *Gudikanti Narasimhulu v. Public Prosecutor*, the Court famously ruled that bail shouldn't be denied just because the charge is serious; rather, it should be based on actual risk, not abstract worries.

The circumstances surrounding the arrest as well as the justifications for the continued detention are two additional important aspects to consider. In *Arnesh Kumar vs. State of Bihar*, The Supreme Court voiced its disapproval of the practice of routine arrests, stating that the authority to arrest must be exercised with caution and documented justification. When deciding whether to arrest a person or deny them bail, the court ordered that police officers and magistrates provide specific justifications. This decision established a higher threshold for custodial detention, especially for crimes punishable by less than seven years in prison.

A crucial distinction must also be made between offenses that are bailable and those that are not. Because bailable offenses typically carry less severe penalties and do not pose a significant threat to public order, it is expected of courts to grant bail on a regular basis. Non-bailable offenses, on the other hand, necessitate a more thorough investigation because of the potential gravity and impact of the alleged crime. However, liberty must not be withheld prior to trial even in this instance. The presumption of innocence is a golden thread that runs through all criminal law and is perhaps the most important principle. In the case of *Sanjay Chandra v. The CBI* emphasized that this presumption is a substantive guarantee that bail law must uphold, not just a theoretical right. The Court reiterated that bail is a constitutional safeguard and not a privilege granted at the state's whim and warned against using pre-trial detention to appease public outrage or as a substitute for a proper trial.

4.1 Bail Should Be Granted Based on Logical Grounds

The judiciary has consistently insisted that bail must be based on

relevant factors. The trial court should not condition the individual's release on bail on unreasonable or burdensome terms. The apex court in *Munish Bhasin & others v. State government Of N.C.T. Of Delhi* made clear that onerous and illogical conditions must not be imposed while granting of bail. It was held that the condition imposed regarding paying of maintenance of rupees twelve thousand five hundred monthly to the wife in context to granting of bail under Section 498A of Indian Penal Code, 1860 is not in alignment and thereby, should be set aside. Following that, in *Sumit Mehta v. The term "any condition" used by the State (N.C.T.) of Delhi to grant bail was interpreted.* Hereby, it was held that the term 'any condition' does not empowers the trial court to imply 'baseless conditions' to be imposed on granting bail. Conditions regarding right to bail are required to be 'reasonable and logical'.

Additionally, in *Dataram v. State of Uttar Pradesh*, it was observed that strict conditions need not be imposed while granting bail, as irrelevant conditions would turn bail into an illusionary penological provision. In the case of *Aparna Bhatt vs State of Madhya Pradesh*, High Court's order was overturned by the highest court in the state. The under-trial person's condition of tying a rakhi to the victim was found to be illogical by its very nature. It was clarified by the court that personal contact between the victim and the accused should be avoided, while the accused person is on bail. In addition, it was stated that the trial court must refrain from stereotyping individuals when granting bail.

After that, in the case of *Sheikh Javed Iqbal v. The State of Uttar Pradesh*, the apex court noted that the primary objective of bail is to guarantee the accused's attendance at the trial. It is against the law to withhold bail as a punishment. It was stated that, in the event that the trial is extended, the prosecution cannot oppose bail in the event of an undertrial on the grounds that the charges being presented are serious. Challenges in the legal process of bail vis-a-vis under-trial prisoners form the major part of the prisoner population within Indian prisons. Hereby, large number of under-trial prisoner population is leading to several problems within working of Indian prison system. The following is a list of the goals that under-trial prisoners are incarcerated for:

- a. To prevent the alleged offender from committing further harm;
- b. To assure smooth investigation process;
- c. to guarantee that the offender will be available within the specified time frame and will not impede the justice process;
- d. To protect the witness and victims of crime from any type of further harm from the alleged offender;
- e. To establish a sense of security within the society;

- f. To protect the offender from the aggression of the society in heinous crimes and accordingly punish the under-trial according to due process of law.

However, there is an alarming overpopulation of under-trial prisoners within Indian prisons. Lack of refined bail system India is one of the major reasons leading to substantial increase in under-trial prisoner population within Indian prisons. Noticeably, provisions regarding bail are suffering from various flaws, resulting into violation of rights of under-trial prisoners and pressure on the Indian prison system.

The following are some of the difficulties that arise during the bail application process:

- a. Lack of logical approach towards the amount of bail bond;
- b. Demand for number of sureties for getting bail in a number of cases;
- c. Courts' reluctance to grant bail;
- d. When it comes to bail-related matters, lower courts have not utilized a liberalized approach;
- e. Lack of actual legal assistance.

In addition, the following consequences typically result from the complexity of granting or denying bail to prisoners awaiting trial:

1. Increase in under-trial prisoners population resulting into prison overcrowding;
2. Ever increasing occupancy rate in prisons, exceeding beyond the official capacity;
3. violation of prisoners' constitutional and human rights while they are awaiting trial;
4. Prolonged incarceration leading to violation of basic principle of penology, i.e. "innocent until proven guilty";
5. Impoverished under-trial offenders are not able to get bail due to financial deterrent;
6. Some under-trial prisoners convert into hardened criminals due to failure of the criminal justice system and violation of cardinal principle of penology, stating that "under-trial, convicts and hardened offenders should be kept separately for minimisation of negative influence;
7. Denial of bail results in the unreasonable and prolonged incarceration of economically disadvantaged prisoners without a trial, putting the prisoner's family in further financial trouble;
8. The resources of the mechanism for delivering justice are being put under more stress.

Otherwise, such resources could be used for betterment of conditions of prisons

4.2 Misuse of Bail Provisions

Through the lens of the 41st Law Commission Report, it is easiest to comprehend the legislative intent behind the Law Commission's report advocating for the introduction of the "Anticipatory Bail" provision. This report emphasizes the importance of preventing people from being wrongfully implicated in false cases, shielding them from the consequences of political resentments, and preventing powerful figures from attempting to entangle them in fabricated charges for personal gain. The primary aim of this legislative provision was to prevent the misuse of power by ensuring that people are not unjustly arrested and detained.

However, when we examine the legislative intent alongside the practical application of anticipatory bail, significant gaps and deficiencies become apparent. Despite the fact that the provision was made to prevent power abuse, it has unfortunately led to new forms of exploitation. Any type of bail, including anticipatory bail, is frequently abused by those who are granted it. There are numerous instances where such individuals obstruct ongoing investigations, intimidate witnesses, and tamper with evidence, thereby undermining the very intent of the provision.

The courts' authority to issue bail is well-established and widely acknowledged. The decision to grant bail must be based on sound legal principles and must be judicial. Such decisions should be rule-based and free from arbitrariness, ambiguity, or frivolity; they should be legitimate and consistent. When dealing with requests for interim bail, this judicial approach is especially important because the judicial system may not yet be aware of the full context and gravity of the situation. During the interim period, decisions are often made based on limited evidence and the immediate circumstances presented to the court. This can create opportunities for unethical litigants or accused individuals to exploit the situation. There have been numerous instances where bail conditions have been flagrantly violated, with individuals either disregarding the terms of their bail or absconding altogether, thereby evading the legal system.

The judicial system's integrity is seriously threatened by the misuse of anticipatory bail. It emphasizes the need for a stricter and more cautious approach to granting bail to ensure that the provision accomplishes its intended goal of safeguarding innocent people and preventing its misuse by those attempting to evade justice. This balance is crucial for maintaining public trust in legal system & ensuring that justice is both served and seen to be

served.

In *A.K. Murumu v Prasenjit Choudury*, the court explained that a bail order can be revoked if new or aggravating circumstances occur after the release on bail. The destruction of evidence, malicious attacks on eyewitness accounts, or the commission of the same or a similar crime are examples of such circumstances. However, the court also emphasized that the existence of any situation following the grant of anticipatory bail or bail is not the only criterion for canceling bail, either explicitly or implicitly. Before granting bail, a court must carefully consider whether the accused person's release might frighten witnesses for the prosecution, making them reluctant to testify at the trial. Granting bail for non-bailable offense is seen as a privilege rather than a right.

With the expectation that this privilege will not be abused in any way, the court places a certain amount of trust and confidence in the applicant by granting bail. An accused individual who has been released on bail is expected to refrain from any actions that could tamper with the prosecution's evidence. This includes avoiding potential witnesses because doing so could result in the loss or reduction of evidence against them. The accused loses the right to this advantage if they abuse the liberty granted by bail. The prosecution often argues against bail by highlighting that person accused of serious crime may be tempted to eliminate evidence against themselves, regardless of the strength of the evidence.

In assessing whether to grant or revoke bail, the court must consider the potential for evidence tampering. The primary concern of the prosecution is the possibility that an accused person will attempt to influence or intimidate witnesses following their release, thereby compromising the judicial process. This potential for evidence tampering is a significant factor in court's decision-making process regarding bail. In *Bishambhar Nath v. Emperor*, the counsel for the Crown, voiced concerns during his arguments regarding the potential for the accused to interfere with the prosecution's evidence. Despite these concerns, the presiding judge determined that mere apprehension of evidence tampering was not sufficient to deny bail if other conditions warranted its grant. The judge acknowledged that such concerns were speculative at this stage of the proceedings.

However, he provided a provision for future action, indicating that if these apprehensions materialized during the trial, the prosecution could petition the trial court to revoke the bail granted to the accused. This statement emphasizes the court's goal of striking a balance between protecting the accused's rights

and maintaining the judicial process's integrity. Similar to what happened in *Madhukar Purshottam Mondkar and Others v. The State of Maharashtra*, Bombay High Court heard Talab Haji Husain and Others, a case in which the accused were found to have tampered with or attempted to tamper with the evidence presented by the prosecution. Even though the case was initially bailable, the High Court took the significant step of revoking bail in response to this misconduct.

This decision underscored the court's stance that any actions undermining the prosecution's case would be met with strict repercussions. The Supreme Court of India endorsed this perspective, supporting the High Court's decision to revoke bail under circumstances where the accused's behaviour jeopardized the integrity of the judicial process. This decision reaffirms the judiciary's commitment to safeguarding the administration of justice from any attempts to tamper with evidence.

The reports from the Malimath Committee have significantly increased police officers' authority to grant bail. This development has sparked concern due to the widespread belief that many police officers lack a comprehensive understanding of the law and primarily rely on their ability to exercise authority. This combination of limited legal knowledge and extensive power is problematic, as it may lead to situations where the rights and interests of the accused are not adequately protected.

To avoid police abuse of power during the bail-granting process, this issue requires immediate national attention. It is common practice in the field of criminal law to arrest people who are suspected of committing crimes. A suspect is taken into custody and taken to the police station, where a crucial decision must be made about whether to release them on bail or hold them until they appear in court. Police officers have the discretionary authority to either grant or deny bail at this point. This is a particularly pressing issue for offenses that can be bailed out because the accused has a constitutionally protected right to bail. Bail can be granted by station police officers in less serious cases.

However, this discretionary power is often marred by inefficiencies and corruption. Officers may be swayed by external pressures, such as requests from influential individuals or monetary incentives, to make quick decisions that may not align with justice.

5. CONCLUSION & SUGGESTIONS

Following this, it will be made clear that a judge may or may not grant bail based on the severity of the charge, the type of

accusation, and the evidence that supports it. In addition, age, the length of time the accused has already served in prison, the possibility of the applicant absconding and obstructing justice if released on bail must be taken into account. The concept of bail has been significantly liberalized by the judiciary through judicial activism in support of fundamental rights. Such judicial interpretation in context to bail is in accordance with the human rights jurisprudence in 21st century, to a certain extent. It could be deduced that the current bail system in India has numerous legislative flaws. There is a dire need for its modification with an objective of transformation of Indian prison jurisprudence for benefit of under-trial prisoners.

In order to alleviate some of the pressure placed on the judiciary, police, and prison administration, the granting of bail needs to be liberalized by the relevant authorities. However, bail bond in case of granting bail is required to be an amount in balance with the economic condition of the accused person. It must be with regard to Article 14 and 15 of Indian Constitution. There shall be logical expansion regarding the offences that areailable. Bail hostels are needed to be created in context to individuals that are first time offenders and have committed offences of less serious nature. Moreover, particular definition of bail is required to be inserted in the Bharatiya Nagarik Suraksha Sanhita, 2023, in a well clarified manner.

There will be new types of crimes, like those that can be tried by any magistrate. As a result, it is essential to streamline the procedure for granting bail so that the delivery of justice can begin quickly at the beginning of the trial. As a result, the bail bond amounts for poor and wealthy offenders must be set at separate lower and upper caps. The relevant government must promptly and effectively implement the "Support to Poor Prisoners Scheme" of 2023, which provides financial assistance for the submission of a bond amount to under-trial inmates up to a sum of 40,000 and convict inmates up to a sum of 25,000. There is a need for separate and elaborate bail Act in Indian perspective, keeping in limelight the different conditions in a developing country, such as India. Alongside, modernisation of bail system could act as a tool in order to reduce the constantly increasing under-trial prisoner population in Indian prisons.

A fundamental aspect of criminal law is bail, which is meant to guarantee that people accused of crimes will be granted temporary freedom while they await trial. However, there are significant restrictions to this essential right. When an accused person is granted bail and takes advantage of this freedom by tampering with evidence, committing additional crimes, or threatening and influencing witnesses or complainants, this is considered misuse.

Such actions undermine the integrity of the judicial process, prompting the court to exercise its authority to revoke bail to maintain justice and order. The extent of this misuse has become so pervasive that it threatens to undermine the entire criminal justice system. Addressing these ambiguities and limitations is crucial for the integrity of the legal system. Amendments and changes to the existing laws are urgently required. Implementing a new code could help address these issues more effectively.

It is also imperative to closely scrutinize the operations of the criminal justice system to ensure that it functions fairly and efficiently. Providing remedies for those affected by the misuse of bail provisions is essential to uphold the rule of law and protect the rights of individuals.

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