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Critical Analysis of Bail Trends Prevalent in India in Comparison to Other Jurisdictions

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ABSTRACT

This study seeks to identify the fundamental distinctions between India and other countries in relation to laws relating to bail. Bail is the release of a guilty individual in exchange for a personal bond or assurance that they will abide by the court's rules and show up for court appearances. It is not necessary to keep someone in custody for an indefinite amount of time just because they are charged with a crime. Bail enhances individual liberty and societal interests. A bail-out defendant has more time to prepare and present his case than a remanded defendant. If public justice is to automatically advance, detention must be reduced where there is no fear of disappearance because it costs the public a lot. Judges must weigh fair, humanitarian, and statutory factors before denying bail. If the courts have cause to believe the defendant will not come for trial or if it is not in the public interest to offer him bail, he should be released from jail so that he can prepare his defense. But, if it is not in the public interest to give him bail, he should remain behind bars. The decisions made about bail in different countries fluctuate significantly. In comparison to other countries, the notion of bail used in India will be critically examined in this research article. The goal of this study is to show how other jurisdictions approach the same issue in various ways while also highlighting the distinctions between these nations.

Keywords: *Bail, trial, crime, liberty, jails, countries, custody.*

I. INTRODUCTION

When a defendant deposits a bond, the court is guaranteed that they will show up when their case is called. Giving bail has the opposite effect of letting the prisoner go free from detention or jail. The prisoner is instead turned over to the custody of his sureties, who are required to bring him to his trial at the scheduled time and location. In other words, setting a bail has the opposite result of getting the prisoner out of jail or other detention. The custom of issuing bail is the rule, while not issuing bail is the exception. Anybody accused of a crime for which bail may be posted has the legal right to be released on bond. Posting bail is necessary when dealing with offenses that are subject to bail. The Code of Criminal Procedure distinguishes between offences that can and cannot be released on bond when it comes to the topic of admission to

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bail. The court has the power to release a suspect on bond if they are being looked into for a crime that does not allow for bail. But, if a person is being detained without a warrant for a crime that qualifies for a bond release, they have the right to do so at any point throughout their detention.

The practice of releasing a defendant on bail when dealing with legal issues relating to criminal offenses allows him to freely prepare his defense without worrying about being penalized for an offense for which he may subsequently be found not guilty. The amount of bail is typically determined in accordance with the seriousness of the felony charge and the likelihood that the accused will try to flee, even though some magistrates take into account additional factors, such as the strength of the evidence, the reputation of the accused, and the ability of the accused to obtain bail. Around the middle of the 20th century, there was a significant deal of criticism of the refusal to consider a person's ability to pay bail. This was because the need for bail could inadvertently discriminate against persons with lesser means and members of particular minority groups, depriving them an equal chance to be released from custody pending trial. Indigent accused parties who are regarded more likely to appear in court based on their reputation in the community and their criminal history are increasingly receiving special consideration from a number of courts. The criminal justice system has recently undergone adjustments, which is why. The accused may be released by the court either on their own recognizance or in exchange for an unsecured promise. In some states, the defendant may also deposit some of the money with the court clerk in cash. Usually 10% of the entire bond is allocated to this section. In some countries, failing to show up for court on time and subsequently losing one's bail are seen as separate criminal offenses. If someone is accused of a crime but fails to appear in court, their bail may be forfeited, and every jurisdiction will issue an arrest warrant for them.

The operation of bail procedures in legal systems is characterized by a high degree of arbitrariness. If the suspect requires police protection, is charged with a felony while out on bond, or there is reasonable reason to believe the suspect committed murder or treason, the court may decide not to release the defendant on bail. A further option is to set an unreasonably high bail amount. In *United States v. Salerno* (1987)², the U.S. Supreme Court ruled that the U.S. According to a decision handed down by the Supreme Court, an individual's ability to post bail may be revoked if there are certain conditions that cannot be met in order to guarantee the

² *United States v. Salerno*, 481 U.S. 739

community's or a particular person's safety.³

(A) Literature review

Articles

1. LI JIAO, COMPARITIVE STUDY OF BAIL⁴

- The pre-trial process is described in the article as the stage at which persons' rights begin to be infringed upon, due to the increased likelihood that criminal suspects may be abused during this stage.
- By contrasting various countries, it also discusses the strain that pre-trial inmates put on state budgets, and how the lack of necessary supplies in detention centres contributes to the deterioration of criminal suspects' health.

2. SHIMA BARADARAN BAUGHMAN, THE BAIL BOOK: A COMPREHENSIVE LOOK AT BAIL IN AMERICA'S CRIMINAL JUSTICE SYSTEM⁵

- This article emphasises the fact that the story of bail is one that most significantly affects people who are poor by using examples like a well-known foreign diplomat who was released relatively quickly on bail and remained under house arrest following an alleged violent sexual assault of a hotel maid. Because they hire private bail guards, a wealthy husband and wife who are accused of starving, torturing, and other forms of abuse against two teenage housemaids are allowed to leave jail on bond.
- The United States of America is one of just two countries in the world that requires people to pay money in order to be released on bail pending trial, according to the information provided in the article. In the majority of nations around the world, defendants often have the constitutional right to be freed on bail until their trial. The right to bail has historically and constitutionally been available to citizens from all socioeconomic situations, including in the United States of America.

3. HANS KUMAR, A CRITICAL STUDY OF BAIL TRENDS IN INDIA⁶

- This article argues that, absent compelling evidence that the defendant will not

³ <https://www.bailusa.net/education/what-is-bail/> (last accessed on 24, February, 2023)

⁴ LI JIAO, COMPARITIVE STUDY OF BAIL, Central European university, November, 2009

⁵ Baughman, Shima B., *The Bail Book: A Comprehensive Look at Bail in America's Criminal Justice System - Introduction*, Cambridge University Press (2017)

⁶ Hans Kumar, A Critical study of bail trends in India, -Palarch's Journal Of Archaeology Of Egypt/Egyptology 17(7), ISSN 1567-2146

appear for his trial or that granting bail would be contrary to the public interest, the accused should be free to post bail in order to prepare a strong defence. It is possible to demonstrate substantial differences between trial court and High Court bail determinations. It has been observed that even when a lower court refuses to give bail, the appeal is reviewed and evaluated by the higher court, which usually grants bail. The bail petition and subsequent petitions were denied by the trial court without the court providing a reason. It is widely agreed that our community's bail system needs a thorough assessment, and that this examination must account for the majority's economic situation. A court's decision on whether to grant bail should take into account the accused person's financial circumstances, and the judge should treat the defendant with compassion.

4. **BHUPINDER KUMAR, DR. ASHOK KUMAR MAKKAR, LAW RELATING TO BAIL IN INDIA: A CRITICAL ANALYSIS**⁷

- This article examines the idea of bail, which is related to the release of a person, and so raises problems concerning the applicability of individual liberty as provided by Article 21 of the Constitution while considering whether or not to grant bail. And since bail safeguards both the accused's right to liberty and the public interest, it's a win-win.

5. **S.D. BALSARA, BAIL NOT JAIL-EMPTY THE PRISONS**⁸

- This essay discusses the topic of bail and explains why jail should be an exception rather than the rule. In order to support this, it cites a number of cases from both the high court and the supreme court.
- It also states that pre-trial imprisonment should be avoided because of the presumption of innocence, the effect that incarceration has on the private life of prisoners, and the higher ratio of prisoners who plead guilty during the trial.

Book review

1. **ASIM PANDEY, LAW OF PRACTICE AND PROCEDURE**⁹

- The book discusses the various Bail laws as well as the Process.

⁷ BHUPINDER KUMAR, DR. ASHOK KUMAR MAKKAR, LAW RELATING TO BAIL IN INDIA: A CRITICAL ANALYSIS, *International Research Journal of Management Sociology & Humanity (IRJMSH)*, Vol 12 Issue 5, pp- 141-145, 2021, ISSN 2277 – 9809

⁸ S.D. BALSARA, BAIL NOT JAIL-EMPTY THE PRISONS, *Journal of the Indian Law Institute*, July-September 1980, Vol. 22, No. 3 (JulySeptember 1980), pp. 341-350

⁹ Asim Pandey, *Law of Practice and Procedure*, Second Edition, 2015, Lexis Nexis

- In his book, he explains how the law of bail plays a very essential part in the administration of justice. Because it is immediately and inextricably linked to a person's liberty, which is guaranteed by article in the constitution, the legislation governing bail is of the utmost significance.

2. JANAK RAJIN, "BAIL LAW AND PROCEDURES"¹⁰

- The book looked at how bail is typically granted and how it is rarely denied. Sadly, the majority of the courts in our country do not adhere to the actual letter or the actual intent of the law when making their decisions.
- The individual freedom of a resident and the right to life, as outlined in Article 21 of the Constitution, is the most precious crucial right, and it is not permissible for any office or group in any way to put this right in jeopardy. Bearing in mind the fundamental right of residents to be free from discrimination based on race, position, or doctrine, the author of this book has made only extremely modest efforts to control the procedures and procedures for the awarding of bail.

3. R.V. KELKAR, CRIMINAL PROCEDURE¹¹

- The book examined how bail is usually granted and how it is rarely denied.
- He writes that the bail system is essential to the functioning of the legal system. As a person's freedom is guaranteed by article, the laws governing bail are crucial.

4. RATANLAL & DHIRAJLAL, THE CODE OF CRIMINAL PROCEDURE 23RD EDITION¹²

- The laws governing bail are of the utmost importance because they are directly and inextricably linked to a person's freedom, which is guaranteed by an article in the constitution.
- Further case laws are provided to enhance the level of understanding of the reader about the various laws related to bail.

(B) Statement of problem

The primary objective of this study is to compare and contrast the laws regarding bail prevailing in India and other jurisdictions. While assessing the legal position of these countries, it compares

¹⁰ Janak Raj Jai, Bail Law and Procedures, Universal Law Publishing, 6 th edition, 2015

¹¹ R.V.Kelkar, Criminal Procedure, Eastern Book Company, 2014, Eastern Book Company, ISBN: 9789388206013

¹² Ratanlal & Dhirajlal, The Code of Criminal Procedure, 2020, LexisNexis, ISBN: 9789388548854

and contrasts that evaluation with the legal status with help of various case laws. The paper also aims to clarify the distinctions in using examples and case law. Moreover, case laws are provided to try and make plain the responsibility that may emerge in a wide range of contexts.

(C) Research questions

1. What is the meaning, scope and nature of bail?
2. How does the provision in India regarding Bail differs from those in other nations?
3. What is the different type of Bails granted in various nations?
4. How has the provisions of bail impacted the Criminal laws in various nations?
5. What legal changes and implementation have been made so far in various countries regarding the provision of bail?

(D) Research methodology

A key element of the bail instrument is to guarantee a person's freedom. When it comes to non-bailable charges, the decision to grant bail is up to the judge. Examining is like looking again. This investigation is a doctrinal sort of investigation. With the aid of both the mandatory and the optional sources, the examination is completed. The governing body's own demonstrations, enactments, and ordinances are primary sources. Secondary sources include the many court rulings and standards that have been established outside of the courts.

II. MEANING NATURE AND SCOPE OF TOPIC

(A) What is bail?

The French word *daillier*, which means "to control, guard, or deliver," is where the word "bail" comes from. Additionally, it derives from the Latin words "to bear a burden" (*taulare*) and "one who bears burdens" (*taulus*), respectively (for pay).¹³

When referring to the process of gaining the release of an accused individual who has been charged with specific offences, the phrase "bail" is the term that is used. This is achieved by requiring the accused person to continue living within the court's jurisdiction and ensuring that the accused person will appear in court in the future for further proceedings related to the case.

The "security required by a court for the release of a prisoner who must appear at a future time," as stated in *Black's Law Dictionary*¹⁴, is what is meant to be understood as the meaning of bail. To put it another way, "bail" refers to "the security required by a court for the release of a

¹³ <https://www.etymonline.com/search?ki=BAIL> (last accessed in October,2019)

¹⁴ Garner, Bryan A., "Black's Law Dictionary, Tenth Edition" (2014)

prisoner who is due to appear at a future time." When a person is taken into custody, it is with the goal of bringing that person before the court so that justice may be carried out. If, on the other hand, the same objective can be achieved without any arrests being made, then there is no reason to place any kind of restriction on his freedom. Due to this, the accused individual has the right to apply and, if granted, receive bail in order to be freed from custody subject to specified conditions.

An individual who has been granted bail "is not released from custody of law, but is entrusted to the custody of his sureties who are pledged to produce him to appear at his trial at a specified time and place," as stated in Halsbury's Laws of England. This is how the impact of releasing someone on bail is understood to work. The sureties have the right to take their principal at any time, release themselves by turning him over to the custody of the authorities, and have him put in jail.¹⁵

(B) What is the purpose of bail?

Bail is primarily used to guarantee the accused's appearance at the trial and to make sure he will be present to accept the sentence if he is found guilty. The purpose of bail as follows in *SANJAY CHANDRA V. CBI*¹⁶: It has been generally established in bail petitions from the beginning that the goal of bail is to assure that the accused individual will present at his trial by posting a reasonable amount of bail. This purpose has been established since the beginning. The objective of bail is neither to punish nor to deter the offender. A deprivation of liberty must be deemed a punishment unless it can be demonstrated to be a necessary precaution for ensuring that an accused person will appear in court when compelled to do so. It is not enough for the courts to just acknowledge the concept that punishment does not begin until after a conviction has been reached and that everyone is assumed innocent until their guilt can be established. It has been common knowledge for a very long time that being detained in jail while awaiting trial may be an exceptionally trying experience. It is sometimes necessary to hold certain innocent persons in jail while they await trial in order to assure that they will be present at the hearing. This can be done in order to guarantee their presence. In circumstances like these, the concept of "necessity" serves as the deciding factor. It is completely against the concept of personal liberty that is enshrined in the Constitution of this country for anyone to be punished for any offence for which they have not yet been found guilty or for anyone to be imprisoned under any circumstances based solely on the suspicion that they will tamper with the witnesses if they are

¹⁵ Halsbury's Laws of England, 1998 (Vol II).

¹⁶ Sanjay Chandra v. CBI (2012) I SCC 40

allowed to go free. In this country, it is completely against the idea of personal liberty that anyone can be punished for any offence for which they have not yet been found guilty. It would be improper for any court to deny bail as a sign of disapproval of past behaviour, regardless of whether the accused has been found guilty, or to deny bail to an innocent person in order to teach him a lesson about imprisonment. In addition to the issue of prevention being the focus of a refusal of bail, it is important to remember that any imprisonment prior to conviction carries a serious element of punishment, and it is important to remember that any imprisonment prior to conviction carries a serious element of punishment.

(C) History of bail

Around the year 399 B.C., when Plato was attempting to secure the release of Socrates by posting a bond, the concept of bail was first introduced. The concept of bail in its contemporary form was first developed in England. In order for an accused individual to be granted release on interim bail and still be required to appear in court on the day that has been set for the trial, the surety had to be located first. The surety would be put on trial in the place of the accused if he failed to show up as required.¹⁷

The Indian legal system includes a number of distinct aspects, two of which are the institution of bail and the system that allows an individual to be released from detention after giving surety. The Italian traveller Manucci, who was wrongfully convicted of stealing and released from prison on bail after serving his time, wrote a travelogue in the 17th century in which he mentions the employment of this technique. He was granted bail in accordance with Punjabi law at the time, but Kotal didn't free him until he provided a surety.¹⁸

The idea that, under Mughal law, compensation claims for losses suffered by the aggrieved party could be made against the judge himself in the event that the administration of justice in one's case was delayed could serve as the impetus for an interim release.¹⁹

(D) Provision regarding bail in india

In its ruling in the case of *MOTI RAM V. STATE OF MADHYA PRADESH*²⁰, The term "bail" was defined by the Supreme Court to include both the release of a defendant on personal bond and the release of a defendant with sureties. According to this definition, the term "bail" can only be used to refer to release from custody on the basis of some form of financial guarantee,

¹⁷ K.N. Chaturvedi, Rights of Accused under the Indian Constitution, 283 (1964)

¹⁸ William Irvin "Mughal India", vol 11, 198 (1907)

¹⁹ J.N. Sarkar Mughal Administration India, 108 (1920)

²⁰ Moti Ram v. State of Madhya Pradesh AIR 1594: 1979 SCR (1) 335

such as the defendant's personal assurance or sureties from third parties.

In *KAMALPATI TRIVEDI V. THE STATE OF WEST BENGAL*²¹ that bail is a tool for achieving a synthesis of two fundamental human values, namely the right of the accused to enjoy his personal freedom and the public interest; subject to which, the release is conditioned on the prosecution's obligation to produce the accused in court to face trial.

In *VEMAN NARAIN GHIYA V. STATE OF RAJSTHAN*²² that bail continues to be understood as a right to assert freedom against the State's imposition of restraints. Since India became a signatory to the UN declaration of human rights in 1948, the idea of bail has found a place within the realm of human rights. The definition of "bail" according to the dictionary is a guarantee that a prisoner will show up in order to be released.

III. CLASSIFICATION OF OFFENCES FOR BAIL PURPOSES

Offences are divided into those that are eligible for bail and those that are not, as discussed below:

a. **Bailable Offence:**

In Section 2a²³ of the Code of Criminal Procedure, you can find the definition of an offence that allows for bail to be granted. Offences are said to be "bailable" if they are included on the First Schedule of the Criminal Process Code as being subject to bail, or if they are rendered so by any other law that is now in effect. Offences are said to be "nonbailable" if they are not included on the First Schedule. The term "eligible for bail" refers to offences for which it is possible for the accused person to be released on bond. Certain criminal offences carry a sentence of fewer than three years in prison, as a general rule. The chances of getting released on bond for bailable offences are significantly higher. An offence is said to be bailable if it is given the authority to be released on personal recognisance. In the event that such an offence has been committed and certain conditions have been completed, bail may be granted automatically in accordance with Section 436²⁴ of the Criminal Procedure Code. When a defendant is arrested or placed in jail for a crime that is subject to bail, the law enforcement officers are authorised to determine the amount of bail for the defendant.

b. **Non-Bailable Offence:**

A crime is said to be non-bailable if it is one for which an accused person cannot be released on

²¹ Kamalpati Trivedi v. the State of West Bengal AIR 1979 SC 777

²² Veman Narain Ghiya v. State of Rajsthan 2009 (2) SCC 281

²³ Section 2a, Code of Criminal Procedure, 1973

²⁴ Section 436, Code of Criminal Procedure, 1973

bail without the authorization of a judge. In such a scenario, the accused person has the right to make a bail request in accordance with the provisions of Section 437²⁵ and 439²⁶. These infractions are of a more serious nature than those that can be released on bond. Crimes that cannot be released on bond typically incur sentences of three years or more. It is important to keep in mind that the judicial discretion of the court may place restrictions on whether or not bail is granted for an offence that is not eligible for bail.²⁷

(A) Types of bail

1. Bail in Bailable Offence:

According to Section 436²⁸, anyone who is arrested or detained but is not charged with a crime for which a bail bond is required may immediately request to be released on bail. In these situations, the man is typically free; he should only be kept in detention if he is unable to provide the minimal security that is necessary to ensure his appearance before the court while an investigation is ongoing.²⁹

In *RASIKLAL V. KISHORE S/O KHANCHAND WADHWANI*³⁰ The Honorable Supreme Court ruled that the right to bail forailable offences is an unalienable right and that it cannot be waived because the provisions of Section 436³¹ are mandatory and the accused is required to be released as soon as the bail is posted.

2. Bail in non Bailable Offence

If the offence has a penalty that can be satisfied by posting bail, then doing so is a legal requirement. If the offence is not very serious, the decision to post bail is entirely up to the judge. It will become abundantly evident that the scope of the discretion is contingent on a number of different criteria.

- i) The discretion score will drop in a manner that is inversely proportional to the severity of the offence that was committed.
- ii) The judge had less room to make a decision on whether or not to release the defendant on bail as the severity of the offence increased.
- iii) In terms of the relationship that exists between those who work in law enforcement

²⁵ Section 437, Code of Criminal Procedure, 1973

²⁶ Section 439, Code of Criminal Procedure, 1973

²⁷ <http://www.irjmsh.com/> (last visited 24,February,2023)

²⁸ Ibid 23

²⁹ Mir Hashamali, (1917) 20 bom, L.R. 121.

³⁰ Rasiklal v. Kishore S/o Khanchand Wadhvani AIR 2009 SC 1341

³¹ Supra 25

and those who work in the court system.

- iv) As compared to the other courts and judicial officers, a high court or a court of sessions had a considerable amount more authority than the rest of the courts and judicial officers.

In **GURCHARAN SINGH V. STATE OF DELHI**³², the Honorable Supreme Court ruled that in situations in which a person who is accused or suspected of committing any non-bailable offence is arrested or detained without a warrant by an officer in charge of a police station, or when that person appears or is brought before a court, the person is not entitled to bail.

If he is brought before a court or court of session, he might be allowed to post bond (section 437). When exercising their discretion, both the police officer and the courts should adhere to the parameters that are outlined in the preceding part, which clearly suggest that the term "may" in that section clearly indicates that there are some guidelines that they should follow. The fact that the objective of incarceration throughout the course of criminal proceedings is not punishment and that the law favours the granting of bail, with denial constituting the exception rather than the rule, should be brought to everyone's attention as soon as possible.

3. Anticipatory Bail

Section 438 and its marginal notes don't mention anticipatory bail at all. The term "anticipatory bail" is misleading because it refers to bail that has not yet been issued in advance of an arrest. Evidently, there is no question of release on bail unless a person is arrested, therefore the order granting "Anticipatory bail" only becomes effective upon arrest. When the court awards "Anticipatory bail," what it does is make an order that in the event of arrest, a person shall be released on bond.³³

In **GURBAKSH SINGH SIBBA V. STATE OF PUNJAB**³⁴ that a defendant cannot be released on ancillary bail if he or she is contemplating conduct that could reasonably be interpreted as criminal activity, even if the defendant believes he or she is only exercising a legal privilege. Bail in anticipation of arrest is issued when there is no need for judicial custody, as opposed to ordinary bail, which is awarded after an arrest and results in release from police court custody.

4. Default Bail

According to subsection (2) of section 167³⁵, When an investigation into an arrest warrant

³² Gurcharan Singh v. State of Delhi 1978 AIR 179

³³ Balchand Jain v. State of M.P. (1976) 4 SCC 572

³⁴ GURBAKSH SINGH SIBBA V. STATE OF PUNJAB 1978 Cri.L.J. 20 (P&H)

³⁵ Section 167, Code of Criminal Procedure, 1973

cannot be concluded within twenty-four hours, court magistrates can order the suspect's imprisonment. It establishes the maximum legal period of detention for an individual. In addition, if the inquiry is not concluded within the allotted time period, the accused must be freed on bond regardless of the severity of the allegations against him.

IV. JUDICIAL APPROACH TAKEN IN INDIA

The Hon'ble Court established a criterion to determine "roots in the community" in *MOTI RAM V. STATE OF M.P.*³⁶ He placed emphasis on the following considerations to be made when granting bail.

1. His place of living in society
2. His place of job
3. His family
4. His ties to and relationships with other people
5. He has a criminal history
6. The names of trustworthy people in the community who could attest to his dependability
7. The nature of the alleged offence, the apparent likelihood of conviction, and the anticipated punishment.
8. Any other element pointing to community relations or influencing the possibility of purposeful absence.

(A) Criticism of bail based on money

It is a common complaint that the bail system is too reliant on financial resources; this is due to the fact that, despite multiple amendments to the penal code, the surety still discriminates against low-income defendants. Those who have a lot of money can buy their release with ease, but poor people who are subject to the financial bail system are often compelled to remain in jail because they are unable to come up with the necessary amounts. In point of fact, one's financial standing is the sole factor that decides whether or not one is freed from jail and whether or not one remains incarcerated. Because of this method's inherently flawed approach, it begs the question of whether or not it is actually feasible to use. In the case of *RUDAL SHAH V. STATE OF BIHAR*³⁷ is a sobering illustration of the worst kind of state executive apathy with regard to the plight of the poor. After being cleared of all accusations by the relevant penal court

³⁶ Moti Ram v. State of M.P AIR 1978 1594

³⁷ Rudal Shah v. State of Bihar AIR 1983 SC1086

on June 3, 1968, he was freed from prison 14 years later, on October 16, 1982.

V. PROVISIONS OF BAIL IN CANADA

A person who has been charged with a crime is required to acquire formal permission from the court in order to be released from custody (jail) while waiting for a trial or other resolution in the criminal process. This permission must be requested in writing.

The release (or imprisonment) of a person accused of a crime prior to their court appearance or punishment is referred to as "bail" in Canada. This phrase can also be used interchangeably with "remand." Both the Canadian Bill of Rights and the Canadian Charter of Rights and Freedoms protect an individual's entitlement to a bail that is reasonable in Canada. This right is implemented by the Criminal Code, which provides a variety of avenues for a person to be released from custody prior to an appearance in court. A person may only be released from custody by a law enforcement official or by a judge and jury in a court of law. A release that has been ordered by the court is referred to as a judicial interim release in its formal capacity. A person does not necessarily need to be arrested and held in custody before being ordered to appear in court; this can be done in a variety of other ways.³⁸

A person who has been accused of committing a crime is presumed innocent under the law until they can establish their guilt. The court has the ability to release them from detention while their case is being conducted, which might take several months. If bail is granted, the court can do this.

The principles of English common law form the basis of Canada's bail system, which has been in place for a significant amount of time. In an effort to reduce the cost of incarceration and stop criminals from escaping from cells, the courts in England started granting accused prisoners bail, provided that certain standards were followed. In Canada, a significant section of the same system is still in operation at the present time. According to the Criminal Code, a person has the right to a bail hearing within 24 hours of their arrest, or as soon as it is practically possible once someone becomes available. This right is only applicable if a judge or justice of the peace is accessible at the time of the hearing.

If their request for bail is denied, they will continue to be held in custody. When compared to the cost of putting an accused person under community supervision while they await trial, the cost of keeping an accused person incarcerated is significantly higher.

³⁸ <https://www.calgarycriminallawyer.com/bail-hearing/>. (last visited on 24, February, 2023)

(A) What are the criteria for getting bail?

Unless there is an extremely compelling basis to detain an accused person in custody, they are entitled to bail under Canada's Charter of Rights and Freedoms.

Although murder and some other offences carry a "reverse onus," meaning the accused must persuade the court to release them, it is up to police and prosecutors to establish the case against granting bail.

The Criminal Code was amended in 2019 by Bill C-75, which includes the introduction of the reverse onus for repeat offenders charged with an offence against an intimate relationship.

For some crimes involving guns, the onus of proof for getting bail falls on the accused as well. An accused person frequently needs a surety. A guarantor who pledges a sum of money without making a deposit must show they are in possession of the money. A bank statement, RRSP statement, deed and mortgage documents, or any other documentation demonstrating an asset may be used for this purpose. Vehicles and other types of personal goods are typically not accepted assets for bail. A possible surety must bring these supporting papers with him to court when his bail is being considered.

In addition to curfews, travel limitations, and a prohibition on alcohol and narcotics, bail terms may also include orders not to contact specific people, such as a co-accused or an alleged victim.³⁹

The Crown must "show cause," which means "provide evidence," for why you should remain in custody pending the result of your case. This is because it is generally assumed that you will be released after a bail hearing. The burden of proof, however, shifts to the defense in a long list of circumstances where it must show that the release is warranted. When this occurs, the defense has the burden of proof. In cases where the accused is "not ordinarily resident in Canada," certain crimes are alleged to have been committed for a criminal organization or alleged terrorism offenses, crimes involving firearms or other prohibited weapons, and certain drug offenses that are considered moot are alleged to have been committed while the accused was already on bail or alleged crimes that would be violations of existing conditions are subject to a reversal of the onus of proof. (Section 515(6) of the Criminal Code).

(B) What rights do victims currently have with respect to bail

1. If a court is considering judicial interim release for an offence involving actual, threatened, or attempted violence against a person, the court must consider whether release order

³⁹ <https://www.cbc.ca/news/canada/canadian-bail-system-1.6700210> (last visited on 24, February, 2023)

requirements that assure the safety and security of any victim should be imposed. The Court must say on the record that it took each victim's protection and safety into account while making its decision.

2. A copy of the bail hearing order must be provided upon request to a victim of an offence under the Criminal Code (the decision to detain or release the accused, along with any conditions).

(C) What types of bail are available in Canada?

The police and the judge typically have a choice between two categories of release. The following are the release kinds that are most common:

1. A promise to appear or an appearance notice

With those who have little to no criminal history and for relatively minor crimes, release by appearance notice or promise to appear is frequently used. This type of release is given by law enforcement and does not require a bail hearing. There are virtually few restrictions on this release. The most crucial order is that you appear in court on the scheduled court date and on the following dates as well. Also, you'll probably be asked to go to a police station to get your fingerprints taken. To avoid a warrant being issued for your non-compliance, make sure you don't miss either date.

The police may believe that further conditions, such as the following, are necessary before releasing you following an appearance notice or promise to appear:

- a. Don't use drugs or drink alcohol
- b. Avoiding all contact with potential victims or witnesses
- c. a curfew.
- d. a few geographical limitations on travel
- e. regular reporting to the neighborhood's police department

2. Recognizance

Recognizance carries a potential financial penalty against the accused if the terms are broken, as well as against the sureties if they are aware that the terms are being broken but choose not to notify the authorities. This monetary fee, which is sometimes referred to as a "bond," has to be proportionate to the promise-financial maker's resources. It is not a deposit and is not paid in advance, but it may be collected if there is a breach.

The best way to understand the many bail choices (forms of release) is to think of a stairway,

with the most lenient kind of release at the bottom and detention at the top. The Crown must argue its way upward to justify further restrictions and conditions, with the exception of circumstances of reverse onus.

(D) Why can bail be denied to someone?

The Criminal Code lists three circumstances under which a suspect may be detained: Maintaining "confidence in the administration of justice" requires ensuring that those who stand accused actually show up to face their charges. There is no priority between the two. While deciding the latter, a judge or justice of the peace might look at the "apparent strength" of the prosecution's case, the severity of the alleged crime, the length of the prospective sentence, the existence of a pistol, and other factors.

Some of the reasons why bail could be rejected include:

- a. Criminal history of the accused, particularly if they have a history of disobeying court orders or bail restrictions.
- b. It is believed that the accused continues to put the public at risk.
- c. Issues with their bail arrangement, such as not having a guarantor or an appropriate place to reside.

(E) What unfairnesses are present in the current system?

Who is granted bail and who is imprisoned in Canada has always been at odds.

1. Indigenous people are more frequently denied bail than other groups, while Black people in Ontario were detained longer than white people while they awaited trial for the same offences.
2. The bail system may also discriminate against many other oppressed groups, such as those who have mental health conditions or substance use disorders, LGBTQ+ individuals, recent immigrants, and the less fortunate.
3. A police summary of the alleged crime and the accused's criminal history, if any, are the major pieces of material that judges consider when making bail decisions.
4. The surety system also disadvantages those who are less fortunate.⁴⁰

(F) Grounds for detention

The reasons for detainment are not obscure. The custody of an accused person may be lawfully

⁴⁰ <https://news.uoguelph.ca/2023/01/5-ways-to-reform-canadas-bail-system-to-benefit-both-the-public-and-the-accused/> (last visited on 24 February 2023)

authorized under one of the following three circumstances (Criminal Code, § 515(10)): The primary justification for granting bail is the expectation that the defendant would appear in court as scheduled and not "skip bail." The "secondary premise" for setting bail is to ensure the accused person's mandatory court appearances and avoidance of "skipping bail."

There are three levels of justifications, with the first two being the most common and the third one being saved for really unusual cases. When the courts have no reason to believe the accused would leave and no reason to believe the accused will conduct another crime in the near future, what amount of public outcry would be necessary to force the courts to arrest the person anyway? The Crown has an annoying habit of repeatedly debating this argument, using the tertiary basis as a form of "miscellaneous rationale category" that can be added to the primary and secondary grounds if they fall short of the required level of plausibility.

VI. PROVISIONS REGARDING BAIL IN USA

Since the beginning of the United States as a nation, defendants in criminal cases have had the legal right to post bail before their trials. The United States acquired both the common law and the statutes of England, which are responsible for the development of the right to bail (Hegreness, 2013). Because of the numerous varied forms that bail laws have taken throughout the course of American history, there is a great amount of disagreement regarding the procedures that should be followed both within the states and within the federal government. The evidence that is currently available supports granting defendants freedom by enabling them to post bond as well as keeping them in jail by rejecting them bail. Both opposing outcomes are supported by the evidence that is currently available. Both the detainee and the criminal justice system may experience increased levels of anxiety as a result of the pre-trial confinement of the inmate. At the same time, there are risks involved with the practise of releasing criminal suspects on bond. Current study focuses on a variety of themes, including the evolution of bail laws in the United States, significant Supreme Court judgements, and attempts at legal reform. The right to be represented by an attorney at bail hearings, pre-trial monitoring, and the many outcomes that might be expected from being held in pretrial detention have all been investigated. Even while there are national guidelines and models, individual states are still allowed to establish whatever bail regulations they see fit in their jurisdiction. There is a need for additional study and research on the processes and rules that regulate bail in each state, as well as the outcomes of such practises and legislation.⁴¹

⁴¹ <https://www.mass.gov/doc/bail-in-the-united-states-a-brief-review-of-the-literature/download> (last visited on 23 february 2023)

(A) How has bail laws been reformed in usa

It has been not only the preference but also the norm in the United States to release offenders before trial or punishment. Bail has traditionally had two purposes: freeing defendants who may be innocent of the charges against them and encouraging their appearance in court through monetary incentives. According to Matthew Hegreiness's findings, there exists a legal provision known as the "Consensus Right to Bail Clause." Hegreiness read and analyzed every United States Constitution from the country's founding text to the present day, as well as every Constitutional amendment pertaining to bail, in order to compose this section. "All persons should beailable by sufficient sureties, except for capital offenses when the proof is apparent or the presumption is great," as stated in the Consensus Right to Bail Clause. Only in cases when the proof is unambiguous or the presumption strong does this rule come into play. Furthermore, the Supreme Court ruled in 1951's *Stack v. Boyle* that "the traditional right to freedom before conviction promotes the unencumbered preparation of defense, and serves to preclude the administration of punishment prior to conviction." The presumption of innocence, which was only secured after many centuries of deadly fighting, would be rendered meaningless if this right to bail before trial is not protected.

Despite the longstanding precedent of the right to bail, judges across the United States have started factoring on the defendant's risk to the community and his or her chances of avoiding capture. rising numbers of suspects and defendants being locked up in prisons.

Decisions about whether or not to release a defendant on bail must take into account both the defendant's potential to flee and the community's safety, as defined by the Federal Bail Reform Act of 1966. However, the revisions based on dangerousness were to be applied to judges' decisions regarding whether or not to grant bail to defendants facing the death sentence, even though the statute stated that defendants who were not facing the death penalty should have the option of posting bond. Murder and treason, two of the "quintessential capital crimes" in the past, are two examples of crimes that may result in the death penalty today. Nonmonetary release on a promise to appear in court at a later date is also known as "release on personal recognizance" or "ROR." This sort of release was first made possible by the Release on Personal Recognizance Act of 1966. Political culture only started to accept the indefinite detention of all offenders, including those facing the death penalty, in the 1970s. The District of Columbia Crime Act of 1970 allowed for non-capital offenders to be held without bail and mandated that courts consider the defendant's risk to the community while setting bail. In *United States v. Edwards*, the Supreme Court upheld the legality of this Act.

(B) Types of bail in usa

- Bail Bonds with Surety

A bail system that is run privately and does not rely on public funds. Bail bonds are posted with the court by bail agents who are licenced to work in the private sector. This ensures that the defendant will appear in court. The most efficient form of bail involves the bail agent taking full responsibility for the defendant's appearance in court.

- Cash Bonds

In order for the offender to be released from custody, the full amount of the cash bail must be paid to the court in the form of a cashier's check or money order. Both the defendant and any co-signer, if there is one, are required to sign the bond in order to ensure that the defendant will show up to any subsequent court hearings. This is a form of government.

- Recognizance Bonds Issued on Own Behalf-

Those who have never been arrested before make a solemn oath in front of the court that they will appear of their own free choice for all court dates that are required of them under this government system.

- Relationships in the Workplace

A person who is the owner of real estate can participate in this system if they obtain a licence from a state that allows them to use their own property as collateral for customers that they post bonds for. The written liability is subject to judicial oversight since it is limited to a certain proportion of the total property worth.

- Bonds for Release Before Trial

A bail system run by the government.

(C) Bail reform act of 1966

The Bail Reform Act of 1966 expanded the rights of federal criminal defendants by allowing non-capital defendants to be released pending trial on their own recognizance or on personal bond. Unless a judge ruled that the incentives weren't enough to get the offender to court, they had to be provided. Federal criminal defendants' access to bail was expanded in 1966 by the Bail Reform Act. If the judge or magistrate determined that additional security measures, such as time limits on travel, were necessary, it was their duty to make that determination. Judges were obligated to examine the defendant's ties to the local community, family, and past court appearances when determining bail.

The Act only allowed judges to consider a suspect's threat to the community while deciding whether or not to impose the death penalty, or after a conviction had already been made in situations involving the death penalty. If a person was found guilty, was awaiting sentencing or an appeal, and was facing the death penalty, no court authority could release them unless there were sufficient reasons to believe that they wouldn't flee or cause harm if released under any terms.

For defendants who were charged with breaking the law and were ordered to post bail but had the resources to do so, the Bail Reform Act of 1966 provided no meaningful relief. The statute also favored defendants with access to lawyers who could help them assemble the requisite information about an arrested individual prior to a bail hearing, given the limited time between the moment of arrest and the bail hearing.

(D) Bail reform act of 1984

Congress made it possible for changes to be made to the way persons are kept in custody in the United States by repealing the Bail Reform Act of 1966 and replacing it with the Bail Reform Act of 1984. Sections 3141–3150 of Title 18 of the United States Code contain these requirements. The Criminal Justice Act of 1984 differs from its predecessor in that it allows for pretrial custody on the grounds that the offender is a flight risk and/or a threat to society. People accused of violent crimes, crimes with the death penalty or life in prison as the maximum punishment, certain drug offenses, repeat offenders, and people who pose a serious risk of fleeing, obstructing justice, or tampering with a witness are all eligible to be held without bail under 18 U.S.C. 3142(f). Repeat offenders are defined as those who have been convicted of a crime more than once. If the offender does not fit into any of these categories, a separate hearing is held to determine whether or not they are eligible for bail; if they are, they cannot be denied it.⁴²

Pretrial detention is mandatory for those accused of federal crimes if a court determines that the public is in danger.

(E) Crimes against minors

The Adam Walsh Child Protection and Safety Act (AWA), which revised the 1984 Act, was enacted by Congress as a direct response to a high-profile case involving the sexual assault and subsequent murder of a child. Any person who is found guilty of committing a crime involving a minor will, as a result of the changes, be sentenced to incarceration, placed under a curfew,

⁴² <https://www.rip.uscourts.gov/sites/rip/files/bailreformact.pdf> (last visited on 24, February, 2023)

and required to make regular reports to the relevant authorities.

Opponents of the AWA argue that Congress ought to make changes to the amendments in order to provide a defendant with the opportunity to dispute release conditions that involve tracking and monitoring.

They argue that because the AWA undermines defendants' constitutional rights by denying them their rights under the constitution and undercutting the aims of the 1984 Act, it does not provide any visible benefits to the general public and therefore violates defendants' constitutional rights. Opponents contend that individuals who are facing charges under the AWA should be given the opportunity to establish that the strict pretrial release conditions of the AWA are not required in their particular circumstances. This is because opponents believe that this would be fair.

(F) Criticism

The United States bail system has been criticized heavily for its reliance on monetary bail as a means of releasing inmates from jail. The idea that defendants will be more likely to stop from illicit behavior and appear in court if they have a negative financial incentive is central to the cash bail system. Because of this, it is assumed that defendants will show up in court more frequently. The assumption that this is the case is false, say those who argue against the use of monetary bail. There is little evidence that cash bail improves public safety, and there is a lot of conflicting data on how it affects court appearance rates, according to the results of a recent study. Many defendants show up in court without having been detained or monitored. Sending automatic text message reminders for court dates is a cheap strategy with the potential to increase court appearances.

It has been demonstrated that incarceration before to trial exacerbates existing social imbalances and causes harm to individuals, families, and communities. The defendant's employment, income, housing situation, relationships with family and the community, and child custody are all negatively impacted by their time spent in pre-trial incarceration. Other members of the family, mostly the women, are the ones who end up bearing the financial burden of paying bail premiums since they frequently have to make a choice between paying for bail premiums and paying for necessities such as rent, food, and medicine. Those who are detained face threats to their bodily as well as mental health. When detainees are locked up before their trials, they have a greater chance of receiving wrongful convictions or of becoming further involved in criminal activity.

According to a study that was conducted in 2015 on a "major northern urban jurisdiction in the United States," the bond that was required of women in order to be released on bail was typically

set at a rate that was 54% lower than the bond that men were required to pay for charges that were equivalent. The authors claimed that there is significant evidence that women were more likely than men to be handled leniently by the judicial system based on their findings and a study of prior papers that studied gender-related differences in criminal prosecutions. The authors based their claims on their findings and a study of prior papers that investigated gender-related differences in criminal prosecutions.

"The field of bail creates regular and predictable harms that disproportionately fall on the poor and people of race," as stated in research. It has been shown that racial prejudice against Latino/a and black defendants has an effect on the system. [Citation needed] [Citation needed] White defendants have a lower probability of having a cash bail set, and a higher probability of being released from custody. The combination of a defendant's high wealth and their racial identity works against them when it comes to their chances of getting released from jail before their trial even begins. This is especially true for people of colour.

VII. COMMITTEE REPORTS

- **Law commission of India 41st report**

The topic of bail was also discussed by the 41st law commission. Here is a discussion of the report:

- i. Bail is a matter of right, if the offence is bailable, according to the general principles defined by the code regarding bail.
- ii. If the offence is not bailable, the decision to post bond is up to the individual.
- iii. If the crime carries a death or life sentence, the magistrate has the power to issue bail; but, if the accused is a minor, a woman, or a person who is ill or infirm, the Court has the discretion to do so.
- iv. The session court or the High Courts have greater discretion to grant bail, even for offences that carry a life sentence or the death penalty.
- v. A person who violates a bail bond will not be released on bail.

According to Section 496, the right to bail is unalienable in cases of bailable offences (of the 1898 law). It was suggested that a person released on bail who evades capture or fails to show up in court forfeits his right to bail when he is eventually brought before the court. The commission recommended that this notion be adopted and that refusals of release under specific conditions be made without affecting any legal proceedings under section 514 for the forfeiture of the bail bond.

As a result, subsection (1) of section 496 may be changed to read as follows: "notwithstanding anything contained in subsection (1), the court may refuse to release a person freed on bail on bail and he will be imprisoned again if he fails to appear before the court or is taken into custody on a subsequent occasion." Any such denial will not impact the Court's ability to demand that any person bound by such a bond pay the fine imposed by section 514.⁴³

- **Law commission of India 268th report**

According to the 268th report of the Law Commission of India, in order for our criminal justice system to establish some credibility with fair and equitable regulations and laws, necessary steps need to be taken on how an arrested individual was treated. The Commission gives credence to what we already knew to be true, namely that those who are famous and wealthy are showered with favours, while those who are disadvantaged are persecuted. The legal definitions of bail as well as the numerous decisions make it abundantly clear that the approach that the courts take towards bail depends on the specific facts and circumstances of each individual case. In India, around 67% of people who are detained in jail are presently awaiting their day in court. The inconsistency of the bail system is one of the factors that contributes to the problem of overcrowding in correctional facilities around the country as well as the challenges that are currently being faced by the state and the prison system. The practise of granting bail quickly and without difficulty to those who are powerful, wealthy, and prominent while requiring those who are less fortunate to remain in jail has become the norm. A fault in the bail system is the fact that those with less financial resources must either post bail or pay for their own pretrial detention. It is also evident that the position on bail held by the High Court is not the same as the opinion held by the trial court. It appears that the trial court is generally in favour of rejecting bail. So, in order to apply for bail, the accused person must first appear before both the High Court and the Supreme Court.

The inadequate management of bail has resulted in an overcrowding of offenders who are currently awaiting their trials in correctional facilities.

Both the bail judgement of the Supreme Court and the bail order of the trial court make it abundantly clear that the constitutional provision and the rule of bail are not synonymous with one another. Yet, the status of the trial court has been established by a court that has the authority to only sentence persons and cannot issue them bail, despite the fact that the Supreme Court has ruled that there is no violation of criminal law for which bail cannot be granted. In cases when

⁴³ <https://www.latestlaws.com/library/law-commission-of-india-reports/law-commission-india-report-no-41-code-criminal-procedure1898-vol-1> (last visited on 24, February, 2023)

the Supreme Court and the High Court have the authority to decide whether or not a defendant may be released on bond, the behaviour of the trial court takes an entirely different turn. It is clear from an in-depth comparison of the bail rules of the Supreme Court, the High Court, and the Court of Judgment that the respective judicial philosophies of these three courts are distinct from one another.

The Honorable Court that hears bail applications has the responsibility of striking a balance between the individual constitutional rights of the offender and the interests of society. This must be done while keeping in mind that neither the accused's right to a comprehensive defence nor the prosecution's right to present their case should be compromised by the actions of the other party. Detention is an exception to the rule of bail, which is a law. According to the organisations that are striving to reform the system, the procedure of posting bail in the country is arbitrary and unfair, and it has to be reformed. In spite of this, the law regarding anticipatory bail was noted to have only a few minor loopholes here and there. Despite the common conviction that significant progress has to be made, India still has a long way to go before it can successfully convince the rest of the world that its protection of human rights is on par with that of other Western nations.

VIII. JUDICIAL PRECEDENTS

1. The practise of requesting interim bail from a higher court and then going to a lower court to obtain regular bail under the guise of interim bail being granted by the lower court has become common among applicants. In the case of ***RUKHMANI MAHATO V. STATE OF JHARKHAND(2017)***⁴⁴, the Supreme Court issued an order to stop these unethical acts. In light of the current situation, it is necessary to stop this practise because, even though the superior court will dismiss the anticipatory bail after a thorough review of the case, the regular bail of the lower court will remain in effect and render the superior court's order of pre-arrest bail meaningless.
2. The autonomy and originality of a coordinate bench's obiter dicta in its decision are seriously compromised when one bench of the court interferes with its operation. In the case of ***VIKRAMJIT SINGH V. STATE OF M.P(1992)***⁴⁵, the Supreme Court held that such a trend should be outlawed because otherwise a party who is dissatisfied with an order of one bench will be tempted to open the case before another bench and will attempt this repeatedly, leading to absolute tyranny and mockery of the earlier bench's

⁴⁴ RUKHMANI MAHATO V. STATE OF JHARKHAND 5 SCC 574

⁴⁵ VIKRAMJIT SINGH V. STATE OF M.P AIR 1992 SC 474

decision.

3. It will be an obvious usurpation of the lower court's sovereignty if the superior court issues a direction or mandamus to the lower court in the matter of bail granting, i.e., to give direction whether to allow the bail application or to reject it. In the case of **MADAN MOHAN V. STATE OF RAJASTHAN(2018)**⁴⁶, the Supreme Court took notice of this practise and strongly prohibited its continuation.
4. In the recent case of **MR. Y V. STATE OF RAJASTHAN(2022)**⁴⁷, the Supreme Court noted the practise of high courts awarding bail in a cryptic manner without providing justification. In this case the accused is habitual offender and is influential in his family, committed rape on his niece. Hence, the lack of justification in these courts while granting or rejecting bail exemplifies their arbitrary nature. According to CJI Ramana, "There is a new tendency of making such decisions granting or refusing to grant bail, when the courts make a general statement that "the facts and the circumstances" (of the case) have been reviewed. There are no mention of any particular factors that led to the court's decision to issue the injunction. Such lower court decisions absolve them of the fundamental requirement of accountability, which is profoundly unacceptable in our democratic system.
5. The Supreme Court provided guidance for the subsequent bail applications in the case of **KALYAN CHANDRA SARKAR V. RAJESH RANJAN(2004)**⁴⁸. The court reviewing the application must give the higher court's decision careful attention. Due weightage to be given to the higher court or former one in rejecting the bail application. Normally, it is not permitted for the matters that have already been presented and discussed to be brought up again in a future bench since this would encourage speculation in the administration of justice. The only exception to this rule is if there has been a major change in the facts or if new laws have been passed that have rendered the prior finding irrelevant.
6. In the recent case of **AASU VS. RAJASTHAN**⁴⁹, the Supreme Court issued an order mandating that decisions regarding bail petitions be made within one week after receipt.
7. In another case, known as **TARUN AGGARWAL V. UOI(2022)**⁵⁰, the Supreme Court

⁴⁶ *MADAN MOHAN V. STATE OF RAJASTHAN* (2018) 12 SCC 62

⁴⁷ *MR. Y V. STATE OF RAJASTHAN* 2022 SC 384

⁴⁸ *KALYAN CHANDRA SARKAR V. RAJESH RANJAN* 2004 (7) SCC 528

⁴⁹ *AASU VS. RAJASTHAN* 2009 (2) WLN 175

⁵⁰ *TARUN AGGARWAL V. UOI* (2022) (SC) 885

of India overturned an order that had been made by the Allahabad High Court to restrict the anticipatory bail of an accused person just till the charge was framed. In the case of express, Judge Gavai made the observation that an order limiting anticipatory bail only until the charging of the accused should be established with reasonable reasons derived from the facts and circumstances of each instance.

8. The Supreme Court itself stated in ***HARNAIRAIN SINGH V. THE STATE(1958)***⁵¹ that this discretion shall be exercised judicially, subject to the restrictions listed in Section 437 of the CrPC and keeping in mind the seriousness of the crime, the nature of the allegation, the severity of the punishment on conviction, the possibility of the accused fleeing if released on bail, the danger of evidence being tampered with, the accused's health, age, and sex, etc., among other factors In the event that the judge determines that doing so is essential, the court has the authority to impose such requirements "in the interests of justice."
9. In the case of ***GUDIKANTI NARASIMHULU AND OTHERS V. PUBLIC PROSECUTOR***⁵², High Court of Andhra Pradesh, it was made clear that in India, the decision to grant bail is left up to the bench that is considering the case at large. The application of the Indian Criminal Code has been mainly left to the discretion of judicial minds because it is not secretive and does not offer a detailed list of circumstances for its provision.
10. In the case of ***AKHTARI BI V. STATE OF M.P.(2001)***⁵³, the bench emphasised the significance and requirement for more courts as well as other ways to lessen backlog and case pendingness. In this case, the Supreme Court further noted that:

A necessity of criminal law is a speedy trial, an early hearing, and a speedy resolution. Several countries, like England, set aside official courtroom days for trial proceedings. Holding an accused prisoner for even one extra day is a violation of their right to life, liberty, and the preservation of their dignity as a human being, and is therefore illegal. Time helps alleviate and heal even the worst cuts you've taken physically, mentally, and emotionally. If the Courts have been rendered powerless and the frustrating delay is threatening to devour the system, the Government may consider increasing the strength to clear the backlog or establishing a mechanism by which criminal appeals pending for more than a reasonable time in higher Courts

⁵¹ *HARNAIRAIN SINGH V. THE STATE* AIR 1958 P H 273

⁵² *GUDIKANTI NARASIMHULU AND OTHERS V. PUBLIC PROSECUTOR* 1978 SCC (1) 240

⁵³ *AKHTARI BI V. STATE OF M.P.* 2001 5 SCC 158

should stand resolved.

11. According to Articles 438 and 482 of the CrPC, Sessions Court and the High Court have the authority to issue pre-arrest release (transit bail) in the case of **SMT. MERRY BINA MARAK V. STATE OF MEGHALAYA & ANR. (2018)**⁵⁴. It was further held that the power of the High Court or the Court of Sessions in whose jurisdiction an individual lives or the location he anticipates being arrested is appropriate and not prohibited as such for the purpose of providing transit bail in relation to non-bailable offences in cases where it is warranted. In this fashion, the accuser has the ability to issue a summons to the defendant, requiring him to appear before the High Court or Court of Sessions in the jurisdiction in which he resides or the place where he is being held. Nonetheless, releasing a suspect on anticipatory or transit bail cannot be a matter of course, and in circumstances like these, the gravity of the offence committed should be taken into consideration. In order to prevent the accused from escaping or abusing his rights or freedoms, anticipatory bail is necessary. Moreover, it is important to prevent the accused from being falsely accused with the sole goal of ruining his reputation or unjustly detaining him.
12. In the recent landmark decision in **SUSHILA AGARWAL V. STATE OF DELHI**⁵⁵, The Supreme Court was tasked with deciding two issues: (i) whether the life of expectant bail should end at that point and stage when the blamed is brought to court, and (ii) whether the assurance granted to an individual under Section 438 of Cr. P.C. ought to be restricted to a fixed period to enable the individual to give up under the watchful eye of the preliminary court and look for normal bail. The first question required the court to determine whether the assurance granted to an individual under Section 438.
13. The Supreme Court ruled in **GURBAKSHA SINGH SIBBIA AND OTHERS V. THE STATE OF PUNJAB(1980)**⁵⁶:
 - a. The CrPC makes no restrictions regarding the timeliness of granting pre-arrest anticipatory bail.
 - b. Subject to taking into account any unique requirements, the concerned court has the option to establish conditions for the grant of anticipatory bail, including a brief term of protection, etc.

⁵⁴ SMT. MERRY BINA MARAK V. STATE OF MEGHALAYA & ANR. 2018 MANU/MG/0107/2018

⁵⁵ SUSHILA AGARWAL V. STATE OF DELHI AIR 2020 SC

⁵⁶ GURBAKSHA SINGH SIBBIA AND OTHERS V. THE STATE OF PUNJAB 1980 SCC (2) 565

14. In the case of **SUSHILA AGARWAL VS. STATE(2020)**⁵⁷, the Supreme Court ruled that anticipatory bail should not be granted for a predetermined amount of time; nevertheless, the court has the authority to set a time restriction on the duration of anticipatory bail if there is a compelling reason to do so.

15. **KANUMURI RAGHRAMA KRISHNAN RAJU V. STATE OF ANDHRA PRADESH (2021)**⁵⁸, 2021, In this case, the defendant bypassed the lower court and went straight to the Supreme Court of the United States, raising the question of whether or not the Supreme Court has jurisdiction to review his bail application under Section 439 of the Code. The Supreme Court answered in the positive, explaining that Section 439's provisions are concurrent and that the fact that the accused skipped the trial court and went straight to the high court does not preclude the high court from hearing his case. In other words, even though the accused proceeded straight to the high court, the high court can still hear the case.

IX. CRITICAL ANALYSIS

The Criminal Process Code of 1973 is the primary legal document that governs the bail system in India (CrPC). In accordance with the Criminal Procedure Code, a person may be granted bail if the offense in question is considered bailable. The term "bailable offenses" refers to those types of misdemeanors and felony charges that allow for the possibility of the defendant's release on bail without the provision of any form of collateral. The offenses that are considered non-bailable are those for which the court will not grant bail even if the defendant requests it. When deciding whether or not to release the accused on bail, the court takes into consideration a number of circumstances and requires the accused to provide a security or guarantee. In India, most bail requests are granted, and the courts have a reputation for being lenient when it comes to doling out bail. Nonetheless, there are some circumstances in which bail is not granted, such as when the accused is accused of committing a particularly horrific crime or when it is believed that they may attempt to tamper with the evidence or flee the country.

The provisional release mechanism used in the United States is governed by the eighth amendment of the Constitution of the United States. The Eighth Amendment makes it illegal to impose excessive bail or fines, in addition to cruel and unusual punishment. A defendant in the United States is entitled to pretrial release, which means that they will not be required to pay bail in order to be released prior to their trial. This is the case unless there is a possibility that

⁵⁷ SUSHILA AGARWAL VS. STATE(NCT OF DELHI) 2020 5 SCC 1

⁵⁸ KANUMURI RAGHRAMA KRISHNAN RAJU V. STATE OF ANDHRA PRADESH 6 SCC 129

they will not appear in court for their trial or if they pose a threat to the safety of the community. In the legal system of the United States, a defendant has the option of paying a bail bond firm a percentage of the total price of the bail in exchange for the company's promise that the whole amount of the bail will be paid to the court. In the event that the defendant does not appear in court for their trial, the bail bond business is obligated to pay the full sum of the bail to the presiding judge.

The Criminal Code of Canada is the primary legal document that governs the bail process in this country. In accordance with the Criminal Code, a person may be granted bail if they have been accused of committing a bailable offense and do not pose a threat to the safety of the community or themselves. The Criminal Code also allows for the use of sureties, which is when a person makes a commitment to ensure that the accused person appears in court as required and complies with the conditions of their bail. The majority of bail applications in Canada are successful, and the country's courts have a reputation for being lenient when it comes to doling out bail. Nonetheless, there are some circumstances in which bail is not granted, such as when the accused is accused of committing a particularly horrific crime or when it is believed that they may attempt to tamper with the evidence or flee the country.

Contrasting the various forms of bail The process of obtaining bail in India is typically very easy, and it is granted in the vast majority of situations. In the legal system of the United States, a defendant has the option of paying a bail bond firm a percentage of the total price of the bail in exchange for the company's promise that the whole amount of the bail will be paid to the court. The majority of people who apply for bail in Canada are granted release on their own recognizance. Pretrial release is the foundation of the bail systems in India, the United States of America, and Canada. This principle states that a defendant should be freed prior to their trial without the obligation to post bail unless there is a risk that they will not appear in court or that they pose a threat to the community.

To summarize, the systems for determining bail in India, the United States of America, and Canada all adhere to the pre-trial release premise. In contrast to the United States and Canada, which both use surety systems rather than bail bonds, the bail system in India is often more lenient. Yet, bail is granted in the majority of cases in all three countries, and the courts have a reputation for being rather lenient when it comes to issuing bail.

X. SUGGESTIONS

Several initiatives to modify India's bail system have been made in the past. For instance, in 1973, the Expert Committee on Legal Aid, presided over by Justice Krishna Iyer, recommended

reconsidering how the Criminal Procedure Code classifies crimes as eitherailable or non-ailable in order to make it easier to grant bail in more cases and hasten the conclusion of pre-trial proceedings. The Malimath Committee on Criminal Justice System Reforms pushed for an adjustment to Schedule I of the Criminal Procedure Code in 2003 depending on the type of crime committed, the level of violence, the length of the punishment and the potential for alternative dispute settlement.

There can be specific changes made to the bail decision-making process so that it is no longer discretionary, unlike the bail schedules used in different US states, especially for serious felonies. Every criminal violation carries a set bail price, yet those who cannot afford it are ignored. A non-refundable fee and collateral are also charged by the US bail bond industry to the agents who pay the bond to secure the release of those who cannot post bail. In order to ensure that bail is given in at leastailable offences, it is necessary to redesign the existing discretionary power and create a new bail protocol. This would eliminate the significant geographic variances in the bail orders issued by the lower criminal courts. Aside from these procedural changes, the legislature can also revisit the current bail rules by modifying the law and adding checks and balances to prevent needless detention or excessive bail in order to safeguard an individual's freedom.

Effective training and capacity-building initiatives for legal aid attorneys can influence the results of bail. This would guarantee that each person who is brought before the court is represented by a lawyer who is capable of adequately defending him or her by timely filing a bail application.

To protect the low-income defendants who typically do not pose a higher risk to society, it is advised to move away from a bail system that is only dependent on money. It is possible to institutionalized pre-trial services, which keep track on suspects released on unsecured bail by reminding them of upcoming court appearances, offering mental health treatments, or guaranteeing their attendance at the trial. Additionally, passports can be returned, regular reports to the relevant government can be made, or a more powerful electronic tagging system can be implemented to reduce the likelihood of such individuals fleeing.

The Law Commission of India's 268th Report, which was published in 2017, emphasized the need for quick improvements to the country's bail laws. B.S. Chauhan, a former SC judge who served as the commission's chair, advocated for revamping the monetary bail system for everyone awaiting trial, particularly those from disadvantaged socioeconomic backgrounds. This report laid the basis for changes to bail laws in India by warning police officials against

making unwarranted arrests and magistrates against making biased bail decisions based on factors such as gender, color, ethnicity, wealth, or social standing. The Commission advised that personal monetary bonds or sureties should be the last option after evaluating the socio-economic circumstances of the accused. Its recommendation was based on its doctrinal research on the Supreme Court's rulings and the current Indian law on bail.

In the case of the aforementioned special laws, bail should be granted, taking in mind the applicable legislation, the gravity of the case, and unusual circumstances; however, this does not indicate that there should not be stringent examination in cases of grievous violations as well. Restrictive bail should be given in cases of tax evasion or bank fraud while strictly adhering to Cr.P.C. In order to highlight the psychological, physical, and societal effects of crime as well as the implications of such release in heinous felonies, the prosecution may also file a Victim Impact Assessment Report and Risk Assessment Report.

(A) Need for reform in India

In India, if someone is charged with a serious crime and is expected to be found guilty and given a harsh penalty, they are more likely to flee the scene or jump bail to avoid the trial and the ensuing sentencing. It would be pretty foolish to if such a person is being held in custody.

Give him bail and let him go again. It would also be wrong to release an accused individual on bond if they were likely to hinder the fairness of the legal process by destroying evidence or tampering with prosecution witnesses, or if they were likely to commit new crimes while out on bail. On the other hand, it would be cruel and unfair to refuse the accused individual bail if there are no such risks associated with his release.

Hardened criminals could be kept from exerting their negative effect on others who are through trials by establishing up separate jails or, at the very least, separating them from convicts. The treatment of undertrials by jail staff and the general public may also shift as a result of such seclusion.

Petty criminal suspects who are being held without bond may also be sent to reformatory homes and required to perform community service until their release on bail.

The benefit of bail should not only be available to a select group of people but also to all people, even those who are unable to pay for it.

XI. CONCLUSION

In conclusion, bail in India is similar to bail in the United States and Canada in that it allows an arrested person to be released from custody pending trial. Yet the bail posting rules and

procedures vary by country.

The severity of the offense, the likelihood that the accused would flee the jurisdiction, and the risk that the accused will tamper with witnesses or evidence are all factors that go into determining whether or not an accused individual will be released on bail in India. Bail amounts may be determined by either the court or the police.

While deciding whether or not to grant bail, a judge in the United States will take into account the same factors as their Indian counterparts. A defendant may be forced to post a bond in a set amount to ensure they will appear in court for their scheduled court dates.

A judge hears the bail application and considers a number of considerations before making a decision in Canada. The accused's likelihood of showing up in court, the seriousness of the alleged crime, and the threat the accused may pose to the public are all relevant considerations. The accused may also be asked to provide a surety or deposit money to guarantee their appearance in court on the dates set for their trial.

While the concept of bond release is universal, the specifics vary greatly from country to country. The rules and procedures pertaining to bail in one's own country should be thoroughly understood.

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