POST CONVICTION BAIL AND POWER OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL

By:

P. Rahul Ambedkar, B.A. LL.B (Hons)

Civil Judge (Junior Division), Atmakur.

'Bail' is derived from the old French verb 'baillier' meaning to 'give or deliver. According to the legal language, bail refers to the assurance of the accused's attendance that is required before releasing him pending trial or investigation. "Procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit himself/herself to the jurisdiction and judgment of the court" is what bail aims to accomplish.

Meaning of Bail

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving a title to the property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. The law lexicon defines bail as the security for the appearance of the accused person on which he is released pending trial or investigation.[1]

Types of Bail

There are three stages in a case where an accused person can apply for the bail.

1. Prior to the arrest
2. After the Arrest, and
3. After the Conviction/Sentence.

In this article, we confine ourselves to the first and third type of bails referred above.

1 https://www.advocateinchandigarh.com/bail-after-conviction-from-high-court/

POST CONVICTION BAIL OR BAIL AFTER CONVICTION

When the trial is concluded, the accused person is either convicted or acquitted. Now, if the accused is convicted by the lower court, the presumption of his innocence comes to an end. The conviction operates and the accused has to undergo sentence. Upon which an appeal can be preferred in the appellate court. In case, where the sentence of punishment is pronounced and the appeal is pending the convict can approach the court for suspending the sentence of punishment decreed against him. The Code of Criminal Procedure establishes the Appellate Court and entitles them with the necessary powers to review or rehear the matters which are already disposed of by the subordinate courts. Accordingly, via Section 389 of Cr.P.C the appellate court has the power to direct the suspension of the sentence of an accused pending the appeal and also to release the appellate on bail based on the nature of offence and facts and circumstances of each case. It states that "Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail.[2]

Development of concept of Suspension as a relief

The foundation of the Indian Legal System lies in the core principle of the "Presumption of Innocence." This signifies that any individual accused of a criminal offense is entitled to be regarded as innocent until proven guilty through a lawful process. As a result, the Indian criminal justice system is prominently inclined towards adopting perspectives that assist the accused in substantiating their innocence, rather than embracing viewpoints that stand against them. The modern-day concept of suspended sentence was introduced in Belgium in 1888 which was later on incorporated in some jurisdictions by the judiciary of Ireland, United States, Denmark etc., in the early 1900s . The Indian legislation has incorporated this concept from the English law.[3]

Section 389 of the Criminal Procedure Code deals with the power of the appellate court to suspend, remand or release a convicted person on bail. It applies to cases where a person has been convicted by a trial court and has filed an appeal against the conviction. Under this section, the appellate court has the discretion to grant bail to a convicted person pending the hearing and final disposal of the appeal. The court may also suspend the sentence of the convicted person or remand them to custody during the pendency of the

2 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

3 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

appeal. The objective of Section 389 CrPC is to ensure that a person who has been convicted by a lower court but has appealed against the conviction, is not subjected to unnecessary incarceration until the appellate court decides on the appeal. The section also seeks to strike a balance between the interests of justice and the personal liberty of the convicted person.[4]

Section 389 of the Code outlines the Conditions that must be followed for any convicted person to seek suspension of sentence pending the appeal or release of the appellant on bail. The Section provides for the following:[5]

- **Section 389(1):** This Section gives discretion to an Appellate Court to order a stay of execution of a sentence pending appeal and release the convicted person to bail or on his bond. For which sufficient reasons have to be given in writing. Within this section, there are two provisions, namely :

The First is that in cases of conviction involving offences punishable with Death, Life Imprisonment, or imprisonment not less than Ten Years, the Appellate Court shall hear the Public Prosecutor before Granting Bail or Bond.

The Second Proviso is that such a Public Prosecutor may move the Court to have the bail cancelled, if already Granted.

- **Section 389(2):** This section gives the High Court similar powers to the Appellate Court in those Cases where the appeal is to a Subordinate Court
- **Section 389(3):** This section explains those situations where the Court that has convicted the person needs to release them on bail in case the person intends to appeal:

1. If the Convicted Person, already on bail, is sentenced to imprisonment for Three Years or less;
2. If the Offence is Bailable and the accused is already on Bail;
3. There, the Court is to grant bail subject to there being any particular reasons for not granting bail so that 'The Appellant-Accused has sufficient time to move the Appellate Court and obtain the said Appellate Court's decision under subsection (1) above, during which the sentence of imprisonment does not come into operation.

4 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/
5 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/

- **Section 389(4):** This Section states that in case the sentence of imprisonment is confirmed on appeal, or a sentence of greater severity is passed for the offence, the time the accused has spent out of prison will not be included in calculating the total duration of his sentence.

Types of Bail under Section 389 CrPC

There are two types of bail that can be granted under Section 389 CrPC:[6]

Regular Bail

Regular bail is granted when a person who has been convicted by a lower court is released on bail pending the hearing and final disposal of the appeal. The appellate court may grant regular bail if it is satisfied that the convicted person is not likely to abscond or tamper with the evidence, and that their release on bail will not pose a threat to public safety or the administration of justice.

Interim Bail

Interim bail is granted for a short period of time, usually during the pendency of the hearing of the bail application. Interim bail is granted to provide temporary relief to the convicted person while the appellate court is considering their bail application. Interim bail may be granted subject to conditions, such as a requirement to report to the police station regularly, surrendering their passport or refraining from contacting certain persons. It is important to note that the grant of bail under Section 389 CrPC is subject to the discretion of the appellate court and may be granted with or without conditions, depending on the facts and circumstances of each case.

The Eligibility Criteria For Bail After Conviction Under Section 389 CrPC are as follows:[7]

1. The convicted person must have filed an appeal against the conviction in the appellate court.

2. The convicted person must have been sentenced to imprisonment for a term of three years or less. If the sentence is for more than three years, then the convicted person must first approach the High Court for bail under Section 439 CrPC.

6 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/
7 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/

3. The convicted person must satisfy the appellate court that there are reasonable grounds for believing that they are not guilty of the offense for which they were convicted, and that they will not abscond or tamper with the evidence if released on bail.

4. The convicted person must show that their continued incarceration pending the hearing and final disposal of the appeal will cause them irreparable harm or injustice, and that their release on bail will not be contrary to the interests of justice or public safety.

It is important to note that the appellate court has the discretion to grant or deny bail after conviction, even if the convicted person satisfies the eligibility criteria. The court will consider various factors, such as the nature of the offense, the severity of the sentence, the criminal record of the convicted person, and the likelihood of the convicted person fleeing from justice or interfering with the administration of justice.

Factors Considered by Courts in Granting Bail after Conviction

In deciding whether to grant bail after conviction under Section 389 CrPc, the appellate court will consider several factors, including:[8]

Nature of Offense

The appellate court will consider the seriousness of the offense committed by the convicted person, the circumstances surrounding the commission of the offense, and the potential impact of the offense on public safety and the administration of justice.

Severity of Sentence

The appellate court will consider the length of the sentence imposed on the convicted person, the nature of the sentence (such as imprisonment or fine), and the time already spent by the convicted person in custody.

Criminal Record

The appellate court will consider the past criminal record of the convicted person, including any prior convictions, and the likelihood of the convicted person committing similar offenses if released on bail.

8 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/

Flight Risk

The appellate court will consider whether the convicted person is likely to flee from justice or abscond if released on bail, and the measures that can be taken to ensure their presence during the hearing and final disposal of the appeal.

Tampering with Evidence

The appellate court will consider whether the convicted person is likely to tamper with the evidence or influence witnesses if released on bail.

Personal and Family Circumstances

The appellate court will consider the personal and family circumstances of the convicted person, such as their age, health, financial situation, and family obligations, to determine whether continued incarceration will cause them undue hardship or injustice.

Public Interest

The appellate court will consider the interest of the public in ensuring that the convicted person is brought to justice and that the administration of justice is not hampered. The appellate court will weigh these factors and make a decision based on the facts and circumstances of each case.

Grounds for Cancellation of Bail after Conviction

The grounds for cancellation of bail after conviction under Section 389 CrPC are as follows:[9]

Violation of Bail Conditions

If the convicted person violates any of the conditions of bail, such as failure to report to the police station or contact certain persons, the court may cancel the bail.

Commission of another Offense

If the convicted person commits another offense while on bail, the court may cancel the bail.

Tampering with Evidence or Witness

If there is evidence to suggest that the convicted person has tampered with the evidence or influenced a witness, the court may cancel the bail.

9 https://corpbiz.io/learning/bail-after-conviction-section-389-crpc/

Fleeing from Justice

If the convicted person absconds or flees from justice, the court may cancel the bail and issue a warrant for their arrest.

Change in Circumstances

If there is a material change in the circumstances of the case, such as the discovery of new evidence, the court may cancel the bail.

Interference with the Administration of Justice

If the convicted person interferes with the administration of justice or attempts to obstruct the course of justice, the court may cancel the bail. It is important to note that the court has the discretion to cancel the bail and the decision will depend on the facts and circumstances of each case. The convicted person or their legal representative should ensure that all conditions of bail are complied with and seek the advice of a competent lawyer if there is a change in circumstances that may affect their bail.

Suspension of Conviction

On a meticulous reading of section 389 CrPC, it is clear that there is no explicit mention about the power of the Hon'ble courts in relation to suspension of conviction. This gives rise to three significant questions:[10]

1. Whether is there any distinction between suspension of sentence and sentence of conviction?

2. In a case where if someone's sentence has been suspended, then will it subsequently imply that there is a temporary stay on his conviction as well?

3. Further, in the absence of a separate legal provision for suspension of conviction, whether or not the Appellate Court has the jurisdiction to entertain and decide over the matters seeking relief for the same?

Distinction between Order of Suspension of Sentence and Order of Suspension of Conviction

“Suspension is an act of temporarily preventing something from operating or being in force. It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence . Conviction and sentence, although often associated with each other, are two entirely different things. Conviction can be defined as the decision of the judge declaring someone as guilty of an offence. Accordingly, in effect, if one prays

10 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

for a stay of conviction, he is asking for a stay of operation of the effects of the declaration of being guilty . On the other hand, sentence is a form of punishment whereby the accused has to undergo either imprisonment, fine or punishment for the offence committed by him/her. Additionally, it is upon the discretion of the court to entirely suspend the sentence or just a part of it whereas the conviction cannot be partially suspended. Thus, it can be established that the order of sentence is always subsequent to the order of conviction and the suspension of the execution of the sentence does not alter or affect the fact that the offender has been convicted of an offence and has attracted the sentence of imprisonment."[11]

Consequence of stay in order of sentence

When the order of sentence is stayed by the court, then that particular order will not be operative for an indefinite time. That is, there is no particular time period assigned for this relief as in the case of reprieve of sentence where temporary relief is provided to the convict by postponing the judgement of the court for a certain period of time.[12]

Consequence of stay in order of Conviction

The order of stay on conviction does not make the conviction non- existent, but only non-operative. That is, by staying the order of sentence the presumption of guilt does not come to an end. Therefore, It is clear that an order of suspension of sentence is not equivalent to an order of suspension of conviction and that these two reliefs operate in different fields. In circumstances, where the sentence passed against the petitioner is suspended, he must not be held entitled to seek suspension of the order of conviction either. On the contrary, it may be pointed out that when the order of conviction is suspended, the accused cannot remain behind the bar and has to be released either on bail or on his own bond. Consequently, when an order of conviction is suspended, the order of sentence has to be suspended. In other words, an order suspending conviction will, eventually, lead to an order of suspension of sentence.[13]

Jurisdiction of Appellate Court to Stay Order of Conviction

"The Apex Court, through its various judgements and precedents, has settled the position of law with respect to stay on the order of conviction. Accordingly, the appellate Court, while exercising it is not true to suggest that powers under section 389(1) of Cr.P.C, can

11 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

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13 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

suspend the order of conviction. In the case of Ram Narang V. Ram Narang a 3-judge bench of the Supreme Court for the first time recognized the authority of the appellate court to suspend conviction. The court was of the opinion "that there is no reason to give a narrow interpretation on Section 389(1) of the code and to not extend it to an order of conviction in a fit case." A wide interpretation was given to section 389(1) wherein the power of the court to stay the order of conviction was acknowledged. Correspondingly, it was highlighted that the expression "order appealed against" in section 389(1) means the order of conviction . Thus, section 389(1) does not only provide relief against order of sentence and bail but also encompasses stay on the order of conviction. Further, it was observed that even if it is considered that the Code of Criminal Procedure 1973, does not provide the High Court with the power of staying the order of conviction under section 389(1) then the same can be exercised by the High Court in its inherent jurisdiction under section 482 of the code . Section 482 provides the High Court with inherent jurisdiction to make orders as may be necessary to prevent abuse of process of court and to secure justice."[14]

What Constitutes to be a fit case for Suspension of Order of Conviction

"Suspension of conviction is a "relief" and not a "right" by the law. Although the Apex Court has widened the scope of Section 389, it has also time and again suggested that the appellate court should always maintain caution while exercising its jurisdiction or providing relief under this section. The supreme Court also clarified that an order granting a stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case . Till now the Apex Court has not specifically laid down any set of guidelines or tests to determine as to what will constitute a fit case for providing a relief under this section. However, from its innumerable judgements on this subject matter certain essentials can be listed down that can be considered by the courts while staying the order of conviction."[15]

1. Rare And Exceptional Cases and irreversible damages-

"Precisely from the acknowledgement of this relief, both the Supreme Court and the High Court have time and again expressed through their judgements that the power of the court to stay the order conviction should be used in exceptional circumstances only. Such rare and exceptional circumstances can vary from case to case and "no straight jacket formula"

14 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

15 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

can be evolved. Thus, a prima facie case coupled with peculiar or special circumstances involved may place the case in exceptional or extra ordinary category when entailment of specific consequences is shown. It was also observed that to constitute a fit case for this relief, specific attention of the appellate court should be drawn to the consequences that may arise if the conviction is not suspended. Basically, the court should make a comparative analysis and see in whose favour the balance of convenience lies that is the consequences of withholding the relief against the consequences of granting it. To summarize it we can state that the court can only provide relief of this nature in a case where if the conviction is not stayed then it will lead to injustice and irreversible consequence to the convict against the harm that can be caused to the opposite party.[16]

2. Seriousness of offence or offence of moral turpitude-

“The gravity of the offence and the impact that it can cause to the society and people in general plays a significant role while providing such a relief. It was observed in the case of Shyam Narain Pandey Vs. State of UttarPradesh "If the convict is involved in crimes which are so outrageous and yet beyond suspension of sentence, if the conviction also is stayed, it would have a serious impact on the public perception on the integrity of this institution and such orders definitely will shake the public confidence in judiciary." Although the expressions moral turpitude or seriousness of the offence is not defined under any law, the Supreme Court interpreted them as an expression which is used in legal and societal parlance to describe a conduct which is inherently base, vile, depraved or having any connection showing depravity.”[17]

3. Criminal antecedents of the accused will be a relevant consideration

The criminal history of the accused and the nature of offences committed by him over a period of time is to be noted. It was held that the criminal antecedents of the accused is not only a necessary requirement for staying the order conviction but also for staying the order of suspension.[18]

16 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

17 https://articles.manupatra.com/article-details/Analysis-of-Suspension-of Conviction as a Statutory Remedy.pdf By Urvashi Agarwal

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IMPORTANT CASES RELATED TO SECTION 389 CRPC

Kishori Lal vs Rupa And Ors reported in AIR 2005 SC 1481

In this case, the appeal has been made by the state against the order of the High Court granting bail to three Murder Convicts. The appellant brought flaws in that decision, and the Supreme Court agreed to the same and set aside the impugned order. It observed that while granting bail, the High Court had failed to consider the Material Facts as per Section 389 of the Code. The Court held the following:[19]

- The High Court focused on the fact that appellants did not misuse the bail during the trial and it could not become a sufficient reason to suspend the sentence.
- Suspension of sentence, especially while confirming convictions under Section 302, IPC, calls for detailed reasons under exceptional circumstances.
- The Court explained that suspension of sentence and Bail are two different Legal Entities, and good behaviour when out on Bail during Trial cannot turn into a good enough reason for Suspension of Sentence after conviction.

State Of Punjab vs Deepak Mattu reported in (2007) 11 SCC 319

In this case, the appellants were convicted for corruption under the Prevention of Corruption Act. The impugned order passed by the High Court of Bombay had inter alia suspended the conviction of the Public Servant appellants pending appeal before the High Court. The Supreme Court found the reasons provided for the suspension of the sentence inadequate. The Court held that the High Court had erroneously passed orders to suspend the conviction of the respondent by granting him Bail under Section 389 of the Code and thus set aside the impugned orders. The Supreme Court held the following:[20]

- The High Court did not show any Special Reasons for Suspension, Particularly in a Case related to Corruption.
- Reasons like a Probable delay in the appeal were not sufficient to stay the conviction, more particularly of a Public Servant.
- What was stressed by the Court above all was that the Public Confidence must be Protected. Permitting convicted officials to continue in office pending an appeal can lead to eroding public morale and the integrity of the institutions.

19 https://restthecase.com/knowledge-bank/crpc/section-389
20 https://restthecase.com/knowledge-bank/crpc/section-389

- The discretion to modify any interlocutory orders by the High Courts must be exercised with due Judicial Consideration.

Navjot Singh Sidhu vs State Of Punjab & Anr reported in AIR 2007 SC 1003

The Supreme Court in this case held that the power of an appellate Court to suspend or stay an order of conviction under Section 389 of the Code implies keeping in abeyance, for the time being, the actual carrying out of the sentence while the conviction remains in force. However, the Court made it clear that such discretion, under such peculiar circumstances, should be exercised only in rare cases. The Court explained that:[21]

- The person seeking a stay of conviction has the burden of clearly informing the Court what, if any, consequences would flow, or could be expected to flow, from the refusal of it.
- A stay of conviction is not a matter of course but an exception to the general rule and hence, it should be followed in an Exceptional Case.
- Where the conviction is stayed, the suspension of execution of the sentence usually, but not necessarily, follows and the conviction itself does not vanish.

Atul Tripathi vs State Of U.P. & Anr reported in 2014 (9) SCC 177

“The Supreme Court in this case has confined the judgement strictly to the formalities for release on bail of a convict under Section 389 of the Code. The Court vacated the High Court order granting bail to respondents convicted of murder and sentenced to life imprisonment for non-compliance with Section 389 of the Code. The High Court granted bail without affording an opportunity to the Public Prosecutor to file written objections, as required by the law in case the convict is sentenced to death or imprisonment for life or imprisonment for a term of ten years or more. Thus, the Supreme Court has distinguished between Grant of Pre-Conviction Bail under Section 439 of the Code and post-conviction bail under Section 389 of the Code. It has, thus, drawn the distinction that each may entail with its respective procedures. It relies on the mandatory nature of Section 389, thereby allowing the Court to take into consideration the severity of the offence, whether there has been any conviction in the past, and how far it may affect Public Confidence if Bail is granted. It would not be enough compliance with the requirement of Section 389 only if a Copy of the appeal and the bail application is served on the Public Prosecutor. As per Section 389 of the Code, objections in writing have to be specifically invited. As that course was not adopted, the impugned order granting bail was found to be unsustainable. The

21 https://restthecase.com/knowledge-bank/crpc/section-389

Court thus remitted the bail applications to the High Court for fresh consideration, with strict adherence to the procedure prescribed under Section 389."[22]

The Court also summarised in short, the procedure to be followed when there is consideration of a bail under Section 389 in cases involving Severe Punishments:[23]

- If the Appellate Court is inclined to release the convict on Bail, then without fail, the Public Prosecutor should be made to appear and an opportunity to file written objections must be given.
- The State will then file its written objections, if any.
- If the Public Prosecutor does not file written objections, then the Court shall State that in its Order.
- While Granting bail, the Court has to consider all relevant factors, which include factors pointed out by the Public Prosecutor even though not specifically mentioned in the objections.

POWER OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL

In India, the Criminal Procedure Code 1973 provides protection to persons anticipating or fearing arrest. The essential difference between regular bail and anticipatory bail is that while a regular bail is applied for by a person/ accused only after his arrest, anticipatory bail ("Anticipatory Bail") is applied for by a person in anticipation of his arrest and to secure orders from court to prevent the actual arrest. However, there are certain conditions under which an application for grant of Anticipatory Bail may be considered and it is not granted in a routine manner and depends on facts of the case.

Anticipatory bail refers to the pre-arrest legal protection available to an individual who anticipates arrest on the accusation of having committed a non-bailable offence. Under Section 438 of CrPC, a person can seek such bail from the High Court or the Sessions Court. This provision enables courts to grant bail in anticipation of arrest, thereby preventing the detention of the accused before any potential conviction.[24] The concept of anticipatory bail is deeply rooted in the legal framework provided by the erstwhile Criminal Procedure Code (CrPC) and now Bharatiya Nagarik Suraksha Sanhitha (BNSS), which

22 https://restthecase.com/knowledge-bank/crpc/section-389
23 https://restthecase.com/knowledge-bank/crpc/section-389
24 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

offers a set of comprehensive guidelines for the functioning of criminal courts. The legal framework establishes the conditions and the procedures under which anticipatory bail may be granted, ensuring a balance between an individual's fundamental right to liberty and the societal interest in the investigation and prosecution of crimes.The provisions for anticipatory bail are aimed at preventing the unnecessary detention of individuals who, in good faith, believe that they might be implicated in a non-bailable offence. The legal process is enshrined within a complex admixture of constitutional rights and judicial pronouncements that have further shaped the jurisprudence surrounding anticipatory bail, affording it a significant position in the criminal justice system.[25]

Anticipatory bail, by definition, is a pre-emptive legal measure that allows a person to seek bail in anticipation of an arrest on accusation of committing a non-bailable offence. This type of bail is particularly relevant for individuals who fear they might be arrested based on unjust grounds or in a manner that could harm their reputation or cause undue harassment. It is an instrument furnished by the law which permits the courts to release a person on bail, even before they are taken into police custody.[26] The primary legal provision concerning anticipatory bail is contained in Section 438 of the CrPC (now section 482 BNSS). This section permits the High Court or the Sessions Court to grant bail to a person who has not yet been arrested but is anticipating arrest on the accusation of having committed a non-bailable offence. Notably, the application for such bail can only be made under the apprehension of being accused of specific offences and not as a protective measure for all criminal prosecutions.[27]

Conditions for granting Anticipatory Bail

“The provision of anticipatory bail is not applied uniformly in all cases. The discretion lies with the courts, and they make their decision based on several conditions that must be fulfilled before such bail can be granted. One of the primary considerations is whether there is reasonable ground for believing that the accused may be arrested for a non-bailable offence. The applicant must demonstrate that they do not pose a flight risk and are not likely to flee the jurisdiction of the court. There should be assurance that the person seeking bail will make themselves available for interrogation by the police as

25 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113
26 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113
27 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

required and will not tamper with the evidence or influence witnesses. Additionally, the court assesses the potential for repeat offences while the applicant is on bail. Another condition is the severity and nature of the charge. Serious allegations like corruption, crimes against women, or economic offences could tilt the decision against granting anticipatory bail. The court also considers the length of the period for which bail is requested and may impose conditions that it deems fit to enforce to ensure that justice is upheld and the accused complies with legal procedures. Lastly, the applicant must display full compliance with the court's requirements, including any specific conditions laid upon the grant of bail. These conditions might encompass restrictions on travel, regular appearances at the police station, and avoiding any engagement with criminal activities."[28]

Nature of the Offense

"The nature of the offense plays a pivotal role in the determination of anticipatory bail. The court meticulously examines the seriousness of the offense, its implications, and it is not true to suggest that repercussions on society. Offenses that are heinous or grave in nature, such as murder, rape, or terrorism, usually lessen the likelihood of anticipatory bail being granted. For non-bailable offenses, the decision to grant bail relies heavily on the scrutiny of facts and materials presented by the applicant, and the bail can be denied if the court deems the offense as severe and with conclusive evidence. The court takes into account not just the severity of the offence but also the role the accused is alleged to have played, the extent of involvement, and any criminal antecedents. In cases where the offense is less severe or more of a personal nature, or if it's under a specific financial threshold, the court could be more inclined to grant anticipatory bail, assuming that the other conditions for bail are also satisfied."[29]

Possible Threat to Life or Liberty

"A convincing demonstration of a possible threat to the life or liberty of the applicant is a significant factor in obtaining anticipatory bail. When the applicant apprehends a risk of spiteful or vindictive action leading to his arrest, the courts may consider this an urgent and compelling ground for anticipatory bail. Such threats must not be speculative; they must be substantiated with credible evidence. If an applicant can show that the accusation is a result of rivalries, or there is a possiblity of being falsely implicated due to ulterior motives, the court might accept these factors in favor of granting bail. The court also examines if the

28 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113
29 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

threat emanates from a position of power or influence that could be unjustly used against the accused. In cases where the accused is a woman, or belongs to a weaker section of society, and alleges persecution by more potent adversaries, the court is likely to take a more protective stance considering the vulnerability of the applicant."[30]

Duration of Validity of Anticipatory Bail

"Anticipatory bail is a form of pre-arrest legal protection available to individuals who apprehend arrest for a non-bailable offense. The duration of validity of anticipatory bail is not explicitly prescribed by the Law and may vary based on the discretional power of the court granting it. In some instances, the High Court or Sessions Court may limit the validity to a certain period, after which the individual must approach the court for an extension. However, in the case of Sushila Aggarwal vs. State (NCT of Delhi) reported in AIR 2020 SC 831, the Supreme Court of India ruled that anticipatory bail does not have to be time-bound unless there are special circumstances necessitating a limited duration. The validity of such anticipatory bail lasts until the disposal of the case, as per this landmark judgement. However, it is still subject to the condition that the beneficiary does not misuse the liberty or hamper the investigation. It is pertinent to note that anticipatory bail can be cancelled by the court that granted it if conditions attached to the bail are breached or if subsequent facts warrant such cancellation."[31]

The Hon'ble Supreme Court in the case of **Priya Indoria Vs. State of Karnataka** discussed the essential features of section 438 CrPC as follows:[32]

i. It confers a statutory right upon any person who has a reason to believe that he may be arrested in relation to the commission of a non-bailable offence.

ii. The statutory right consists of the right to apply before the High Court or the Court of Session for a direction that in the event of such arrest, he shall be released on bail.

iii. The Parliament has provided ample legislative guidance on the factors that may guide the High Court or the Court of Session while considering the application for grant of an anticipatory bail.

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30 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

31 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

32 https://www.thelawadvice.com/articles/understanding-anticipatory-bail-transit-bail-judgment-of-priya-indoria-vs-state-of-karnataka

iv. The substantive factors consist of the nature and gravity of the accusation, the criminal antecedents of the applicant, the risk of the applicant absconding from justice or not cooperating with the criminal justice administration and the possibility of an accusation made in bad faith with the aim of injuring or humiliating the applicant.

v. In addition to the aforementioned substantive factors guiding the exercise of judicial discretion, Section 438 of CrPC engrafts certain procedural requirements. The High Court or the Court of Session may grant an interim order under Section 438(1) of CrPC in case the facts and averments in the application satisfy the factors laid down. However, the proviso to Section 438(1) of CrPC provides that if such an interim order is denied, the officer in-charge of a police station is at liberty to arrest the applicant without warrant. Even if the interim order is made in favour of the applicant, the High Court or the Court of Session is mandated under Section 438 (1A) of CrPC to cause a notice of not less than seven days along with a copy of the interim order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application is finally heard by the Court. The Court is also empowered under Section 438 (1B) of CrPC to allow the Public Prosecutor's application to make the presence of the applicant seeking anticipatory bail obligatory at the time of final hearing, if the Court deems such presence necessary in the interest of justice.

vi. The High Court or the Court of Session, under Section 438(2) of CrPC, is further empowered to pass any such conditions in light of the facts of a particular case, including

a) A condition that the person shall make himself available for interrogation by a police officer as and when required

b) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer

c) a condition that the person shall not leave India without the previous permission of the Court

d) such other condition as may be imposed under Sub-Section (3) of section 437, as if the bail is being granted under that Section.

Granting of Transit Anticipatory Bail

The Hon'ble Apex court in **Priya Indoria Vs. State of Karnataka** affirmed that both, High Courts and Sessions Courts possess the power to grant Transit Anticipatory Bail in situations where an FIR has been filed against the accused in a different state. In doing so, the Supreme Court overturned the decisions of the Calcutta High Court in the case of

Sadhan Chandra Kolay v. State and the Patna High Court in **Syed Zafrul Hassan and Anr. vs State** which had held that High Courts or Sessions Courts, within whose jurisdiction the FIR was not registered, lacked the power to grant anticipatory bail. However, the Hon'ble Supreme Court cautioned the Courts to grant such Transit Anticipatory Bail sparingly and in exceptional circumstances. The Hon'ble Supreme Court has ensured protection of liberty of individuals who are unable to approach the jurisdictional Courts due to the fear of arrest.[33]

The Hon'ble Supreme Court has laid down the following conditions to be considered before granting Transit Anticipatory Bail:[34]

1. Notice must be issued to the investigating officer and public prosecutor on the first hearing date, with the court having discretion to grant interim anticipatory bail.
2. The order granting Transit Anticipatory Bail should provide reasons for the applicant's fear of inter-state arrest and consider its impact on the investigation.
3. State Amendment to Section 438 of the CrPC should not exclude the offence from anticipatory bail jurisdiction where the cognizance of the offence has been taken.
4. The applicant must satisfy the Court of their inability to seek anticipatory bail from the jurisdictional court where the offence is registered, citing reasons like immediate threats to life, bodily harm, violation of liberty, arbitrariness, or the applicant's medical status or disability.

"While interpreting Section 438 of the CrPC, the Hon'ble Supreme Court, noted that the expression 'the High Court' or 'the Court of Sessions' is not restricted to any specific local limits or territorial jurisdiction. However, the Hon'ble Supreme Court, clarified that this doesn't imply that an accused can approach a court in a different state for anticipatory bail if the FIR is lodged in another state. The accused may do so only if, at the time of the FIR in one state, they are residing or present for a legitimate purpose in another state. The Hon'ble Supreme Court emphasizes that the jurisdiction of 'the High Court' or 'the Court of Sessions' need not be limited to the place or territorial jurisdiction where the FIR is lodged, and the use of the word 'the' before these expressions does not restrict jurisdiction to the court within whose jurisdiction the FIR is filed."[35]

Following are the conditions under which the High Court or the Court of Session could grant limited anticipatory bail in the form of an interim protection under Section 438 of

33 https://www.lexology.com/library/detail.aspx?g=1b5a7e16-578b-4fc7-9885-056aad286f38
34 https://www.lexology.com/library/detail.aspx?g=1b5a7e16-578b-4fc7-9885-056aad286f38
35 https://www.lexology.com/library/detail.aspx?g=1b5a7e16-578b-4fc7-9885-056aad286f38

CrPC in the interest of justice with respect to an FIR registered outside the territorial jurisdiction of the said Court:[36]

(i) Prior to passing an order of limited anticipatory bail, the investigating officer and public prosecutor who are seized of the FIR shall be issued notice on the first date of the hearing, though the Court in an appropriate case would have the discretion to grant interim anticipatory bail.

(ii) The order of grant of limited anticipatory bail must record reasons as to why the applicant apprehends an inter-state arrest and the impact of such grant of limited anticipatory bail or interim protection, as the case may be, on the status of the investigation.

(iii) The jurisdiction in which the cognizance of the offence has been taken does not exclude the said offence from the scope of anticipatory bail by way of a State Amendment to Section 438 of CrPC.

(iv) The applicant for anticipatory bail must satisfy the Court regarding his inability to seek anticipatory bail from the Court which has the territorial jurisdiction to take cognizance of the offence. The grounds raised by the applicant may be –

a. a reasonable and immediate threat to life, personal liberty and bodily harm in the jurisdiction where the FIR is registered

b. the apprehension of violation of right to liberty or impediments owing to arbitrariness;
c. the medical status/ disability of the person seeking extraterritorial limited anticipatory bail.

Cancellation of Anticipatory Bail

The High Court or Sessions Court that grants anticipatory bail can also cancel it. The Supreme Court of India holds the power to cancel such bail if it is approached under its appellate jurisdiction. The cancellation of anticipatory bail ensures that individuals do not misuse the protection granted to them by the judiciary.

Grounds for Cancellation

There are several reasons why a court might cancel anticipatory bail. These grounds may differ slightly depending on the jurisdiction, but generally include the following:[37]

1. **Misuse of Liberty**: If a person is found to be misusing the liberty granted through anticipatory bail, such as by attempting to tamper with evidence or influence witnesses.

36 https://www.thelawadvice.com/articles/understanding-anticipatory-bail-transit-bail-judgment-of-priya-indoria-vs-state-of-karnataka
37 https://lawrato.com/indian-kanoon/divorce-law/anticipatory-bail-from-high-court-sessions-court-supreme-court-3113

2. **Non-cooperation with Investigation**: Lack of cooperation with the investigating authorities or non-compliance with the conditions of bail.
3. **New Aggravating Facts**: Discovery of new facts or material that could warrant a cancellation, such as involvement in additional criminal activities after the granting of bail.
4. **Subverting Judicial Process**: Actions that may thwart or undermine the judicial process can also lead to cancellation.
5. **False Information Supplied**: The bail may be canceled if it is found that the applicant provided false information or concealed relevant facts at the time of obtaining bail.
6. **Change in Circumstances**: Significant changes in the circumstances of the case may prompt a review and cancellation of anticipatory bail.

Guiding Principles for Granting Anticipatory Bail laid down in *Gurbaksh Singh Sibbia Etc vs State Of Punjab* (AIR 1980 1632)

The five judge bench of Supreme Court issued the following guiding principles for granting anticipatory bail:[38]

1. The applicant must understand the term “reason to believe” in section 438 which means that the applicant has to show the reasonable grounds that he apprehends arrest. The vague and baseless beliefs will not suffice for the test laid down to grant anticipatory bail.

2. The Court if Sessions or High Court must apply it’s mind while deciding whether the prima facie is made out to grant anticipatory bail.

3. An FIR is not a condition precedent for granting anticipatory bail.

4. Anticipatory bail can be granted even after an FIR is filed but arrest has not been made.

5. The relief under section 438 CrPC cannot be claimed after the arrest.

6. Anticipatory bail cannot be granted where there is a possibility of collecting incriminating evidence from the person and remand of the person is necessary.

7. In cases of offences punishable by death or life imprisonment, anticipatory bail should not be granted unless the court is satisfied of falseness of charges.

Concurrent Powers of High Court and Sessions Court to grant Anticipatory Bail

“The Supreme Court has clarified that both the High Court and the Sessions Court hold concurrent jurisdiction to grant anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023, and that it is not a rule that an accused must first approach the

38 https://blog.ipleaders.in/anticipatory-bail-and-judicial-interpretation-of-section-438-crpc/

Sessions Court before moving the High Court. A bench of Justices Sanjay Kumar and N.V. Anjaria was hearing appeals filed by Manjeet Singh challenging the July 28, 2025 order of the Allahabad High Court, which had refused to entertain his anticipatory bail applications and directed him to approach the Sessions Court instead. Singh, facing criminal proceedings in Uttar Pradesh, had directly approached High Court for relief, arguing that he was entitled to do so in view of the concurrent jurisdiction recognised under law. Setting aside the High Court's order, the bench observed that it had failed to consider this concurrent jurisdiction while dealing with the pleas. Referring to its earlier rulings in Kanumuri Raghurama Krishnam Raju v. State of A.P. (2021) and Arvind Kejriwal v. Directorate of Enforcement (2024), the Top Court reiterated that "it would not be necessary for an accused to approach the Sessions Court in the first instance, as a rule, before approaching the High Court."[39]

Section 438 CrPC vis-a-vis Section 482 of BNSS

Section 482 of BNSS deals with anticipatory bail. It differs from section 438 CrPC in the following way:[40]

1. Section 482 (1) of BNSS brought the original version of section 438(1) CrPC which was before the amendment of 2005
2. The proviso to section 438 (1) CrPC is excluded from section 482 BNSS which means the power of police officer in-charge to arrest the applicant in cases where interim relief is not granted by the High Court or the Sessions Court is not available under the new law.
3. Section 438 (1A) and (1B) of CrPC are also excluded from section 482 BNSS
4. Section 438 (4) CrPC and section 482 (4) BNSS are similar except that the offence of rape on a woman under the age of 16 has been increased to woman under the age of 18.

39 https://lawbeat.in/news-updates/do-high-courts-sessions-courts-have-concurrent-powers-to-grant-anticipatory-bail-supreme-court-says-yes-1515100

40 https://blog.ipleaders.in/anticipatory-bail-and-judicial-interpretation-of-section-438-crpc/

Conclusion

Bail after conviction under Section 389 CrPC is a legal provision that allows an accused person to be released on bail after they have been convicted and sentenced by a court of law. The eligibility criteria for bail after conviction are different from those for bail before conviction, and the court must consider various factors before granting bail, such as the nature of the offense, the likelihood of the accused person absconding, and the possibility of the accused person tampering with evidence or influencing witnesses. Anticipatory bail is a legal remedy available in India that allows a person to seek advance bail in anticipation of an arrest on accusation of having committed a non-bailable offense. It can be sought from the High Court or the Sessions Court under Section 438 of the Criminal Procedure Code. It is important to note that vague and general allegations against the applicant will not entitle him to anticipatory bail. It is also crucial to understand that the Supreme Court has interpreted provisions of anticipatory bail in connection with personal liberty but the person must be aware of his rights in order to exercise them.