

CHAPTER XXXIII

PROVISION OF BAIL AND BONDS

SECTION 436-450

What is Bail

- ▣ 'Bail ' has not defined under the Code. It has been defined in the Law Lexicon as security for the appearance of the accused person, on the giving which, he is released pending trial or investigation.
- ▣ The word ' bail' means to set at liberty a person arrested or imprisoned on security being taken of his appearance in the court on a particular day.
- ▣ The word 'bail ' covers release on one's own bond.
- ▣ Cont...

- ❑ Bail means entrustment of the accused to his sureties, who are bound to produce the accused in court whenever required.
- ❑ Bail means the security taken from a person to appear on a fix date before the Court. Bail is the release from the custody of a person charged with an offence, on that person signed undertaking that he will appear in court to answer the charges framed against him.
- ❑ The classification of offences intoailable and non-ailable has been devised for making a threshold decision as to whether the accused should be released on bail.

IN WHAT CASES BAIL TO BE TAKEN

SECTION 436

436
(1)

No reasonable grounds to believe that accused was involved in the commission of a non-bailable offence

Accused shall be released on bail.

Where such person is indigent and is unable to furnish surety, discharged him on his executing a bond without sureties.

As a matter of right.

Section 436 (2)

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Where a person has failed to comply with the conditions of bail bond as regards the time and place of attendance, (When a person who absconds or has broken the condition of his bail bond)

Court may refuse to release him on bail

Further, the court can call upon any person bound by such bond to pay the penalty thereof under Section 446

SECTION 436-A

Maximum period for which
undertrial prisoner can be
detained

- ▣ Section 436-A , inserted by the 2005 Amendment.
- ▣ “ 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 punishment under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under the 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 reason 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.

Cont...

SECTION 436-A

- ▣ Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial period of more than the maximum period of imprisonment for the said offence under that law.
- ▣ (The aforesaid Section 36 –A will benefit undertrial, who are detained for long periods while investigation or trial is proceeding. There have been instances , where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment)

OTHER MANDATORY BAIL PROVISIONS

- ❑ Right to be released on bail if investigations are not completed within the prescribed number of days . Section 167(2)
- ❑ No reasonable grounds for believing the accused guilty of a non-bailable offence but sufficient for further inquiry . Section 437(2)
- ❑ Trial not concluded within 60 days. Section 437 (6)
- ❑ Release on bail after conclusion of trial but before the judgment is delivered. Section 437 (7)
- ❑ Release of Appellant on bail. Section 389

BAIL MAY BE TAKEN IN CASE OF NON-BAILABLE OFFENCES SECTION 437

→ Section 437 (1): accused or suspected person of , the commission of Pany non-bailable offence. Accused arrested or detained without warrant

By an officer in charge of a police station

Appears or is brought before a court

Other than the High Court or Court of Session, he may be released on bail

Except in following cases

Committed offence shall not be punishable with death or life imprisonment

He shall not be previously convicted of an offence

Punishable with death or life imprisonment

Imprisonment for seven years or more

Had been previously convicted on two or more occasions

CASES OF NON -BAILABLE
OFFENCES Section 437

Exception to the provision of Section 437 are :

- The court may direct that any person under the age of 16 years or any woman or any sick or infirm person accused of such offences be released on bail.
- The court may direct that a person (habitual offender) 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

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- The mere fact that an accused person may be required for being identified by the witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail.
- 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 without giving opportunity of hearing to the PP. (inseted by the 2005 Amendment Act)

SECTION 437(2)

- ▣ If it appears to police officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are no 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, on execution by him of a bond without sureties for his appearance

SECTION 437(3) GRANT OF BAIL WITH CONDITIONS

The Court may impose any condition which the court considers necessary in order to ensure that such person shall attend in accordance with the conditions of the bond, or in order to ensure that such person shall not repeat the offence or otherwise in the interest of justice.

Conditions may be imposed in the following cases

Accused suspected of the commission of an offence which may extend to 7 years imprisonment or under IPC Chapter VI, XVI, XVII...any such offence is released on bail

Three conditions

Shall attend the court

Not commit similar offence

No inducement, threat or promise

SECTION 437 (4)



- An officer or a court releasing any person on bail shall record in writing his or its (reason or special reasons) for doing so.

SECTION 437 (6)



- If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offences is not concluded within a period of 60 days from the first date for taking evidence in the case, such person shall, if he is in custody be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

SECTION 437(7)



If, at any time the conclusion of the trial of a person accused of a non-bailable offence and before the judgment is delivered the court is of the opinion that there are reasonable grounds for believing that the accused is not guilty of such offence, it shall release the accused

SECTION 437(5) & SECTION 439(2) CANCELLATION OF BAIL

Even after bail has been granted, it can be cancelled

Under Section 437(5)

Any Court which has released person on bail under Section 437(1)&(2) may consider it necessary so to do, direct that such person be arrested and commit him to custody. (Re - arrest of person)

Under Section 439 (2)

A High Court or Court of Session may direct any person released on bail under this chapter be arrested and commit him to custody.

Cancellation of Bail

- ▣ It is easier to reject a bail application in a non-bailable case than to cancel a bail granted in such a case.
- ▣ Cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only if , by reason of supervening circumstances it would be no longer conducive to a fair trial to allow the accused to retain his freedom during trial.

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Cancellation of Bail

- ▣ Following are some grounds where a person granted bail may have the bail cancelled :

The person has committed the very same offence for which he is being or has been convicted

If he hampers the investigation and forcibly prevents the search of places under his control

If he tampers with the evidence as by intimidating the prosecution witnesses, interfering with the scene of the offence

If he abscond i.e. run away to a foreign country or goes underground, or beyond the control of his sureties;

If he commits acts of violence against the police and the prosecution witnesses etc.

Cancellation of Bail

- ▣ In State (Delhi Administration) v. Sanjay Gandhi (“KISSA KURSI KA” Case,) [1978 Cr.L.J.], the Supreme Court said that rejection of bail when bail is applied for is one thing; cancellation of bail already granted is quite another. Cancellation of bail by and large , be permitted only if by reason of supervening circumstances, it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial.

Cancellation of Bail

- ▣ In State through C.B.I v Amarmani Tripathi, 2005 Cr.L.J. (SC) accused repeatedly attempt to interfere and sidetrack the investigation and also threaten the witnesses. The bail granted to accused Amarmani Tripathi was thus liable to be cancelled. On the reasonable apprehension that if co -accused husband is taken into custody , she may taken over the task of tampering evidence and manipulating /threatening witnesses. Thus bail granted to co-accused (wife) also held liable to be cancelled.

(What is Anticipatory Bail)



- ❑ The term 'anticipatory bail' implies a direction to release a person on bail issued even before the person is arrested.
- ❑ When the court grant 'anticipatory bail', what it does is to make an order that in the event of arrest, a person shall be released on bail.
- ❑ Therefore, it is only on arrest that the order granting anticipatory bail becomes operative.
- ❑ The provision of Section 438 cannot be evoked after the arrest of the accused.

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(What is Anticipatory Bail)



- ▣ The rationale behind the 'anticipatory bail' is that individual liberty must not be put in jeopardy on the instance of unscrupulous and irresponsible persons.
- ▣ An order under Section 438 is a device to secure the individual's liberty, neither it is a passport to the commission of crimes nor a shield against any and all kinds of accusation likely or unlikely (Parvinderjit Singh v State (U.T.Chandigarh, AIR 2009 SC502)

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(What is Anticipatory Bail)



- ▣ The object of Sec. 438 is that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant (HDFC Bank Ltd. V J. J. Mannan alias JM John Paul AIR 2010 SC 618)

SECTION 438

- ❑ Section 438 Cr.P.C empowers the High Court and the Court of Session to grant anticipatory bail i.e. , a direction to release a person on bail issued even before the person is arrested.

CONSIDERATION

- ❑ The nature and gravity of the accusation;
- ❑ 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,

Cont.....

SECTION 438

- On the basis of the consideration mention High Court or the Court of Session either reject the application forthwith or issue an interim order for the grant of anticipatory bail.

When interim order has not been passed for anticipatory bail or when application is rejected

Officer-in-charge of a police station shall make an arrest without warrant, the applicant on the basis of accusation apprehended in the application

Section 438(2) & (3)

Conditions in Anticipatory Bail

- ▣ When Court makes direction to release a person on bail issued even before the person is arrested, it may include such conditions :
 - a) The person shall make himself available for police interrogation as and when required;
 - b) The person shall not directly or indirectly, make 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/police
 - c) The person shall not leave India without Court's permission.

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Section 438(2) & (3)

Conditions in Anticipatory Bail

- d) Such other conditions as may be imposed under Section 437(3), as if the bail were granted under the Section.

Section 438(3)

If such person is thereafter arrested without warrant on such accusation, and is prepared either at the time of arrest or at any time while in the custody of the police to give bail, he shall be released on bail. If the magistrate taking cognizance of the offence decides that a warrant should be issued in the instance, he must issue aailable warrant against that person

Important Point on Anticipatory Bail

- ❑ Anticipatory Bail could not be claimed as a matter of right.
- ❑ The power to grant anticipatory bail vests only in Session Court/ High Court having jurisdiction over the locale of the commission of the offence of which the person is accused.
- ❑ Section 438 does not require that the offence in respect of which the anticipatory bail is asked for has been registered with the police.
- ❑ Anticipatory bail can be granted even after the F.I.R. has been filed, so long as the applicant has not been arrested, but provision of Section 438 cannot be invoked after the arrest.

Case laws

- ▣ Gurubaksh Singh Sibba v. State of Punjab (AIR SC 1632)

It was held that

- ▣ Court must consider particular facts and circumstances of the case.
- ▣ No anticipatory bail after arrest.
- ▣ Grant only in exceptional cases
- ▣ No restriction on granting anticipatory bail merely because the alleged offence is one punishable with death or life imprisonment.

Case laws

- HDFC Bank Ltd. V J.J. Manan, AIR 2009SC618

It was held that

- Object of Section 438 of the code is that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant.
- Once the investigation makes out a case against a person and he is included as an accused in the charge-sheet, the accused has to surrender to the custody of the court and pray for regular bail.

Case laws

- ▣ State (CBI) v Anil Sharma (1997) 9 SCC 187
It was held that
- ▣ While reject anticipatory bail , court said that in case of corruption in high places and that considering the responsible and high office which the accused held may handicap the investigation .

THANK YOU

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