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RIGHT TO BAIL IN INDIA

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ABSTRACT

The right to bail in India is a fundamental legal principle that safeguards personal liberty and ensures that an accused person is not unjustly detained before trial. Rooted in constitutional guarantees under Article 21, statutory provisions in the Code of Criminal Procedure, 1973 (CrPC), and judicial precedents, bail serves as a balance between individual rights and the broader interests of justice. While Indian courts have upheld bail as a rule rather than an exception, delays in the judicial process, stringent conditions in special laws, and the discretionary nature of bail decisions often lead to prolonged pre-trial detention, particularly for marginalized individuals.

Judicial interpretations, including landmark cases like *Maneka Gandhi v. Union of India* (1978) and *Arnesh Kumar v. State of Bihar* (2014), have emphasized the need for a liberal and rights-based approach to bail. However, special laws such as the Unlawful Activities (Prevention) Act (UAPA) and the Prevention of Money Laundering Act (PMLA) impose stringent bail conditions, making it difficult for accused individuals to secure release. A comparative analysis with international bail systems highlights the need for reforms in India's bail laws, ensuring a more consistent, transparent, and accessible approach to pre-trial release.

KEYWORDS – *Right to Bail, Personal Liberty, Criminal Procedure Code (CrPC), Article 21, Judicial Interpretation, Pre-Trial Detention, Special Laws, Fundamental Rights, Presumption of Innocence, Bail Reforms.*

1. INTRODUCTION

Bail is an essential part of the Indian criminal justice system that balances upholding the right to personal freedom of an individual against the need to secure their presence in court for the trial. Bail is a judicial remedy which provisions for an accused person to be released temporarily from custody till the order of the court. Based on the presumption of innocence, a fundamental principle of criminal law, the bail system presumes that a person is innocent until proven guilty. It is because of that, that any denial of bail must be backed up with solid coverture so as not to infringe the rights of an individual without just cause to do so. The Indian law on bail is mainly contained in the **Code of criminal Procedure, 1973 (CrPC)** and is closely linked with the basic rights

guaranteed under Article 21 of the Constitution, the right to life and personal liberty. From October 2023, you will be expected to know all of the data. Federal courts have underlined time and again that money bail should be the rule and not the exception, czar especially for so-called non-heinous offenses, to safeguard against preconviction incarceration being used as punishment.

Even though the law recognizes bail as an important right, there has been non-uniform application of bail laws in India, causing undue delay and hardships to weaker sections and marginalized segments of society. The use of judicial discretion to grant or refuse bail is extreme in varying degrees from case to case, at times determined by the nature of the crime, socio-economic status of the accused, and

prevailing political or popular sentiment. Although the Supreme Court and the High Courts have framed guidelines to follow a more consistent practice with respect to bail, lower courts often show hesitancy in granting bail, especially in politically sensitive or high-profile cases. Further, the fact that there exist special laws like the **Unlawful Activities (Prevention) Act (UAPA)**, the **Narcotic Drugs and Psychotropic Substances Act (NDPS)**, and the **Prevention of Money Laundering Act (PMLA)** has also made it more cumbersome for bail because stringent conditions make it very difficult to obtain bail. The disproportionate effect of such limiting bail conditions on particular communities and economically disadvantaged people has generated concern about the abuse of the use of pre-trial detention as a form of oppression, as opposed to being a measure of necessity for upholding justice. Over the past few years, the judiciary has acknowledged the imperative to reform bail law to avoid unnecessary detention and ensure constitutional protections. A number of landmark judgments have reaffirmed that an accused cannot be held in detention indefinitely without trial, and that courts should follow a liberal policy in granting bail, particularly where extended detention is not necessary or warranted. The function of legal aid in facilitating bail for poor prisoners has also been emphasized, as most prisoners are stuck in jails merely because of the unavailability of proper legal counsel or the inability to provide bail bonds. In addition, the institution of progressive provisions like default bail under **Section 167(2) of the CrPC**, where an accused can be released if the investigation is not finished within a specified time, is a measure to avoid indefinite detention. Systemic inefficiencies, procedural delays, and overloading of courts still stand in the way of the effective enforcement of bail laws. While the Indian legal system faces these challenges, a more orderly, transparent, and rights-based bail jurisprudence is required to ensure that the criminal justice system does not turn into a tool

of arbitrary detention but stays true to upholding individual freedom and human rights.

2. CONCEPT AND LEGAL FRAMEWORK OF BAIL IN INDIA

The institution of bail in India is based on the very basic principles of criminal jurisprudence, and its main purpose is to protect personal liberty while ensuring that an accused individual remains at the disposal of the legal process. Bail, in its most basic sense, is the release of an accused individual from custody temporarily, on the basis of a surety or bond, with the promise that they will be present before the court whenever needed. The reason for releasing on bail is founded on the principle of innocent until proven guilty so that an individual would not be unnecessarily detained prior to conviction. The concept of bail is not only a legal provision but also an expression of **the right to life and personal freedom under Article 21 of the Indian Constitution**, which stipulates that no individual shall be deprived of his liberty except according to due process of law. Here, bail acts as a protection against capricious state action and keeps the criminal justice system from being abused to hold people in custody indefinitely. The character of bail is essentially discretionary, such that courts have the power to determine whether to grant or withhold bail depending on a number of factors including the gravity of the offense, the probability of the accused fleeing, and the risk of tampering with evidence or intimidating witnesses.

The law relating to bail in India is mostly contained in the **Code of Criminal Procedure, 1973 (CrPC)**, which classifies offenses into **bailable and non-bailable** offenses under **Sections 436 to 450**. For **bailable offenses**, bail is a right, and the police or magistrate has to release it on satisfaction of conditions. Yet, in **non-bailable offenses**, bail is not of right and is subject to the court's discretion. The conditions for granting bail in non-bailable offenses are prescribed in **Section 437 of the CrPC**, where it is

provided that courts can refuse bail where there are sufficient grounds to believe that the accused has committed an offense punishable with life imprisonment or death. **Section 438 of the CrPC** gives the provision of anticipatory bail, an important provision that enables an individual to apply for bail in advance if they fear arrest. This provision is especially important in situations where false charges or politically motivated arrests are prevalent, providing legal safeguards against unwarranted detention. Furthermore, Section 439 also gives discretionary powers to the High Court and Sessions Court with greater general powers to grant bail, even in grave offenses, affirming the judiciary's role as a watchdog in resolving the concerns of justice and personal freedom.

The judicial interpretation also affects the concept of bail, with seminal judgments determining the developing jurisprudence of bail legislation in India. The Supreme Court and High Courts have held uniformly that the grant of bail must be determined on the basis of reasonableness, equity, and justice and not on the basis of arbitrary judicial discretion. In **Hussainara Khatoon v. State of Bihar (1979)**, the Supreme Court made a strong point that undue delays in pre-trial detention violate the fundamental right of life and liberty, exhorting the judiciary to pursue a generous attitude while considering grant of bail, especially where poor and impoverished prisoners are concerned. Likewise, in **Sanjay Chandra**

v. CBI (2011), the court emphasized that bail was to be the norm and jail was to be the exception and reiterated that economic status must not be a disincentive in granting bail. In addition, the provision of default bail under **Section 167(2) of the CrPC** guarantees that an accused is released if the investigating agency is unable to finish the investigation within the stipulated time, avoiding the abuse of prolonged detention by law enforcement agencies. Nevertheless, regardless of these safeguards in law, the irregular enforcement of bail laws, delayed judicial proceedings, and interference by sociopolitical considerations often result in

the refusal of bail to deserving cases, pointing towards the necessity of a more organized and uniformed system of bail jurisprudence in India.

The bail legal framework of India is also affected by special legislation imposing more stringent conditions for the grant of bail in certain categories of offenses. Legislation like the **Unlawful**

Activities (Prevention) Act (UAPA), the **Narcotic Drugs and Psychotropic Substances Act**

(NDPS), the **Prevention of Money Laundering Act (PMLA)**, and the **Protection of Children from Sexual Offences (POCSO) Act** have strict provisions regarding bail that render it highly impossible to obtain bail. For example, in the NDPS Act, bail may be granted only if the court is convinced that there are sufficient grounds to believe that the accused is innocent, putting a high burden of proof on the accused. Analogously, under the UAPA, bail is refused except where the accused is able to show that there is no prima facie case against them, so pre-trial detention is virtually inevitable in allegations of terrorism. These draconian provisions relating to bail have created increasingly high levels of concern about arbitrary denial of bail, abuse of pre-trial detention, and disproportionate targeting of marginalized groups. The courts have tried to resolve these issues by interpreting bail provisions in such a way as to uphold constitutional values without rendering the purpose of these special legislations nugatory. Nevertheless, the intricateness and strictness of such laws still cause great problems and often lead to long-term incarceration without trial.

3. JUDICIAL INTERPRETATION AND LANDMARK CASES

The courts have played a central role in charting the jurisprudence of bail in India, construing constitutional protections and statutory law to make certain that the right to bail is invoked in a manner that is in conformity with the principles of justice and individual

freedom. Through the years, courts have developed a system of guidelines to balance individual freedom from oppression and society's interest in preventing crime and having a fair trial. The bail laws have been interpreted with the ideology that bail should be the norm and jail the exception, especially for crimes not involving extreme criminality. Courts have insisted that a person accused, unless convicted, should not be unnecessarily detained since it violates the presumption of innocence under the criminal justice system. Judicial discretion has, however, been applied cautiously to avoid abuse of bail provisions so that issuing bail does not result in a scenario where the accused goes into hiding, contaminates evidence, or intimidates witnesses. The High Courts and the Supreme Court have time and again stepped in to see that bail laws are uniformly applied and not arbitrarily or discriminatorily, especially where economic status or social background could lead to unequal access to justice.

The most important case regarding the right to bail is **Hussainara Khatoun v. State of Bihar (1979)**, where the Supreme Court heard the case of undertrial prisoners who spent years in jail because they could not afford bail. The court ruled that extended pre-trial detention was a violation of Article 21 of the Constitution, pointing out that provisions for bail must be used liberally, particularly for poor prisoners. This led to judicial activism for decongesting the prisons and ensuring that the granting of bail does not depend upon economic status. In **Moti Ram v. State of Madhya Pradesh (1978)**, the Supreme Court again emphasized that the conditions of bail should not be too rigid and that courts have to look at the economic means of the accused while framing the conditions of bail. It condemned the tendency of imposing unrealistically excessive sureties, which disproportionately hit economically weaker segments of society, keeping them out of bail despite their right to it under the law. This verdict supported the notion that bail must be a reachable right and not a luxury for the rich.

The courts have also played an important part in determining the ambit of anticipatory bail, a **provision of Section 438 of the Code of Criminal Procedure (CrPC)** that provides for a person to apply for bail in anticipation of arrest. In **Gurbaksh Singh Sibbia v. State of Punjab (1980)**, the Supreme Court formulated the principles of grant of anticipatory bail as that courts need to interpret **Section 438** in a liberal way to avoid harassment and abuse of arrest powers. The ruling specified that anticipatory bail cannot be rejected on mere grounds of suspicion that the accused could abuse it, and that every case has to be ruled on merits. The decision made sure that anticipatory bail is a working shield against arbitrary detention, especially in the case of political or personal scores being settled through the abuse of criminal proceedings. Earlier this year, in the case of **Sushila Aggarwal v. State (NCT of Delhi) (2020)**, a Supreme Court Constitution Bench held firmly that anticipatory bail was not to be governed by time because the liberty of people has to be secured against extended apprehensions of arrest as a result of politically motivated or false cases.

In white-collar crimes and economic offenses, the courts have been more circumspect while issuing bail, pointing out the necessity of being cautious so that such crimes, which involve huge financial scams, do not escape their due punishment owing to procedural complacency. In **Sanjay Chandra v. CBI (2011)**, the Supreme Court considered the question of bail in economic offenses and held that severity of punishment alone is not a reason for refusing bail. The court held that as the accused was not in a position to destroy evidence or abscond, there was no need for further detention. This case reinforced that bail needs to be released on objective grounds, not as a pre-trial punishment. Likewise, in **P. Chidambaram v. Directorate of Enforcement (2019)**, the Supreme Court emphasized that the right of bail is a component of individual freedom and need not be refused unless there are cogent reasons for doing so, even where offenses of an

economic nature are involved. The decision reaffirmed that the concept of justice is as applicable to economic crimes as it is to traditional criminal offenses, so that the setting of bail is always in accordance with constitutional safeguards.

The courts have also dealt with the problem of default bail, **a valuable legal protection under Section 167(2) of the CrPC**, requiring that an accused person be granted bail if the investigation is not finalized within a given time (**60 or 90 days**, depending on the offense). In **Rakesh Kumar Paul v. State of Assam (2017)**, the Supreme Court held that the right to default bail is a fundamental protection against undue detention and a failure by the prosecution to conclude the investigation within the stipulated time should automatically entitle the accused to bail. The judgment highlighted the fact that default bail is neither a discretionary relief nor a benefit but a statutory right, whereby investigative agencies would not abuse procedural delays to cause accused persons to remain in continued detention.

The judgment has helped to reinforce procedural accountability and the fact that investigative agencies will keep to stipulated legal timelines.

Though judicial rulings have increasingly broadened the ambit of bail rights, some judgments have also recognized the need to impose limitations in national security, terrorism, and organized crime cases.

The Unlawful Activities (Prevention) Act (UAPA), the **Narcotic Drugs and Psychotropic Substances Act (NDPS)**, and the **Prevention of Money Laundering Act (PMLA)** are very strict bail conditions, making it hard for accused individuals to get bail. In **National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)**, the Supreme Court construing the UAPA provisions narrowly, held that bail under anti-terror legislation could be granted only in rare situations. The ruling reaffirmed the legislative policy to discourage acts of terrorism but encouraged fear about the potential abuse of

strict bail provisions to restrict individual liberty. Likewise, in **Tofan Singh v. State of Tamil Nadu (2020)**, the Supreme Court also dealt with the question of bail under the NDPS Act, holding that what is said to investigating officers in NDPS proceedings cannot be termed as confessions, thus consolidating the accused's rights and ensuring that the onus continues to lie with the prosecution.

In spite of these judicial pronouncements, there is still an inconsistent enforcement of bail laws that continues to plague the system, with lower courts tending to be reluctant to grant bail based on public opinion, media influence, and technicalities. The Supreme Court has on several occasions condemned arbitrary refusals to grant bail and called upon the courts to implement a balanced and rights-oriented approach. In the recent past, the judiciary has been proactively taking steps to ensure that bail jurisprudence keeps pace with constitutional ideals, promoting homogenous guidelines, less judicial discretion, and a simplified bail process to avoid unjustifiable incarceration. As judicial interpretations keep changing, the imperative of having a complete legislative framework that provides for prompt, equitable, and transparent grant of bail is an indispensable part of legal reforms in India.

4. RIGHT TO BAIL AS A FUNDAMENTAL RIGHT

The right of bail has its close link with the basic rights enshrined in the Indian Constitution, specifically the right to life and liberty of the person under **Article 21**. The Indian judiciary has always held the view that refusal of bail, especially when the accused is eligible for it, constitutes a violation of personal liberty and defeats the very principle of constitutional protection. Article 21 guarantees that no individual will be deprived of their life or personal liberty except in accordance with a procedure laid down in a law, and courts have interpreted the said provision to mean that the procedure must be just, fair, and reasonable. Because extended pre-trial detention of an accused individual who is not convicted

contravenes the presumption of innocence, the right to bail has been deemed an integral aspect of due process. Although the Constitution does not explicitly state that bail is a basic right, judicial interpretations have increasingly entrenched it as an inherent aspect of the right to personal liberty. Courts have time and again indicated that arbitrary or excessive refusal to grant bail is tantamount to an unjustified curtailment of individual liberty and contravenes the constitutional promise of liberty.

One of the most important Supreme Court decisions upholding bail as a constitutional right was in **Hussainara Khatoon v. State of Bihar (1979)**, where the court noted that the prolonged detention of undertrial prisoners because they could not pay bail was a direct contravention of Article 21. The ruling brought about sweeping changes in bail jurisprudence, making sure that poor accused individuals are not denied their liberty just because of their financial situation. Likewise, in **Maneka Gandhi v. Union of India (1978)**, the Supreme Court expanded Article 21 in its interpretation and held that every deprivation of liberty must meet tests of reasonableness and justice. This view has had significant implications for bail legislation, protecting detention without trial from becoming a means of oppression. The courts have also associated the right to bail with **Article 14** (equality) by opining that laws governing bail need to be enforced alike and not whimsically. Bail refused on prejudicial grounds such as social class, financial situation, or political affiliation amounts to an infringement on the fundamental right of equality before the law.

The constitutional basis for the right to bail is also found in the directive principles of state policy, which seek a just and humane criminal justice system. The judiciary has time and again underlined that the law relating to bail should be in consonance with the canons of justice, fairness, and nondiscrimination. In **Moti Ram v. State of Madhya Pradesh (1978)**, the Supreme Court condemned the practice of granting

unreasonable conditions of bail and ruled that economic standing should not act as a hindrance to the grant of bail. The ruling upheld the doctrine that bail cannot be a luxury of the rich but a right available to all accused, regardless of their economic standing. The court also held that bail fees must be established in a way that enables the poorest of individuals to avail of their right of bail, in order to reinforce the basic doctrines of equality and justice.

The judiciary has come to the fore in anticipatory bail cases by protecting individual freedom from arbitrary detention and arrest. The classic case of **Gurbaksh Singh Sibbia v. State of Punjab (1980)** explained that anticipatory bail is not only a statutory provision but also an important mechanism to safeguard personal liberty, preventing individuals from being unnecessarily arrested on frivolous charges. The Supreme Court held that the provision for anticipatory bail under **Section 438 of the Code of Criminal Procedure (CrPC)** had to be read liberally to avoid the abuse of the power of arrest by law enforcement agencies. The court also asserted that anticipatory bail had to be viewed as an extension of the fundamental right of life and liberty, especially where people are targeted on the grounds of political or personal vendetta. This ruling reaffirmed the constitutional principle that individual freedom is not to be sacrificed except where there are overriding reasons to do so.

Nonetheless, even in light of these judicial dicta, the erratic application of bail legislation continues to be a major challenge, resulting in violations of fundamental rights in numerous cases. The Supreme Court, in a number of judgments, condemned the excessive use of preventive detention laws and the abuse of provisions regarding bail, particularly when accused individuals are incarcerated for extended periods on bail without being tried. In **Arnab Manoranjan Goswami v. State of Maharashtra (2020)**, the Supreme Court reaffirmed that bail is the norm and jail is the

exception and stressed that personal liberty must not be restricted on mere procedural grounds. The judgment reasserted that the courts need to take a rights-oriented approach in granting or denying bail applications, so that the principles of equity, fairness, and justice outweigh the technical or procedural obstacles.

In instances of special laws like the **Unlawful Activities (Prevention) Act (UAPA)**, the **Narcotic**

Drugs and Psychotropic Substances Act (NDPS), and the **Prevention of Money Laundering Act (PMLA)**, the courts have been struggling to balance national security interests and basic rights. The strict conditions of bail imposed under these statutes have resulted in prolonged detentions, and that has raised alarms regarding the contravention of **Article 21**. But, in some instances, the judiciary has stepped in to ensure the proportionate limitation of fundamental rights. For example, in **Tofan Singh v. State of Tamil Nadu (2020)**, the Supreme Court held that oral statements recorded to investigating officers in terms of the NDPS Act cannot be employed as confessions, thus reaffirming the right of the accused to a fair trial and curbing the abuse of strict bail provisions.

In spite of the judicial acknowledgment of the right to bail as a fundamental right, various structural and procedural problems still impede its effective enforcement. Delays in judicial proceedings, overreliance on custodial sentences, strict conditions of bail, and judicial discretion resulting in infringement of the principles established under **Articles 14 and 21** are usually the consequences. In light of these issues, the Supreme Court has promoted wholesale reforms in bail law, implying that bail jurisprudence has to change in order to protect fundamental rights better. In **Satender Kumar Antil v. CBI (2022)**, the Supreme Court gave detailed guidelines regarding the grant of bail and minimizing the burden of pre-trial detention, holding that bail cannot be refused on technical or arbitrary grounds. The judgment

emphasized the necessity of a uniform and systematic approach to bail orders so that personal liberty is not unnecessarily impaired.

5. BAIL IN SPECIAL LAWS AND OFFENSES

The idea of bail in India is generally regulated under the **Code of Criminal Procedure, 1973 (CrPC)**, which regulates various forms of bail based on the nature of the offense. For special legislation and offenses, though, bail becomes much tighter given the nature of crimes within such enactments. A number of special acts, including the **Unlawful Activities (Prevention) Act (UAPA)**, the **Narcotic**

Drugs and Psychotropic Substances Act (NDPS), the **Prevention of Money Laundering Act (PMLA)**, and the **Protection of Children from Sexual Offenses Act (POCSO)**, place stringent limitations on the grant of bail to accused individuals. These acts tend to reverse the burden of proof on the accused, making them prove their innocence before bail is granted. This has resulted in deviation from the standard bail jurisprudence under CrPC, whereby the principle of presumption of innocence is fundamental. Therefore, getting bail under special laws is an uphill task and results in pre-trial imprisonment for extended periods, thus arousing questions with respect to constitutional rights and fairness in judicial outcomes.

One of the most controversial bail laws is the **Unlawful Activities (Prevention) Act (UAPA), 1967**, which addresses offenses in relation to terrorism and national security. **Section 43D(5) of UAPA** states that bail shall only be granted if the court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the offense and will not commit any offense while on bail. This stringent criterion effectively reverses the presumption of innocence, making it extremely difficult for accused persons to secure bail. The Supreme Court, in **National Investigation Agency v. Zahoor Ahmad Shah Watali (2019)**, upheld the restrictive bail provisions of UAPA, ruling that at the bail stage, courts must not conduct a detailed

examination of evidence and should primarily rely on the prosecution's prima facie case. But in **Union of India v. K.A. Najeeb (2021)**, the Supreme Court identified the constitutional right to personal liberty under Article 21 and held that extended detention without trial, even under UAPA, can be a valid reason for bail. The case indicated the judiciary's effort to balance national security with fundamental rights.

Equally, the **Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985**, an act relating to offenses involving drugs, has among the toughest provisions for bail under Indian law. **Section 37 of the NDPS Act** imposes stringent requirements in granting bail whereby courts must be convinced that reasonable grounds exist for believing that the accused is not guilty and that he will not commit any future offense while out on bail. This section renders bail virtually impossible in commercial quantity narcotic cases, as was seen in **State of Kerala v. Rajesh (2020)**, where the Supreme Court opined that the substantial threshold under Section 37 needs to be scrupulously followed in view of the danger of drug peddling. Yet, judicial interpretations have been dynamic over the years, with the Supreme Court in **Tofan Singh v. State of Tamil Nadu (2020)** holding that confessional statements given to investigating officers under NDPS cannot be considered evidence, thus granting some relief to accused persons who are seeking bail. The ruling reiterated the principle that provisions of bail must be interpreted in a way that ensures due process and avoids wrongful convictions.

Another restrictive law regarding bail is the **Prevention of Money Laundering Act (PMLA), 2002**, which addresses economic offenses of money laundering and financial fraud. **Section 45 of PMLA** lays down strict conditions like **UAPA and NDPS**, where courts must be convinced that the accused is not guilty of the crime before releasing him on bail. The Supreme Court, in the case of **Nikesh Tarachand Shah v. Union of India (2017)**, at first invalidated the twin conditions to bail under PMLA and declared them as unconstitutional since they were

violative of **Articles 14 and 21**. These restrictions were revived through later amendments to the statute, which sparked a new cycle of litigation. In **Enforcement Directorate v. Kapil Wadhawan (2021)**, the Supreme Court reaffirmed that economic offenses carry severe implications on the financial well-being of the nation and need to be dealt with sternly. However, in recent judgments, courts have taken a balanced approach, making sure that bail is not refused arbitrarily and pre-trial detention does not turn punitive in nature.

The **Protection of Children from Sexual Offenses (POCSO) Act, 2012**, which is concerning offenses against children, also strictly conditions bail. **Section 31 of POCSO** provides for stringent examination of bail applications based on the vulnerability of victims. In **State of Rajasthan v. Bal Kishan (2019)**, the Supreme Court specifically underlined that in sexual offense cases against children, courts need to exercise maximum prudence while granting bail so that victims' rights are not undermined. **Nonetheless, in Satish Ragde v. State of Maharashtra (2021)**, the Bombay High Court was under fire after holding that rubbing hands over clothing over a child was not a sexual assault in **POCSO**, only for this to be overruled by the Supreme Court following popular outcry. In this case, it highlighted difficulties facing courts balancing victims' rights with bail rights of accused individuals, especially for cases of major accusations.

The **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act)** also puts limitations on granting bail in atrocities relating to caste. **Section 18 of the SC/ST Act** provides that anticipatory bail cannot be granted for offenses under the Act except on a satisfaction of the court that the allegations are prima facie false or frivolous. In **Prathvi Raj Chauhan v. Union of India (2020)**, the Supreme Court made it clear that anticipatory bail is otherwise prohibited but courts can exercise discretion to grant it in situations where there is evident abuse of law.

This judgment emphasized the necessity to avoid misuse of harsh bail provisions while upholding justice for victims of caste violence.

Outside these special enactments, offenses of sedition (**Section 124A of IPC**), offenses under the Official Secrets Act, and cyber crimes under the Information Technology Act also present some special challenges in terms of bail. Courts have appreciated that in such instances, the jurisprudence of bail should reconcile state interests with personal freedoms. For example, in **Vinod Dua v. Union of India (2021)**, the Supreme Court dismissed charges of sedition against a journalist and reiterated that bail should be released liberally to avoid misuse of provisions, which are draconian in nature, to suppress free speech. So, in cyber crime cases under the IT Act as well, courts have been prudent in their decisions, acknowledging that conditions of bail need to keep pace with the gravity of the offense and the intangible nature of evidence.

6. BAIL LAWS IN OTHER JURISDICTIONS

The principle of bail is found in nearly all legal systems globally, yet the method of granting bail is subject to varying legal traditions, constitutional protections, and statutory systems of different jurisdictions. Individual liberty and the assumption of innocence are prioritized in some jurisdictions with more liberal approaches to bail, whereas others place severe conditions under public safety grounds. The common law nations like the **United States, the United Kingdom, Canada, and Australia** have a judicial system where bail is provided except in compelling cases of denial. Civil law nations like France and Germany have a more formal system where bail determinations are affected by procedural codes and judicial discretion. Despite these variations, a common thread among all jurisdictions is the recognition that pre-trial detention should be an exception rather than a norm, ensuring that an accused is not unduly deprived of liberty without a fair trial.

In the **United States**, the bail system is primarily controlled by the **Eighth Amendment to the U.S.**

Constitution, which forbids excessive bail. The **Bail Reform Act of 1984** brought profound changes to the bail system by enabling courts to refuse bail when the accused threatens society or will likely abscond. In the **U.S. system**, courts rely on a bail schedule to set the amount of bail for various crimes, and persons accused can pay bail in cash or by going through a bail bondsman who offers a money guarantee to the court. Yet, the American bail system has been condemned as being biased toward the rich because the affluent get released from jail while others languish in detention. Over the last few years, some states like **New York and California** have gone in the direction of bail reforms, introducing pre-trial release programs and lowering dependence on cash bail to overcome issues of economic discrimination. The **U.S. Supreme Court** has supported the ideology that bail is not to be employed as a punitive tool, reaffirming the significance of individual liberty in cases like **Stack v. Boyle (1951)** and **United States v. Salerno (1987)**. Nonetheless, the American model also allows preventive detention where there is a serious offense, showing some equilibrium between rights of the individual and public protection.

In the **United Kingdom**, bail is generally regulated by the **Bail Act 1976**, which provides a presumption of bail unless there are good reasons to suspect that the accused will not appear, re-offend, or disrupt witnesses. **UK courts** take into account a range of factors including the nature and severity of the offense, previous criminal history, and the quality of evidence against the suspect prior to bail release. In **contrast to the U.S.**, where commercial bail bondsmen have a prominent role, the **UK** does not have private bail services but rather judicial discretion and conditions of bail like electronic monitoring and curfews. Special legislations, like counter-terrorism act, introduce extra constraints on bail, especially in national security-related cases. The **case of R v. Governor of Brockhill Prison, Ex parte Evans (2000)** emphasized safeguarding individual rights against untrammelled detention and

reaffirmed that denial of bail should not be done without strong justification. Recent UK reforms have attempted to lower pre-trial detention rates, especially for juvenile offenders and non-violent offenders, as a sign of a progressive bail jurisprudence.

In Canada, provisions for bail are made in Section 11(e) of the Canadian Charter of Rights and

Freedoms, which provides that no one is to be denied reasonable bail except on just cause. The **Criminal Code of Canada** mandates that bail must normally be released unless the prosecution is able to show that the detention of the accused is required for public safety or for keeping public confidence in the administration of justice. The Canadian system includes judicial interim release hearings, in which courts determine whether conditions like sureties, reporting, or travel restrictions should be placed on a person accused who is applying for bail. In **R v. Antic (2017)**, the **Supreme Court of Canada** reiterated that pre-trial detention has to be an ultimate measure, warning against unwarranted restraint on liberty. Yet for more severe crimes like terrorism, **organized crime, and domestic violence**, bail is more difficult to secure and involves the need for the accused to prove that their release is not a risk to society. Over the past few years, debates regarding bail reform in **Canada have centered** on minimizing systemic biases, most notably the overrepresentation of Indigenous and disenfranchised communities in pre-trial detention, resulting in policy reforms designed to make bail legislation more equitable and less punitive.

In **Australia**, laws on bail are different across jurisdictions but largely under the presumed condition of bail as in the **UK and Canada**. Bail provision in **New South Wales is controlled through the Bail Act 1978 (NSW) and the Bail Act 2013 (NSW)**, while in the other states there are respective statute provisions. Australian courts consider a **"show cause"** requirement, where accused persons charged with serious

offenses must demonstrate why they should not be kept in custody. In **DPP v. Tikomaimaleya (2019)**, the **Supreme Court of Victoria emphasized the importance of balancing public safety with the rights of the accused**, affirming that bail conditions must be proportionate to the risks involved. Australia has also experienced controversies regarding preventive detention, specifically in terrorism and violent offense cases, where exceptional legislation limits bail for high-risk offenders. Electronic monitoring and stringent supervision for persons released on bail have been incorporated into the Australian system, exhibiting an integrated response to criminal justice that attempts to balance security with individual liberties.

In **France**, a **civil law country, bail (or "liberté sous contrôle judiciaire") is regulated by the Code de Procédure Pénale**. Here, compared to common law nations in which bail tends to be a financial requirement, judicial supervision is emphasized at the expense of monetary terms. The courts evaluate flight risk, community connections, and offense seriousness before making a ruling on pre-trial detention. **Article 144 of the Code de Procédure Pénale** enunciates the circumstances under which a judge can deny bail, with the provision that detention must only be applied as a measure of last resort.

The **European Convention on Human Rights (ECHR)** also has an impact on bail jurisprudence in France, where courts must justify any denial of liberty. France has been more innovative in decreasing dependence on pre-trial detention, tending to favor house arrest and electronic monitoring over custodial responses.

In Germany, bail is integrated into the German Code of Criminal Procedure (Strafprozessordnung, StPO). The German model is quite different from common law nations since it does not often involve money bail and is centered on judicial guarantees and procedural protection. The risk assessment

determines eligibility for bail by courts, and severe terms like confiscation of passports, reporting obligations, or curfews are imposed. The German Federal Constitutional Court has consistently held that pre-trial detention should conform to the tests of proportionality and necessity, affirming again that freedom cannot be arbitrarily restricted. Bail is more difficult to secure in prominent white-collar offense and terrorism cases, but Germany's system ensures detention orders are subject to routine judicial review, so there can be no arbitrary incarceration without trial.

CONCLUSION

Right to bail in India is a vital security protecting individual freedom from arbitrary truncation prior to a fair trial. Grounded in constitutional philosophy and statutory law, the institution of bail is a tool for weighing individual rights against societal interests and avoiding unnecessary pre-trial incarceration.

Even with clear legal guidelines, inconsistent judicial interpretations and procedural delays frequently hamper effective implementation of bail. The discretionary character of bail decisions at times results in injustice, especially for marginalized groups who are unable to afford bail conditions.

Reforms in the bail process and judicial practice are needed to maintain the presumption of innocence and avert prolonged detention. A rights-based and uniform approach is required to guarantee that bail is an integral protector of justice, not an exception available to the favored few.

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Case Laws

1. **Maneka Gandhi v. Union of India**, AIR 1978 SC 597 – Expanded the interpretation of personal liberty under Article 21.
2. **Gudikanti Narasimhulu v. Public Prosecutor**, AIR 1978 SC 429 – Laid down principles for granting bail based on judicial discretion.
3. **State of Rajasthan v. Balchand**, AIR 1977 SC 2447 – Affirmed that bail is the rule and jail is the exception.
4. **Hussainara Khatoun v. State of Bihar**, AIR 1979 SC 1369 – Addressed the issue of undertrial prisoners and speedy bail.
5. **Moti Ram v. State of Madhya Pradesh**, AIR 1978 SC 1594 – Emphasized the liberal approach towards bail.
6. **Kartar Singh v. State of Punjab**, AIR 1994 SC 1538 – Discussed bail provisions under special laws like TADA.
7. **Sanjay Chandra v. CBI**, (2012) 1 SCC 40 – Stressed the presumption of innocence and the right to bail in economic offenses.

8. **Arnesh Kumar v. State of Bihar**, (2014) 8 SCC 273 – Guidelines to prevent unnecessary arrests and grant bail in minor offenses.
9. **Nikesh Tarachand Shah v. Union of India**, (2018) 11 SCC 1 – Struck down stringent bail provisions under PMLA as unconstitutional.
10. **P. Chidambaram v. Directorate of Enforcement**, (2019) 9 SCC 24 – Clarified the conditions for anticipatory bail in economic offenses.

