

Bail: Right of Accused [Remedy against Pre-Trial Conviction]

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Abstract

The present research paper seeks to examine legislative provisions and judicial approach with regard to the Right of Accused to bail. The topics like Right to bail in exceptional cases, types of bail provisions, when and in what circumstances the Right to bail of accused be curtailed have also been covered. It further discusses the Right of Foreigners to Bail. The Judicial and Legislative trends have been examined in the conceptual and applied aspects to find the answer for the fact that "Bail is a right and Jail is an exception."

Keywords: *Right to Life and Personal Liberty, Bail, Anticipatory Bail, Criminal Procedure Code.*

❖ Introduction

Meaning and Concept of Bail

"Bail means an order of release of a person from prison and forms an integral part of our criminal justice system which assumes every man innocent until (conclusively) proven guilty. Bail is granted during the pendency of the trial or an appeal. Before bail is granted to the accused, a surety gives a guarantee to the Court that the accused will appear in the Court as and when required. Moreover, a sum of money is to be deposited to ensure his appearance before the Court, which otherwise stands forfeit."¹

"To grant or obtain the liberty of (a person under arrest) on security given for his or her appearance when required, as in court for trial."²

"Release of an arrested or imprisoned accused when a specified amount of security is deposited or pledged (as cash or property) to ensure the accused's appearance in court when ordered."³

"Traditionally, **bail** is some form of property deposited or pledged to a court to persuade it to release a suspect from jail, on the understanding that the suspect will return

for trial or forfeit the bail (and possibly be brought up on charges of the crime of failure to appear)."⁴

"Security, usually a sum of money, exchanged for the release of an arrested person as a guarantee of that person's appearance for trial."⁵

"To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court To set at liberty a person arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, (that is, become bail for his due appearance when required,) in order that he may be safely protected from prison."⁶

❖ Types of Offences to Avail Bail

There may be two types of offences to avail bail:

I. Bailable Offences

II. Non-Bailable Offences

"Section 2 of the Code of Criminal Procedure, 1973 defines bailable and non bailable offences. Bailable offence is an offence which is shown as bailable in the First Schedule and it is right of the accused to be released on bail on giving required security.

An offence which is not a bailable offence is a non-bailable offence. In a non bailable offence, the accused does not have a right to be released on bail. In these offences, the discretion is with the Court. The Court may release the person and may impose conditions on him."⁷

❖ Remedial Types of Bail

Remedy of bail can be availed by any person to ensure liberty only through two ways i.e.:

Anticipatory Bail

Regular Bail

I. Anticipatory Bail

“Anticipatory bail is bail that is applied for prior to one’s arrest or detention by an authority, but in anticipation of the same. Section 438 of the Criminal Procedure Code prescribes that a person may apply to an appropriate High Court or Court of Sessions for anticipatory bail when he has reason to believe that he may be arrested on accusation of having committed a non-bailable offence (note that this provision does not apply in every state in India). The filing of an FIR is not a mandatory pre-condition for the filing of an application for anticipatory bail. When directing the grant of anticipatory bail, the Court may set such conditions as it deems fit. Anticipatory bail orders are usually time-bound and are not granted as a matter of right – they court must be satisfied that the person will not interfere with the investigation or hamper the inquiry into the crime and that the accused would be subjected to undue harassment or unjustified detention if the order were not to be granted. Anticipatory bail is usually not granted for heinous crimes (rape, murder etc) or for certain specific offences under special statutes (such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Defence of India Rules, 1971, etc). Pursuant to granting of anticipatory bail and the arrest of the person the person must be released upon fulfilling the conditions of the bail (depositing the mentioned surety).”[8]

- “Power of High Court or Sessions Court to grant anticipatory bail U/S 438 of Cr.p.c., 1973”⁹

II. Regular Bail

Regular bail is bail that is applied for one who has been arrested and detained by an authority. Section 437 and 439 of the Criminal Procedure Code prescribes that a person may apply to the court other than High court or Sessions court U/s 437 Cr.p.c. or to the High Court or Court of Sessions U/S 439 Cr.p.c. respectively for regular bail when he has been arrested on accusation of having committed a non-bailable

offence. The arrest of accused is mandatory pre-condition for the filing of an application for regular bail. When directing the grant of regular bail, the Court may set such conditions as it deems fit. Regular bail orders are usually time-bound and are not granted as a matter of right – they court must be satisfied that the person will not interfere with the investigation or hamper the inquiry into the crime and that the accused would be subjected to undue harassment or unjustified detention if the order were not to be granted.

- **Power of court other than High Court or Sessions Court to release accused U/S 437 of Cr.p.c., 1973**¹⁰
- **“Power of High court or sessions court to release accused U/S 439 of Cr.p.c., 1973”**¹¹

❖ Default Bail: Failure to file charge sheet

The object of providing certain limitation to file the charge sheet i.e. within 60 days or 90 days is to ensure right of accused to speedy trial and expeditious disposal of the case. Failure of filing charge sheet entitles the accused person to obtain bail as a matter of right at least till the finalization of the charge sheet and thereafter on merits.

This is absolute right of accused whereby the court has no discretionary power to curtail right of accused person being released from jail.

- **“Sec 167.Procedure when investigation cannot be completed in twenty four hours”**¹²

❖ Bail granting is a Rule

The Supreme court of India observed in **State Of Rajasthan, Jaipur vs Balchand @ Baliay**¹³, “the basic rule is bail, not jail, except-where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court.”

❖ **Protection from pre-trial conviction**

State Of Gujarat vs Rameshbhai Hirallal, Gujarat High Court, on 9th Dec 2013 “it was held by the Gujarat High Court that the offence alleged against the opponent accused is triable by the learned Judicial Magistrate First Class and considering the pendency of the cases there, it is not possible that the trial would be commenced and concluded in near future and therefore, in such eventuality, rejection of bail would amount to pre-trial conviction, which is prohibited by law and on this count, learned trial Judge has rightly exercised its power under Section 439(2) of the Code”.

❖ **Rationale Behind Bail**

The Rationale of granting bail is to ensure that an accused person will return for trial if he is released after arrest.

An Accused person has the entire Constitutional and other Rights and he is presumed to be innocent till convicted.

❖ **Grounds to be kept in mind while granting/refusing bail in non-bailable offence**

In State vs Jaspal Singh Gill¹⁴, “the Supreme court held that the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take into consideration various matters such as:

1. the nature and seriousness of the offence,
2. the character of the evidence,
3. circumstance which are peculiar to the accused,
4. a reasonable possibility of the presence of the accused not being secured at the trial,
5. reasonable apprehension of witnesses being tampered with,
6. in the larger interest of the public or the State and
7. similar other considerations.”

❖ **Accused to be granted bail if in custody for a long time**

In Shailendra Kumar vs State Of Delhi¹⁵, “the Supreme court held that taking into account the fact that the appellant-applicant is in custody for more than three years and there is no likelihood of appeal being heard early, we direct that the appellant-applicant be released on bail to the satisfaction of the Additional Sessions Judge, New Delhi.”

In Kalyan Chandra Sarkar vs Rajesh Ranjan @ Pappu Yadav¹⁶ “the Supreme court held that long period of custody and no possibility of the trial concluding in the near future may be a good ground for the grant of bail.”

❖ **Delay in trial entitles the accused to be released on bail**

In Vivek Kumar vs State Of U.P.¹⁷ “the Supreme court held that considering the fact that the appellant is in jail from 4-4-98 in connection with offences under Sections 307 and 395 read with Section 149 of the Indian Penal Code. It is quite a long period that he has been in custody without commencing the trial. There is no need to detain him further in custody and therefore we are inclined to release him on bail.”

❖ **Facts and circumstances of each case**

In Rajesh Ranjan Yadav @ Pappu Yadav vs Cbi Through Its Director¹⁸, “the Supreme court held that no decisions can be said to have laid down any absolute and unconditional rule about when bail should be granted by the Court and when it should not. It all depends on the facts and circumstances of each case and it cannot be said there is any absolute rule that because a long period of imprisonment has expired bail must necessarily be granted.”

❖ **Right to Bail : Article 21 – Right to life and personal liberty**

In Babu Singh & Ors vs. State of Uttar Pradesh¹⁹, “the Supreme court held that: “Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Art. 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and community. To glamorize impressionistic orders as discretionary

may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by 'law'. The last four words of Art. 21 are the life of that human right."

❖ **Bail Order Should be Speaking Order**

In Prashant Kumar vs Mancharlal Bhagatram Bhatia²², "it was held that the Magistrates as also the Sessions Judges while either granting or refusing bail must support their Order by cogent reasons and that is all the more so required as their orders are frequently subjected to scrutiny of this Court."

■ **Exceptional Circumstances in Bail matters**

❖ **Bail for offences under NDPS Act**

In State Of Madhya Pradesh vs Kajad²³, "it was held that perusal of Section 37 of the NDPS Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant and exception under sub clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail."

❖ **Bail for offences under MCOCA**

In State Of Maharashtra vs Bharat Shanti Lal Shah & Ors²⁴, "it was held that the object of the MCOCA is to prevent the organised crime and, therefore, there could be reason to deny consideration of grant of bail if one has committed a similar offence once again after being released on bail but the same consideration cannot be extended to a person who commits an offence under some other Act, for commission of an offence under some other act would not be in any case in consonance with the object of the act which is enacted in order to prevent only organised crime."

❖ **Bail for offences under NDPS Act**

In Sami Ullaha vs Superintendent, Narcotic Central Bureau²⁵ "it was held that the Act although is a self-contained code, application of the provisions of the Code of Criminal Procedure, 1973, however, either expressly or by necessary implication, have not been excluded. It is true that the general principles of grant of bail are not applicable in a case involving the Act. The power of the court in that behalf is limited."

❖ **Bail in Fake Encounter Case**

In Dinesh M.N. (S.P.) vs State Of Gujarat²⁶, "it was held by the Supreme court that the High Court on consideration of the rival submissions held that the learned trial Judge has not kept in view the seriousness of the offences, punishments prescribed for such offences and involvement of the accused, a high ranking officer when allegations or misuse of power necessary in law by registering false FIR has been lost sight of. The comparative past conduct and antecedents of Sohrabuddin by the so called good official record of the accused could not have been a ground for grant of bail. Accordingly, the bail granted was cancelled."

❖ **Bail in Money Laundering Cases**

In Manoj Ramesh Mehta vs State Of Maharashtra²⁸, "the Supreme Court held that having examined the material, it is not possible for us to accept the claim that the involvement of appellant was only peripheral. The material prima facie shows that though he was not directly connected with the printing and selling of the fake stamps, he was associated with A.K.L.Telgi and had abetted and facilitated the commission of the organized crime, and he had also aided and assisted in the money-laundering operations and attempted to interfere with the witnesses on behalf of A.K.L. Telgi and his family members. There is also prima facie material to show that the payment for the purchase of printing machine for Telgi's illegitimate activities, was routed through the appellant. Under section 3(2) of MCOC Act, the minimum sentence is five years and the maximum can be imprisonment for life. In the circumstances, we feel that this is not a fit case for interference with the order of the High Court, particularly, having regard to the provisions of section 21(4) of MCOC Act."

❖ **Bail in Offences under SC/ST Act**

In Vilas Pandurang Pawar and Anr. Vs. State of Maharashtra and Ors²⁹ "the Supreme Court has held that Section 18 of the SC/ST Act rules out the application of Section 438 of the Cr.P.C.

in respect of persons who have committed an offence under the SC/ST Act.

The Supreme court also held that the scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.”

❖ **Cancellation of Bail**

“As per Section 439(2) of the Code of Criminal Procedure, a High Court or Court of Session may direct that any person who has been released on bail under Chapter XXXIII (i.e., relating to bail) be arrested and commit him to custody.

If a Court of Session had admitted an accused to bail, the State may either move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State; or the State may approach the High Court being the Supreme Court under Section 439(2) to commit the accused to custody.

Section 437(5) confers on the High Court the power to cause any person who has been released under Section 437 to be arrested and commit him to custody. Section 439(2) of the Code empowers the High Court to cause any person who has been admitted to bail under Section 439(1) of the Code to be arrested and commit him to custody. The Supreme Court has also power to cancel bail allowed by the High Court if there is a wrong exercise of discretion by the High Court.

Bail may be cancelled on the following grounds as per the verdicts of different Courts:

(1) When the person on bail is found tampering with the evidence either during the investigation or during the trial.

(2) When the person on bail commits similar offence or any heinous offence during the period of bail.

(3) When the person on bail has absconded and trial of the case gets delayed on that account.

(4) When it is alleged that the person on bail is terrorizing the witness and committing acts of violence against the police.

(5) When the person on bail creates serious law and order problems in the society and he had become a hazard on the peaceful living of the people.

(6) When it is found that the subsequent events make out a non-bailable offence or a graver offence.

(7) When the High Court found that there was a wrong exercise of judicial discretion to grant the accused bail.

(8) When the circumstances were proved that the accused has misused the liberty granted to him, it is sufficient ground to cancel bail.

(9) If the life of the accused person on bails itself be in danger.”³⁰

The bail granted by the courts is not the absolute of accused, who has been granted bail, but the same is subjected to the discretion of the courts, though that has to be reasonable and justified, and fulfillment of the terms and conditions imposed while grant of bail and breach of those conditions or any act which the court finds against interest of justice may result in cancellation of bail.

There may be a number of considerations or circumstances where the bail can or can't be cancelled even after grant by the court.

Some of those specific conditions and circumstances may be studied herein below with the help of case laws under the following heads:

❑ **Conduct of Accused after release**

In **Subodh Kumar Yadav vs State Of Bihar**³¹, “the Supreme Court pointed out that for cancellation of bail, conduct subsequent to release on bail and supervening circumstances will be relevant. In fact it is now well settled that if a superior court finds that the court granting bail had acted on irrelevant material or if there was non- application of mind or failure to take note of any statutory bar to grant bail, or if there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can in fact be made.”

In Dolat Ram v. State of Haryana³² And Samarendranath Bhattacharjee v. State of West Bengal³³ “the Supreme court has held that in an application for cancellation, conduct subsequent to release on bail and the supervening circumstances alone are relevant. But in an appeal against grant of bail, all aspects that were relevant under Section 439 read with Section 437, continue to be relevant. ”

❑ **Consequences of Discovery and Absence of new material**
If some new material evidence is discovered than bail may be canceled and if no discovery is there in regard to it than it does not lead to the conclusion that accused is misusing the freedom and tampering with the Evidences. It is further to be noticed that prosecution agency cannot always have Evidences on their table.

In Gurcharan Singh & Ors vs State (Delhi Administration)³⁴, “the appellants were arrested in connection with the above case between June 10, 1977 and July 12, 1977 and the Magistrate declined to release them on bail. Thereafter, they approached the learned Sessions Judge under Section 439(2), Criminal Procedure Code, 1973 (briefly the new Code) and secured release on bail of the four appellants, namely, Gurcharan Singh (Supdt. of Police), P. S. Bhinder (D.I.G. of Police), Amarjit Singh (Inspector) and Constable Paras Ram on 1st August 1977 and of the eight other police personnel on 11th August 1977. Charge sheet was submitted on 9th August 1977 against 13 accused including all the appellants under Section 120-B read with Section 302, I.P.C. and under other Sections. The 13th accused who was also a policeman has been evading arrest.”

The Delhi Administration moved the High Court under Section 439(2), Cr. P.C. against the orders of the learned Sessions Judge for cancellation of the bail. On September 19, 1977 the High Court set aside the orders of the Sessions Judge dated 1-8-1977 and 11-8-1977 and the bail bonds furnished by the appellants were cancelled and they were ordered to be taken into custody forthwith.

❑ **Injuries sustained by victim : Not enough to cancel bail**

In Bhagirath Singh S/O Mahipat Singh vs State Of Gujarat³⁵ “it was held that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail and the trend today is towards granting bail because it is now well-settled that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence.”

❑ **Mere assertion of alleged threat : No ground for cancellation of bail routinely**

In Mehboob Dawood Shaikh vs State Of Maharashtra³⁶, “it was held that mere assertion of an alleged threat to witnesses should not be utilized as a ground for cancellation of bail, routinely. Otherwise, there is ample scope for making such allegation to nullify the bail granted. The Court before which such allegations are made should in each case carefully weigh the acceptability of the allegations and pass orders as circumstances warrant in law. Such matters should be dealt with expeditiously so that actual interference with the ordinary and normal course of justice is nipped at the bud and an irretrievable stage is not reached.”

❑ **Alien Grounds of case**
In Biman Chatterjee vs Sanchita Chatterjee & Anr³⁷, “it was held that though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court.”

❖ **“Bail, a Matter of Right: Not to Be Denied On the Ground of Nationality”³⁸**

“The Constitution of India is the supreme law of the land. The Fundamental Rights are available to all the “Citizens” of the country but a few of them are also available to “persons”. While Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to “person” which

would also include the "citizen" of the country and "non-citizen". This reflects that the Indian Legal system does not bring the nationality of an individual into consideration while granting him/her the benefit of the provisions of bail. There is no discrimination or differentiation in granting bail to a foreign national in India.³⁹ The Apex Court of the Country has laid down in its judgments that

The Supreme court held that:

"Personal liberty, deprived when bail is refused, is too precious a value of our constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and community. To glamorize impressionistic orders as discretionary may, on occasions, make a litigative gamble decisive of a fundamental right. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of procedure established by 'law'.⁴⁰

This Right is available to foreigners too. The High Court of Delhi had observed that *"Law does not permit any differentiation between Indian Nationals and Foreign citizens in the matter of granting bail. What is permissible is that, considering the facts and circumstances of each case, the court can impose different conditions which are necessary to ensure that the accused will be available for facing the trial. It cannot be said that an accused will not be granted bail because he is a foreign national."⁴¹*

In the case of Mohammed Kunju⁴², "the accused was a foreign national. When he was granted bail, he jumped it and slipped out of India. As a result, legal action against his sureties for levy of the penalty under their forfeited bail bonds was initiated. That action was challenged by the sureties before the Hon'ble Supreme Court of India Court. While dealing with the legality or otherwise of the said legal proceeding against sureties, an observation was made by Hon'ble Supreme Court that while granting bail to the accused foreign national, the Court could have imposed the condition to surrender his passport as a measure to prevent him to escape out of India. Thus the Indian Courts while granting bail to a foreign national firmly believes in imposing certain conditions like surrender of passport, bail

bonds, attendance before consulate or the investigating officer, etc in order to prevent misuse of the provision as there may be chances of the accused absconding after getting bail."

The Hon'ble High Court of Delhi in the case of Lambert Kroger vs Enforcement Directorate⁴³ "while allowing the bail application of the foreign national made an observation that *"Admittedly the petitioner's passport is with the respondent and ordinarily the petitioner cannot leave the country without the passport. Though the possibility of fleeing from trial may be more in the case of foreign national. It cannot be said that an accused cannot be granted bail merely because he is a foreign national. There is no law which authorizes or permits discrimination between a foreign national and an Indian national in the matter of granting bail what is permissible is that, considering the facts and circumstances of each case, the Court can impose different conditions to ensure that the accused will be available for facing trial."*

In Sartori Livio's case⁴⁴ "the counsel for the state raised an argument stating that the petitioner is an Italian national and if he is released on bail, there is every likelihood that he may flee from justice. The Hon'ble High Court by relying on the judgment in Nasimjon Komlov vs. Customs in CRLM (M) No. 2038/2000 observed that the argument must be rejected."

The Court said that "it would be a shame if courts are going to keep persons incarcerated merely because they are of foreign origin even though prima facie no case is made out against them. This would be a negation of valued principles of rule of law and vocative of the constitutional mandate and principles of human rights".

In Haroub Slaum Sleyoum⁴⁵ ["the Hon'ble High Court of Delhi reiterated the law on bail to a foreign citizen.

The Court observed that *"While considering an application for grant of bail, various factors are to be taken into consideration, such as, the nature and seriousness of the offence, the stage of investigation, a reasonable possibility of the presence of the accused not being secured at the trial, a reasonable apprehension of evidence being tampered with or such other*

circumstances which may be brought to the notice of the Court which might hamper proper investigation into the matter" The Court after considering the facts of the case held that "I find force in the submission of learned counsel for the petitioner that merely because the petitioner is a foreign national this by itself cannot be a ground for declining the bail. No special circumstances have been shown to this Court to show that the petitioner is likely to interfere with course of justice nor any material to show that there are strong reasons that the petitioner is likely to leave the country. Accordingly, I have considered it a fit case to grant bail and release the petitioner."]

❖ **Equal Rights of Foreigners to get Bail⁴⁶:**

"The above discussion clearly throws light on the fact that the normal rule is **"BAIL NOT JAIL"**. The Indian Legal system does not create any discrimination or differentiation between Indian Nationals and foreign nationals when it comes to granting bail. The Indian Courts have in catena of judgments rejected the "foreign national" plea and have allowed the bail applications of the foreign nationals by imposing certain conditions in order to secure their presence during the course of trial. The fundamental right to "equality before law" provided by the Constitution of India is not denied to the foreign nationals merely on the ground of they being non citizens of this country. For Indian legal system the "right to personal liberty" of foreign nationals is equally important as that of the Indian nationals and the same is curbed when the security of the society is put at stake."

❖ **Do I have the right to be granted bail under all circumstances?⁴⁷**

"Answer: The granting of bail is usually considered to be an inherent right. However, there are certain circumstances where bail may be refused. In bailable offences, it is a right of the accused to be released on bail. But in non bailable offences, the accused can be refused bail by the competent authority if the authority deems it fit. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person."

❖ **Types of Bail⁴⁸**

"There are different types of bail, in different countries although some of them are used less frequently than others and some are limited to some particular nations. The most common ones are as follows:

▪ **Cash Bail**

Cash bail means that the accused pays the full amount of bail in cash. Sometimes the court accepts cheques or even a credit card.

▪ **Surety Bond**

Also called a **bail bond**, a surety bond can be used for any amount of bail, but it is especially useful when the accused can't afford to pay his or her bail. This type of bail often involves a friend or relative of the accused contacting a **bail agent**, also known as a **bail bondsman**.

▪ **Release on Citation (Cite Out)**

In some cases, an officer will not book a suspect at all but will instead issue a citation saying that the accused must appear in court. While this process is less thorough than taking a suspect to a police station and performing the formal booking procedure, it allows the arresting officer to focus on catching more serious offenders.

▪ **Release on Own Personal Recognizance**

A judge may also choose to release a suspect on his own recognizance, meaning that he is responsible for showing up for court dates and does not have to pay bail. Personal recognizance is usually only allowed when the charge involves a relatively minor, nonviolent crime and if the defendant is not considered a danger to anyone else or a **flight risk** -- meaning that it's highly unlikely that the person will flee and not appear for his or her court date.

▪ **Property Bond**

Sometimes a defendant can provide some property to act as a bond. In these cases, the court gets a **lien**(essentially a legal claim) on the property in the amount of the bail. If the defendant doesn't show up for his court appearances, the court can foreclose on the property to recover the forfeited bail."

☐ **In India two forms of bail prevails i.e.:**

1. *Own undertaking*⁴⁹

“There are different forms of bail; however, most people are bailed “on their own undertaking”. This means the only *person responsible* for the accused attending court when required to do so is the accused themselves (see also “*Surety*”, below). Sometimes the accused has to deposit a sum of money with the police or the courts before being released. An accused is entitled to recover the deposit once the matter against them is determined.”

2. *Surety*⁵⁰

“Sometimes another person will be required to deposit or “put up” a sum of money or property. Such a person is called a “surety” (see “*Sureties*”, below). A *surety* is a person who guarantees, by putting up a security (usually a sum of money or a title to a property), that an accused person will appear at the date and place specified in the *bail bond*. If the accused does not turn up at court to answer their *bail*, the security put up is liable to be forfeited to the state.”

❖ Conclusion

As pointed out in early points and in various judgments by the Hon’ble High Courts and Hon’ble Supreme court, it is very clear that every person is entitled to bail except in exceptional circumstances as every person is considered as innocent until proven guilty and this requires that rejection of bail may amount to pre-trial conviction if later on the accused is acquitted of the allegations/charge.

Hence it is notable that

“Bail is a right and Jail an exception as Right to bail is a remedy against pre-trial conviction”

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