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# **BAIL BEFORE BARS: A CONSTITUTIONAL PERSPECTIVE**

AUTHORED BY - MANSIRAT KAUR SANDHU<sup>1</sup>

## ***Abstract***

*The principle that “bail is a rule and jail is an exception” underpins human liberty, individualism & presumption of innocence in legal system. It says that most accused are entitled to bail as long there is no good reason to not grant it. It comes from the assumption of innocence, which ensures that people are not unnecessarily sent to prison onto a trial. The main reason behind its priority is to reduce the crowding in our jails and make sure that with other things prevalent within his/her life, an accused should also prepare for the defence of the case. The jurisprudential essence of the above principle lies in balancing the individual and the societal interest. An offence is considered to be a wrong against the society as it shakes the societal conscience and stability and therefore it is in the societal interest that the culprit shall be found out and should be punished and for that purpose a proper and effective investigation is essential for which keeping the accused in custody may be required. On the other hand right to life and personal liberty as enshrined in article 21 of the constitution is guaranteed to every individual therefore it is in the individual’s interest that without having been proven guilty, he shall not be kept in custody. His right to dignity, right to reputation and right to physical and mental wellbeing are involved. However no fundamental right is absolute and if in the societal interest the personal liberty of the accused has to be curtailed then that will be allowed and therefore it is said that in some exceptional circumstances only a person can be detained in custody and be deprived of his fundamental right of bail and not in every case.*

## **INTRODUCTION**

Bail is a fundamental component of criminal law, serving as a bridge between individual liberty and the state’s interest in justice. In India, the principle that “bail is the rule, jail is the exception” reinforces the presumption of innocence, a cornerstone of democratic societies. This principle ensures that detention before conviction remains limited, aligning with Article 21 of

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the Indian Constitution, which guarantees the right to life and liberty. The word "bail" comes from the old French verb "baillier," which means "to give or deliver."<sup>1</sup> The Criminal Procedure Code (henceforth referred to as the CrPc) does not define the term bail. Despite this, the term "bail" has been used multiple times in the Cr.P.C. and continues to be a key component of the criminal justice system in accordance with the fundamental values enshrined in Parts III and IV of the Constitution as well as the protection of human rights as stipulated by international treaties and covenants. Bail is defined as "the setting free of the defendant by releasing him from the custody of law and committing him to the custody of his sureties who are obligated to produce him to appear for his trial at specific date and time."<sup>2</sup>

### **DEFINITIONS**

- According to *Halsbury's Laws of England*: "The effect of granting bail is not to set the defendant (accused) free, but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of the law and he will then be imprisoned"<sup>3</sup>.
- According to *Black's Law Dictionary*, what is contemplated by bail is to "procure the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court."<sup>4</sup>
- *Wharton's Lexicon*<sup>5</sup> and *Stroud's Judicial Dictionary*<sup>6</sup> defines bail as "the setting free of the defendant by releasing him from the custody of law and entrusting him to the custody of his sureties who are liable to produce him to appear for his trial at a specific date and time."

### **MEANING AND CONCEPT OF BAIL**

According to the dictionary, "bail" refers to a security for a prisoner's attendance in order to be released. According to etymology, the word comes from the old French verb "bailer," which

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<sup>2</sup>Iyer, v. R. Krishna. "CODE OF CRIMINAL PROCEDURE I." *BAIL*, [www.iilsindia.com/studymaterial/320679\\_1601207180.pdf](http://www.iilsindia.com/studymaterial/320679_1601207180.pdf).

<sup>3</sup> Halsbury's Laws of England, , Vol II para 166 ( 4th Edn., 1998)

<sup>4</sup> Black's Law Dictionary 177 (4th ed.)

<sup>5</sup> Law lexicon by Ramanth Iyer, (3rd ed).

<sup>6</sup> 4th Edn., 1971.

means "to give" or "to deliver." However, another theory holds that the word's origin is the Latin word "baiulare," which means "to bear a burden." Bail is a conditional liberty.

The term "bail" literally means "surety.". Therefore, bail means being released from custody, either with sureties or on a personal bond. Bail is based on financial assurance, either through third-party sureties or one's own assurance (also known as personal bond or recognition). In the Moti Ram case<sup>7</sup>, the Supreme Court reaffirmed this term as well. In layman's terms, bail refers to an arrested person's promise or assurance to appear before a competent court at a designated time and location. The primary laws establishing criminal proceedings in India, Chapter XXXIII of the CrPC, contains the legal requirements governing bail. An individual's right to liberty and his right to be presumed innocent until proven guilty are at odds with society's desire to uphold law, order, and security in the idea of bail. A person may experience severe problems while in jail awaiting the outcome of their trial, such as losing their freedom and means of support. The purpose of detaining an accused individual before or during the trial is not punishment, but rather

- a) preventing the accused from committing the same offense twice
- b) requesting the accused's presence during the trial
- c) preventing the destruction of evidence.

Therefore, the stance on bail can be summarised as that which was decided in *Vaman Narain Giya v. State of Rajasthan*<sup>8</sup>, "Bail" is still interpreted as a way to express one's liberation from restrictions imposed by the state. The idea of bail has been incorporated into the framework of human rights since the 1948 UN Declaration of Human Rights, to which India is a party. Therefore, bail can be seen as a way for the state to entrust the community with the responsibility of ensuring the inmates' presence while also involving the community in the administration of justice.<sup>9</sup>

### **OBJECTIVES OF BAIL**

- a) The main goals of the accused person's arrest and detention are to guarantee his presence at the trial and to make sure he is accessible to accept the punishment in the event that he is found guilty. It would be unreasonable and unfair to deny the accused

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<sup>7</sup> 7(1978) 4 SCC 47.

<sup>8</sup> (2009) 2 SCC 281.

<sup>9</sup> Iyer, V. R. Krishna. "CODE OF CRIMINAL PROCEDURE I." *BAIL*, [www.iilsindia.com/study-material/320679\\_1601207180.pdf](http://www.iilsindia.com/study-material/320679_1601207180.pdf).

- his freedom while the criminal proceedings against him are pending if his attendance at the trial could be fairly guaranteed in any other way than by his arrest and incarceration.
- b) The purpose of all the laws pertaining to summons issuance, arrest of the accused with or without a warrant, and bail release is to guarantee the accused's presence at his trial without unjustly and unreasonable interfering with his freedom.
  - c) Even if the accused is deemed innocent until his guilt is shown beyond a reasonable doubt, denying him release on bail would mean that he would have to endure the mental and physical hardships of incarceration.
  - d) The incarcerated defendant is unable to properly participate in the planning of his defence and loses his job. Equally significant is the reality that his family members who are innocent are often the ones who bear the brunt of his incarceration.
  - e) When someone is charged with a major crime and is likely to be found guilty and face harsh punishment, it is common for them to flee or post bail in order to avoid the trial and the ensuing punishment. It would be foolish to issue bail and restore the individual's liberty while they are currently under custody.
  - f) Furthermore, it would be foolish to grant bail to an arrested individual if, if released on bail, he is likely to obstruct a fair trial by destroying evidence, attempting to intimidate prosecution witnesses, or committing additional crimes while on bail.
  - g) It would be harsh and unfair to grant the detained person bail if there are no such risks associated with his release.
  - h) All too frequently, bail has been denied in situations where there is no valid reason to do so or where there is concern that the individual granted bond may abuse their freedom or flee. Keeping an accused person in jail before they are found guilty of a crime on the only suspicion that they would tamper with the witnesses or flee is to deny them the benefit of the doubt which the law gives to every person against whom no adverse evidence is found.
  - i) However, if the accused has committed a crime and it is proven, they must be punished for it. The Legislature, in its wisdom, has provided some clear guidelines for granting or refusing bail in order to support the aforementioned goals.
  - j) When the government permits discretion in granting bail, that discretion must be used in accordance with the legal principles; additionally, the courts have established standards for the appropriate use of this discretion.<sup>10</sup>

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<sup>10</sup> "OBJECT AND MEANING OF BAIL- BAILABLE AND NON-BAILABLE OFFENCES." *Vidhi Judicial Academy*, [vidhijudicial.com/object-and-meaning-of-bail-bailable-and-non-bailable-](http://vidhijudicial.com/object-and-meaning-of-bail-bailable-and-non-bailable-)

## LEGAL PROVISIONS OF BAIL UNDER BHARTIYA NYAYA SANHITA, 2023

The phrases bail, bail bond, and bond are not defined in the Criminal Procedure Code 1973; however, they were introduced by the BNSS. In accordance with BNSS Section 2(1)'s definition clause:

- a) "*bail*" refers to the release of an individual who has been accused or suspected of committing a crime from the custody of the law, subject to specific terms set by an officer or court, upon the execution of a bond by the accused;
- b) "*bail bond*" refers to a release undertaking with surety;"
- c) "*bond*" refers to an undertaking for release without surety or a personal bond;<sup>11</sup>

The idea of bail arises from the tension between the police's authority to limit the freedom of a man who is suspected of committing a crime and the presumption of innocence in favour of the accused. Bail is seen as a tool by which the state forces the community to ensure the inmates' presence while also involving the community in the administration of justice. Chapter **XXXV**, sections (479–498) of the BNSS., contains the provisions pertaining to the granting of bail. Crimes are divided into "cognizable" and "non-cognizable," as well as bailable and non-bailable. Under the BNSS, police officers, magistrates, sessions courts, and high courts have the authority to deal with bail, including anticipatory bail, the conditions on bail, and bail cancellation.

### TYPES OF BAIL

#### a) REGULAR BAIL

Regular bail is a legal tool that allows a judge to authorize the release of an individual who is being held on suspicion of committing a crime, provided that the individual does not impede the administration of justice. Executing a bond with sureties may be a requirement for this type of bail. Section 478 of the Bhartiya Nyaya Sanhita, 2023(BNSS) states that an individual who has been arrested for a bailable offense has the right to be freed. Police officers are required by law to provide bail to anyone who requests it. Furthermore, if the accused has been held for a length equal to 50% of the maximum sentence, the maximum time of detention for an undertrial prisoner is established while the case is being investigated, the court will release them when

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offences.html#:~:text=Bail%20contemplates%20to%20%22procure%20the,and%20judgment%20of%20the%20court.

<sup>11</sup> "Bail Provisions in Bharatiya Nagarik Suraksha Sanhita." *Finology*, blog.finology.in/Legal-news/Bail-provisions-in-BNSS.

they sign a bond, with or without sureties.

However, the granting of bail for an individual held on suspicion of committing a non-bailable offense is discretionary and can only be granted in the event that a compelling case is made.

Nonetheless, certain grounds may be used to grant bail for *non-bailable offenses*, such as:

- If the defendant is younger than 16 or older than 16;
- If a woman is the accused;
- If the defendant is unwell or infirm

Bail is only given in certain situations for repeat offenders; Bail petitions filed before magistrate courts are subject to Section 479 of the BNSS. Regular bail is either granted or denied based on the rules set forth in Section 479 regulate the judicial discretion used to decide whether to grant or deny ordinary bail. However, bail applications filed in High Courts or Courts of Sessions are subject to Section 481.

#### b) ANTICIPATORY BAIL

Anyone who expects to be charged with a non-bailable offense may request anticipatory bail under Section 482 of the BNSS. The High Court or Sessions Court with jurisdiction over the alleged offense is where the application for anticipatory bail should be submitted. When anticipatory bail is requested before an arrest, the police are prevented from making the arrest if the court grants it. For anticipatory bail to be granted, a number of requirements must be fulfilled, such as:

- Reasonable suspicion: In the situation for which anticipatory bail is being requested, there must be a legitimate fear or belief that the accused individual may be taken into custody.
- Bailable Offense: According to the law, the offense in question must be eligible for bail, or be bailable.
- Pre-Arrest Application: Prior to the arrest, the anticipatory bail application must be made after being taken into custody; the individual would have to apply for standard bail.
- Not a Habitual Offender: The individual requesting anticipatory bail must not have a criminal record that includes repeated offenses.
- Absence of Leave from the Nation. The accused shouldn't depart once anticipatory bail has been granted.

#### c) INTERIM BAIL

Interim bail is a type of temporary release that gives people a brief reprieve from custody while their application for anticipatory or regular bail is pending. For a set period of time, it permits the accused to be at liberty as they get ready for bail hearings. It is, nevertheless, subject to the court's discretion and is conditional, with the potential for an extension depending on the situation. The accused's freedom is revoked and they risk being arrested again if the temporary bail expires and they don't comply with the terms or pay the required sum. This type of bail is a crucial stopgap that keeps the justice system flexible and equitable while avoiding needless incarceration.

#### d) DEFAULT BAIL

A person must be brought before a magistrate in accordance with Section 187 BNSS, if they are arrested and the investigation cannot be finished in 24 hours. After then, the magistrate has the authority to permit their custody for a maximum of fifteen days. In order to give the police or investigating agency more time to finish their investigation, this custody period is usually prolonged by an extra 15 days. However, Section 187(2) of the BNSS stipulates that the detention period cannot be longer than 90 days in instances involving offenses punished by death, life in prison, or imprisonment for at least 10 years. The restriction for other offenses is sixty days. If a charge sheet or complaint is not filed by the police or investigating agency within the 60 days, the accused is eligible to default bail if the police or investigating agency does not file a charge sheet or complaint within the allotted time. This right is unassailable and independent of the court's judgment. The court must issue default bail if the accused can show that the necessary 60 or 90 days have gone by after their arrest without a charge sheet or complaint being filed.

#### e) MEDICAL BAIL

Medical bail is a type of bail that is given to people only for medical reasons. It is mostly taken into consideration when the patient's health condition necessitates urgent medical care or specialist therapy. Usually, while granting medical bail, the courts don't get into the case's merits or determine if the standard requirements for bail are met. The person's medical requirements and wellbeing are the main priorities.

## **BAIL IS A RULE AND JAIL IS AN EXCEPTION**

"Bail is a rule, jail is an exception" is a fundamental tenet of India's criminal justice system. It highlights the notion that the main goal of the law is to guarantee that an accused individual be released from custody pending trial, as opposed to being imprisoned. This principle stems from the presumption of innocence until proven guilty and upholds the fundamental right to personal liberty enshrined in Article 21 of the Indian Constitution. Article 21 of the Constitution guarantees the right to life and personal liberty, which cannot be deprived except according to the procedure established by law. The law prescribes that every person accused of an offense has a right to a fair trial, which includes avoiding pre trial imprisonment unless it is absolutely required. The legal principle 'bail is a rule and jail is an exception' was given by the Supreme Court in its landmark judgement of the *State of Rajasthan vs Balchand @ Baliay in 1977*.<sup>12</sup> When granting bail to the petitioner in the *State of Rajasthan vs. Balchand @ Baliay (1977)* case, the court said that it did not intend to be exhaustive but rather illustrative, unless there were circumstances showing that the petitioner was evading justice, obstructing the course of justice, or causing other problems in the form of repeating offenses, intimidating witnesses, etc. Detaining someone and denying them their freedom goes against natural justice principles unless there are the aforementioned circumstances. It is against the Indian Constitution's Article 21, which guarantees everyone's right to life and liberty. The legal doctrine known as the "Presumption of innocence," which states that an individual is innocent unless and until proven guilty, guarantees that an innocent<sup>13</sup>

## **JUDICIAL PRONOUNCEMENTS AND CASE LAWS**

This idea has been emphasized by the Indian judiciary on numerous occasions throughout the years: "bail is a rule, jail is an exception." This is clear from a number of seminal rulings that have influenced bail jurisprudence.

- a) *Balchand v. State of Rajasthan*: One of the most important cases in the development of the doctrine is this one. The Supreme Court, via Justice V.R. Krishna Iyer, infamous to be "the basic rule is 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 offenses or intimidating witnesses and the like by the petitioner who seeks enlargement on bail."

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<sup>12</sup> (1997) 4 SCC 308

<sup>13</sup> Parihar, Subhashini. "Bail Is a Rule, and Jail Is an Exception – Explained." *WritingLaw*, 11 Nov. 2023, [www.writinglaw.com/bail-is-a-rule-and-jail-is-an-exception-explained](http://www.writinglaw.com/bail-is-a-rule-and-jail-is-an-exception-explained).

- b) *State of Madhya Pradesh v. Moti Ram*<sup>14</sup> : The Supreme Court noted in this decision that denying someone their freedom, even for a single day, is too valuable a matter to be taken lightly; hence, bail ought to be freely granted. The court further emphasized that excessive bail requirements would negate the intent of the bail process.
- c) *State of Bihar v. Hussainara Khatoon*<sup>15</sup> : The predicament of undertrial inmates who are held in custody for longer than the maximum term they would have gotten if found guilty was the subject of this historic case. The Supreme Court ruled that the fundamental right to life and liberty includes the right to a quick trial. This ruling, which emphasized that an accused person shouldn't be held in custody needlessly, resulted in a substantial change in bail law.
- d) *Central Bureau of Investigation v. Sanjay Chandra*<sup>16</sup>: "Bail is the rule and jail is the exception," the Supreme Court reaffirmed, particularly in situations where the accused is unlikely to flee and the trial could take a long time to finish. The court underlined that the potential of the accused altering evidence or influencing witnesses should be the main factor taken into account when rejecting bail.
- e) *State of Maharashtra v. Arnab Manoranjan Goswami*<sup>17</sup>: The Supreme Court reiterated that the right to personal liberty is a basic right when it granted bail to journalist Arnab Goswami in this recent case and ought not to be violated unless there are strong grounds for doing so. The court emphasized that judges must use their discretion and care when granting bail, but they also have a need to respect the tenet that "bail is the rule, jail is the exception."<sup>18</sup> The Indian Supreme Court stepped in to protect Arnab Goswami's fundamental rights and the rule of law. Article 21 of the Indian Constitution, which protects the right to life and liberty, is violated when someone is detained. It is unquestionably a noteworthy, innovative, and commendable choice. The rule of law prevailed, and the rights of individuals were appropriately protected. It is evident, therefore, that such zeal and speed are absent from the typical flow of business. Typically, it takes days, weeks, or months to obtain bail. The nation's jails are overcrowded with trials, and judges are reluctant to grant bail. In reality, bail is rarely issued promptly, and the prosecution typically has weeks to prepare a response. After

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<sup>14</sup> (1978) 4 SCC 47

<sup>15</sup> (1979) 3 SCR 532

<sup>16</sup> (2012) 1 SCC 40

<sup>17</sup> (2020) 14 SCC 12

<sup>18</sup> *The Law Advice - Articles - Bail is a Rule, Jail is an Exception: A Legal Perspective.*  
[www.thelawadvice.com/articles/bail-is-a-rule-jail-is-an-exception-a-legal-perspective.](http://www.thelawadvice.com/articles/bail-is-a-rule-jail-is-an-exception-a-legal-perspective)

an accused person is The prosecution should have no more than three days to respond after an accused person is placed in judicial custody. The courts should decide regular bail applications within seven days after being filed. While waiting for the outcome of their bail application, accused individuals regrettably frequently spend months in jail. The idea that "Bail being the Rule and Jail being an Exception" will be useless if courts do not prioritize and promptly decide bail applications. Regrettably, it can be difficult to get bail for a "Common Man." A person and his supporters are compelled to sprint from one post to another in pursuit of a suspect's bail when a formal complaint is made.<sup>19</sup>

## **BAIL IS RULE AND JAIL IS AN EXCEPTION EVEN IN MONEY LAUNDERING CASES**

In the case of *Prem Prakash v. Union of India*, the Supreme Court ruled through the Directorate of Enforcement that jail is an exception to the Prevention of Money Laundering Act 2002 (PMLA) and that bail is the rule. The PMLA's Section 45, which outlines two requirements for granting bail, was noted by the Supreme Court. This clause, which stipulates two requirements to be met before granting release, is not an exemption to the normal bail rule. The fundamental principle that "Bail is the Rule and Jail is an exception" was emphasized by the Supreme Court. The Supreme Court also stated that Section 45 of PMLA is paraphrasing of Article 21 of the Constitution of India (COI) which states that no person shall be deprived of his life or personal liberty except according to the procedure established by the law. The Supreme Court further added liberty of the individual is always the rule and deprivation is the exception. Only through the legal process, which must be legitimate and reasonable, can deprivation be made. As a result, the appellant's appeal was granted bail by the Supreme Court.<sup>20</sup>

## **GUIDERLINES LAID DOWN IN SATENDER KUMAR ANTIL V CBI (2022)**

The idea of bail is at issue in the *Satender Kumar Antil v. CBI*<sup>21</sup> case. It highlights the norm, which is that incarceration is the unusual and bail is the rule. The Supreme Court of India

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<sup>19</sup> *BAIL IS A RULE, JAIL IS AN EXCEPTION- AN ANALYSIS*. [opinionexpress.in/bail-is-a-rule-jail-is-an-exception-an-analysis](http://opinionexpress.in/bail-is-a-rule-jail-is-an-exception-an-analysis).

<sup>20</sup> "Bail is Rule and Jail is an Exception." *Drishti Judiciary*, [www.drishtijudiciary.com/current-affairs/bail-is-rule-and-jail-is-an-exception](http://www.drishtijudiciary.com/current-affairs/bail-is-rule-and-jail-is-an-exception).

<sup>21</sup> (2022) 10 SCC 51

received a Special Leave Petition (SLP) and, in rendering its decision, cited John E.E.D.'s Essay on Freedom and Power, which states that "Liberty is one of the most essential requirements of the modern man." The delicate fruit of modern civilization, so the saying goes. It is a fundamental necessity for modern man and the core of a civilized living. The court noted the inadequacies in India's bail system, namely in relation to the matter of individuals awaiting trial. Some important guidelines regarding bail were laid down in the above case.

- a) *Separate legislation for bails*: In order to expedite the granting of bails, the Indian government may think about introducing a separate legislation in the form of a bail act.
- b) *Compliance of sec.41 and sec.41A of CrPC*: In situations where an arrest is not necessary, the police officer is required by Section 41A of the CrPC to issue a notice directing the accused to appear before him. If the individual complies and continues to comply with the notice, he will not be detained for the offense mentioned in the notice unless the police officer believes that he should be arrested for reasons that will be documented.
- c) *Bail by default for noncompliance*: The courts will need to confirm that Sections 41 and 41A of the CrPC are being followed. The accused would be entitled to bail for any noncompliance.
- d) *Application of Other CrPC Provisions*: When evaluating an application under Sections 88, 170, 204, and 209 of the CrPC, no bail application is required.
- e) *Siddhartha v. State of UP (2021) Compliance*: Strict adherence to the guidelines established in this court's ruling in Siddharth v. State of U P (2021) is required. In this case, the Supreme Court ruled that "the mere filing of a charge sheet would not be an ipso facto cause to arrest the petitioner if during investigation there has been no cause to arrest the accused."
- f) *High Court Instructions*: The task of identifying undertrial inmates who are unable to adhere to the terms of their bail has been delegated to the High Courts. Following that, in accordance with Section 440 of the Code, the necessary steps must be done to enable the release.
- g) *Section 440 of the CrPC*: The purpose of Section 440 of the CrPC must be remembered when requiring sureties.
- h) *Compliance of Union of India v. Bhim Singh (2015)*: A similar activity must be performed in order to adhere to as instructed by this Court in Bhim Singh v. Union of India (2015), a comparable exercise must be carried out at the district judiciary level and the High Court in order to comply with the mandate of Section 436A of the CrPC,

followed by the necessary instructions. In this instance, the court ordered jurisdictional Magistrates to convene weekly sessions in jails beginning on October 1, 2014, in order to address Section 436A CrPC legislative policy and reduce prison overcrowding. They will quickly submit reports to High Court Registrars after identifying undertrial inmates who fit the release requirements. Court sessions must be facilitated by jail superintendents. Orders disseminated for compliance.

- i) *Period for Granting Bail*: Applications for bail, with the exception of intervening applications, should be processed within two weeks, unless the provisions specify otherwise.

With the exception of any intervening applications, anticipatory bail applications are anticipated to be resolved within six weeks.<sup>22</sup>

### **CHALLENGES**

The saying "Bail is a rule, jail is an exception" captures a core feature of the criminal justice system that aligns with the more general ideas of justice and human rights. But even though this theory is obvious, putting it into practice can be difficult, which calls for more in-depth thought and change.

- a) *Inconsistency in Bail Decisions*: Bail application is a complex issue due to inconsistent decisions across courts and cases. Judges' discretion can lead to inconsistencies, influenced by factors like judge's outlook, offense nature, and socio-political context. High-profile cases may see bail denial as political pressure, while lesser-known individuals may remain incarcerated due to financial constraints.
- b) *Monetary Bail and Socio-Economic Inequity*: Monetary bail, a precondition for release, raises concerns about justice system equity, particularly in India, where economically disadvantaged individuals often face unjust detention. Despite judicial pronouncements and legal reforms, implementation remains uneven. Alternatives like personal bonds, community-based sureties, or regular judicial oversight should be explored and institutionalized.
- c) *Human Rights Violations and Pretrial Detention* Long-term pretrial incarceration violates fundamental human rights and the presumption of innocence, especially when the trial process is postponed for years. This issue is highlighted in cases like *Hussainara Khatoon v. State of Bihar*.

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<sup>22</sup> "Satender Kumar Antil Case." *Drishti Judiciary*, [www.drishtijudiciary.com/editorial/satender-kumar-antil-case](http://www.drishtijudiciary.com/editorial/satender-kumar-antil-case).

- d) *The Danger of Bias and Judicial Discretion:* Judicial discretion is crucial for fair trials, but it can sometimes lead to biases in bail decisions. Society's perception of crimes can influence judges' decisions, potentially resulting in stricter policies. Balancing judicial discretion with anti-bias measures is challenging, and comprehensive bail standards can help maintain this balance.
- e) *Effect on the Legal System:* The "Bail is a rule, jail is an exception" premise can lead to overcrowded prisons, overburdened courts, and a decline in public confidence in the judicial system. Inconsistent bail grants can negatively impact the public's image, leading to outcry and a sense of injustice.<sup>23</sup>

### **CONCLUSION**

In summary, the adage "Bail is a rule, jail is an exception" reflects the ideals that support a fair and compassionate society and goes beyond simply being a legal maxim. This idea acknowledges the value of individual freedom, the assumption of innocent, and the necessity of impartiality in the administration of justice. Even though India's legal system and courts have made great progress in preserving this idea, much more needs to be done to guarantee that it is applied consistently at all societal levels. A justice system's ability to punish the wicked is only one aspect of its true test; another is its dedication to upholding the rights of the innocent. By implementing the principle that "Bail is a rule, jail is an exception," India can get one step closer to establishing a more just and equitable legal system for all of its residents.

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<sup>23</sup> *The Law Advice - Articles - Bail is a Rule, Jail is an Exception: A Legal Perspective.*  
[www.thelawadvice.com/articles/bail-is-a-rule-jail-is-an-exception-a-legal-perspective](http://www.thelawadvice.com/articles/bail-is-a-rule-jail-is-an-exception-a-legal-perspective).