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LAW RELATING TO BAIL FOR **UNDER-TRIAL PRISONERS IN** **THE INDIAN LEGAL SYSTEM**

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ABSTRACT

In India, the bail provision for undertrial inmates is a critical component of the system of justice since it offers a legal framework for releasing accused persons from imprisonment pending trial. The purpose of this Research Paper is to offer a concise summary of the bail mechanism in India, including its scope and restrictions.

Bail is granted under Indian law in two situations: first, when the accused is charged with a bailable offence, and Second, when the accused is charged with a non-bailable offence but the court believes there are reasonable grounds to believe that the accused is not guilty of the offence charged and is not likely to commit any offence while on bail the court may in that situation grant bail to accused in the case. In India, bail is subject to several limitations, such as the necessity that the accused be able to supply a bond, as well as the imposing of restrictions such as the submission of the accused's passport, limits on travel, and regular reporting to the police department. One of the biggest issues related with the bail provision in India is jail congestion, which is frequently compounded by the enormous number of undertrial detainees who are unable to gain bail in their case. The Supreme Court of India have taken a number of initiatives to solve this issue, including the establishment of fast-track courts to accelerate proceedings and the use of alternative dispute settlement procedures.

Overall, the bail provision for undertrial detainees in India is crucial for guaranteeing that the accused are not arbitrarily detained pending trial. Nonetheless, continuing efforts are required to overcome the provision's problems and guarantee that it is administered in an equitable and efficient way.

WHAT IS BAIL?

The phrase "bail" is not defined in the statute according to Black's Law Lexicon, bail is the procedure of obtaining a person's release from legal custody by promising to appear at the time and place specified and to submit to the jurisdiction and judgement of the court. Bail is commonly used to denote judicial release from custody, **Cr.P.C. Chapter XXXIII deals with the provision as to bail and bonds.**

THE OBJECT OF BAIL

The major reason for obtaining an assurance from the accused in the form of bail & surety is to ensure that he is accessible for the trial as and when called up by the court. If this goal can be accomplished without imprisoning the accused throughout the investigation or trial, it represents the perfect marriage of two seemingly opposing interests, namely, individual freedom and the interests of justice. The arrest serves an important role in ensuring the accused's attendance at the point of enquiry or trial, as well as his availability to accept sentence if convicted. It should also be noted that the fundamental principle of jurisprudence is that one should be assumed innocent unless and until guilt is proven beyond a reasonable doubt. Consequently, if someone is imprisoned throughout the pre-trial or trial stages, it inevitably violates their constitutional and fundamental rights. The accused loses his employment and is unable to contribute effectively to his defence preparations. As important, the weight of his confinement usually falls severely on unsuspecting family members. As a result, the bail legislation strives to design and manage such a system in order to release the greatest number of accused individuals on bond without jeopardising the arrest and trial objectives.

MEANING OF UNDERTRIAL

An unconvicted prisoner is one who has been kept in jail during the period of investigation, inquiry, or trial for the offence of which he or she is accused. According to the National Crime Records Bureau (NCRB'Prison)'s Statistics India 2015' report, which was issued in

October 2016, 67% of persons in Indian jails are undertrials, amounting to nearly 200,000 under-trial prisoners.¹ According to the Government of India's National Crime Records Bureau, hundreds of under-trials have been imprisoned for five years or more. Undertrial refers to a scenario in which an accused is facing a criminal trial but is not released on bail (inprison), and the law demands that such an accused be tried as soon as possible.

RIGHTS OF UNDERTRIAL PRISONERS

1. THE RIGHT TO INDIVIDUAL LIBERTY

The fundamental rights guaranteed by Part III of the Indian Constitution are the primary and principal rights possessed by the Undertrials during the proceedings. The most significant of them is Article 14, which states that "the state must not deny to any individual equality before the law or equal protection of the laws within in the territory of India."

2. PERSONAL LIBERTY AND THE RIGHT TO LIFE

This right is guaranteed under Article 21 of the Indian Constitution, which states that "no individual may be deprived of his life or personal liberty unless in accordance with the method established by law."

3. THE FREEDOM TO RESIDE WITH DIGNITY

In a unique twist on Article 21, the Supreme Court ruled that the "right to life" does not just refer to bodily existence, but also encompasses the right to live with human dignity.

4. THE RIGHT TO KNOW THE REASONS FOR ARREST

Article 22 (1) of the Constitution states that a person detained for an ordinary law offence must be notified of the grounds of arrest as quickly as possible. Section 50 of the Criminal Procedure Code, in addition to the constitutional mandate, allows for the same.

5. THE RIGHT TO SEEK LEGAL ADVICE

It is one of the essential rights guaranteed by our country's constitution. According to Article 22 (1) of the Constitution, no individual detained must be refused the right to consult and be represented by a legal practitioner of his choice. The ability of the accused to choose his own

¹ https://ncrb.gov.in/sites/default/files/PSI-2015-%2018-11-2016_0.pdf

counsel is important to a fair trial. The right is recognised since, in most cases, an accused individual lacks the legal knowledge and professional expertise to defend oneself in a court of law where the prosecution is handled by a qualified and experienced prosecutor. This includes the right to free legal help guaranteed by Article 39A of the Indian Constitution.

6. THE RIGHT TO GET A MEDICAL EXAMINATION

An undertrial also has the right to have a medical officer examine the detained individual. Section 54 of The Code of Criminal Procedure, 1973 guarantees this privilege.

7. BAIL IS A LEGAL RIGHT

Another important privilege of the under trial is the right to bail, which is outlined in Section 436 of the 1973 Code of Criminal Procedure. Bail is defined as "to set at liberty a person arrested or imprisoned, on security being taken for his appearance on a certain day at a certain place because the party arrested or imprisoned is delivered into the hands of those who laid themselves or became bail for his due appearance when required, in order that he may be safely protected from prison."

8. THE RIGHT TO A SPEEDY TRIAL

Justice is denied when it is delayed. This is especially true in a criminal trial if the accused is not freed on bond and the trial is excessively prolonged. Yet, the legislation does not expressly grant the accused the right to have his case determined quickly. According to Section 437(6) of the Criminal Procedure Code, if the accused is detained and the case is not concluded within 60 days of the first date set for hearing, he will be freed on bond. Nevertheless, this simply alleviates the accused's burden and does not guarantee a swift trial; moreover, this regulation applies only in the case of proceedings before a Magistrate.

PERSON ARRESTED SHOULD BE INFORMED OF THEIR ARREST GROUNDS AND THEIR RIGHT TO BAIL. [CRPC SECTION 50, 1973]

The arrested individual must be informed of the reason for his arrest as soon as possible by the police officer. This is a valuable right of the detained individual, and the Constitution recognises it as one of the essential rights. A timely disclosure of the basis for arrest benefits the detained individual in a variety of ways. It allows him to clear up any confusion,

misapprehension, or misunderstanding in the arresting authority's mind. It also allows him to petition for bail, a writ of habeas corpus, or to undertake other expedited defence preparations.

ARRESTED PERSON TO BE BROUGHT BEFORE MAGISTRATE OR OFFICER- IN-CHARGE OF POLICE STATION [SECTION 56]

A person apprehended without a warrant should be brought without undue delay before a Magistrate with jurisdiction over the matter or in front of the officer-in-charge of the police station, subject to the provisions respecting bail.

PERSON ARRESTED MAY BE DETAINED FOR NOT MORE THAN TWENTY- FOUR HOURS [SECTION 57 CRPC, 1973]

No police officer shall detain in custody a person arrested without a warrant for a period of time that is unreasonable in all the circumstances of the case, and such time frame not, in the dearth of a special order of a magistrate under section 167, exceed 24 hours, exclusive of the time required for the journey from the place of arrest to the Magistrate's Court.

EXCLUSIVE OF TIME NECESSARY FOR JOURNEY:- The 24-hour restriction for the detained prisoner in police custody for investigative reasons does not include the time required to convey the accused to the Magistrate.

CIRCUMSTANCES WHEN RELEASE ON BAIL IS REQUIRED (COMPULSIVE BAIL)

There are several varieties of compulsive bail:

When the arrestee is not charged with a non-bailable offence- Bail in the event of bailable offences is a right of the accused. If a person suspected of a bailable offence is detained or held without a warrant and is willing to post bail, the officer or court in charge of that person is compelled to release him on bail. There is no discretion in providing bail under Section 436

since the terms of the statute are mandatory. The only thing the court can do is order appropriate security.

BAIL IN BAILABLE OFFENCES- WHEN TO BE REFUSED

SECTION 436 (2) states that if a person (who was granted bail under Section 436(1)) fails to adhere to the terms of the bail bond regarding the location and time of attendance, the judge may refuse to release him on bail when he appears before the court or is brought into custody on a subsequent occasion in the same case. Such refusal shall be without prejudice to the court's ability to order any individual bound by such bond to pay the penalty imposed by section 446.

REMEDY IF BAIL IS REFUSED U/S 436(1): On a refusal to grant bail under Section: 436(1), the accused may move the High Court or the Court of Session under Sec. 439, which provides for special powers to the High Court or the Court of Session regarding bail. The amount of bond must be reasonable: The entitlement to be released on bail under Section 436(1) cannot be invalidated by setting an excessively high amount of bond or bail bond to be given in order to obtain the release. Section 440 (1) expressly states that the amount of each such bond should be established in accordance with the circumstances of the situation and should not be exorbitant. In the case of **Sandeep Jain vs NCT Delhi**,² an order was issued forcing the accused to pay a hefty sum of Rupees 2 Lakhs as security for bail and, failing that, to put him behind jail, in a case where bail would typically be granted for the alleged offence. This was deemed not only severe, but also improper. The rejection of a bail plea without a validly reasoned order has been ruled an inappropriate order. (**Dhruv K Jaiswal vs. State of Bihar**)³ It was established in **Rasiklal vs. Kishore Khanchand Wadhwant**⁴ that the right to obtain bail is provided under section 436 of CrPC, 1973 which deals with bail in cases of bailable offence which is an absolute and unassailable right. There is no discretion in providing bail in bailable offences since the wording of Section 436 are mandatory.⁵

² AIR 2000 SC714.

³ 2002 Cr. L. J 410 SC

⁴ AIR 2009 SC 1341

⁵ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974) , AMBITION PUBLICATIONS, NEW DELHI

MAXIMUM TIME OF DETENTION FOR A PRISONER AWAITING TRIAL(UNDER-TRIAL PRISONER) [SECTION 436A CRPC, 1973]

A new section, Section 436A, was enacted by a 2005 amendment, which provides that where a person has been detained for a period up to one-half of the maximum period of imprisonment specified for that offence under that law during the period of investigation, inquiry, or trial under this code (not being an offence for which the sanction of death has been specified as one of the sanctions under that law), he shall be released.

Provided, however, that the Court may, after hearing the Public Prosecutor and recording its reasons in writing, order the continuing imprisonment of such accused person for a time longer than one-half of the aforementioned term or discharge him on bail rather than a personal bond with or without sureties:

Moreover, no such individual must be imprisoned for longer than the maximum time of imprisonment permitted for the alleged offence under that legislation throughout the investigation, inquiry, or trial. This particular clause was placed into the **Code of Criminal Procedure by Act 25 of 2005** to protect undertrial inmates from indiscriminate confinement that sometimes exceeds the statutory period of imprisonment for the offence committed by the undertrial. According to the rule, if a person has been detained for almost one-half of the maximum length of imprisonment prescribed for the crime for which he's being prosecuted, the court may release him on a personal bond without or with sureties. This confinement must occur during the investigation, inquiry, or trial of the case, not during the execution of the punishment after conviction. On hearing the public prosecutor, the court may also impose imprisonment for more than one-half of the stated duration or discharge him on bail instead of a personal bond if it thinks it suitable. A person cannot be imprisoned for more than the maximum time of imprisonment permitted for the offence throughout the period of investigation, inquiry, or trial. This doesn't apply to those accused with crimes punishable by death. When proceedings are prolonged at the request of the accused under trial, the period of delay is not counted while calculating the term of custody under this provision.⁶

⁶ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974) , AMBITION PUBLICATIONS, NEW DELHI

DISCRETION IN ISSUING BAIL FOR NON-BAILABLE OFFENCES [SEC. 437 OF CRPC, 1973]

This section addresses bail in non-bailable instances as follows:

If any person accused or suspected of committing a non-bailable offence may be released on bail if he is arrested or held without warrants by an officer in charge of the police station, or appears or is produced before a court other than the High Court or the Court of Session.

Nevertheless, such person shall not be released on bail if there are reasonable reasons to believe that he has been convicted of a serious offence with death or life imprisonment, or such offence is a cognizable offence and he has previously been convicted of an offence, at once. It is punishable by death or life imprisonment or imprisonment for seven years or more, or having previously been guilty on two or more instances for a cognizable offence that entails imprisonment for three years more than but not surpassing 7 years as a whole/in aggregate.

Provided, however, that the above-mentioned individual may be released on bail if he or she is (a) under the age of sixteen, (b) a woman, or (c) an ill or infirm person.

This section solely addresses the Court of Magistrate; it clearly excludes the High Court and the Court of Session. While held for a non-bailable offence, a person cannot claim bail as a matter of right; he may only ask the Court to grant bail. The Court's discretion to grant bail is not mandatory. After assessing the circumstances and type of the offence, the likelihood of intimidating witnesses, tampering with evidence, the accused's age and his subsequent circle of influence in influencing the enquiry, the Court may either grant or reject bail. Non-compliance with bail conditions or failing to attend in Court when summoned is an offence under Section 229A IPC."⁷

BAIL CANCELLATION

The Court that releases an individual on bail may also terminate that person's bail under subsection (5) of section 437 and, if necessary, order that person to be arrested and put to jail.

⁷ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974), AMBITION PUBLICATIONS, NEW DELHI

Furthermore, the High Court or the Court of Session can direct that any person granted bail, may be detained again and committed to jail as specified in section 439(2).

SPECIAL POWER OF HIGH COURT OR COURT OF SESSION REGARDING BAIL

Section 439 of the Criminal Procedure Code of 1973 gives the High Court and Court of Session specific authority over the grant or termination of bail. This section provides that these courts mentioned have concurrent jurisdiction to deal with the bail application and have broad powers. It comes into play when bail cannot be granted by the magistrate or if the bail that has been granted requires cancellation or any modification of any condition imposed on bail, it is used when the magistrate is unable to grant bail. This exceptional power, as specified in this section, must be exercised with care and not on a regular basis by superior courts. The Criminal Law Amendment Act of 2018 added Subsection 1A and the Second Proviso to Subsection (1), making the application of Section 439 CrPC, 1973 more stringent in the case of rape offences.⁸

CIRCUMSTANCES WHEN RELEASE ON BAIL IS REQUIRED (COMPULSIVE BAIL)

Section 167 addresses the case that allows for further detention if the enquiry of police is not concluded within 24 hours after arrest. Section 57 of the Code states that a person arrested without a warrant must be brought before a Magistrate within 24hrs after his arrest and cannot be imprisoned for any longer period without the Magistrate's permission.

The objective of sections 57 and 167 is to allow the Magistrate to assess whether the person apprehended should be held or if additional custody will be a restriction on the individual's liberty.

⁸ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974) , AMBITION PUBLICATIONS, NEW DELHI

COMPULSIVE BAIL OR DEFAULT BAIL

If the police enquiry is not concluded within 90 or 60 days, as the case may be, the accused has an inalienable right to be released, and he will be released on bond if he is willing to and does supply bail. The preceding clause contains a special and unique provision of bail that is mandatory in nature, and it is referred to as "default bail," "compulsive bail," or "statutory bail" since a statutory right of bail arises in favour of the defendant due to the investigating agency's failure to file chargesheet within the statutory period of 90 or 60 days.

If the accused does not use his right to be freed on bail and a chargesheet is filed in the meantime, he cannot claim that he had an unassailable right to bail. It should also be emphasised that if the accused has been freed on bail, the simple submission of the chargesheet does not immediately revoke his bail. Bail can only be cancelled in accordance with the terms of Chapter XXXIII.

The 90 or 60-day term must be calculated from the date of imprisonment or remand, not from the day of arrest. Both the day of arrest and the day of imprisonment, if different, must be eliminated.⁹

SENTENCE SUSPENSION PENDING APPEAL: APPELLANT RELEASED ON BAIL

According to Section 389 of the CrPC, 1973, the Appellate Court has the authority to postpone the sentence and release a guilty individual on bail or on his own bond. In doing so, the appellate court shall give the public prosecutor an opportunity to show cause in writing against the release. If the offence is punishable by death, life imprisonment, or imprisonment for a term not exceeding ten years, the bail granted by the appellate court may be cancelled at any time. It should be emphasised that the High Court can use this power throughout the pendency of an appeal before a lower court under this provision. The trial court has the authority to release a convicted person on bail to allow him to file an appeal in the following circumstances:

- a) where a person is convicted to imprisonment for a maximum of three years, or
- b) where the alleged crime for which the person is found guilty is bailable and he is on bail.

⁹ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974), AMBITION PUBLICATIONS, NEW DELHI

The guilty individual will be freed on bail. The goal of giving the convicted individual with the option of suspending his or her sentence under Section 389 is to guarantee that he or she does not confront the problem of excessive delay in his or her appeal and so pay the extremely high price of languishing in jail for several years.¹⁰

CONCLUSION

Finally, the bail provision for under trial detainees in India is a critical component of the legal system. It is an important precaution against arbitrary imprisonment of those who are deemed innocent unless proven guilty. While the provision has been subjected to various modifications over the years, there is always room for growth in terms of ensuring that it is administered equally and unbiasedly across all segments of society. Finally, the bail provision must be recognised as a critical instrument for sustaining the rule of law and defending people's fundamental rights, and efforts must be made to enhance and streamline it in order to better serve the interests of justice.

¹⁰ BARE ACT, THE CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974), AMBITION PUBLICATIONS, NEW DELHI