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JUDICIAL ASPECT OF BAIL UNDER CRIMINAL LAW

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ABSTRACT

The constitution of India under Article 21 gives guarantees about the protection of life and personal liberty to all persons. Under this article Indian constitution stated that No one is unreasonably restrained from his/her individual right to liberty of a person. This article in turns gives convicted person an opportunity under fundamental right to ask for bail.

In judicial system bail is process by which an accused person can be released for a specific period of time, on a condition that security money has been paid on behalf of the accused person for his/her appearance in the court. Criminal offences are categorized into bailable and non- bailable offences under the code. Regarding this provision related to bail is provided under section 436 to section 450 of the code of criminal procedure code 1973.

Keywords - Bail, Criminal, Offence, Accused, Arrest, Imprisonment, Judiciary, Court, Custody, Summon

MEANING OF BAIL

The term bail is not defined under the code of criminal procedure but Bail is a fundamental aspect of criminal jurisprudence and through various laws regulated in India. In Black’s law Dictionary, 9th edition, the term bail is described, A security as cash or a bond; especially security required by a court for the release of a prisoner who must appear in the court at future time. The term bail includes two important parts, first one is liberty of individual and second one is interest of justice. So that it is a instrument to procure the release of a person from legal custody. The code of Criminal procedure, 1973 deals the provision regarding bail procedure.

KINDS OF BAIL

Bail is categorized under the criminal procedure code into two parts for it’s bail procedure

- Bailable offences
- Non-bailable offences

➤ **BAILABLE OFFENCES**

The term bailable offence defined under section 2(a) of CrPc. It covers the offences which is

classified in the first schedule as bailable offence of the code. If a person accused of a bailable offence then an accused has right to claim for bail to the court. Under bailable offences, bail is given by the competent police officer or any other authority. When an accused apply for bail under this category of bail, The court or any authority has no right to reject the bail. The rules related to bailable offence is provided under 436 of the code. This type of offences are less serious so that court or any police officer can grant bail at any stage of proceedings on the request of accused person. These offences are punishable with less than three years.

➤ **NON-BAILABLE OFFENCES**

In simple terms, under non-bailable offences an accused is not allowed to furnish a request application for granting bail in the court at the time of their arrest or custody. Under this offences an accused person has no right to claim bail as a matter of right. These offences are more serious in nature comparison to bailable offences. An accused of non-bailable offences are punishable with three years or



more. However, an accused person is permitted to request for bail but it is up to the court discretion in non-bailable charges.

In respect of the condition that an accused person can be granted bail in non-bailable offences section 437 Of the code of criminal procedure 1973 provide rules for the same but an accused person cannot consider it as matter of right. This section stated that an accused person is arrested without warrant and produced in front of a court. Any court which is not high court or the court of sessions may grant him/her bail. If the court has reasonable ground to consider guilty of an offence punishable with death or life imprisonment under the code of criminal procedure 1973. The court has power to decide on it's own discretion and also power to refuse from granting bail to the person. Non-bailable offence are cognizable, it gives authority to police arrest without warrant.

SOME OTHER TYPE OF BAIL-

➤ **ANTICIPATORY BAIL**

If a person is suspected or believed that he/she may be arrested by the police for a non-bailable offence in future time. The person can approach to the court and request for grant anticipatory bail from protection against arrest. When the court has reason to believe that the person will be arrested for an offence which doesn't falls under the subject to bail. The court in this Circumstances releases a defendant on bond. Anticipatory bail is always considered by higher Criminals court. Section 438 of the criminal procedure code,1973, stated that the defendant may only approach to the high courts and session courts for bail request.

➤ **REGULAR BAIL**

Regular bail is granted in the case of non-bailable offences. If any person commits a crime which offence is so serious in nature and the police authority have power to detain him without issue a warrant or investigate without court's permission. Section 437 and 439 deals with this type of bail and provides relaxation of

an accused from confinement under the CrPc provision. Regular bail is granted when accused person gives his assurance to presence at the trial in the court.

➤ **INTERIM BAIL**

Interim bail grants by court for a short period of time. This bail is provided when an application is in pending or considering by the court for anticipatory or regular bail. During this time the accused will free from custody. In this bail, the court is granted bail for a fixed and predetermined of time. Once the granted time has expired then again the accused will be taken into custody. This type of bail is conditional in nature. Before the ending of given time, the accused person has been given an anticipatory bail or regular bail and he doesn't pay the required amount for further bail procedure, then he will be taken again under custody and taken away his right to be free.

➤ **MANDATORY BAIL**

Under the code of criminal procedure, 1973 section 167(2) stated about that if the charge sheet does not submitted during this specified time by the investigating officer, within ninety days in case of an offence punishable with death, life imprisonment or imprisonment for a term at least 10 years and sixty days in case of any other offences than the earlier ones. In the prescribed time submission of charge sheet in delay then mandatory bail is granted by the court. Mandatory bail is also known as default bail.

➤ **POWERS OF HIGH COURTS AND COURTS OF SESSIONS REGARDING BAIL**

Under section 439 of the criminal procedure code,1973, the High court and Session court have special powers may grant bail in following circumstances given below-

An accused person committed an offence which is prescribed under subsection 3 of section 437 and person is in custody. The High court or session court under section 439 (1)(a) may grant bail and impose appropriate



conditions regarding this subsection on any accused person.

The high court and session court have power to set aside or alter any condition which is imposed by a magistrate on accused person during granting bail, it is provided under section 439(1)(b) of the code of criminal procedure,1973.

Before granting bail by the high court and session court accused of offence triable exclusively by the court of sessions if it is not so triable, is punishable with imprisonment for life. A notice of application for bail to be given to the public prosecutor unless a recorded reason in writing of opinion that is not possible to give notice.

Under section 439 of CrPc the powers given to the court is unrestrictable by any limitation of rules and regulation but it is controls through the discretionary powers of the court.

In case **Kanwar Singh Meena V. The state of Rajasthan and others 2012**, (Indian kanoon, 2012) the court point out that under section 439 of CrPc, the High court and session court gives more power for granting, modifying and cancelling bail.

In one another case, **Sundeep kumar bafna v. the state of Maharashtra 2014** (Indian kanoon, 2014) the Supreme court stated that granting bail by the high court and session court are restriction less if the accused is in custody. If after long prosecution a regular bail application to a magistrate has been denied then further requesting for bail from the session court and high court.

➤ **AN OVERVIEW TO BE CONSIDER WHILE GRANTING ANTICIPATORY BAIL**

Any competent court while granting anticipatory bail shall be bound to follow. A detailed and exhaustive list which is enumerated by hon'ble supreme court based on section 438(1) of Crpc for determining while deciding anticipatory bail.

These are some key point given below-

- While granting bail, it must be checked out by the court previous record of accused person related to conviction in respect of non-bailable offence.

- The court must predict on provided evidence and witness that applicant will be free from justice.

- It must be also consider about probability of repetition of similar crime.

- Find out the role and participation in offence by an accused person.

- What is the intention to commit the crime.

- During investigation, accused should present himself/herself before investigating officer for interrogation. When asked to appear.

➤ **CANCELLATION OF BAIL**

- Under the code of criminal procedure, 1973, some provision given regarding the cancellation of bail. Section 437(5) of Crpc stated about if a person has released on bail according to subsection (1) or (2) of section 437. The court deems appropriate reason to cancel the granted bail and then ordered that the person be arrested.

- Under section 439(2), the sessions court and the High court has power to use suo moto, cancel the granted bail and accused will be taken under custody.

- An appellate court has also power under section 389(2) cancel the bail of an accused person and ordered for his/her arrest for the same offence.

➤ **SUPREME COURT'S HELD GUIDELINES FOR REFORMS –**

The Supreme Court through various judgement and guidelines putting out certain procedural issues for judiciary as well as for the police are following –

- The code does not responsible for arrest as a fundamental rights and liberty issue in itself. Original structure of the code was drafted during colonial power over its subjects. So that apex court when feel any uncertainty rectify it by judicial process.

- The hon'ble supreme court stated that the uniformity and certainty related to decisions

are fundamentals of judicial system. All persons accused in similar offence shall never be treated different manner either by the same court or by the different courts.

In case SATENDAR KUMAR ANTIL V. CENTRAL BUREAU OF INVESTIGATION (kanoon, 2023) The supreme court of India issued guidelines and that reform bail law, but make the right diagnosis first. When bail is granted after filing of charge sheet. The trial courts examine the behavior of accused during the probe and on its own discretion can grant bail. For determining these guidelines by the courts. it is mandatory to observe accused behavior and nature, At the time of investigation accused cannot be arrested and cooperate in the investigation like as appearing and answering before the investigating officer.

- In simple offences, when the charge-sheet has been filed or complaint concern with cognizance has been taken. further the court will follow these following steps-

- An ordinary summon will be issued at first instance by the court.

- When accused is not appearing after service of the summons, then court may release aailable warrant for physical appearance of the accused person.

- If the accused does not follow and fails to appear before court then the court may issue a non-ailable warrant.

- When an application is filled by the accused concerning with non-ailable warrant and undertaking in the application that he will be present physically before the court on next date of hearing. In this condition the court may cancel the non-ailable warrant or change into either summon or aailable warrant.

➤ INSTRUCTION TO POLICE IN BAIL MATTERS-

- An accused person who is carrying potential punishment of up to 7 years at the time of arrest, the state police is required to produce a check list under section 41(1)(b)(2) of the Crpc. With remand application a copy of checklist must be provided to the magistrate

who has power to function to remand the accused in police custody.

- Whenever police does not arrest the suspect person then they have to notify within two weeks from the date of FIR lodged to the magistrate.

- If the maximum penalty for the offence is up to seven years. In this condition police may not detain the accused person, unless specific reason that requires it.

➤ CRITICAL ANALYSIS RELATED TO BAIL REFORMATION IN INDIA-

India's population is huge in the world so that application of laws and it's procedure is a tough task for judiciary and executive. The bail related laws should be more realistic, practical and easy to approachable by a rich to poor people in the same way. A large number of prisoner in prison in India under-trial. Because of this prisons condition is becoming overcrowded and this lead inhumane condition in jail.

Indian judiciary system believes in presumption of innocence until guilty is not proven. Always before granting bail, it is determined by the judge or magistrate the nature and gravity of offences. Bail is granted or refused its up to these conditions. All allegation which is framed in FIR must be examined carefully. Court can only see evidences and witnesses and further on the basis of consider about gravity of offence and examine that any allegation is charged falsely. Upon these factors court may grant or reject bail. Another important recommendation given by the law commission related to arrest that make it more revamp, fair and transparent. Relating this section 41 of Crpc should be amended. Because of this provision fewer people seeking bail before the police and the court.

In many act and statutes covers those laws which contrary to natural justice whenever presumption of guilt is determine according to these law. Under the (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, n.d.) Laws, it is complicated to get bail.

In the same way charges of section 375 of IPC also put down the presumption of guilt. These sections were laid down for prevention of crime related with women but these laws bypass the law of innocence prior to being proved crime. So that laws should be focused on principle of innocence prior to being proved guilty of offence and should be amended on reasonable point.

The Indian bail process believes on sureties and bonds which often act as a deterrent for the poor. A financially weak person can not effort after bail petitions get rejected repeatedly. So that it needs to reform and should not be based on only monetary considerations.

Delay in justice is also a dark point of judicial system so that it is need to modify which provide fast justice. Many prisoners under-trial do not get bail on reasonable time. Thus all these circumstances in Indian judiciary system should be needed reforms and implement easy procedure for bail.

CONCLUSION

Bail in itself cover all point which provides personal liberty recognized under Indian constitution with extent limit but whenever court consider that social welfare is more important than personal liberty, then court can refuse from granting bail. Because criminal offences is not consider against individual but consider against the state. so that It is the responsibility of state to protect the individual interest. Law of bail through various laws which is legally and logically balance between two conflicting interest of society.

Until the offence is not proved, no innocent will be punished but the burden of case on judicial system sometimes make it difficult. By parliament and judicial body framed and amend the laws which promote bail procedure in more effective and transparent manner in the society.

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