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Authored By: Ms. Mansi Pragma (LL.M (Criminal Law)), Chanakaya
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HYPOTHESIS:

The Supreme Court's bail guidelines have not yet provided true freedom to the accused; the guidelines must be revisited to provide better freedom.

RESEARCH METHODOLOGY:

The goal of this research is to examine various statutes, books, cases, articles, reports, and so on in order to uncover various studies and developments in this field. As a result, the research methodology used here will be purely doctrinal.

SOURCES OF DATA COLLECTION:

The researcher will collect data for this project using both primary and secondary sources of data collection.

METHOD OF DATA COLLECTION:

The researcher has done online as well as offline research as well.

ABSTRACT:

*“The accused requires bail because the consequences of pre-trial detention are severe and unforgiving. If the accessed is denied the right to bail, it implies that, while he is generally assumed innocent until proven beyond any reasonable doubt, he will be forced to submit to the mental and physical confinement of a prison. Bail awaiting trial is a mandated by law way of measuring entrenched in the **Criminal Procedure Code (the code) of 1973**. It is one of the most treasured rights, makes a claim, or privileges of the accused.*

Bail laws must manage two conflicting demands: on the one hand, the society's need to be protected from the risks of being exposed to an accused person's misadventures; and on the other, the society's desire to be protected from the risks of being exposed to an accused person's misadventures, the fundamental texts of criminal law, namely the assertion of an accused's innocence until he is found guilty Individual liberty and the interests of justice are reconciled by the bail provisions. Bail is not defined in the Criminal Procedure Code of 1973”.

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Keywords: Interest of Justice, Crucial To The Accused, Bail, Non-Bailable Offences, Criminal Procedure Code 1973, Bail Able Offences, Individual Freedom.

I. INTRODUCTION:

I.I BAIL:

Bail is defined as follows:

The following is how the term "bail" is defined in the Law Lexicon: release a person arrested or imprisoned on bail for his appearance on a specific day and location, because the party arrested or put in prison is delegated to those who connect themselves or become bail for his presence when deemed appropriate, in order that he may be safely protected from prison. If they are concerned about his escape, they have the lawful power to deliver him¹.

Regular Bail:

Regular bail can be granted to someone who has previously been taken into custody in police custody. Sections 437 and 439 of the CrPC allow a person to apply for regular bail.

Interim Bail:

Interim bail is a bail that is granted for a set period of time. An accused is granted interim bail before a hearing for standard or anticipatory bail.

Anticipatory Bail:

If a person believes he or she will be arrested for a non-bailable offence, he or she may petition for anticipatory bail. It is similar to obtaining advance bail under Section 438 of the CrPC. Section 438 bail is a bail before arrest, and if the court has granted anticipatory bail, the individual cannot be held by the police.

Even when a statute appears to grant it in unlimited terms, judicial discretion has never been arbitrary and would always continue to operate through well-defined and easy to predict channels. It is an appeal to the judicial conscience of the judge. The discretion must be exercised in accordance with well-established legal principles rather than in conflict with them.

¹ Venkatararnaiy, low Lexicon 131 (1971)

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Bail cannot be denied unless the suspected or convicted of a heinous or more serious offence. Even if the offence is punishable by a significant sentence. The likelihood of the individual fleeing is considered. If the court determines the individual has the capacity to flee the country, the judge will deny his bail application. Bail is frequently issued with movement restrictions. It suggests that the individual has been unable to leave the region or country. If necessary, the prosecutor must persuade the judge that the person will attend the hearings. The judge must also consider the possibility that, once released, the individual may interfere with or contaminate evidence, compel witness accounts, or impede the investigation. If even a remote possibility of these events occurs, the adjudicator will deny the bail plea. It is also necessary to think about the possibility of committing an offense after being released. The prosecutor must present convincing evidence to the judge or file a strict objection to avoid bail². Despite the fact that it appears to be granted in broad terms by statute, judicial body has never been arbitrary, and it commonly operates through well-defined and predictable channels. It is an appeal to the judge's judicial conscience. The discretion must be exercised in accordance with, rather than in defiance of, well-established legal standards³.

II. TYPES OF OFFENCES:

According to CrPC offences are classified into two;

- a) *Bailable*
- b) *Non- bailable*

This classification is based on the gravity of the offence as well as the punishment for it. Generally, a bailable offence is considered less grave and serious than a nonbailable one.

Offences are defined in clause (a) of Section 2 of the Criminal Procedure Code as follows:

"Bailable Offence" means an offence shown as bailable in the First Schedule, or which is made bailable by any other law currently in force; and ***"non-bailable offence"*** means any other offence, as specified in ***clause (a) of Section 2 of the Criminal Procedure Code. It is important***

² Atigre Ameyprasad, "Critical analysis on bail and judicial discretion" ITJ, available at: <http://lawtimesjournal.in/critical-analysis-on-the-concept-of-bail-and-judicial-discretion/>.

³ Bhatia Dakshit, "Bail and Judicial Discretion, a legal study in context of India", AEGAEUM JOURNAL, available at: <http://aegaeum.com/gallery/agm.j-2434.34-f.pdf>.

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to note that in the first part of the first Schedule to the Cr.P.C⁴., each offence under the Indian Penal Code has been individually declared as bailable or non-bailable. In the absence of such a declaration under the parent Act, the general rules mentioned in the second part of the first Schedule of the Cr. P.C. must be applied to determine whether the category of the offence.

III. RIGHT TO LIBERTY:

In a recent Supreme Court decision in *Brijmani vs. Pappu Kumar*⁵, Justices L. Nageshwar Rao, B R Gavai, and B V Nagarathna sat on the bench. "When contemplating an application for bail, the court must exercise discretion in a judicious manner and in accordance with established principles of law, particularly with regard to the crime alleged to have been committed by the alleged perpetrator on the one hand and ensuring the purity of the trial of the case on the other," Justice Rao stated⁶.

Judicial discretion refers to the ability of judges to make and interpret laws. Simply put, judicial freedom means that the court has some leeway in deciding such cases. Under the principle of separation of powers, this tends to fall under judicial independence. *Section 360 of the Code of Criminal Procedure* grants judges the authority to sentence convicts to probation, which constitutes the majority of judicial jurisdiction⁷. Bail is the defendant's protection, and it provides as a surety or assuredness that the accused person will show up for court when summoned. *Sections 436 to 450 of the Criminal Procedure Code*, which deal with bail procedures in India, contain the rules for issuance of bail. The court has been given broad freedom to determine the level of safeguarding in this case. When a person can plead for bail even if the crime committed is not bailable, the exceptions set forth in *Section 437 of the code* define when a person can do so. In such a case, obtaining bail is not a person's right, but rather a matter of the bench's discretion, which is primarily based upon whether the petitioner is

⁴ The Code of Criminal Procedure, 1973, (2 of 1974)

⁵ Brijmani Devi vs. Pappu Kumar and Anr, MANU/SCOR/55223/2021.

⁶ Ashish Tripathi, Bail without reasonings violation of natural justice, 1st January, 2022, Deccan Herald. Available at: <https://www.deccanherald.com/national/north-and-central/bail-without-reasonings-violation-of-natural-justice-sc-1066913.html>

⁷ Diva Rai, "Bail and Judicial Discretion," available at www.blog.ipleaders.in.

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qualified for bail. *Paragraph (3) of Section 437 allows for certain exceptional cases.* The purpose of *Article 21 is to prevent the executive from infringing on personal liberty* except in accordance with the law and in accordance with its provisions. As a result, it is critical that before an individual is stripped of his life or his personal liberty, the procedure established by law be followed and not deviated from to the person's disadvantage. Within every case in which an individual complains of the deprivation of his life or personal liberty, the Court decides whether there is a law authorising such deprivation and whether the operation prescribed by such law is reasonable, fair, just, and not arbitrary, based on a liberal interpretation of the words 'life' and 'liberty' in Article 21, which has now come to be invoked as a residuary right, Personal liberty is guaranteed by the Constitution. However, Article 21, which guarantees the aforementioned right, also contemplates the deprivation of personal liberty through a legal procedure.

IV. JUDICIAL DECISIONS:

The Hon'ble Supreme Court stated in *Kalyan Chandra Sarkar vs. Rajesh Ranjan@PappuYadav and Anr*⁸, that "*the court decision to grant bail should try exercising its discretion in a prudent manner and not as a matter of course.*" Though a thorough analysis of evidence and extravagant documentation of the merits of the case are not required at the stage of granting bail, it is necessary to imply in such orders purposes for prima facie reaching the conclusion why bail was granted, especially where the suspect is charged with a serious offence. *Any order that lacks such reasons suffers from a lack of mental application.* It is important to note *section 354(4) of the Criminal Procedure Code, 1973*, which states that if the conviction is for an offence punishable by imprisonment for a period of one year or more, however the court imposes a punishment of imprisonment for a term of less than three months, the court must record the purpose for awarding such sentence, except if the sentence is one for imprisonment until the court's rising or the case was tried summarily under the code. This subsection limits the court's discretionary power to impose a sentence of at least three months in cases where the offence is punishable by a term of one year or more. The reasoning behind

⁸ (2004 (7) SCC 528)

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this is that short-term incarceration does not always serve any useful purpose. In this regard, the following observation of the Hon'ble Supreme Court in *Pyarali K. Tejani vs. Mahadeo Ramchandra Dange*⁹, should be kept in mind when awarding a final sentence in any criminal trial.

V. PROVISIONS RELATING TO BAIL UNDER CR.P.C:

V.I SECTION 436. IN WHAT CASES BAIL TO BE TAKEN?

Any individual other than an alleged perpetrator of a non-bailable offence who is arrested or detained without a warrant by an officer in command of a police station, or would seem or is brought before a court, and is prepared to give bail at any time while in the custody of such officer, or at any stage of the procedure before such court, shall be released on bail. Provided, however, that such officer or Court may, and shall, if such person is indigent and unable to furnish surety, instead of taking bail¹⁰, release him on his implementing a bond without guarantees for his appearance as hereinafter provided. Prejudice to the generality enclosed in sub-section (1), where an individual has failed to comply with the conditions of the bail-bond as to the time and place of attendance, the court may refuse to let him on bail when he appears before the court or is brought in custody on a subsequent occasion in the same case, and any such refusal shall be without prejudice to the court's powers to call upon every person bound by such bond to pay the fine thereof under section 446.

V.II SECTION 436 A. MAXIMUM PERIOD FOR WHICH AN UNDER-TRIAL PRISONER CAN BE DETAINED:

Maximum period of detention for an under-trial prisoner. Where a person has been detained for a period spanning up to one-half of the maximum term of imprisonment specified for that offence under that law during the period of investigation, inquiry, or court hearing under this Code of a crime under any law (*not having committed an offence for which the sanction of death has been specified as one of the punishments under that law*), he is to be released by the Court on his personal bond with or without sureties: Provided, however, that the Court may,

⁹ AIR 1974 SC 228

¹⁰ The Code of Criminal Procedure, 1973, (2 of 1974)

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after having heard the Public Case and for reasons to be recorded in writing, order such person's continued detention for a longer timeframe than one-half of the said period or discharge him on bail instead of the personal bond with or without sureties.

V.III SECTION 437. WHEN BAIL MAY BE TAKEN IN CASE OF NON-BAILABLE OFFENCE:

When a person accused or suspected of committing a non-bailable offence is arrested or detained without a warrant by an officer in charge of a police station, or would seem or is decided to bring before a court other than the High Court or Court of Session, he may be released on bail; however, such person shall not be so set to release if there appear reasonable grounds to believe that he has been guilty of an offence punishable with death or life imprisonment; or imprisonment for seven years or more, or he had been previously.

VI. STATUTORY PROVISIONS REGARDING 'BAIL' AND JUDICIAL INTERPRETATIONS:

A. Code of Criminal Procedure, 1861: For the first time, bail provisions were incorporated into the Code of Criminal Procedure of 1861, under sections *216 and 258 (for bailable cases) and sections 156 and 212 (for non-bailable cases) (for non-bail able cases)*.

B. Code of Criminal Procedure, 1872: A number of sections in this code were devoted to bail matters, *including sections 128, 194, 204, 388, and 393 (for bailable offences) and sections 128 and 389 (for non-bailable offences) (for non-bailable cases)*.

C. The Code of Criminal Procedure of 1898: Preserved the distinction between bailable and non-bailable cases. This code's section 496 dealt with bail in bailable cases, while section 497 dealt with bail in non-bailable cases.

Sections 496 and 497 of the 1898 Code came up for interpretation in several cases. The principles governing bail can be summarised as follows: Any person, other than someone accused of a nonbailable offence, has the right to bail¹¹. However, in exercising their

¹¹ 14 CW.N. (1910)

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"discretionary power" to admit a person to bail, the courts had to consider the following factors: a.) *the gravity of the charge*; b.) *the nature of the evidence*; and *the severity of the incarceration recommended for the offence*; and the accused's character, means, and standing¹².

Under Article 21 of the Indian Constitution, the concept of a speedy trial is interpreted as an enshrined in the constitution right of the people. The stages of such a trial are investigation, inquiry, conviction, appeal, revision, and retrial. If proceedings and court expenses are postponed for an extended period of time, the victim has the right to apply for bail. Because the right to appeal is a constitutional right, a trial can drag on for years, if not decades, and where parole is not granted, the accused can stagnate in prisons for the same amount of time. The reason for the delay is crucial in this case, and it impacts the exercise of judicial authority in granting bail. As a result, judgments rendered with judicial minds' discretion in this regard cannot be indefensible or unconstitutional. Rapid justice necessitates timely decisions based on legal and other considerations.

It was emphasised in the case of *Gudikanti Narasimhulu vs. Public Prosecutor*¹³, 1978, that in India, bail is granted based on the gut instinct and discretion of the bench hearing the case. Our penal code is unobtrusive and lacks a comprehensive set of circumstances for determining punishment, having left it entirely to the discretion of judicial minds.

Bail is thus simply a matter of judicial discretion, and issues concerning one's personal liberty in addition to the broadening social and public involvement must be balanced in order to ensure a speedy trial.

VII. GUIDELINES OF THE COURT:

The following principles emerge for grant or refusal of bail under section 437, CR.P.C.¹⁴

¹² Ramchand v. Emperor, A.I.R. 1929 Lab. 284

¹³ Richa Mukopadhyay, "A Judicial Analysis through precedents," available at www.indialawjournal.org

¹⁴ SidharthVashisth alias Manu Sharma v. State of Delhi, 2004 Cri LJ 684

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- a) *Bail should not be denied unless such crime accused is of the highest magnitude and the prison sentence imposed by law is severe;*
- b) *Bail should be denied when the Court can reasonably presume, based on evidence, that no amount of bail would secure the convict's presence at the stage of judgement;*
- c) *Bail should be refused if the person seeking the Court's benign jurisdiction to be freed for the time being would obstruct the course of justice;*
- d) *Bail should be denied if there is a risk of the applicant interfering with prosecution witnesses or otherwise tainting the justice system; and*
- e) *Bail should be denied if a man's antecedents show a bad record, particularly a record that suggests he is likely to commit serious crimes while on bail.*

Penal laws in India generally provide for the maximum amount of punishment that a criminal court can impose, with only a few exceptions providing for a minimum punishment. In the former cases, the court has broad discretion to award punishment; however, when sentencing, the court must base its authority on the principle of proportionality in prescribing liability based on the culpability of each type of criminal conduct, as laid down by the Hon'ble Supreme Court in the case of ***State of M.P. vs. Munna Chaubey***¹⁵. This principle gives the Judge significant leeway in determining a sentence in each case, presumably to allow sentences that represent more delicate considerations of culpability raised by the unique facts of each case. In essence, judges affirm that punishment should always be proportionate to the crime.

Section 437 of the Code of Criminal Procedure authorises the Court to impose conditions on bail. As stated in ***Hazarilal vs. Rameshwar Prasad***¹⁶, the Court may require a person to surrender his passport when granting bail. Any condition that is not pragmatic or unfair to the accused cannot be imposed. It is the Court's responsibility to ensure that the condition imposed on the accused is consistent with the intent and provisions of the sections and is not onerous. ***Under Section 437(3)***, the Court has the authority to impose certain conditions on a person accused or suspected of committing an offence punishable by imprisonment, such as (a) that

¹⁵ AIR 2005 SC 682

¹⁶ 14 CW.N. (1910).

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such person attend in accordance with the conditions of the bond executed, (b) that such person not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and (c) that such person shall not, directly or indirectly, make any inducement, threat, or promise to any person familiar with the facts of the case in order to discourage him from disclosing such facts to the Court or any police officer, or tamper with the evidence.

In the case of ***Sumit Mehta vs. State of NCT of Delhi***¹⁷, the Supreme Court ruled, "*The words "any condition" used in the provision should not be interpreted as giving a Court of Law absolute power to impose any condition it chooses. Any condition must be interpreted as a reasonable condition that is acceptable in the facts, permissible in the circumstances, and effective in the pragmatic sense, and it must not defeat the order of bail grant.*" In the aforementioned case, the Supreme Court overturned the decision of the High Court of Delhi, which directed the Bail Applicant to deposit Rs. 1,00,00,000/- (One Crore) in fixed deposit in the name of the complainant in a nationalised bank and to keep the FDR with the Investigating Officer.

In the case of ***Sheikh Ayub vs. State of M.P***¹⁸, the Hon'ble Supreme Court, circumstances that have no correlation to the purpose and goal of bail and that are more probable to be like abusive behaviour or even an infringement of the individual's constitutional and statutory rights cannot be managed to bring within the jurisdiction of the lawful exercise of '*judicial discretion.*' Despite the fact that the Supreme Court's decision in the ***Amarmani Tripathi case***¹⁹ stated that courts should consider the accused's "character, behaviour, means, position, and standing" when granting bail. Even though the presumption of innocence²⁰ principle states that an accused is innocent until proven guilty a conditional order directing the accused to transfer a

¹⁷ 9 (2013) 15 SCC 570

¹⁸ (2004) 13 SCC 457

¹⁹ State Through C.B.I vs Amaramani, MANU/SC/0677/2005

²⁰ Dembi, Divyanshu, Rethinking Presumption of Innocence Doctrine in India through a Minimum Interference Standard, Available at SSRN: <https://ssrn.com/abstract=3953364> or <http://dx.doi.org/10.2139/ssrn.3953364>

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particular amount of money that is reportedly part of the accused's misappropriation impedes the independence of the trial²¹ because it is evident that after evaluating such a bail order, the trial court will make an unjustified assumption against the accused in respect of his innocence. When awarding bail, the Court must focus on ensuring that no condition is imposed on the suspect that contradicts the premise of the accused's innocence.

The Supreme Court can issue bail orders under *Article 136 of the Indian Constitution*²², which allows for special permission to appeal lower court rulings. Even so, this is a discretionary remedy that should be used only in "*rare circumstances*" involving a serious legal question with contradictory precedents or cases of "*atrocious miscarriage of justice.*" Even the Supreme Court admits that in cases involving the grant or rejection of bail, the "*High Court should ordinarily be the final arbitrator*" and that it shouldn't intervene for every legal or factual error in dispute. The two types of crimes are bailable and non-bailable offences. *In the first case*, the accused has the right to request bail. *In the latter case*, bail is set at the judge's discretion. Judges must consider issues such as the possibility of evidence tampering or the accused fleeing. They are supposed to take into account the gravity of the charges as well as the nature of the evidence.

Although a thorough analysis of evidence and extravagant documentation of the circumstances of the case is not required when granting bail, there is a need to imply in such orders reasons for prima facie concluding why bail was granted, particularly when the accused is charged with a major felony²³. Any order that does not have such justifications suffers from a lack of psychological application. *Bail denial shouldn't be used as a form of pre-conviction punishment.* Let us not forget that under criminal law, there is a presumption of innocence

²¹ Faizan Mustafa, Strange and Arbitrary Bail Orders: Are Indian Judges Going Too Far? Available at: <https://thewire.in/law/judges-bail-orders>

²² Constitution of India, Article 136.

²³ Consider prima facie case when deciding bail, SC tells courts, Available at: <https://www.deccanherald.com/content/288301/consider-prima-facie-case-deciding.html>

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until guilt is proven²⁴. This guilt must be proven beyond a reasonable doubt. Denial of bail also affects the accused's right to a fair trial because he has very limited contact with his attorneys, especially in such a confined environment.²⁵

VIII. LAW COMMISSION OF INDIA 41ST REPORT:

The 41st law commission also took up the issue of bail. The report was discussed as follows:

Broad principles regarding bail:

- a) *The broad principles adopted in the code regarding bail are:*
- b) *Bail is a matter of right if the offence is bailable;*
- c) *Bail is a matter of discretion if the offence is not bailable;*
- d) *Bail shall not be granted by the magistrate if the offence is punishable by death or imprisonment for life; however, if the accused is under 16 years of age, a woman, a sick or infirm person, the Court has the discretion to give bail;*
- e) *The session or High Courts have broader powers to grant bail, even for offences punishable by life imprisonment or death;*
- f) *Persons who violate bail bonds are not released on bail;*

In the case of bailable offences, the right to bail is absolute under **Section 496 (of the Code of 1898)**. It was proposed that if a person released on bail absconds or fails to appear before the Court, he forfeits his right to bail when brought before the Court on a subsequent date. The commission recommended that this suggestion be accepted, and that refusal of bail under such circumstances be without prejudice to any action taken **under Section 514** for forfeiture of the bail bond. As a result, **subsection (1) of section 496** may be renumbered, and the following subsection may be added: *"notwithstanding anything contained in subsection(1), where a person who has been released on bail has failed to adhere to the terms of the bail bond as*

²⁴ Krishnadas Rajagopal, Right to seek bail implicit in Constitution: Supreme Court, Available at: <https://www.thehindu.com/news/national/right-to-see-bail-implicit-in-constitution-supreme-court/article36767032.ece>

²⁵ Bhandari, Vrinda, Inconsistent and Unclear: The Supreme Court of India on Bail, Available at SSRN: <https://ssrn.com/abstract=3384618>

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*respects the time and place of participation, the Court may reject to start releasing him on bail when, on a successive occasion in that case, he makes it appear before the Court or is brought into custody." Any such refusal shall be without prejudice to the Court's right to order any person bound by such bond to pay the penalty imposed by **section 514**.*

IX. CONCLUSIONS AND SUGGESTIONS:

The judicial authority in granting bail cannot be used arbitrarily; it must be guided by the law and cannot be ambiguous or fanciful. "*Discretion of a judge is claimed to be the law of tyrants; it's always unknown; it's different for different people; it's casual and depends on constitution, temper, and passion,*" Lord Camden said. At best, it's caprice; at worst, it's every vice, folly, and passion to which human nature is prone²⁶.

While the Indian criminal justice system appears to work with such discretionary power, even after doing their best and taking into account the law and certain guidelines to be followed for its exercise, it remains flawed in the long run. The courts should always consider the accused's socioeconomic situation, take a compassionate approach, and conduct background checks to prevent him from fleeing the justice system, resulting in the restoration of citizens' fundamental and other rights.

Before granting bail, the Court may consider the following facts concerning the accused:

- a. The type of crime committed by the accused.*
- b. Factors indicating the accused's ties to the community, with the exception of the risk of wilful failure to appear.*
- c. His employment history and financial situation.*
- d. His family connections and relationships*
- e. His prior criminal history, including any prior release on recognisance or bail.*
- f. His reputation, character, and financial situation.*

²⁶ <http://indiafacts.org/a-dangerous-precedent-of-judicial-discretion/>

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g. Names of responsible members of the community who can attest to his dependability.

According to our country's criminal laws, a person accused of a non-bailable offence must be detained in custody during the pendency of his trial unless he is expanded on bail. ***Such detention cannot be challenged as a violation of Article 21 because it is legal***²⁷. Even people accused of non-bailable offences have the right to bail if the court finds that the prosecution has failed to establish a prima facie case against them and if the court is satisfied for reasons to be recorded that, despite the existence of a prima facie case, there is a need to release such people on bail where facts and circumstances require it.

In that process, a person whose application for enlargement on bail is previously denied may file a subsequent application for grant of bail if the facts change. While an individual's liberty is valuable and Law Courts should always make every effort to protect such person's right to personal liberty, in the event of a conflict between the accused person's right to personal liberty and the interests of public justice and societal welfare objectives, the former should be subordinated to the latter.

The passage of bail laws has been a slow process in the house of representatives. ***Only in 2017 did India's Law Commission issue a study emphasising the need to change the bail system's legislative framework.*** According to the commission, under-trial inmates account for 67 percent of the total jail population. It claimed in its study that a bail provision must not infringe on constitutional rights unreasonably. It was also proposed that under trial, inmates serving up to seven years be released after serving one-third of their sentence, and those serving longer sentences be released after serving half their sentence.

While the study emphasised the need for bail reform, it was heavily criticised in many ways. The report identified several problems with the bail system, but only minor changes were proposed in the end. Bail is governed by the 'innocent until proven guilty' theory. Please remember that the victim is still facing criminal charges and has not been charged when

²⁷ Kalyan Chandra Sarkar v. Rajesh Ranjan, (2005)2 SCC 42

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proposing bail reforms. The gravity of the crime should not sway the courts; rather, they should value the facts and apply their minds rationally. To guide the courts in issuing bail, a standardised checklist should be used. The test should require courts to deny bail only when there is a flight risk, a lack of conformance on the part of the convicted, or a risk of evidence tampering. Bail conditions should be reasonable and take into account the person's socioeconomic status. Bail for the vulnerable has been made inaccessible due to the requirement of monetary ‘surety’.

Alternative types of requirements may be imposed for the presence of the convicted at the trial. Conditions that are completely unrelated to the subject of the bail or that require a high level of ‘surety’ accidentally harm the socially disadvantaged segments of society. The new bail rules are completely disconnected from the social realities of the country. Despite the fact that bail is considered a right and that the law is formally equitable, the provision of discretion leads to abuse of authority and a shift away from the rule of law²⁸. In all bail-related cases, the rule of law should direct judicial discretion, which should be exercised through reasoned decisions. The relationship between both the terms and the issuance of bail must be stated explicitly in the order. The court should maintain a balance between the person's liberty rights and the sociocultural interest at large when contemplating a bail appeal.

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