

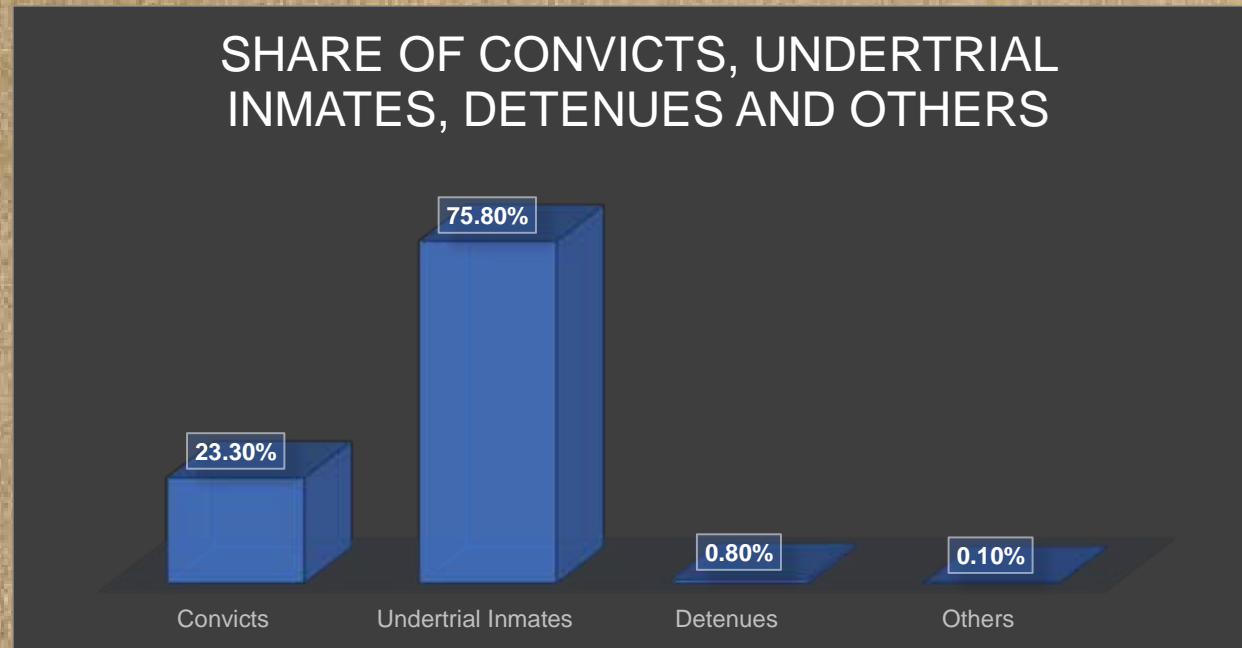
**PARADIGMS OF PERSONAL
LIBERTY VIS-À-VIS
GROWING JURISPRUDENCE
OF BAIL**

WHAT IS BAIL?

- Bail is not explicitly defined in Cr.P.C., but defined in section 2(b) of B.N.S.S.
- Bail is a written promise, signed by the offender or a person who gives surety of the offender presence in the court when called upon, to pay a certain amount fixed by a court or police officer.

BAIL NOT JAIL

- The maxim enunciated by Justice V.R. Krishna Iyer seems to exist in theory and not in practice.



NCRB 2022

WHY THIS SITUATION?

- Arbitrary Arrests - [*Joginder Kumar vs State Of U.P* (1994 SCC (4) 260) , *D.K.Basu Vs State of West Bengal* (1997) 1 SCC 416 and *Arnesh Kumar vs State of Bihar* (2014) 8 SCC 273)]
- Prolonged Trial
- Strict Bail Provisions
- Heavy Bail Bonds/Conditions

SHIFT IN STANCE OF APEX COURT

Supreme Court in 1985: -

This Court does not ordinarily, in the exercise of its discretion under Article 136, entertain petitions for special leave to appeal against orders granting or refusing or cancelling bail or anticipatory bail. These are matters where the High Court should become final and this Court should not entertain petitions for special leave.

Jagdish v. Harendrajit Singh, (1985) 4 SCC 508

Supreme Court in 2021: -

The basic rule of our criminal justice system is “bail, not jail”. The High Courts and the courts in the district judiciary of India must enforce this principle in practice, and not forgo that duty, leaving the Supreme Court to intervene at all times.

Arnab Manoranjan Goswami vs State of Maharashtra, (2021)2 SCC 427

Do We Need a Standalone Bail Act?

- Chapter XXXIII of Cr.PC./ Chapter XXXV, BNSS deals with bail and bonds.

IS IT ADEQUATE?

- Let's peep into other jurisdictions

United Kingdom- Bail Act, 1976

- Bail is a right unless case falls under enumerated exceptions (Section 4)
- Reasons must be given for refusal of bail (Section 5)
- Exceptions/Probable reasons for refusal enumerated in the Act

Canada

Bail shall be granted unless prosecutor satisfies the Court regarding grounds for detention: -

1. Primary- Ensuring presence in Court
2. Secondary- Preventing reoffending
3. Tertiary- Impact of crime in society/victim

Conditions of Bail-Ladder System

- From bond to house arrest

Bail Plan to be submitted by Defence

Bail Program-Release under supervision of case workers

Australia (New South Wales Bail Act)

Court may grant bail taking into consideration: -

1. Appearance in Court
2. Accused's interests
3. Community/Victim's interest

New Zealand Bail Act, 2000

Section 8 enumerates the factors to be taken into consideration

Arnesh Kumar v. State of Bihar (Recommendations)

- (1) Recording of reasons for arrest must be followed by the Police. Magistrate must peruse the same before granting detention.
- (2) Decision to not arrest must be forwarded to the Magistrate within 2 weeks from case institution.
- (3) Notice of appearance u/s 41-A CrPC may be given within 2 weeks to the accused.

Consequences of Non-Compliance with *Arnesh*

(4) Failure to comply will make police liable for departmental action/contempt of court.

(5) Authorising detention without recording reasons by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

(6) These directions shall apply to S. 498-A IPC cases & S. 4 Dowry Act cases, along with cases with less than 7 years punishment.

Satender Kumar Antil vs CBI(Recommendations)

- (1) Separate Bail Act be introduced;
- (2) Strict compliance of section 41-A Cr.P.C.; as per Arnesh Kumar- also reiterated in *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443
- (3) Standing orders be issued;
- (4) Courts must satisfy itself in this regard while considering bail;

5) Accused need not be arrested and forwarded to court under section 170 CrP.C. if he was available and cooperated during investigation. Court may permit such accused to remain on his own bond [See *Siddharth (2022)1 SCC 676*]

(6) Special Courts be filled up;

(7) Bail - two weeks; A/Bail-six weeks;

(8) Conditions must be reasonable- High Courts to monitor compliance

Md. Asfak Alam v. State of Jharkhand(Recommendations)

(1) HCs shall frame directions via notifications/guidelines to implement directions in Arnesh (supra) to be followed by Sessions Courts & other criminal courts.

(2) DGPs in all States shall provide strict instructions via guidelines & directives/departmental circulars for guidance of trial/district courts & police authorities.

Policy Strategy for Grant of Bail, In Re (Recommendations)

- (1) Courts must email bail orders to the prisoner via the Jail Superintendent on the same or next day and JS update the e-prisons system.
- (2) If **release doesn't occur within 7 days**, JS must inform DLSA, which may **appoint a paralegal** or advocate to assist.
- (3) NIC must enable automatic alerts in e-prison software to **flag delayed releases** and notify DLSA.

(4) Paralegals can submit **socio-economic reports to help courts consider relaxation** of bail conditions.

(5) **Temporary bail** may be granted if the prisoner can **arrange sureties only after release**.

(6) If bail **bonds aren't furnished within a month, courts may suo moto modify** bail terms; local surety should not be insisted upon.

Bail Hearing- Best Practices

1. Presumption of Innocence- Onus on prosecutor to justify continued detention
2. Prompt hearing of bail applications
3. Reasons to be given- No final opinion on merits but must advert to relevant parameters which prompt the court to grant/deny bail
4. Conditions of bail- Reasonable and not giving an impression of pre-judging issues/disrespectful to accused or victim

Other Interesting Developments

HOUSE ARREST-

Courts can in exceptional cases direct house arrest keeping in mind parameters like nature of crime, age and health condition of the accused, criminal antecedents etc.

[Gautam Navlakha vs CBI, 2021 SCC OnLine SC 382]

BAIL IN WRIT JURISDICTION- *Arnab Manoranjan Goswami (2021) 2 SCC 427*

- Cannot be resorted to for “Forum Shopping”, held in *State of Maharashtra vs Pankaj Jagshi Gangar, (2022)2 SCC 66*

VICTIM PARTICIPATION

Statutory Changes: -

Section 439(1)(a) Cr.PC./Section 483 (1) (a)- rape of minors

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Judicial Pronouncement: -

In *Jagjeet Singh vs Ashish Mishra*, (2022)9 SCC 321, the victim's right to hearing was upheld.

OPPRESSIVE CONDITIONS OF BAIL

- In *Frank Vitus vs. NCB and ors*, 2024 SCC OnLine SC 1657, the Apex Court held assurance from embassy to attend court regularly and sharing of Google PIN violative of right to privacy.
- In *Girish Gandhi vs State of Uttar Pradesh and ors*, 2024 SCC OnLine SC 2142, the Apex Court highlighted the maxim '*excessive bail is no bail*' and held sureties across multiple FIRs should be consolidated.

BAIL IN OFFENCES UNDER SPECIAL ACTS

ADDITIONAL RESTRICTIONS ON BAIL

Section 37 NDPS Act (19, 24, 27-A)	(1) Notice to PP (2) "Reasonable grounds" – "not guilty" (3) Not likely to commit any offence
Section 43-D UAPA	(1) Notice to PP (2) "Reasonable ground" – "prima facie true" (3) Not to a foreigner who was illegally entered India except under exceptional circumstances
Section 45 of PMLA	(1) Notice to PP (2) "Reasonable ground" – "not guilty". Except where accused in 16 years, woman, sick, infirm or amount laundered is below Rs. 1 crore (prior 2018 – applicable to predicate offence punishable with imprisonment more than 3 years in Part A of Schedule

SECTION 37 NDPS ACT- “NOT REASONABLE GROUND”-NOT GUILTY

Section 37

Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra And Another, (2005) 5 SCC 294

Findings tentative – based on broad probabilities

“shall not commit any offence” – offence under relevant statute – conclusion based on antecedent/conduct

Narcotics Control Bureau vs. Mohit Aggarwal, 2022 SCC OnLine SC 891

Reasonable ground – something more than prima facie grounds - “substantial probable cause” that accused is not guilty. That is existence of facts and circumstances which by itself show accused is not guilty. (para 13 and 14)

Accused’s statement under Section 50 PMLA will be inadmissible if the accused was already in judicial custody in another case. – *Prem Prakash v. ED, (2024) 9 SCC 787*

BAIL VS JAIL IN TERRORISM CASES

- In *Gurwinder Singh vs State of Punjab, (2024) 5 SCC 403*, the Apex Court observed, '*Bail is the Rule and Jail is the Exception*', does not apply to UAPA cases.
- In a subsequent case, *Jalaluddin vs. Union of India, 2024 SCC OnLine SC 1945*, the Apex Court clarified if materials collected during investigation are not convincing, the principle '*Bail is the Rule, Jail is the Exception*' will apply to UAPA cases also.

DELAY IN TRIAL- BAR DOES NOT OPERATE

UAPA

Inordinate delay – bail may be granted for breach of right to speedy trial under Article 21 of Constitution of India – section 43-D(5) no bar. (para 11 and 17) - *Union of India vs. K.A. Najeer, (2021) 3 SCC 713*, reiterated in *Sk. Javed Iqbal vs. State of UP*, 2024 SCC OnLine SC 1755 and *Javed Gulam Nabi Shaikh vs. State of Maharashtra and anr*, 2024 SCC OnLine 1693

NDPS

Speedy trial – one time measure – undertrials in detention for five years – granted bail – *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India And Another, (1995) 4 SCC 695*; *Thana Singh vs. Central Bureau of Narcotics, (2013) 2 SCC 590*

UAPA

Section 436A Cr.P.C. – as statutory bail – *Vijay Madanlal Choudhury vs. UoI, 2022 (10) Scale 577* (para 147-149)

COMMUNICATION OF ARREST GROUNDS

- Non communication of ground of arrest in writing would render the arrest illegal being violative of Article 22(1) of the Constitution and Section 19(1) of PMLA- *Pankaj Bansal vs. Union of India and ors*, (2024) 7 SCC 576
- In *Prabir Purkayastha vs. State (NCT of Delhi)* 2024 SCC OnLine SC 934, the ratio in Pankaj (supra) shall also apply to **UAPA** cases.
Ground of arrest- not limited to mere communication- must disclose materials and details necessitating arrest.

COMMUNICATION OF ARREST GROUNDS

- In *V. Senthil Balaji vs State, (2024) 3 SCC 51*- Apex Court held Police remand for first 15 days, Section 41-A CrPC but not applicable in PMLA but Breach of Section 19 PMLA vitiates arrest- entitles to bail
- In *Arvind Kejriwal vs. Directorate of Enforcement, 2024 SCC OnLine SC 1703*, the ratio in Pankaj (supra), Prabir(supra) and *V. Senthil Balaji* (supra) applies to PMLA cases with regard to justification of arrest – matter referred to larger bench.

COMMUNICATION OF ARREST GROUNDS

- In ***Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799*** the ratio was analysed as follows –
 - (1) Informing grounds of arrest is a mandatory requirement under Article 22(1).
 - (2) Information of the grounds must be in such a manner that sufficient knowledge of the basic facts constituting the grounds is communicated to the arrest person in a language which he understands. Mode and method of communication must achieve objective of Article 22(1).
 - (3) When non-compliance with Article 22(1) is alleged, burden to prove compliance will be on the investigating officer/agency.

COMMUNICATION OF ARREST GROUNDS

(4) Non-compliance of Article 22(1) violates fundamental rights guaranteed by said Article. It also violates right to personal liberty under Article 21. Non-compliance of Article 22(1) vitiates arrest. Further orders of remand are also vitiated. It will not vitiate the investigation, charge-sheet and trial. Filing of charge-sheet will not be a breach of the mandate of Article 22(1).

(5) Magistrate must ascertain whether compliance with Article 22(1) & other mandatory safeguards has been made when the arrested person is produced before them for remand.

(6) When violation of Article 22(1) is established, court must order release of the accused. It will be a ground to grant bail even if statutory restrictions exist on grant of bail. Statutory restrictions do not affect Court's power to grant bail when violation of Article 21 and 22 is established.

COMMUNICATION OF ARREST GROUNDS

“Another argument canvassed on behalf of the respondents is that even if the appellant is released on the grounds of violating Article 22, the first respondent can arrest him again. At this stage, it is not necessary to decide the issue.” – Vihaan (supra) reiterated in Kasireddy Upender Reddy v. State of Andhra Pradesh 2025 SCC OnLine SC 1228.

STATUTORY BAIL

- Right to Statutory Bail is a facet of Article 21.
- Hyper technical approach to be avoided- *Rakesh Kumar Paul vs State of Assam, (2017) 15 SCC 67*

Default Bail Application may be oral- *Bikramjit Singh vs State of Punjab, (2020) 10 SCC 616*

- Extension application to be filed prior to application of default bail.
- If filed earlier must be disposed of before default bail can be availed-*M. Ravindran vs Directorate of Revenue Intelligence, (2021) 2 SCC 485*

- Notice of extension application need not be given but it must be considered in presence of accused/ his counsel- ***Jigar alias Jimmy Pravinchandra Aditya vs State of Gujarat, 2022 SCC OnLine SC 1290.***
- Incomplete chargesheet, without sanction, is not a ground for the accused to seek bail. - ***Judgebir Singh v. NIA, (2023) 17 SCC 48***

KEY CONSIDERATIONS FOR ANTICIPATORY BAIL APPLICATION

- In **Siddharam Satlingappa Mhetre v. State of Maharashtra**, (2011)1 SCC 694, the Apex Court laid down the tests for grant of anticipatory bail: -

"112. ... (i) the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(iii) the possibility of the applicant fleeing from justice;

(iv) the likelihood of the accused repeating similar or other offences;

(v) whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting them;

(vi) the impact of the grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

vii) the courts must carefully evaluate the entire material against the accused. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication in such cases is a matter of common knowledge and concern;

(viii) while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) the reasonable apprehension of tampering of the witnesses or apprehension of threat to the complainant;

(x) frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail".

- reiterated in ***Naresh Kumar Mangla v. Anita Agarwal***, (2021) 15 SCC 777

- In ***Sushila Aggarwal vs State of NCT of Delhi***, 2020 SCC OnLine SC 98, Supreme Court held protection granted to a person under section 438, CrPC should not invariably be limited to a fixed period ordinarily.
- In ***Dhanraj Aswani vs Amar S. Mulchandani***, 2024 SCCOnLine SC 2453- The Apex Court held accused in custody in another case can apply for anticipatory bail in connection to a different case.
- In ***Shajan Skaria vs State of Kerala***, 2024 SCC OnLine SC 2249, Supreme Court held the bar to anticipatory bail under section 18 of the SC and ST (Prevention of Atrocities) Act, 1989 is not attracted unless a prima facie case under the Act is made out against the accused.

SETTING ASIDE/CANCELLATION OF BAIL

- A Bail order may be set aside when it is without reasons, perverse, without consideration of relevant facts, based on irrelevant materials etc. by a superior court exercising inherent powers/judicial review. [**See: *Abdul Basit & Ors. V. Mohd. Abdul Kadir Chaudhary & Anr. (2014) 10 SCC 754***]
- Cancellation u/s 437(5)/439(2) CrPC for post bail conduct.

SETTING ASIDE/CANCELLATION OF BAIL

Distinction between setting aside and cancellation – *"It is a well-settled principle of law that the setting aside of an "unjustified, illegal or perverse order" granting bail is distinct from the cancellation of bail on the ground of the supervening misconduct of the accused or because some new facts have emerged, requiring cancellation. In Puran v. Rambilas (2001) 6 SCC 338, this Court has held that where an order granting bail ignores material on record or if a perverse order granting bail is passed in a heinous crime without furnishing reasons, the interests of justice may require that the order be set aside and bail be cancelled. The recording of no reasons is one end of the spectrum. The other end of the domain for interference with an order granting anticipatory bail (into which the present case settles) is where the reasons are contrary to the material on record and hence found to suffer from perversity." – [Naresh Kumar Mangla v. Anita Agarwal, (2021) 15 SCC 777]*

ILLEGAL ARRESTS: CONSTITUTIONAL TORT

- In *Rudul Shah v. State of Bihar (1983) 4 SCC 141*, Supreme Court observed -
 - Illegal detention violates Article 21.
 - With release orders, monetary compensation must be directed to ensure compliance with liberty rights under Article 21.
 - State must repair the damage.

ILLEGAL ARRESTS: CONSTITUTIONAL TORT

- Illegal police detention for one month justified ₹20,000 compensation; Sessions Judge's inquiry confirmed the violation. - *D.G. & I.G. of Police v. Prem Sagar, (1999) 5 SCC 700*
- Wrongful detention warrants compensation to enforce Article 21; denial of legal defence violates constitutional rights. - *A.S. Mohammed Rafi v. State of Tamil Nadu, (2011) 1 SCC 688*

ILLEGAL ARRESTS: CONSTITUTIONAL TORT

- Procedural illegality (arrest without grounds) won't lead to compensation unless not specifically pleaded - *V. Senthil Balaji v. State of* (2024) 3 SCC 51
- Compensation cannot be granted u/s 439 CrPC, it must be pleaded in a constitutional proceeding under Article 32. - *Union of India v. Man Singh Verma* 2025 SCC OnLine SC 456

ILLEGAL ARRESTS: CONSTITUTIONAL TORT

- Statutory framework for compensation due to wrongful imprisonment/prosecution is required - *Kattavellai v. State of TN 2025 SCC OnLine SC 1439.*
- Compensation may be directed if release is withheld despite release order due to technical errors. - *Aftab v. State of UP MA No. 1086/2025 in Crl. Appeal No. 2295/2025*

THANK YOU