

BAIL AND JUDICIAL DISCRETION – A STUDY OF JUDICIAL DECISIONS

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ABSTRACT

The idea of bail rises up out of the contention between the 'police control' and to limit the freedom of a man who is affirmed to have perpetrated a wrongdoing and the assumption of blamelessness to support him. 'Bail' is gotten from the old French verb 'baillier' which means to 'give or convey'. Bail in English Common law is the liberating or setting at freedom a man captured or detained on security or on surety being taken for his appearance on certain day and place named. As such, bail is the conveyance of captured individual to his sureties upon their giving security for his appearance at an assigned place and time, to the purview and judgment of the court. The surety is named 'bail' in light of the fact that the individual captured or detained is put in the care of those (surety) who get themselves or progress toward becoming bailer for his due appearance when required. Surety must be those people who have specialist to bail the captured individual to show up under the watchful eye of the court on a specific date. It is upon the obligations of those sureties that the individual captured or detained is bailed, i.e., set at freedom until the point when the day designated for his appearance. The impact of allowing bail isn't to set the detainee free from prison or guardianship, yet to discharge him from the care of law and to endow him to the authority of his sureties who will undoubtedly deliver him to show up in the court at a predefined time and place. The important end product is that it is interested in the sureties to grab the detainee whenever and any release themselves by giving him over to the authority of law and the outcome would be that he (the detainee) would be then detained.

Bail laws in the United States became out of a long history of English statutes and approaches. Amid the provincial time frame, Americans depended on the bail

Object and purposes of bail:

The question of keeping a charged individual in confinement preceding, or amid the trial isn't discipline yet

- to forestall reiteration of offense with which he is charged; and
 - to secure his participation at the trial.
- Nonetheless, every criminal continuing depends on an at first sight suspicion of blame and again there is an assumption of purity for the blamed for the charged. Bail fills the need of assumption of purity. Also, in the meantime, the states of bail like appearance in the court on settled date and time fills the need of by all appearances

suspicion of blame against the denounced. There are assortments of purposes behind conceding a bail. This might be, for instance, for appearance under the steady gaze of a court, for showing advance; pending reference or amendment; or to give prove and so forth.

Meaning of bail

Bail is a security given by for the due appearance of a man captured or detained to get his or her brief discharge from legitimate guardianship or detainment. In precedent-based law, a denounced individual is said to be confessed to bail, when he or she is discharged from the care of the officers of court and is

endowed to the care of people known as his or her sureties who will undoubtedly deliver him or her at a predefined time and place to answer the charge against him or her and who in default of so doing are at risk to relinquish such aggregate as is indicated when the bail is allowed. Consequently, the custom and consistent origination of bail in legal manner implies arrival of a man from guardianship or jail and convey under the control of sureties who attempt to create him or her in court upon a selected day. In criminal law, 'bail' intends to set free, free or convey the blamed from capture or out for care, to the keeping of different people, on their endeavor to be in charge of his or her appearance at a specific day and place to reply to the charge against him or her. These people are called his or her sureties. Definition of bail Bail is the money a defendant pays as a guarantee that he or she will show up in court at a later date. For most serious crimes a judge or magistrate sets bail during an arraignment, or in federal court at a detention hearing. For minor crimes bail is usually set by a schedule which will show the amount to be paid before any court appearance (arraignment). For more serious crimes, the amount of bail is set by the judge at the suspect's first court appearance. Categories of bail Arrangements as respects bail can be comprehensively classed into two categories. Bailable and Non Bailable

- Non-bailable cases

The allow of bail involves course. It might be given either by the cop responsible for a police headquarters having the charged in his care or by the Court. The discharge might be requested on the denounced executing a bond and even without sureties. In non-bailable case, the denounced might be discharged on bail: however no bail can be conceded where the charged shows up on sensible grounds to be liable of an offense culpable International Journal of Pure and Applied Mathematics Special Issue 2804 either with death or with detainment forever. Be that as it may, the run does not make a difference to

- A individual under sixteen years old,
- A lady, or
- A wiped out or sick individual. When sensible justification for the blame stop to show up, the denounced is qualified for is discharged individually recognizance; he can be additionally discharged, for comparable reasons, between the end of the case and conveyance of the judgment. At the point when a Man is discharged on bail, the request with reasons in this manner ought to be in composing. A man discharged on bail might be arrested by arrange if the Court. Similarly the High Court or the Court of Session may concede a man to bail or decrease the measure of the bail. When the bail bond is executed, the denounced is qualified for be discharged from care. At the point when the measure of bail taken td observed to be lacking, the Court may request extra bail. A surety who is once acknowledged is at freedom to apply to the Court for his release; and the blamed is then called upon to discover new sureties. If there should arise an occurrence of non-bail capable offense bail might be given by the accompanying name and conditions:

- Anticipatory Bail (before arrest)
- Interim or Ad-interim Bail
- Bail after conviction

ANTICIPATORY BAIL (BEFORE ARREST)

Anticipatory bail - a term not found in any Indian enactment alludes to a pre-capture arrange go by a court that says that in the occasion a man is captured, he is to be allowed bail. The 'anticipatory' marking of the request can deceive as it isn't a request which allows a man bail before he is captured as bail can't become effective before a man is captured. Having said that, the key distinction between a request for bail and one for anticipatory bail is that the previous is conceded simply after capture (and ends up noticeably agent accordingly) however the last is allowed before capture and henceforth is agent from the

snapshot of capture.

Bail meaning:

Webster's new 7th dictionary defines bail as follows:

"Bail is a security given for the due appearance for the prisoner in order to obtain his release from imprisonment; a temporary release of a prisoner upon security of one who provides bail"¹⁹⁸

"To set at liberty a person arrested or imprisoned on security being taken for his appearance on date at a certain place, which security is called bail because the person arrested or is delivered on the hands of these who bind themselves or become bail for his due appearance when required in order that he may be safely protected from prison to which of they have, of they fear his escape the legal power to deliver him".¹⁹⁹

"To set at liberty a person arrested or imprisoned, or security being taken for his appearance on a day and at a place certain because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from the prison"²⁰⁰

Our Supreme Court defines bail as 'a technique which is evolved for effecting the synthesis of two basic concepts of human value, viz., the right of an accused to enjoy his personal freedom and the public's interest on which a person's release is conditioned on the surety to produce the accused person in the Court to stand the trial'.²⁰¹

1.1.1 Arrest:

The word ordinarily means apprehension or deprivation of one's personal liberty. The question that whether one is under arrest or not depends on whether a person is deprived of his personal liberty to move about where he

pleases not on the legality of his confinement. When the term is used in legal sense this procedure is connected with criminal offence. Arrest consists of taking one into custody under the authority of law for the purpose of detaining him or holding him so as to answer questions on the criminal charge framed on him or prevent commission of criminal activity.

The Black's Law dictionary defines arrest as;

"To define a person of his liberty by legal authority taking under real or assumed authority, custody of another for the purpose of holding or detaining him to criminal charge or civil remand."²⁰²

Halsbury's Law of England defines arrest as:

"Arrest consists of in the seizures or touching of a person's body with a view to his restraint; words may, however amount to an arrest in the circumstances of the cases, they are calculated to bring and do bring to a person's notice that he is under compulsion and he thereafter submits to compulsion."

1.1.2 Principles governing bail:

The following principles emerge for grant or refusal of bail under section 437, CR.P.C.²⁰³

- i. Bail should not be refused unless the crime charged is of the highest magnitude and the punishment of it assigned by law is of extreme severity;
- ii. Bail should be refused when the Court may reasonably presume, some evidence warranting that no amount of bail would secure the presence of the convict at the stage of judgment;
- iii. Bail should be refused if the course of justice would be thwarted by the person who seeks the benignant jurisdiction of the Court to be freed for the time being;
- iv. Bail should be refused if there is likelihood of the applicant interfering with witnesses for the prosecution or otherwise

¹⁹⁸ Webster's 7th new Judicial Dictionary

¹⁹⁹ Wharton's Law Lexicon

²⁰⁰ Venkatrammaiyas Law Lexicon, 2nd edition, vol. I at pp 260-61

²⁰¹ Kamalapati v State of West Bengal AIR 1979 SC 777

²⁰² Black's law dictionary, 5th Ed. Vol. II, Para 99.

²⁰³ SidharthVashisth alias Manu Sharma v. State of Delhi, 2004 Cri LJ 684

polluting the process of justice; and

v. Bail should be refused if the antecedents of a man who is applying for bail show a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail.

The magistrate while granting bail must take into consideration the following matters into consideration. One must remember that when wherever proviso (a) to section applies the magistrate has no discretion and he is bound to grant bail. When bail is granted under this proviso and after that charge sheet is filed the release order of bail continues to be in practice. And bail can be cancelled under section 437(5) of CR.P.C²⁰⁴. Except where the proviso (a) to s. 167 of CR.P.C is attracted, bail needs to be granted on these guidelines:

- i. That there is a reasonable ground for believing that the accused has committed the offence with which he is charged.
- ii. The nature and gravity of the charge.
- iii. Severity of degree of punishment which might follow in the particular circumstance in case of a conviction.
- iv. The danger of the accused absconding if he is released on bail.
- v. The character means and standing of the accused.
- vi. The danger of the alleged offence being continued or repeated

Assuming that the accused is guilty of having committed that offence on the past. The danger of witness being tampered with.²⁰⁵

The Supreme Court has also held in *g. Narasimhulu v Public Prosecutor*²⁰⁶ that the public justice is in center to the whole scheme of law of bail that endeavors to serve both social defense and individual emendation in anti criminal direction.

In a case, while investigation of the case by a custom officer in connection with the offence committed by the accused under the custom act the bail granted by the magistrate was set aside by the additional Sessions Judge the legality if such cancellation has been challenged before the High Court. The High Court found that:

1. Before the magistrate granted bail with well-reasoned order the applicant had been interrogated by the officer of the custom department for a considerable amount of time and a detailed statement had been recorded.
2. That before his arrest the investigation was almost completed.
3. That the other accused people had already been arrested and released on bail and that in the circumstances the plea of the department that the officers require the applicant's custody would not justify in upholding the contention unless the department could factually justify the correctness of the demand. The learned Judge being satisfied that the detention of the petitioner is not necessary for further investigation has held that the additional Sessions Judge only on the plea of the department that the custody of the accused is necessary for further investigation should not have cancelled the bail. The learned Judge has clearly observed that while it is essential that Court should provide investigating authorities with reasonable time to carry out their investigation but it is equally necessary that the Court strike a correct balance between this requirement and equally compelling consideration that the curtailment of the liberty a citizen cannot be done until the circumstances completely justified it.²⁰⁷

In a similar question before the High Court of Rajasthan arose that whether further custody of the accused was required in relation to an offence relating to Foreign Exchange Regulation Act 1973. The applicant's had been refused by the Sessions Court. It was disclosed that the

²⁰⁴ Raghur Singh v State of Bihar AIR 1987 SC 149.

²⁰⁵ State v Jagjit Singh AIR 1962 253 SC

²⁰⁶ 1978 AIR 429, 1978 SCR (2) 371

²⁰⁷ Mulchandv Assistant Collector of Customs 1991(2) Crimes 88 (Bom).

investigating agency got a month full time to collect materials while the petitioner was in custody. The petitioners were charged with offences with maximum seven years of imprisonment. So it was held that conditional bail be granted to the applicant to secure their attendance during their trial, and that the applicant can be released on bail.

Who can grant bail?

a. Police:

The code of criminal procedure confers the power to the police to release a person on bail. Any person arrested by police has to be released on bail if he is arrested without warrant or order from the magistrate under the circumstance mentioned in section 41 of the CR.P.C and that if the offence with which he is charged is a bailable offence. Also in case a person when arrested by the police in relation to a non cognizable offence on the ground that he refused to give his correct name or address, may be released on executing a bond with or without sureties, to appear before a magistrate if required. The officer in charge of the police station may in his discretion release any a person accused of or suspected of the commission of non bailable offence and arrested or detained by him without warrant. But such power cannot be exercised even in his discretion if there appear sufficient grounds for believing that such person has been guilty of an offence punishable with death or imprisonment for life.

b. Bail by Executive Magistrate:

Section 44 (1) authorizes any magistrate either judicial or executive to arrest or order the arrest of any person who has committed any offence in his presence. Since he can order ones arrest, he also has the power to release him on bail. It has been held that magistrate arresting a person is not a Court, so detaining such person beyond 24 hours would be illegal normally.²⁰⁸ So he has to be produced before a competent magistrate under section 167 (1) of CR.P.C.

Under section 81 the executive magistrate has the power to grant bail to a person who is charged of a bailable offence and arrested under warrant and that the offence was committed in any other district.

c. Judicial magistrate:

Bail before a judicial magistrate can be moved at any stage of investigation, enquiry or trial, at the time of the commitment or after conviction until a proper bail order is obtained from the appellate Court.

b. Bail by Sessions Judge:

Section 439 of the CR.P.C confers the power upon the Sessions Judge to take up bail application of an accused against whom the investigation is pending and the bail of such accused has been refused by the Sessions Judge at the investigation stage. The power of the Sessions Judge is concurrent with that of the High Court. The power upon the Sessions Judge or the High Court under section 439 to enlarge the accused on bail is as an original Court. But the Sessions Judge can impose appropriate conditions on bail. Section 439 also empowers the Sessions Judge to set aside or modify any condition imposed by the magistrate while admitting the accused on bail.

In *Sangappa v. State of Karnataka*²⁰⁹ the Karnataka High Court held that the power of Session or the High Court under section 439 is wider than that of the magistrate under section 437 of CR.P.C. Also that even then the reasonable limitation in section 437 (1) should not ordinarily be departed from by the Court of Sessions or the High Court except in special cases.

In *Gurcharan singh v State*²¹⁰ the Supreme Court has clearly drawn the distinction between the powers of magistrate under section 437 and that of the Court of Session of High Court under section 439 of CR.P.C. If a person has been arrested by a police officer and with a reasonable ground to believe that he has

²⁰⁸ M.R. Malik; Bail Law & Practice, fourth edition, page 54.

²⁰⁹ ILR (1978) 1 Kant 891

²¹⁰ AIR 1978 SC 179

committed an offence which is punishable with life imprisonment or death, then in that case magistrate will have no discretion to grant bail at that point of situation.

d. Bail by High Court:

The High Court has been given wide power to grant bail as Court of superior jurisdictions, as a Trial Court, as an Appellate Court or as a Court of Revision. Power has also been given to the High Court either to reduce the bail granted by the magistrate, or by the Sessions Judge on being satisfied that the amount of bail is excessive and has also the power to cancel the bail granted either by the magistrate or by the Sessions Judge on being satisfied that the bail has been improperly granted ad regard to being had to the facts and circumstances of the case and in the interest of the public order and for fair trail of the case pending against the accused, his bail should not be granted. The High Courts have been given wide discretionary powers in matters of granting or refusal of bail.²¹¹

f. Bail by Supreme Court:

The constitution of India under Article 134 and 136 confers a limited appellate jurisdiction to the Supreme Court. The Supreme Court has got the powers under Article 142 of the constitution to enforce its decrees etc. Article 145 confers power upon the Supreme Court to make rules for regulating generally the practice and procedure of the code.

Under Article 134 the Supreme Court can entertain an appeal from any judgment, final order or sentence in a criminal proceeding of a High Court. Under 136 the Supreme Court can grant special leave to any appeal from any Judgment, decree, or determination or sentence etc. Made by any Court in India. Article 142 the Judgment of the Supreme Court a law and it is enforceable throughout the territory of India.²¹²

1.1 Bail is a security for appearance.

Bail in its fundamental concept is a security for the prisoner's appearance to answer the charge at a specified time and place. It is natural and relevant for any Court to consider such security in relation to and in the light of the nature of the crime charged and the likelihood or otherwise of the guilt of the accused there under. At any early stage when accused asks for bail, the Court has necessarily to act on a reasonable and intelligent anticipation which ex-hypothesis must, to a certain extent, be problematical because the trial has not run its course.

In matters of bail the test to be applied is the test of reasonable belief as opposed to decision and conclusion which marks the ends of the trial. The available materials for the Court in considering the question of granting bail are the charges made, the attendant facts including the police report, facts stated in the petition for bail and the grounds of opposition to the granting of that petition. The release on bail does not change the reality and from that fact alone, it cannot be said that he is not a person arrested for an offence. A person released on bail is still considered to be detained in the constructive custody of the Court through his surety. He has to appear before the Court whenever required or directed. Therefore, to that extent, his liberty is subjected to restraint. He is notionally in the custody of the Court and hence continues to be a person arrested. Even in spite of the fact that the accused had been released on bail, he continues to be a person arrested on a charge of commission of an offence.

Classification of Offence:

The code of criminal procedure classifies offences into two main categories. Viz.

- i. Bailable
- ii. Non - bailable.

²¹¹ M.R. Malik; Bail Law & Practice, fourth edition, page 172.

²¹²The Code of Criminal Procedure, 1973, (2 of 1974)

This classification is done on the basis of gravity of the offence and also punishment for the same. Normally, a bailable offence is regarded less grave and serious compared to a non-bailable one. Offences are defined in the clause (a) of S. 2 of the Cr. P.C. as:

(a) "Bailable Offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence;²⁰

It is important to note that every offence under The Indian Penal Code have been individually declared as bailable or non-bailable in the first part of the first Schedule to Cr.P.C. to find out which offence is bailable and which non-bailable. However, in the absence of any such declaration under the parent Act, general rules mentioned in second part of the first Schedule of Cr. P.C. needs to be referred to decide whether the category of the offence.

Cr.P.C classifies offences into two categories, namely bailable or, nonbailable depending on the seriousness or gravity of the offences and punishment the Code (of 1973) provides. The main provision regarding bail in bailable offences is contained in Section 436, of the Code (of 1973) and those relating to non-bailable offences are given in Section 437 of the code. The classification of offences into these categories can be explained like;

1. Bailable offences are generally considered less grave and serious compared to non-bailable ones. It is very clear that S. 436 of Cr. P.C. (of 1973) recognizes that a person who is accused of bailable offence has a right to be released on bail.

2. Bailable offences have been defined under Section 2 (a), Cr.P.C. which means offences which are shown bailable in the first Schedule, or one that is made bailable by any other law in force at that time.

Non-bailable offence means any offence other

than the above mentioned²¹³. The first Schedule of Cr. P.C. comprises of two parts, the first is regarding offences under the Indian Penal Code and the second is regarding offences under any other law. The second part holds that if the offence is punishable with less than three years of imprisonment only then it will be bailable and be tried by any Magistrate.

Different Bail Provisions for Bailable and Non-Bailable Offences:

In the matter of granting bail, the Cr. P.C. makes a difference between bailable and non-bailable offences. The granting of bail to one accused of a non-bailable offence is discretionary under Section. 437 of Cr. P.C. [1973] and the person granted bail may again be arrested by the order of the of High Court or Session court or the Court granting the bail. Under this Section the High Court or the Court of Session may release any person on bail and by a subsequent order may rearrest him. A person accused of a bailable offence is treated differently.²¹⁴ He at any time during detention without a warrant and at any stage of the proceedings before the Court before which he is brought he has the right to be released on bail. If at any stage of the case, it is found that the person accused of a bailable offence is tampering with or intimidating the prosecution witnesses or is making attempt to escape, the High Court can cause him to be rearrested and to commit him back to custody for a period it considers fit. This jurisdiction rises from the overriding powers of the High Court which can be invoked at times of exceptional cases and that the High Court is satisfied that the ends of justice will be defeated if the accused remains out on bail. The person rearrested under the orders of the High Court cannot ask for his release on bail under Section 437, but the High Court by a subsequent order may grant him bail again.²¹⁵

The contrast between sections 436 and 437 of Cr. P.C. is apparent. Under S. 436 the Magistrate

²¹³ *Kanubhai Chhagnal Brahmbhat v. State of Gujarat*, 1973 Cri LJ 533 at p. 536 (Guj)

²¹⁴ Ezinearticles.org

²¹⁵ Manupatra.com

has no discretion as he has to grant bail to person accused of bailable offence, if he is prepared to give bail; while under Section 437, the Magistrate may refuse to release him on bail on grounds of certain circumstances that may be brought to his notice. If the offence is bailable, bail has to be granted under Section 436, but if it is a non-bailable one, the Courts are to decide on the question of granting the bail keeping in mind considerations like;

- i. the nature and seriousness of the offence,
- ii. A reasonable possibility of the presence of the accused being secured at the trial,
- iii. A reasonable apprehension of the evidence being tampering with and the quantum of punishment.

ii. Whenever an application for bail is presented before a court, the first question to be decided is whether the charge slapped on the accused is bailable or not. If bailable, then bail will be granted under S.436 of the Code. If the offence is non-bailable, further considerations will arise before the Court and it will decide the question and then grant or reject bail. Further considerations like;

1. Seriousness and nature of offence.
2. Character of evidence.
3. Circumstances which are unique to the accused.
4. A reasonable possibility of accused's presence not being secured at the time of trial, reasonable apprehension of witnesses being tampered.
5. The larger interests of public or the state. And similar considerations that arise in a court when asked for bail in non-bailable offence.

2.1 Classification of Non-Bailable Offences.

- i. If the offence is not punishable with death or imprisonment for life. The accused person may be admitted bail.
- ii. If there are no reasonable grounds

for believing that the person is guilty of an offence punishable with death or imprisonment for life. The accused may be released on bail.

iii. If there are reasonable grounds for believing that the accused is guilty of an offence punishable with death or imprisonment for life. The accused shall not be released on bail.

iv. If there are reasonable grounds for believing that the accused person is guilty of an offence punishable with death or imprisonment for life but is less than sixteen years of age, is a woman or is sick or infirm. The accused person may be released on bail.

v. If there do no reasonable grounds for the accused person believe that the accused person has committed a non-bailable offence but there are sufficient grounds for further inquiry into his guilt. The accused shall be released on bail.

vi. If, in any case triable by a Magistrate, the trial of a person accused of a non-bailable offence is not concluded within sixty days from the first date fixed for taking evidence and such person has been in custody throughout. The accused shall be released on bail.

vii. If 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 the accused is not guilty of any such offence. The accused shall be released on bail.²¹⁶

It will thus appear that the occasion for the exercise of judicial discretion either in favour or against the accused arises only under (i), (ii) and (iv), otherwise the legislature itself has taken a liberal view of the matter. As far as the case of an accused under (iii) is concerned, it is submitted, that he cannot be released by the Magistrates. So far as the courts of Session or High Court is concerned, their power is not fettered by the fact that there are reasonable grounds for believing that they are involved in

²¹⁶ www.shodhganga.com

offences punishable by death or imprisonment for life.²¹⁷

Thus it has been held in an Allahabad case that a Magistrate has no jurisdiction to grant bail where there are prima facie reasons to believe that the accused is guilty of attempt to murder (section 307, I.P.C.). But, in such a case Sessions Judge by invoking the aid of section 439, Cr. P. C., may admit the accused to bail. The question has been exhaustively dealt with while discussing the scope and ambit of the provisions of section 439 of the code. Besides the considerations catalogued above which weigh with a court while considering the question of bail in a non-bailable case, there may be other situations which may influence the decisions of the court.

2.2 Conversion of Case from Bailable to Non-Bailable Offence:

In the case of *Hamida v. Rashid*²¹⁸ bail had been granted to the accused for offences under ss. 324,352 and 506 IPC (which were bailable offences) on the day of their arrest itself. Subsequently, the victim succumbed to the injuries and died after which the offence was converted into S. 304 IPC. The accused file a petition under S. 482 before the High Court seeking a direction to allow them to continue on same bail even after the conversion of the offence into S, 304 IPC. The High Court accepted their prayer. On appeal, the Supreme court held that the accused could have applied for bail afresh after the offence had been converted into one under Section 304 IPC. They deliberately did not do so and filed a petition under section 482 Cr. P. C. in order to circumvent the procedure where in *Talab Haji Husain v. Madhukar Purshottam Mondkar*²¹⁹ *Ratilal Bhanji Mithani v. Asstt Collector of Customs*²²⁰ under they would have been required to surrender as the bail application could be entertained and heard only if the accused were in custody. It was held that as no order adverse to the accused

had been passed by any court nor was there any miscarriage of justice or any illegality, in such circumstances, the High Court committed manifest error of law in entertaining a petition under Section 482 Cr.P.C. and issuing a direction to the subordinate court to accept the sureties and bail bonds for the offence under Section 304 IPC. It was observed that the effect of the order passed by the High Court was that the accused after getting bail in an offence under Sections 324,352 and 506 IPC on the very day on which they were taken into custody, got an order of bail in their favour even after the injured had succumbed to his injuries and the case had been converted into one under Section 304 IPC without any court examining the case on merits, as it stood after conversion of the offence. The procedure laid down for grant of bail under Section 439 Cr. P. C., though available to the accused, having not been availed of, and the exercise of power by the High Court under Section 482 Cr. P.C. was clearly illegal. Accordingly, the aforesaid order passed by the High Court was set aside.

In the aforesaid case of *Hamida v. Rashid*²²¹, in a petition under S. 482 Cr.P.C., the High Court had allowed the continuation of the same bail which was granted to accused in a bailable offence even after its conversion into an offence under S. 304 IPC. While setting aside the said order, the Supreme Court held that in spite of its repeated pronouncements that inherent power under Section 482 Cr.P.C. should be exercised sparingly with circumspection in rare cases and that too when miscarriage of justice is done, the High Court entertained the petition under Section 482 Cr.P.C., the ultimate result where of was that the order of bail granted in favour of the accused for an offence under sections 324,352 and 506 IPC ensured to their benefit even after the offence had been converted into one under section 304 IPC and also subsequently when charge had been framed against them under section 302 read with Section 34 IPC. The accused did not remain in

²¹⁷ Manupatra.com

²¹⁸ 108 (2008) 1 SCC 474

²¹⁹ AIR 1958 SC 376

²²⁰ Bombay, 1967 Cri LJ. 107 (2008) 1 SCC 474

²²¹ 108 (2008) 1 SCC 474

custody even for a single day nor did they approach the Court of Chief Judicial Magistrate or sessions Judge for being granted bail under section 304 or 302 IPC, yet they got the privilege of bail under the aforesaid offences by virtue of the said order passed by the High Court. Highlighting that the dockets of the High Court are full and there is a long pendency of murder appeals in the High Court from which the instant case had arisen, the Supreme court held that ends of justice would be better served if valuable time of the High Court is spent in hearing those appeals rather than entertaining petitions under Section 482 Cr. P. C. at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as was the case in the instant case, or to delay the trial which would enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice. In a case, the accused were arrested for the commission of bailable offence and accordingly they were released on bail by the Magistrate. Subsequently, the charge was altered and S. 307 IPC was included which is non-bailable and exclusively triable by the Court of Session. Only on that ground the police arrested the accused without the bail being cancelled by the Court. In other words, the police did not move the Court to cancel the bail, make out a case that they are required for an offence under S.307, IPC. Therefore, the arrest by the police itself was illegal. Subsequently when the accused were produced before the Magistrate, the Magistrate also did not look into the fact that they were released by the same Court on earlier occasion in the same crime number.²²²

Therefore, before remanding the accused, the Magistrate ought to have considered whether their bail application should be cancelled or not. Without cancelling the bail which was granted by the same Court and remanding the accused without assigning any reasons, the

said order was illegal. If the police is allowed to arrest the accused who has been released on bail by the Court, it will lead to disastrous consequences as the police will be able to arrest the same accused under the same crime number by altering the section, making it a non-bailable offence. Therefore, it is absolutely necessary that before the accused is re-arresting in the same crime number, if he is released on bail, the prosecution has to seek cancellation of bail making out prima facie case for non-bailable offences or for arresting him in view of the serious nature of the offence, etc. In the event the bail is cancelled by the Court either under S. 437(5) or S. 439(2), Cr. P.C., as the case may be, the accused can be arrested. In the event the accused is re-arrested and produced before the Magistrate, it is incumbent on the Magistrate to look into all the material particular and after being satisfied only, he may pass orders according to law. In *Nathuram v. State of Rajasthan*³¹, initially a case under ss. 447, 323 IPC was registered against the petitioners. However, subsequently, Ss. 307 and 325 IPC were also added to the case. They approached the High Court under S. 482 Cr. P. C. alleging that by addition of these sections, the bailable offence was converted into a non-bailable offence and their right to bail had been divested by the police due to that reason. The High Court refused to intervene in the matter on the ground that so long as the investigation proceeds in conformity with the mandates of the Cr. P. C., the domain of investigation circumscribed by the provisions of the Cr. P. C., an attempt should be made by the Court to stifle or impinge upon the progress of the investigation unless the salient features of illegality, irregularity, or mala fide, misuse of power by the police conscientiously persuades the Court to believe that personal liberty of the citizen is at stake at the hands of arbitrary exercise of power by the State machinery. Moreover, it was clarified that on the apprehension of arrest by the police, the citizens have the right to move for anticipatory bail for the reasons available to them in the facts and circumstances.

²²² *Rati Singh v State of Bihar AIR1988, SC 457*

CONCLUSION

However, Bangladesh Cr.P.C has no specific provision for illegal crimes. Ordinary people be less harmed in Bangladesh if he adopts the necessary regulations and judges will not agree with the parties because of the politicians or the power to run the meetings according to their needs. Therefore, in the case of a crime that cannot be guaranteed, we must prepare special bail. For example, as stipulated in Cr.P.C Section 339(c), judges cannot exceed 180 days to decide case, while judges have 360 days to complete the trial. If the process is not completed within this time, the suspect may be released on bail even if he is charged with a non-criminal offense. Mostly in Bangladesh, we see that many initiatives are successful but not sustained. not many people benefit from his arrangement. This statement compels the court or judge to consider only the right of self-defense. We also suggested that "must" be replaced with "possible" in that area so that the judge/court does not believe in giving the test period to the person whose test period is the evidence to show that the time has passed. It often happens that the Hope plan is held up in the competition of Bangladesh's top political leaders and other big cats, but only in case, especially with the special power of the word "in any case" in clause 498. CRPC

Criminal Code only specifies the terms of consent, but the courts do most of the work. Laws enacted by the courts can also be changed by the courts. Since insurance is defined and defined, it has no legal definition. Therefore, it will also be understood as the right to be freed from restrictions by the state to the person who is safe in court for the purpose of release. Insurance is often a matter of jurisdiction. In deciding whether bail should be accepted, the discrepancy between the

defendant's freedom and quality of life must be taken into account. When it comes to the evolution and history of consent, it developed slowly in India. This is a very important tool. The importance of the from the first-degree accusation of the police to the Supreme Court, from the indication of future authorization, especially to the authority of the Supreme Court and the Supreme Court to grant permission and habeas corpus. it is allowed to store information for the restoration of personal freedom, and according to article 2 of the Criminal crimes Code, are divided into illegal and illegal. The difference of this crime is that there is the right to ask for permission in the crime, and that the permission in the illegal crime is at the discretion of the court. Courts will consider a number of factors when giving bail for illegal conduct. Today, the field of human rights is expanding. At the same time, crime increased. Following this, the Supreme Court saw that balance had to be struck between the freedom of the individual and the investigative powers of the police. It is not right to subordinate the freedom of the individual to the security of the state. However, no right can be obtained to which reasonable restrictions may be placed. Since this detention is permitted by law, it cannot be prosecuted as a violation of Article 21. However, even if the person accused of a crime that does not constitute a crime is released on bail, if the prosecution is found to be unsuccessful in the first case brought against him by the relevant court and the court is satisfied, why the decision closed even though it is final? unsuccessful. In most cases, these individuals should be released on the basis of facts and circumstances. In this process, if the application for suspension of authorization is rejected, if the facts change, the possibility of applying for an extension of authorization cannot be ruled out. While personal freedom is important and it is

important for the courts to take care of personal freedom, if it is alleged that one's freedom conflicts with the purposes of the public interest and justice and the welfare of the people, the first must be based on personal freedom. The main purpose of bail is to ensure that the accused is brought to justice if released after being arrested – the Supreme Court has adopted the general rule that allowing is better than refusing. He was also not charged with making false statements or giving illegal money. Contrary to the above, professional bail is often considered an important figure who can ease the burden of the court by enforcing the court order. It also eased the burden on prison officials who would otherwise have arrested people. In fact, experts only charge a "fee" for the person's release. Such schools have become a suitable school for law enforcement. In *Afsar Khan V. State*, Karnataka High Court recognized as hard and oppressive, capable of rejection and freedom, fixed Rs 6750/- cash. Case-law also indicates that courts have the power to restrict some of the defendants' freedom to accept bail, even if it relates to the purpose of allowing those restrictions. However, under no circumstances can the right to freedom be given a fair trial. In many cases, professional liability arises from the same device and sometimes does not exist. Withdrawal of insurance is a rare occurrence. Programs are usually closed if started. It is done with the knowledge of the authorities, but this is how the job is done, revealing the inadequacy of the police, the prosecutor's office and the court for bail. Here is the unjust situation Krishna Iyer's observation: "Effective legal structure is an important part of the decision-making process in society. There is no system for determining the amount of medical aid, the amount to be awarded in a case is often determined regardless of the character or financial situation of the accused determine the integrity and

ability of security The price of the license will be set higher than usual, as most of the defendants are not in good financial standing. The court has no power to restrict the defendant's freedom of bail under Article 436 of the Criminal Code. Payment as proof is subject only to the respondent's requirement of willingness and ability to provide insurance and other conditions set forth in Article 436 (1) and (2). Written rules will not be enough to give confidence in the operation of the insurance and even if the cases decided by the judiciary are not included in the law or if the persons are subject to it, they may leave some uncertainties that will not allow the abuse of the law. To the *Naresh Mirajkar* case. It is a common practice to keep detainees in detention centers for a long time without being registered with the Decree Law No. Those arrested will also not appear in court within 24 hours of being arrested. The usual bail method is to ask the accused to submit a personal deed stating the amount that guarantees that he will appear in court and be recognized with similar provisions. Other surety mechanisms, especially unsecured bonds, do not exist. Finally, it can be concluded that all this corruption is about making money, the rich are the main beneficiaries of the above system and the poor are due to dissatisfaction of leaders or target. Many detainees are illiterate or illiterate, have little income and influence, and therefore have no opportunity to contact lawyers, friends or relatives to arrange legal services or guarantees. In this case, even if the arrest shows that some documents have been processed, it will not be recorded in the official records. Because poor have laws and lawyers, they cannot pass through legal means despite many decisions and instructions of the Supreme Court. The problem is in the management and health of the country. The legal process is so complex and complex that people cannot understand it.



It is an important skill that experts in the field of evidence law can possess beyond the knowledge of lawyers, lawyers, and police officersto work in the body.

