

**JAIL IS THE RULE  
AND  
BAIL IS A VERY RARE  
EXCEPTION**

- The evolution of bail jurisprudence in India reflects a dynamic interplay between constitutional mandates, judicial interpretation, and evolving statutory frameworks.
- With the introduction of the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**, replacing the CrPC, and the enduring influence of the Constitution of India, the concept and practice of bail continue to be refined.

# Constitutional Perspective on Bail

## 1. Article 21 – Right to Life and Personal Liberty

- Bail is intrinsically linked to Article 21.
- The Supreme Court has consistently held that liberty is the rule and jail is the exception.
- Hussainara Khatoon v. State of Bihar (1979) – Recognized the plight of undertrial prisoners and emphasized that speedy trial and right to bail are part of Article 21.

## 2. Article 14 – Right to Equality

- Bail jurisprudence must not discriminate based on economic or social status.
- Conditions for bail must be non-arbitrary and reasonable.
- Moti Ram v. State of M.P. (1978) – Held that poor people must not be denied bail for inability to furnish surety.

# Evolution Through Judicial Interpretation

## 1. Presumption of Innocence

- A core principle upheld across judgments; bail is not to be denied merely based on accusation.

## 2. Landmark Judgments Shaping Bail Jurisprudence

### Arnesh Kumar v. State of Bihar (2014)

- Emphasized Section 41A CrPC (now Section 35 BNSS): Arrest is not mandatory for offences punishable with less than 7 years.
- Magistrates must record reasons before authorizing detention

### Satender Kumar Antil v. CBI (2021 & 2022)

- Issued guidelines on granting bail across 4 categories of offences.
- Reinforced the need to avoid unnecessary incarceration.

### Sumit Mehta v. State of NCT of Delhi (2013)

- Bail conditions must be reasonable and not excessive.

### In Re Contagion of COVID Virus in Prisons (2020)

- Bail granted to decongest prisons, reaffirming that custody should not be mechanical.

# Statutory Framework: Cr.P.C. to B.N.S.S.

## Under the Code of Criminal Procedure, 1973 (CrPC)

- Bail provisions were primarily under Sections 436 to 439.
- Distinction between bailable and non-bailable offences.

## Under the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)

- Provisions related to bail largely retained, with enhanced focus on procedural safeguards:
- Section 35 BNSS: Incorporates mandatory compliance with notice of appearance before arrest (akin to 41A CrPC).
- Section 479 BNSS: Special provision for anticipatory bail (like 438 CrPC).
- Section 480 BNSS: Regular bail (akin to 439 CrPC).
- Focus on technology and digital documentation to streamline bail hearings.

# Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 *(Para- 53, 54, 55,56)*

## When non-bailable warrants should be issued

Para 53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon;  
or
- it is considered that the person could harm someone if not placed into custody immediately.



# Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1

**Para 54-** Courts should prioritize summons or bailable warrants over non-bailable warrants.

Non-bailable warrants must be issued only after full application of mind and scrutiny of facts, given their serious impact on personal liberty.

**Para 55-** Courts must follow a gradual process:

1. First, serve summons (with copy of complaint or FIR).
2. If the accused evades it, issue bailable warrant.
3. Only if the accused continues to evade, resort to non-bailable warrant.

Personal liberty is paramount, and non-bailable warrants should be a last resort.

# Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1

**Para 56-** Courts must exercise their discretionary power judiciously, balancing personal liberty and public interest.

Non-bailable warrants are justified only in serious offences or where there's a real risk of:

- Evidence tampering
- Evasion of law

# TOTAL NUMBER OF BAIL CASES IN THE HIGH COURT OF JHARKHAND

CASE TYPE	2023	2024	UPTO June 2025
Total No. of Cases Instituted	45990	38718	18567
A.B.A.	10963 (23.84%)	8205 (21.19%)	3516 (18.9%)
B.A.	12290 (26.72%)	11088 (28.63%)	5739 (20.9%)
GRAND TOTAL (B.A. & A.B.A.)	23253 (50.56%)	19293(49.82%)	9255 (49.84%)

- There were in total 23,253 cases of bail in the year 2023, i.e., 50.56% of the total number of cases instituted in the High Court Of Jharkhand.
- There were in total 19,293 cases of bail in the year 2024, i.e., 49.82% of the total number of cases instituted in the High Court Of Jharkhand.
- There were in total 9255 cases of bail upto June 2023, i.e., 49.84% of the total number of cases instituted in the High Court Of Jharkhand.

# CASES ON DEVELOPMENT OF BAIL JURISPRUDENCE

- *Maneka Gandhi v. Union of India (1978)*: “The amount of the bond should be determined having regard to these relevant factors and should not be affixed mechanically according to a schedule keyed to the nature of the charge.
- *State of Rajasthan V Balchand (1977) 4 SCC 308*: Principle of bail not jail.
- *Prem Prakash V UOI through ED (2024)*: Recently upheld the principle laid down in Balchand of bail being the rule and jail being the exception--- through which it can be deduced that in cases of arrest by ED as well, the natural bail principle is to follow. The conditions of PMLA doesn't over ride Art. 21.

# Public Prosecutor v. George Williams [1951 Mad 1042]

The Madras High Court pointed out cases where a person granted bail may have the bail cancelled and be recommitted to jail:

- (a) Where the person on bail, during the period of the bail, commits the very same offence for which he is being tried or has been convicted, and thereby proves his utter unfitness to be on bail.
- (b) If he hampers the investigation as will be the case if he, when on bail; forcibly prevents the search of place under his control for the corpus delicti or other incriminating things.
- (c) If he tampers with the evidence, as by intimidating the prosecution witness, interfering with scene of the offence in order to remove traces or proofs of crime, etc.
- (d) If he runs away to a foreign country, or goes underground, or beyond the control of his sureties.
- (e) If he commits acts of violence, in revenge, against the police and the prosecution witnesses & those who have booked him or are trying to book him.

# **Surendra Singh vs State of Bihar 1990 [1989 (37) BLJR 496, 1990 Cri. L.J. 1904]**

Patna HC pointed out that a bail may be cancelled on following grounds:

- (a) When the accused was found tampering with the evidence either during the investigation or during the trial.
- (b) When the accused on bail commits similar offence or any heinous offence during the period of bail.
- (c) When the accused had absconded, and trial of the case gets delayed on that account. (d) When the offence so committed by the accused had caused serious law and order problem in the society.
- (e) If the high court finds that the lower court has exercised its power in granting bail wrongly. (f) If the court finds that the accused has misused the privileges of bail.
- (g) When the life of accused itself is in danger during the investigation or during the trial. (b) When the accused on bail commits similar offence or any heinous offence during the period of bail.

# Trends and Challenges in Bail Jurisprudence

## Progressive Trends

- Increasing recognition of bail as a rule, not exception.
- Emphasis on non-custodial measures, particularly for minor and economic offences.
- Judicial activism in checking unlawful and arbitrary arrests.

## Challenges

- Inconsistent application across lower courts.
- Delay in hearing bail applications, especially in higher Courts.
- Stringent bail conditions leading to prolonged incarceration of the poor and marginalized.

# Future Outlook

- BNSS aims to institutionalize reforms suggested by judiciary.
- Digital infrastructure may reduce delays in bail orders and ensure transparency.
- Need for regular training of judges and police to comply with constitutional and procedural safeguards.



# CONCLUSION

- The evolution of bail jurisprudence in India showcases a delicate balance between **individual liberty and societal interest**.
- Rooted in constitutional values and shaped by landmark judicial pronouncements, the shift from CrPC to BNSS offers an opportunity to strengthen the framework for protecting personal liberty and ensuring access to justice for all.



THANK  
YOU

The text "THANK YOU" is rendered in a bold, black, sans-serif font. The word "THANK" is on the top line, and "YOU" is on the bottom line. The letters are outlined, giving them a three-dimensional appearance. Surrounding the text are several short, black, radiating lines of varying lengths, creating a starburst or sunburst effect. The entire graphic is centered within a white rectangular area, which is itself set against a blue gradient background.