

Bail: Mandatory or Discretionary Evaluate

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Abstract: In our society for better governance's law is made by the government and it is responsibility of every person to follow law .If anyone violate the law then he will be punished. There are many types of crime in our society which are defined in the IPC'1860 and some other laws. For every offence different punishment is provided under above code. If any person commits offence he will be arrested by the police and brought before the court for trial and in last he will be convict or acquitted. Every time person arrested by the police is not accused and it is upon discretion of court to release that person on bail with condition that he will appear before court or police officer when called upon by them.

Keywords: Bail, Mandatory, Discretionary Evaluate

1. Definition of bail

The temporary release of an accused person awaiting trial sometimes on condition that a sum of money is lodged to guarantee their appearance in court.ⁱⁱ

Bail is rule and jail is exception. there are two types of offences (1) Bailable offences. (2) Non bailable offence. Sec 2(a) of Crpc,ⁱⁱⁱ bailable offence means an offence which is shown as bailable in the first schedule or which is made bailable by any other law for the time being in force. under article 21 of constitution it is fundamental right of every citizen to live life with dignity. so bail is rule and jail is exception.

2. Types of bail

Regular bail or Mandatory bail: Under section-436 of crpc^{iv} when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail:

In bailable offence right of arrested person to release on bail is absolute and indefeasible right. Under this question of discretion of court does not arise held in *Rasiklal v/s Kishore Khan Chand Wadhvani*.^v Under section-436(2) if any person not comply with the condition of bail bond as regard to the time and place of attendance the court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the court.

Discretionary bail: Section-437^{vi} when bail may be taken in case of non bailable offences (1) when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the high court or court of session, he may be released on bail, but –(i) such person shall not be released if there appear reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life; (ii) such person shall not be so released if offence is a cognizable offence and

he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven year or more or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three year or more but less than seven year:

Under section-437 accused person cannot claim bail as matter of right. When judge give bail under non bailable offence he also see some special reason like age, gender or mental condition etc. court may use his discretion to grant bail in non bailable offence if such person is under age of sixteen years or is a woman or is sick or infirm person. The division of bailable and non bailable offence is matter of parliamentary policy. Primarily release of person on bail or his not release depends upon balancing of interest between society and individual accused. It is the societal interest that fair trial and investigation to be completed and culprit get punished. And it is also individual interest that right to life and personal liberty shall not be curtailed unnecessarily. Whenever for non bailable offence a bail application is present before magistrate or court the basic tilt of court or magistrate will be in favour of accused as bail is rule and jail is exception. More grave and heinous crime, less the chance of release on bail.

Anticipatory bail: it is also type of discretionary bail. A person can't claim anticipatory bail as matter of right. Provision for anticipatory bail is given under section-438.^{vii} under section-438 *Direction for grant of bail to person apprehending arrest.*-(1) where any person has reason to believe that he may be arrested on accusation of having committed a non bailable offence, he may apply to the high court or court of session for a direction under this section that in the event of such arrest he shall be released on bail and that court may after taking into consideration *inter alia*, the following factor namely:- (i) the nature and gravity of the accusation ;(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the

application forthwith or issue an interim order for the grant of anticipatory bail:

Anticipatory bail is upon the discretion of court and court can grant anticipatory bail for unlimited period also as was held in landmark judgement Gurubaksh singh sibia v/s state of Punjab.^{viii}

3. Conclusion:

Division of bailable and non bailable offence is parliamentary policy. In bailable offence a person can

claim bail as matter of right but under non bailable offence it is upon discretion of court. Some time false FIR registered to mentally of financially disturb particular person. So it is upon court to his best while using discretion to give bail. Balance has to be drawn between individual interest and societal interest. Right to life with dignity is individual interest and at the same time wrong doer should be punished is societal interest.

ⁱ The INDIAN PENAL CODE ,1860

ⁱⁱ Oxford dictionary

ⁱⁱⁱ The Code of criminal procedure,1973

^{iv} The Code of criminal procedure ,1973

^v AIR 2009 SC 1341.

^{vi} The code of criminal procedure, 1973

^{vii} The code of criminal procedure, 1973

^{viii} AIR 1980 SC