



# A Glance at the Misuse of Bail Provisions within the Legal Framework of India

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## ARTICLE INFO ABSTRACT

In the realm of criminal trials, the decision to incarcerate an accused individual serves multiple critical purposes within the legal framework. Primarily, it ensures the defendant's participation in ongoing judicial proceedings and guarantees their appearance as required by the court. Should the individual be found guilty, their presence is mandated for the imposition of the designated penalty. However, the constitution of India, under Article 21, enshrines the right to personal liberty and life, emphasizing that this fundamental right should not be curtailed unnecessarily if the accused's presence can be assured through means other than arrest. This principle underscores importance of balancing interests of justice with protection of individual freedoms. Central to the determination of guilt or innocence in any criminal trial is burden of proof, encapsulated in maxim *Ei Incumbit Probatio, Qui Dicit, Non-Qui Negat* which places the onus on the party making an assertion rather than on the one denying it. This presumption of innocence is pivotal in safeguarding the rights of the defendant throughout the judicial process. It mandates that the accused must be afforded a fair trial, free from undue suspicion and bias from the prosecution. However, the decision to grant or deny bail hinges on several crucial factors, especially in cases involving serious offenses. The potential for flight to avoid trial, tampering with evidence, or interfering with witnesses necessitates careful consideration by the judiciary. In such instances, the denial of bail serves to mitigate risks to public safety and the integrity of the legal process.

**Keywords:** Bail, Criminal Trial, Incarceration, Constitutional Rights, Presumption of Innocence

## Introduction

The concept of bail is multifaceted and intricate, spanning across a broad jurisdiction that defies easy categorization under a singular legal code. Despite this complexity, its core legislative intent remains straightforward, to strike balance between rights of accused & imperative of ensuring a fair trial in accordance with principles of natural justice. This legislative aim seeks to prevent arbitrary detention and uphold the presumption of innocence until proven guilty.<sup>1</sup>

However, the misuse of bail extends beyond the accused themselves, influencing various facets of criminal justice system, including law enforcement & judiciary. Instances of abuse include bail being sought by the accused with intentions of retaliating against others, tampering with evidence, or influencing witnesses through bribery or intimidation. Moreover, political interference in the bail process can compromise its integrity, potentially undermining the rule of law.

Police officials and subordinate courts, entrusted with the discretion to grant or deny bail, are not immune to exploitation. There have been documented cases where bail decisions have been influenced by external pressures or personal gain, rather than being solely guided by legal principles and evidence.

To rectify these issues, there is a critical need for collaboration and oversight among the three branches of government, executive, legislative, and judicial, to strengthen the justice system's fairness and credibility. Implementing robust checks and balances over officials and courts could significantly mitigate instances of abuse and ensure that the bail system operates in a manner that upholds justice and public trust.

<sup>1</sup>Das, Paulomi. (2019). Detailed Study of Bail in India. *LexForti Legal Journal*, 1(1), 20-30.

The law governing bail thus seeks to harmonize conflicting demands: on one hand, the societal need for protection from potential harm posed by individuals accused of crimes, and on the other, the foundational principle of criminal justice that presumes innocence until proven guilty. Furthermore, prolonged pre-trial detention can have severe implications for the accused, including psychological distress, social stigmatization, and physical hardships.<sup>2</sup>

### Conceptual Framework of Bail

“Bail is a rule, jail is an exception” proclaimed Justice V. Krishna Iyer, encapsulating a fundamental principle in criminal justice. Despite its absence in Cr.P.C., 1973, bail remains a pivotal concept, representing temporary release of accused person pending trial. This release can be with or without sureties, contingent upon various factors such as severity of alleged crime, accused’s criminal history, & likelihood of them absconding or tampering with evidence.<sup>3</sup>

Fundamentally, bail operates on premise that every accused individual is presumed innocent until proven guilty. Once bail is granted, the accused is freed from incarceration but remains bound by their own bond or with the involvement of sureties, who undertake the responsibility of ensuring the accused appears in court as required. This system acts as a safeguard to secure the accused’s participation in the judicial process and ensures their presence for trial, preventing the misuse of freedom granted during the interim period.

According to legal definitions, as cited in Black’s Law Dictionary and Wharton’s Lexicon, bail involves procuring the release of an individual from legal custody under the guarantee that they will submit themselves to the court’s jurisdiction at specified times. It entails entrusting the accused to the custody of sureties who are legally obligated to produce them in court when summoned, thereby facilitating the judicial process while preserving the presumption of innocence.<sup>4</sup>

Hence, bail provides a mechanism for an accused person to attain provisional liberty between the filing of charges and the resolution of their case. This arrangement, rooted in the French word “*bailera*” which means “to deliver” or “to provide,” underscores its function as a means to deliver the accused from incarceration pending adjudication. The granting of bail is not a right but a judicial discretion exercised with utmost care to balance individual liberties with societal interests in justice and security.<sup>5</sup> Therefore, while bail signifies temporary freedom for the accused, it remains intricately tied to legal obligations and responsibilities aimed at maintaining the integrity of the judicial process and ensuring fairness in adjudication. Understanding its nuances is crucial in appreciating its role within the broader framework of criminal justice systems worldwide. The complexity of the bail system arises from the inherent uncertainty about a defendant’s guilt or innocence during ongoing legal proceedings. As a result, many individuals who are later found innocent may endure prolonged periods of incarceration simply because bail was denied.<sup>6</sup> In cases where the accusations are grave and the evidence strong, courts may be inclined to deny bail to prevent flight risk or obstruction of justice. Conversely, when the alleged offense is less severe, evidence is weaker, potential sentences are minimal, and the defendant has strong community ties, courts are more likely to grant bail. This discretion aims to strike balance between protecting public safety & upholding principle of presumption of innocence.

The purpose of bail serves a dual objective that is crucial in the realm of law and justice. Both legislative bodies and judiciary systems, in formulating and interpreting bail provisions, are tasked with maintaining a delicate balance. This balance must uphold the human dignity of the accused while ensuring the integrity of fair trial processes.<sup>7</sup>

Firstly, bail serves as a mechanism to ensure that accused individual appears for their trial & does not evade judicial process. By allowing the accused temporary freedom under certain conditions, the legal system aims to foster accountability and compliance with court proceedings. Secondly, the concept of bail underscores principle that accused person should not be unnecessarily confined in custody pending trial, unless there are compelling reasons to do so. Such reasons may include risks to national security, concerns that the accused may flee, or credible evidence suggesting that the accused could tamper with evidence or obstruct justice if granted liberty.

The fundamental idea behind granting bail is to strike a balance between these objectives: ensuring the accused’s presence in court while respecting their presumption of innocence and their right to fair trial. This principle reflects a commitment to justice that is both equitable and effective in safeguarding individual rights within the legal framework.

<sup>2</sup> Dubey, Anudatt. (2022). An Analysis of the Law Relating to Bail in India. *Indian Journal of Law and Legal Research*, 4, 1-9.

<sup>3</sup> State of Rajasthan v. Balchand, AIR 1977 2447.

<sup>4</sup> Singh, Satwinder, & Kaur, Palakdeep. (2023). The Status of Bail Jurisprudence in India: Need Comprehensive Revamp. *International Journal of Law Management & Humanities*, 6, 1386-[i].

<sup>5</sup> Dubey, Saubhagya Manuj Kumar, & Ranjan, Priya. (2021). Revisiting the Efficacy of Bail Provisions in India: Empirical Exercise to Assess the Ground Realities of Bail Jurisprudence. *Supremo Amicus*, 24, [1115]-[1128].

<sup>6</sup> *Supra* note 2.

<sup>7</sup> Rakesh Kumar Kaushal v. State of Himachal Pradesh, 2018 SCC Online HP 486.

### Kinds of Offences as to Bail

In the Indian legal system, the administration of bail for offences is governed by specific provisions outlined in Cr.P.C. Sec. 436 of Cr.P.C. pertains to bailable offences, stipulating that if a person commits an offence that is considered bailable in nature, they are entitled to be released from custody upon furnishing the required bail bond. This provision ensures that individuals charged with less serious offences are not unduly detained before trial, promoting the principle of liberty.

On the other hand, Sec. 437 deals with bail for non-bailable offences. Unlike bailable offences, bail is not granted as matter of right in non-bailable cases. The law provides specific conditions under which bail may be granted by court. These conditions include considerations such as gravity of offence, potential penalties involved, likelihood of accused fleeing justice, & possibility of tampering with evidence or influencing witnesses.<sup>8</sup>

Under Sec. 437, bail may be denied if there are substantial reasons to believe that accused has committed offence punishable by death or life imprisonment. Furthermore, bail can be refused if the offence is prima facie cognizable and the accused has previously been convicted of certain serious offences. These include crimes punishable by death, life imprisonment, or imprisonment for seven years or more, or if accused has prior convictions for non-bailable and cognizable offences on two or more occasions.

In cases of bailable offences, the availability of sureties or the failure to comply with bail conditions regarding appearance may influence the court's decision. If an accused released on bail for a bailable offence fails to adhere to the conditions set by the court, such as appearing at specified times or places, the judge may refuse bail when the accused appears in court again or is taken into custody on a subsequent occasion.

### Misuse of Bail Provisions

The legislative intent behind the Law Commission's report advocating for the introduction of the "Anticipatory Bail" provision is best understood through the lens of the 41<sup>st</sup> Law Commission Report. This report emphasizes the necessity of safeguarding individuals from being wrongfully implicated in false cases, shielding them from the ramifications of political vendettas, and protecting them from powerful figures who might seek to entangle them in fabricated charges for personal gain. The primary aim of this legislative provision was to prevent the misuse of power by ensuring that people are not unjustly arrested and detained.<sup>9</sup>

However, when we examine the legislative intent alongside the practical application of anticipatory bail, significant gaps and deficiencies become apparent. Although the provision was crafted to prevent the misuse of power, it has unfortunately given rise to new forms of exploitation. Individuals who are granted anticipatory bail, or any form of bail, often misuse this privilege. There are numerous instances where such individuals obstruct ongoing investigations, intimidate witnesses, and tamper with evidence, thereby undermining the very intent of the provision.

The authority of the courts to grant bail is well-established and widely recognized. Any decision to grant bail must be judicial, meaning it should be grounded in sound legal principles. Such decisions should be rule-based and free from arbitrariness, ambiguity, or frivolity; they should be legitimate and consistent. This judicial approach is particularly crucial when dealing with interim bail requests, as the full context and gravity of the matter may not yet be fully understood by the judiciary. During the interim period, decisions are often made based on limited evidence and the immediate circumstances presented to the court. This can create opportunities for unethical litigants or accused individuals to exploit the situation. There have been numerous instances where bail conditions have been flagrantly violated, with individuals either disregarding the terms of their bail or absconding altogether, thereby evading the legal system.<sup>10</sup>

The misuse of anticipatory bail poses serious challenges to the integrity of the judicial process. It highlights the need for a more stringent and cautious approach to granting bail, ensuring that the provision serves its intended purpose of protecting the innocent while preventing its exploitation by those seeking to evade justice. This balance is crucial for maintaining public trust in legal system & ensuring that justice is both served and seen to be served.

In *A.K. Murumu v. Prasenjit Choudury*,<sup>11</sup> the court articulated that an order granting bail can be revoked if new or aggravating circumstances arise after the release on bail. Such circumstances include harassment of individual liberty by destroying evidence, malicious attacks on eyewitness accounts, or the commission of the same or comparable crime. However, the court also emphasized that the existence of any expressly or impliedly situation following the grant of anticipatory bail or bail is not the only criterion for bail cancellation.

<sup>8</sup> Singh, Pradeep Kumar. (2020). Bail in Socio-Economic Crimes and Criminal Justice in India. *Athens Journal of Law (AJL)*, 6(3), 209-230.

<sup>9</sup> Singh, S. P. (2024, June 12). *41st Report of Law Commission of India on Anticipatory Bail*. Kanoonirai. <https://kanoonirai.com/41st-report-of-law-commission-of-india-on-anticipatory-bail/#:~:text=In%20its%2041st%20Report%20dated%20September%2024%2C%201969%2C,the%20Court%20of%20Sessions%20to%20grant%20%E2%80%9Canticipatory%20bail.%E2%80%9D>.

<sup>10</sup> Singh, Manali. (2021). Anticipatory bail and the criminal justice system in india. *Indian Journal of Law and Legal Research*, 3(1), 1-8.

<sup>11</sup> 1999 Cr.LJ 3460 (3468).

When a court grants bail, it must carefully evaluate whether the accused person's release might intimidate prosecution witnesses, making them reluctant to testify during the trial. Granting bail for non-bailable offense is seen as a privilege rather than a right. By granting bail, the court places a certain amount of trust and confidence in the applicant, with the expectation that this privilege will not be misused in any way. An accused individual who has been released on bail is expected to refrain from any actions that could tamper with the prosecution's evidence. This includes avoiding contact with potential witnesses, which could lead to the destruction or minimization of evidence against them. If the accused abuses the liberty granted by bail, they forfeit their right to this advantage. The prosecution often argues against bail by highlighting that person accused of serious crime may be tempted to eliminate evidence against themselves, regardless of the strength of the evidence. In assessing whether to grant or revoke bail, the court must consider the potential for evidence tampering. The prosecution's main concern is that once an accused is released, they might try to influence or intimidate witnesses, thereby undermining the judicial process. This potential for evidence tampering is a significant factor in court's decision-making process regarding bail.<sup>12</sup>

In *Bishambhar Nath v. Emperor*,<sup>13</sup> the counsel for the Crown, voiced concerns during his arguments regarding the potential for the accused to interfere with the prosecution's evidence. Despite these concerns, the presiding judge determined that mere apprehension of evidence tampering was not sufficient to deny bail if other conditions warranted its grant. The judge acknowledged that such concerns were speculative at this stage of the proceedings. However, he provided a provision for future action, indicating that if these apprehensions materialized during the trial, the prosecution could petition the trial court to revoke the bail granted to the accused. This statement highlights the balance the court seeks to maintain between safeguarding the integrity of the judicial process and upholding the rights of the accused.

Similarly, in *Madhukar Purshottam Mondkar and Another v. Talab Haji Husain and Others*,<sup>14</sup> the Bombay High Court faced a situation where accused were found to have manipulated or attempted to interfere with the prosecution's evidence. In response to this misconduct, the High Court took the significant step of revoking bail, even though the case was initially bailable. This decision underscored the court's stance that any actions undermining the prosecution's case would be met with strict repercussions. The Supreme Court of India endorsed this perspective, supporting the High Court's decision to revoke bail under circumstances where the accused's behaviour jeopardized the integrity of the judicial process. This ruling reinforces judiciary's commitment to ensuring that the administration of justice remains untainted by any attempts at evidence tampering.

The Malimath Committee's reports have significantly expanded the authority of police officers regarding the granting of bail. This development has sparked concern due to the widespread belief that many police officers lack a comprehensive understanding of the law and primarily rely on their ability to exercise authority. This combination of limited legal knowledge and extensive power is problematic, as it may lead to situations where the rights and interests of the accused are not adequately protected. This issue demands urgent national attention to prevent potential abuses of power by the police in the bail-granting process.<sup>15</sup>

In the realm of criminal law, the apprehension of individuals suspected of committing offenses is a routine practice. Once a suspect is detained, they are taken to the police station, where a critical decision must be made: whether to grant bail or detain the individual until their court appearance. At this juncture, police officers possess the discretionary power to either grant or deny bail. For bailable offenses, this issue is particularly significant, as the right to bail is constitutionally guaranteed for the accused. In less serious cases, police officers at the station are authorized to grant bail. However, this discretionary power is often marred by inefficiencies and corruption. Officers may be swayed by external pressures, such as requests from influential individuals or monetary incentives, to make quick decisions that may not align with justice.

### Conclusion

The provisions in Chapter XXXIII of Cr.P.C., 1973 deal comprehensively with the concept and implementation of bail in India. These sections cover various aspects of bail, including the different types of bail available, the jurisdiction and competence of courts to grant bail, the legal framework governing sureties, and the provisions for anticipatory bail. They also classify different types of offences & outline conditions under which bail can be granted. Furthermore, it delineate the criteria for granting bail, the grounds upon which granted bail can be cancelled, and the crucial difference between the rejection and cancellation of bail. This comprehensive framework establishes various bail requirements, reflecting the balance between an individual's liberty and the need to ensure justice and public safety.

The dual nature of the law is evident in its application, where both its use and misuse are prevalent. Bail is a fundamental aspect of criminal law, designed to ensure that individuals accused of crimes can secure temporary

<sup>12</sup> State v. Pritam Dass, AIR 1956 Bom 559.

<sup>13</sup> 25 CrLJ 1132.

<sup>14</sup> AIR 1958 SC 376.

<sup>15</sup> Sharma, Prerna. (2023). Misuse of Bail Provisions in India. *International Journal of Law Management & Humanities*, 6, 1941-1954.

freedom while awaiting trial. However, this essential right is not without its significant limitations. Misuse occurs when an accused, granted bail, exploits this liberty by engaging in activities such as tampering with evidence, committing further criminal acts, or threatening and influencing witnesses or complainants. Such actions undermine the integrity of the judicial process, prompting the court to exercise its authority to revoke bail to maintain justice and order. The extent of this misuse has become so pervasive that it threatens to undermine the entire criminal justice system.

Addressing these ambiguities and limitations is crucial for the integrity of the legal system. There is an urgent need for reforms and amendments to the existing provisions. Implementing a new code could help address these issues more effectively. It is also imperative to closely scrutinize the operations of the criminal justice system to ensure that it functions fairly and efficiently. Providing remedies for those affected by the misuse of bail provisions is essential to uphold the rule of law and protect the rights of individuals.

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