



## BAIL: A LEGAL FRAMEWORK IN INDIA

**Tahira Siddique,**

Research Scholar, Dept. of Law,  
Himalayan University

**Dr. Manoj Sharma,**

Research Supervisor, Dept. of Law,  
Himalayan University

### Abstract

A Bail is a judicial process that has to be conducted impartially and judicially and in accordance with statutory and constitutional precepts. Bail in its essence is a fine balance between the right to liberty of the person accused of an offence and the interests of society at large. In general parlance, bail refers to release from custody, whether it is on personal bond or with sureties. In the present moments, bail in India is a highly debatable issue. There are number of reports that shed light on the state of the criminal justice system in India. In this paper the researcher will cover the concept of bail nationally as well as internationally along with emphasis on Article 21 of the Constitution of India. The researcher will also cover various types of bails under this paper and the relevance and impact of these types of bails.

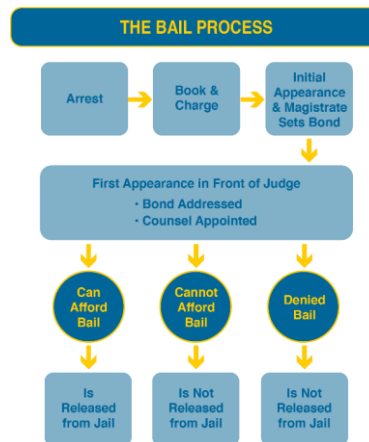
**Key words:** Bail, Personal, Constitution of India

### Introduction

The concept of Bail can trace back to 399 BC, when Plato tried to create a bond for the release of Socrates. The modern bail system evolved from a series of Laws originating in the middle ages in England.<sup>8</sup> During the Mughal rule, the Indian legal system is recorded to have an institution of bail with the system of releasing an arrested person on his furnishing a surety. The use of this system finds reference in the 17th Century travelogue of Italian traveler Manucci who himself was restored to his freedom bail from imprisonment for a false charge of theft. He was granted bail by the then ruler of Punjab, but the kotwal released him only after he furnished a surety. Under Mughal law an interim release could possibly be actuated by the consideration that if dispensation of justice got delayed in ones case then compensatory claim could be made on the judge himself for losses sustained by the aggrieved party.<sup>9</sup> During the British Raj in India criminal courts were using two well understood and well defined forms of bail for release of person held on custody. These were known as Zamanat and Muchalka.<sup>10</sup> Its latest reflection is the improved version of the provisions relating to bail in the code of criminal procedure, 1973 which were preceded by the adoption of the constitution 1950.

### Concept of Bail - Internationally

Internationally, the bail system is different particularly in the Philippines and the United States of America. These are the two countries, where the commercial bail bond system is still into existence i.e., the bail bond system. Whereas in many other countries, the bail system might involve entailing set of restrictions and various conditions on a criminal defendant. These restrictions and conditions are in return for their release from the custody until their trial dates or a specified period of time. The judges in these countries do have wide powers or latitude in deciding or setting a bail amount. So, in such countries, a person who is criminal defendant or who is charged with an offence, which is criminal in nature then he is given a bail hearing before a judge. Here the judge decides the bail amount i.e., deciding the amount of the bail amount is at the sole discretion of the judge. The judge is also vested with the powers to deny a bail altogether. In case the criminal defendant is charged with a crime which is violent in nature or if it appears to a judge that criminal defendant's release on bail might or is likely to cause a risk then the judge, apart from refusing to grant a bail may also set the bail at an astronomical level. Thus, judges do have wide latitude or powers in setting the amount of bail in foreign countries and the amount of the bail also varies by jurisdiction.



**Figure 1.1: Bail Process in U.S.A.**

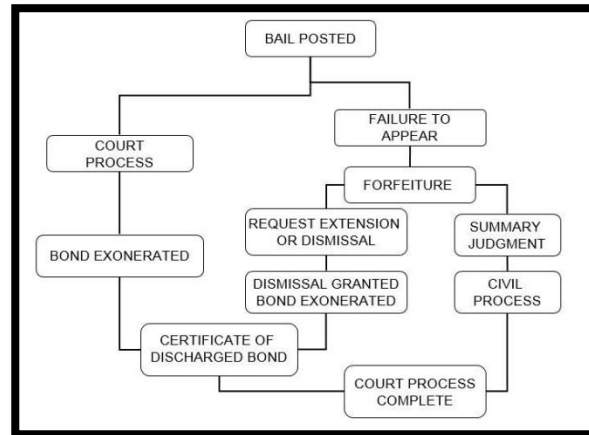
Say for example, a criminal defendant might be imposed a bail amount of around \$500 in case of a non-violent misdemeanor. In case of a felony crime, the criminal defendant might be imposed a bail amount of \$20,000 or more. Such type of system exists only and only in the Philippines and United States of America. The bail bondsmen in such countries furnish a written agreement to the criminal Courts and pay the bail amount in full in case the criminal defendant whose appearance they guarantee if fail to appear on their dates of trial. These bail bondsmen are also known as bail bond agents. Such agents can also be required to furnish a statement of “creditworthiness” or might also demand that the criminal defendant submit collateral which could be in the form of a securities or property. Thus, once the bail bond is delivered, the criminal defendant is released until the trial. This type of bail bond system has become a controversial system throughout U.S. particularly of young black men and it became a part of larger debate due to mass incarceration in U.S. Many in the legal profession consider this bail bond system as discriminatory as the system requires “low-income defendants to stay in jail or scrape together a 10% cash fee and the rest of the bail in collateral, even before they stand trial for any crime”.

Some of the laws that regulate bail in California are:

- “California Insurance Code (CIC)”
- “California Code of Regulations (CCR)”
- “Penal Code (PC)”

Kentucky, Illinois, Wisconsin and Oregon are the four States in U.S. to have outlawed the said bail bondsmen system, which in a way has paved way for a 10% deposit in the Court on the bail amount. It was only in the year 2018 that California discarded the said system of cash bail from its Court system. The reason why California eliminated the cash bail system can be explained with the help of an example. For example, if a New York based resident “M” has broken the law and now wants a bail, then the Court would set her bail at \$25,000. Although “M” does not want to stay in a jail, till the time her Court case is being reviewed by the Court, she does not have the cash amounting to \$25,000. Then the only way left out for “M” is to reach out to a bail bondsman to post a bail bond. In return, the bail bondsman would be paid 10% of the bond amount for their services or \$2,500. Now, for the balance \$22,500, the bail bondsman would secure it in the form of a collateral security from “M” or anyone from the family of “M”. A such “M” will comply with the requirements of the Court and will show up the Court dates and as such “M” will receive the balance amount i.e., \$22,500 which would be less than what “M” would have received had “M” had paid the bail amount on its own.

Another drawback of the system was that the bail bondsmen would accept land i.e., property or real estate, credit cards, bonds, cars, stocks and jewellery as a collateral security. Another problem with the said system was that if anyone was unable to post bail, then the accused person would remain behind the bars until the case was resolved.



**Figure 1.2: Bail posting in U.S.**

Another drawback associated with this type of system was relating to return of the bail money. Say for example, if all the court appearances were made by the accused, then the bail amount would be returned or refunded. The bail amount could be refunded only at the end of the case wherein all the appearances have been made by the accused on all the dates in a Court. If the case is dismissed or an accused is not found guilty, then 100% of the bail amount would be returned to the person. But if the person is convicted, then the entire amount less 3% fee would be refunded. If there were any missed Court appearances then the Court would forfeit the bail amount. So, at the end what is necessary in case of return of bail money is to ensure Court appearances on all the dates.

On the other hand, in case of U.K. if any person is charged with a crime, then there are just two things that can take place:

- Either be released on police bail
- Detained in police custody

So, if any person is accused or is charged with a crime and as such is held in a police custody, then the very first thing that is undertaken by the police is to bring the said person to the first available Court. Here the Court will decide whether the said person will continue in the custody or not i.e., would be remanded in custody or not. Then it is the Public Prosecution Service (PPS) will consider the charges levied on the person and on the basis of this it is decided whether there is a need to keep the person in further custody or not. If there is a risk of the defendant, who is in the custody and who tends to seek bail, were by the PPS has apprehension of the defendant –

- That the defendant would run away
- That the defendant would interfere with or even threaten the witnesses
- That the defendant can pervert the course of justice
- That the defendant would further commit offences
- That the defendant could be a threat to public order

Then, considering the above risks by the PPS, the defendant would not be granted bail and the said person would remain in custody. The said person would then be kept in a prison and would be required to appear in the Court on the dates.

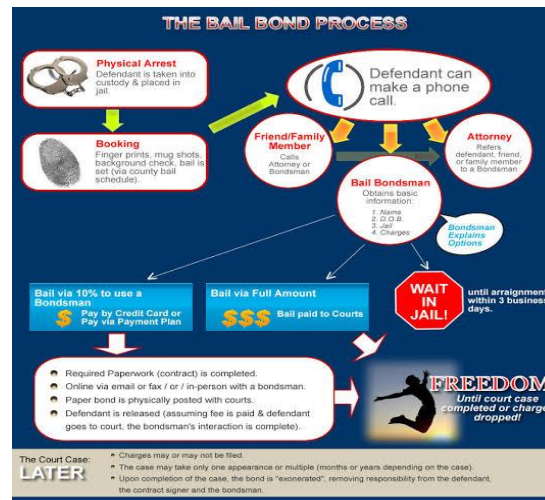


Figure 1.3: Bail bond process in U.K.

Bail in U.K. always refers a recognisance entered between the defendant and the Court to pay the said amount if any of the conditions of the bail are broken. Recognisance means a bond which is between the Court and the defendant. Bail also refers to surety. So, any person providing a surety will also be required to enter into a recognisance. Which means, in case the defendant breaks any of the conditions laid down in the said bail, then the persons who have provided the bail and has entered into a recognisance, they tend to lose their money. After the bail, the very foremost requirement is that the defendant, i.e., the person who has been charged and subsequently released on bail by the police, then the said person will have to ensure that the first Court appearance by the said person is made within 28 days from the date of the charge. The appearance is in the Magistrates' Court, where the District Judge will then consider whether there is sufficient evidence to connect the said defendant with the crime or not.

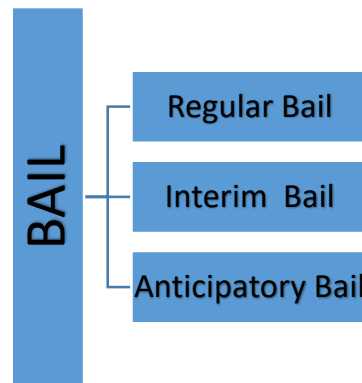
Another provision in U.K. related to bail is that even if a defendant is kept in a prison, the defendant can again apply for a bail. This is possible only if there has been a change in the circumstances from the day the defendant had applied for the bail last. The defendant also has a chance of applying on compassionate bail for a shorter period of time such as the circumstances where a family funeral has to be attended by the defendant. Once the defendant has used the compassionate bail, they cannot again make any further applications for bail unless and until the defendant can persuade the judge that their personal circumstances have changed. If the defendant is able to persuade the judge regarding change in its personal circumstances, then the judge may grant a bail, unless and until the prosecution can prove that if the bail is granted then it could pose a specific risk.

Once the bail is granted to the defendant by the appropriate Court, then the public prosecutor will try to consider in case any of the bail conditions would help identify or address any of the identified risks such as –

- The defendant to whom the bail has been granted has to provide an approved address so that the defendant be at the said approved address between certain times and this is also termed as curfew.
- The defendant to whom the bail has been granted, would be granted on certain restrictions such as the defendant cannot visit certain places or drink alcohol or even see certain persons.
- Electronic tagging.
- So, in case even if the PPS has argued against the bail and the Court still grants the bail, on the basis of above conditions, then the public prosecutor may appeal against the said bail and this appeal is made by the public prosecutor in the High Court, as in U.K. the High Court has jurisdiction to hear appeals.

### Types of Bail

There are three types of bail in India:



**Figure 1.4 : Types of Bail**

### **Regular Bail**

“Regular bail” refers to bail in non-bailable instances. The rules for standard bail in criminal cases are outlined in Section 437 of the Criminal Procedure Law. It states that a person may be released on bail at the discretion of the court if they are brought before a court other than the high court or the court of sessions after being detained by a police officer in charge of a police station without a warrant and accused of committing a non-bailable offence. There is an exception to it and following are such exceptions:

- When there are good reasons to think that he committed an offence for which the maximum penalty is life in prison or death.
- When such an offence is cognizable in nature and if he has been previously convicted of an offence which was punishable with death, imprisonment for life, or imprisonment for seven years or more. Additionally, he will not be granted bail if he has received two or more convictions for a cognizable offence for which bail is not permitted.

Regarding the aforementioned instances, the Code of Criminal Process also has a number of restrictions. First, the court may give bail to the accused in the situations mentioned above if they are under the age of sixteen, ill, infirm, or a woman. Moreover, it stipulates that if the accused has previously been convicted of an offence punishable by death, life in prison, or a sentence of seven years or more, or if he is charged with an offence that is punishable by both death and life in prison, the court may grant him release on special grounds if it determines that it is just and proper to do so after finding that the accused's release is just and proper. Additionally, it states that if the accused is eligible for bail under other circumstances, the refusal of bail on the basis of the witness's identification of the accused will not be sufficient, and the accused must also make a promise to follow whatever instructions the court may provide. Finally, it stipulates that if the crime for which the accused is charged carries a penalty of death, life in prison, or a term of imprisonment of seven years or more, the accused cannot be released on bond without providing the public prosecutor a chance to present his case.

Section 436 of Cr. P.C. allows a person to avail bail if the offence is a bailable offence. Section 436 is a mandatory provision, thereby indicating that no one has any discretion in this matter – neither the Court nor even the police. The provision under Section 436 of Cr. P.C. is absolutely clear by indicating that any person who is arrested for an offence as falling under the category of a bailable offence and who is capable of providing the bail, has to be released. Under such circumstances, even the police have no option but to release the said person after providing a surety or on a personal bond. In case the accused person is unable to provide the bail bond, then it is the responsibility of the police officer to bring the said accused person before the Magistrate. The accused person has to be brought before the Magistrate within 24 hours of his arrest. This provision of production of an accused person before the Magistrate is provided under Section 57 of the Cr. P.C. Once the person is produced before the Magistrate, then if the accused, who is accused of an offence is willing to furnish a bail, then the Magistrate is supposed to pass an order for the release of the accused person. The only condition is such an order passed by the Magistrate is that the person accused of an offence can be released on only when he or she furnishes a personal



bond or a bond with sureties. “The Magistrate cannot order the detention of a person accused of a bailable offence, who is willing to furnish bail with or without sureties, even if it is for the purpose of assisting the investigation”. In accordance with Section 437's Subsection 2, if the officer or the court determines that there are sufficient grounds for further investigation into the accused's guilt but that there are no grounds to believe that the accused has committed a non-bailable offence at any point during the trial, enquiry, or investigation. The accused will thereafter be released on bail in these circumstances, subject to Section 446A, which calls for the execution of a bail bond. At the officer's or the court's discretion, bail in such instances may be provided by the accused by way of the execution of a personal bond.

The conditions that may be imposed while granting bail are outlined in Subsection 3 of the current Act. It states that the court must impose certain conditions when granting bail to a person who is charged with or suspected of committing an offence covered by chapters VI, XVI, or XVII of the Indian Penal Code, as well as any offence involving aiding, conspiring, or attempting to commit an offence covered by any of the aforementioned chapters. These conditions are:

- That the accused individual must appear in court and adhere to all of the terms of the bond, including attendance.
- That the accused individual will not commit an offence similar to the one of which he or she is accused or suspected while out on bail.
- It is forbidden for the accused to directly or indirectly coerce, promise, or threaten anyone with knowledge of the case in order to keep them from telling police officers anything that could be used against them or interfering with the evidence.
- The court has complete power to impose any condition that it may determine is appropriate in the interests of justice, according to subsection 3 of the law.

Section 437's additional subsections 4 and 5 detail the general process that the officer and court must follow while considering bail. While sub-section 4 mandates that the officer or the relevant court must document any specific justifications in writing before releasing someone on bail under subsections 1 and 2.

In sub-section 6, which deals with trials before a magistrate, it is stated that if the trial of the person accused of any non-bailable offence is not finished within sixty days of the first date the court sets up for taking evidence, the accused will be granted bail if he was in custody for the entire time. Additionally, in such circumstances, the magistrate would deny the bail while noting the mandatory or necessary grounds for the same if, despite the fulfilment of the aforementioned condition, he is of the opinion and view that such a person should not be released. Last but not least, Section 437 subsection 7 contains provisions relating to the trial's road map. It states that the accused will be released from custody if the court determines that there are reasonable grounds to believe that the accused is not guilty of a non-bailable offence after the trial but before the verdict is rendered. After the execution of his personal bond, if he is in custody.

Even in case of offences which fall under the category of non-bailable offences, under Section 437 of the Cr. P.C., the said Code provides for bail provision. The said Section provides discretionary powers to the Court to release the accused on bail in the case of non-bailable offences. Section 437 provides for granting of bail in case of non-bailable offences, wherein the bail can be granted with specific conditions.

### **Interim Bail**

The concept of interim bail is not mentioned under Cr. P.C. The Hon'ble Supreme Court in 2009 established the concept of interim bail thereby stating that pending disposal of a bail application, interim bail can be granted. The objective behind the concept of interim bail is that detention or an arrest of a person can result into irreparable loss. The concept of interim bail is often misused. The misuse of interim bail was brought before the Hon'ble Apex Court of the country in the case of *Rukmani Mahato v. The State of Jharkhand* wherein the Hon'ble Supreme Court analysed the extent of bail provisions under the criminal jurisprudence.

The Court may award interim bail while any case is ongoing or while your application for anticipatory bail or regular bail is being considered by the Court. It will be granted if a few requirements are satisfied. The Court may award interim bail while any case is ongoing or while your application for anticipatory bail or regular bail is being considered by the Court. It will be granted if a few requirements are satisfied.

The interim bail is granted, only if following essentials are fulfilled:

- It is granted only when an application of regular bail or an anticipatory bail is pending before the Court.
- It is always granted for a shorter period of time.
- Once the time frame of the interim bail is over, the accused will be arrested by the police without a warrant.
- As far as interim bail is concerned, there is no specific process for its cancellation.

In one of the cases before the Hon'ble High Court of Bombay, an application for Anticipatory Bail was filed in case of an accused who had been charged U/s 498 (A), 406, 504, 506 r/w 34 of the I.P.C. and the charges had been levied by defacto-complainant, the wife of the accused. The defacto-complainant had managed to register a false case with the Police after a lapse of more than six years and the present complaint was devoid of rightness and truth further it was an afterthought just to harass the applicant and using the twisting arm technique to squeeze out money from the applicant and to defame the applicant and his family in the society. The defacto-complainant was taking an undue advantage of special laws and Act to satisfy her own unjust wrong attitude and ego.

Apart from this, the applicant and even his family members were also falsely dragged in the false alleged case, as stated by the applicant in his anticipatory bail application. There were various grounds on which the applicant had sought anticipatory bail such as the allegations made were vague and fabricated and were far away from the truth and the applicant further stated in an anticipatory bail application that the defacto-complainant had left the matrimonial house and had opted to stay alone away from the applicant, who was her husband, without any just reasons.

Further with regard to the 'streedhan' and dowry harassment the applicant put the defacto-complainant to strict proof thereof. As such the incident never took place as there were difference but was not true to say that it was due to harassment or dowry demand. The applicant therefore had submitted that the differences were mostly due to the trust issues between them and hence they both had willingly decided to stay separated hence the allegations made were baseless, false and fabricated. The applicant therefore, had submitted that they were staying separately since past six years. Further going through the statement given by the defacto-complainant it was crystal clear that the allegations were just vague submissions and the prosecution had failed to prima facie prove the case against the applicant.

Therefore, the applicant had submitted that the defacto-complainant had made a false allegation in the F.I.R. which was very clear after perusing the notice that was sent by the defacto-complainant through her advocate to the applicant.

To seek anticipatory bail, following grounds were relied by the applicant:

- That the applicant was innocent and had no connection of whatsoever in the commission of any of the crime.
- The applicant had no connection and clue about the said allegations. Thus, this was not a case requiring custodial interrogation of the applicant for the purpose of any recovery or discovery or any deep inquiry or any identification etc. therefore, as per the law settled on this issue, though the police may be having powers to arrest a person but it is one thing, as the question that arises is as to what is the necessity of arresting the applicant in the present matter.
- If the applicant was arrested, then a great injustice and hardship shall be caused to them, thereby putting a blot on their characters. They therefore needed to be protected by appreciating the facts as was stated by the applicant in the said anticipatory bail application.
- This was not the case which would require custodial interrogation of the applicant. The case could be decided at the stage of trial on the basis of the testimonies of the witnesses.

Thus, in the event of the arrest of the applicant by the respondent police in the said crime, the application may be ordered to be released on appropriate Bail and on such terms and conditions as the Hon'ble Court may deem fit and proper. Through the said application, the applicant be released on anticipatory bail of such amount and on such terms and conditions as the Hon'ble Court may deem so fit. Pending the hearing and final disposal of the said application, the liberty of the applicant was sought to be protected and interim anticipatory, ad-interim bail may be granted on such terms and conditions as the Hon'ble Court may deem fit and proper.

On the basis of the said Anticipatory Bail application, the applicant was granted Interim Bail.

Since "interim" literally means "for an interval", it is clear that in the instance of interim bail, the court has granted bail for a predetermined amount of time. The break could last fifteen days or even a whole month. At these intervals, the accused is freed from custody; nevertheless, after the given time period has passed, the accused is once more imprisoned.

In order to get interim bail, an accused person might submit an application to the relevant court. The court issues an order after considering the case's facts and the alleged offense's character. Although bail is a legal right in cases where a defendant is eligible for bail, interim bail can only be granted in those situations. It should be highlighted that the relevant court has the discretion to extend the duration of interim bail if necessary. In the case of *Athar Parvez v. State*, the Hon. Delhi High Court ruled that "extraordinary circumstances must exist in respect to the release of the accused for interim bail".

### **Default Bail**

Default bail is nothing but a "mandatory bail". The provisions of default mail are contained in Section 167(2) of Cr. P.C. As per this section, if the investigation officer fails to file a charge sheet within a time frame of 90 days, which is a specific prescribed time under the said section, then under those circumstances, even if the case is of an offence which is punishable by life imprisonment or by death or imprisonment for a term which is not less than ten years and sixty days for any other offence, then the accused will have to be released on bail, if he or she is willing to take it. In order to gather evidence under such cases, the investigating officer carries investigation as per the process or the procedure. The main objective of gathering evidence against the person so accused is to collect evidence against him or her. After the investigation is completed, then the investigating officer files a final report in consonance with Section 173 of the Cr. P.C. and if the investigating officer fails to file the said report within the stipulated time frame, then the accused is released on mandatory bail or default bail.

Mandatory bail is another name for default bail. The provisions regarding default bail are given under Section 167, subsection 2, where it is stated that if the investigation officer does not file the charge sheet within a specific prescribed time which is 90 days for cases of an offence punishable by death, imprisonment for life or imprisonment for a term of not less than 10 years. And 60 days for any other offence than the earlier ones. If the defendant agrees to post bail, he will then be freed. A system or process that an investigating officer follows in order to gather evidence can be referred to as an investigation.

The gathering of evidence against the accused is the only goal of an investigation into an offence. The investigating officer submits a final report in accordance with Section 173 of the Code following the conclusion of the investigation; if he does not submit the report within the aforementioned time frame, the accused is released on default bail.

### **Anticipatory Bail**

Anticipatory bail application is filed by a person before the arrest could be made. Anticipatory bail is also known by the name "pre-arrest" bail. A pre-arrest bail is a direct order, which is granted by the Sessions Court or the High Court. Whenever a person is of an apprehension that he or she might get arrested, then he or she may apply for an anticipatory bail under Section 438 of the Code i.e., Cr. P.C., which grants the right to bail.

Anticipatory bail is based on the concept of a legal principle "*presumption of innocence*". This legal principle indicates that anyone who is accused of any crime is presumed to be innocent, until the said person is proven guilty. Till the time the guilt of a person is not proved, he or she is deemed to be innocent. This legal principle is



also treated as a fundamental principle which is also enshrined in Article 11 of the Universal Declaration of Human Rights (UDHR).

Many a times a question arises whether an anticipatory bail granted to an accused amounts to contempt of court or not. In the case of *Satwant Singh v. Malkeet Singh*, the learned Single Judge and the Division Bench had taken the view that once the Respondent had been granted interim bail under Section 438, Code of Criminal Procedure Code, his arrest on a charge which has been later on added Under Section 307, Indian Penal Code (IPC) constitutes contempt.

In its most basic form, anticipatory bail is a form of protection against future arrest in which a judge releases a defendant on bond when they have good cause to believe they will be arrested for an offence that is not subject to bail. In accordance with Section 438 of the Criminal Procedure Code, a person who reasonably believes they will soon be arrested for a crime for which there is no possibility of a bail bond may be granted anticipatory bail by the high court or sessions court. Preliminary bail is only granted to higher criminal courts, according to the current clause, which also states that the applicant may only submit bail requests to the high court and sessions court.

There are two types of law: procedural law and substantive law. Written or statutory law is referred to as substantive law, while the law that deals with enforcing substantive law is referred to as procedural law. What constitutes an offence is an issue to explore before delving into the insights of the subject. An act or omission that is punished under any currently in effect law is referred to as an offence. The offences that fall under its purview are those that are bailable. Undoubtedly one of the most significant areas of procedural law is bail law. The code doesn't define the word "bail." But, in general, it refers to the provisional release of a suspect pending the provision of a security for their appearance.

The provisions relating to anticipatory bail are covered in Section 438 of the Code of Criminal Procedure, 1973. The code doesn't define the terms "anticipatory bail." The term "anticipatory bail" is misleading, as the ruling only takes effect upon arrest. The Constitution gives all citizens the important right to life and personal freedom. One of the most valuable rights is that. In order to prevent an individual's freedom from being unduly compromised, the Joint Select Committee of Parliament first proposed that bail be made available in advance of an arrest, according to the legislative history of the provision.

In the first sentence of Section 438 of the Code, it is stated explicitly that a person may request the High Court or the Court of Sessions to grant them "anticipatory bail" if they have a reasonable suspicion that they will be arrested on suspicion of committing a crime for which there is no provision for bail. As an illustration, Mr. 'A' wed Ms. 'W'. Things between them were not easy after their marriage. Afterwards Ms. 'W' brought a claim against him in accordance with section 489(A) of the 1973 Code of Criminal Procedure.

The Court must only use its authority to grant anticipatory bail in extremely rare circumstances. In order to grant anticipatory bail, the court must be persuaded that there is a legitimate cause and a reasonable justification. By giving people a way to fight pointless detention, the clause safeguards their right to life and personal liberty. Citizens of a nation where rifts and rivalries are frequent should have access to a remedy that doesn't jeopardise their right to life and personal liberty. A person may go to the High Court or the Sessions Court to get anticipatory bail. As soon as the suspect believes they could be detained under to Sections 406, 434, or 498A, they should speak with an experienced solicitor.

With the 2005 change, the court must hear from the public prosecutor. When the District and Sessions Court denies anticipatory bail, it frequently happens that the person must appeal to the High Court, which typically approves anticipatory bail. There are a few requirements to be completed after the bond is approved before the defendant is released on bail. The Court has the authority to impose various requirements and limitations.

Ordinary bail orders and anticipatory bail orders are different in that the former are given after an arrest and result in release from police custody, whereas the latter are given before to an arrest and take effect at the time of the arrest. When someone is arrested for an offence that doesn't allow for bail, police custody is a given. In a sense,

an order for anticipatory bail acts as insurance against being taken into custody by the police after being arrested for the offence or offences covered by the order. In other words, it is a pre-arrest legal procedure that specifies what should happen if the individual in whose favour it is given is subsequently arrested on the charge, as opposed to a post-arrest order of bail.

Although Section 439 does not contain an explicit clause addressing bail cancellation, it is implied that the court that granted anticipatory bail has the right to do so after giving it due consideration. Anticipatory Bail is a unique privilege given to the individual anticipating arrest and should never be misused. The High Court's inherent overriding powers give it the authority to cancel bail even in the absence of an express provision in the Code. This authority can only be used in exceptional circumstances when the High Court is convinced that the ends of justice will be compromised without taking the accused into custody.

In order to avoid a person's personal liberty being violated, anticipatory bail was added to the Code. No one has the right to be deprived of their personal freedom or held without cause. Yet, the Courts should award it with the utmost caution in order to guard against misuse of this unique privilege. Through a string of decisions, the Hon'ble Supreme Court of India has emphasised this fact numerous times. Anticipatory bail is a tool to ensure a person's freedom; it is not a licence to commit crimes or a defence against any and all accusations, likely or improbable.

### CONCLUSION

The right of a bail and fair trial required moderation not only to the person accused of an offence, but also consideration of the public and society at large as represented by the state. The accused should not be subjected to undue or unnecessary detention prior to his conviction. Every citizen of India has basic fundamental right to freedom guaranteed Article 21 of the Indian constitution, which specifically states, "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21 provides right to life and personal liberty to the citizen and the same time a balance has required to be struck between the right to individual liberty and interest of the society at large. If any of the individual, who commit such types of acts which that is forbidden by the law of the land, he or she is bound to face the consequences as per the law and in that situation, his or her freedom may be restricted depending upon the gravity of offence as such committed.

### References

- Andhra Legal Decisions (ALD's) Criminal Consolidated Digest, 1996- 2002, 2003 Edition, ALD Publications, Hyderabad
- Halsbury's Laws of England, 1955 Ed. Vol. X. Hansariya, B.L. – "Right to Life and Liberty under the Constitution', Hansariya, B.L.– "Rights to Life and Liberty under, the Constitution', 1993, Bombay. Hemphill, Charles F. – "Criminal Procedure: The Administration of Justice', Goodyear Publishing Co. Hingorani, R.C. Human Rights in India, 1985.
- Kumar, H. (2020). *A Critical Study of Bail Trends in India*, Paparch's Journal of Archaeology of Egypt/Egyptology, 17(7).
- Mathivathani, P. M. and Udayavani, V. (2018). *Bail and its Processing Under Cr. P.C. – A Critical Study*, International Journal of Pure and Applied Mathematics, 120(5), 2801;2809.
- R. Sharma, Human Rights and Bail, 2002, APH Publishing Company, New Delhi.
- Rani, M. and Rana, Parveen (2021). *Right to Bail as a Constitutional Right*, International Journal of Law Management and Humanities, 5(5), 352:361.
- Sethy, N. (2020). *Right to Bail: A Jurisprudential Approach*, International Journal of Humanities and Social Science Invention (IJHSSI), 9(3), 05:11.
- Shah, M. and Chadha, V. (2021). *Evolution of Law on Anticipatory Bail in India*, Janus.Net, 12(1), 251:264.