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GROUNDS FOR GRANTING BAIL AND DERIVATION OF BAIL AMOUNT*

Abstract

This article states about decision on granting bail and deciding the bail amount by Indian Courts. Bail means an order of release of a person from prison and it forms an essential part of our justice system which assumes that every man innocent till upheld guilty. Bail is granted in the pendency of the trial or an appeal. Before bail is granted to the accused, a surety provides a guarantee to the Court that the accused will appear in the Court as and when necessary. Furthermore, a sum of money is to be deposited in order to guarantee his appearance before the Court, which or else stands forfeit. Bail means procurement of release from prison of a person until trial or an appeal, by the deposit of security to guarantee his submission at the required time to legal authority. The monetary value of the security, also known as the bail bond, is fixed by the court having jurisdiction over the prisoner. The security might be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. There are no set rules in court of law to decide a fixed bail amount as it varies as per the gravity of the intensity of the crime.

Keywords: Bail, Bail Provisions, Bail amount, Bail provisions in India, bailable & non bailable offence.

Introduction

For the purpose of granting bail offences have been classified into Bailable and non-bailable offences in Section 2 of the Criminal Procedure Code.¹ The rudimentary distinction in these offences is that in bailable offences, bail can be requested as a matter of right, whereas in non-bailable offences it is at the discretion of the Courts whether to grant the bail or not. While granting bail in case of non-bailable offences, numerous factors are to be taken into account by the Courts. In today's world the perspective of Human Rights is intensifying. Also, at the same time, the crime rate is also growing at a faster rate. Thus, Supreme Court has held that there is vital need to strike a balance between personal freedom and investigational commands of Police. There can be no improvement by stating that freedom of an individual must vantage to the security of the state. However, not right can be absolute and thus reasonable limitations can be sited on them.

It is essential for the courts dealing with application for bail, should ruminates other conditions as well. The ensuing factors are also considered by the courts:

- (i) The nature of indictment and the rigorousness of punishment in case of conviction and nature of ancillary evidence.
- (ii) Rational trepidation of tempering with the witness or trepidation of threat to the complaint.
- (iii) Prima facie approval of the court in sustenance of the charge.²

When any suspect of any non-bailable offence applies for bail before a Court other than High Court or a Court of Session in the following four circumstances:-

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¹ The Code of Criminal Procedure, 1973, (2 of 1974).

² Narinder Singh Sahni v. Union of India, AIR 2001 SC 3810 at p. 3814 (2002)2 SCC 210.

1. When he is confined
2. When he is arrested without warrant by an officer-in-charge of a police station
3. When he appears
4. When he is brought in a Court of Law

The Magistrate may release him on bail, but the accused shall not be so released if there is rational grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.³ Though, it can be provided that the conditions must have comported to the object and purpose of bail. Thus, confirming the presence of the accused on the fixed days and that he/she does not impede the course of law.

A number of court decisions have already preserved the factors which are pertinent to evaluate risks involved in releasing arrested person on bail.⁴ These factors organized with other necessary ones may be categorized to set up evident criteria for practice by the courts while exercising their discretion. The prevailing law on sureties is relatively insufficient. In any case, the law relating to sureties must take into interpretation the capability, veracity and the propinquity of the surety (in relation to kinship, place of residence or work etc.) as well as his suitability in terms of moral earnestness.⁵ In case of individual sureties, a procedure for verification of the antecedents, capacity and their suitability shall have to be provided for. This can be a check on the growth of a clandestine channel of professional sureties. The financial capacity of the person to stand as surety should not be given a place of prevalence. Though, a surety should be under an onus to guarantee attendance of the accused at the fixed time and place. On breach of a condition previously settled by a surety, the liability should be in terms of imposing a monetary fine on him.

The judges have been given discretionary capacity to give or not to allow bail. The activity of this power is commonly founded on the points of reference. Be that as it may, liberated forces given to the judges are commonly abused and subject to extraordinary analysis. It has been seen that bails conceded by the lower courts are dropped by the higher courts. There must be distinct criteria in such manner. There is no statutory cutoff fixed on the measure of bail bond or number of sureties. The whole issue has been lost to the discretion of the courts. Numerous people need to stay in prison for need of outfitting bail bonds. The statutory arrangements might be made for every classification of cases. The law and practice relating to remand, police bail, successive bail applications on refusal of bail, detention release of juvenile, sick, women, and old persons as well as host of related issues would essentially call for discourse, discussion and reformulation of the principles. The task is extensive.

It is additionally crucial for utilitarian and cultivated working of the administration of criminal justice. In whole, the reformulation of bail law is definitely not a unimportant revision of the law. It is a bar to any promise to change the administration of criminal justice. This examination has indicated that the law of bails contained in the Code of Criminal Procedure stays obfuscated in sundry authoritative arrangements just as in a plenty of legal points of reference. Haziness infests both.⁶ The net outcome is that the law needs cogency in its comprehension and application. Without having an appropriately sorted out base of standards using tenets and standards the distortions in the law of bails would continue. Appropriately, the change calls for earnest all out endeavors. Concerned organizations of state and the administration can't overlook it for long; however preceding the endeavor of any change it is basic that the activity of systematization and investigation is completed. These are fundamental essentials for any effort to draft a code. In this manner, an extraordinary discussion needs to go before under the steady gaze of the new law is arranged with preferred position even at the expense of weakening the "standard of law" as by and by guaranteed by the current law.

³ *Bhola v. State*, 1974 Cri LJ 1318 at p. 1319 (All).

⁴ Dr. Ashok Dhamija, 'Law of Bail, Bonds, Arrest and Custody' 1st ed. 2009 at p. 2.

⁵ *Id.*

⁶ The Code of Criminal Procedure, 1973, (2 of 1974).

The component of giving bail to a captured individual is along these lines equipped on the twin standards of verifying the nearness of any denounced individual in a criminal preliminary just as to put just at least restriction on the opportunity of the person. Notwithstanding, the use of the law of bails has been given an all-encompassing degree because of over accentuation on individual flexibility, which has developed because of cognizant statement of individual rights in recent years. This has driven the criminal law administration agencies to confront a few obligations not inside their customary perception. The facts confirm that while the estimation of individual opportunity can't be limited, it is important to consider to what degree the opportunity of a denounced can be directed inside the bail framework in light of a legitimate concern for criminal justice. In real practice, genuine deviations are accounted for influencing validity and utility of the bail framework. There has likewise been a perceptible pattern of bail jumping. The all-encompassing accentuation on the individual opportunity, which has developed because of cognizant attestation of human rights in recent years, has represented a few issues having an immediate bearing on the law and practice of bail. In the activity of the arrangement of bail some expert bondsmen or sureties have risen as an adjunct to the procedures of criminal justice. These expert bondsmen promptly volunteer to furnish sureties for an accused and got installment for such services. The accessibility of such expert sureties on installment of a specific level of the bail sum gets debasement and misuses the procedure of bail in heap ways. The method of confirming the character, status and property of a surety has consistently been perfunctory.

The courts are occupied with legal work and have next to no opportunity to focus on supervisory obligations in such manner.⁷ They additionally need assets to manage this kind of work. Besides, court officials are regularly accused of conspiring with interested parties in getting fundamental legitimate customs pushed up. It enables questionable sureties to get acceptance for expeditious release of the accused. Therefore, a band of fake sureties, with sketchy predecessors and misleading personalities have come to remain as a vital piece of the arrangement of release on bail.⁸ There are different variables which contribute towards perplexity about the utility of the arrangement of bail in criminal cases. One such factor is the acts of neglect winning widely among law enforcement agencies previously brought to the notice by the National Police Commission.

The maltreatment of criminal law has been a continuation of these acts of neglect, which thus have made more prominent sensitivity towards human rights. This pattern is a solid improvement in our protected framework for fortifying individual freedoms of a person. Working of the general law and its organization is currently being contrasted and the benchmarks of human rights statute. It has an effect on the grounds that extensive accentuation on close to home freedom by higher Judiciary has to a great extent turned out in the idea of a reaction to the overbearing appeared by specialists to a person throughout law implementation. Its impact has given a support to having a crisp look on the working of the bail framework and the deviations, assuming any, caused to it. The essential balance in the framework can be created uniquely with a superior political comprehension of the framework by the police and the general population. The disagreeable practices which have sneaked in may likewise require a frontal assault – both authoritatively and by enactment – so as to reclaim the institution of bail. The Supreme Court and different High Courts have set down different standards for award or rejecting of Bail.⁹ These rules are not carefully clung to. It has been seen that multiple occasions the facility of Bail is abused by the lawbreakers and different new crimes are committed by person released on Bail. On the something else, some guiltless people need to mope in Jail for not concede of Bail when preliminaries continue a more drawn out period. There is pressing need to have a basic examination of the current arrangements and statutory rules in such manner.

⁷ Dewan, V. K. "Laws Relating to Bail & Remand" with Introduction by R.S.Bedi –Orient Law House at p.23.

⁸ *Id.*

⁹ Mallick, M.R. 'Bail Law in India', 1993 Edn. at p.15.

Important Information related to Bail

In Indian courts decide upon whether to enlarge bail or not on the following basis:

- a) The seriousness of the offence.
- b) Whether accused is probably going to slip away.
- c) If accused is indicted with a serious offence, whether accused is to be expected to commit a serious offence while on bail. A grave offence is one for which accused may be punished by a term of 5 or 7 years imprisonment.
- d) The fact that accused was caught perpetrating the wrongdoing.
- e) Whether accused is probably going to alter the proof or influence witnesses.
- f) Whether accused has ever breached a bail bond previously.
- g) The character and past criminal record of the accused.
- h) Whether accused has roots in this jurisdiction - i.e., property, family, business, employment.
- i) Background of the accused (whether accused have a family, an occupation, a house, and so forth.)
- j) The conceivable sentence if accused is indicted.
- l) The quality of the proof against the accused.
- m) Whether the Police and Public Prosecutor have carefully protested that the accused should not be granted bail.

There is no fixed formula of getting the bail in the Indian court but the Judges rely on the precedents and the above stated points while deciding the bail granted or not. If accused is arrested and charged with an offence, accused will be brought before a Court of law as soon as possible. Accused may make an application in court to be released from custody on bail.

Bail

Bail is conceded when accused is released from custody in light of a bond or guarantee made either by accused or by someone else (a surety) to ensure that accused will show up in court for accused's trial. Bail depends on the rule that the accused is assumed blameless until demonstrated guilty.

Whenever accused enter into a bail bond, accused is committing to show up in court to answer the charges made against accused.

The court may not be happy with accused's guarantee that accused will show up in court to answer the charges made against accused. The court may decide that an "independent surety" is required to ensure accused's appearance.

An independent surety is an individual who makes oneself liable for accused's appearance in court.¹⁰ The individual in question vows to pay a total of cash to the court whenever accused don't show up as concurred.

Kinds of Bail

In a criminal case, an accused person must require bail to prove innocent to him in a case. There are three phases in a case where an accused person can apply for the bail.

¹⁰ M.R. Malik; Bail Law & Practice, fourth edition at p. 260.

1. Before arrest
2. After the Arrest
3. After the Conviction/Sentence.

Anticipatory bail is bail that is applied for before one's arrest or detention by an authority, but in expectancy of the same. Section 438 of the Criminal Procedure Code recommends that an individual may apply to an appropriate High Court or Court of Sessions for anticipatory bail when he has cause to believe that he might be detained on accusation of having committed a non-bailable offence (this provision does not apply in every state in India). The filing of an FIR is not an obligatory pre-condition, for the filing of an application for anticipatory bail.¹¹ When coordinating the award of anticipatory bail, the Court may set such conditions as it deems fit. Anticipatory bail orders are normally time-bound and are not conceded as a matter of right. The court must be satisfied that the individual won't meddle with the examination or hamper the investigation into the wrongdoing and that the accused would be exposed to undue provocation or unjustified detainment if the request were not to be allowed. Anticipatory bail is normally not allowed for egregious crimes (rape, murder etc) or for certain particular offences under special statutes (such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Defence of India Rules, 1971, etc). The individual must be released upon satisfying the conditions of the bail (depositing the mentioned surety).

The second phase of the bail i.e. bail after arrest means bail is to be applied under S. 437 and S. 439 of Code of Criminal Procedure.¹² Regular bail is allowed to an individual who is as of now in the police authority of an offence or when there are claims on him of submitting the equivalent. At the point when an individual is captured he is taken to the police headquarters to record the case. The police headquarters where the suspect is taken is the one which activities ward over the zone where the suspect dwells. Accused should take the assistance of a criminal legal advisor for his bail matter. Bail if there should arise an occurrence of a bailable offence implies so as to get bail in a bailable offence; the suspect needs to submit Form-45 allowed in the Second schedule to the court wherein his case is being heard. The bail can't be conceded without the court's endorsement. Bail in case of a non-bailable offence means when the suspect is accused of committing a non-bailable offence, he has to submit the same form as above before the Court, where his case is being heard, however, allowing of bail is on the discretion of the court only. The bail amount that the suspect has to deposit is also based on the discretion of the court. However, in criminal cases with lesser gravity, a standard amount is set by convention and practice which needs to be deposited for granting the bail.

If there should be an occurrence of a bailable offence, award of bail is a privilege accessible to the accused. It might be either given by a police officer who is having the charge of the accused or by the court under whose jurisdiction the offence falls. The suspect might be released on bail, on executing a bail bond, with or without furnishing sureties. The bail bond may comprise of specific terms and conditions, For example, the accused can't leave the regional purview of the state without consent of the court or the police officer. The suspect

¹¹ The Code of Criminal Procedure, 1973, (2 of 1974)

¹² Nirmal Kumar Banerjee v. State, 1972 Cri LJ 1582 at p. 1583 (Cal).

shall give his presence before police officer each time he is required to do as such. The accused can't alter the proof at all, considered by the police in the investigation. Besides, the court additionally has the ability to reject bail to an accused individual regardless of whether the offense is bailable, where the individual allowed bail, neglects to follow the states of the bail bond. A non-bailable offence is a crime wherein award of Bail doesn't involve right at the same time, the accused needs to look for the consent of the court, and upon the attentiveness of the court dependent on the realities.¹³ Bail is allowed be that as it may, the court may by and large decline the Bail, if the "Bail Bond" has not been appropriately executed, or if the offense submitted is of grave nature, which forces passing discipline or life imprisonment, for example, murder, assault and so forth or in situations where the accused has endeavored to slip off, avoid his capture by stowing away and furthermore, when his certifications are suspicious. The application for bail will be filed before the Magistrate, who is conducting the trial. The application subsequent to being recorded is normally recorded on the following day. On such day, the application will be heard, and the police will likewise exhibit the accused in court. The justice may pass such orders, as he thinks fit.

The third phase of the bail for example Bail after the Conviction and same is likewise called as suspension of sentence Lawful framework has given each other arrangement for giving the bail to the accused for example after conviction/sentence. Under Section 389 of Cr.P.C court can give the bail to the accused individual even after the conviction.¹⁴ The greater part of the individuals doesn't know about this reality that accused can get likewise the bail after the conviction from the court. In the wake of articulating the conviction/Sentence to accused individual, court award the bail to the accused for filling the intrigue in the higher court it's called suspension of sentence.

Accused, who have to face a criminal trial, fight the case with only one motive that court proclaim guiltless to him and vindicate from the every criminal allegation. Some of the time individual succeed and get absolution request from the court and here and there, court announce guilty to the accused person of criminal charges. At the point when the court announce blameworthy to the accused individual at that point court prompt articulate the sentence to him, if the court pronounce the sentence below the three years to the accused, then same court has power to release the accused on suspension of sentence and if court pronounce the sentence above the three years then higher court has power to release the accused on suspension. Illustration of heinous crime are, S.302 (murder), S.376 (rape), S.366, S.363 (kidnapping), S.395, S.396 (robbery), S.307 (attempt to murder), S.306 (abetment to suicide) of Indian Penal Code.¹⁵ In this sort of, conviction will be constantly higher side. At the point, when conviction is higher side, then just High court of the state and Supreme Court of India has capacity to allow suspension of sentence.

Opportunity is the privilege of each resident. In any case, when an individual is held sentenced by a court and send behind the bar all things considered, he can't state opportunity is his

¹³ M.R. Malik; Bail Law & Practice, fourth edition, at p. 260.

¹⁴ The Code of Criminal Procedure, 1973, (2 of 1974).

¹⁵ Indian Penal Code , 1860.

privilege yet he can benefit all solution for getting the opportunity according to law. An indicted individual can't guarantee the suspension of sentence not as his correct its solitary optional intensity of the court.

For getting the suspension of sentence from the High court, accused individual need to invest some fundamental energy period in the correctional facility. In the wake of investing the energy in the correctional facility accused individual can document the application for the suspension in the High Court and after look at the reality of the case, granted sentence to the accused, check the criminal record of the accused and time of experienced of the accused, high court passed the request about that accused individual is at risk for suspension or not.

At the point when accused is brought under the steady gaze of the District Court, the judge may either remand accused in authority or discharge accused restrictively when accused go into a bail bond with or without surety. The measure of cash indicated in the bail bond is set by the judge. On the off chance that the District Court declines bail, accused will be remanded in custody. Accused can claim the choice to the High Court.

Considerations of the Court

Whether or not the Court of Law will grant accused bail depends on a number of factors;

- Whether accused is probably going to escape.
- If accused is charged with a serious offence, whether accused is probably going to commit a serious offence while on bail. A serious offence is one for which accused may be punished by a term of 5 years imprisonment.¹⁶
- The fact that accused was caught in the act at the crime scene.
- Accused's character and past criminal record.
- Whether accused has ever breached a bail bond previously.
- Whether accused is probably going to meddle with proof, witnesses or members of the jury.
- Accused's conditions (whether accused have a family, a job, a house, and so forth).
- Whether accused has establishes in this jurisdiction - i.e., property, family, employment.
- Whether accused is willing to keep to specific conditions (e.g., surrendering accused's passport).
- The seriousness of the offence.
- Whether the Police officer object to accused being allowed the bail.¹⁷
- The opposition of the Public Prosecutor, for accused being allowed the bail.¹⁸
- The likely sentence if accused is indicted.

People who cannot be accepted as sureties or bails-persons- A court can't dismiss an individual as a surety just on account of his/her ethical character or political assessments. In any case, a

¹⁶ M.R. Malik; Bail Law & Practice, fourth edition, at p. 258,259

¹⁷ Narula R. K. (Justice of Undertial) "Jail or Bail" Law and Procedure of Bail in India and U.K.

¹⁸ *Id*

surety might be dismissed on the off chance that plainly the individual in question couldn't pay the amount of money indicated if the bail-bond was breached.

The following people may not be accepted as sureties or bail-persons¹⁹:-

- accused's advocate
- those under 18 years old
- those with past criminal records
- those in custody
- those recently announced bankrupt by Order of the Court

In Indian courts bail amount is calculated on the basis of the following factors:-

- A. Brutality of crime
- B. Judge's decision.

Judges refer the prior points of reference and as per that they choose the bail sum just as condition alongside the bail sum.²⁰ While settling on the bail sum and bail conditions, by and large the Judge focuses on the above two main factors.

There is no fixed formula of the bail amount and conditions levied by the Indian court but the Judges rely on the precedents and the above stated points while deciding the bail amount and bail conditions.

There are five kinds of bail over which bail amount is paid:

- i. Cash Bail: The accused pays the full amount of bail in cash or even cheque/credit card.
- ii. Property bond: The defendant can provide some property to act as a bond. In these cases the court gets a lien (legal claim) on the property in the amount of the bail. In the event that the respondent doesn't appear for his court appearances, at that point the court can abandon the property to recuperate the relinquished bail.
- iii. Release on own personal recognizance: Judge may choose to release a suspect since he showed up on all the court dates and it is exceptionally far-fetched that he won't show up in the court on the said date. This is possibly permitted when the charge includes a generally minor and if the litigant isn't viewed as a hazardous to any other person or a flight chance for example it is exceptionally impossible that the individual will escape and won't show up on the court.
- iv. Release on citation: At times, an officer will give a reference saying that the accused must show up in court. While this procedure is less careful than taking a suspect to a police headquarters and playing out the proper booking procedure, it enables the arresting officer to catch hold the criminal.
- v. Surety Bond: It is otherwise called bail bond, it is particularly helpful when the accused can't pay his/her bail. Thus a companion/relative of the accused contacts a bail operator likewise called bail bondsman. The bail operator is upheld by an

¹⁹ Saha, A.N. K. C. Mehrotra's "Law of Bails", Forfeiture of Bonds and Habeas Corpus –2nd Ed. – Eastern (1985).

²⁰ *Id*

exceptional kind of insurance agency called Surety Company and vows to pay the full estimation of the bond if the accused doesn't show up in the court. Consequently the bail specialist charges a 10% premium and furthermore collects some deposit.²¹

There is no specific formula for Bail calculation- Bond amounts generally vary from Rs. 15,000/- to Rs. 5,00,000/- depending on the nature of the crime - usually with one or two solvent sureties.

It is calculated according, to the severity of crime committed as mentioned in Indian Penal Code. More heinous crime means, more amount of bail bond charges.

Conclusion

Bail, is an indispensable part of each criminal equity framework, is an instrument, which should try to strike a harmony between these contending requests. While nearness of a blamed individual for preliminary must be guaranteed and any risk to the organization of equity and simply social request avoided, he ought not to be impaired to precede with his life exercises. Law of bail is one of the vital branches of the legitimate administration, which represents the criminal equity arrangement of any nation. 'Bail or correctional facility' constitutes a cryptic inquiry in the legal basic leadership process, of ordinary event and significance. The question of bail or jail choices should be decided at the phases of capture, examination, request and preliminary and furthermore at the phase of bid after conviction of the charged. The statute of bail ought to equilibrate the 'flexibility of individual' and the 'interests of social request'. The 'brilliant guideline' of assumption of honesty is of focal significance, representing all phases of the criminal procedure until the point that a decision of liable is come to. The law of bail must be perfect with the guideline of assumption of blamelessness. Any individual held in authority pending preliminary endures indistinguishable limitations on his freedom from one serving a sentence of detainment after conviction. By keeping blamed people out for guardianship until attempted, indicted and condemned, bail ought to secure against the invalidation or weakening of the assumption of guiltlessness.

²¹ Dr. Ashok Dhamija, 'Law of Bail, Bonds, Arrest and Custody' Ist ed. 2009.

