



A STUDY OF RELEASING AN ACCUSED ON BAIL AND BOND

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Abstract:

We know the meaning of Presumption of innocence is a legal principle that means accused shall be innocent until he/she proven Guilty. Also Supreme Court said that Bail is the rule and jail is the exception. In this paper you will understand the various provisions mentioned the Criminal Procedure Code, 1973. The study will help to law students, lawyers, and those who are doing preparation for Judiciary, APO. The study will acquaint about the various Bail Provisions. Difference between Bail and Bond. Sometime Bail is the right in non-bailable offence. Bailable offence is the right but sometime this right is denied by the court. Who is surety and how the surety can withdraw the liability of the Surety. This study will tell you Anticipatory Bail concept. Every citizen must be known the Bail provision, it is useful to protect the wrongful detention by the Police.

Key words: Bail, Bond, Anticipatory Bail, bailable and non-bailable offence.



Introduction:

If we read the Bare Act of Criminal Procedure Code, 1973 thoroughly, we found various grounds of the Bail and Bond.

When a FIR lodges against a person in cognizable offence then Police Officer arrest the Person after doing some investigation. When the person is detained in the custody of the Police, then the freedom of accused and Personal Liberty is compromised.

Article 21 of Constitution of India says: **“Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law.”**

Detention is against the Article 21 that’s why Provisions of Cr.PC. is synchronised with the Indian Constitution. Bail is a means, mechanism by which the accused person enjoys his/her freedom, guaranteed under Article 21 of the Indian Constitution. Bail is run on the principle of Presumption of Innocent.

When accused is left with his own Bond is called Bond and when accused is left with the surety then called Bail. Accused has to satisfy the court that when Court will call him he will be present in the court on time. Accused has to comply with the conditions of the Bail or Bond.

Why Police is arrested to the Accused: Law and order is maintained by the executives like DM, SP, Police officers. It is a matter of State concerns, State’s responsibility to provide the Peace, prevent crime and protect the citizens and provide the free and threat free environment. And when a person has committed the crime which is the duty of the State government to prevent it, Police can arrest the person. Personal Interest of the Liberty is always shifted to Public Interest that’s the reason the accused is arrested.

Type of Offences

- A) **Bailable Offence:** Bailable offence is the offence where the Bail is the right of the accused.
- B) **Non-Bailable Offence:** This is not the right of the accused, it depends on the discretion of the court. This types of offences is more severe in nature.

Schedule-I of the CrPc has the classification of offences in the 6 (six) heads

| Sr. No. | Heads |
|---------|------------------------------|
| 1 | Indian Penal Section |
| 2 | About Offence |
| 3 | Punishment |
| 4 | Cognizable or non-Cognizable |
| 5 | Bailable and non-Bailable |
| 6 | By what Court triable |

Table-1

Provisions of the Bail as the right of the accused

| Bail as a right of Accused in Criminal Procedure Code, 1973 | | |
|---|-------------|--------------|
| Sr. No. | Chapter No. | Section No. |
| 1 | 33 | 436 |
| 2 | 33 | 436-A |
| 3 | 33 | 437 Clause 6 |
| 4 | 33 | 437 Clause 7 |
| 5 | 6 | 71 |
| 6 | 12 | 167 (2) |
| 7 | 12 | 169 |

Table-2

1. 436. in what cases bail to be taken

(1) When any person other than a person accused of a **non-bailable offence is arrested or detained without warrant by an officer** in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, **such person shall be released on bail:**

Provided that such officer or Court, if he or it thinks fit, may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

[Explanation.—Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso:]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the Court or is brought in custody and any such refusal shall be without prejudice to the powers of the Court to call upon any person bound by such bond to pay the penalty thereof under section 446.

Comment: Cr.P.C. AMENDMENT ACT, 2005: in respect of bailable offences, a person has to remain in jail for his availity to furnish bail, till the case disposed of section 436 (1) is, therefore, being amended to make a mandatory provision that if the arrested person of a bailable offence and he is an indigent and cannot furnish surety, the Court shall release him on his execution of a bond without sureties.

2. 436A. Maximum period for which an under-Trial prisoner can be detained

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) **undergone detention for a period extending up to one-half of the maximum period of imprisonment** specified for that offence under that law, **he shall be released by the Court on his personal bond with or without sureties:**

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a **period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:**

Provided further that **no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided** for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

3. Section 437 Clause 6

If, in any case triable by a Magistrate, the trial of a person accused of **any non-bailable offence** is not concluded within a period of **sixty days from the first date fixed for taking evidence** in the case, such person shall, if he is in custody during the whole of the said period, **be released on bail to the satisfaction of the Magistrate**, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

4. Section 437 Clause 7

If, at any time, after the conclusion of the trial of a person **accused of a non-bailable offence** and before judgment is delivered, the Court is of opinion that there are **reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused**, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

5. Section 71. Power to direct security to be taken

(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, **if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.**

(2) The endorsement shall state— (a) the number of sureties; (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; (c) the time at which he is to attend before the Court. (3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

6. Section 167 clause 2:- Procedure when investigation cannot be completed in twenty-four hours

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

[(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, **but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—**

(i) **ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;**

(ii) **sixty days, where the investigation relates to any other offence,**

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]

7. Section 169. Release of accused when evidence deficient

If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Other Provisions of Bail as Discretion of Court in Criminal Procedure Code, 1973

| Bail as Discretion of Court in Criminal Procedure Code, 1973 | | |
|--|-------------|---------------|
| Sr. No. | Chapter No. | Section No. |
| 1 | 5 | 42 |
| 2 | 5 | 59 |
| 3 | 6 | 81 |
| 4 | 8 | 123 |
| 5 | 12 | 170 |
| 6 | 27 | 360 (1) & (9) |
| 7 | 29 | 389 |
| 8 | 29 | 390 |
| 9 | 30 | 395 |
| 10 | 30 | 397 |

Table-3

1. Sec. 42 Arrest on refusal to give name and residence:

- (1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.
- (2) **When the true name and residence of such person have been ascertained, he shall be released** on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

2. Sec 59. Discharge of person apprehended

No person who has been arrested by a police officer shall be discharged except **on his own bond, or on bail, or under the special order of a Magistrate.**

3. Sec 81. Procedure by Magistrate before whom such person arrested is brought

- (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the **offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant:**

Provided further that if the offence is a **non-bailable one**, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of **the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.**

- (2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

4. **123. Power to release persons imprisoned for failing to give security**

Whenever the District Magistrate in the case of an order passed by an Executive Magistrate under section 117, or the Chief Judicial Magistrate in any other case is of opinion that any person imprisoned for failing to give security under **this Chapter may be released without hazard to the community or to any other person, he may order such person to be discharged.**

5. **Sec 170. Cases to be sent to Magistrate, when evidence is sufficient**

- (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, **if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.**
- (2) When the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the **case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.**
- (3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.
- (4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

6. **Sec 360 (1) & (9) Order to release on probation of good conduct or after admonition.**

- (1) When any person not under **twenty-one years of age is convicted** of an offence punishable with fine only or with imprisonment for a term **of seven years or less**, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender **should be released on probation** of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2).

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or **admit him to bail** with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

7. **389. Suspension of sentence pending the appeal; release of appellant on bail**

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that **he be released on bail**, or on his own bond:

[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on a Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—

(i) **where such person, being on bail**, is sentenced to imprisonment for a term not exceeding three years, or

(ii) **where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail**, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

8. **390. Arrest of accused in appeal from acquittal.**

When an appeal is presented under section 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any Subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or **admit him to bail**.

9. **395 (3). Reference to High Court:**

Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or **release him on bail to appear when called upon**.

10. 397 (1). Calling for records to exercise powers of revision

- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and **if the accused is in confinement that he be released on bail** or on his own bond pending the examination of the record.

Conclusion:

Thus, in this study we have noted down the provisions of Bail as Rights and other grounds where Court can release accused on Bail. In Criminal Laws onus always be on the Prosecutor to prove the charges in beyond the reasonable doubt, If not done then accused should be released. The study has identified the whole provisions related to bail in Criminal Procedure Code, 1973.

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