Bail matter from G.R. & C.O. (Criminal) Vol-1

1. **Rule 72A (Part I, Chapter X)**
   - Description: In cases where an accused is released on bail, the Magistrate must ensure that the accused executes a bond with sureties to appear before the Magistrate as required and before the Court of Sessions when called upon. The rule emphasizes verifying the solvency of sureties to ensure compliance with bail conditions.
2. **Rule 121 (Part I, Chapter XV)**
   - Description: When an appellate court orders the release of an appellant on bail, the order is sent to the Chief Judicial Magistrate or, if the original order was passed by a court in an outlying subdivision, to the Sub-divisional Judicial Magistrate or the concerned Judicial Magistrate. A copy of the order is also sent to the trial court to ensure proper execution of the bail process.
3. **Rule 187 (Part I, Chapter XVIII)**
   - Description: An application for bail in non-bailable cases must ordinarily be disposed of within 3 to 7 days from the date of the first hearing. If the application is not disposed of within this period, the Presiding Officer shall provide reasons for the delay in the order itself. A copy of the order and any reply to the bail application or status report (by the police or prosecution), if available, shall be furnished to the prison concerned, and the bail order shall be provided by the prison authorities to the accused on the date of pronouncement of the order.
   - The Presiding Officer may, in an appropriate case and at their discretion, require a statement to be filed by the prosecutor in charge of the case.
4. **Rule 398 (Part VI, Chapter VII)**
   - Description: No pleader shall be entitled to make or perform any appearance, application, or act in any criminal case or proceeding on behalf of any person unless they present a written appointment duly signed by that person, their recognized agent, or an agent duly authorized by a power of attorney to act on their behalf, or unless they are instructed by an attorney or pleader duly authorized to act on behalf of the person.
   - Provided that: No such written appointment is necessary for a pleader appointed by the Government or the Court to act, appear, or plead on behalf of an accused or convicted person.

Bail Matters from High Court compendium (Part-I):

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1. General Letter No. 3 of 1986

- Subject: Procedure for hearing of bail matters and granting bail
- Details:
  - Outlines the standardized procedure for subordinate courts in Orissa to handle bail applications.
  - Emphasizes consistent and fair approaches to ensure timely decisions.
  - Provides guidelines for granting bail, considering factors such as the nature of the offense, the accused's background, and compliance with the Code of Criminal Procedure (Cr.P.C.), 1973.
  - Aims to streamline judicial processes and reduce delays in bail hearings.

2. General Letter No. 2 of 1978

- Subject: Preference to cases involving under-trial prisoners
- Details:
  - References Court's letter No. 9402/XXIX-83/72, dated 24th October 1973, which instructs courts to prioritize cases involving under-trial prisoners.
  - Highlights the provisions of Section 167(2) of the Cr.P.C., which mandates timely action on bail applications for under-trial prisoners to prevent prolonged detention without trial.
  - Directs that applications for withdrawal of cases against under-trial prisoners be processed promptly to avoid unnecessary delays.

3. General Letter No. 2 of 1981

- Subject: Safe custody of material objects and bail-related procedures
- Details:
  - Discusses the safe custody of material objects in relation to bail proceedings, ensuring that evidence is preserved during the bail process.
  - Instructs courts to send material objects under safe custody, as outlined in the letter, to prevent loss or tampering during transit.
  - Emphasizes compliance with procedural requirements when handling bail applications involving material evidence.

4. General Letter No. 1 of 1986

- Subject: Recording and distribution of witness depositions in bail matters
- Details:
  - Directs courts to prepare carbon copies of witness depositions at the time of recording to expedite bail hearings.
  - Ensures that these copies are distributed to the concerned parties to minimize delays in the release of accused persons granted bail.
  - Aims to enhance efficiency in bail proceedings by ensuring timely availability of deposition records.

5. General Letter No. 2 of 1983

- Subject: Proper recording of confessional statements under Section 164 Cr.P.C.
-Details:
  - Addresses improper recording of confessional statements under Section 164 Cr.P.C., which can impact bail decisions.
  - Instructs courts to ensure accurate and complete recording of confessions to avoid failures in judicial proceedings, including bail hearings.
  - Stresses the importance of adhering to procedural standards to support fair bail determinations.

6. Letter No. 4583-XLIXD-38/85

- Subject: Bail procedures and compliance
- Details:
  - Reinforces the need for strict adherence to bail procedures by all concerned courts.
  - Issued by Shri J. M. Mohapatra, Registrar (Administration), to ensure that bail-related instructions are followed meticulously.
  - Aims to maintain consistency and compliance with legal standards in bail matters across subordinate courts.

7. Letter No. 5253-XLIX-D15/86

- Subject: Anticipatory bail applications
- Details:
  - Discusses procedures for handling applications for anticipatory bail, as addressed in the District Judges' Conference of 1985 (Item No. 16).
  - Directs District and Sessions Judges to follow specific guidelines when processing anticipatory bail applications.
  - Ensures that courts adhere to statutory provisions under the Cr.P.C. for anticipatory bail to prevent misuse and ensure fairness.

Bail Matters from High Court compendium (Part-II):

1. **Application for Bail under Section 437(1) Cr.P.C. (Circular No. 8443(13)/ 13.09.1991):**
   - Magistrates are cautioned against exceeding their jurisdiction by granting bail to persons accused of offenses punishable with death or imprisonment for life, unless the case falls under the proviso to Section 437(1) Cr.P.C.
   - The principles laid down in Gurucharan Singh & others Vrs. State (Delhi Administration) (A.I.R. 1978 S.C. 179) must be strictly followed. This judgment clarifies that at the initial stage of arrest for serious offenses, bail is generally out of the question unless the Magistrate can act under

the proviso. The position changes as investigation progresses and more facts emerge.

- The High Court or Court of Session has special powers under Section 439(1) Cr.P.C. to grant bail, without the same ban as under Section 437(1). However, it is expected that the High Court or Court of Session will be approached after the accused has failed before the Magistrate and after investigation has shed light on the evidence.

2. **Grant of Anticipatory Bail (Circular No. 1708/ 26.02.1993):**
   - The Supreme Court's decision in Gurbaksh Singh-V-State of Punjab, AIR 1980 SC 1632, broadly defines the operation of Section 438 Cr.P.C. The width of this section should not be curtailed by imposing restraints not intended by the legislature.
   - Considerations for regular bail (Section 437) are distinct from those for anticipatory bail (Section 438), as the latter is invoked *before* arrest.
   - The nature and seriousness of the proposed charges must be considered. Anticipatory bail may be granted if the accusation stems from ulterior motives rather than furthering justice, but not if the applicant is likely to flee from justice.
   - Hearing the Public Prosecutor is necessary before passing an order of anticipatory bail, though an interim order can be passed without notice, provided notice is issued forthwith and the bail question is re-examined.
   - Perusal of the case diary may be necessary depending on the facts, especially if the Public Prosecutor requests it.
   - Courts must be cautious and circumspect in exercising anticipatory bail power, as it intrudes on the sphere of investigation. For murder cases, very compelling circumstances must be shown.
   - The order under Section 438 should be for release on bail in the event of arrest, not an order prohibiting arrest.
3. **Release of Prisoners on Bail (Circular No. 5248(13)/ 23.07.1990):**
   - A revised procedure, effective from August 1, 1990, was adopted for the transmission of Supreme Court orders regarding the release of convicts and enlargement on bail.
   - Such orders are to be conveyed via wireless network to concerned judicial authorities or jails, with formal orders following through normal communication channels.
   - Executing courts should act only upon receipt of the wireless message. If an order is presented without a preceding wireless message, the authority must confirm its authenticity with the Joint Registrar/Additional Registrar of the Supreme Court before processing.

4. **Return of Warrant for Release on Bail (Circular No. 51/ 03.01.1991, Page 48-49 and Circular No. 4378/ 07.06.1999):**
    - Rule 121 of G.R. & C.O. (Criminal) Vol.I states that when an Appellate Court or Court of Revision directs the release of a prisoner on bail, the warrant should be sent to the Chief Judicial Magistrate or Sub-divisional Judicial Magistrate.
    - If the prisoner is unable to furnish bail, the Court receiving the warrant must promptly return it to the Appellate/Revisional Court with an endorsement to that effect.
    - A time limit of 15 days is fixed for the return of the release order by the lower court to the Appellate/Revisional Court, counted from the date of receipt of the order. This 15-day limit also applies to convicts released on interim bail.
5. **Propriety of Handcuffing Under Trial Prisoners after Acquittal (Circular No. 2798/ 18.03.1991):**
    - Under-trial prisoners should not be handcuffed when being taken from Court to jail after pronouncement of a judgment of acquittal in their favor, unless the Public Prosecutor indicates that the U.T.P. is required to be detained in any other case.
6. **Identification of Surety by Advocate (Circular No. 908(13)/ 29.01.1993):**
    - The High Court clarified that an advocate, when identifying a surety for bail, acts within their authorized legal functions.
    - Identification by a lawyer is generally insisted upon to ensure the acceptability of the surety to the court, which is crucial for the smooth functioning of justice.
    - For an advocate to be prosecuted for false identification, it must be proven that the identification was made with the required *mens rea* (guilty mind) as contemplated by relevant sections of the Penal Code. A preliminary inquiry is desirable before prosecuting an advocate for false identification to avoid unfounded prosecutions.
7. **Filing Fresh Bail Bond by Surety after Commitment (Circular No. 3639/ 15.04.1993):**
    - No fresh bail bond is required to be filed by the surety in the Court of Session after commitment if the accused had already been released on bail in the lower court and had furnished a bail bond in Form No. (M) 83. This is in line with the Supreme Court's decision in Free Legal Aid Committee-v-State of Bihar (A.I.R. 1982, Supreme Court, 1463).

8. **Modalities for Granting Bail (Circular No. 6627/Dated 17.07.1998):**
    - To counter professional and fictitious bailers, specific guidelines are prescribed:
        - Preferably, bailors should be blood relatives of the accused. If not solvent or unwilling, the accused must satisfy the court, and then bailors should preferably be from the same village, Panchayat, Sub-Division, or District.
        - If an outside-district bailor is chosen, they must explain their acquaintance with the accused in an affidavit, and the accused must provide convincing reasons for choosing an outside bailor.
        - Ordinarily, bail should not be granted if the accused has jumped bail and surrenders without satisfying the court with unavoidable circumstances for non-attendance.
        - When an accused is arrested for jumping bail, the Magistrate should not be liberal in granting bail.
        - Orders to continue on previous bail should not be passed without the bailor's knowledge.
        - A miscellaneous case against the bailor(s) and accused should be initiated without delay on the day the accused jumps bail.
        - Bailors must state in their affidavit whether it's their first time standing surety or if they have previously acted as bailors in other cases.
        - Presiding Officers must scrupulously follow Sections 437, 438, 439 Cr.P.C. regarding conditions for granting bail.
        - Sessions Judges and Chief Judicial Magistrates should periodically verify bail jumping cases during inspections to ensure proper application of judicial mind and action against defaulting bailors and accused.
9. **Non-release of NDPS Accused on Bail (Circular No. 8919(13)/ 20.10.1992):**
    - Sessions Judges should not release persons accused under the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) on bail if the requirements of Section 37 of the Act are not fulfilled, even if relying on decisions like Bidyadhar-V-State, 1992 (5) OCR 31. The latter case granted relief under Section 482 Cr.P.C. (High Court's inherent power), which is not available to a Sessions Judge for bail applications under Section 439 Cr.P.C.
10. **Suo Moto Criminal Misc. Case No. 1949 of 1992 (Circular No. 222/ 12.01.1993):**
    - This circular emphasizes that even in cases involving "small quantity" under Section 27 of the NDPS Act, the requirements of Section 37 (1)(b)

are applicable at the bail stage. Section 27 is a "punishing section" that applies during final trial, not at the bail stage. Therefore, the rigor of Section 37 (1)(b) applies to offenses under Section 20(b) of the NDPS Act, which carries a punishment of five years or more.

11. **Implementation of Sections 436(1) & 436(A) Cr.P.C. (Circular No. 7749(14)/ 09.09.2008):**
    - Instructions for the release of indigent prisoners on personal recognizance (P.R.) bond without sureties, and the release of prisoners on P.R. bond who have already undergone one half of the maximum period of punishment for the offense.
12. **Compliance of Supreme Court Order on Bail (Circular No. 2761(30)/ Dtd. 16.02.2023):**
    - In cases where an under-trial or convict requests to furnish bail bond or sureties once released, the Court may consider granting temporary bail for a specified period to facilitate this.
    - If bail bonds are not furnished within one month of bail grant, the concerned Court may *suo moto* take up the case and consider modifying/relaxing bail conditions.
    - Courts should not impose the condition of local surety, as it often delays the release of accused/convicts.
13. **Transfer of Bail Application under Section 439 Cr.P.C. (Circular No. 5261(30)/Dtd.29.03.2023):**
    - This circular addresses the transfer of bail applications filed under Section 439 Cr.P.C. to other Sessions Courts by the Sessions Court (I/c).
14. **Disposal of Applications under Section 438 Cr.P.C. (Circular No. 5274/ 29.03.2023):**
    - This circular specifically instructs on the disposal of anticipatory bail applications.
15. **Compliance with Supreme Court Directions on Bail Matters (Circular No. 6320/24.04.2023):**
    - The Supreme Court expressed concern over the disproportionately large number of under-trial prisoners unable to comply with bail conditions and emphasized the need for special steps.
    - It directed full compliance with previous Supreme Court judgments, including Arnesh Kumar Vrs. State of Bihar[(2014)8 SCC273], Sidharth Vrs. State of UP[(2021) 1SCC 676], and Bhim Singh Vs UOI [(2015) 13 SCC 605], especially regarding bail matters under Section 440 Cr.P.C.

Modalities to Be Followed When Granting Bail to Accused Persons

(a) In cases where there is apprehension that the accused may abscond, the bailor(s) should preferably be a blood relative of the accused. If the bailor(s) is/are not solvent up to the bail amount or unwilling to act as surety, the accused must satisfy the Court on these points. In such cases, the bailor(s) should preferably be from the same village, panchayat, sub-division, or district as the accused, in that order. If the accused proposes a bailor from outside their district, the bailor must include in their affidavit, to the satisfaction of the Court, details of how they became acquainted with the accused. Additionally, the accused must provide a written explanation, with convincing reasons, for choosing a bailor from outside their district.

(b) Bail should not ordinarily be granted when the accused has previously absconded and surrenders after action is taken for non-attendance in Court, unless the accused satisfies the Court with valid reasons for their absence due to unavoidable circumstances.

(c) In cases where the accused is brought under arrest after absconding, the Magistrate should exercise caution and not be liberal in granting bail.

(d) If the bail bond(s) has/have not been forfeited and the accused seeks to continue on the previous bail, the Presiding Officer should not pass an order to continue the previous bail without notifying the bailor(s).

(e) On the day the accused is found to have absconded, a miscellaneous case against the bailor(s) and the accused should be initiated without delay.

(f) The bailor(s) must state in their affidavit whether they are acting as sureties for the first time or have previously acted as bailor(s) in one or more cases.

(g) When verifying solvency, if the property is registered in the name of the bailor's/bailors' father(s), the bailor(s) must state in their affidavit whether their father(s) is/are deceased. If the father(s) is/are alive, only the current market value of the bailor's/bailors' share(s) of the property should be considered for solvency verification.

(h) When a document related to immovable property is recorded jointly in the names of two or more persons, only the share(s) of the bailor(s) should be considered for solvency verification.

(i) The bailor(s) must declare in their affidavit that the land mentioned in the document has not been sold, mortgaged, or transferred in any manner, that they are in possession of the land, and that there is no ongoing litigation concerning it.

(j) Homestead land with houses should not be considered when verifying solvency. However, if the bailor(s) owns multiple houses, has rented out one or more, and is solvent to the bail amount, they may be accepted as bailor(s).

(k) The Presiding Officer, while verifying records, should affix the Court seal, case number, and their signature to ensure the elimination of professional bailors.
(l) One photograph of the bailor(s) should be affixed to the bail petition to identify them if they seek to act as bailor(s) for other accused persons in the future.
(m) If the bailor(s) possesses a voter identity card(s), they may not need to affix a photograph to the bail petition, provided the identity card is produced before the concerned Magistrate for verification of solvency.
(n) If the bailor(s) claims to be a government servant(s) or employee(s) of a recognized institution, they must produce a pay certificate issued by a competent authority.
(o) The Presiding Officer may ask questions, such as the names of the accused's relatives, prominent persons in the accused's area, or other questions within the legal framework, to determine whether the bailor(s) is/are genuine or professional.
(p) While considering bail, the Presiding Officer, taking into account the gravity of the offense, should set a bail amount that is not arbitrarily low.