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INTERNATIONAL JOURNAL

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Process Of Bail In India – A Critical Study

Authorerd By- Rakshith K S

“The basic rule may perhaps be tersely put as bail, not jail”

- Justice V.Krishna Iyer.

When any cognizable offence is reported in a police station, police register an FIR and the investigation starts from that point. One of the first steps in any investigation would be to find out the person who might have committed the reported offence and take him to the custody. Once such an accused person's custody is secured by the police, as per law he should be produced before the nearest Judicial Magistrate within Twenty Four hours from the time of his arrest excluding the time taken for the journey. Once accused is produced before such Judicial Magistrate by the police, if the police require such accused person's custody for interrogation as a part of investigation, police can request the magistrate for the police custody of such an accused person. If the Magistrate thinks fit, he can send the accused to police custody or the accused may be sent to the judicial custody. This is the point where the concept of Bail sneaks in.

Bail is simply defined as “the temporary release of an accused person awaiting trial, sometimes on condition that either a sum of money is deposited or a person stands guarantee to such accused person's appearance in court.”¹

In Indian Criminal Justice system, there are various kinds of bail for different kinds of offences. Jurisdiction of Courts to grant bail differs from one kind of offence to another. Conditions to be satisfied to secure bail, differs from one offence to another. Discretionary power of a court in granting bail, to an accused person for a particular offence, plays an important role. Conditions imposed by the court while granting bail may differ from case to case. Though accused gets a bail, he may not be released very next moment.

¹ <https://www.legalserviceindia.com/legal/article-41-anticipatory-bail.html>

Though an accused gets an order of bail in his favour from a competent Court, due to various bottlenecks in the procedure, release of an accused, from either police custody or judicial custody, as the case may be, gets delayed.

In criminal justice system, Bail is one of the most consequential decisions. The ability to secure bail often makes the difference between guilt and innocence, retaining employment and family obligations, and keeping place to live. Any bail process including formal bail application is aimed at addressing the question of bail. Bail serves mainly three purposes: First, the liberty interest of the accused. Second, the public interest (by reducing the high number of awaiting trial prisoners clogging our already overcrowded correctional system). Lastly, by reducing the number of families deprived of breadwinners. The court must not unnecessarily keep an accused person in detention who might later be found not guilty for lack of evidence, whilst on the other hand, due to consideration must be given to the risk of harm posed to the community if such person were to be released, or that he may reoffend or fail to appear before the court if not held in custody. The court thus has to balance the individual liberty of the accused against the interest of any victims, the effective administration of the criminal justice system, and the safety of the criminal justice system, and the safety of the wider community.

The Jurisprudence of granting bail to an accused person is well settled in Indian legal system through legislations and case laws. But still there is ambiguity with respect to the bail system, its operation, discretionary power granted to courts in granting bail and procedure to release an individual after obtaining the bail.

Post Bail Procedure:

After bail is granted by the Court in favour of an accused person, certain conditions will be imposed. The usual conditions would be, not to leave the jurisdiction, to co-operate with the investigation, not to threaten witnesses, not to tamper evidence and to appear before the court whenever called for among others.

Accused will be then asked to execute a bond in this respect. Bond can be either a personal bond or any other person can stand as a surety for such an accused person. Bond can be accompanied with just cash surety. Bail can be granted by executing a bond without surety too. The kind of surety is decided based on the degree of offence charged with.

Once bond is executed, an intimation confirming the grant of bail to accused will be sent by the court to either judicial custody or police custody, as the case may be, where accused will be held.

Practical Difficulty:

In the aspect of sending intimation by the court to the custody, there is a bottleneck. In almost every state, this intimation will be sent by the court to the custody on a printed paper, signed by the concerned authority. This intimation will be taken to the custody by a process server physically. On one hand, the intimation would not be taken by the process server after the official time of court (Usually 5pm) and on the other hand, the judicial custody will not carry on the procedure of releasing an accused person after its official working time (Usually 5pm).

In a hypothetical situation, if bail is granted to an accused person on an evening of a Thursday, by the time a bond is executed, official time of the court would be over and the physical copy of the intimation would not be sent to the custody the same day. If Friday turns out to be a government holiday, Saturday being a second Saturday and Sunday being a government holiday, accused will have to remain in the custody for three more days even after obtaining bail.

Possible Reforms:

- Official Working Hours:

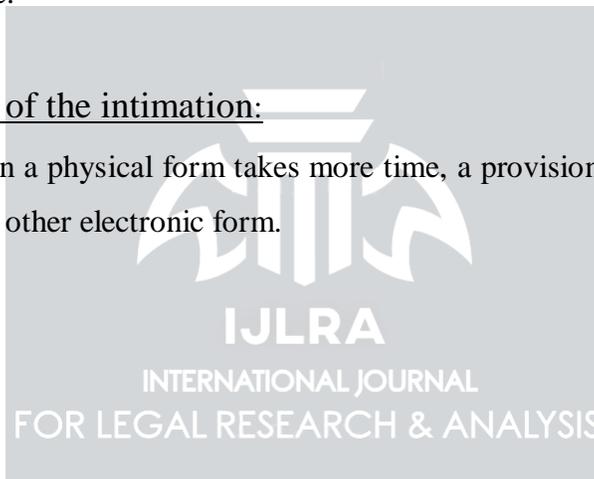
A separate time slot after the usual working hours of either of the institutions, i.e, Court and Judicial Custody, may be fixed to carry out the procedure of release of the accused person from the custody.

- Separate Unit:

A separate unit consisting of the officers or employees may be formed to exclusively carry out the post bail procedure.

- Electronic form of the intimation:

Since serving intimation in a physical form takes more time, a provision may be made to serve the intimation via mail or any other electronic form.



Conclusion:

The U.S. Supreme Court said “life is not merely animal existence. The souls behind the bar can’t be denied the same. The rights guaranteed by Art.21 are for every person and not even the state could deny it. Prisoners also have all the rights which a free man has under some restrictions. Just being in prison doesn’t deprive them from their fundamental rights.”²



² Manna v. people of Illinois 94 U.S. 113 (1876)