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Right to Bail

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ABSTRACT

Bail means to release an accused person. Bail as a matter of right means that an accused person has got the right to get bail if he has committed a bailable offence which has been described under the first schedule of the criminal procedure code. If an accused is denied to get the bail, he will be in mental and corporeal destitution of jail life, so it is a right given to an accused to be free from custody till further proceeding and investigation is done. Bail should be given to a person because large numbers of people are unlettered and there is a lack of awareness seen over the victims. There is also a lot of torture by police in prison as they misuse their powers to prise out their mistake. Bail rises to give an assertion of police control and freedom to a person who has been convicted for his wrongdoing. The judiciary has given power to every individual who has been deprived of their liberty under article 21 of the Constitution. The reason for giving bail is not to let the accused person be released from prison but to release him from the misbehaviour under law. Bail is the security given by the defendant that he will be presented to the court for his hearing. A non-bailable crime is not considered as a matter of right, but an accused can be released on bail if a court thinks fit and proper to do so for the justice. It becomes the discretion of a court to grant bail or to refuse it. But if a person is granted bail under non-bailable offence then the person has to submit a bond that he will appear in the court whenever be called, and will comply with all the conditions imposed by the court.

I. INTRODUCTION

Bail is the fundamental facet of any Criminal Justice system that gives assurance to the accused to the equitable of a fair trial. If any, person is detained for the cognizable offence on the assertion of commission of a crime, he shall be produced by the police officer in the competent court, and the person has a right to apply for bail. Bail is to liberate a person on condition by signing an undertaking that, whenever court will direct or calls him he, shall be present before the Court to respond to the charge. But if a person fails to comply with the bail's condition, he can be arrested. Bail commonly means, to set free the accused on its bond and securities. The securities shall be decided by the court having jurisdiction over it. No person is said to be the accused unless he is proved guilty. The sequel of granting bail is not to let the accused person

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be free, but to release him from the custody and to entrust him to produce him to appear for his trial at the specified time and location.

II. MEANING

Bail is not defined in the Criminal Judicial System 1978 but can be stated that it is a temporary release of an accused person on a condition that he has to be present before the court whenever required. Though the term bail is not defined the bailable and non-bailable offence is given under section 2(a) of the criminal procedure code, which states that bailable crime is that crime which is shown bailable under the first schedule for example giving false evidence in the judicial proceeding, causing the disturbance in the religious worship, obstructing public servant while performing his duties etc, on the other hands non-bailable crime means any other offence for example murder, dowry, kidnapping, causing grievous hurt to a person etc. In the case, of *Sanjay Chandra v. CBI*² the court in, this case, held that to grant or refuse bail lays indiscretion of the court by seeing the facts and circumstances of the case. In another case, *Aasu v. State of Rajasthan*,³ court on, this case, observed that bail applications should be disposed of within one week. In this case, *Vaman Narain Ghiya*,⁴ the court, has distinctly brought light to the effect that bail is not defined in the criminal procedure code it is an undefined term.

(A) Objective

The objective of bail is that it assists the accused for the reappearance, and secondly, it averts the unnecessary imprisonment of an un-convicted individual. The basic goal for giving bail is that the accused must be presented before the court during his trial. The purpose of bail is to provide affirmation and supervision to the courts to minimize unnecessary trial and detention of an accused person. By giving bail:-

- It helps to reduce the number of convicted persons who are detained in prison.
- It reduces the number of days spend in jail detentions and reduce the number of remands.
- It serves individuals to understand the bail process.
- It can excess from lawyers court throughout the court process.

III. CONDITION FOR BAIL

1. Bail in bailable offence (section 436)

Bailable offences are those in which the nature of the act is not so serious and the accused

² SCC 40 (2011)(S.C) 4077.

³ (Criminal appeals No of 2017) dt 27.03.2014

⁴ (2009) 2 SCC 281.

person has a right to bail under such act. If the offence committed by an accused is bailable then the police officer has no discretion over such matters and he may be released; the only discretion is to leave him with a bond or with or without sureties. In such cases, where an accused person is not in a position to give bail, the police officer must present him before the magistrate within 24 hours of arrest, as specified in section 57 of the criminal procedure code, and when the accused is presented he may seek for bail to a magistrate. In the case, of *Rasikal v. Kishore*⁵ the SC, in this, case observed that after the bail is furnished an accused person is bound to be released on bail because he has the right to bail which is an absolute right and no discretion can be exercised on such rights. In the case of *Amar Nath Singh v. the State of Rajasthan*⁶ it was held that if a person has fail to comply with the conditions of bail then the court may refuse him to grant bail.

2. Bail in case of non bailable offence (section 437)

Non -bailable are offences that are serious in nature and in which bail can only be granted by the court. If a person is arrested for the act of a non-bailable offence he cannot claim it as a matter of right. The term non-bailable does not mean that the accused cannot get bail; sections 437 provide the provisions of bail in a bailable offence. The court can give bail to an accused person if it is a non-bailable offence if he has been detained without the warrant except in the following matters:-

- a) If he has committed an offence in which punishment is death or life imprisonment, or he has not been previously convicted for the same act.
- b) If he has been suspected of a crime in which punishment is 7 years?
- c) He cannot be released if an offence is a cognizable one.
- d) If the court thinks that the accused may tamper with witnesses and evidence.
- e) If the court feels that the accused may abscond if granted bail.
- f) The probability of an accused committing more offence.

The following factors which a court takes into consideration while granting bail in non-bailable offence are:-

- a) If a person is a woman ,or he is sixteen years of age, or is sick or infirm.
- b) It is satisfied to the court that it is just fair and proper to give bail, and there is no sufficient ground for refusing it.

⁵ AIR 2009 SC 1341.

⁶ REGULAR BAIL- Case no. 4644 of 2016.

In the case, of *Shakuntala Devi v. state of U.P*⁷ in this case, the court observed that ‘may’ in section 437 ought to be read as discretionary power, not mandatory power to grant bail. In the case, of *Gurcharan Singh v. state Delhi Admn*) the court, took the view that they will exercise its discretion for granting bail only if it deemed necessary under such act. In the case, of *Prahlad Singh Bhati v. NCT*⁸ the court, in this case gives an effect that for granting the bail the legislations have used the word such as ‘reasonable grounds’ which means that if a court finds that there is no reasonable ground for detaining a person by seeing the evidence it may grant such person on bail.

IV. TYPES OF BAIL IN INDIA

1. Anticipatory bail (section 438)

Anticipatory bail is given to an accused when he has an apprehension that he is going to be arrested for committing a non-bailable offence, then the accused person can, before his arrest apply to the H.C or Court of Sessions for bail. Anticipatory bail can be on certain conditions that:-

- The accused must not make any threat, promise, or induce any person from disclosing any material facts.
- He may not leave India without the permission of the court.
- The accused person shall present himself to the court for interrogation made by the police office whenever required.
- It may be granted by seeing the conduct and the behaviour of an accused.
- By seeing the gravity and nature of the alleged offences.

In this case, of *Balchand Jain v. State of M.P.*⁹ the case observed anticipatory bail means that anticipation of arrest when a person seeks anticipatory bail and is arrested; he may be released on bail. In the case, of *Adri Dharamdas v. State of West Bengal*¹⁰ court gave life to the effect that anticipatory bail may be granted in the exceptional cases only when it appears that a person may be falsely implicated in such cases as may be exercised, In case of *Suresh Vasudeva v. State*¹¹ in, this case, court held that section anticipatory bail under section 438 (1) is given only to non-bailable offences. In *Re Digendra v. State*¹² court held that section 438 will apply even

⁷ 1986 CriLJ 365.

⁸ (2001) 4 SCC 280.

⁹ AIR 1977 SC 2447.

¹⁰ AIR 2005 SC 1057.

¹¹ 1978 CriLJ 677.

¹² 1982 CriLJ 2197.

if the F.I.R is not registered for the commission of a non-bailable offence. In *Gurubaksh Singh Sibba v. State of Punjab*,¹³ a court in the case held that no anticipatory bail shall be given after the accused has been arrested and the court must consider the fact and circumstances while releasing the person on bail.

In Mallimath Committee Report it is stated that the provisions of giving anticipatory bail are generally misused by the people. The committee granted two conditions for retaining the provision:-

- i. When the person seeks anticipatory bail, it should be heard by the court having jurisdiction over such matter.
- ii. The Court shall hear the public or the public prosecutor before granting such bail.

2. Interim Bail (section 439)

This kind of bail is granted to an accused for a short period it is just like a temporary bail, which may be granted to an accused till the time application for regular and anticipatory bail is pending in the court. In the case of *Deepak Bajaj v. state of Maharashtra*,¹⁴ the court held that to grant bail there should be inherent power in the court. In *Kanhaiya Kumar v. State*¹⁵ in this court observed that interim bail was granted to Kanhaiya Kumar for six months on furnishing personal bond in the sum of Rs 10000/ and an undertaking was signed by the accused under this behalf.

3. Regular bail

Regular bail is the bail that is granted by the court when the accused has been arrested in police custody. Under this bail, the application can be given to the court under sections 437 and 439 of the criminal procedure code. To get bail, the accused must apply to court. The court may then give summon to the parties for the hearing. On the date of hearing the court will hear the arguments made by parties and will give the decision based on the facts and circumstances of the case. Regular bail can be rejected by the court if, the court thinks that the accused is a habitual offender or an offence is petty. In the case of *Mukesh Kumar Patel v. the State of Chhattisgarh*¹⁶ in this case, the court held that the applicant may be released on bail on furnishing a personal bond of Rs 25000/ with the surety that he may appear in the court for his appearance.

¹³ 1980 AIR 1632 SCR (3) 383.

¹⁴ W.P. (CRL) 558/2016.

¹⁵ W.P (CRL) 558/2016.

¹⁶ CRIMINAL APPEAL N.o 230 of 2004.

4. A person can be released on bail

- **Before charge**

If the police are on investigation and have not framed charges, it is necessary to release the accused on bail. Pre-charge bail is given under the following situations when:-

- i. There is not sufficient evidence to detain a person.
- ii. There is sufficient evidence, but the matter has been referred to the C.P.S for charging the decision.

Pre-charge bail will not be given if the police suspect that the accused person has given a name, address which is likely to be false.

- **After charge**

When a suspect is charged for the commissions of an offence, either they will be released on bail or they will be remanded in the custody, and if an accused is released on bail then he has to attend the magistrate court for a hearing at the time and location so called by the magistrate.

V. CANCELLATION OF BAIL

Court who has given bail to the accused can also cancel it by *Suo- Moto*, by the application of the police officer, Complainant on its own motion or by any aggrieved person. But court usually refuses to cancel bail at it jeopardizes the personal liberty of a person. The bail can be rejected on the following grounds:-

1. It is a possibility that the accused may be absconded.
2. He may misuse the bail.
3. There is a possibility that he may tamper with the evidence.
4. He may evade the due court of Justice.
5. Attempt or interfere with the administration of justice.

In *Puran v. Ramvilas*¹⁷ court, in this case, held that the bail can be cancelled by the state or any aggrieved party or by *Suo –Moto*.

(D) The following persons may grant bail

1. By Police officer

The police officer has the power to grant bail to an accused if he has arrested him without a warrant or by the order of the magistrate, and the offence is aailable one defined in the first

¹⁷ SLP (Cri) no 756 of 2001.

schedule of crpc. The police officer may also grant bail in cases of non-bailable offence but this power cannot be exercised if an accused is guilty of committing an offence.

2. By Executive magistrate

Section 44(1) gives power to the magistrate to arrest the accused who has committed an offence in his presence. Since the magistrate has the power to arrest, he also has the power to grant bail; if an offence is a bailable one, the accused has been arrested under a warrant and the offence has been committed in any other district.

3. By Judicial Magistrate

Bail can be moved at any stage of investigation, enquiry, or trial by a judicial magistrate, at the time of commitment or after the conviction until a bail order has not been given by the appellate court.

4. By Sessions Judge

If the investigation is pending in the court and bail has been rejected by the Sessions Judge at an investigation stage Section 439 gives the power to the Sessions Judge to take up the bail because the power of the Sessions Judge is concurrent with that of the High Court. In *Sangappa v. State of Karnataka*,¹⁸ the court held that the power of the Court of Sessions and High Court is wider than that of the magistrate under section 437.

5. By High Court

The power to grant bail is given wider to the High Court as compared to a court of superior jurisdictions because the High Court can reduce the bail granted by the magistrate or by the Sessions Court on the belief that the amount of bail is excessive. The High Court is given the discretionary power to decide whether to grant bail to the accused or to refuse it.

6. By Supreme Court

The Supreme Court is the highest court has all the authority over the matters, which has been decided by the court so if an accused person is not granted bail and he thinks that his personal rights and liberty are being violated he can approach the Supreme Court as it can entertain matters under article 136 of the Constitution.

VI. CONCLUSION

Most of the works are done by the Courts themselves; the Criminal Procedure Code only gives an outline to the provisions of bail. The bail is shown as a remedy to let the innocent person be

¹⁸ 1978 CriLJ 1367.

saved from illegal detention, and it also allows him to prepare his case presentation with the help of the lawyer to know, a good understanding of the case. As far as the definitions of bail are concerned, it is not statutorily defined. Bail is considered as a matter of discretion of the court because it is on the court to grant bail to an accused or not. The basic distinction; is that aailable offence is a matter of right, whereas in a non-bailable offence it depends upon the court whether to grant bail or not. As crimes are rapidly increasing in our society, it has thus become important to strike a balance between the investigational powers of the police and personal liberty. It is concluded that a person may be released on bail on a temporary basis, but he needs to appear in the court for the hearing whenever required. Generally, people do it to release themselves from the custody of the police.
