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“BAIL IN EYES OF COURT”

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ABSTRACT:

The idea of bail was first institute in England. Getting inspired from that India also, then introduced this concept. The concept of bail has come under the extent of human rights since the UN declaration of Human Rights of 1948. Law commission in its 41st report conduct out the recommendations to the parliament and these recommendations were examined and incorporated by parliament in criminal procedure code, 1973. The provisions relating to the bail and bonds have been given under section 436 to 450 of the Criminal Procedure Code. These provisions foresee in the code gives the brief concerning the provisions of the bail.

Bailable offence is the type of offence in which the accused person is granted bail. Under section 2(a) of the code this term has been defined and Non Bailable offence is the type of offence in which accused is not entitled to get bail. So, the question lies here is that 'cases in which bail may granted'? In the case of bailable offence it is mandatory for the court to grant the bail to accused person and in cases of non bailable offence it depends on the discretion of the court whether court thinks fit to grant bail to accused or not.

KEYWORDS:

BAIL

BAILER

OFFENCE

BAILABLE

NON-BAILABLE

COGNIZABLE

NON- COGNIZABLE

INTRODUCTION:

Bail means short-term release of an accused person awaiting trial. Bail is the judicial release of an accused charged with the certain offence by imposing some restrictions on him and compelling him to remain within the jurisdiction of court. So, if we look on the background history of this concept. Originally, the word is derived from the old French word

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'bailer' which means to give or to deliver. Bail means short-term release of an accused person awaiting trial. Bail is the judicial release of an accused charged with the certain offence by imposing some restrictions on him and compelling him to remain within the jurisdiction of court. So, if we look on the background history of this concept. Originally, the word is derived from the old French word 'bailer' which means to give or to deliver.

1 In what cases bail to be taken:-

- ❖ 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.

- ❖ 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.

(Notes on Clauses)

till the case is disposed of. Sub-section (1) has been amended to make a mandatory provision that if the arrested person is accused 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.

COMMENTS

It is true that Supreme Court does not interfere with an order granting bail but judicial discipline will be sacrificed at the altar of judicial discretion if jurisdiction under article 136 is refused to be exercised

1. When bail may be taken in case of non-bailable offence:-

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- When any person accused of, or suspected of, the commission of any 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 other than the High Court or Court of Session, he may be released on bail, but-
- Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years];
- Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm;
- Provided further that the court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason;
- Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court;
- [Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]
- If it appears to such officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, [the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or court on

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the execution by him of a bond without sureties for his appearance as hereinafter provided.

- When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) [the Court shall impose the conditions,-
- that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
- that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
- that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.]
- An officer or a court releasing any person on bail under sub-section (1), or sub-section (2), shall record in writing his or its [reasons or special reasons] for so doing.
- Any court which has released a person on bail under sub-section (1), or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.
- If, 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.
- 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.

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(Notes on Clauses)

Section 437 has been amended to provide that if a person commits a cognizable and non-bailable offence and he has previously been convicted on two or more occasions of a cognizable offence punishable with imprisonment for 3 years or more but not less than 7 years, he shall not be released except in the circumstances specified in the provision. It has further been provided that if an accused appears before the Court while in judicial custody and prays for bail, or a prayer for bail is made on his behalf, the Court shall grant bail only after giving an opportunity of hearing to the prosecution, if the offence alleged to have been committed by the accused is punishable with death, imprisonment for life or imprisonment for not less than 7 years.

Under sub-section (3) the Court has got the discretion to impose certain conditions for the grant of bail. Under section 441 (2), where any condition is imposed for the release of a person on bail, the bond shall contain that condition also. In order to make the provision stringent and to see that the person on bail does not interfere or intimidate witness, sub-section (3) has been amended to specify certain conditions, which are mandatory.

COMMENTS

In non-bailable cases in which the person is not guilty of an offence punishable with death or imprisonment for life, the court will exercise its discretion in favour of granting bail subject to sub-section (3) of section 437 if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the court which may defeat the proper investigation and fair trial, the court will not decline bail to a person who is not accused of an offence punishable with death or imprisonment for life.

It has been held that since the jurisdiction is discretionary, it is required to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general.

1. Direction for grant of bail to person apprehending arrest

- Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-
- the nature and gravity of the accusation;

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- the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- the possibility of the applicant to flee from justice; and
- where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested,
- either reject the application forthwith or issue an interim order for the grant of anticipatory bail:
- Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.
- Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.
- The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.]
- When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including
- a condition that the person shall make himself available for interrogation by a police officer and when required;
- a condition that the person shall not, directly or indirectly,- make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer,
- a condition that the person shall not leave India without the previous permission of the court;
- Such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted -under that section.
- If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on

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bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1).

(Notes on Clauses)

- Section 438 has been amended to the effect that (i) the power to grant anticipatory bail should be exercised by the Court of Session or High Court after taking into consideration certain circumstances; (ii) if the Court does not reject the application for the grant of anticipatory bail, and makes an interim order of bail, it should, forthwith give notice to the Public Prosecutor and Superintendent of Police and the question of bail would be re-examined in the light of the respective
- contentions of the parties; and (iii) the presence of the person seeking anticipatory bail in the Court should be made mandatory at the time of hearing of the application for the grant of anticipatory bail subject to certain exceptions.

COMMENTS

- Section 438 makes no distinction whether the arrest is apprehended at the hands of the police or at the instance of the Magistrate. The grant of bail under section 438 (1) by the High Court or the Court of Session is dependent on the merits of a case and not the order of the Magistrate choosing to summon an accused through bailable or non-bailable warrant. Anticipatory bail may be granted for a duration which may extend to the date on which the bail application is to be disposed of or even a few day thereafter to enable the accused to move the higher court if he so desires.

2. *Special powers of High Court or Court of Session regarding bail:-*

- A High Court or Court of Session may direct.
- That any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition, which it considers necessary for the purposes mentioned in that sub-section;
- any condition imposed by a Magistrate when releasing any person on bail be set aside or modified;
- Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

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- A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

- **CONCLUSION:**

Doubt first and then demonstration are key but assumptions of innocence are also required. A bail provision was introduced in this regard. It has been shown as a way to save the innocent man's time in jail before his trial and to allow the lawyer to have a better understanding of the case as well as to increase the readiness of the case. The basic law relating to bail is laid down in sections 436, 437, 438 and 439 of the Code.

It may be concluded that the concept of bail is that it acts as a defense entered by the accused person on the basis of which he can be released on short term basis but is required to be present in court whenever required by the court. Bail is processed while the trial of the accused is still pending. Typically, a person seeks this option to free themselves from police custody. These provisions in the Code provide a brief overview of the bail provisions. The bail process is a legal process.