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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **JUDICIAL DISCRETION IN GRANTING BAIL: AN ANALYSIS OF POLITICAL AND CELEBRITY BIAS IN HIGH-PROFILE CASES**

AUTHORED BY - SANJALI GARG

II Year B.A., LL. B – Semester-IV (2025)

Symbiosis Law School, Pune

## **ABSTRACT**

Bail constitutes one of the fundamental pillars of criminal justice. While designed to be impartial, judicial discretion in bail adjudication has more often than not exposed systemic biases against politicians and celebrities which violate the constitutional promise of equality before law.

This paper will examine how India's bail jurisprudence, particularly under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, besets such disparities by means of subjective judicial discretion. The study undertakes an analysis of landmark cases contrasted with the case of an ordinary accused to bring out how high-profile individuals manage expedited bail or parole while the marginalized groups are subjected to punitive pre-trial detention.

After a real-time evaluation, this paper suggests structured bail guidelines, risk-assessment tools, and transparency measures that would result in appropriate reforms to ensure that our system functions within the scope of constitutional safeguards under Articles 14 and 21.

*Key words: bail, BNSS, high-profile, politicians, celebrity, judicial discretion, guidelines, constitutional safeguards*

## 1. INTRODUCTION

The term “bail” derives its existence from the French word ‘baillier’ meaning to convey. It constitutes an essential element of the criminal justice system across all jurisdictions.<sup>1</sup>

Depending on the stage of criminal trial, the types of bail are –

- Regular Bail – Granted under the procedural law to a person arrested and kept in police custody.
- Interim Bail – Granted for a certain period of time before the hearing of an ordinary or anticipatory bail.
- Anticipatory Bail – Application for bail on apprehension of being arrested for a non-bailable offence.
- Statutory Bail – Also known as default bail, it can be granted under the BNSS when the police fail to file a report within the stipulated period.

### 1.1 Research Problem

Despite the existence of principles of equality before law and presumption of innocence, there is an apparent judicial discretion in the granting of bail which is inconsistent especially in high-profile cases involving politicians or celebrities. This alleged influence of societal status and media coverage raises concerns about fairness and judicial independence, since it also undermines public confidence and raises questions on the uniform application of laws. This analysis becomes even more pertinent in the context of the Bharatiya Nagarik Suraksha Sanhita, 2023, which seeks to streamline criminal procedures but also retains the discretionary power of the judiciary in pre-trial processes, more importantly bail.

### 1.2 Research Objectives

- To study the legal provisions governing bail and judicial discretion under the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, and evaluate whether they prevent bias adequately in high-profile cases.
- To critically evaluate landmark judicial precedents on bail involving influential personalities and identify inconsistencies in judicial reasoning.
- To assess the societal impact of the perceived judicial bias in bail decisions, on public confidence in the criminal justice system.

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<sup>1</sup> Dakshq Baweja, *Judicial Discretion in Grant of Bail*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

- To propose reforms for minimizing arbitrariness in adjudication of bail applications, ensuring fairness, and restoring institutional credibility.

## 2. CRITICAL ANALYSIS OF THE PROBLEM

*“Bail is the law, and prison is the exception” ~ Justice V.R. Krishna Iyer*

Bail jurisprudence refers to the evolving body of legal doctrines, statutory provisions, and judicial precedents that govern the temporary release of an accused person during the pendency of trial or investigation.<sup>2</sup> The evolving nature of heinous crimes has transformed the criminal justice system from the ‘*presumption of innocence*’ to ‘*presumption of guilt*’ resulting in adverse effects on pre-trial procedures. This denial of bail is a curtailment of individual freedom and a violation of the principles of fair trial.<sup>3</sup> Incarceration in huge numbers is a major problem that Indian Criminal Justice system is facing today. Bail is one of the pioneering mechanisms, creating institutional divisions based on income groups.

The salient considerations to be weighed by the court in the contemplation of granting or refusing a bail application include:

- Nature of the Offence as being a petty, serious or heinous crime
- Prime Facie observation of an incidental, accidental or intentional commission
- Antecedents pertaining to social standing and credentials of the Offender
- Probability and stakes as to abide by the process of trial, or a possibility of abusing the given concession by tampering with the evidence.<sup>4</sup>

Bail today has been made inaccessible to those who do not possess the means to fulfill the monetary requirements for furnishing surety. While this has proved detrimental for the vulnerable sections of society, contemporary dialogue has given rise to debates on the judicial discretion in the granting of bail in high-profile cases involving politicians and celebrities.

It is often the reliance placed on these subjective factors which leads to inconsistent outcomes in bail applications. There are growing concerns over the disproportionate harm that monetary bail causes to the marginalized groups of society while favoring the wealthy defendants who can afford executing sureties and bail bonds. Non-compliance with court directions due to lack of funds and free facilities further increases the risk of additional charges or pretrial detention.<sup>5</sup>

<sup>2</sup> An Analytical Study of Bail Jurisprudence and the Discretionary Power of Court Relating To Bail in India, 2 IJHSSM 45 (2021).

<sup>3</sup> V. Reen, *Proof of Innocence Before Bail: Amendments Required*, 37 J. Indian L. Inst. 256, 256–60 (1995).

<sup>4</sup> Adv. Naveen Rao, *Bail or Jail: A Balance of Absolute and Limited Judicial Discretion* (Prowess Publishing 2019).

<sup>5</sup> Jenny E. Carroll, *Beyond Bail*, 73 FLA. L. REV. 143 (January 2021).

It is argued that those with political and social capital are more likely to be backed by the law due to considerations of public perception, political pressure and status in the granting of bail. In India, the judicial mechanism may be subjected to media pressure and executive intervention in cases involving influential persons, either in the political arena or other distinguished fields. It is settled that politicians and celebrities would demand for legislative changes and selection of judges of their choice if they are controlled by the high rates of detention and conviction, faced by the low-income defendants.<sup>6</sup>

### 3. LEGAL FRAMEWORK AND JUDICIAL PRONOUNCEMENTS

#### 3.1 Statutory Recognition

##### 3.1.1 Bail under BNSS

The Code of Criminal Procedure (CrPC), 1973, now replaced by the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 serves as the foundational law, with Chapter XXXIV under the BNSS comprised of Sections 479–498 outlining the general principles of bail and bonds.<sup>7</sup> Section 437 of the Code of Criminal Procedure (CrPC), 1973<sup>8</sup> dealt with the conditions of bail in non-bailable offenses. It has now been included under **Section 482 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**<sup>9</sup> enforced recently. It provides for the circumstances in which bail can be granted to an accused person in a non-bailable offense, subject to fulfillment of certain requisites. The accused cannot be released on bail if there are reasonable grounds to believe that he/she has committed an offence punishable with life imprisonment or death, or if the person has been previously convicted for the commission of a cognizable offence.

Exceptions are laid down if the person so accused is a woman, minor or sick. An opportunity of hearing must be given to the Public Prosecutor before granting bail in cases of serious offences. Bail is furnished by executing sureties or a personal bond on fulfilment of criteria. Additionally, if the trial before a Magistrate with respect to a non-bailable offence does not conclude within 60 days, the accused is entitled to bail.

##### 3.1.2 Bail under Special Legislations

In the Indian jurisprudence, the provisions for bail are incorporated under various special laws

<sup>6</sup> Samuel R. Wiseman, *Bail and Mass Incarceration*, 53 GA. L. REV. 235 (Fall 2018).

<sup>7</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter XXXIV, No. 46 of 2023 (India).

<sup>8</sup> Code of Criminal Procedure, 1973, § 437, Act No. 2 of Parliament, 1974 (India).

<sup>9</sup> Bharatiya Nagarik Suraksha Sanhita, 2023, § 482, No. 46 of 2023 (India).

with differing stringency reflecting the nature of offence and legislative contemplation of the same. These include the Unlawful Activities (Prevention) Act (UAPA), 1967<sup>10</sup> and Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985<sup>11</sup> which overturn the presumptive nature of bail and impose stricter conditions on the accused, requiring proof of no prima facie case to be presented, in contrast to the ordinary criminal law.

Alongside this, the Prevention of Money Laundering Act (PMLA), 2002<sup>12</sup> attaches dual conditions on the granting of bail, furthering the interests of the prosecution. Collectively interpreted, these statutes assimilate into a system of stratification where accessibility to bail is complicated depending on the provision invoked, deepening the gap between the most vulnerable segments and the prominent populations, such as celebrities and politicians, who take a free hand in exploiting the resources of legal aid found circumvented legal norms.

### **3.2 Judicial Precedents**

In *Govind Prasad v. State of West Bengal*<sup>13</sup>, the Court held bail to be a judicial function. The discretion of the court cannot be arbitrary. It must be exercised within the confines of Section 437 of CrPC taking into consideration the nature of offence, the severity of punishment and the potential tampering of evidence. The Courts reserve the right to impose additional limitations in the interest of justice.

The disparity between the treatment given to big names and other ordinary people in the criminal justice system can be highlighted through the case of *Sanjay Dutt v. State*<sup>14</sup>, wherein Sanjay Dutt was convicted under The Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA Act)<sup>15</sup> for his contribution in the 1993 Mumbai shootout by illegal possession of arms. While in jail, he was given parole more than six times due to family reasons and had to serve only a 5 out of the 6-year awarded imprisonment period. This flexibility was justified by the Supreme Court on grounds of good conduct, while critics perceived it as a celebrity privilege. This must be contrasted with the feat of other TADA convicts whose sentences have been strictly executed.

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<sup>10</sup> Unlawful Activities (Prevention) Act, 1967, Act No. 37 of 1967 (India).

<sup>11</sup> Narcotic Drugs and Psychotropic Substances Act, 1985, § 37, Act No. 61 of 1985 (India).

<sup>12</sup> Prevention of Money Laundering Act, 2002, Act No. 15 of 2003 (India).

<sup>13</sup> *Govind Prasad v. State of West Bengal*, 1975 SCC OnLine Cal 169.

<sup>14</sup> *Sanjay Dutt v. State through CBI, Bombay (I)*, (1994) 5 SCC 402.

<sup>15</sup> Terrorist and Disruptive Activities (Prevention) Act, 1987, Act No. 28 of 1987 (India).

### 3.2.1 Politically Sensitive Cases

A widely publicized case of judicial discretion and bail which caught the attention of all was the *arrest of Arvind Kejriwal by the Enforcement Directorate (ED)*<sup>16</sup> for alleged corruption and money laundering in the Delhi Liquor Policy Scam of 2022. He was purported to have colluded with his ministers for providing preferential treatment to certain entities in the liquor business. On filing of a bail application, the Delhi High court stayed the bail order given by the Trial Court in his case. Subsequently, the matter appeared before the Supreme Court in appeal. While unanimously granting interim bail to Kejriwal citing the right to liberty under Article 21 of the Constitution of India<sup>17</sup>, the division bench gave a split verdict on the validity of arrest. This landmark judgment highlights the ponderance on need and necessity of arrest in the granting of bail. It also reiterates compliance with the procedure of arrest under Section 35 and Section 36 of BNSS, 2023.

The coinciding of Kejriwal's arrest with the election season raised concerns over the potential misuse of CBI and ED against opposing political leaders. The judgment revived debates on the influence of political unions in judicial decisions. Caught between the different narratives, the public gradually loses trust in these public institutions.

In the *2G Spectrum case*<sup>18</sup>, high-profile politicians and corporate executives were accused of selling 2G spectrum licenses at low cost leading to a huge loss in the government revenue. The appellants herein were denied bail by the Delhi High Court on account of the grave economic offence. They appeared before the Supreme Court which granted bail stating that long incarceration without conducting the trial is a violation of Article 21 of the Indian Constitution. The judicial leniency shown by the court towards influential figures in this case is noteworthy since it prioritized individual liberty over the severe nature of allegations against the appellants. This is a conferred privilege which is beyond the reach of non-elite defendants in most cases.

### 3.2.2 Emerging Dualism

Numerous cases can be cited to showcase the two tracks that the legal system functions today, one for influential persons and another for ordinary citizens. Luminaries often benefit from expedited bail hearings such as that in *Aryan Khan's conflict with the Narcotics Control*

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<sup>16</sup> Arvind Kejriwal v. Enforcement Directorate, (2024) 9 SCC 577.

<sup>17</sup> INDIA CONST. Art. 21.

<sup>18</sup> Sanjay Chandra v. CBI, (2012) 1 SCC 40.

*Bureau*<sup>19</sup> where he was granted bail after three weeks of intensive hearings. Judicial leniency is exercised in such cases with due consideration given to a holistic list of aspects.

Common people on the other hand, become victims of systemic delays and punitive pre-trial detention. A reference can be made to *Neeru Yadav v. State of Uttar Pradesh*<sup>20</sup>, where the Supreme Court was posed a question about the incorrect application of the principle of parity by the High Court in granting bail. The apex court set aside the order of the High Court by recognizing the severity of the offences and the past criminal record of the concerned accused, who was directly involved in the commission of the offence. It thus clarified that parity signifies treating the co-accused equally in similar circumstances. It also emphasized on the judicial discretion in deliberating over bail by ensuring the integrity of the constitutional process.

## 4. COMPARATIVE STUDY

### 4.1 United Kingdom

Bail in the United Kingdom is governed by a codified and structured framework under the **Bail Act, 1976**<sup>21</sup>. It is an evolving legislation which incorporates provisions to increase the chance for defendants to be remanded to bail than being kept in custody. For this, it creates a general right to bail, wherein an accused is granted bail in an offense unless contrary factors are shown to exist. There is an expanded scope of application of the principle of presumption in favor of bail in less serious as well as grave offences. The Act explicitly lays down the grounds on which bail can be denied to the accused.<sup>22</sup>

Monetary payments do not have a huge role to play in the granting of bail since these amounts are often not found to be excessive. This reduces the possibility of influence by politically powerful and famous people. While addressing the concept of court bail, there is an outline of the separate provision of police bail within the Act, which empowers the police to grant pre-charge and post-charge bail to a suspect in a crime.<sup>23</sup>

### 4.2 United States

The American Bail system is not governed by a national codified statute, rather it is a

<sup>19</sup> NCB v. Aryan Khan, 2021 SCC OnLine Dis Cr (Bom) 4.

<sup>20</sup> Neeru Yadav v. State of U.P., (2014) 16 SCC 508.

<sup>21</sup> Bail Act 1976, c. 63 (UK).

<sup>22</sup> *Bail*, 26 Int'l & Comp. L.Q. 686 (1977).

<sup>23</sup> Richard Stone, *Police Bail Without Charge: The Human Rights Implications*, 68 Cambridge L.J. 128 (2009).

culmination of federal statutes, state laws and judicial rulings. It has had a complicated history characterized by several criticisms which have eventually been transferred into progress protecting.<sup>24</sup>

Various federal laws have been enacted to give effect to the rights of people in the process of receiving a bail, gradually also available to those who lack the financial means to do so, thereby bridging differences between the well-offs and the low placed.

The Eighth Amendment to the US Constitution<sup>25</sup> protects the rights of individuals by restricting excessive bail, heavy fines and unduly harsh penalties against social tolerance on the offenders. This Amendment is essentially the implementation of the text from the English Bill of Rights in the American legal system. It operates as a limit to the unchecked powers of the federal government in the treatment of different defendants.<sup>26</sup>

## 5. SUGGESTIONS

### 5.1 The 268th Law Commission of India Report (2017)

#### **Amendments to the Criminal Procedure Code (CrPC) – Provisions Relating to Bail<sup>27</sup>**

For the speedy release of undertrials, the report directs their automatic release on statutory bail after serving half the imprisonment sentence for the alleged offence. Poverty and inability to furnish sureties should not be the sole ground of continued detention.

It also recommends the development of risk assessment tools to assist judges in deciding bail applications on an objective criterion. A national database can be created to track bail applications and judicial decisions to increase transparency and conformity in different states. A review of the stringent bail conditions under special laws such as the NDPS Act must be conducted to make sure that these provisions are in consonance with constitutional standards and do not violate the fundamental rights under the Constitution.

<sup>24</sup> Hans Zeisel, *Bail Revisited*, 4 American Bar Foundation Research Journal 769 (1979).

<sup>25</sup> U.S. Const. amend. VIII.

<sup>26</sup> J.N. Mitchell, *Bail Reform and the Constitutionality of Pretrial Detention*, 55 Virginia Law Review 1223 (1969).

<sup>27</sup> LAW COMMISSION OF INDIA, REPORT NO. 268: Amendments to the Criminal Procedure Code (CrPC)– Provisions Relating to Bail, (2017).

### 5.2 Reimagining Bail as an Instrument of Liberty

The future of an equal justice mechanism lies in the promotion of a remedial interpretation of bail provisions as instruments of liberty rather than means of punishment. A liberal construction must be adopted to give effect to the intention of the legislature which is to safeguard all persons within the criminal justice process, irrespective of their economic or political status.

### 5.3 Uniform Bail Law in India

Bail laws can be streamlined within the country by enacting a comprehensive bail legislation for consistent outcomes of bail applications throughout India's judicial landscape. These explicit provisions will help standardize procedures and provide required assistance, thus limiting disparate decisions by judges in individual cases involving similar circumstances. Anticipatory bail and statutory bail should also be brought within the uniform legislative scope of the law.

### 5.4 Judicial Administration in High- Profile Cases

Judicial management of high-profile cases must begin with the selection of a right judge to adjudicate the case. It is also advisable to have a back-up judge in lengthy trials to take over in cases of sickness or unavailability. The physical surrounding in which the proceedings are conducted affect the conduct of the parties, particularly in cases involving influential public personalities. These setups should also include technological features to give option for video conferencing and remote presentation of evidence. The coverage of proceedings, spectators and media presence should be pre-regulated.<sup>28</sup>

## 6. CONCLUSION

The bail regime in India, despite being founded on the principles of liberty and equality, operates under an uneven playing field where political influence and celebrity status are conveniently placed above legal merit. Cases like Sanjay Dutt (lenient parole) and Arvind Kejriwal (bail in election season) show how judicial discretion is tilted towards the elites while undertrials like languish due to systemic neglect.

The BNSS, 2023, though progressive, needs to include standardized reforms to replace the

<sup>28</sup> Gerald T. Wetherington, Hanson Lawton & Donald I. Pollock, *Preparing for the High Profile Case: An Omnibus Treatment for Judges and Lawyers*, 51 FLA. L. REV. 425 (July 1999).

interplay of subjective discretion. There is a dire need of review of bail outcomes for like offenses across socioeconomic groups. As India moves toward modernization of procedures, there should be a recalibration of bail to serve the ends of justice rather than granting privileges to some segments. This will help restore public confidence in judicial impartiality.<sup>29</sup>

## 7. BIBLIOGRAPHY



<sup>29</sup> Madhav Saxena, *Critical Analysis of Bail Trends Prevalent in India in Comparison to Other Jurisdictions*, 6 IJLMH ISSN 1422 (2023),