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*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

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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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# The Scope & Power Of Courts To Grant Bail

## Without Definite Reasons

Authored By- Dev Kumar

### Abstract

Courts, in recent times, have started a trend of granting bail in matters of utmost importance without regarding the sincerity of the provisions in respect to bail. This is in regard to the recent statement by the Supreme Court wherein they said that granting bail without giving specific and appropriate reasons for the same has become a trend when granting bail, including the accused's prima facie participation, the type and seriousness of the crime, the harshness of the sentence, and the accused's character, position, and standing however, in the case of *Ms. Y v. State of Rajasthan*<sup>1</sup>, where the accused raped the victim on 2 occasions, Bail was still granted bail under Section 439 of Criminal Procedure Code<sup>2</sup>(Hereon referred to as CrPC). The paper will test and discuss the scope of Section 493, the restrictions on bail and the power of the courts to grant bail without giving adequate reasons thereby violating the provisions under the Code of Criminal Procedure.

<sup>1</sup>Ms. Y v. State of Rajasthan 2022(SC)384.

<sup>2</sup>The Code of Criminal Procedure, 1973, §439, No. 02, Acts of Parliament, 1973 (India).

## Introduction

Bail is the process of obtaining a person's release from prison while awaiting trial or an appeal by depositing a bond to secure his timely surrender to legal authorities. Bail is most commonly utilised in criminal court, although it can also be used in civil courts. It's a fundamental right mentioned under Article 21 of the Constitution<sup>3</sup> and it ensures that the accused gets a fair trial. The necessity to protect the fundamental right to liberty led to the practise of providing bail. No one's personal liberty may be taken away unless a reasonable, fair, and just method is followed. A matter which was used to be and has to be dealt with seriousness and precision, is now being taken quite lightly by the courts. The goal of bails in criminal situations is to prevent punishing an innocent person (who may be convicted at trial) and to allow him to prepare his defence without hindrance. Its primary purpose is to guarantee the freedom of someone who has been arrested and charged with a criminal offence before trial, however it can also be used to gain release until an appeal of a conviction in specific situation however, in serious matters where the courts shouldn't grant bail, they have done so, thereby, hampering its solemnity.

### Law Of Bail In India

Bail is a system that secures the accused's liberty without providing them with any unwarranted advantage. However, it has been noted that the procedure of issuing bail is insecure and ambiguous. Bail bond amount, grounds for granting bail, and bail bond restrictions are all aspects to consider. In a number of decisions, the Supreme Court has said that each case must be evaluated for its facts and circumstances before bail is granted. The Code of Criminal procedure though doesn't define Bail, gives the course of action in respect to the aforementioned and it has classified the offences into 2 categories – Bailable and Non-Bailable.

Bailable offences are apparently less serious, hence the penalty for them is less harsh, and the accused has the right to seek release on bail. Certain types of crimes are often penalised for fewer than three years. In the case of bailable offences, your prospects of receiving bail are much greater. After such criteria have been completed, bail can be given as a matter of law under Section 436<sup>4</sup> of the Criminal Procedure Code. The word "non-bailable" does not indicate that no bail is available. It simply implies that the accused cannot assert it as a matter of right during their arrest or detention. They can, however, approach the court while they are being tried. These offences, in contrast to bailable offences, are grave in character.

Bail are of 3 types – Regular Bail, Interim Bail and Anticipatory Bail. A person who has been arrested and is being held by the police might ask for regular/daily bail. Sections 437<sup>5</sup> and 439 of the Code of Criminal Procedure provide provisions for bail. Interim bail is granted by a court order releasing an accused for a

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<sup>3</sup>INDIA CONST. art. 21.

<sup>4</sup>The Code of Criminal Procedure, 1973, §436, No. 02, Acts of Parliament, 1973 (India).

<sup>5</sup>The Code of Criminal Procedure, 1973, §437, No. 02, Acts of Parliament, 1973 (India).

limited period of time. Interim bails are being misused in many situations, hence the courts have reduced the number of interim bails awarded. Anticipatory bail is set before a person is arrested. A pre-arrest bail is another name for it. It's referred to as 'grant apprehending arrest' in Section 438<sup>6</sup> of the Code of Criminal Procedure. When there were a number of fake charges filed against businesspeople in the early 1990s, anticipatory bail became more popular. The Law Commission has proposed introducing a clause forbidding pre-arrest arrest to safeguard the public's interests. It was included to the Code because it concerns a man's personal liberty.

## Courts On Bail

Bail is a highly debated issue in India. Because the penalties of pre-trial imprisonment are determined by state authorities, the accused's release on bond is critical. If the accused is denied bail, he would be exposed to the psychological and physical deprivations of jail life, despite the fact that he is deemed innocent until his guilt is proven beyond a reasonable doubt in court. As a result, the imprisoned defendant loses his work and is unable to contribute effectively to his defence preparation. Equally significant, his arrest usually places a heavy strain on his family's innocent members.

In *Sanjay Chandra v. CBI*<sup>7</sup>, The Supreme Court ruled that the court has entire power in granting or rejecting bail petitions because the situations and circumstances should be thoroughly examined before granting or rejecting bail. In my opinion, this is absolutely valid however the courts also need to take into the consideration the seriousness of the crime and need to give appropriate reasons as to why Bail is being granted. It has become a recent trend that the courts have been granting bail pleas without specific and appropriate reasons for the same. In recent judgement by CJI NV Ramana and Justice Kirshna Murari, it was held that High Court has not taken into account any relevant factors which should've been considering while granting bail. The accused was charged of violently raping the prosecutrix on two occasions after summoning her to his room. She argued in her appeal to the Supreme Court that the High Court erred in providing bail to the accused in a mechanical and unjustified manner. The court stated that some essential considerations are always taken into account when granting bail, including the accused's prima facie participation, the type and seriousness of the crime, the harshness of the sentence, and the accused's character, position, and standing however, in the case of *Ms. Y v. State of Rajasthan*, any of the factors essential to grant weren't considered.

Another instance of this is the judgement by the Andhra Pradesh High Court wherein they granted conditional Bail for a Non-Bailable offence. The petitioners were charged with violating Sections 324<sup>8</sup>

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<sup>6</sup>The Code of Criminal Procedure, 1973, §438, No. 02, Acts of Parliament, 1973 (India).

<sup>7</sup>*Sanjay Chandra v. CBI* (2012) 1 SCC 40.

<sup>8</sup>Indian Penal Code, 1860, §324, acts of parliament, 1860 (India).

(voluntarily causing bodily harm with dangerous weapons), 307<sup>9</sup>(attempt to murder), and 506<sup>10</sup> (criminal intimidation) of the Indian Penal Code, as well as Section 34<sup>11</sup> (acts done by multiple individuals in furtherance of a common intention), all of which are serious and heinous crimes and non-bailable offences. The general reason granted by the court in this particular case was that there had been quite some progress in the investigation and hence, Bail was granted on the condition that the petitioner execute a surety bond and report to the appropriate Station House Officer every day until the investigation was concluded and a charge sheet was filed in the matter. Bearing in mind the earnestness of the offence, the aforementioned was clearly not an appropriate reason for granting bail.

*C.M. Sivasankaran v. State*<sup>12</sup> is another case where this contention was repeated. The offences under the POCSO Act<sup>13</sup> are all non-bailable however, the Madras High court had a different opinion. In multiple child sexual assault incidents, Siva Sankar baba has been charged under the POCSO legislation. The accused was granted bail by the Supreme Court on the condition that he not return to the institution where the sexual harassment charges were lodged. The judge had also warned that if the accused sought to sway the victims, his bail would be revoked.

Justice G Jayachandran ordered the accused to produce his passport and cooperate with the inquiry while granting conditional bail. Various restrictions were set upon the accused however no proper reasoning was given as to why the bail is being granted for such a heinous crime, especially when it's the accused's eighth offence.

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<sup>9</sup>Indian Penal Code, 1860, §307, acts of parliament, 1860 (India).

<sup>10</sup>Indian Penal Code, 1860, §506, acts of parliament, 1860 (India).

<sup>11</sup>Indian Penal Code, 1860, §34, acts of parliament, 1860 (India).

<sup>12</sup>*C.M. Sivasankaran v. State* 2022 (Mad) 167.

<sup>13</sup>The Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

## Conclusion

The Judgement by the Andhra Pradesh High court, the cases of *Ms. Y v. State of Rajasthan* and *C.M. Sivasankaran v. State* are all recent examples of the trend of the courts granting bail without giving appropriate and specific reasons for the same. The Supreme Court in the Sanjay Chandra case has correctly stated that they have the power in granting or rejecting bail however, it also has a condition wherein they need to thoroughly examine the seriousness of the crime and provide a valid explanation for the same however lately, they have turned a blind eye to this condition. For all offences with emphasis on Non-Bailable, proper reasoning should be given as to why the accused is being granted bail after properly analysing the details of the matter considering the nature of Non-Bailable offences is consequential. In the Sivasankaran case, the order of Justice Jayachandran for granting bail to the accused even though it was his eighth offence and a case under the POCSO act which undertakes offences grave in nature, might have been valid however, in my opinion they aren't considering no proper reasoning were provided. The courts should take into account the importance of the concept of Bail and grant the aforementioned only after rigorously analysing the facts, arguments and proof and also, provide apt and definite reasons for the same.

