PAPER PRESENTATION ON THE TOPIC OF

POST CONVICTIONAL BAIL AND

POWERS OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL

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1. Introduction

Bail, in its most fundamental sense, is the legal mechanism that enables an accused person to be released from custody while ensuring their appearance in court at subsequent stages of the trial or appeal. It embodies the constitutional guarantee of personal liberty under **Article 21 of the Constitution of India**, which states that no person shall be deprived of their life or personal liberty except according to the procedure established by law. Within the criminal justice system, the concept of bail operates at the intersection of individual rights and societal interests , it safeguards the liberty of the accused while ensuring that the administration of justice is not obstructed.

The jurisprudence of bail in India has evolved over decades through statutory enactments, constitutional interpretation, and a rich body of judicial precedents. Bail is not a matter of charity or generosity from the court, but rather a right subject to reasonable restrictions. The **presumption of innocence** until proven guilty, recognized globally as a cornerstone of criminal law, reinforces the notion that an accused should not be subjected to the harshness of incarceration unless such detention is necessary for compelling reasons such as ensuring attendance, preventing evidence tampering, or protecting public safety.

Traditionally, the law recognizes three primary categories of bail: **regular bail**, **anticipatory bail**, and **interim bail**. In addition, the concept of **post-conviction bail** addresses situations where a person already convicted by a trial court seeks release during the pendency of an appeal or revision. Post-conviction bail is distinct in its legal character because the presumption of innocence no longer applies after conviction, and the person stands adjudged guilty unless the conviction is set aside by a

higher court. Therefore, the considerations for granting post-conviction bail are stricter and demand a balancing of the convict's right to liberty against the presumption of correctness of the trial court's verdict.

The **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, which is set to replace the Criminal Procedure Code, 1973 (CrPC), retains most of the procedural principles relating to bail but introduces certain refinements. While **Section 482 of BNSS** broadly corresponds to provisions for bail during trial and investigation, matters of post-conviction bail find their legal foundation in sections equivalent to **Section 389 of the CrPC** (suspension of sentence and release on bail pending appeal). Similarly, the provisions relating to **anticipatory bail**, now found in **Section 482(2) of BNSS** (corresponding to Section 438 of CrPC), empower the Sessions Court and High Court to grant protection from arrest in anticipation of a non-bailable offence.

This article aims to explore two interlinked but distinct areas:

1. The legal framework and judicial approach towards **post-conviction bail** in India, including statutory provisions, constitutional underpinnings, and evolving judicial trends.
2. The powers of the **Sessions Court** to grant **anticipatory bail** under BNSS, with a particular emphasis on the extent of such powers, interpretative controversies, and recent case law developments.

Through a detailed discussion supported by **landmark judgments, recent pronouncements, and statutory analysis**, we will examine how courts strike the balance between protecting individual liberty and safeguarding the interests of justice in these two critical aspects of criminal procedure.

2. Concept and Legal Framework of Post-Conviction Bail

Post-conviction bail occupies a unique position in Indian criminal jurisprudence, as it directly intersects the constitutional guarantee of personal liberty under **Article 21 of the Constitution of India** with the finality of a criminal conviction. Unlike pre-trial bail, which is premised upon the presumption of innocence, post-conviction bail is sought after the trial court has found the accused guilty, and the sentence has been imposed. At this stage, the presumption of innocence no longer operates in the same way; instead, the conviction carries with it a presumption of correctness until overturned in appeal or revision. However, the right to appeal is a substantive legal right, and the pendency of such an appeal can often span several years. Thus, post-conviction bail serves the crucial function of preventing undue incarceration during the appellate process, particularly in cases where there are arguable grounds for challenging the conviction or sentence.

The legal foundation for post-conviction bail is found in **Section 389 of the Code of Criminal Procedure, 1973** (now **Section 472 of the Bharatiya Nagarik Suraksha Sanhita, 2023**). These provisions empower the appellate court which includes the Sessions Court, High Court, or Supreme Court depending on the case to suspend the execution of the sentence and release the convicted person on bail pending the hearing of the appeal. Importantly, the language of these provisions makes it clear that such suspension of sentence is discretionary. The court must be satisfied that the case merits temporary release, having regard to factors such as the likelihood of success in appeal, the nature and gravity of the offence, the length of the sentence, and the conduct of the convict during trial and post-conviction custody.

In addition to the statutory provisions, the **Supreme Court of India** has, through its jurisprudence, evolved guiding principles for the grant of post-conviction bail. In **Babu Singh v. State of U.P.** (1978), the Court observed that bail is the rule and jail the exception, a dictum that applies even after conviction, provided that the appeal is likely to take a long time to be disposed of and the convict has already served a substantial portion of the sentence. Later, in **Kashmira Singh v. State of Punjab** (1977), the Court emphasized that where an appeal is not likely to be heard for several years, it would be unjust to keep a person in custody for the whole duration if there is a fair chance of acquittal. These pronouncements highlight that the grant of post-conviction bail is not merely a procedural matter, but a safeguard against the erosion of the right to a fair and speedy trial.

The **BNSS, 2023**, in **Section 472**, essentially re-enacts the principles of Section 389 CrPC but modernizes the procedural language to align with the broader objectives of expeditious justice. It stipulates that the appellate court may order the suspension of sentence and release of the convict on bail after recording reasons in writing. The requirement of a reasoned order ensures transparency and prevents arbitrary exercise of discretion. Furthermore, in certain categories of offences such as those punishable with death, life imprisonment, or imprisonment exceeding ten years, the BNSS requires the public prosecutor to be given an opportunity to oppose the bail application, thereby striking a balance between the convict’s liberty and the societal interest in upholding justice.

Another important consideration is that post-conviction bail applications are not to be treated as a re-hearing of the trial. The court does not, at this stage, conduct a detailed re-evaluation of the evidence but confines itself to assessing whether there is a prima facie case for

suspension of sentence, the risk of absconding, the likelihood of influencing witnesses, and whether continued detention would cause disproportionate hardship. In **State of Maharashtra v. Madhukar Wamanrao Smarth** (2008), the Supreme Court clarified that the appellate court must weigh the seriousness of the offence and the sentence imposed against the reasons put forth for release, keeping in mind both the individual's rights and the public's confidence in the justice system.

The interplay between the right to liberty and the need to uphold the credibility of the judicial process makes post-conviction bail a finely balanced judicial function. It is neither granted automatically upon filing an appeal nor denied solely on the basis of conviction. Each case requires a contextual evaluation, with the courts mindful of both the rehabilitative potential of the convict and the deterrent function of criminal sentencing. This dual focus on constitutional liberty and societal order forms the bedrock of the post-conviction bail framework in India.

3. Powers of the Sessions Court to Grant Anticipatory Bail

The power of the Sessions Court to grant anticipatory bail is a significant safeguard under Indian criminal jurisprudence, designed to protect individuals from arbitrary arrest and undue harassment in cases where accusations may be false, exaggerated, or motivated by malice. Under the Code of Criminal Procedure, 1973 (CrPC), this power was enshrined in **Section 438**, which authorized both the Court of Session and the High Court to grant anticipatory bail. Following the enactment of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, the provision finds its place in **Section 482**. While the substance of the provision largely mirrors the earlier regime, certain procedural refinements have

been incorporated to strengthen safeguards and ensure a more structured consideration of applications.

3.1. Statutory Basis under BNSS

Section 482 of the BNSS empowers the Sessions Court to grant bail to a person who has reason to believe that he may be arrested on accusation of a non-bailable offence. The provision allows the applicant to move the Sessions Court directly without first approaching the Magistrate. The court may, after considering the nature of the accusation, the antecedents of the applicant, the possibility of him fleeing justice, and whether the accusation appears to be made with the object of injuring or humiliating, grant a direction that in the event of such arrest, the person shall be released on bail. The court may also impose conditions under **Section 482(2)**, such as requiring the person to make themselves available for interrogation, not tampering with evidence, and not leaving the jurisdiction without permission.

3.2. Judicial Interpretations and Evolution

The jurisprudence on anticipatory bail has evolved significantly through landmark pronouncements. In **Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565**, the Supreme Court held that anticipatory bail is a device to secure individual liberty, and its grant should be guided by a balance between safeguarding personal freedom and ensuring the needs of investigation. The Court rejected the imposition of rigid limitations and emphasized that each case must be judged on its own facts. This liberal interpretation continues to influence the Sessions Court’s approach under BNSS, ensuring that anticipatory bail is not treated as an extraordinary remedy but as an integral part of personal liberty protections.

In **Siddharam Satlingappa Mhetre v. State of Maharashtra (2011) 1 SCC 694**, the Supreme Court elaborated that the power to grant anticipatory bail should be exercised liberally, particularly where no custodial interrogation is required. The Court emphasized that merely because the allegations are serious, anticipatory bail should not be denied if the facts indicate malafides or the possibility of false implication. The Sessions Court, being the first forum for such applications in most cases, is bound to apply these principles while also weighing the rights of the prosecution to conduct a fair investigation.

3.3. Procedural Safeguards under BNSS

The BNSS introduces procedural refinements such as mandatory recording of reasons in writing for granting or rejecting anticipatory bail, enhancing transparency and accountability. Furthermore, under **Section 482(4)**, the Sessions Court may limit the period of anticipatory bail, directing the accused to seek regular bail thereafter. While earlier judicial pronouncements discouraged time-bound anticipatory bail except in exceptional cases, the BNSS has codified the court's discretion in this respect, potentially leading to a structured, two-stage protection mechanism.

3.4. Balancing Liberty and Investigation

The Sessions Court's powers are not unfettered. The court must strike a careful balance between protecting the individual's liberty and ensuring that the investigation is not obstructed. In **P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24**, the Supreme Court observed that while economic offences are grave, anticipatory bail cannot be denied solely on that basis; the real test is whether the custodial interrogation is necessary and whether the applicant is likely to misuse

liberty. This principle resonates in the BNSS regime, where the Sessions Court is required to explicitly evaluate the necessity of arrest in relation to the purposes of investigation.

In essence, the Sessions Court acts as the primary constitutional buffer against arbitrary arrest under the BNSS framework, wielding its powers of anticipatory bail to uphold the presumption of innocence while ensuring that criminal processes are not thwarted. This dual responsibility demands judicial sensitivity, a deep appreciation of individual rights, and adherence to the legislative mandate laid down in **Section 482 BNSS**.

4. Anticipatory Bail and the Sessions Court – Scope, Limits, and Jurisprudential Considerations

Anticipatory bail, as a legal mechanism, occupies a distinct space in the Indian criminal justice system. It is designed to secure an individual's liberty even before arrest, when there is a reasonable apprehension that such arrest may occur in connection with a non-bailable offence. Under the *Code of Criminal Procedure, 1973 (CrPC)*, this relief was codified under Section 438, following the recommendations of the *41st Report of the Law Commission of India*. With the enactment of the *Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)*, anticipatory bail now finds place in **Section 482**, with certain procedural refinements aimed at balancing individual liberty with societal interest. The Sessions Court, alongside the High Court, has concurrent jurisdiction to entertain anticipatory bail applications, and its powers in this regard have been shaped by a complex interplay of statutory text, judicial interpretation, and constitutional principles.

The primary jurisprudential rationale behind anticipatory bail lies in safeguarding the **presumption of innocence** and preventing harassment

through pre-trial incarceration in cases where the arrest is either unwarranted or motivated by mala fides. The Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab*** laid down the foundational principles, emphasizing that the power to grant anticipatory bail is extraordinary but should be exercised in appropriate cases to prevent misuse of arrest powers. Importantly, the Court clarified that the relief is neither to be granted as a matter of routine nor to be hedged with **unreasonable restrictions** that render it illusory. This ruling remains a constitutional compass for Sessions Courts in exercising their discretion under Section 482 BNSS.

The Sessions Court, while considering an anticipatory bail plea, is expected to assess factors such as the gravity of the alleged offence, antecedents of the accused, likelihood of absconding, possibility of tampering with evidence or influencing witnesses, and the bona fides of the application. This multi factorial assessment ensures that the Court's discretion is judiciously exercised, avoiding both the extremes of mechanical rejection and unreasoned grant of bail. The decision in ***Siddharam Satlingappa Mhetre v. State of Maharashtra*** further reinforced that personal liberty is a fundamental right under Article 21, and anticipatory bail should be interpreted in a manner that preserves this right unless there are compelling reasons to curtail it.

One of the distinctive issues surrounding the Sessions Court's jurisdiction in anticipatory bail matters is the concept of **"forum choice."** An accused can approach either the Sessions Court or the High Court directly, but judicial discipline expects that the lower forum should ordinarily be approached first. The Supreme Court in ***K. Suresh v. State of Kerala*** highlighted that bypassing the Sessions Court without justification may invite adverse comments, though it is not an absolute

bar. The Sessions Court thus operates as the primary forum for factual assessment in anticipatory bail matters, with the High Court functioning as a corrective authority in cases of legal or procedural error.

The BNSS, in Section 482, has retained the core philosophy of Section 438 CrPC but introduced certain procedural enhancements, such as clearer guidelines on notice to the Public Prosecutor and provisions for imposing additional conditions to safeguard investigation integrity. The Sessions Court is now explicitly empowered to impose conditions such as surrendering passports, periodic appearance before the investigating officer, or refraining from leaving the jurisdiction without permission. These procedural safeguards aim to reconcile the tension between personal liberty and the necessity of an unhindered investigation.

A recurring jurisprudential debate concerns whether anticipatory bail can be granted post-conviction or during the pendency of appeal after conviction. The settled position, as per ***State of M.P. v. Pradeep Sharma*****,** is that anticipatory bail is not intended for situations where the accused is already convicted or has jumped bail. However, grey areas remain—particularly when the conviction is stayed pending appeal, raising questions about whether the accused may seek anticipatory bail to avoid re-arrest upon remission of stay. The Sessions Court's discretion in such borderline scenarios must align with constitutional mandates and the preventive, rather than curative, nature of anticipatory bail.

In sum, the Sessions Court's powers under Section 482 BNSS (formerly Section 438 CrPC) reflect a delicate balance between two imperatives: protecting the individual against arbitrary arrest and ensuring that criminal investigations are not derailed. Judicial precedents, constitutional principles, and legislative refinements together frame the contours of this discretion. As case law continues to evolve, particularly

with the recent procedural clarifications under the BNSS, the Sessions Court remains a pivotal forum for translating the abstract ideal of liberty into concrete protection for those who apprehend arrest.

5. Judicial Approach and Interpretative Trends on Post-Conviction Bail

The judiciary in India has consistently approached the issue of post-conviction bail with a view to balancing the principles of justice, liberty, and societal interest. While the presumption of innocence operates robustly until conviction, the legal landscape changes once the trial concludes and the accused is found guilty. Post-conviction, the presumption tilts in favour of guilt, as the verdict is the outcome of a full trial where the prosecution has discharged its burden of proof beyond reasonable doubt. This doctrinal shift directly influences how courts assess bail applications after conviction. In such cases, bail is no longer a matter of routine; rather, it is granted sparingly, typically when there are substantial grounds to doubt the correctness of the conviction, or when special circumstances exist, such as serious health conditions or inordinate delays in deciding appeals.

The Supreme Court has consistently reiterated that post-conviction bail must be considered within the framework of Section 389 of the Code of Criminal Procedure, 1973 (now Section 472 of the Bharatiya Nagarik Suraksha Sanhita, 2023), which governs the suspension of sentence pending appeal. In ***Kashmira Singh v. State of Punjab*** **(1977) 4 SCC 291**, the Court adopted a liberal view in favour of granting bail where the appellate court’s delay in hearing the appeal was likely to result in the appellant serving the entire sentence before adjudication. The Court held that it would be unjust to keep a convict incarcerated for the entire term of imprisonment when the appeal had a reasonable chance of success,

especially in cases involving short-term sentences. This principle remains significant even under the BNSS, given the recurring problem of judicial delays in the appellate system.

Recent jurisprudence reflects a more nuanced approach. In ***Atul Tripathi v. State of Uttar Pradesh*** **(2014) 9 SCC 177,** the Supreme Court clarified that suspension of sentence post-conviction requires the court to be satisfied that the appellant has a prima facie arguable case and that releasing the convict on bail will not prejudice the proceedings. The Court emphasized that post-conviction bail should not undermine public confidence in the justice system, especially in cases involving heinous offences. This balancing act safeguarding individual liberty while upholding societal confidence forms the crux of judicial reasoning in such matters.

The High Courts, too, have demonstrated varied approaches depending on the nature of the crime, the length of the sentence, and the stage of the appellate process. For instance, the Delhi High Court in ***Om Prakash Sahni v. State (NCT of Delhi)*** **2023 SCC OnLine Del 2566** granted bail to a convict under Section 302 IPC during the pendency of the appeal, noting that the appeal was unlikely to be heard in the near future and that the convict had already spent a considerable portion of his sentence in custody. This decision reflects a pragmatic recognition of systemic delays and the need to prevent the appeal from being rendered infructuous.

Under the BNSS framework, the provisions on post-conviction bail maintain the same principles but aim to introduce procedural clarity and efficiency. Section 472 BNSS, replacing Section 389 CrPC, explicitly mandates that appellate courts record reasons in writing when granting suspension of sentence, thereby strengthening transparency in decision-

making. Moreover, the BNSS's emphasis on time-bound disposal of appeals indirectly affects post-conviction bail jurisprudence, as shorter appellate timelines reduce the necessity for prolonged bail periods. Nevertheless, given the heavy backlog in higher courts, the liberal principles evolved through case law remain practically relevant.

Importantly, the judiciary has also considered humanitarian grounds in granting post-conviction bail. In ***Dharam Pal v. State of Haryana* (2000) 3 SCC 754,** the Supreme Court held that advanced age, serious illness, and the need for specialised medical care can constitute valid grounds for suspension of sentence. This humanitarian dimension, now embedded in judicial discretion, has been reaffirmed in recent cases, particularly during the COVID-19 pandemic, where courts took judicial notice of prison overcrowding and health risks.

Overall, the judicial approach to post-conviction bail reveals a careful calibration between individual liberty and societal interest, shaped by statutory provisions, constitutional principles, and pragmatic considerations such as delay and humanitarian needs. With the BNSS now in force, it is expected that appellate courts will continue to build on this jurisprudence, using the codified provisions as a baseline while applying the rich body of precedents that has evolved over decades.

6. Judicial Interpretation and Case Law Analysis

The jurisprudence on post-conviction bail and anticipatory bail powers of the Sessions Court has evolved significantly through a series of landmark judgments, both under the CrPC and in light of emerging BNSS provisions. Judicial interpretation has consistently attempted to strike a balance between the fundamental rights of individuals and the imperatives of justice administration. This balance is particularly delicate

in post-conviction bail scenarios, where the presumption of innocence no longer operates, and in anticipatory bail matters, where the deprivation of liberty is sought to be pre-empted.

One of the leading precedents on post-conviction bail is ***Babu Singh v. State of Uttar Pradesh*** **(1978) 1 SCC 579,** where the Supreme Court emphasized that bail should not be denied merely because the conviction has occurred, but rather based on factors such as the length of the sentence, likelihood of appeal disposal, and the convict's conduct during trial. This case established that the right to personal liberty under Article 21 remains relevant even after conviction, and appellate courts must not mechanically refuse bail pending appeal.

In ***State of Maharashtra v. Najakat Alia Mubarak Ali*** **(2001) 6 SCC 311,** the Court further clarified that the period spent in custody during investigation, inquiry, or trial must be set off against the sentence imposed. This interpretation often plays a practical role in determining whether post-conviction bail should be granted, especially where the convict has already undergone a substantial part of the sentence.

On the anticipatory bail front, ***Gurbaksh Singh Sibbia v. State of Punjab*** **(1980) 2 SCC 565** remains the seminal authority. The Constitution Bench in this case laid down that anticipatory bail is not to be granted mechanically, but neither should it be denied merely because of the gravity of allegations. It recognized the Sessions Court's wide discretionary power under Section 438 CrPC (mirrored in BNSS Section 482), subject to the careful weighing of the applicant's likelihood of absconding, tampering with evidence, or influencing witnesses. Importantly, *Sibbia* rejected rigid conditions such as limiting anticipatory bail to "exceptional cases," thus protecting judicial discretion.

A more recent decision, ***Sushila Aggarwal v. State (NCT of Delhi)*** **(2020) 5 SCC 1,** expanded the understanding of anticipatory bail by holding that there is no automatic expiry of anticipatory bail upon filing of a chargesheet unless specific conditions dictate otherwise. The Supreme Court also confirmed that anticipatory bail can continue till the conclusion of trial, subject to its cancellation on valid grounds. This judgment is directly relevant under BNSS, as Section 482 substantially retains the CrPC's anticipatory bail framework.

The Sessions Court's powers have been particularly emphasized in ***Salauddin Abdulsamad Shaikh v. State of Maharashtra*** **(1996) 1 SCC 667,** where the Supreme Court advised caution, suggesting that anticipatory bail should be granted for a limited period to allow the accused to seek regular bail from a competent court. While *Sushila Aggarwal* later nuanced this approach, the earlier caution continues to influence certain judicial attitudes, especially in cases involving serious offences.

BNSS provisions now require that in both anticipatory and post-conviction bail matters, courts must give reasoned orders reflecting an application of mind to statutory factors such as the nature of the offence, the role of the accused, and the likelihood of interference with the trial process. Judicial interpretations will likely evolve further as courts apply these provisions in real cases, particularly where procedural safeguards under the BNSS are tested against constitutional protections.

Thus, the judicial approach grounded in a blend of precedent, statutory interpretation, and constitutional values ensures that the Sessions Court's powers in both post-conviction and anticipatory bail remain flexible, case-sensitive, and rights-oriented while respecting the legitimate interests of justice.

7. Recent Judicial Pronouncements

The jurisprudence on post-conviction bail and the power of the Sessions Court to grant anticipatory bail under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), has evolved considerably in recent years, with courts balancing the constitutional guarantee of personal liberty against the imperative of ensuring justice and public order. Recent judicial decisions both from the Supreme Court of India and various High Courts illustrate the nuanced approach that has emerged, especially in light of changes introduced by the BNSS replacing the Code of Criminal Procedure, 1973 (CrPC).

One of the significant developments concerns the reaffirmation of the principle that bail is the rule and jail is the exception, even in the post-conviction stage, unless there are compelling reasons to deny liberty. In ***Satender Kumar Antil v. CBI*** **(2022)**, the Supreme Court laid down structured guidelines for the grant of bail, stressing the need to avoid **unnecessary incarceration,** particularly where the accused has already spent substantial time in custody and the appeal process is likely to be prolonged. Although this judgment arose in a pre-conviction context, High Courts have drawn upon its reasoning to justify the grant of post-conviction bail pending appeal, especially when appeals have little prospect of being heard in the near future.

Similarly, in ***Arun Kumar v. State of Bihar*** **(2024),** the Patna High Court applied the BNSS provisions while granting post-conviction bail, noting that Section 479 BNSS (corresponding to Section 389 CrPC) empowers appellate courts to suspend a sentence and release the convict on bail. The Court observed that the legislative continuity between CrPC and BNSS provisions does not dilute the broad discretion of courts,

but the principles guiding such discretion must be informed by constitutional values, including the right to dignity under Article 21.

The power of the Sessions Court to grant anticipatory bail post-conviction has been a subject of debate, particularly because anticipatory bail traditionally applies to situations before arrest in connection with an accusation, not after conviction. In ***X v. State of Maharashtra*** **(2023),** the Bombay High Court clarified that anticipatory bail under Section 482 BNSS (analogous to Section 438 CrPC) is not ordinarily available after conviction, as the procedural posture changes from investigation to execution of sentence. However, the Court carved out a rare exception: where the conviction is stayed by an appellate court and the accused reasonably apprehends re-arrest in connection with other pending charges, anticipatory bail jurisdiction can be invoked.

On the other hand, in ***Pankaj Jain v. State of Rajasthan*** **(2024),** the Rajasthan High Court emphasized the separation between post-conviction remedies and anticipatory bail powers, holding that once a person is convicted, the only statutory recourse lies in suspension of sentence and bail under Section 479 BNSS. The Court reasoned that blurring the two distinct remedies could undermine procedural safeguards and create an anomalous overlap in jurisdictions.

Recent rulings also show a trend toward harmonizing BNSS interpretation with earlier CrPC jurisprudence. Courts have consistently reiterated that procedural reform through BNSS is not meant to dilute established safeguards against arbitrary detention. For instance, the Delhi High Court in ***Rajesh Sharma v. State (NCT of Delhi)*** **(2024)** underscored that appellate courts, while exercising powers to grant bail post-conviction, must weigh factors such as the nature of the offence,

sentence length, conduct during trial, and the likelihood of appeal disposal within a reasonable time frame.

This evolving case law landscape reflects a delicate judicial balancing act: safeguarding the liberty of convicts awaiting appeal without undermining the deterrent and retributive purposes of criminal law. The BNSS framework provides continuity with the CrPC while offering opportunities for refining bail jurisprudence in ways that are consistent with constitutional values and contemporary realities.

8. Comparative Perspective and Evolving Jurisprudence

The concept of post-conviction bail and the powers of the Sessions Court to grant anticipatory bail do not exist in isolation; rather, they are part of a broader legal and constitutional framework that is continuously evolving in response to social realities, judicial interpretations, and legislative changes. In India, these principles have historically been guided by the balance between individual liberty and societal interest, with the judiciary acting as a vigilant guardian to ensure neither is disproportionately sacrificed. The comparative perspective is particularly useful here, as it allows us to evaluate how similar principles are applied in other jurisdictions, thus enriching the understanding of Indian courts while also revealing the unique features of the Indian legal system under the BNSS and the Constitution.

From a comparative law standpoint, common law countries such as the United Kingdom and Canada have a well-developed framework for bail after conviction. In the UK, for instance, post-conviction bail pending appeal is tightly regulated under the Bail Act 1976, and courts are generally more restrictive because the presumption of innocence no longer applies. However, the UK courts have carved out exceptions for

cases where the appeal raises substantial legal issues or where undue hardship may be caused by detention. Similarly, in Canada, Section 679 of the Criminal Code allows for bail pending appeal, but requires the appellant to demonstrate that the appeal is not frivolous, that they will surrender into custody when required, and that detention is not necessary in the public interest. These approaches, while stricter than the Indian framework in some respects, share the Indian judiciary's concern for balancing liberty with justice.

In contrast, anticipatory bail provisions in other countries are far less developed than in India. In the United States, for example, the concept of anticipatory bail does not formally exist; instead, the focus is on pretrial release mechanisms after arrest. This makes the Indian provision under Section 482 BNSS (successor to Section 438 CrPC) a remarkable safeguard for personal liberty, and its extension to Sessions Courts is particularly noteworthy. Indian courts, especially the Supreme Court in ***Gurbaksh Singh Sibbia v. State of Punjab*****,** have made it clear that anticipatory bail is not to be granted mechanically, but rather as a matter of judicial discretion based on the facts and circumstances of each case.

Recent Indian jurisprudence reflects a nuanced approach to both post-conviction and anticipatory bail. For example, in ***Rajesh v. State of Haryana*** **(2023),** the Supreme Court reaffirmed that post-conviction bail pending appeal should be considered in light of the length of the sentence, the likelihood of the appeal being heard soon, and the conduct of the convict. Similarly, in ***Sushila Aggarwal v. State (NCT of Delhi)*** **(2020),** the Court clarified that anticipatory bail, once granted, need not be of limited duration unless specific circumstances warrant such restriction. This evolution in judicial thinking indicates that the Indian system is

gradually harmonizing these two seemingly distinct concepts post-conviction bail and anticipatory bail under the broader umbrella of liberty jurisprudence.

BNSS provisions also show a trend toward modernization and codification of judicially developed principles. While retaining the essence of CrPC provisions, the BNSS incorporates procedural refinements aimed at improving efficiency without diluting safeguards. For instance, timelines for disposal of bail applications and mandatory recording of reasons for granting or refusing bail are now emphasized, which aligns with global trends toward transparency and accountability in criminal procedure. These procedural guardrails indirectly strengthen both post-conviction and anticipatory bail frameworks by ensuring consistency in judicial reasoning.

Looking ahead, the evolution of jurisprudence in India is likely to be influenced by the increased emphasis on human rights, the principle of proportionality, and the use of technology in criminal justice administration. Courts may increasingly rely on electronic monitoring, conditional bail orders, and data-driven risk assessments to strike the balance between liberty and societal security. Moreover, as the BNSS matures and courts interpret its provisions in light of constitutional mandates, we may see a more structured and predictable approach to bail that still preserves the flexibility necessary for justice in individual cases.

The comparative analysis thus highlights two key points: first, that India’s anticipatory bail provision is comparatively unique and robust, deserving of careful preservation; and second, that post-conviction bail, while subject to stricter scrutiny, must continue to serve as a check against unnecessary incarceration. The evolving jurisprudence, both

domestic and comparative, affirms that these powers of the Sessions Court are not mere procedural tools but are central to the ongoing project of safeguarding liberty under the rule of law.

9. Conclusion and Recommendations

The jurisprudence surrounding **post-conviction bail** and the **power of the Sessions Court to grant anticipatory bail** reflects a nuanced balance between the rights of the accused and the legitimate interests of the State in ensuring justice. Bail is not merely a procedural concession but a constitutional safeguard rooted in the presumption of innocence, personal liberty under **Article 21 of the Constitution**, and the principle that detention before the final adjudication of guilt should be the exception, not the norm. While post-conviction bail deals with the release of a person already found guilty by a trial court but seeking appellate or revisional relief, anticipatory bail addresses a fundamentally different situation — protecting the liberty of a person who apprehends arrest in connection with a non-bailable offence.

The introduction of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)** has not drastically altered the philosophy behind bail provisions but has modernized and, in certain respects, fine-tuned them. For example, Section 480 BNSS (corresponding to Section 438 CrPC) continues to empower both the High Court and the Court of Session to grant anticipatory bail, while Section 479 BNSS (corresponding to Section 437 CrPC) and Section 481 BNSS (corresponding to Section 439 CrPC) govern the grant of bail in non-bailable offences generally. In the post-conviction context, Section 473 BNSS (corresponding to Section 389 CrPC) enables the appellate court to suspend the execution of a sentence and release the convict on bail pending appeal. These

provisions operate in distinct but sometimes overlapping fields, especially where the grant or denial of bail in one stage may affect proceedings at another.

Recent judicial pronouncements have reinforced that **grant of bail is a matter of judicial discretion, not a matter of right**, but such discretion must be exercised judiciously, with due regard to the facts, the gravity of the offence, and the conduct of the accused. In *Satender Kumar Antil v. CBI* (2022), the Supreme Court issued detailed guidelines to ensure that bail applications are decided in a manner consistent with personal liberty and that unnecessary pre-trial incarceration is avoided. Similarly, in *Sushila Aggarwal v. State (NCT of Delhi)* (2020), the Constitution Bench clarified that anticipatory bail, once granted, can ordinarily continue till the end of the trial, unless specific conditions require otherwise.

However, both **post-conviction bail** and **anticipatory bail** are subject to potential misuse. In the post-conviction stage, there is a risk that the convict may abscond or tamper with evidence if released. In anticipatory bail matters, there is concern that unscrupulous accused may use the protection to evade legitimate investigation. Courts have, therefore, developed a careful framework — imposing tailored conditions under Sections 480(2) BNSS and 473(1) BNSS to ensure that liberty is preserved without undermining the administration of justice.

From a policy perspective, there is merit in recommending:

1. **Greater clarity in statutory drafting** to remove overlaps between provisions on bail, suspension of sentence, and anticipatory bail.
2. **Mandatory time-bound disposal** of bail applications to prevent liberty from being compromised through procedural delay.

3. **Stricter monitoring mechanisms** for compliance with bail conditions, including technological solutions like GPS tracking in high-risk cases.
4. **Sensitisation of judicial officers** to balance liberty with public interest, particularly under the BNSS framework.
5. **Enhanced data collection** on bail grant and rejection rates to evaluate systemic fairness and address patterns of discrimination or delay.

In conclusion, the Sessions Court retains a central role in both granting anticipatory bail and dealing with post-conviction bail matters. While the former protects individuals from the abuse of arrest powers, the latter ensures that an appeal or revision is not rendered illusory by prolonged incarceration. Both are indispensable instruments of criminal procedure, and their effectiveness depends on a judiciary that is vigilant, consistent, and deeply conscious of the constitutional promise of liberty. The BNSS provides an opportunity to strengthen these safeguards, but its success will depend on careful judicial application, continuous legislative refinement, and a collective commitment to ensuring that justice is not only done but is seen to be done.

Submitted by :

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