Powers and Duties of Magistrates, Sessions Judges and Special sessions Judges pertaining to bails

“Even in silence, justice has a voice”

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Powers and Duties of Magistrates, Sessions Judges and Special sessions Judges pertaining to bails

A) Default Bail

B) Grounds on which bail can be Granted / Rejected

C) Imposition of conditions while granting bail

D) Power to modify conditions of bail

Magistrates, Sessions Judges, and Special Sessions Judges in Indian criminal law play critical roles in investigation, trial, and sentencing, each with distinct powers and duties. Their authority is defined mainly under the Code of Criminal Procedure (CrPC), now replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), and related laws.

Magistrates

Powers: Magistrates take cognizance of offences from police reports, private complaints, or other sources. They may issue summons or arrest warrants, authorize detention and police/judicial custody, grant or reject bail, and monitor police investigations, including ordering further investigation.

Duties: Magistrates conduct summary, warrant, and summons trials for offences punishable up to certain terms (generally not exceeding seven years). They record evidence, pass judgments, and issue orders for preventive action, such as addressing nuisances or public disturbances.

Sentencing Authority: Chief Judicial Magistrate (CJM) may impose imprisonment up to seven years; First Class Magistrate up to three years or ₹10,000 fine; Second Class Magistrate up to one year or ₹5,000 fine. But now as per new BNSS, Act 20203 powers has been changed.

Administrative Powers: CJMs oversee other judicial magistrates, allocate caseloads, revise orders of lower magistrates, and transfer cases within their jurisdiction.

Sessions Judges

A Sessions Judge in India is primarily responsible for adjudicating serious criminal cases within a district, acting as the highest authority for criminal trials below the High Court level. A Sessions Judge thus ensures effective, fair, and timely justice delivery for serious criminal cases, supervises subordinate judiciary, and often provides administrative leadership within their judicial division.

Powers: Sessions Judges preside over the Courts of Session, dealing with serious offences such as murder, dacoity, and theft. They may try cases transferred from lower courts and have the power to pass any sentence authorized by law, including the death penalty (subject to High Court confirmation).

Duties: Sessions Judges ensure fair trials for grave offences, supervise Assistant and Additional Sessions Judges, and handle appeals or revisions from subordinate courts.

Sentencing Authority: They can pass any sentence permitted by law, but Assistant Sessions Judges cannot sentence death, life imprisonment, or terms exceeding ten years.

Special Sessions Judges

Powers and Duties: These judges are appointed for specific statutes (e.g., anti-corruption, POCSO cases) and conduct trials for such offences exclusively. Their jurisdiction and sentencing are provided by the special act under which they are appointed, often broad but strictly for specified offences.

Role: They ensure speedy, focused trial for particular offences, often employing specialized procedures and protections distinct from regular criminal courts.

A Special Sessions Judge differs from a regular Sessions Judge primarily in jurisdiction, subject-matter focus, and appointment, reflecting the need for expertise or specialized handling of certain kinds of cases.

Jurisdiction and Subject-Matter

- Regular Sessions Judge: Tries serious criminal offences such as murder, dacoity, and theft under the general criminal law, with wide jurisdiction over all cognizable crimes in the district.
- Special Sessions Judge: Is appointed specifically to try cases under a special statute (such as anti-corruption, NDPS, POCSO, terrorism, or cases involving MPs/MLAs); jurisdiction is limited to offences defined by that special act. They do not handle general criminal cases unless conferred such authority.

Procedure and Role

- Regular Sessions Judge: Applies the general Code of Criminal Procedure (CrPC/Bharatiya Nagarik Suraksha Sanhita) and standard trial procedures.
- Special Sessions Judge: Often applies special procedures set out by the relevant Act, which may differ from regular criminal procedure—for example, fast-track rules, heightened witness protection, and relaxed evidentiary requirements.
- The key difference is that a Special Sessions Judge's court focuses solely on cases assigned by special legislation, delivering focused justice and speedy trials for complex or sensitive offences.
- Sessions Judges and Special Sessions Judges in India have broad, discretionary powers to grant and cancel bail in both bailable and non-bailable offences, especially in serious criminal cases.

Bail Powers of Sessions Judges

Granting Bail: Sessions Judges are empowered by Section 439 of the CrPC (now BNSS) to grant bail to accused persons in grave offences, including murder, sexual assault, and cases traiable exclusively by Sessions courts. They also hear regular and anticipatory bail applications when the Magistrate Court either lacks jurisdiction or has already refused bail.

Cancelling Bail: Sessions Judges may cancel bail granted by themselves, Magistrates or even higher courts if the accused violates bail conditions, tampers with evidence, influences witnesses, or flees justice. The Sessions Judge can order the arrest of such an accused and commit them to custody.

Notice Requirement: Before granting bail in serious, life-imprisonment or death-penalty lcases, Sessions Judges must notify the Public Prosecutor; for certain sexual offences, the informant's presence at the bail hearing is mandatory.

Bail Powers of Special Sessions Judges

Special Cases Only: Special Sessions Judges deal with bail matters exclusively under the statutes for which they are appointed (such as POCSO, NDPS, Prevention of Corruption Act), often following specialized requirements or stricter guidelines.
The principles for granting bail depends on the seriousness of the offence, risk of absconding/tampering, nature of accusations remain similar, but procedures may be tailored by the relevant act.

- Concurrent Powers: They possess all bail powers of a Sessions Judge for offences under their designated Act and may also subject bail conditions to statutory norms specific to those cases (e.g., child protection or drug-related bail requirements).
- Cancellation: Special Sessions Judges can also cancel bail if statutory conditions are violated, in line with both CrPC/BNSS and the special law.

Key Differences

- Regular Sessions Judges: Handle bail for all cases within the Sessions court jurisdiction using general criminal law.
- Special Sessions Judges: Handle bail only for offences under special statutes, sometimes using stricter or expedited procedures mandated by those statutes.

Both judges ensure judicial oversight over pre-trial liberty and enforce strict compliance with bail conditions to protect the integrity of the trial.

Default bail:

Default bail in Indian criminal law is a statutory right granted under Section 167(2) of the Code of Criminal Procedure (CrPC), ensuring the accused is not detained indefinitely when police fail to complete the investigation and file a charge sheet within a specified time limit.

Key Features of Default Bail

- Legal Basis: Section 167(2) of CrPC provides default (statutory) bail when the investigating authority does not file a charge sheet within 60 days for most offences or 90 days for offences punishable with death, life imprisonment, or imprisonment of at least ten years.

- Fundamental Right: The Supreme Court affirms default bail as a fundamental right under Article 21 of the Constitution, guaranteeing protection against arbitrary detention and upholding the right to a speedy trial.
- Period of Custody: The calculation of the 60/90 days starts from the date the accused is first remanded into custody (includes both police and judicial custody).
- Application Mandatory: The accused must file an application for default bail once the stipulated period expires; otherwise, the right is forfeited if the charge sheet is filed before such an application is made.

Procedure and Principles

- If the investigation is incomplete after 60 days (or 90 days for serious offences), and the accused applies for default bail, the court must grant bail regardless of the offence's gravity.
- Default bail is unconditional as regards the right itself, but the court may impose reasonable conditions (such as furnishing a bond).
- Special statutes may prescribe longer periods for investigation (e.g., 180 days for NDPS Act cases).
- Filing an incomplete charge sheet does not defeat the right to default bail, as clarified by recent Supreme Court judgments.

Important Distinctions

- **Default Bail vs. Regular or Anticipatory Bail:**
  Default bail is claimed due to the prosecution's failure to file a charge sheet on time.
  Regular or anticipatory bail is granted at the court's discretion based on case facts or fear of arrest.
- Right Accrues Automatically: The moment the statutory period lapses, the accused acquires an **"indefeasible right"** which must be claimed by filing an application before filing of charge sheet.

Default bail is a crucial safeguard against indefinite detention and upholds the constitutional right to personal liberty and speedy trial in India.

This structure ensures a gradation of powers, checks, and balances for the efficient dispensation of justice in criminal matters.

The procedural steps to claim default bail in court in India are as follows:

1. Accused Must Be In Custody: The accused should be in custody (police or judicial) for more than 60 days (for most offences) or 90 days (for offences punishable with death, life imprisonment, or imprisonment for 10 years or more).
2. Expiration of Investigation Period: The investigation by the police must remain incomplete, and the charge sheet must not have been filed within the prescribed time period (60 or 90 days) from the date of arrest/remand.
3. Filing an Application: The accused must file an application for default bail before the court *before* the charge sheet is filed. This application can be written or oral, but it is advisable to make a formal written application to enforce the right effectively.
4. Readiness to Furnish Bail: The accused must be prepared to furnish bail and comply with any conditions imposed by the court when ordering release on default bail.
5. Court Verification: The court checks the facts, such as:
    - Whether the statutory period has indeed lapsed.
    - No charge sheet has been filed yet.
    - Accused is in custody and ready to provide bail.

   If these conditions are met, the court must grant bail as it is a statutory right.
6. No Effect of Subsequent Charge Sheet: Even if the police file a charge sheet after the accused has applied for default bail, the right to bail cannot be defeated as long as bail is furnished within the time directed.
7. Release: Upon grant of bail, the accused must comply with bail conditions such as furnishing a bond or surety to secure release.

The accused's failure to apply for default bail within time or failure to furnish bail may extinguish the right to default bail.

- Default bail is a fundamental right and the court is obliged to consider such an application promptly without unnecessary delay.

Thus, claiming default bail involves timely filing of an application before the charge sheet, proving investigation delay, and readiness to abide by the court's bail conditions.

Indian case law has systematically expanded and clarified the right to default bail under Section 167(2) of the CrPC, emphasizing its constitutional nature and procedural requirements.

Landmark Supreme Court Cases

- **Ritu Chhabaria v. Union of India (2023):**
  - Supreme Court held default bail under Section 167(2) is not just a statutory right, but a fundamental right flowing from Article 21 of the Constitution.
  - Court clarified that an incomplete or "preliminary" charge sheet filed solely to defeat the right to default bail is not valid; the accused retains the right where the investigation is genuinely incomplete.
- **Hitendra Vishnu Thakur v. State of Maharashtra (1994):**
  - The court established that once the prescribed period lapses and the accused files an application for default bail, the court must grant bail—even if the application is oral.
  - Requiring a formal application for default bail before the charge sheet is filed; the right is not automatic.
- **Sanjay Dutt v. State through C.B.I. Bombay (II) (1994):**
  - Clarified that the period for filing the charge sheet is calculated from the date the accused is first remanded.
  - Indefeasible right to default bail exists for the accused if the application is made before the charge sheet is filed, and is lost if made afterwards.
- **Uday Mohanlal Acharya v. State of Maharashtra (2001):**
  - Supreme Court explained that "availed of" under Section 167(2) means filing an application and readiness to furnish bail, preserving the right even if the charge sheet is filed after the application but before release.
  - Magistrate must dispose of such applications without unnecessary delay.
- **Rakesh Kumar Paul v. State of Assam (2017):**
  - Court strengthened that default bail is an indefeasible right and applies regardless of the offence severity if the charge sheet is not filed within time.
- **Nirala Yadav v. Union of India (2014):**
  - Magistrate is obliged to consider default bail applications at once, ensuring timely release.

Other Influential Cases

- **Hussainara Khatoon v. State of Bihar (1979):**
    - While not strictly about default bail, it cemented the right to a speedy trial and condemned prolonged detention of undertrial prisoners, which informs the context of default bail.

Procedural Principles Established

- Default bail becomes operative only upon application.
- Filing a charge sheet after the accused has applied for default bail, but before release, does not extinguish the right if bail is furnished within the time prescribed by court.
- Courts have condemned the practice of filing incomplete or supplementary charge sheets to circumvent the statutory right, upholding the integrity of default bail.

These cases reinforce default bail as a crucial legal and constitutional safeguard against indefinite custodial detention in India.

What is the relevant date of counting 90 days for filing charge sheet?

The relevant date of counting 90 days for filing charge sheet is date of first order of remand and not date of arrest.

In **Pragyna Singh Thakur v. State of Maharashtra,** it was held that -

> *"As far as Section 167(2) of the Criminal Procedure Code is concerned this Court is of the firm opinion that no case for grant of bail has been made out under the said provision as charge sheet was filed before the expiry of 90 days from the date of first remand. In any event, right in this regard of default bail is lost once charge sheet is filed. This Court finds that there is no violation of Article 22(2) of the Constitution, because on being arrested on October 23, 2008, the appellant was produced before the Chief Judicial Magistrate, Nasik on October 24, 2008 and subsequent detention in custody is pursuant to order of remand by the Court, which orders are not being challenged, apart from the fact that Article 22(2) is not available against a Court i.e. detention pursuant to an order passed by the Court."*

The appellant has not been able to establish that she was arrested October 10, 2008. Both the Courts below have concurrently held so which is well founded and does not call for any interference by thin Court. Though this Court has come to the conclusion that the appellant has not been able to establish that she was arrested on October 10, 2008, even if it is assumed for the sake of argument that

the appellant arrested on October 10, 2008 as claimed by her and not on October 23, 2008 as stated by the prosecution, she is not entitled to grant of default bail because this Court finds that the charge sheet was filed within 90 days from the date of first order of remand. In other words, the relevant date of counting 90 days for filing charge sheet is the date of first order of the remand and not the date of arrest. This proposition has been clearly stated in the **Chaganti Satyanarayana and Others vs. State of Andhra Pradesh (1986) 3 SCC 141.**

If one looks at the said judgment one finds that the facts of the said case are set out in paragraphs 4 and 5 of the judgment. In paragraph 20 of the reported decision it has been clearly laid down as a proposition of law that 90 days will begin to run only from the date of order of remand. This is also evident if one reads last five lines of Para 24 of the reported decision. Chaganti Satyanarayana and Others (Supra) has been subsequently followed in the following four decisions of this Court:

(1) Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni (1992) 3 SCC 141*, where it has been authoritatively laid down that:*

> *"The period of 90 days or 60 days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police."*

(2) State through State through CBI vs. Mohd. Ashraft Bhat and another (1996) 1 SCC 432, Para 5.

(3) State of Maharashtra Vs. Bharati Chandmal Varma (Mrs) (2002) 2 SCC 121 Para 12*, and*

(4) State of Madhya Pradesh vs. Rustom and Others 1995 Supp. (3) SCC 221, Para 3.

Section 167(2) is one, dealing with the power of the learned Judicial Magistrate to remand an accused to custody. The 90 days limitation is as such one relating to the power of the learned Magistrate. In other words the learned Magistrate cannot remand an accused to custody for a period of more than 90 days in total. Accordingly, 90 days would start running from the date of first remand. It is not in dispute in this case that the charge sheet is filed within 90 days from the first order of remand. Therefore, the appellant is not entitled to default bail.

Can right under section 167 (2) Cr.P.C would survive after filing of charge sheet?

The right under section 167(2) Cr.P.C is not absolute or indefeasible. The said right would lost if charge sheet is filed and would not survive after filing of charge sheet. This said right would be lost even if charge sheet is filed before consideration of default bail or before being released on such bail.

Pragyna Singh Thakur v. State of Maharashtra, SC JT DT 23-09-2011, it was held that – There is yet another aspect of the matter. The right under Section 167(2) of Cr.P.C. to be released on bail on default if charge sheet is not filed within 90 days from the date of first remand is not an absolute or indefeasible right. The said right would be lost if charge sheet is filed and would not survive after the filing of the charge sheet. In other words, even if an application for bail is filed on the ground that charge sheet was not filed within 90 days, but before the consideration of the same and before being released on bail, if charge sheet is filed, the said right to be released on bail would be lost. After the filing of the charge sheet, if the accused is to be released on bail, can be only on merits. This is quite evident from Constitution Bench decision of this Court in *Sanjay Dutt vs. State (1994) 5 SCC 410* [Paras 48 and 53(2)(b)].

In Uday Mohanlal Acharya vs. State of Maharashtra (2001) 5 SCC 453, a Three Judge Bench of this Court considered the meaning of the expression "if already not availed of used by this court in the decision rendered in case of Sanjay Dutt and held in para 48 and held that if an application for bail is filed before the charge sheet is filed, the accused could be said to have availed of his right under Section 167(2) even though the Court has not considered the said application and granted him bail under Section 167(2) Cr.P.C. This is quite evident if one refers para 13 of the reported decision as well as conclusion of the Court at page 747.

It is well settled that when an application for default bail is filed, the merits of the matter are not to be gone into. This is quite evident from the principle laid down in Union of India vs. Thamisharasi and Others (1995) 4 SCC 190 para 10.

To sum up the Supreme Court interpretated section 167(2) of the Code in (2011) 10 SCC 445, Pragyna Singh Thakur vs State of Maharashtra. The Apex Court also considered the constitutional bench judgement in Sanjay Dutt (ii) vs. State, (1994) 5 SCC 410 and held as follows: 'in the other words, even if application for bail is filed on the ground that the charge sheet was not filed within 90 days but before consideration of the same and being released on bail if the charge sheet is filed, the said right to be released on bail would be lost'

What is the duty of the Magistrate on filing of petition under section 167(2)?

When an application is filed under section 167(2), the Magistrate/ Court must dispose it of forthwith, on being satisfied that in fact the accused has been in custody for period of 90 days or 60 days, as specified and no charge sheet has been filed by the police. Such prompt action on the part of the Magistrate/Court will not enable the prosecution to frustrate the object of the Act and the Legislate mandate of an accused being released on bail on account of default on the part of the investigating agency in completing the investigation within the period stipulated.

If the application u/s 167(2) is not disposed expeditiously:

In case the court concerned as adopted any dilatory tactics or an attitude to defeat the right of the accused to be released on bail on the ground of default, the accused should immediately move the superior court for appropriate direction. But if the delay is bona fide and unintentional and in the meantime challan is filed than in view of the aforesaid judgments of this court, such a petition has to be dismissed and it cannot be said that the accused has already availed of the right accruing under proviso to section 167 of the code. It need not be repeated that the right accruing under proviso to section 167(2) of the code on the expiry of the statutory period of sixty days cannot be said to have been availed of by mere making of an application for bail expressing therein willingness to furnish bail, but on furnishing bail bond as required under clause (a)(ii) of proviso read with Explanation I to section 167(2) of the Code. If because of any bona fide view or procedure adopted by the court concerned some delay is caused and in the meantime challan is filed, the court has no power to direct release under proviso to section 167(2) of the Code. ***(Uday Mohanlal Acharya vs. State of Maharashtra on 29 March 2001).***

The accused was granted bail under section 167(2) of Cr.P.C. for default but fail to furnish bail bonds with securities. In the meanwhile the case was committed to Court of Session. Can a Magistrate accept securities and enlarge the accused on bail on being committed to Court of Session? Can a Sessions Court accept the securities on the bail which has been granted by JMFC?

If the charge sheet is not filed within the stipulated period of 60/90 days as the case may be, the accused person gets indefeasible rights to be enlarged on bail subject to condition. Then he must file bail application with a prayer that he is

ready to furnish the bail bond. If the charge sheet is filed before furnishing the bail bond, then the right of accused to be released on bail extinguishes if the charge sheet is filed after submission of bail bond that the indefeasible right cannot be taken again. (Devendra Sahani@ Devendra Mallah vs The State of Bihar on 22 August, 2012.) In such circumstances the accused has to submit fresh application for bail on merits.

What will happen in a case where before any order directing release on bail is passed or before the bail bonds are furnished a charge sheet is filed.?

The Apex Court clarified this issue in Uday Mohanlal Acharya vs. State of Maharashtra on 29 March 2001, the Supreme Court considered this issue by referring the judgement in Sanjay Dutt case and Hithendra Vishnu's case and held that the right accrued to the accused but it will remain unenforced till the filing of the charge sheet, then there is no question of his enforcement. It is well settled that once challan is filed, no sooner the court concerned applied its mind, cognizance shall be deemed to have been taken. Thereafter the power to remand the accused is under other provisions of the Code, including sub-section (2) of Section 309 thereof. A Constitution Bench of this Court in the case of Sanjay Dutt while considering correctness of Division Bench decision of this Court in the case of Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors., (1994) 4 SCC 602, laid down the law in paragraphs 48 and 49 of the judgment which read thus:-

> *48. We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4) (bb) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 Cr.P.C. ceases to apply.*

It further held that if not already availed of referred to in the judgment in Sanjay Dutts case for arriving at conclusion No.6. Accordingly, the expression availed of does not mean mere filing of application for bail expressing therein willingness of the accused to furnish bail bond. What will happen if on the 61st day an application for bail is filed for being released on bail on the ground of default by not filing the challan by the 60th day and on the 61st day the challan is also filed by the time the Magistrate is called upon to apply his mind to the challan as well as the petition for grant of bail? In view of the several decisions referred to above and the requirements prescribed by clause (a)(ii) of proviso read with Explanation I to Section 167(2) of the Code, as no bail bond has been furnished, such an application for bail has to be dismissed because the stage of proviso to Section 167(2) is over, as such right is extinguished the moment challan is filed.

In this background, the expression availed of does not mean mere filing of the application for bail expressing there under willingness to furnish bail bond, but the stage for actual furnishing of bail bond must reach. If challan is filed before that, then there is no question of enforcing the right, howsoever valuable or indefeasible it may be, after filing of the challan because thereafter the right under default clause cannot be exercised.

Provisions of Sec. 167 (2) CrPC have no application to an offence relating to Prevention of Money Laundering Act and therefore, the accused cannot derive any benefit of not filing of charge sheet within a period of sixty days as under Sec. 167 (2) CrPC.' When the facts on record discloses that it is a case of loot and laundering of huge public money in which the accused is also shown to have actively involved, he does not deserve for bail in view of the seriousness of the charges, the material available thereof and the provisions of Money Laundering Act. Section 3 of the Act makes it clear that the offence under the Act will continue till the accused continues to hold proceeds of crime and gets himself involved in the process and activity connected with the proceeds of crime projecting the same as tainted property and in the light of stringent provisions in the Act, Sec. 45 of the Act relating to bail has to be strictly implements by the Court. Therefore bail under that provision can be granted only when the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not to commit any offence while on bail.

BAIL

The concept of bail has a long history and deep roots in England and American law. In medieval England, the custom grew out of the need to free untried prisoners from disease ridden jails while they were waiting for the delayed trials conducted by travelling justices. Prisoners were bailed, or delivered, to reputable third parties of their own choosing who accepted responsibility for assuring their appearance at trial. If the accused did not appear, his bailor would stand trial in his place. Eventually it became practice for property owners who accepted responsibility for accused persons to forfeit money when their charges failed to appear for trial. From this grew the modern practice of posting a money bond through a commercial bondsman who receives a cash premium for his service, and usually demands some collateral as well. In the event of non-appearance, the bond is forfeited, after a grace period of a number of days during which the bonds man may produce the accused in court.

General introduction to bail jurisprudence*: "**Bail, not jail"*** is the general rule in Indian criminal jurisprudence. This is based on the cardinal principle that a person is presumed to be innocent till his conviction. **"Presumption of innocence**" is well recognised in Article 11 of the Universal Declaration of Human Rights (1948). Therefore a person whose personal liberty is curtailed by arrest is entitled to bail. Many of the undertrial prisoners in jails in India suffer at the hands of procedural laws as they are unable to meet the requisite financial requirement for availing bail. In the landmark judgement of Hussainara Khatoon,' it was observed by the Supreme Court that the undertrials suffering in jail were in such a position where no action or application for bail was made, either, because, they were not aware of their right to obtain release on bail or on account of their poverty they were unable to furnish surety and/or personal bond. The plight of these undertrial prisoners is such that they are made to compromise on their personal liberty due to their financial weaknesses, which is a travesty in the face of the principles of social justice, liberty and equality promised by the Constitution of India.

In the words of **Justice V R Krishna Iyer**, the law of *bails 'has to dovetail two conflicting demands namely, on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of a person alleged to have committed a crime; and on the other, the fundamental canon of criminal jurisprudence. The presumption is of innocence of an accused till he is found guilty.* Justice Iyer in the **Gudikanti Narasimhulu** case said "*The issue of*

bail is one of liberty, justice, public safety and burden of the public treasury, all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. In another judgement it is commented by Justice Iyer that the basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the applicant of bail.

In a later point of time, larger bench of the Supreme Court consisting of six judges laid down first principles of granting anticipatory bail in **Gurbaksh Singh'** case re-emphasizing that liberty remarked in a classical way 'A person who has yet to lose his freedom by being arrested asks for freedom in the event of arrest. That is the stage at which it is imperative to protect his freedom, in so far as one may, and to give full play to the presumption that he is innocent."

The guidelines given in this celebrated judgment are thus:

(1) The power under Section 438, Criminal Procedure Code, is of an extra-ordinary character and must be exercised sparingly in exceptional cases only.

(2) Neither Section 438 nor any other provision of the Code authorizes the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far leveled.

(3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

(4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

(5) Where a legitimate case for the remand of the offender to the police custody under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.

(6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the

executive and political power, the discretion under Section 438 of the Code should not be exercised; and

(8) Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

All these landmark cases established a liberal bail philosophy in India's jurisprudence or as Justice D A Desai put it **Bhagirath Judeja'** decision "The trend today is towards granting bail because it is now well- settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted ill his favor by tampering with evidence." Thus, the consistent view of the judicial thought in this country right from **Gurucharan Singh to Susanta Ghosh** is laying emphasis on two parameters for considering grant of bail to an accused. They are (i) likelihood of with his running away and (ii) tampering with the evidence or the witnesses or even with the process of investigation.

Trend of judiciary as can be seen from various pronouncements show that the release of a person accused of an offence on bail is decisive to him as the consequences of pre-trial detention are extremely harsh and vindictive. If right of bail is denied to the accused it would mean that though he is presumed to be innocent till the guilt is proved beyond the reasonable doubt, yet he would be subjected to the psychological and physical deprivation of enjoying normal life. Bail pending trial is a compulsory measure adopted by the Criminal Procedure Code,1973. It is one of the cherished rights, claims or privileges of the accused person. The laws of bail has to dovetail two conflicting demands, namely on one hand, the requirements of the society for being shielded from the hazards of being exposed to the misadventures of accused person; and on other hand, the fundamental canon of criminal jurisprudence viz. the presumption of innocence of an accused till he is found guilty.

The law of bail has its own philosophy and occupies an important place in the administration of justice and the concept of bail emerges from the conflict between the police power to restrict liberty of a man who is alleged to have committed crime, and presumption of innocence in favour of the alleged criminal. An accused is not detained in custody with the object of punishing him on the assumption of his guilt.

Therefore, bail is the device of protecting the fundamental rights of a person who is accused of committing an offence and who is prepared to face trial. The Bail provisions blend the two conflicting claims of individual freedom and interests of justice. The Supreme Court in one of its judgements regarded the 'bail' as a mechanism whereby the state devaluates upon the community the function of securing the presence of the prisoners and at the same time involves participation of the community in administration of justice.

Grounds for Granting and Rejecting Bail:

Bail is a cornerstone of India's criminal justice system, balancing an individual's right to liberty with societal interests in justice. Recent Supreme Court judgments have clarified the grounds for granting and rejecting bail, principles for imposing conditions, and the courts' powers to modify bail orders. This structure ensures a gradation of powers, checks, and balances for the efficient dispensation of justice in criminal matters.

The legal limits for modifying bail conditions in India derive from statutory provisions, judicial precedents, and constitutional principles, emphasizing fairness, proportionality, and judicial propriety. While the Code of Criminal Procedure (CrPC) and the Bharatiya Nagarik Suraksha Sanhita (BNSS) do not explicitly detail a stringent procedure for modifying bail conditions, courts exercise inherent power and discretion with important legal boundaries.

Indian courts have broad but principled power to modify bail conditions, constrained by statutory mandates, judicial discipline, and constitutional rights. Modifications must be justified, proportional, and respectful of going appellate processes to ensure the fair administration of justice.

Grounds for Granting and Rejecting Bail:

When Bail Can Be Granted

Courts in India grant bail considering multiple factors:

- Nature and seriousness of the offence: Non-heinous offences, first-time accused, and lack of direct evidence favour grant of bail.
- Likelihood of absconding or repeating offence: Courts assess flight risk and propensity for re-offending. Lower risks support bail.
- Influence on witnesses or evidence: Bail is considered if the accused is unlikely to tamper with evidence or threaten witnesses.

- Delay in trial or prolonged detention: Excessive pre-trial detention supports bail, as highlighted in Sanjay Chandra v. CBI (2012): “Bail is the rule, jail is the exception”.

When Bail Is Refused /Bail may be rejected for:

- Gravity of allegations: Charges such as terrorism or financial fraud invoke stricter scrutiny, as in *Serious Fraud Investigation Office v Aditya Sarda* (2025), where anticipatory bail was denied for serious economic offences.
- Danger to society or public order: Threat posed by the accused can lead to denial.
- Likelihood of influencing trial: If the accused’s release may undermine the trial process, courts usually refuse bail.

Special legislations like UAPA, NDPS Act, and MCOCA also require courts to find that there are reasonable grounds for believing the accused is not guilty and is unlikely to re-offend (see *Jayshree Kanabar v State of Maharashtra*, 2025 INSC 13).

Imposition of Bail Conditions

When bail is granted, courts impose conditions to prevent misuse:

- Surety and bond requirements: Ensuring the accused’s presence in court.
- Passport surrender or travel restrictions: To check the risk of absconding.
- No-contact orders: Preventing interaction with witnesses or victims.
- Reporting to police: Regular check-ins as a precaution.

The Supreme Court in ***Girdhar Gandhi v State of UP*** (2025) reiterated: “Excessive conditions are as good as refusal of bail”—relevant conditions only, never punitive barriers. In ***Aftab v State of UP*** **(2025),** the Court rebuked prison authorities for technical delays in release and ordered compensation for unwarranted custody after bail was granted.

Power to Modify Bail Conditions

Courts—both trial and appellate—can modify, add, or remove bail conditions:

- Changed circumstances: Fresh facts or compliance can justify relaxation.
- Excessiveness review: Higher courts can quash undue conditions. In *Sangitaben Shaileshbhai Datanta v. State of Gujarat* (2019), imposing scientific tests as bail conditions was struck down as going beyond legal bounds.

- Pending appeals: High Courts must not modify bail already under Supreme Court review—judicial propriety must be maintained (see *Anitha R. Nair case*, 2025).

Trial courts, High Courts, and the Supreme Court retain discretion to update conditions to reflect new developments, always balancing liberty and fair trial.

Recent Landmark Judgments

- *Senthil Balaji v The Deputy Director, Directorate of Enforcement* (2025): Bail cancelled unless the accused resigned from his ministerial post, demonstrating courts' power to employ conditions preventing influence over witnesses.
- *Dhanya M v State of Kerala* (2025): Supreme Court ruled preventive detention is not a substitute for bail cancellation, reaffirming proper process.
- *Mohd Tahir Hussain v State Of Nct Of Delhi* (2025): Interim bail with strict conditions for election canvassing; clear demarcation of permissible activities and travel limits.

The Future of Bail in India

Recent Supreme Court reviews reveal a move toward balancing preventive detention and bail, protecting both individual freedoms and society. Procedural delays and hyper-technical denials are increasingly viewed critically by the judiciary. Future reforms may focus on streamlining bail hearings, enforcing proportional and practical conditions, and prioritizing timely releases*. Indian bail jurisprudence now centers around reasoned judicial discretion, proportionate and fair conditions, and revisability of bail terms when justice demands.*

Key Legal Limits on Modifying Bail Conditions

1. Statutory Basis and Judicial Discretion

- Under Section 439 of the CrPC, the High Court or the Court of Sessions has the authority to impose, alter, or rescind bail conditions based on the interest of justice and the facts of the case.
- Courts must justify any modification, ensuring conditions are not arbitrary, harsh, or excessive to avoid frustrating the purpose of bail.
- Modifications typically occur due to inadvertent mistakes, changed circumstances, or demonstrated compliance by the accused with previous conditions.

2. Legitimate Purpose and Proportionality

- The phrase “interest of justice” used for imposing or modifying conditions is interpreted narrowly, meaning conditions must genuinely advance the trial process or ensure fair administration of justice.
- Courts cannot impose conditions unrelated to these legitimate goals or conditions that are oppressive or irrelevant.
- Changes in investigation progress or accused’s personal circumstances, like health or employment, may justify relaxing restrictive bail conditions.

3. Restraint During Pending Appeals

- Recent Supreme Court rulings emphasize judicial propriety, stating lower courts or High Courts should exercise restraint and avoid modifying bail conditions when an appeal or special leave petition (SLP) is pending before the Supreme Court on the bail order.
- Modifications during such pendency can amount to interference with the appellate jurisdiction and disorder in judicial administration.

4. Limits from Constitutional and Human Rights Perspective

- Bail conditions must respect fundamental rights, including personal liberty (Article 21) and privacy, preventing invasive, excessive, or punitive conditions beyond necessity and proportionality.
- Courts may disallow or alter conditions such as mandatory electronic monitoring or extensive travel restrictions if they infringe on constitutional guarantees without justification.

5. Grounds for Cancellation Versus Modification

- Though related, bail cancellation involves a stricter threshold—such as violation of conditions, fresh offences, or threat to the justice process—compared to modification, which may be a lighter adjustment process.
- Courts distinguish between reasonable adjustments and outright cancellation, ensuring accused are not unduly deprived of liberty while preserving trial integrity.

Successive applications for bail: It is common knowledge that when once a bail application was dismissed, the second application cannot be entertained by the Court when there is no new or changed circumstance entitling the applicant to claim for bail in a non-bailable case. The settled law in this regard is that unless there was any substantial change in the second situation, successive applications for bail ought not to be entertained,” For a successive bail application, there has to be material change in the fact-situation or additional ground or reason for taking a

different view. The change in the material fact-situation would imply not merely a cosmetic change. The principles of res judicata and such analogous principles althoughare not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical systemprevailing in our country.

Bail in non-bailable cases under certain special legislation:

(a) NDPS Act: If the quantity of the narcotic substance involved was of the commercial quantity, the stringent conditions provided in section 37(1)(b) of the NDPS Act will govern the bail application. In such type of cases only the provisions of the Code of Criminal Procedure cannot be invoked. Section 37(1)(b) has imposed two conditions, fulfillment of which is necessary before grant of bail, firstly, the public prosecutor must be given an opportunity to oppose the application for bail and secondly, where the public prosecutor opposes the application for bail, the court must record its satisfaction before releasing the accused on bail that (a) there are reasonable grounds for believing that the accused is not guilty of such offence, and (b) that he is not likely to commit any offence while on bail.

The limitations on granting bail under the NDPS Act are in addition to the limitation under the CrPC or any other law for the time in force.On granting of bail, It is patently clear that no person who is accused of an offence punishable for a term of imprisonment tor five years or more shall be released on bail unless the limitations contained in clauses (1) and (ii) of clause (b) of sub-sec. (1) are satisfied. The limitations in clause (b) of sub-section (1) of Sec. 37 of the Act, so long as they are not in contravention with the later, shall be read along with the limitations contained elsewhere: The Apex Court was of the view that the provisions of the Sec. 37 of NDPS act have overriding effect over the provisions of Sec, 439 CrPC in the case of any inconsistency between them.' Although Section 439 CrPC goes not contain any limitations on the power conferred upon the Sessions court or the High Court to grant bail in any manner, but limitations contained in clause (b) of sub-section (1) of Sec. 37 would still operate of such power of Sessions Court or the High Court as the case may be.' The Supreme Court made it clear that unless conditions enjoined under clause (b) of sub-section (1) of Sec. 37 of the Act are satisfied, bail cannot be granted.

(b) Economic offences: Under the AP Protection of Depositors of Financial Establishments Act, it was alleged that the Chairman, and Directors of the Board of the Bank with a criminal intention and in connivance with each other sanctioned and disbursed several crores of rupees of the bank to various persons violating the rules after accepting the title deeds which are defective in nature and immovable properties which are grossly over-valued, as securities and there by committed fraud and misappropriated the bank funds, bail can be granted to the Director who joined the Board after disbursement of alleged loans.

(c) Section 45 of the Prevention of Money Laundering Act declares that the Offences punishable under that Act are cognizable and non bailable.

Sec.45: Offences to be cognizable and non-bailable: Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court , Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by:

(i) the Director; or ;

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorized, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Bail in sensitive cases-recent trends: In 2G spectrum case, while granting bail to the accused, the important observations made by the Supreme Court are:

1. Even though the accused were charged with economic offences of huge magnitude, if proved may jeopardize the economy of the country, one could not lose sight of the fact that investigation was completed and the presence of accused in the custody is no more necessary;
2. the under trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person detained or arrested is entitled to speedy trial. As the trial may take considerable time in a case where there are several accused persons, and statement of the witnesses runs to several hundred pages and documents relied upon by the prosecution are voluminous; and so, the accused should not be in jail for indefinite period in the interest of justice;
3. Merely because the offences alleged against accused are serious in terms of alleged huge loss to the State exchequer by itself should not deter enlarging the accused on bail when there was no plea from prosecution that the accused, if released on bail, would interfere with the trial or tamper with evidence.
4. There is no reason to detain accused in custody after the completion of investigation and filing of charge-sheet.

Barring this pronouncement, there are certain cases where the bail was refused by Courts on the grounds (i) the individual right of thepetitioner-accused for bail cannot have precedence over larger interest, of the society which is stated to have sustained wrongful loss by way of deprivation of public money of larger magnitude for development any welfare of the people of the State.

In the event of arrest of a person accused/suspected to be involved in committing a non-bailable offence, the question whether the person is to be released on bail or not depends upon the gravity of the offence afd such gravity is required to be considered on the basis of the punishment provided for the offence.

Interim bail: An interim bail permits an accused person to be given bail till the final hearing of the bail application in court. Sections of 437, 438 and 439, of the Criminal Procedure Code, provide that the order of the court granting relief till the final hearing of the bail application is known as interim bail. However, if an accused is already in jail, the provision of interim bail is cancelled. In appropriate cases, the court ishaving adequate power in it to grant interim bail pending disposal of thy final bail application, since arrest and detention of a person can cause. irreparable

loss to a person's reputation, even though arrest is not a must in all cases of cognizable offences as observed by the in Supreme Court in Joginder Kumar case.' In recent times also the Supreme Court approved this principle and granted interim bail under Sec.438 till the disposal of the Special Leave Petition of the accused.

Power to grant bail includes power to grant interim bail.?

While dealing with the application for anticipatory bail under Sec. 438 CrPC, the Court can order interim bail to the applicant, till the decision is given on his regular bail. In the case of a Juvenile against whom offences under Sections 307, 450, 323 and 148 IPC are registered was given interim bail to enable him to appear for examinations

The conclusions of the Court are:

Poor, indigents, young persons, infirm individuals and women are weak categories and the courts should be liberal in releasing them on their own recognizances, put whatever reasonable condition the court may;

Releasing of accused on one's bond is permissible in law.

Sureties from the own district or town of the accused should not be insisted by the courts. Surety may be from any part of India.

Duty of Court accepting the bail bonds: The Judge who has to accept sureties should make due verification as to whether the accused has complied with the conditions of bail order. He has to examine whether the sureties are genuine or not, whether solvency certificates are genuine or not. There should be no hurry or halfhearted verification. For example in a case where in the bail order, a condition was made that the accused should deposit passport. The sureties should not be accepted the passport is deposited. Similarly, where a direction to deposit locker Keys of certain documents was made by the court in the bail order, thesureties shall not be accepted or release order shall not be issued till that condition was complied with. The court cannot impose condition about deposit of cheated amount. It was a case involving cheating and forgery in respect of funds of a bank, the Supreme Court while granting anticipatory bail on verified medical grounds, imposed a condition that the accused would deposit a sum of Rs. 40 lakhs with the bank in four equal monthly installments. This was despite the fact that in the case before the Supreme Court, there were as many as 49 accused persons who were arrested and each one of them had already been enlarged on bail.

It is the duty of the court to safeguard the interest of the victims who have been duped of huge amount. An example may be quoted from a reported judgement where an exercise was made by the learned Judge to fix the amount of bail. Where the investigation reveals that the accused had taken out money from his saving and current account encashed the FDRs and PPF amount was also withdrawn and had mortgaged the properties with the bank in lieu of cash credit limits extended and the bank has taken over those properties and disposed off the same. In these circumstances, it was felt by the court that the reasonable condition of deposit can be imposed upon accused for the grant of bail. Considering the totality of facts and circumstances of the case, the condition of deposit of the alleged cheated amount i.e., fifteen crores as imposed by the Magistrate is reduced to five crores and subject to deposit of one crore with the trial court, the accused is ordered to be released on his furnishing a personal bond of Rs. 50,000/- with one surety of the like amount to the satisfaction of the trial court. The remaining amount of four crores be deposited with the Id. trial court within four months of his release i.e., one crore every month. It was further directed that in default of making deposit, the prosecution will be at liberty to apply for cancellation of bail.' This is an ideal order that can serve as guidance for the trial courts to fix the quantum of amount in bails.

Considerations before court for granting bail: Broadly, it is necessary for the court dealing with an application for bail to consider the following circumstances besides others, before granting bail.

The nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant;

Prima facie satisfaction of the court in support of the charges; Though the courts are required to consider the above circumstances for granting bail, they cannot be considered in isolation ignoring the well settled principles laid down by the Supreme Court from time to time. While considering an application for bail, the court need not search to find out whether there would be evidence against the accused to convict him after trial. While examining the case, the court should not be meticulous in examination of the evidence available on record by then. In an appeal filed against an order granting bail, the High Court is however at liberty to examine whether there is any material on record to come to the conclusion that there is prima facie case made out against the accused, which disentitles him to the bail and as such, the bail granted to them has to be cancelled.

It is pointed out that the Court cannot consider the merits and demerits of the material available on record and also opined that to consider the main materials only for specific purpose to find out whether prima facie case is made out for granting Bail or not, **two paramount consideration for grant of Cancellation of Bail** are to be looked into viz., (i) likelihood of the Accused fleeing from justice; and (ii) tampering with prosecution evidence during the period he was on Bail'. The basic principles emerged from several judgments are

- *Prima facie reasonable ground to believe that the accused had committed the offence;*
- *Nature and gravity of the accusation,*
- *Severity of the punishment in the event of conviction;*
- *Danger of the accused fleeing, if released on bail;*
- *Character, behaviour, means, position and standing of the accused;*
- *Likelihood of the offence being repeated;*
- *Reasonable apprehension of the witnesses being influenced; and*
- *Danger of justice being thwarted by grant of bail;*

It may be kept in mind that for the purpose of granting bail, the words "reasonable grounds for believing" are used in the provision instead of using the words "the evidence" which means, the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected at that stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.'

Cancellation of bail: The object underlying the cancellation of bail is to protect the fair trial and secure justice being done to the society by preventing the accused who is set at liberty by the bail order from tampering with the evidence in the heinous crime. It hardly requires to be stated that once a person is released on bail in serious criminal cases where the punishment is quite stringent and deterrent, the accused in order to get away from the clutches of the same indulge in various activities like tampering with the prosecution witnesses, threatening the family members of the deceased victim and also create problems of law and order situation.

There is distinction between the parameters for grant of bail and cancellation of bail. There is also a demarcation between the concept of setting aside an unjustified, illegal or perverse order of and cancellation of an order of bail on the ground that the accused has misconducted himselfof certain Supervening

circumstances warrant such cancellation. If the order granting bail is perverse or passed on irrelevant materials, it can be annulled by the superior court. In an application for cancellation, conduct subsequent to release on pail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. We, however, agree that while considering and deciding appeals against grant of bail, where the accused has been at large for a considerable time, the post bail conduct and supervening circumstances will also have to be taken note of. But they are not the only factors to be considered as in the case of applications for cancellation of bail.'' However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. As mandated by Section 436.of the Code what is to be ascertained by the officer or the Court is whether the offence alleged to have been committed is a bailable offence and whether he is ready to give bail as may be directed by the officer or the Court. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all.

Section 439(2) of the Cr.P.C. confers jurisdiction on the High Court or Court of Sessions to direct that any person who has been released on bail under Chapter XXXIII be arrested and committed to custody. The **power to take back in custody an accused that has been enlarged on bail** has to be exercised with care and circumspection. But the power, though of an extra-ordinary nature, is meant to be exercised in appropriate cases when, by a preponderance of probabilities, it is clear that the accused is interfering with the course of justice by tampering with witnesses. Refusal to exercise that whole-some power in such cases will reduce it to a dead letter and will suffer the Courts to be silent spectators to the subversion of the judicial process.

Legal analysis: Sec. 436 CrPC provides for the right of a person to move for bail in all cases when a person concerned in a bailable offence is arrested, or detained without warrant by an officer in-charge of a police station or appears before the court and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such court to give bail. Where the accused person has surrendered before the court and moved application for bail, it indicates that the accused 1s prepared to take the risk of the magistrate remanding him to prison and dispose of the bail application either simultaneously with the order of remand or sometime subsequent to the order of remand. Such accused would fall within

the category of persons who were prepared to place themselves under a restraint, the moment the Magistrate accepted thesurrender.' It is assertively held by the Court that the persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing (sic unwilling) to offer bail or to execute personal bonds. There js no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound so release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him.

Import of expression “may” in Sec. 436 (2): Section 436(2) of the Code gives discretion to the Court to refuse to release him on bail when on a subsequent occasion in the same case he appears before the Court or is brought in custody where accused has failed to comply with the conditions of the bail bond as regards the time and place of attendance. The word used in Sub-section 2 of Section 436 of the Code is “may” and not “shall”. However, it does mean that in every case when accused fails to appear, he shall not be enlarged on bail in a bailable offence. The Court has to find out as to whether the non-appearance before the Court was intentional with object to frustrate the trial or was because of some unavoidable circumstances. If Court finds that nonappearance before the trial Court in a bailable offence was not deliberate or mala fide or with ulterior motive or was, in fact, bona fide and for the sufficient reasons, Court must release such an accused of a bailable offence on bail.’

Duty of Police & Court in bailable cases: It is the duty of the Police officer who has arrested the accused or/and the court before whom the accused is produced for remand to inform the accused of his right to obtain bail in the cases of all bailable offences. The only condition that can be imposed in the bail in case of bailable offences is that the accused shall appear for all the hearings. Any condition like prohibiting him to travel abroad is illegal.’ In a bailable case, if bail is granted by court and if the accused is unable to furnish bail within a reasonable time, say one week in a case under Sec. 138 of Negotiable Instruments Act, there is no wrong if the court releases him on his personal bond.” when there is a breach of bond in bailable cases, the court should not issue non-bailable warrant for the arrest of the accused or surety. If that is permitted, it would amount to converting a bailable offence to a non-bailable one. In such cases, the court shall issue bailable warrant only and if the accused or surety enters appearance they shall be released on bail with or without sureties. Refusal of bail to an accused in a bailable

offence is nothing but infringing the right to life guaranteed under Article 21 of the Constitution of India.

Sec.170 (1) CrPC provides for sending an accused before the Magistrate, where after investigation it is found that there are reasonable grounds for proceeding against him This also thus provides that if the offence is bailable and accused is able to give surety, the police officer shall take surety from him for his appearance before the magistrate on a date fixed for his attendance and from day to day before such Magistrate and this also shows that the bail and bonds furnished before the police officer for appearance before the Magistrate are to be taken as a sufficient compliance of submission of bail and bonds. Similarly Sec. 441 (3) CrPC provides that where a person is released on bail or released on his own bond; a person released on bail to appear when called upon by the High Court or the Court of Session. **This provision also suggests that the Code does not contemplate asking the accused to furnish bail and bonds again and again. There is no necessity for the Magistrate to obtain bail bonds against from the accused who was granted bail by the police officer.**

Form No 45 in Schedule II of the CrPC is the form in which the bonds and bail are to be submitted for attendance before the officer in-charge of police station or court. The form is the same whether the bail and bonds are submitted before the police officer or before the court.

When the police officer grants bail and releases the accused in a bailable offence, he is entitled to re-arrest the accused if the medical report subsequent to the bail shows a non-bailable offence is committed.' When the accused was once released on bail in a bailable offence, the court cannot refuse bail to him merely because, the charge-sheet was filed for a non-bailable offence.

Bail to indigent person on personal bond: A perusal of section 436 of the Code shows that there is no provision therein which gives power to the Court to impose any condition while enlarging an accused on bail in a case where bailable offence is alleged. The first proviso of the section lays down that if an accused is indigent and is unable to furnish surety, the Court is under obligation to discharge him on his executing a bond without sureties for his appearance. The explanation to sub-section (1) of section 436 provides that when a person is unable to give bail within a week of his arrest, it shall be a sufficient ground for the police officer or a Court to resume that he is an indigent person for the purposes of this proviso. Thus, the

law makes it clear that when an accused who is alleged of commission of a bailable offence is unable to furnish bail in the form of surety within a week from his arrest, he has to be discharged on his own bond. Thus, not only section 436 (1) but the first proviso and the explanation thereto clearly shown that an unfettered right is granted to be enlarged on bail to a person other than a person accused of non-bailable offence arrested or detained without any warrant by an officer in charge of a police station or when such a person appears is brought before a court.

When the terms of bail are violated by accused in a bailable case, he is not entitled to bail as a matter of right. The right of a person to be released on bail in a case involving bailable offence would not be available if he fails to comply with the conditions of the bond. After having violated the conditions of the bail bond, the accused cannot say that he has an indefeasible right to be released on bail under sub-section (1) of Sec. 436 CrPC. The right of the accused to be released on bail under Section 436(1) would be available only so long as he complies with the conditions of the bail bod. Once he violates the conditions, he forfeits his right under Sec. 436 (1)

Bail to a juvenile: A juvenile who i is accused of a bailable or non-bailable offence "shall" be released on bail or placed under the care of a suitable person/institution. This is subject to three exceptions:

(i) where his release would bring him into association with a known criminal,

(ii) where his release would expose him to moral, physical or psychological danger, or

(iii) where his release would defeat the ends of justice. Even where bail is refused, the ***juvenile is to be kept in an observation home or a place of safety (and not jail).***

Sec. 437 When bail may be taken in case of non-bailable offence:

(1) When any person accused of, or suspected of, the commission of any non bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but (i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death,

imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years:

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm.

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court.

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor -If it appears to such officer or Court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable groundsfor believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or Court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(2) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVI of the Indian Penal Code (45 of 1860) or abetment of, of conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) the Court shall impose the conditions:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such 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 or tamper with the evidence and may also impose, in the interests of justice, such other conditions as if considers necessary.

(3) An officer or a Court releasing any person on bail under subsection (1), or sub-section (2), shall record in writing his or its [reasons or special reasons for so doing.

(4) Any Court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

(5) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(6) If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accusedis not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

(7) Before releasing the accused on bail under sub-section (1) or subsection (2), the Court shall give the prosecution a reasonable opportunity to show cause against such release.

Sec. 437A Bail to require accused to appear before next appellate Court:

(1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.

Section 437, Code of Criminal Procedure provides as to when bail may be taken, in case of non-bailable offences. Sub-section (1) of Section 437, Code of Criminal Procedure makes a dichotomy in dealing with non-bailable offences. Section 437, cannot be read in isolation, it provides for grant of bail in general by different authorities and it is also mentioned about different stages when bail can be granted but other provisions of the Code pertaining to different stages of prosecution will also have to be read while considering the question of power to grant bail by different authorities and Courts at different stages and the scope of exercise of the power.

Offences relating to death or imprisonment for life: The first category relates to offences punishable with death or imprisonment for life and the rest are all other non-bailable offences. With regard to the first category, Section 437(1), Code of Criminal Procedure imposes a bar to grant of bail by the Court or the officer in charge of a police station to a parson accused of or suspected of the commission of an offence punishable with death or imprisonment for life, if there appear reasonable grounds for believing that he has been so guilty. Naturally, therefore, at the stage of investigation unless there are some materials to justify an officer or the Court to believe that there are no reasonable grounds for believing that the person accused of or suspected of the commission of such an offence has been guilty of the same, there is a ban imposed under Section 437(1), Code of Criminal Procedure against granting of bail. Thus, Section 437(1) puts a restriction on the power of a Magistrate to release a person on bail against whom there exists reasonable ground to believe that he has committed an offence punishable with death or life imprisonment. This however, does not mean that for the purpose of deciding the bail applications only the offence punishable with death or life imprisonment shall be treated as offences of grave magnitude.

Thus, a Magistrate has the jurisdiction to consider the prayer for bail of a person accused of commission of a non bailable offence punishable with death or life imprisonment. However, in order to release an accused on bail, the Magistrate is required to record specific finding that there is no reasonable ground for believing that the accused is guilty of an offence punishable with death or imprisonment for life. In view of the embargo provided under Sub-clause (11), the Magistrate entertaining a bail application under Section 437 shall have a very limited scope to consider bail. Powers of the Magistrate while dealing with the

applications for grant of bail, are regulated by the punishment prescribed for the offence in which the bail is sought. Generally speaking if punishment prescribed is for imprisonment for life and death penalty and the offence is exclusively triable by the Court of Sessions, Magistrate has no jurisdiction to grant bail unless the matter is covered by the provision attached to Section 437 of the Code The limiting circumstances the jurisdiction of the Magistrate are evident and apparent ousting of jurisdiction to entertain the application is distinguishable from the exercise of the jurisdiction.

Bail in case of juvenile in a non-bailable offence: According to Section 4 of the Act, a duly constituted Juvenile Justice Board shall pave the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate First Class. Section 12(1) of the Act confers special powers to Juvenile Justice Board to grant bail to juvenile who is accused of a bailable or non bailable offence. The Sec. 12 reads.

Sec. 12 Bail of juvenile:

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Bail to juvenile in conflict with law is governed by Sec. 12 of the Act which provides for his release on bail with or without surety. So much so the objection that juvenile cannot be called upon to execute a bond, On his release on bail is totally relevant and that does not impinge his right to seek bail or anticipatory bail as provided by law.It is manifest that, the above provision provides certain specific

conditions for consideration for releasing the juvenile who is accused in a bailable or non-bailable offence, and the said special authorization begins with “not withstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force.” The said non obstante clause is appended herein with a view to give the enacting part of the section in case of conflict an overriding effect over the provisions of the Code of Criminal Procedure applicable to the case. The said non obstante clause does not take away the various provisions of bail, but only removes various barriers, and authorises that, in spite of the various barriers, the conditions, enumerated under Section 12 of the Act, shall prevail while considering the matter of granting or refusing bail to juvenile, accused of a bailable or non-bailable offence.

Therefore, the non obstante clause, contained in Section 12 of the Act, has overriding effect against those provisions, which empowers Judicial Magistrate First Class or Metropolitan Magistrate to decide the matter of bail, and those relevant provisions are Sections 436 and 437 of the Code of Criminal Procedure. Therefore, although certain barriers and limitations have been imposed under Sections 436 and 437 of the Code of Criminal Procedure for releasing the person arrested or detained or appears or is brought before a Court, yet Juvenile Justice Board, if conditions mentioned under Section 12 of the Act are fulfilled, has power to release the juvenile on bail. The grounds mentioned in Sub-section (1) of Sec. 12 of the JJB Act on which the bail can be refused by the Court are*: If the release is likely to bring him into the association with any known criminal; Exposes him to moral, physical or psychological danger; and, If his release would defeat the ends of justice;*

It is incumbent on the court wherever it is refusing bail to a juvenile on any of the above three ground, to record sufficient reasons with particular emphasis to the fact whether any such ground is existing or not. It is not sufficient to mere quoting few lines from the provision

If a juvenile, accused of a bailable or non-bailable offence, has been refused bail by the Juvenile Justice Board, the person aggrieved has right to file an appeal under Section 52 of the Act within 30 days from the date of such order or after the expiry of the said period if prevented by sufficient cause to prefer an appeal within time, to the Court of Session, and in case the appeal fails, can file revision against the appellate order before the High Court in accordance with Section 53 of the Act, Section 54 of the Act prescribes the procedure for appeals and revisions, and according to that, as far as practicable, the procedures prescribed in the Code bf

Criminal Procedure, 1973 are to be followed. Therefore, a juvenile accused of a non-bailable offence, can approach for remedy available under Section 438 of the Code of Criminal Procedure. The juvenile, accused of a bailable or non-bailable offence, under custody, after exhausting the remedy available under Section 12 of the Act, has option to file application for grant of bail under Section 439 of the Code of Criminal Procedure. The High Court or the Court of Session can exercise not only the powers contained in Sections 438 and 439 of the Code of Criminal Procedure but also the powers conferred on the Juvenile Justice Board being empowered under Section 6(2) of the Act.?

Where the juvenile was involved in a crime the normal rule is that he shall be granted bail. But exception is, if release would bring juvenile in contact with known criminals. Even if a petition is moved for cancellationof bail given to a juvenile, it must be alleged in the petition that the juvenile is tampering with evidence or that he may come into contact with other known criminals. Otherwise, bail shall not be cancelled. Offence involving the juvenile is of heinous nature is not a ground to refuse bail] to him. However, if the juvenile of 15 years committed rape on a minor girl, there is justification for the court to refuse bail to him on the ground that such release on bail would defeat the ends of justice. It is not as though the settled law is that in every case of rape committed by juvenile, bail shall be refused as a rule. It depends on the circumstances of each case. At any rate, the Juvenile Board while refusing bail to juvenile who is alleged to have committed offence under Sec. 376 IPC shall assign ground for believing that release of juvenile was likely to expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. In the absence of reasons, the High Court will generally grant bail.'

If it is a case registered under Sections 302 and 201 IPC, the juvenile shall be granted bail because release of a juvenile in such case on bail would be in his best interest. In this case, before granting the bail, the Court has called for the report of the Probation Officer. But in a similar case, the High Court was of the view that bail cannot be refused to a juvenile in an uncared manner on conjectures and surmises. In this case, the report of the Probationary Officer discloses that there appeared to be reasonable ground for believing that release of juvenile was likely to ring him in association with any known criminals or expose him to moral, physical, or psychological danger. This report was not accepted by the Court to refuse bail to juvenile on the ground that there is no material and no reasonable ground existed for believing such report.° Generally, the courts used to rely upon

the reports of Probationary Officer in cases of Juveniles in the bail applications. Where the conduct of the juvenile was reported to be good in the report, bail used to be granted to the juvenile

Bail to women in non-bailable cases: According to the proviso, bail has to be granted to the women, as if it is a bailable case. But this rule is not absolute as it appears from the line of some recent judgements. Where a woman IAS Officer is involved in granting illegal sanction for mining by interpolating the-words in the GO, the High Court refused bail to her on the ground that the offence alleged has serious ramifications and she may influence the investigation.'

Bail to aged and sick in non-bailable cases: So far the other provisions of the proviso regarding the accused being a woman or sick or infirm, the Apex Court has held time and again that the above proviso does not grant any indefeasible right to a woman accused or sick or infirm accused to obtain bail in a heinous crime.

Yardstick for measuring gravity of offence for the purpose of bail. Quantum of sentence alone cannot be yardstick for measuring the gravity of offence. Another parameter to measure the gravity of offence is the impact of the offence on the society. The offences against body or property generally affect one or few victims, but the economic offences involving exploitation of public offices have a potential to impact the society at large. When a loss Is caused to the State exchequer, every citizen suffers because the money could have been used for the development of the country or for public welfare measures like food, health, education etc. The recent example of such case is B. Ramaraju.The Apex Court has stated that clause (b) of sub Section (1) of Section 37 imposes limitation on granting of bail in addition to those provided under the Code. Two limitations are (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. The said conditions are stated to be cumulative and not alternative. It is stated that the expression “reasonable grounds” means something more than prima facie grounds that it contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence.

The Apex Court observed, referring to Section 37 of the Act that it is to be borne in mind that the legislative mandate has to be adhered to and followed. In a murder case the accused commits murder of one or two persons, While those persons who are dealing in narcotic drugs are instruments in Causing death or in

inflicting deathblow to a number of innocent young victims who are vulnerable; it causes deleterious effects and a deadly impact on the society they are a hazard to the society even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved.

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