

DETAILED STUDY OF BAIL IN INDIA

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HISTORY OF BAIL

Bail is an instrument to guarantee the appearance of the accused person at trial or to make sure the reliability of the procedure by preventing from manipulation of the evidence or with the witness. Bail can be referred as discharge from the custody.

In the case of *Moti Ram v. State of Madhya Pradesh*¹ the SC elucidated the expression bail it comprises of both personal bond and it also includes with sureties, even after the broadened ambit of the term it refers to the release of the person on the basis of monetary terms either by the promise of person or a promise made by the third party.

In the 399 BC, were existed Socrates and Plato. Plato was the person who tried to make certain bond with the church, as Socrates was held accused, he tried to release him. As during the British time it was circuit court structural system in which the accused had to wait for their trial for months in the unhygienic and awful conditions. Different kinds of disease were spreading in the custody because of the unhygienic area which resulted in compelling the government to release the accused in return of some surety² which would be renounced in case of non-availability.

During the thirteenth century, the sheriff had sovereign authority to release or suspect. The sheriff had the authority to apply any standard or any aspect while deciding to grant a believer of bail. This unguided power were not always wisely used which would often result in abuse of the bail agenda. The essential required for a bail to be qualified would be adjudged from the statute of Westminster. In any case the statue could be considered as a general ideal to bail.

The report of network of civil society organization and another report by the law minister, 2010 states that approximately three lakhs prisoners are under trial prisoners who are left in the jail as a sack of vegetable left there to be decomposed. And even the prisoners are in the jail after completion of the arranged minimum sentence in the statute for which they were punished. The main intention behind the detention of the person is to ensure the appearance of the person at the time of the proceedings of the trial and in the case where he is found guilty should be held liable for the consequences.

¹ AIR 1978 SC 1594.

² Sunil Fulchand Shah v. Union of India, AIR 2000 SC 1023

CONCEPT OF BAIL

The code specifies for all the offences as “bailable” and “non-bailable offences”. “Bailable offence” has been defined in the section 2(a) of the code which signifies the offences which have been listed in the First Schedule or for the time being it is made bailable in any other law. “Non-Bailable offence” the offences for which the code has not mentioned whether to be considered bailable or non-bailable from the offences provided in First Schedule. The offences for which the punishment is for imprisonment with 3 years or more can be defined as non-bailable offences as the gravity of the offence is more as compared to the offences provided under First schedule.

In the case of *Kamalapati Trivedi v. State of West Bengal*³, the Supreme Court it is derived as the process of amalgamation of two main concepts of human sentiment as the right of the person in enjoying his freedom and without underlying the public interest. The condition for the same is that the accused would be present at the trial of the suit.

GENERAL PRINCIPLE REGARDING BAIL LAW:

1. Grant of bail in the cases of bailable offences is a right which should be guaranteed to the accused by the magistrate or police.
2. Grant of bail in non-bailable offences is a judicial discretion given to the magistrate and no power is given to the police in these kinds of cases.
3. The accused who has committed the offence which is punishable by death or imprisonment for life the magistrate has no right to grant bail in those circumstances, but a woman, a person sick or infirm and children below the age of 16 are excused from the rule.
4. The judicial discretion in the cases of bail the appellate court has the massive authority.

The section which provides for grant of bail is under Chapter XXXIII in the section 436-450 of the code, these can also further be classified as “cognizable” and “non-cognizable” offences. The word cognizable offence can be referred as the offences which can be investigated by the police with the prior permission of the magistrate and under non-cognizable offences the police has no authority to investigate upon the same without the prior permission of the court.

BAILABLE OFFENCES:

³ *Kamalapati Trivedi v. State of West Bengal*, AIR 1979 SC 777

The 78th report of the law commissioner⁴ has provided that the law of bail has been established on the provided standard

- (i) The bail can be considered as the right of the person in the cases of bailable offences,
- (ii) In the cases of non-bailable cases the right is on the discretion of the Magistrate,
- (iii) In the cases of the offence committed in punished with death or life imprisonment the bail cannot be granted, and
- (iv) The appellat court is vested with a enormous power to grant bail even on the cases in which the offence committed is punished for death or life imprisonment.

The section 50, 56 and 57 of CrPC should be read cordially for the bailable offences. When read tighter there raises a question of constitutional validity of Article 22 of the constitution, where it is assured that the accused person would be informed of the grounds and the nature for the arrest so made.⁵ A moderately time is reasonable for the conducting of interrogation and for the other procedure as the recording of the statement, and also the recording of the statements and the fingerprint⁶. To obtain the remand of the arrest of the person is not available to the bailable offences as given under the section 167 of the code.⁷

Any person who is arrested the offence constituted as a bailable offence the accused is providing for bail should be released as it is mandatory in nature, and anything cannot restrict the Section 436 of CrPC⁸. The only authority which is vested to the police is to release the accused from the custody either on the personal bonds or under securities. Whereas in the cases where the accused fails to provide for the bail has the right to be produced before the magistrate in 24 hours of the person taken in custody and it has been well depicted under the Section 57 of the Code. After producing the accused person in front of the magistrate and if the accused in front of the magistrate wants bail the magistrate must freely the accused the only authority provided is that the magistrate can release the accused person either on the personal bonds or in surety of the person.

⁴ 78th Report by Eighth of Law Commission of India, Congestion of Under Trial Persons in Jail, 1979.

⁵ Pravin Kumar Chandrakant Vyas v. State, 2001 (3) GLR 2755.

⁶ *ibid*

⁷ State through C.B.I v. Dawood Ibrahim Kaskar (2000) 10 SCC 438.

⁸ *Santh Prakash v. Bhagwandas Sahni*, 1969 MLW (Cri) 88.

In the case of *Rasiklal v. Kishore s/o Khanchand Wadhvani*⁹, the SC opined that the language of section 436 clearly provides that bail to the accused in the cases of bailable offences is a unconditional right and secured right and the magistrate cannot apply any discretion on the same the person should be immediately released after the bail has been granted.

The section 436 of the code can be applied to every individual other than the cases of non-bailable offences.

Under section 436 of the code it provides for bailable offences and states that every person who is not accused of a non-bailable offence has the right to be granted a bail once provided for the same, but in the cases where the security proceedings of the bail have been started the person cannot claim the same.

SCOPE OF THE SECTION-

The magistrate when granting bail in the cases of bailable offences should discharge his duties judicially, keeping away all the extra-judicial favors as person accused of the offence of bailable offences has the right to profess bail. The contention of seriousness of the offence committed cannot be a valid ground for refusal of the bail application. The choices which is provided to the court in the cases of the bail is identifying the accused person or to release the person on some kind of security of surety.

The magistrate while granting the bail as provided under section 436 of the code cannot lay a condition stating that the person should be present before the officers of police such a conditions placed by the magistrate cannot be said to be proper conditions. Grant of bail is a right which is provided to every accused of bailable offence and cannot be constituted as a favour given to the accused. While fixing the amount for granting of bail should be made on the social value of the person. The option of refusing of granting a bail to a person as long as provided for surety and security doesn't lie in hands of the police officer¹⁰

⁹ AIR 2009 SC 1341

¹⁰ Dharma V. Rabindranath, 1978 Cr. LJ 864 (Ori).

The section 436 is not only restricted to the person accused for the bailable offence but it is also applicable in the Chapter of VII except in those cases where the provisions which have been expressly excluded by the statute.

CONDITION FOR GRANTING BAIL-

Three conditions for the granting of bail have been laid down in the case of State v. Baswanath Rao.¹¹-

1. The person seeking for bail is charged for the offence of bailable offence and granting of bail can be considered as a right of the person seeking for bail.
2. The accused person appeared or has been presented before the court or the accused person was arrested without the warrant by the police officer-in-charge and;
3. The accused has arranged to be granted a bail at any time during his presence in the custody, or the court can grant the same at any stage of the suit.

THE PROVISION OF THE SECTION IS OBLIGATORY IN NATURE-

It is clear from the language of the section it can be constituted as the accused person appeared or has been presented before the court or the accused person was arrested without the warrant by the police officer-in-charge can be granted bail at stage in the time of the suit. The section is compulsory and the discretionary power is not granted to the police officer or the court.

If the accused person is arrested for a offence of bailable offence he should be produced before the within 24 hours magistrate¹² who has the jurisdiction to hear the matter and if in the case where the person before being produced in front of magistrate produced for the bail has be granted and should be released from the custody.

A arrest made without the warrant of the accused cannot be held in the police custody for more than 24 hours, if the police thinks fit that the person should be detained in the custodt he can do the same but with the prior special order by the magistrate which is provide under section 167 of the Code.

¹¹ AIR 1966 Mys 71; 1966 Cr. LJ 267.

¹² Section 57, Criminal Procedure Code 1973

The essential requirements for the section 167 of the code are-

As per the section 167(2) it provides for the time period of the detention of the accused person in the custody of the police shouldn't surpass the time which the magistrate can authorize:

1. Where the offence is punishable with death or imprisonment not less than 10 years or imprisonment for life, the detention cannot exceed 90 days.
2. When the enquiry relates to some other subject matter it shouldn't exceed the period of 60 days.

The accused can be released on bail if he is ready to furnish the bail after the period of ninety or sixty days. If the accused is kept beyond the time period the detention of the person would not be considered as a illegal, the magistrate has the authority to authorize detention of the person beyond the mentioned time and if the person produces bail during the expiry of the period has the right to be released.

In the section 436 it provides that the accused has the right to go for a bail and under the section 50(2) it is the obligation on the police officer to make the accused aware that he has the right to avail the right of bail and once the accused can produce the bail bond has he freed from the custody.

NON-BAILABLE OFFENCES

The offence of non- bailable offence is provided and id dealt by the section 437 of the code, the cases of where the offence is a non-bailable offence is a matter of prudence. When the discretions is made it is applied by the court of justice and is provided and channeled by the supervised by the law. It should not be indistinguishable and absurdity but instead should be made with great caution and should be a rule and the decision so made should be arbitrarily made and should always be lawful and regular. Certain rules and regulation are been formed for by the court and the judicial bench and these are to be considered while granting of the same bail:

1. The vastness of allegation;
2. The description of the indictment;
3. The type of evidence to support the same allegation;
4. The social status of the victim as compared to the accused;
5. The kind and severity of the situation in with the alleged crime is committed;

6. The fear that the witness would be tampered;
7. The person who is already facing guilt, the likelihood of committing the offence more crimes;
8. The chance of the person to arrange his defense and to approach counsel of his own;
9. The age the sex of the person and the health of the same¹³.

When the bail can be granted in the cases of non-bailable offences:

The accused person appeared or has been presented before the court other than the High Court and session court or the accused person was arrested without the warrant by the police officer-in-charge he may be released in bail, but the conditions for the same are-

1. If the grounds are there which tend to suspect that the person has committed an offence which is punishable with the death sentence or of life imprisonment;
2. A person of a bad character who has earlier convicted of an offence punishable with death sentence or of imprisonment for 7 years and a life imprisonment and if the offence is a cognizable offence punishable with custody of the person for more than three years and more but cannot be less than seven years, the person shall be granted bail

The person may be unconfined if the person same as the above can be free on bail if the person who has committed the same is a child under the age of sixteen years and the same applies for a person sick and would be suffering infirmity.

If after the investigation it is believed that the accused has committed the non-bailable offences and there is a scope for investigation on the same to determine his guilt the accused can be subjected to section 446 A of the code and during the pendency of the inquiry he can also be released on bail and the court can also have discretions for the granting bail to the accused after providing for the surety and the security for him to appear in the court later.

¹³ Gurucharan Singh vs State of Delhi (Administration), AIR 1978 SC 179.

UNDER THE AGE OF SIXTEEN-

Juvenile can be defined as the child who has not yet crossed the age of 16years and it has been provided in the JJA, 2000.

The children below the age of 16years are presented before the JC and their bail is regulated under the provision of section 12 of the act.

Bail of a child below the age of 16 years: section 12-

When a juvenile commits any offence which is aailable or non-ailable offence, if arrested and is presented in the board such a person would not endure anything which have been provided under the code or any law which provides for the same, the accused would be released except in the case where there is a suspicion that the release would likely to involve the minor in criminal association or would affect and make him prone to the physical and psychological arms and the release of the accused would defeat the purpose of justice in the society.

The child who cannot get a bail should be kept in the observation home or may be sent to a safe place during the period of the investigation which would be specified in an order by the officials of the police station till the period the person is not presented before the board.

For the determination of the age of the accused it would be considered on the date on which the accused is presented in front of the JC.¹⁴

The SC held in the case of Sheela Barse v. Union of India,¹⁵ held

'For developing the personality of the child the child should not be kept in the jail it could adversely affect the life of the child by making him enemy to the society as the children are considered as an national asset and it becomes obligatory to the state to look after the child and take proper actions which would serve public welfare'

¹⁴ Armit Das v. State of Bihar, 1975 Cri. LJ 1348.

¹⁵

WOMAN-

The language of 437 of the code implies that, the word ‘may’ should be read as ‘must’ and ‘shall’ which implies that the court is under pressure to release the accused person which can include the women on bail¹⁶.

Looking at the disgraceful position of the women in the Indian society the provision was added in the section 437 of the code to take avoiding action to keep the women away from the custody, it is obligatory to release the women who is in the custody even if it is believed that the women is guilty of the offence which is punishable with death or life imprisonment¹⁷. There is congenial understanding in section 437 in releasing the women in bail which is an obligatory¹⁸.

The purdanashin women¹⁹ are allowed to the personal attendance²⁰, section 205 and 273 of the code provide for the exemption of a person from personally attending the court. The women should not be asked to attend the court unless the reason to attend is of grave importance and should be taken discretionally taking in view the present social status²¹. If a women is sentenced for death and later found to be pregnant the court shall delay the punishment and even if thinks that it would be okay to decrees the sentence to life imprisonment²².

SICKNESS AND INFIRM:

Sickness can be defined as the harm which would result in risk in the life with a danger to the life of the accused person.²³ Sickness can be a ground for the release of the person under bail as provided under section 437(1) of the provision,²⁴ the nature of the sickness should be such that if not released the person from the custody the person cannot be properly treated and the consequence of the same would affect the life of the accused.

¹⁶ State of U.P. vs Joginder Singh, AIR 1963 SC 1618.

¹⁷ State vs Harbansal, 1975 Cri. LJ 1705 (JK).

¹⁸ Smt. Sundar vs State of Rajasthan, 1990 Cri. LJ (Rajasthan) 92.

¹⁹ Rajyalakshmi vs State (1951) 46 C.W.N. 221 Ref. in SC Sarkar, or “Criminal Procedure” Edi 8th, 2004, Indian Law House, Delhi, p.735.

²⁰ Sushila Devi vs Sharada Devi, 1961, Cri. LJ 819.

²¹ M.J. Marjina Begum and others v. Matakhal Ali, 1978 Cri.LJ No. C 292 (Gan).

²² Section 416 of Cr.PC, 1973.

²³ State vs Sardool Singh, 1975 Cri.LJ 1348.

²⁴ State vs Gadadhar Baral, 1989 Cri.LJ.627 (Ori).

Infirmity can be defined as physically weak and which happens mostly due to age.²⁵

²⁵ K.N. Bayan vs State of Gujarat, 1982 Cri.LJ 2109