



BAIL AND JUDICIAL DISCRETION: AN ANALYSIS ON JUDICIAL RULES

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ABSTRACT

In the criminal justice system, bail is a fundamental right, but the Judge has the power to grant or deny the bail. Legal, Social and political elements are only a few of the variables that might affect the exercise of judicial discretion, which is vital in striking a balance between public safety concerns and individual liberty.

The Indian system, which support a bail system that typically allows an individual to remain out of jail until a trial has proven them guilty. When it comes to crimes in India that are not punished by death or life in jail, women and children are the only ones who can be granted bail, or release on their own recognizance, whereas bail is accessible to all other offenders.

INTRODUCTION

In India the criminal justice system, bail and judicial discretion are related ideas. Bail is the process of releasing someone from jail until trial, whereas the power bestowed upon judges to provide decisions based on their own judgement and legal interpretation is known as judicial discretion.

Article 21 of the constitution of India establishes bail as a fundamental right. The idea of bail is governed by both the Code of Criminal Procedure (CrPC), 1973 and Indian Penal Code (IPC), 1860. The judge's discretion is essential in deciding whether to grant or refuse bail because they must balance the public interest and safety concerns with the rights of the individuals.

In Article 22, which prohibits the arbitrary and indefinite imprisonment of individuals, the Indian Constitution rightfully places personal liberty and the rule of law. It specifies that no one may be detained for an amount of time greater than permitted by any Indian law that has been approved by the parliament. The perception that the bail system is unpredictable in a legal sense arises from the fact that, despite the judiciary putting in place a complicated procedure

to handle matters requiring the granting of bail to an individual, the system does not live up to the standards of a model system.

HISTORY

The Criminal Procedure Code was first suggested by Lord Canning and codified by Lord Thomas Babington Macaulay in 1873, making the Indian criminal justice system a product of the British Raj. The same laws and regulations that were in place in the UK at the time were passed on to them. Stated differently, the Criminal Procedure Code of India was developed in the early years of Indian colonization and carried over the same ideas and structure from the British Raj.

Based on the suggestions made by the Law Commission within its 41st Report on the Code of Criminal Procedure, the law pertaining to bail was appropriately changed to align with constitutional goals and achieve a delicate balance between the "freedom of person" and the "interest of social order." Chapter XXXIII Cr. P. C.'s Sections 436, 437, and 439 were simplified in 1973. In the past many decades, there have been several strong reasons to evaluate the problem of bail and to create a plan for future reform, including the socioeconomic circumstances, its relationships, shifting patterns of criminal activity, and arbitrariness in the exercise of judicial discretion when granting release.

In addition to advocating for a swift criminal trial to prevent pre-trial imprisonment, Kautilya's Arthashastra also included some mention of the bail system in ancient India. During the Mughal era, the concept of bail was widely used in the form of MuchAlaka, or personal bond, and Zamant, or bail. The common rule of bail was established in India with the arrival of Britishrule, and it was made legally recognised by statutes in the Codes of Criminal Procedure for the years 1861, 1872, and 1898.

BAIL AND JUDICIAL DISCRETION

Bail is the term used to describe the provisional release of an accused individual from custody, typically in exchange for a financial assurance of their appearance in court. On the other hand, judicial discretion describes a judge's ability to make choices based on their own assessment and interpretation of the law. When it comes to bail, the decision of whether to provide an accused individual bail or not is mostly based on the judge's discretion. When using their discretion, the judge must consider a few criteria including

- (a) The seriousness of the offence;
- (b) The accused's prior criminal record;

(c) The possibility that they may flee or not appear in court; their connections to the community.

To determine whether to grant or deny bail, the judge must weigh these considerations. In bail issues, judicial discretion is crucial because it gives the judge the ability to evaluate the particular facts of each case and determine the best course of action. But judges' discretion can also be influenced by prejudice and discrimination, so it's critical to make sure they use it in a fair and impartial manner.

In general, the interaction between judicial discretion and bail is essential to guaranteeing that the criminal justice system is just, efficient, and successful in defending individual rights while simultaneously upholding public safety and order.

Under section 360 of CrPC judges give the power to sentence guilty people to probation. Bail is seen as an assurance that the accused would appear for the proceedings at a specific time and in a specific court, protecting the accused in the process.

PROVISIONS OF BAIL AND JUDICIAL DISCRETION IN CrPC, 1973

Bail refers to the fact that a person who is suspected of a significant crime and who is likely to be found guilty and given a harsh punishment for it is likely to flee or jump bail to avoid the trial and the ensuing sentence.

TYPES OF BAIL

1. **REGULAR BAIL:** If an accused person is already in jail or legal custody, they are normally given bail. This kind of bail enables the person to be freed from custody with or without sureties once a bond is executed. According to sections 437 and 439 of the CrPC, the accused is entitled to be freed from custody.

2. **INTERIM BAIL:** A legal provision known as interim bail, sometimes called anticipatory bail, permits someone to request temporary release from custody prior to the conclusion of a formal trial or investigation. It is usually issued by a court to provide the person with protection from arrest for a predetermined amount of time while legal processes are pending

3. **ANTICIPATORY BAIL:** Section 438 of the CrPC defines anticipatory bail. Individuals who are anticipating arrest should be granted anticipatory bail. In this case, an individual may request anticipatory bail if they believe or know they could be arrested for an offence for which they are not eligible for bail. One may request anticipatory bail under section 438. Prior to an arrest, a person is granted anticipatory bail by the court, which prevents them from being taken into custody. The accused must appear for the police investigation following the anticipatory bail.

4. **DEFAULT BAIL:** A person must appear before a magistrate in accordance with Section 167 of the Code of Criminal Procedure (CrPC) if they are arrested and the investigation cannot be finished in a day. The Magistrate may then approve their incarceration for up to 15 days (about 2 weeks), or around two weeks. Usually, to give the police or investigating agency enough time to finish their investigation, this custody period is prolonged by an extra fifteen days.

BAILABLE AND NON BAILABLE OFFENCE

1. **BAILABLE OFFENCE:** A crime is deemed bailable under Section 2(a) of the CrPC if it is listed as such in the First Schedule or if it is made so by any other recently enacted laws. The IPC-listed offences are covered in the first portion of the CrPC's first schedule, whereas other statute-listed offences are covered in the second section. The last sentence in the First Schedule specifies that a crime cannot be eligible for bail if it carries a sentence of more than three years in jail or a fine.

2. **NON BAILABLE OFFENCE:** Non-bailable offences are those which are serious in nature and the punishment is imprisonment of 3 years or more. Section 2(a) defined, 'non-bailable offences as any other offences. In cases of non-bailable offences bail cannot be granted by police. The competent Courts have the authority to release the accused on bail or not in case of non-bailable offences.

(a) if there is no death or life sentence associated with the offence. The accused person may be granted bail.

(b) if there aren't any solid grounds to believe that the person is guilty of a crime for which they could get a life sentence or the death penalty.

The accused may be set free on bail.

(c) In the case that there are solid grounds for believing the defendant committed a crime for which they could be executed or given a life sentence.

The accused will not be released on bail.

(d) If the accused has a reasonable suspicion that she has committed a crime for which she could face death by hanging or life in prison, and she is a woman, under sixteen, sick, or infirm. Bail may be used to release the accused individual.

In India, the procedures for granting bail are governed by Sections 436–450 of the Criminal Procedure Code, 1973. The court's ability to set a maximum amount for the bond that needs to be paid is greatly enhanced by this code.

Differentiating between Section 436 & 437

The general bail principles set forth in the Code are as follows, according to the Law Commission's 41st Report:

- (i) It is a matter of right if bail is granted for the offence.
- (ii) It is up to the individual whether bail is granted in case the offence is not eligible.
- (iii) The magistrate may refuse to give bail if the offence entails a life sentence or death penalty; however, the court may grant bail if the accused is a woman, a minor under sixteen, or a person who is ill or incapacitated.
- iv) Even for offences having such severe consequences, the court of session and the high court have even greater authority in granting bail.

CASE LAWS RELATED TO BAIL AND JUDICIAL DISCRETION

1. Sanjay Chandra v. CBI 2011

The defendants faced allegations of manipulation and theft aimed at influencing the telecom industry's UAS licenses. The accused appealed the legitimacy of the Special Judge CBI's bail refusal to the Delhi High Court, where it was dismissed on May 23, 2011, after the judge rejected the accused's bail requests. The Apex Court received an appeal from the accused. The Supreme Court issued a ruling in which it said that the Court alone has the authority to grant or deny bail applications because each case is unique and should be thoroughly considered before making a decision.

2. Bhadresh Bipinbhai Sheth v. State of Gujarat (2015)

The state (Central Bureau of Investigation) charged the minister of telecommunications and his son of corruption in this case. At the High Court, the minister requested anticipatory bail. The Court rejected the bail, stating that in delicate cases like corruption, the Court should closely consider the applicant's position and whether he might unduly influence the investigating agency if he has a prominent position. Therefore, in these cases, bail should be first denied.

3. Balchand v. State of Rajasthan

The Supreme Court ruled that basic rule is bail, not jail, except from situations in which there's a chance the accused would evade prosecution, tamper with the legal process, commit crimes again, or threaten witnesses.

CONCLUSION

The intention of Article 21 is to prohibit the executive from interfering with an individual's right to personal liberty unless it is necessary to comply with the law and its provisions. For this reason, it is essential that the legal process be followed and that no steps be taken against the interests of the individual before taking away their life or personal freedom. The Court uses its judicial review authority under the constitution in each case where a complainant alleges that his life or personal liberty has been violated. It determines whether the deprivation is authorized by law and whether the legal procedure in question is reasonable, equitable, just, and not capricious. A liberal interpretation of the phrase's "life" and "liberty" in Article 21 has led to the invocation of the Article as a residuary right, meaning that one's personal liberty cannot be taken away unless it is done so in compliance with the legal process. One guarantee of the Constitution is personal freedom.

