"THE LEGAL FRAMEWORK AND IMPLICATION OF ANTICIPATORY BAIL UNDER THE CODE OF CRIMINAL PROCEDURE 1973: A CRITICAL ANALYSIS OF THE JUDICIAL APPROACH"

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DECLARATION

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LIST OF ABBREVEATIONS

AIR	All India Reporter
Bom	Bombay High Court
Cal.	Calcutta High Court
CBI	Central Bureau of Investigation
Cr.LJ.	Criminal Law Journal
Cl. F.	Federal Court of Claims
Del./NCT	Delhi High Court
DB/ FB	Divisional/Full Bench
Guj.	Gujarat High Court
GLH	Gujarat Law Herald
H.P.	Himachal Pradesh High Court
P./PP./Para	Page(s)/Paragraph
Pat./P&H	Patna/Punjab &Haryana High Court
Ker.	Kerala High Court
Kar.	Karnatka High Court
Mad. L.J.	Madras law Journal
MP	Madhya Pradesh High Court
NOC	Notes of Cases
QB	Queen's Bench
Ori.	Orissa High Court
Raj	Rajasthan High Court
Rep.	Represented By
Sec.	Section
SCR/SCW	Supreme Court Reporter/Weekly
SCC	Supreme Court Cases
SCALE	Supreme Court Alamanac
V/Vs.	Versus

LIST OF CASES

- Dharmu Naik V. Rabindranath Acharya 1978 Cri.LJ 864.
- D.K. Basu V. State of West Bengal 1997 1 SCC 416.
- Dr L.R. Naidu V. State 1984 Cri LJ 757(Kant).
- Govinda Chandra Senapati V. State of Orissa, 1996 Cri LJ 1014.
- Gurbaksh Singh Sibbia V. State Of Punjab 1980 AIR 1632.
- HDFC Bank V. J.J. Mannan 2010(1) SCC 679.
- Hema Mishra V. State of U.P. AIR 2014 SC 1066.
- Hussainara Khatoon V. State of Bihar AIR 1979 SC 1369.
- Jagat Prasad V. State of U.P.(1998).
- Jodha Ram V. State 1994 Cr.L.J 1962 (Raj.).
- Joginder Kumar V. State of U.P. AIR 1994 SC 1349.
- Kalyan Chandra Sarkar V. Rajesh Ranjan, AIR 2005 SC 921.
- Kashmira Singh V. State of Punjab 1978 AIR 2147.
- K.K. Jivah V. Union Territory AIR 1988 SC 1934; (1998) 4 SC.
- KL Verma V. State (1988) 9 SCC 348.

- K. Joglekar V. Emperor AIR 1931 All. 504.
- LilaramL. Revani V. R.D.Gandhi, 1998 Cr LJ 14 (Guj.).
- Mahendra Singh V. State of U.P. 1997 (4) Crimes 470 (All).
- Maneka Gandhi V. Union of India AIR 1978 SC 571.
- Mangi Lal V. State 1952 Cr. L.J. 1425.
- Maya Rani Guin V. State of West Bengal AIR 2003 SC 203.
- Moti Ram and Ors. V. State of M.P. AIR 1978 SC 1594.
- M. Sreenivasulu Reddy V. State Of Tamil Nadu 2000(6).
- Munish Bhasin V. NCT of Delhi (2009) 2 SCC (cri) 56; AIR 2009 SC 2072.
- Muraleedharan V. State of Kerala AIR 2001 SC 1699 (1700); (2001)4 SCC 638.
- Nancy jamshed Adajaina V. State 1993 Cr LJ 3465(Bom).
- Nandini Satpathy V. PL Dani AIR 1978 1025.
- Narinderjit Singh Sahni V. Union of India, AIR 2001 SC 3810.
- Natturasu V. State, 1998 Cri LJ 1762 at p. 1765 (Mad).
- Neela J Shah V. State of Gujarat 1998 Cri LJ 228 (Guj.).

- N.K Nayar V. State 1985 Cr.L.J. 1887 (Bom).
- Om Prakash V. State of Rajasthan 1996 Cr.LJ 819.
- Pokar Ram V. State Of Rajasthan And Anr 1985 AIR 969, 1985 SCR (3) 780. \
- Poolpandi V. Supdt., Central Excise 1992 AIR 1795.
- Pradeep Kumar Soni V. State 1990 Cr.L.J. 2055 (MP) 19.
- P Chidambaram V. Directorate of Enforcement(2018)SCC.
- Ranjit Singh V. State of M.P., 2013 AIR SCW 5728.
- Ravindra Saxena V. State of Rajasthan(2010) 1 SCC 684; (2010) 1 SCC Cri 884.
- Ramsewak V. State of M.P (1979) 1 SCC.
- Ravinder Saxena V. State of Rajasthan AIR 2002 SC 212.
- Salauddin Abdulsamad Shaikh V. The State Of Maharashtra 1996 Cr LJ 1368.
- Sanjeev Chandel V. State of H.P, 2003 Cr LJ 935.
- Sajjan Singh V. State(1955) 2 SCC.
- Satya Pal V. State of U.P. 1999 Cr LJ3709 (All) (DB).
- Savitri Agarwal V. State of Maharashtra (2009) 8 SCC 325.

- Siddharam Satlingappa Mhetre V. State of Maharashtra AIR 2011 SC 312.
- Som Mittal V. Government of Karnataka AIR, 2008 SC 1126.
- State of Gujarat V. Alpeshbhai Navinbhai Patel, 2004 Cr LJ 1191 (Guj). State rep by CBI V. Anil Sharma AIR 1977 3806.
- State of Gujrat V. Govindlal Monilal Shah AIR 1966 Cr. L.J. 1425.
- State of M.P. V. Ram KishnaBalothia AIR 1995 SC 1198; (1995) 3 SCC 221.
- State V. Captain Jagat Singh, AIR 1962 SC 253: (1962) 1 Cr.LJ 215.
- State V. Captain Jagat Singh, AIR 1962 SC 253.
- Sunita Devi V. State of Bihar 2005 SCC (Cri) 435.
- Syed ZafrulHusan V. State AIR 1984 Pat 194.
- Thayyanbadi Meethal Kunhiraman V. S.I. of Police, Panoor, 1985 Cri LJ 1111.
- T. Madhusoodan V.Supdt. Of Police, 1992 Cri LJ 3442.
- Varkey Paily V. Madthitudiyil, AIR 1967 Ker.
- Vishnu Sahai V. State of Uttarakhand(2018).
- Vijay Narain V. State, 1976 CLR 68 (H.P.).

CHAPTER-I

INTRODUCTION

1.1 BACKGROUND

Anticipatory Bail is a term that is often used in the legal world but does not have a legal definition. The expression is a convenient way of conveying that it is possible to apply for bail in anticipation of arrest. Neither section 438 of the Cr.P.C. nor its marginal note so describes it, but it is a convenient way of conveying that it is possible to apply for bail in anticipation of arrest. It is, in truth, a misnomer. It is not a bail that the court has issued in anticipation of an arrest. When a court grants anticipatory bail, it ensures that the individual will be released on bail if they are arrested.

The conflict of judicial opinion whether a High Court had inherent powers to make an order of bail in anticipation of arrest and the need to curb the prominent people's attempts to falsely accuse their rivals in order to discredit them or for other reasons by locking them up in jail for some days were the necessities, carved out by Law Commission of India in its 41st Report to introduce provision relating to Anticipatory bail.

The Law Commission in its 48 Report in the year 1972 recommended acceptance of suggestion. The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. As most things have a dark side so do this provision of the code. The object behind enacting this law was to prevent the innocent from getting trapped but with time the picture has changed and now persons accused of heinous offences and even habitual offenders are invoking it repeatedly, which was not the intent of the relief sought to be given by this section. The need to curb the acts of influential persons trying to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for a few days were the necessities carved out by the Law Commission of India in its study.

In its 48th Report, published in 1972, the Law Commission suggested that the recommendation be accepted. The purpose of Section 438 is to protect accused persons from excessive harassment by pre-trial arrest and detention. This provision of the code, like most stuff, has a dark side. The goal of enacting this law was to protect the innocent, but as time has passed, the picture has changed, and now people convicted of heinous crimes and even non- habitual offenders are invoking it on a regular basis, which was not the intention of the relief sought by this portion.

When the High Court or a Court of Session examines the facts of a deprivation of personal libert, they lean against imposing undue restrictions on the scope of Section 438, particularly when the legislature has not imposed any such restrictions in the terms of that section.

The right to personal freedom cannot be made to rely on compliance with arbitrary limitations, but an overabundance of constraints and conditions not contained in Section 438 will make its protections constitutionally vulnerable. Section 438 is a good law that should be preserved rather than repealed.

DEFINITION OF BAIL

In **Black's Law Dictionary**, bail has been defined as "a security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date."

The law lexicon defined, "bail as the security for the appearance of the accused person on giving which he is released pending trial or investigation".

Webster's Law Dictionary defined "Bail, a temporary release of a person in exchange for security given for the prisoner"s appearance at a later hearing".

"To set at liberty a person arrested or imprisoned, or security being taken for his appearance on a day and at a place certain. Because the party arrested or imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from the prison".

Justice William Blackstone defined it as "a delivery or bailment of a person to his sureties on their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to jail". Thus, when a person is released on bail, the person will be produced by him before the court when so required. The person who is released on bail is also usually asked to execute a bond for his appearance at a later stage of the proceeding.

The Supreme Court in the case **of Kamlapati v. State of West Bengal**, defines bail as 'a technique which is evolved for effecting the synthesis of two basic concepts of human value, viz., the right of an accused to enjoy his personal freedom and the public's interest on which a person's release is conditioned on the surety to produce the accused person in the Court to stand the trial.

IMPORTANCE OF BAIL

The fact that the instrument of bail has been used to restore a person's liberty from the initial stage of the accusation at the police level to the Apex Court and right from the direction for anticipatory bail to the special powers of the high court and court of session to grant bail and writs of habeas corpus and certiorari. Instrument of bail is a counter to the interest of society and the individual interest can be sacrificed for the interest of society. That is why the instrument of bail is cautiously granted by the authorities. It is Herculean task to keep the balance between these two contrary rights and the rule of law is the only yardstick to perform this task judiciously. Rule of law means to follow "procedure established by law" which has its roots to phrase "due process" found in the fifth and fourteenth amendments to the U.S Constitution. Thus, the dominant idea of bail is that the liberty of a person cannot be lightly interfered with, except in due course of law.
The whole object of arrest and detention of an accused is, obviously, to secure his appearance to abide the sentence of law. That being so, except where a statute specifically requires, the principles which should guide the courts in the exercise of their discretion to grant or not is the probability of the accused appearing to take the trial and not his supposed guilt or innocence. Considerably such as the nature of inducement, the nature of evidence and the severity of punishment awardable, have their relevance only because they affect the likelihood of the prisoner's failing to appear for his trial.

Every trial begins with the presumption of innocence of the accused. But a fair trial does not mean the employment of methods which end in the acquittal of the guilty. A fair trial has two objects in view–

(i) It must be fair to the accused.

(ii) It must also be fair to the State.

The test of fairness must be judged from this dual point of view. Just as a criminal trial must never be so conducted as would lead to the conviction of an innocent person. Similarly progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty person. A bail cannot be withheld merely as punishment because the object of detention of an accused person is never punishment. To keep a person under detention with object of punishing him on the assumption that he is guilty, even if eventually he is acquitted, is highly improper. Generally it is the rule to allow bail rather than to refuse bail and it ought not to be held as punishment.

1.2 RESEARCH PROBLEM:

The research gives answers to the following questions:

- Why is the study of the Anticipatory Bail and its grey areas are important in criminal law?
- What is the plight of the applicants of crime in India?
- What are the emerging trends with regard to the judicial discretion in granting Anticipatory Bail?
- What is the scheme in India with regard to the protection of the rights of bail to the accused?
- Why the criminal justice system of India is lagging behind in granting relief, being the most adversarial in judicial proceed?

1.3 AIMS AND OBJECTIVES OF THE STUDY:

1. To examine the legal framework of anticipatory bail under the Code of Criminal Procedure 1973 and its scope and applicability.
2. To critically analyse the judicial approach towards anticipatory bail, including the interpretation and application of the provisions of the CrPC by different courts.
3. To identify the ambiguities and inconsistencies in the provisions of the CrPC relating to anticipatory bail and their impact on the application of anticipatory bail by the courts.
4. To examine the social and legal implications of anticipatory bail, including its impact on the accused, victims, and the criminal justice system.
5. To identify the factors that influence the grant or denial of anticipatory bail and their impact on the administration of justice.
6. To provide recommendations for the improvement of the legal framework and judicial approach towards anticipatory bail to ensure that it serves its intended purpose without compromising the interests of justice.

1.4 RESEARCH HYPOTHESIS:

1. Ambiguous and inconsistent provisions of the CrPC relating to anticipatory bail have resulted in a lack of clarity regarding its scope and applicability.
2. Judiciary`s inconsistent approach towards anticipatory bail has resulted in ambiguity in its provisions and has led to uncertainty in its application.
3. The social and legal implications of anticipatory bail have been significant, affecting the rights of the accused and victims, and impacting the administration of justice. The study is expected to identify the factors that influence the grant or denial of anticipatory bail and their impact on the administration of justice.
4. The recommendations will aim to ensure that anticipatory bail serves its intended purpose without compromising the interests of justice.

1.5 REVIEW OF LITERATURE:

Asim Pandey writes in his book about the available Bail laws and the Procedure anticipatory Bail. He describes in his book that the law of bail plays a very important role in the justice administration. The law of bail is of supreme importance since it is directly and intimately connected with the liberty of a person which is safeguarded in article of the constitution.

Janak Rajin his book "Bail Law and Procedures" examined that award of bail is a standard and refusal of the bail is a special case. Tragically, the letter and actual intent of the law isn't clung to by the greater part of the Courts in our nation. Individual freedom of an individual resident and right to life under Article 21 of the Constitution is the most valuable crucial right which can't be endangered by any office or organization at all. Keeping in see the major right of residents independent of shading, position or doctrine exceptionally humble exertion has been made by the writer in this book to manage the arrangements and technique for the award of bail and anticipatory bail .P.V. Ramakrishna says in his book the privilege to freedom is one of the principal rights ensured by the constitution of the apparent multitude of enlightened nations. This book manages the law of bail, bonds, capture and authority finally. Anticipatory Bail is a component by which by which the antagonistic outcomes of deferral before preliminary can be limited. Significant legal choices of High Courts and Supreme Court have been included acceptable measure.

V.R. Krishna Ayer in his judgment in the event that Gudikanti Narsimulu v. Public Prosecutor says "noteworthiness and clear of Article 21 make the hardship of freedom, fleeting or bearing, a matter of grave concern and admissible just when the law approving it, is sensible, fair and equipped to the objectives of network great and State need spelt out in Article 19.

Sensibility hypothesizes smart consideration and predicates that hardship of opportunity by refusal of bail isn't for reformatory reason however for the bifocal interests of equity to the individual in question and society influenced." Justice Krishna Iyer additionally makes reference to that the code is secretive on the subject of bail and the Court wants to be the request custodial or not.

1.6 METHODOLOGY:

This project's research approach is both doctrinal and methodological in nature. In this project, all of the data sources used are secondary in nature. To raise awareness of Anticipatory Bail and its consequences, a Google survey form was developed. Case reporters have been referred to a number of leading books on criminal practice and bail law, including All India Reporter, Supreme Court Cases, and Criminal Law Journal, as well as Bare Acts, Magazines, Law Commission and Committee Reports, and Web Sources.

Around 60% of the population was aware of the concept and the factors to be considered when granting bail for judicial delinquency. The Supreme Court's recent recommendations for the factors to be considered were also incorporated into the presentation of the work. These Factors such as the time limit, length of the order, the fact that it is not a blanket order, the applicant's social status, and political superiority.

1.7 SUMMARY OF CHAPTERS

CHAPTER-1- The chapter deals with the basic introduction and the approach of the study of the project convened with the research methodology adopted. This will lead to the normal assessment of the concept and its derivations thereto. There were due considerations taken in the recent trends of the anticipatory bail regarding the applicant's social status…….

CHAPTER-2- The chapter deals with the legislative history of the anticipatory bail in India and the further commencement of its provisions through legal statutes. The reports of Law commission has been critically analysed with the due necessity of the requirement such special bail.

CHAPTER-3- The chapter adopts the rigorous object and scope of Anticipatory Bail under the Criminal Justice System and the various aspects related thereto. The later developments in the assessment of the procedure of Anticipatory Bail has been majorly dealt thereto

CHAPTER-4- The chapter compares the position of Anticipatory Bail effect, besides, its critical enhancement since the inception of the Anticipatory Bail in the Code of Criminal Procedure, 1973. The critical determination shall lie over various horizons later developed with social change and the alteration in the necessity of the grant of application of such Anticipatory bail

CHAPTER-5- The chapter comes out the conclusive comprehension of Anticipatory Bail induced with such ancillary comparison of other special laws with respect to the judicial intervention.

CHAPTER-6- The chapter comes out the special powers of high court or court of session regarding bail

CHAPTER-7- This is the final chapter which assimilates the Anticipatory Bail as a whole. It deals with the inferences with respect to the inception of the concept and conclusions thereto. Also, the suggestions regarding the political interference and the necessity of Anticipatory bail has been rigorously dealt on how such need of the bail is required. The objective of the work is to understand the term Anticipatory Bail, its need in the state whether ancillary or prohibitory with focus on such blanket orders to this aspect. The research work will also be dealing with the question whether such power to be interpreted as political delinquency since the time or such will actually work in cognizant. The applicability of the UP Criminal Amendment Act, 2018 has been critically analyzed with its repercussions

CHAPTER- II

LEGISLTATIVE HISTORY BEHIND ANTICIPATORY BAIL AND ITS EVOLUTION

2.1. INTRODUCTION

The previous Code of Criminal Procedure (old Code) did not have a particular clause relating to Section 438 of the current Code of Criminal Procedure (new Code). Under the old Code, there was significant disagreement among the High Courts as to whether a Court had inherent power to issue a bail order in anticipation of arrest. However, the overwhelming consensus was that it lacked such power.[1]

2.2. EVOLUTION OF THE CONCEPT

The Law Commission of India, in its 41st Report dated September 24, 1969 pointed out the necessity of introducing a provision in the Code of Criminal Procedure enabling the High and the court of session Grant anticipatory bail report (Volume I) that [2.]

The proposal for ordering the release of an individual on bail prior to his arrest (commonly known as anticipatory bail.) judicial opinion about the power of a court to grant anticipatory bail, the majority view is that such a power may not exist under the Code's current provisions. The need for anticipatory bail exists primarily because powerful people often want to implicate their opponents in false cases in order to disgrace them or for other reasons by having them held in jail for a few days.

In recent times, with the accentuation of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond,or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail.

1 Savitri Agarwal V State of Maharashtra (2009) 8 SCC 325 2 Law

2 Commission of India 41st para 39.9; pp. 320-321

The Law Commission recommended approval of the suggestion in paragraph 31 of its 48th Report (July 1972), and made the following remarks on the above clause 3 in line with the previous Commission's recommendation. We accept that this would be a valuable addition, but we must emphasise that such capacity can only be used under extraordinary circumstances. We also believe that, in order to prevent the clause from being abused by unscrupulous petitioners, the final order can only be issued after warning to the Public Prosecutor.

The provision's legislative background shows that the Joint Select Committee of Parliament proposed that bail be made available in advance of an indictment so that an individual's liberty will not be jeopardised unnecessarily.

The matter was referred to the Legal Department. Commission for consideration about the inclusion of the remedy of grant of anticipatory bail in the Code of Criminal Procedure, 1973. The Law Commission was enthused to take up the suggestion. It formulated a draught provision to provide that bail in anticipation of an arrest which ultimately got enacted as section 438 of the Code.

Confinement the distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and thus means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest police custody is an inevitable concomitant of arrest for non-bailable offence

We also believe that, in order to prevent the clause from being abused by unscrupulous petitioners, the final order can only be issued after warning to the Public Prosecutor.
The provision's legislative background shows that the Joint Select Committee of Parliament proposed that bail be made available in advance of an indictment so that an individual's liberty will not be jeopardised unnecessarily

2.3. EXPANSION OF HORIZONS OF ANTICIPATORY BAIL

The legislative history of the provision reveals that the Joint Select Committee of Parliament had initiated a thought that bail should be made available in anticipation of arrest so that liberty of an individual may not be unnecessarily jeopardized. The matter was referred to the Law Commission for consideration about the inclusion of the remedy of grant of anticipatory bail in the Code of Criminal Procedure, 1973.[3]

The Law Commission was enthused to take up the suggestion. It formulated a draft provision to provide that bail in anticipation of an arrest which ultimately got enacted as section 438 of the Code. An order of anticipatory bail constitutes, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favor it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest, the police office shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action A confinement[4]

The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and thus means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest[5] Police custody is an inevitable concomitant of arrest for non-bailable offences. contradiction in terms, in so far as far as the offence or offences for which he is detained. If the accused wants to be freed on bail in relation to the offence or offences for which he is arrested, he must seek his remedy under Section 437 or Section 439 of the Code after being arrested.[6] The need for anticipatory bail mostly results from the fact that sometimes powerful people attempt to incriminate their competitors in fake cases in order to

3 *Ibid*

4 *Sunita Devi v State of Bihar 2005 SCC (Cri) 435.*

5 *Gurbaksh Singh Sibbia v State Of Punjab 1980 AIR 1632;1980 SCR (3)*

To humiliate them or for other reasons, have them spend a few days in jail. With the emphasis on political competitiveness in recent years, this tendency has been steadily increasing.
It doesn't seem justified to require someone who has been charged with a crime to first submit to custody, spend some time in jail, and then apply for bail, with the exception of fictitious cases where there are reasonable grounds to believe that person won't abscond or otherwise abuse his freedom while on bail.

CHAPTER- III

ANTICIPATORY BAIL: CONSTITUTIONAL VALIDITY AND SCOPE UNDER CRIMINAL JUSTICE SYSTEM

3.1. INTRODUCTION

The commission view that The major reason anticipatory bail is necessary is because.....Powerful individuals sometimes try to incriminate their opponents in fake cases in order to embarrass them or for other purposes by holding them in jail for a few days. the political climate has become more volatile, competition in recent years, this trend has been steadily increasing. Apart from false cases, where there are fair reasons to believe It appears reasonable that a person convicted of a crime would not misuse his freedom while out on bail by fleeing or in any other way abusing it. to be no excuse for requiring him to first submit to jail, then stay in prison for a few days before applying for bail.

When a court issues anticipatory bail, it is making an order that a person will be released on bail until and until he or she is arrested, and it is only upon arrest that an order granting bail will be issued[7].

Anticipatory bail is a convenient way of expressing that it is likely to apply for bail in advance of being arrested. According to S. 438 Cr. P.C., a person invoking the Court's jurisdiction must have reasonable grounds to believe that he will be arrested on suspicion of committing a non-bailable offence.

3.2. APPRENHENSION OF ARREST BY POLICE OR AUTHORISED PERSON

The requirements of S. 438 Cr. P.C. apply to any apprehended arrest, regardless of whether it is made by a police officer in charge of a police station or by someone else who is legally allowed to make an arrest.To issue anticipatory bail, the High Court and a Court of Session have concurrent jurisdiction.[8]

7 Mangi Lal Vs. State 1952 Cr. L.J. 1425.

8 Balakchand Jain Vs. State of M. P. 1976 4 SCC 572.

When the place of commission of the offence and the place of apprehension of arrest are in two different states, there has been a judicial conflict over which court is competent to grant anticipatory bail. However, the dictum accepted by the majority of the High Courts is that a court of Session or a High Court with jurisdiction over the local commission of the offence can only grant anticipatory bail.

The High Courts of *Rajasthan, Madhya Pradesh, Gujarat*[9], and Delhi have upheld the legal position that a court within whose jurisdiction an individual is apprehended for a non-bailable offence is qualified to grant anticipatory bail, while a court has no jurisdiction to grant anticipatory bail to a petitioner against whom a case has been filed in another state. The Kerala High[10] Court also ruled that an arrest made outside the state would not be covered by a Section 438 order unless the arrest was made in violation of the law. Offense itself is alleged to have committed within the state.

The Bombay High Court, on the other hand, has taken the opposite stance, holding that if a crime committed in one state but an arrest is required in another, the High Court in the latter state will consider an application for anticipatory bail.

The specific stance taken by the High Courts of Karnataka and Gujarat on the subject appears to be a more appropriate interpretation, with the following ruling:
Sec 438 Cr.P.C. provides relief to the person apprehending arrest even though the court may not have jurisdiction to deal with the offence. He can seek relief in the court within whose jurisdiction he ordinarily resides. Anticipatory bail of limited duration can be granted with a direction to the petitioner to approach the court concerned. Thus an application under. Sec 438 should be finally decided by only the court within whose jurisdiction the alleged offence has been committed[11].

9. Syed ZafrulHusan V State AIR 1984 Pat 194.
10. Jodha Ram V State 1994 Cr.L.J 1962 (Raj).
11. Pradeep Kumar Soni V State 1990 Cr.L.J 2055(MP). 12 C.T. Mathew V Govt. of India 1985 Cr.L.J 1316 (Ker).

a. CONSTITUTIONAL PROTECTION OF ANTICIPATORY BAIL

The Courts have held that the broad discretionary power conferred by the Legislature on the higher echelons of the criminal justice delivery system cannot be reduced to a set of universally applicable laws, since the decision to grant or deny bail is based on a number of factors, the cumulative effect of which must be factored into the judicial judgement. A condition that proves conclusive in one case may or may not be relevant in another. Nonetheless, depending on the circumstances justifying its exercise, the Section's discretion must be exercised with caution and caution.

In order to be granted Anticipatory bail, a requirement set out in Section 438(1) of the Code must first be met. The petitioner must demonstrate that he has a valid reason to fear being detained for a crime that is not yet on the books. When the phrase "reason to believe that" is used he may be detained for a crime that is not subject to bail. The phrase "reason to believe" implies that there must be solid justification for any suspicions of the applicant's arrest.

Show that he has a nagging suspicion that somebody will level an allegation against him, and that he will be arrested as a result. The grounds for the applicant's expectation that he could be found guilty of a crime for which there is no possibility of posting bail is based must be reasonably examinable by the court, and only then will the court decide if the applicant has reason to believe he may be arrested. Sec 438(1)[12] cannot be invoked based on ambiguous and general claims, as if to protect oneself from arrest indefinitely. Further more Upon submission of an anticipatory bail application to the High Court or Court of Session, It becomes necessary for the court to apply its own judgement to the situation and determine if there is sufficient evidence to grant such relief. It cannot defer to the judgement of the Magistrate in question as and when the need arises under Section 437 of the Code. This approach defeats the purpose of Section 438.

In the case of anticipatory bail, if the proposed allegation seems to be motivated by anything other than the pursuit of justice, such as the desire to harm and humiliate the applicant by

12. *Dr L.R. Naidu v State 1984 Cri LJ 757(Kant.) ; Neela J Shah V State of Gujarat 1998 Cri LJ 228 (Guj)*

getting him detained, a direction for the applicant's release on bail in the event of his arrest is usually given. In the other hand, if it is possible, based on the applicant's history[13], that he will escape from justice if anticipatory bail is granted, such an order is not granted. The converse of these propositions, however, is not always valid.[14]

It cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides;[15] and equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. The nature nd seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant presence not been secured at the trial reasonable appreciation that the witness will be tempered with large of the public or the State.

In evaluation of the consideration whether the applicant is likely to abscond, there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice,[16] and more than there can be a presumption that the former are not likely to commit a crime and the latter are more.

If the public interest requires, retention of a person in custody for the purpose of investigation should be considered and refused while considering a petition for bail, as otherwise the investigation could be hampered, possibly resulting in the tampering of evidence. The Supreme Court has ruled that anticipatory bail cannot be given on a first-come, first-served basis. It is simply a constitutional right that was conferred long after the Constitution went into effect, and it cannot be considered an integral component of Article 21 of the Constitution. As a result, its failure to apply to a specific group of crimes cannot be deemed a violation of Article 21.[17]

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13. N.K Nayar V State 1985 Cr.L.J. 1887 (Bom).
14. Pradeep Kumar Soni V State 1990 Cr.L.J 2055(MP). 12 C.T. Mathew V Govt. of India 1985 Cr.L.J 1316 (Ker).
15. Pokar Ram v State Of Rajasthan And Anr 1985 AIR 969, 1985 SCR (3) 7
16. K.K. Jivah V Union Territory AIR 1988 SC 1934; (1998) 4 SC.
17. State of M.P. v Ram KishnaBalothia AIR 1995 SC 1198; (1995) 3 SCC

The courts have been tasked with closely examining the evidence and ensuring that the investigation is not harmed. It is a delicate balance that must be maintained in order to protect both citizen liberty and the functioning of the criminal justice system. Custodial questioning of such suspects is needed by the investigative agency in order to uncover all the connections involved in the criminal conspiracies perpetrated by the individuals that eventually resulted in the Capital tragedy.

When it is established that an action is malafide[18] or corrupted, the courts must come to a decision and do justice by avoiding abuse and unjustified detention.

In order for the Court to determine if the applicant's opinion is reasonable, which is a requirement for using the authority granted by the provision, specific events and facts must be given by the applicant.[19].

The High Court or a Court of Session exercise their discretion upon examination of the facts and circumstances to grant anticipatory bail if it think fit. They are opposed to the imposing of unnecessary restrictions on the scope of Section 438, particularly when no such restrictions have been imposed by the legislature under the terms of that section. The right to personal freedom cannot be made to rely on compliance with arbitrary limitations, but an overabundance of constraints and conditions not contained in Section 438 will make its protections constitutionally vulnerable.

Section 438 is a good law that should be preserved rather than repealed. However, the Court can enforce whatever conditions it sees fit when granting anticipatory bail, but the aim of the conditions should be to prevent the individual from obstructing the investigation. Conditions that are harsh, onerous, or unreasonable and frustrate the purpose of anticipatory bail cannot be placed. The court has no authority to impose any conditions on an accused other than those specified in the Section.[20]

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18. Muraleedharan V State of Kerala AIR 2001 SC 1699 (1700); (2001)4 SCC 638.
19. Nancy jamshedAdajaina V State 1993 Cr LJ 3465(Bom)
20. Gurbaksh Sibbia V State of Punjab 1980 AIR 1632, 1980 SCR (3) 383

The filing of an F.I.R. is not a requirement for exercising Section 438 authority, and the imminence of a probable arrest based on a fair suspicion may be shown even though an F.I.R. has not yet been filed. And if an F.I.R. has been filed, anticipatory bail can be issued if the applicant has not been arrested. The clause cannot be used until an accused has been arrested. Furthermore, the beneficial provisions of Section 438 Cr.P.C. were enacted to allow the Court to prevent the deprivation of personal liberty.[21]

The recent decision of the Supreme Court in the case of *P Chidambaram v. Directorate*[22] of Enforcement, yet again gives rise to the eternal debate between custodial interrogation and anticipatory bail.

The section 438 of Crimnal Procedure Code deals Grant of bail to the person apprehending arrest (Anticipatory bail) and empowers the high court the Court of Sessions to grant anticipatory bail upon exercising discretion. Anticipatory bail can be granted subject to conditions that the accused shall make himself available for investigation as and when required and not threaten or influence witnesses or tamper with evidence. In addition, any other condition in the interest of justice can also be imposed.

The Constitution Bench decision in *Gurbaksh Singh Sibbia v. State of Punjab* provides the most thorough examination of the essence and reach of Section 438. This decision emphasises the importance of interpreting Section 438 to reflect the presumption of innocence in favour of the accused. This is because the accused's guilt has yet to be proved in a tribunal at the time of obtaining anticipatory bail. Section 438 is regarded as the clause that safeguards personal liberty, which is at the core of India's Constitution's Article 21.

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21. Ravindra Saxena V State of Rajasthan(2010) 1 SCC 684; (2010) 1 SCC Cri 884

22. M. Sreenivasulu Reddy vs State Of Tamil Nadu 2000(6) Scale 580; JT 2005 (51) SC 585 23 Munish Bhasin V NCT of Delhi (2009) 2 SCC (cri) 56; AIR 2009 SC 2072.

As a result, the plenary power exercised under Section 438 cannot be construed in a way that imposes fetters or conditions that are not expressly stated in the provision. The afortiori stage of deciding on an anticipatory bail application should be limited to determining whether the applicant meets the requirements outlined above. This type of investigation also protects the prosecution's and investigative agencies' rights.

When determining an application for anticipatory bail, the court should be especially aware of the stigma attached to an individual's arrest as well as its repercussions, according to the ruling. In order to rule out ulterior motives and possible objectives to harm and humiliate a claimant by having him arrested, courts should investigate the validity of the charges. It has been stated clearly that the presence or absence of apprehension of the claimant absconding is the most important factor in determining if anticipatory bail should be granted or denied.
It should be noted that the judgement also pointed to the realistic situation in which anticipatory bail would almost always be granted or denied based on a specific collection of facts and circumstances. As a result, the existence and severity of the potential charges, as well as the possibility that witnesses or proof may be tampered with, are all factors that may influence the final outcome.[23]

By depending on the *Gurbaksh Singh*[24] case, the Supreme Court in the case of *Siddharam Mhetre v. State of Maharashtra (2011)* has comprehensively restated the law on anticipatory bail. The Supreme Court has introduced a new dimension to the interpretation of Section 438 by stating that there is no need to make out a special case in order to exercise control under Section 438. After a lengthy debate, the Supreme Court decided that in situations where the accused has entered the inquiry, is completely compliant with the investigating agency, and is unlikely to flee, custodial questioning should be avoided.[25]

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23. 25 Supra Note 5. 26Chinmoy Pradeep Sharma,
24. M. Sreenivasulu Reddy vs State Of Tamil Nadu 2000(6) Scale 580; JT 2005 (51) SC 585 23 MunishBhasin V NCT of Delhi (2009) 2 SCC (cri) 56; AIR 2009 SC 2072.
25. Supra Note 5. 26Chinmoy Pradeep Sharma,

Applying the principles governing Section 438 that can be gleaned from the two cases mentioned above- anticipatory bail after the High Court overturned it. This inference was reached when it was discovered that there was no reason to believe the accused would escape or attempt to sway the witnesses. It was also stated that, in the event that the need arose, bail could be revoked. Surprisingly, claims based on the values set out in the preceding decisions are conspicuously absent.

In its discussion, the Supreme Court has made a brief reference to the judgment in to discuss only a few**…….** of the many parameters this judgment has elaborately set out.[26]The Supreme Court did not delve into certain crucial factors which assume extreme relevance in the facts of P Chidambaram case.

These factors include the applicant's background, the possibility of the applicant fleeing justice, accusations made solely for the purpose of injuring or humiliating the applicant by arresting him, a balance to be struck between the likelihood of prejudice to the investigation and the protection of accused people from intimidation, humiliation, and unlawful detention, as well as the reasonable fear of influencing witnesses.

The Supreme Court, on the other hand, relied heavily on the decision in the case while ruling in favour of incarceration questioning. The Supreme Court decided in 1997 that interviewing a suspect who is comfortably situated and has a good order of anticipatory bail is qualitatively more focused on eliciting information than interrogating a suspect who is well positioned with a favourable sequence of anticipatory bail.

The Constitution Bench judgement in (supra) and its extensive discussion of the principles governing Section 438 set out in the preceding paragraphs are not stated in the judgement in. It is reasonable to argue that the decision is per incurium in such circumstances. Furthermore, the Supreme Court has interpreted Section 438 as an unusual power that should be used

26. M. Sreenivasulu Reddy vs State Of Tamil Nadu 2000(6) Scale 580; JT 2005 (51) SC 585 23 Munish Bhasin V NCT of Delhi (2009) 2 SCC (cri) 56; AIR 2009 SC 2072.

sparingly, and that anticipatory bail should only be given under rare circumstances, not as a rule. This viewpoint contradicts the law established by the Constitution Bench in the case of Siddharam Mhetre (re-affirmed in). Furthermore, the decision in the Siddharam mhetre case made it clear that a claimant does not need to make out a special case (i.e., an extraordinary case) to obtain anticipatory bail.

The need for custodial questioning is the standard justification used by investigating agencies to refuse anticipatory bail. It goes without saying that the Enforcement Directorate's claim in P Chidambaram was similar[27]. The Supreme Court granted its appeal, stating that detention is a necessary part of the investigation process for a variety of reasons, and that granting anticipatory bail could jeopardise the investigation.

b. RIGHT TO COUNSEL IN CUSTODIAL INTERROGATION

The need for in-custody interrogation must be carefully considered by the courts. Despite the security provided by Article 20(3), the manner in which custodial interrogation is carried out in India has inherent limitations. Unlike the United States, the United Kingdom, and the European Union, an accused in India does not have the privilege of having a lawyer present when being interrogated in custody. In certain nations, a convicted person's right to legal counsel includes the involvement of a lawyer.

An accused person is protected from self-incrimination under Article 20 (3), and a person who is arrested has the right to consult a lawyer under Article 22 (1). In the case of *Nandini Satpathy v. PL Dani* [28], for example, Justice Krishna Iyer's opinion that Article 20 (3) becomes operational from the stage of police questioning set new ground. The court went even further, declaring that under Article 20 (3) read with Article 22 (1) of the Constitution, the police must allow the accused's lawyer to be present while he is being interrogated.

27. Ibid
28. *AIR 1978 1025.*

Unfortunately, the Supreme Court did not obey the ruling in subsequent rulings. The Supreme Court, on the other hand, dismissed the argument that an accused is entitled to the presence of a lawyer during interrogation in *Poolpandi v. Supdt., Central Excise*[29] *Nonetheless, in DK Basu v. State of West Bengal30*, the Supreme Court, in addition to laying out specific rules for arrest and detention, mandated that an arrestee be allowed to consult with his lawyer during questioning.

In comparison to a counterpart in one of the other countries listed above, an acuesd in India has restricted access to legal advice at the time of custodial interrogation. Courts in India have always tried to strike a delicate balance between an individual's rights and the social duty to discover guilt, wherever it may be concealed, and to fulfil the justice system's final tryst with society," as Justice Krishna Iyer put it.[30]

It goes without saying that the balancing act more often than not results in upholding the right of the investigating agency to obtain custodial interrogation. The reasoning behind this perpetual saga is that unless the investigating agency gets a free hand during interrogation, the collection of evidence will get severely hampered and it will be difficult to obtain conviction. Custodial interrogation in certain cases such as those under the Prevention of Money Laundering Act,2002 assumes importance because a statement made under Section 50[31] before the officers of the ED holds more evidentiary value as compared to a statement before a police officer under Section 161 CrPC. Therefore, while considering grant of anticipatory bail, Courts have to ensure that the balance should not unfavourably tilt towards the investigating agency as a thumb rule.

29. 1992 AIR 1795. 30 1997 1 SCC 416
30. 1997 1 SCC 416
31. Supra Note 9.

The Law Commission's 268th Report on changes to the CrPC's bail laws remembered the law laid down by the Constitution Bench in 31 and the judgement in [32]. In cases of serious crimes, the Commission believes that anticipatory bail should be considered with a strict criterion. In contrast to the Supreme Court's strict view in, the Law Commission has ruled in favour of granting bail subject to stringent conditions for economic offences

The best balancing act, based on the experience of custodial interrogation in other countries, is to enable custodial interrogation in India with a similar right to the presence of a lawyer. This allays fears of coercive questioning, instils[33] confidence in detention interrogation, and strikes a good balance between the rights of the accused and the rights of the investigation agencies.

It is common knowledge that custodial interrogation is the weapon wielded by investigating agencies to secure clinching evidence against an accused. On the other hand, anticipatory bail is the shield deployed by an accused to avoid the inclemency of arrest and custody. In cases concerning anticipatory bail, the Supreme Court has expressed a variety of opinions and viewpoints. Since unusual facts play an important role in shaping the Court's decision to grant or deny bail, subjectivity has become a trademark in bail cases.

Having said that, the ultimate consideration for anticipatory bail should be the advancement of justice's ends. To do full justice, the Gurbaksh singh and decisions, which established the legal basis for bail, must be used as a leading beacon in the quest for objectivity in anticipatory bail cases. In the case of *KL Verma v State*[34], a single Supreme Court judge ruled on the length of time during which anticipatory bail orders remain in effect: Anticipatory bail given in advance of arrest in non-bailable cases does not imply that the normal court that will prosecute the accused will be bypassed. It is the proper practice to follow since it must be understood that anticipatory bail is granted by the Court of Sessions or

32. supra Note 11.
33. supra Note 4.
34. 1988) 9 SCC 348

the High Court at a point in the investigation where the investigation is incomplete and the Court of Sessions or the High Court is unaware of the existence of proof against the alleged offender.

As a result, such anticipatory bail orders should be of a limited period only, and when that duration or extended duration expires, the court granting anticipatory bail should refer the case to the regular court for resolution based on an assessment of the facts presented after the investigation has progressed or the charge-sheet has been filed[35].

The Court intended to emphasise that an order of anticipatory bail would not guarantee that the defendant will be released before the conclusion of the proceedings, but that it must be for a short period of time because the regular court cannot be bypassed. The short period must be decided in light of the facts of the case and the need to provide the accused with enough time to apply for bail in a regular court and for the regular court to make a decision on the bail application. In other words, the court can allow the accused to remain on anticipatory bail until the bail application is resolved in some way. If the accused persons so wish, they can appeal to a higher court.

To put it differently, anticipatory bail may be granted for a duration which may extend to the date on which the bail application is disposed of or even a few days thereafter to enable the accused persons to move the higher court, if they so desire.

The dictum in the KL case was upheld in the cases *of Salahudin Abudualahmed Shaikh v The State Of Maharashtra*[36] *and Sunita Devi v The State Of Bihar*; and it was held that Anticipatory bail orders should be of a limited duration only, and that on the expiry of the bail, the regular court should deal with the matter based on an appraisal of evidence placed before it after the investigation has been completed. Though it was not required that the execution of an order made under Section 438(1) of the Code be restricted in time, the Courts could, if

35. Ibid.
36. 1996 Cr LJ 1368.

there were good reasons, restrict the order's operation to a short duration, before the filing of a FIR in the matter covered by the order. In such cases, the applicant was expected to obtain a bail order under Section 437 or 439 of the Code within a reasonable time after filing the FIR.

The provisions of Section 438 Cr.P.C. cannot also be invoked to exempt the accused from surrendering to the Court after the investigation is completed and a charge-sheet is filed against him, according to another case. Such an understanding will be in violation of Section 438 Cr.P.C., since even though a charge-sheet is filed against an accused and a charge is framed against him, he may still refuse to appear in court at all, even during the trial.

[37]Section 438 of the Criminal Procedure Code contemplates detention during the course of an investigation and offers a remedy for an accused to be released on bail if he is detained during that time. When the investigation establishes a case against him and he is named as an accused in the charge sheet, the accused must surrender to the Court's custody and request daily bail.

An accused who has been charged cannot stop appearing in front of the trial court because of an order granting Anticipatory Bail. Four new factors have been inserted in sub-section (1) which have now to be taken into consideration by the Court before issuing any direction under the sub section.[38] The provisions of Section 438 Cr.P.C. cannot also be invoked to exempt the accused from surrendering to the Court after the investigation is completed and a charge-sheet is filed against him, according to another case. Such an understanding will be in violation of Section 438 Cr.P.C., since even though a charge-sheet is filed against an accused and a charge is framed against him, he may still refuse to appear in court at all, even during the trial.

These four factors are

i. Nature and gravity of accusation.

37. Supra note 7
38. HDFC Bank V J.J. Mannan 2010(1) SCC 679

a. The antecedents of the applicant including fact as to whether he has previously undergone imprisonment o conviction by a Court in respect of any cognizable offense.

b. The possibility of the applicant to flee from justice.

c. Where the accusation has been made with the object of injuring and humiliating the applicant by having him so arrested. Sec 438 does not mention anything about the duration to which a direction for release on bail in the event of arrest can be granted. The order granting anticipatory bail is a direction specifically to release the accused on bail in the event of his arrest.

d. Once such a direction of anticipatory bail is executed by the accused and he is released on bail, the concerned court would be fully justified in imposing conditions including direction of joining investigation. In pursuance to the order of the Court of Sessions or the High Court, once the accused is released on bail by The trial court,then it would be unreasonable to compel the accused to surrender before the trial court and again apply for regular bail[39]

The Supreme Court declared the law laid down in the case of *K.L. Verma v State, Salauddin Abdul* [40]*Samad Shaikh v The State Of Maharashtra and Sunita Devi V State of Bihar* as per The validity of the restrictions that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail is contrary to the basic intention and spirit of section 438 Cr.P.C.

39. Ibid.
40. Siddharam Satlingappa Mhetre v State of Maharashtra AIR 2011 SC 312

It also goes against the Constitution's Article 21. Article 21 of the Indian Constitution contains an implied measure of justice and reasonableness. The accused's personal liberty is violated when he is ordered to return to custody after the time limit has expired. By restricting the time for which an order under this section can be granted, it is unfair to impose stringent, inflexible, and restrictive rules for exercising such discretion. When anticipatory bail is issued, the protection should normally last until the conclusion of the trial, unless the temporary protection provided by anticipatory bail is curtailed when the anticipatory bail granted by the court is revoked by the court due to the discovery of new evidence or circumstances, or the accused's[41] misuse of the indulgence. In the Sibbia case, the Constitution bench stated unequivocally that section 438 Cr.P.C. does not need to be rewritten. As a result, given the Constitution Bench's clear statement of the law, the order granting bail under section 438 Cr.P.C. cannot be revoked. Anticipatory bail is a tool for ensuring an individual's liberty; it is not a licence to commit crimes or a defence against any and all charges. Questioning a suspect who is well ensconced with a favourable order under Sec 438 of the Code is qualitatively more elicitation driven than questioning a suspect who is well ensconced with a favourable order under Sec 438 of the Code.

41. Janak Raj Jai, Bail Law and Procedure, Sixth Edition, 2015, Universal Law Publishing, p. 9

CHAPTER-IV

CRITICAL DETERMINANTS ATTACHED TO THE LAW OF

4.1 INTRODUCTION

Bail is an integral aspect of the criminal justice system because it allows an individual who is awaiting trial to be released from jail. Since bail is about a person's release, the relevance of Article 21 of the Constitution's guarantee of individual liberty is called into question when deciding on a bail application. Furthermore, bail serves two interests: human liberty and societal interests. When a person is released on bail, he has a greater chance of preparing and presenting his case than if he is held in jail.Detention can also be demoted if public justice is to be supported mechanically. The high cost of holding people in jail because there is no risk of them disappearing. In non-bailable situations, judicial discretion must be exercised based on just and humane grounds, as well as certain codified provisions[42].

The Constitution protects personal liberty and equality. The right to bail is an extremely important right. The right to bail was established under the provisions of the Code of Criminal Procedure, 1973, prior to independence and the establishment of the Constitution. When bail is denied, an accused's personal liberty is taken away, and the judiciary must use its powers to issue bail. The significance and scope of Article 21 make deprivation of liberty a serious concern, and it is only legal when the law allows it and the accused can afford and provide bail. This discrimination occurs even though the amount of bail set by the Magistrate is not too high, since the vast majority of those that are brought before the courts in criminal cases are so poor that even a small amount of bail will be difficult to obtain. Due to the monetary bond as compensation for the accused's presence at the time of trial, bail has grown into a major business. In India, the courts are judge-centric and state-centric[43].The significance and

42. AIR 1979 SC 1369.
43. State of Rajasthan v. Balchand, AIR 1977 SC 2477 at 2448, Justice Bhagwati in a Report to the Legal Aid Committee

scope of Article 21 make deprivation of liberty a serious concern, and it is only legal when the law allows it and the accused can afford and provide bail.

The maxim states that bail is denied as a law and given as an exception. The notion that bail is a law and jail is an exception is a myth; in fact, the opposite is true. The worst case is when a person is arrested on suspicion of committing a crime and is forced to remain in jail due to a denial of bail. However, since certain prisoners are denied bail due to their failure to post a bond, as in the case of *Hussainara Khatoon v. State of Bihar*[44], these types of cases should be granted on natural grounds as a proper exercise of the judicial power to grant bail.

The vulnerable are unable to pay the cash bail set by the courts. The majority of people earn pitiful wages as wage labourers or joint family tillers of small farms, as a result of land alienation and fragmentation that has occurred in recent decades. The former is unable to pay bail. The latter can, but only if they put their only source of income on the line. They are hesitant to put the family's well-being ahead of individual liberty.

4.2 RIGHT TO BAIL

Bail is, as we all know, a matter of judicial discretion. Conflicting statements of individual liberty of the accused and the greater public interest must be taken into account when deciding whether or not to issue bail. Every person in India has the right to a speedy trial under Article 21 of the Indian Constitution. The aim of the new Code of Criminal Procedure, 1973 is to ensure a speedy trial. The constitutional promise of a fair, just, and rational process, as well as a substantive right to a speedy trial, is violated by the delay in the conclusion of the trial. Under the code, the police and the judge have the authority to issue bail. Bail may be requested as a matter of right in bailable offences. In this case, the police or the magistrate have no discretion. However, since most people are unaware of the law, police use discretion when issuing bail. It is important to raise awareness in this area so that police can not abuse their authority for arbitrary reasons.

44. Om Parkash v. State of Rajasthan, 1996 Cri LJ 819 at pp. 820-21(Raj)

The police officer has no right to deny release under Section 436, which clarifies that bail does not have to be granted solely by the court. The police officer may also decide if the person should be released on bail with or without a surety. [45] A police officer has no right to refuse to release an accused on bail in a bailable offence to which Section 436 applies, as long as the accused is willing to provide surety. The respondent police officer was bound to release the accused on bail in this case because he was willing to provide protection.[46]

In the case of a bailable offence, the arresting officer will issue bail himself, and if he fails to do so for whatever reason, the court will compel him to do so.

[47] In the case of *Dharmu Naik v. Rabindranath Acharya,* the appellant and his brother were arrested by the respondent police officer despite the fact that they had been given bail by the magistrate.

The appellant and his brother were unlawfully arrested and imprisoned in police custody, according to the High Court, despite the fact that they had been previously expanded on parole and the bail order was presented to him. To expect that the appellant and his brother, who had secured a release order after surrendering in court in anticipation of their detention, will remain quiet, refuse to produce the bail order, and silently submit to police custody without protest.

Even if no bail order was presented to the respondent police officer, evidence showed that surety was offered at the time of the appellant's arrest, and thus the respondent was obligated to release him on bail, since in a bailable offence, the police officer has no discretion to refuse to release the accused on bail, s As a result, the respondent police officer was found guilty of unlawful detention under Section 342 IPC[48].

45. *Chowriappa Constructions v. Embassy Constraints and Devpt P. Ltd., 2002 Cri LJ 3863 at p. 3865 (Kant).*
46. *Dharmu Naik v. Rabindranath Acharya, 1978 Cri LJ 864 at p. 867 (Ori)*
47. *Surendra Kumar v. State of M.P., 1995 Cri LJ 1517 at p. 1519 (MP)*
48. *1978 Cri LJ 864 at p. 867 (Ori)*

4.3 PROVISION OF ANTICIPATORY BAIL

The Criminal Procedure Code of 1973 makes no mention of anticipatory bail. A individual can request a hearing in the Court of Session or the High Court anticipatory bail under section 438 of the code. Where there is a fair fear that the individual will be convicted in a non-bailable case, anticipatory bail is issued. Anticipatory bail means that the individual will be released on bail at the same time he is arrested. Furthermore, anticipatory bail is a release from jail rather than a detention a individual can submit a request to the High Court or Court of Session for anticipatory bail under section 438 of the code. Where there is a fair fear that the individual will be convicted in a non-bailable case,

While a police officer has the authority to arrest, he or she is obligated to release at the moment of arrest. In the old Criminal Code of 1898, there was no provision for anticipatory bail. In its 41st report, the Law Commission recommends that a clause be added that allows the High Court and Court of Session to grant Anticipatory Bail.[49]

The commission believes that anticipatory bail is necessary because powerful people often want to implicate their opponents in false cases in order to disgrace them or for other reasons by having them held in jail for a few days. On the recommendation of the Law Commission in its forty-first report, Section 438 was added to the Code of Criminal Procedure.

A individual who is afraid of being arrested for committing a non-bailable offence may file a petition under Section 438. Even if the court does not have jurisdiction over the offence, Section 438 offers relief to the individual who is about to be arrested. He has the option of seeking redress in the court in which he normally resides. Anticipatory bail for a short period of time may be issued with a direction to the petitioner to go to the appropriate court. As a result, an appeal under Section 438 can only be determined by the Court that has jurisdiction over the alleged offence.

49. Law Commission of India, 41st Report on tile Code of Criminal Procedure, Vol. J. p. 311 (969).

Section 438(1) of the code establishes a requirement that must be met before anticipatory bail can be issued. The claimant must demonstrate that he has fair reasons to assume he would be arrested for a non-violent offence. It is not enough to demonstrate any kind of vague suspicion that someone may make an allegation against him, as a result of which he might be arrested. The premises on which the applicant's belief that he may be convicted for a non-bailable offence is based must be reasonably[50] examineable by the Court, and only then will the Court decide if the applicant has reason to believe he may be arrested.

Section 438(1) cannot be invoked based on ambiguous and general claims, as if to protect oneself from arrest indefinitely. Anticipatory bail is a court order issued before an arrest that states that if an individual is arrested, he will be given bail. However, the primary distinction between a bail order and an anticipatory bail order is that the former is issued only after arrest (and thus becomes effective later), while the latter is granted prior to arrest and thus becomes effective immediately. Anticipatory Bail is a clause of Section 438 of the Criminal Procedure Code that allows an individual to obtain bail ahead of time[51].

This means that a person may demand or request bail in the event that he or she is named or suspected of committing a non-bailable offence. Anticipatory bail is intended to protect a person who has been falsely accused or charged, most often due to professional or personal animosity, by ensuring the falsely accused person's release even before he is detained.

To obtain anticipatory bail, the person requesting it must go to the Court of Sessions or the High Court and apply for it, citing Section 438 of the Code and providing adequate justification.[52]

If the Court, based on a number of conditions and the nature of the case, sees merit in the petition the bail is granted. Hence if and when the person is arrested, he will be immediately released on the basis of the anticipatory bail.

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50. Dr. L.R. Naidu v. State, 1984 Cri LJ 757 (Kant.); Neela J. Shah v. State of Gujarat, 1998 Cri LJ 228 (Guj)
51. Premption,Cure-AnticipatoryBai
52. Lilaram L. Revani v. R.D.Gandhi, 1998 Cr LJ 14 (Guj)

4.3.1 OBJECT AND PURPOSE OF ANTICIPATORY BAIL

The purpose of Section 438 is to protect an individual from excessive harassment and discourage arrest for a non-bailable offence. An application to the High Court or the Sessions Court for this right may be granted. An anticipatory bail order is a form of protection against police detention in the event of an arrest for the offence or offences for which the order is given. In other terms, unlike a bond order issued after an post arrest.It is a pre-arrest legal procedure that states that if the person in whose favour the order is given is convicted on the charge on which the order was issued, he will be released on bail. Section 46(1) of the law, which deals with how arrests are to be made, states that the police officer or other person making the arrest must actually contact or confine the person to be arrested's body, unless there is a reason not to[53]. arrest for a non-bailable offence. An application to the High Court or the Sessions Court for this right may be granted. An anticipatory bail order is a form of protection against police detention in the event of an arrest for the offence or offences for which the order is given.

Anticipatory bail is intended to shield the claimant from undue abuse as a result of a restriction on his right to personal liberty. Anticipatory bail is simply bail in anticipation of detention, and it can only be obtained in cases of non-bailable offences because bail is issued as a right in bailable offences. The aim of anticipatory bail is to relieve a person of undue fear or embarrassment. Section 438 is a rare occurrence that can only be included under exceptional circumstances. For anticipatory bail to be granted, there must be certain very compelling circumstances. Where the petitioner's failure to respond to summonses indicated that he wished to elude justice, it cannot be assumed that the allegation levelled against him was made maliciously or with an ulterior motive, and therefore anticipatory bail would not be appropriate.

53. *Bharat Chaudhary & Anr. v. State of Bihar & Anr. on 8 October, 2003*

The object of Section 438 is to prevent undue harassment of the accused persons by pre-trial arrest and detention. The fact, that a Court has either taken cognizance of the complaint or the investigating agency has filed a charge-sheet, would not by itself, in our opinion, prevent.

The gravity of the offense, as well as the need for custodial interrogation, are important factors to consider when granting anticipatory bail, but these are the only considerations that the concerned Courts must make when considering a petition for anticipatory bail, and the fact of taking cognizance or filing a charge sheet cannot be construed as such.

In my view, the Courts, namely the Court of Sessions and the High Court, have the requisite authority to grant anticipatory bail in non-bailable offences under Section 438 even before cognizance or filing of a charge sheet, if the facts of the case warrant it. In order to secure anticipatory bail, one must provide tangible evidence to the Court of Session or the High Court from which the Court can conclude the likelihood of an imminent detention of the accused in such non-bailable cases

Anticipatory bail, on the other hand, does not grant full immunity from detention; rather, it grants immunity from custody upon arrest, i.e., anticipatory bail orders the arresting officer to release the accused on bail as soon as the accused provides the bail. As a result, a non-bailable offence becomes a bailable one for the purposes of detention in that situation. Anticipatory bail is a tool to protect an individual's liberty; it is not a ticket to committing a crime or a defence against any and all types of allegations, probable or impossible.[54]

It confers on the High Court and the Court of Session the power to grant anticipatory bail if the applicant has reason to believe that he may be arrested on the accusation of having committed a non-bailable offence.

The first part of the section outlines the circumstances in which an individual can apply for anticipatory bail. The second section gives the High Court or the Court of Session jurisdiction.

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54. Ashok Daga v. State, 1984 GLH 75

As a result, the second element may be interpreted as purely jurisdictional, implying that the High Court and the Court of Session share jurisdiction. If a Court is given jurisdiction, it retains it throughout until it is stripped away directly or by implication. There are no explicit terms in the section stating the authority is revoked in any case. It does not appear that the authority of any of the Courts is revoked or terminated by default,

It seems that the lawmakers did not wish for one of the two courts, the High Court or the Court of Session, to be excluded. If the lawmakers had meant it to be that way, they would have made it plain in Subsection (3) of Section 397 or Subsection (3) of Section 399 of the old code. [55] Anticipatory bail cannot be asserted as a right; it is simply a constitutional right conferred long after the Constitution entered into force. Article 21 of the Constitution does not include it as a requirement.

4.3.2 REGULAR BAIL AND ANTICIPATORY BAIL

The difference between bail and anticipatory bail is that the former is issued after arrest and hence means release from police custody, while the latter is granted in anticipation of arrest and thus effective at the time of arrest[56]. As a result, pre-arrest bail and post-arrest bail are interchangeable since they all refer to the release after arrest. It is evident from the code's compilation and scheme, as well as Section 438, that the legislature wanted to include anticipatory bail in the category of bail rather than treat it separately as a differentiator from bail. Unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued he shall be released on bail. A direction under Section 438 is intended to confer conditional immunity from the touch as envisaged by Section 46(1)[57] confinement. There is no substantial difference between Sections 438 and 439.So far as appreciation of the case as to whether or not a bail is to be granted is concerned.

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55. Natturasu v. State, 1998 Cri LJ 1762 at p. 1765 (Mad)
56. Pokar Ram v. State of Rajasthan, AIR 1985 SC 969 at pp. 970-71
57. Criminal Appeal Nos. 525-526 of 2012 (Arising out of SLP (Crl.) Nos. 304-305 of 2012).

As a general rule, neither anticipatory bail nor normal bail can be issued. Anticipatory bail is an unusual right that can only be given under rare circumstances. The court's judicial discretion must be adequately exercised after careful consideration to determine if the case is appropriate for anticipatory bail.

The difference between an ordinary order of bail and an anticipatory order of bail is that the former is issued after arrest and hence results in release from police custody, while the latter is granted in advance of arrest and thus becomes effective at the time of arrest. Arrest for non-bailable offences is invariably accompanied by police detention. Arrest for non-bailable offences is invariably accompanied by police detention. In terms of the offence or offences for which he is convicted, granting anticipatory bail to accused who is under indictment is a contradiction in terms. If the accused wishes to be released on bail for the offence or offences[58] for which he is convicted, he must pursue his redress under Section 437 or Section 439 of the code.

4.4 FOR ANTICIPATORY BAIL ACCUSED NEED NOT MOVE THE SESSIONS COURT FIRST

Section 438 is written in a straightforward and unambiguous manner. It gives the High Court and the Court of Session explicit direction-giving powers. It is true that in a hierarchical court system, the High Court supervises and controls the Court of Session, although the latter is subordinate to the former. Should such subordination be taken into account in interpreting Section 438.[59] The response is unequivocally negative. Where an enactment's language is clear, the intention must be deduced from the language itself, and deviation from this can only be justified if the literal sense is absurd or undermines the enactment's aim. It would not be proper for the High Court to refuse to entertain the application under Section 438 on the grounds that the party has not moved the Court of Session in the first place, despite the express language of the provision conferring concurrent jurisdiction on the High Court and the Court of Session. There can be no rule of procedure that contradicts the legislative

58. Sunita Devi v. State of Bihar, 2005 SCC (Cri) 435.
59. Narinderjit Singh Sahni v. Union of India, AIR 2001 SC 3810 at p. 3825 : (2002) 2 SCC 210.

mandate. If a person has reason to believe that he may be arrested on an accusation of having committed a non- bailble offence under the section of 488(1)[60].

4.4.1 APPREHENSION OF ARREST NECESSARY FOR ANTICIPATORY BAIL

It is common knowledge that Section 438 only applies in the case of an apprehension of **detention…..** and that if the accused is behind the prison bars following arrest for cognizable offences, the issue of relieving the accused of undue humiliation and abuse does not arise. A individual facing arrest for a non-bailable offence can file an application under Section 438.A individual apprehending arrest can file an application under Section 438 if they are accused of committing a non-bailable offence.[61] It is reflective of the fact that an anticipatory bail application is based on a fear of arrest, which necessitates the use of Section 438 force.

As a condition precedent to its application, Section 438 makes it incumbent that there must be an existing accusation of having already committed a non-bailable offence. On such an accusation there must be reason to believe that applicant may be arrested.
A mere apprehension of arrest will not suffice. That must be on the basis of an accusation of having committed a non-bailable offence.[62]

That is to say, the fear must be logical and based on known evidence. Imaginary charges or potential charges in the future will not suffice. There can be no fair fear of an existing danger of arrest in the case of those allegations that have yet to be made. An current valid apprehension of arrest on the existing charge of having already committed a non-bailable offence prior to the point of filing the application is a condition precedent for an application under Section 438[63].

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60 *Bimaladak v.State,1997 Cri LJ 1969 at pp. 1970-71 (Cal) : 1997 Cal Cri LR 72*

61 *Thayyanbadi Meethal Kunhiraman v. S.I. of Police, Panoor, 1985 Cri LJ 1111 at p. 1113 (Ker)*

62 *Savitri Agrawal v. State of Maharashtra, AIR 2009 SC 3173 : (2009) 8 SCC 325.*

63 *Ramsewak v. State of M.P., 1979 Cr LJ 1485 (DB).*

The charge must be stated in the application, and the path sought is for release in the event of detention in accordance with the charge. Security under Section 438 may only be sought against a specific allegation, not against the possibility of arrest in general for unspecified current or potential accusations.[64]

4.4.2 THE ANTICIPATORY BAIL HAS ALL THE LEGAL CONSEQUENCES OF BAIL

The expression of anticipatory bail has not define in the code. Anticipatory bail means bail in anticipation of arrest which is specially covered by Sections 436 to 439 of the code, Section 438 governs anticipatory bail forming a part of it. It is also clear that even if the grant of bail is permissible under any other provisions of the code under certain special circumstances, the said release on bail will either be deemed to have been granted under chapter XXXIII of the code or the same will have to be granted subject to the provisions of the code relating to bail, which again means chapter XXXIII of the code. For example, bail under the proviso (a) of Sub-section (2) of Section 167 and under Sub-clause (b) of Section 209 of the code. Once bail is granted to the accused under chapter XXXIII, it naturally follows that the bail would continue to remain in force till it is cancelled under Section 437(5) or under Section 439(2). [65] In short, anticipatory bail is also a bail with all its legal consequences and effects. Legally speaking, there is no substantial distinction between anticipatory bail and regular bail except that the former is a pre-arrest legal process, whereas, the latter is a post-arrest legal process.

4.4.3 REQUIREMENT OF OBTAINING REGULAR BAIL WITHIN THE DURATION OF ANTICIPATORY BAIL NOT ENVISAGED BY LAW

When the language of a legislative provision is explicit, the provision should be interpreted in its plain and natural context, unless the plain and natural interpretation leads to absurdity. The rule established by Tindal, C.J. in the Sussex Peerage case still applies. The rule goes like this: "If the terms of the law are precise and unambiguous in themselves, then nothing more can be

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[63] *(2009) 8 SCC 325*

[64] *Chinna Reddy v. N. Vidyasagar Reddy, 1982 Cr LJ 2183 (AP): 1982 (2) Andh LT 442.*

done than to expound those words in their normal and ordinary context." In such situations, the lawgiver's meaning is better expressed by the terms themselves.

To put it another way, legislative enactments must be construed according to their plain sense, with no terms added, changed, or amended unless it is plainly appropriate to prevent a clause from being unintelligible, absurd, irrational, unworkable, or totally irreconcilable with the rest of the law. The simple and literal sense of Section 438[65] does not provide for the same person to be granted bail twice, i.e,. anticipatory bail and standard bail. No canon of interpretation allows for such a universally applicable practice to be read into Section 438[66] provisions.

[65] *Devidas Raghu Naik v. State, 1989 Cr LJ 252*
[66] *Sussex Peerage case (1844) 11 Cl and F 85.*

CHAPTER-V

JUDICAL APPROACH AND INTERVENTION WITH RESPECT TO ANTICIPATORY BAIL IN INDIA

5.1. INTRODUCTION

From the beginning of the criminal justice system's administration, the options of bail and prison are available. These options are valid in both bailable and non-bailable situations. The functional division of offences into two groups has no effect on the actual functioning of the bail system, since bail must be granted on the assumption that the accused will appear in court for trial on the scheduled date. The nature of the crime may be a consideration, but the exercise of judicial discretion with regard to release is solely concerned with the individual charged, not the charge levelled against him Bail-jail options are available in all cases[67], and the judicial authority is the sole arbiter in the matter of granting or denying bail, which can come up for review before it at various stages of the criminal proceedings. Release on bail presupposes that an accused has been placed in the custody of the state for suspected violations of the law.

If the charge is for a bailable offence, he might be allowed to post bail if he is willing to provide the necessary surety. An convicted person may also be released if he signs a bond with or without sureties. In any of the above situations, he must appear before the Court on the appointed date. The test to be followed in bail cases is the test of fair belief, rather than the judgement and conclusion that signify the end of the trial. The charges made, the accompanying evidence, including the police report, facts contained in the petition for bail, and the grounds of op are all available documents for the court to consider when deciding whether or not to grant bail[67].

66 *(1992) 1 SCC 22*
67 *Ibid. 76 (1995) 5 SCC 326*

5.2 JUDICIAL APPROACH REGARDING SPEEDY DISPOSAL OF CASE AND ANTICIPATORY BAIL APPLICATION

Section 436A was also created to consider the situations in which bail can be given on the basis of delayed trials while an individual is in custody. When an individual has been detained for up to one-half of the full sentence, the law allows for the issuance of bail.[68] It was argued that the said provision only applies during trial, and that the first case is not protected by it because the appellant in that case has not served the necessary detention time to be eligible for bail under the said provision.

The Honourable Supreme Court in its recent judgment in Hussain case laid down guidelines and specially mention in Para 10 Directions given by this *Court in Hussainara Khatoon*[69] to this effect were left to be implemented by the High Court which are since this court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different states should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of under trials without reference to specific fact-situations in different cases may prove to be hazardous. While there can be no doubt that under trial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with six months[70].

68. *1995) 5 SCC 326*

69 (2003) 2 SCC 45

70 Bail and its implications

Sympathy for those on trial who are serving lengthy sentences due to the pending of their cases must be balanced against the effect of crime, especially serious crime, on society, and these factors must be weighed in light of the facts in pending cases. Although it is undeniable that trials of those convicted of crimes should be concluded as quickly as possible, general instructions concerning the judge strength of the subordinate judiciary in each state must be addressed and supervised by the state's High Court[71].

We share the sympathetic concern of the learned counsel for the petitioners that under trials should not languish in jails for long spells merely on account of their inability to meet monetary obligations [72.]

We believe that such monitoring can be done more efficiently by the High Courts because it would be simple for them to collect and collate statistical data, apply the broad guidelines already provided, and deal with the situation when it arises from the status reports submitted to them. The High Court's job is to ensure that the court's guidelines are followed to the letter and spirit. We believe that requesting the chief justices of the High Courts to conduct a study of such cases in their states and provide appropriate directions where necessary to ensure proper and successful enforcement of the guidelines will suffice. Instead of repeating same direction already issued, it would be sufficient to define…. the High Court to ensure expedition petition of the case[73].

When the accused is in prison, magistrate trials are usually completed in six months, and session trials are usually completed in two years. At the end of the year, every effort is made to dispose of all cases that are five years old. If an under trial has served a term of

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71 Bail and its implications
72 (2001) 4 SCC 280.
73 (2005) 8 SCC 21. 82 (2011) 1 SCC 784
74 AIR 2000 SC 1023: 2000 AIR SCW 582: 2000 Cr.LJ 444

imprisonment in excess of the sentence likely to be awarded if conviction is reported, the under trial must be released on personal bond as a complement to Section 436A, but in accordance with its spirit. The concerned trial courts could make such an assessment from time to time.

The timelines outlined above could serve as a benchmark for evaluating judicial performance in annual confidential reports. The High Courts have been asked to ensure that bail applications filed before them are determined within one month, and that criminal cases involving defendants who have been in prison for more than five years are completed as soon as possible. The High Courts have the authority to develop, issue, and control effective action plans for the lower courts. The High Courts can track steps taken on the administrative and judicial sides to expedite investigations and trials from time to time. In light of this Court's decision in Ex. *Captain Harish Uppal v. Union of India*, the High Courts may take whatever stringent measures they deem necessary.

a. JUDICIAL TREND REGARDING BAIL- RULE IS BAIL NOT JAIL

The Supreme Court incorporated the concept of bail in the case of Sunil Fulchand v Union of India. Bail is well understood in criminal law, and the Criminal Procedure Code of 1973 contains detailed provisions on bail. A person who has been arrested for a non-bailable offence or who has been convicted of an offence after a trial is given bail. The effect of granting bail is to free the accused from detention while the court retains constructive contract rights by the terms of the bond obtained from him.

It is important to remember that the Legislature has used deciding whether or not to grant bail involves evaluating the prosecution's ability to present prima facie evidence in support of the charge and the strength of the case against the accused..

At this point, it is not anticipated that the evidence will prove the accused's guilt beyond a reasonable doubt. The exercise of judicial discretion should on considering the just and human factors. As it should be ruled out that in some brutal, heinous and inhuman crimes bail must not be granted moreover the democratic principle of liberty.

The jurisdiction to grant bail in a bail application is to be exercised on the basis of established principles, taking into account the circumstances of each case. The nature of the charge, the nature of the evidences in support of it, the standing character and behaviour of the accused, fair fear of being tempered with the large concern of the public and state must all be taken into account when granting bail. On the other hand, due to poverty, some prisoners are denied bail because they are unable to deposit the necessary security. In these types of cases, as in *Hussainara Khatoon v. State of Bihar,* it should be granted on natural grounds as a proper exercise of judicial discretion in granting bail.. *In State of Rajasthan v. Balchand* [87]**,** the accused was convicted by the trial court. When he went on appeal the High Court acquitted him.

The state filed a special leave petition with the Hon'ble Supreme Court under Article 138 of the Constitution. The accused was ordered by the Court to surrender. After that, he applied for bail. For the first time, Justice Krishna Iyer spoke out against the inequitable bail scheme in place at the time.

While the scheme of pecuniary bail has a long history, it is time to reconsider. It's possible that in most situations, an undertaking will suffice. The accused, a poor mason, was found guilty in *Moti Ram and Ors. v. State of M.P.*[75]**.** The Supreme Court had issued a hazy order, directing the Chief Judicial Magistrate to expand his bail without specifying sureties, bonds, or other conditions.

In Maneka Gandhi v. Union of India, Justice Krishna Iyer once again spoke against the unfair system of bail that was prevailing in India. No definition of bail has been given in the code, although the offences are classified as bailable and non-bailable.

Further, Justice P.N. Bhagwati [76]spoke about how unequal and unjust the bail system is when seen through the lens of a person's economic circumstances. Even though the amount of bail is high for some, a vast majority of those who are brought before the courts in criminal cases are so poor that even a small amount of bail will be difficult for them to provide. The just and human factors should be taken into account when exercising judicial discretion. In addition to the democratic concept of liberty, it should be ruled out that in certain barbaric, horrific, and cruel offences, bail should not be given. Bail is a post-arrest solution that allows the accused suspect to be released before his trial date.

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75 AIR 1978 SC 1594

76 AIR 1978 SC 571.

b. CONCURRENT JURISDICTION

Although under this section concurrent jurisdiction is given to the High Court and sessions court, the fact that the sessions court has refused to bail under this section does not operate as a bar for the High Court entertaining a similar application on the same facts and for the same offence. However, if the choice was made by the party to move first the High Court and the High Court has dismissed the application, then the decorum and the hierarchy of the courts require that if the Sessions Court is moved with a similar application on the same facts, the said application be dismissed.[77] Where bail petition of the accused is pending in the High Court, the accused cannot pursue his bail application simultaneously before the Court of Sessions.[78]

Even if a bail application is denied by the Court of Session, a person in custody can apply to the High Court for bail under Section 439 (1),[79] since the High Court is not exercising any revisionary power, but rather a special power in such cases. On the other hand if the fresh application was meant to overcome the earlier order of rejection of bail by the High Court, judicial decorum requires that the Court of Session should direct that accused to approach the High Court.

It is well-established rule that no subsequent bail application can be granted unless the circumstances have significantly changed. Of course, the concepts of res judicata do not apply to bail applications, but filing bail applications repeatedly without any change in circumstances can lead to bed precedents. An order denying a bail application does not rule out the possibility of a subsequent application with further proof, new developments, and different consideration. Modified reconsideration does not reverse an earlier negation, and interim directions are not final adjudications.

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77. State v. Captain Jagat Singh, AIR 1962 SC 253: (1962) 1 Cr.LJ 215
78. Mahendra Singh v. State of U.P. 1997 (4) Crimes 470 (All
79. Vijay Narain v. State, 1976 CLR 68 (H.P.)

While the principle of res judicata and similar doctrines are not applicable in criminal cases, the doctrine of judicial discipline is binding on the courts due to the hierarchical structure in our country. The conclusions of a higher Court or a co-ordinate bench must be given serious consideration by a higher Court or a co-ordinate bench while a bail application is being considered at a later stage after it has been denied previously. In this case, the Courts must give the former or higher Court due consideration when refusing the bail application.

Normally, topics that have been discussed previously will not be allowed to be revisited on the same grounds, as this would lead to speculation and ambiguity in the administration of justice, as well as the possibility of forum hunting. The decision of a superior forum is unquestionably binding on the subordinate for the same issue, even in bail matters, unless there is a material shift in the fact situation calling for a new decision.

For a certain point of view even if there is space for filing a subsequent bail application in situations where previous applications have been denied, the same can be done if a change in the facts or the law causes the earlier view to be interfered with or the earlier finding has become obsolete. This is the narrow window of opportunity for an accused who has already been refused bail to file a new application.[80] However, Article 21, which protects the above-mentioned right, also allows for the deprivation of personal liberty by legal means. According to the country's criminal laws, anyone convicted of non-bailable offences is subject to detention in prison while their case is pending unless he is granted additional bail in compliance with the statute.

In Aasu vs State of Rajasthan[81], the Supreme Court recently held that in the event of an arrest, the petitioner should be admitted to bail subject to the arresting officer's satisfaction that the petitioner would cooperate with the investigation as required.

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[80] *Dal Chand v. State of U.P. 2000 Cr LJ 4579 (ALL) (DB). 94 Babu Singh v. State of U.P. AIR 1978 SC 527 (para 2).*

[81] *Kalyan Chandra Sarkar v. Rajesh Ranjan, AIR 2005 SC 921: 2005 AIR SCW 536: (2005) 2 SCC42.*

a. **ANTICIPATORY BAIL APPLICATION TO BE DECIDED WITH DUE CARE**

Great ignominy, humiliation and disgrace are attached to the arrest. Arrest leads to many serious consequences not only to the accused but for the entire family. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage. Arrest and detention also directly affects the liberty of an individual. Under the Constitution of India life and liberty of a person is given highest importance. Any deprivation of liberty of a person, therefore, must be closely watched by the Court. Life and liberty of a person can be taken away for valid reasons only and it should have a clear sanction of law. In view of this where a person comes before the court with an application for anticipatory bail on reasonable apprehension that he would be deprived of his liberty without a just cause, the Court must examine the application with all seriousness. If applications of anticipatory bail are dealt with mechanically and perfunctorily it would cause gross injustice to the applicant.

It is therefore exhorted in case that while considering an application for anticipatory bail, the court must examine all the relevant aspects. Without proper examination of the relevant material the Court should not dismiss or grant the application for anticipatory bail. This aspect has been made clear by the Supreme Court in case in the following words:

The complaint lodged against the accused must be fully investigated, including whether the defendant has already filed a false or frivolous complaint. The Court should also look at whether the accused and the complainant have any family disputes, and the complainant

should be informed that if the case is found to be false or frivolous, strict legal action would be taken against him. If there is evidence of collusion between the plaintiff and the investigating officer, then action will be taken. The gravity of charge and exact role of the accused must be properly comprehended. In exceptional cases, the reasons could be recorded immediately after the arrest so that while dealing with the bail application, the remarks and observations of the arresting officer can also. [103]

i. DIRECTION FOR GRANT OF BAIL TO PERSON APPREHENDING ARREST UNDER SECTION 438.

When someone has cause to believe that he will be detained on suspicion of committing a crime for which there is no possibility of bond, he or she may apply to the High Court or the Court of Session for a direction under this section, and that Court may, if it sees fit, order that person to be released on bail in the event of such detention, taking into account, among other things, the subsequent elements:

1. the nature and gravity of the charge;

2. The applicant's history, including any time he may have spent behind bars following a conviction for a cognizable offence.

The application should either be immediately denied or a provisional order for the issuance of anticipatory bail should be given if the allegation is made with the intention of injuring or humiliating the claimant by having him arrested: An officer in charge of a police station may arrest the applicant without a warrant based on the accusation in the application if the High Court or, as the case may be, the Court of Session has not made an interim order under this subparagraph or has rejected the application for anticipatory bail.

1-A) The Public Prosecutor must have a fair opportunity to be heard before the application is ultimately heard by the Court, thus if the Court issues an interim order under Subsection (I), it must immediately serve copies of the order on the Public Prosecutor and the Superintendent of Police.

(1-B) The person seeking anticipatory bail must be obliged to present at the final hearing of the application and the passing of a final order by the Court, if the Court judges such presence suitable in the interest of justice, on an application filed to it by the Public Prosecutor.

(2) Any restrictions that the High Court or the Court of Session deems acceptable in light of the circumstances of the case, including any requirements that it deems appropriate in light of the circumstances of the case, may be included in a direction issued under paragraph (1).

i. A requirement that the subject make himself available for questioning by a police officer as needed.

ii. A restriction prohibiting the person from directly or indirectly offering any enticement, threat, or promise to anybody who is aware of the case's facts in an effort to prevent that person from telling the court or a police officer about those facts.

iii. A restriction prohibiting the person from leaving India without the Court's prior approval.

iv. Any further conditions that may be imposed in accordance with Section 437's subsection (3), as if the bail had been approved pursuant to that subsection (3).

If a magistrate taking cognizance of such an offence determines that a warrant should be issued in the first instance against that person, that person will be released on bail. If a magistrate taking cognizance of such an offence determines that a warrant should be issued in the first instance against that person, that person will also be released on bail.

i. JURISDICTION TO GRANT ANTICIPATORY BAIL-JAIL

When a person is convicted of a non-bailable offence and there are fair grounds to believe he has committed an offence punishable by death or life imprisonment, various factors come into play, according to Section 437. All such offences have been left to the discretion of the court in question. Bail should not be denied as a form of retaliation. A individual accused of a crime, no matter how heinous, must be treated as innocent until proven guilty. Several factors have been weighed by the court when deciding whether to grant or refuse bail, including the severity of the offence, the risk of the accused absconding, or the chances of him tampering with witnesses or abusing his liberty, as well as the prima facie existence of the facts available on the record. There are also considerations to be made when determining whether or not to issue anticipatory bail. Aside from that, it's important to remember the background and circumstances that led the Law Commission to suggest the inclusion of an anticipatory bail clause in the statute book.[82]

According to Section 438, the High Court a nd a Court of Session have reciprocal authority to grant anticipatory bail. When a person has reason to believe that he will be arrested on suspicion of committing a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section, and that Court may, if it thinks fit, direct that he be released on bail in the event of such arrest, taking into account, among other things, the following factors:

[82] Bansi Lal v. State of Haryana, 1978 Cri LJ 472 at p. 476 (P & H).

a. The type and seriousness of the accusation.

b. The applicant's ancestry, including any history of being an accused criminal..

c. The possibility of the applicant o free from justice.

d. Where the accusation has been made with the the applicant by having him.**106**

e. The nature and gravity of the accusation.

The potential for the petitioner to be exempt from justice. If the charge has been made with the intent to harm or humiliate the applicant by having him detained, either reject the application right away or give a temporary order granting anticipatory release. [83]

While an apprehension of arrest on suspicion is a requirement for using Section 438, an accusation can exist until a case is filed with the police. As a result, apprehension must be focused on genuine suspicion, and arrest must be imminent. When viewed in this way, it is apparent that the location of arrest apprehension is important.[84] According to an examination of Section 438, a person who seeks the Court's jurisdiction must have cause to expect that he will be arrested on suspicion of committing a non-bailable offence. The power conferred by Section 438 is unusual in nature, and it is only used in rare circumstances where it appears that the person's identity might be wrongly determined on certain grounds.

In the case of Gurbaksh Singh Sibbia etc. v. State of Punjab,[85]was held that legal position 438 of the Code of Criminal Procedure, 1973

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[83] *Narinderjit Singh Sahni v. Union of India, AIR 2001 SC 3810 at p. 3825 : (2002) 2 SCCC 210.*

[84] *Sachindra Mahawar v. State of M.P., 2000 Cri LJ 637 at p. 641.*

[85] *State of Maharashtra v. Ananda Tukaram Akale, 2008 Cri LJ (NOC) 579.*

The power under section 438 is extraordinary character and must be exercised sparingly in exceptional cases only. Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled. The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438. In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless[86].

The public and state's broader interests require that the authority under Section 438 of the Code not be used in serious cases like economic offences involving overt corruption at the highest levels of the executive and political control. Mere general allegations of mala fides in the petition are inadequate. The exercise of power under Section 438 being of an extraordinary nature, has to be invoked in exceptional cases only. 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 and full investigation.

[86] 1980 AIR 1632; 1980 SCR.

a. **JUDICIAL DISCRETION IN DETERMINATION OF APPLICATION**

The Hon'ble Supreme Court's held that *Gurubaksh Singh Sibbia*[87] held that: In their relative constraints, society has a critical stake in both of these interests, namely personal liberty and the investigative capacity of the police. The High Court and the Court of Session should be allowed to exercise their Section 438 authority wisely and carefully, as they are best qualified to do based on their extensive training and experience. The ends of justice would be better served by trusting these courts to behave fairly and in accordance with long- established standards regulating the grant of bail, rather than depriving them of the discretion that the legislature has bestowed on them by imposing rigid laws. It's to use a specific phrase. If the High Court and the Court of Session are liable to be corrected, a convention can develop whereby they can be trusted to exercise their discretionary powers in their wisdom, particularly when the discretion is entrusted to them by the legislature in its wisdom.

His amendment to the section will take effect on the day it is published. The factors that the court considers when dealing with applications under this section are close to those that the court considers when dealing with applications under Sections 437 and 439. However, the essence of the offence is taken into account first. The guiding principle is that if the court can safely conclude that if the accused is free, he will be completely unconcerned about the investigations and will not be afraid of the outcome of the investigation and trial, the court will deny the application.

[87] Govinda Chandra Senapati v. State of Orissa, 1996 Cri LJ 1014 at p. 1016 (Ori)

Where the conduct of the individual seeking anticipatory bail does not inspire trust and no effort to involve in a false case to disgrace or malign is made out, and an investigation to uncover the plot is ongoing, it cannot be held that extraordinary and unique grounds justifying anticipatory bail have been established.[88]The seriousness of the crime, as well as the need for custodial interrogation, are critical factors to consider when granting anticipatory bail. Number[89]The court will give careful consideration to relevant factors such as the seriousness of the offence, nature of the charge, likelihood of absconding, likelihood of tampering with evidence, and so on when deciding whether to issue anticipatory bail.[90]

a. **RESTRICTIONS PROVIDED IN SECTION 437 DO NOT APPLY TO ANTICIPATORY BAIL**

In case [125] the Constitution Bench stated unequivocally that there is no reason for reading the restrictions in Section 437 into Section 438. The Court went on to say that the section's full scope must be given full consideration. The Constitution Bench also pointed out that the High Court was incorrect in stating that the accused must make out a special case for anticipatory bail to be granted.

While dealing with the issue whether the limitations contained in Section 437 could be read into Section 438, the Supreme Court in Gurb case said that we see no warrant for reading into this provision the conditions subject to which bail can be granted under Section 437(1) of the code.

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[88] *Kasturchand Ramlal v. State of Maharashtra, 1981 Cr. L.J.1328.*

[89] *Bharat Chaudhary v. State of Bihar, (2003) 8 SCC 77 at pp. 78-79 : AIR 2003 SC 4662 SCC (Cri)1953.*

[90] *Somabhai Chaturbhai Patel v. State of Gujarat, 1977 Cri LJ 1523 at p. 1524 (Guj) : (1977) 18 GujLR 131.*

While that section grants the power to grant bail in cases of non-bailable offences, it also includes an exception for a person convicted or suspected of committing a non-bailable crime who believes he has committed an offence punishable by death or life imprisonment. If the legislature intended for the exemption in Section 437(1) to apply to the grant of relief in Section 438 (1), nothing could have been simpler than including a similar clause in the latter section. If the requirements in Section 437 are to be read into the rules of Section 438 in some way, the transplantation must be performed without amputation.

In State of A.P. v. Bimal Krishna Kund[91], it was held that it must be remembered that Section 438 of the code applies to all non-bailable offences and not merely to crimes that carry the death penalty or a life sentence. Also to be kept in mind is that the section's application is not limited to offences that can only be tried in the Court of Sessions. There is no indication in Section 438 of the code for justifying a hiatus to be made among non-bailable offences vivisecting those punishable with death or imprisonment for life and those others punishable with less than life imprisonment. No doubt such a classification is indicated in Section 437(1) of the Code, but that section is concerned only with post-arrest bail and not pre-arrest bail.

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[91] Narinderjit Singh Sahni v. Union of India, AIR 2001 SC 3810 at p. 3825 : (2002) 2 SCCC 210

i. DURATION OF ANTICIPATORY BAIL

Section 438[92] makes no mention of the time limit for granting a direction to release on bail in the event of an arrest. The order granting anticipatory bail directs the accused to be released on bail in the event that he is arrested. When the accused follows such a course of anticipatory bail and is released on bail, the concerned court is completely justified in enforcing conditions, including a direction to enter the inquiry. It would be unethical to force the accused to surrender before the trial court and apply for standard bail after the accused has been released on bail by the trial court, according to the order of the Court of Sessions or the High Court.

The Supreme Court declared the law laid down i*n the cases of K.L. Verma v. State, Salauddin Abdulsamad Shaikh v. The State of Maharashtra, and Sunita Devi v. The State of Bihar*[93] to be in-curium and held that the validity of the restrictions that an accused released on anticipatory bail must first submit to custody and then apply for regular bail is contrary.

Article 21 of the Constitution of India. After the allotted time has passed, ordering the accused to report to detention constitutes a violation of his personal freedom. It is unreasonable to lay down strict, inflexible and rigid rules for exercise of such discretion by limiting the period of which an order under this section could be granted.

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[92] *Siddhram Satlingappa Mhetre v. State of Maharashtra, AIR 2011 SC 312 : 2011 Cr LJ 3905.*
[93] *AIR 2005 SC 498*

When anticipatory bail is granted, the protection should typically last until the end of the case, unless the court reduces the temporary protection it offers when anticipatory bail is revoked due to the discovery of new information, circumstances, or the accused's abuse of the indulgence..[94]

The power to grant, of having committed a non-bailable offence, is conferred on the High Court and the Court of Session by Section 438. The court has extensive authority to issue anticipatory bail. Even after the charge-sheet has been filed, the power to issue anticipatory bail may be used. In other terms, an application for Anticipatory bail will be considered as long as the person who has a fair expectation that he will be detained for a non-bailable offence is not arrested.. It's worth noting that when enacting Section 438, the legislature did not specify whether the length of anticipatory bail should be restricted in time or whether the anticipatory bail should be of a temporary nature before normal bail is obtained.

Thus, no condition of unequivocal language of Section 438 Court have since the year 1996 evolved a uniform procedure of limiting the duration of anticipatory bail and the requirement of obtaining regular bail during the said limited duration. This practice has as such no legal sanction.[95]

Regarding the length of anticipatory bail, there is no explicit provision that specifies whether it is granted for a limited or indefinite time, but it may be ordered for a limited period based on judicial interpretation, as in the Sibbia judgement held by the Apex Court. However, the Court held that the rule should not be to restrict anticipatory bail to a shorter period of time. The court can only restrict bail to a shorter time based on the relevant facts of the case.
Order of anticipatory bail does not ensure restraining from arrest till the end of trial but for a limited duration. The matter should be left for regular bail, giving sufficient time to the

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[94] *Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 (para 112); AIR 2011 SC 312.*
[95] *Asim Pandya, Law of Bail: Practice and Procedure, Second edition, pp. 99-100.*

accused to move regular Court for bail and only in case of refusal by the Regular Court, to approach Higher Court.[96]

In Adhri Dharan Das v. State of West Bengal[97]**,** it was held that anticipatory bail is granted for a limited period in order to enable the defendant to petition the court for regular bail under Section 439. The argument that such a short period of time should be a few days later to give the accused time to file an appeal with a higher court, to the date on which the bail application is decided, or even a few cannot be acknowledged. Anticipatory bail is a provision of the Indian criminal justice system whereby bail is issued by the High Court or Court of Session in advance of an arrest. When there is a fair fear of being arrested for a non-bailable offence. But the order of anticipatory bail should not be a blanket order. And the discretion should be exercise by the High Court or by the Court of Session should be on just and reasonable grounds.

The provision of anticipatory is primarily intended to protect respectable members of society from unwarranted abuse. Anticipatory bail does not offer full immunity from arrest; rather, it provides immunity from detention if the accused has posted bail. As a result, a non-bailable offence is transformed into a bailable offence for the purposes of an indictment in that situation. In general, anticipatory bail should be granted for an indefinite duration, and anticipatory bail for a limited period should not be granted, while the actual spirit of the Sibbia judgement should be interpreted as anticipatory bail should be granted for an unlimited period in general, but the Court is also allowed to grant bail for a limited period in appropriate cases.[98]

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[96] *K.L. Verma v.State and Another, (1998) 9 SCC 348.*
[97] *A.I.R. (2005) 4 SCC 303: AIR 2005 SCW 1013*
[98] *Asim Pandya, Law of Bail Practice and Procedure, Second Edition, 2015, Lexis Nexis, p. 99*

a. **LIMITING THE DURATION OF ANTICIPATORY BAIL NOT SUPPORTED BY LAW**

At any point during the investigation, the power to issue anticipatory bail may be used. It can be used even after the charge sheet has been submitted. In other words, an anticipatory bail application will be considered as long as the person who has a fair expectation that he will be arrested for a non-bailable offence is not arrested. It's worth noting that when enacting Section 438, the legislature did not specify whether the length of anticipatory bail should be restricted in time or whether the anticipatory bail should be limited in scope. Bail is only temporary until daily bail can be collected.

Furthermore, the wording of Section 438 is crystal clear and does not provide for the application of statutory interpretation standards. Order granting anticipatory bail as it sees fit in light of the facts of the case, including any other general conditions set out in that sub-section. As a result, judicial interpretation cannot impose any requirement of uniform implementation. Despite Section 438's clear language, courts have established a uniform system for restricting the length of anticipatory bail and the condition of receiving regular bail during that period since 1996. As a result, there is no legal penalty for this procedure.

b. **SUCCESSIVE ANTICIPATORY BAIL APPLICATION**

Section 438 makes no mention of whether or not successive applications for anticipatory bail are lawfully maintainable. To find an answer to this issue, one must look to the general principles that govern bail law. The theory of res judicata is not applicable to the bail jurisdiction, according to established law[99]. As a result, successive bail applications are not prohibited under the statute. The only thing that needs to be mentioned when considering a subsequent bail application is that there has been a substantive improvement in the facts of the case since the previous bail application was denied. The change expected by the law should not be a just cosmetic change but of a substantial nature. There is no reason as to why the same principle cannot be applied to anticipatory bails also.

So long as he is not arrested, a person can apply for anticipatory bail more than once if he can convince the court that there has been a significant improvement in the facts and circumstances of the case since his previous anticipatory bail application was denied. After the rejection of the accused's third application for anticipatory bail and failure to obtain bail from the High Court, the accused was finally granted anticipatory bail by the Supreme Court, as though the respondent had raised no exception to the maintainability of the successive bail application for anticipatory bail before the Supreme Court[100]

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[99] *AIR 2010 SC 1225 : 2009 (14) SCALE 609: (2009) 1 SCC 684*

[100] *AIR 2010 SC 1225: 2010.*

In Maya Rani Guin v. State of West Bengal[101]**,** the Calcutta High Court held that a second plea for anticipatory bail would lead to a reconsideration of the earlier order. The allegation is the sine qua non, and it has remained the same since the court granted anticipatory bail in the previous case. As a result, even if new conditions arise after the earlier application is rejected or dismissed, the second application for anticipatory bail is not maintainable.

In Aneesh v. State of Kerla[102] **,** a specific question was raised about the maintainability of a successive anticipatory bail after the first anticipatory bail was dismissed as withdrawn. The Kerala High Court answered the questions to it in the following words:

a) It cannot be said as an infallible and absolute rule that when an application for anticipatory bail is dismissed as withdrawn, the applicant cannot file a second application on the same set of facts.

b) If the applicant makes a second application for anticipatory bail after withdrawing the initial application, the court will evaluate whether the applicant had a good reason for doing so, whether he was only buying time, or if he was engaging in forum shopping. The application is subject to the Court's discretion, and the Court may decide whether or not to grant relief based on the specific facts and circumstances of the case.

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[101] *2005 Cr LJ 755 (FB) (All)*
[102] *AIR 1994 SC 1349: 1994 Cr. LJ 1981 : (1994) 4 SCC 260*

c) When a request for withdrawal of the application for anticipatory bail is made, it would be ideal for the Court to record as to why the applicant wanted to withdraw the application. If such reasons are stated, it would enable the Court to deal with the second application for anticipatory bail filed at a later stage.

a. ANTICIPATORY BAIL IN UTTAR PRADESH

Section 438 was repealed and made ineffective in Uttar Pradesh by the State Amendment Act of 1976. *In Amaravati v. State of U.P.*[103], a seven-judge Allahabad High Court Bench held that the Court may grant interim bail pending final disposition of the bail application if it finds fit in the facts and circumstances of the case. The Full Bench also stated that when a FIR of a cognizable offence is filed, detention is not needed. The Full Bench relied on this court's decision in *Joginder Kumar v. State of U.P.*[104]**.**

In Lal Kamlendra Pratap Singh v. State of U.P.[105], the Supreme Court upheld the Allahabad High Court's decision and ordered that it be followed in letter and spirit by all courts in U.P., particularly because anticipatory bail is not available in the state. Since arrest and detention of a person can trigger Joginder case (supra), temporary bail should be issued in appropriate cases pending the disposition of the final bail application. Often, arrest is not required in all cases of cognizable offences, and the police officer must be guided and behave in accordance with the rules set out in the case when determining whether to arrest or not.

Thousands of writ petitions and Section 482 applications have been filed in the Allahabad High Court, requesting a stay of the petitioner's arrest and or quashing of the FIR due to the

[103] (*2009) 4 SCC 437: 2009 (4) SCALE 77. 151 (1970) 1 Q.B. 693 (709*
[104] *AIR, 2008 SC 1126 : 2008 (2) SCALE 108 : (2008) 3 SCC 753.*
[105] *2009) 4 SCC 437: 2009 (4) SCALE 77. 151 (1970) 1 Q.B. 693 (709)*

absence of an anticipatory bail clause in Uttar Pradesh. This is unnecessarily rising the work load of the High Court, contributing to the arrears, as well as causing public inconvenience and jail overcrowding. *In Ghani v. Jones*[106], the Law of England holds movement in such high regard that it can only be hampered or stopped on the most compelling grounds. Despite the fact that the law is clearly stated, many people are convicted and imprisoned on the basis of false and/or frivolous FIRs.

In Som Mittal v. Government of Karnataka[107], the Supreme Court held that this problem could be solved by restoring Section 438's provision for anticipatory bail, which had been repealed in Uttar Pradesh by Section 9 of the U.P. Act, 1976.The Supreme Court went on to say that the lack of an anticipatory bail clause has resulted in great injustice and suffering for the people of Uttar Pradesh. For example, false FIRs are frequently filed under Section 498A of the IPC and Sections 3, 4, and 5 of the Dowry Prohibition Act of 1961, among other statutes. Grandmothers, uncles, aunts, and unmarried sisters, for example, are always present Often aged grandmothers, uncles, aunts, unmarried sisters etc. are implicated in such cases, even though they may have nothing to do with the offence.

Sometimes unmarried girls have to go to jail, and this may affect their chances of marriage. This is in violation of the decision of the Supreme Court in case (supra), and the difficulty can be overcome by restoring the provision for anticipatory bail. Moreover, the Allahabad High Court is already overburdened with heavy arrears and overloaded with work.

This load is increasing daily due to the absence of the provision for anticipatory bail. In the absence of such provision, whenever an FIR is filed, the accused person files a writ petition or application under Section 482 and this has resulted in an unmanageable burden on the court. Also, jails in U.P. are overcrowded.

Finally, the Supreme Court in this case made a clear recommendation to the Uttar Pradesh government to issue an Ordinance immediately repealing Section 9 of the Uttar Pradesh Act.

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[106] *IR, 2008 SC 1126*

[107] *2) SCALE 108 : (2008) 3 SCC 75*

1976 (16 of 1976) and empowering the Allahabad High Court as well as the Sessions Courts in the state to grant anticipatory bail. However, the Supreme Court later ruled in Som Mittal II[108] that the previous Bench's orders were unwarranted. *Hema Mishra v. State of U.P.*[109] was recently decided. The Court held that the new Sections 41 and 41A provisions make it mandatory for the police to issue a notice in all cases where an arrest is not required under Clause (b) of Sub-section (1) of the amended Section 41. Nonetheless, the refusal of a person who has not been arrested to identify himself and to whom a Section 41A notice has been given may be a reason for his arrest.

Legislation has laid down various parameters warranting arrest of a person, which itself is a check on arbitrary or unwarranted arrest and the right to personal liberty guaranteed under Article 21 of the Constitution of India.

Despite the fact that Uttar Pradesh has deliberately left out and rendered Section 438 inapplicable, there is consensus that a party aggrieved can still invoke the High Court's jurisdiction under Article 226 of the Constitution of India, which is extraordinary jurisdiction with vast powers that naturally impose considerable responsibility in its application. Nonetheless, the High Court has the authority and, in certain cases, the responsibility to grant reliefs in certain cases, even if it is impossible to pinpoint them. What are the relevant cases, which must be decided by the Court exercising its powers under Article 226 of the Indian Constitution?

Under Article 226 of the Constitution, the High Courts have the power to hear writ petitions for the quashing of FIRs and the granting of temporary immunity from detention. Nothing is more striking than the inability of law to evolve a coherent jurisdictional theory or even basic concepts if the outcome is contradictory, inconceivable, or inconsistent, leading to doubt,

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[108] *Som Mittal v. Govt. of Karnataka, AIR 2008 SC 1528 : (2008) 3 SCC 574 : 2008 (2) SCALE 717.*
[109] *AIR 2014 SC 1066.*

incongruity, and scepticism of law's efficacy. The High Court's jurisdiction and power under Article 226 of the Constitution are unquestionably constituent powers, and the High Court has unrestricted authority to issue any writ, order, or direction to any person or authority within its territorial jurisdiction for enforcement of any of the fundamental rights or for any other purpose. The Legislature has no power to divest the Court of the constituent power engrafted under Article 226.

It would be pertinent to mention here that in light of above mentioned statements and cases, the High Court would not be incorrect or acting out of jurisdiction if it exercises its power under Article 226 to issue appropriate writ or direction or order in exceptional cases at the behest of a person accused. It is pertinent to mention that though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well-established principles, so much so that while entertaining writ petitions for granting interim protection from arrest, the Court would not go on to the extent of including the provision of anticipatory bail as a blanket provision**.**

As a result, such power must be exercised with caution, bearing in mind that the provisions of Article 226 are intended to advance justice rather than to thwart it. As a result, the powers must be used to avoid miscarriages of justice and abuses of the legal process by officials who indiscriminately make pre-arrests of suspects. The High Court is expected to strike a balance between the two interests when hearing such a petition under Article 226. On the one hand, the Court must ensure that such a power under Article 226 is not used arbitrarily in order to turn it into Section 438 proceedings; on the other hand, the Court must ensure that such a power under Article 226 is not used arbitrarily in order to convert it into Section 438 proceedings. keeping in mind that when this provision is specifically omitted in the State of Uttar Pradesh, it cannot be resorted to as to back door entry via Article 226.

CHAPTER: VI

SPECIAL POWRS OF HIGH COURT OR COURT OF SESSION REGARDING BAIL

6.1 INTRODUCTION

Special Powers have been conferred on High Court or court of session in Criminal Procedure Code for Grant of Bail.

(1) A High Court or Court of Session may direct:-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

2. CA High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

6.2 CORRESPONDING OLD LAW

This section corresponds to the latter half of sub-section (1) of section 498of the 1898 Code, but the Proviso to sub-section (1) is new.

The later half of sub-section (1) of Section 498 of the 1898 Code empowered the High Court or the Court of Session to grant bail, and so does sub- section (1) of this section, but there is redrafting without any change of any substance. That half of sub-section (1) of old Section 498 aforesaid read:

"…… and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail….."

The Proviso to sub-section (1) is new.

Sub-section (2) reproduces sub section (2) of the old section, but in a redrafted form. That sub-section reads as:

"(2) A High Court or Court of Session may cause any person who has been admitted to bail under sub-section (1) to be arrested and may commit him to custody."

6.3 SCOPE AND APPLICABILITY

The powers under this section are wide enough to empower, the Court to exercise its discretion to grant bail to an accused person when he appears and surrenders himself in the Court even in anticipation of his arrest (J&K Criminal Procedure Code).[169] An arrested person released on bail does not cease to be'arrested person' or 'accused person' for the purpose of Sections 53 and 54.[110] The Court may reject the bail application of the accused, but cannot prevent the accused from exercising the right of bail.[111] Where an accused released on short term or personal bond is in judicial custody he need not be sent to jail, before his application under Section 439 Cr. P. C., is entertained and considered by the Court.[112] When the possibility of repetition of the offence cannot be ruled out in thelarger interest of the society, bail should not be allowed.[113]

The powers of the High Court and the Court of Session under this section are of a concurrent jurisdiction with that of a Magistrate. It is seen on a comparison of Sections 437 and 439, that the High Court is invested with power under this section, as a court of superior, appellate or revisional jurisdiction and has vast powers to direct that any person be admitted to bail in any case.[114]

There can be no doubt that sub section (1) deals with cases of persons accused of bailable as well as non-bailable offences. Even in regard to persons

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110 *Kali Dass Vs. SHO, Police Station Reasi, 1979 Cr.LJ 345 (J&K)*

111 *Ananth Kumar Vs. State of A.P. 1977 Cr. LJ 1797 (AP)*

112 *Manloor Khan Vs. State of Bihar, 1999 Cr.LJ 5006: 1998 SCC (Cri) 1541: (1998) 8 SCC368*

113 *Gyan Swaroop Gupta Vs. State of U.P. 1993 Cr.LJ 3895 (All).*

114 *Issak Ibrahim Sandil Sovda Vs. State of Gujarat, 2000 (3) Crimes 466 (Guj).*

If the bail sum set forth in Section 436 is excessively exorbitant for someone accused of a bailable offence, they may petition the exorbitant Court or the Court of Session to have it decreased. Similar to this, a person charged with a crime that qualifies for bail may request release on bail from the High Court or the Court of Session. The High Court or the Court of Session may then order that the bond sum be decreased or that the individual be allowed to bail. If a person accused of a bailable offence is admitted to bail by an on order passed by the HighCourt or the Court of Session, the provisions of sub-section(2) become applicable to his case; and under these provisions the High Court or the Court of Session is expressly empowered to cancel the bail granted by it and to arrest the accused andcommit him to custody. The result is that this section applies not only to cases of persons accused of non-bailable offences but also those accused of bailable offences.[115]

If the Sessions Judge does not apply the tests which have necessarily to be applied while considering an application under this section, the order passed by him cannot be treated as one under Section 439.[116]

This section gives an unfettered discretion to the High Court or Court of Session to admit an accused person to bail, but that discretion must be exercised judicially. The power of the High Court and of a Court of Session to grant bail is not fettered by the restrictions contained in Section 437.[117] In everycase it is the cumulative effect of all the combined circumstances that must weightwith the Court and those considerations are far too numerous to be classified or catalogued exhaustively.[118] In exercising its discretion under this section, the High Court need not confine its attention to the question whether the prisoner is or isnot likely to abscond, as other circumstances may also affect the question of granting bail to persons accused of having committed crimes of a grave and erious nature. The principles underlying Sec.437 Cr.P.C. are to be kept in view.

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115 *Talab Haji Hussain* Vs. *Madhukar Pushottam Mondkar*, AIR 1958 SC 376 at 380; *Juharmal* Vs. *State* 1954 (Raj) 279

116 *State of M.P.* Vs. *Laxminarayan*, 1972 Jab. LJ 6.

117 Kirpa Shankar (1947) All 733: Shanti Lal (1995) Raj 566.

118 Sagri (1950) 30 Pat 115.

The previous conviction of an accused for a heinous crime punishable with imprisonment for life, his involvement in other crimes and the quantum for punishment for the offences in which the applicant is seeking bail are all relevant factors to which the Court should consciously advert while taking a decision in the matter of enlargement on bail.[119] The Courts must not be too liberal in granting bail particularly when bail is asked for with regard to a serious crime like murder.[120] There is greater justification for denying bail to persons charged of high corruption as from such persons there is a danger of sub-version of evidence against them by the use of money power.[121] Where an offence is not bailable the Court has to decide the question of grant of bail in the light of such considerations as the nature and seriousness of the offences, character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial, reasonable apprehension of witness being tampered with, the larger interest of the public or the State and similar other considerations.[122]

Bail is not to be withheld merely as a punishment, and the requirements as to bail are merely to secure the attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others; (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation; (3) the severity of the punishment which conviction will entail; (4) the character of the sureties, that is to say, whether they are independent or indemnified by the accused; (5) the character and the behavior of the accused. Any allegation that the accused is tampering or attempting to tamper with

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119 Narendra Lal Khan (1908) 36 Cal 166, 170, Jamini Mulick (1908) 36 Cal 174,177

120 *Gurcharan Singh* Vs. *State (Delhi Admn)* 1978 Cr.LJ 129: AIR 1978 SC 179; (1978) 2 SCR 358; *Sangappa* Vs. *Karnataka* 1978 Cr.LJ 1367 (Kant)

121 *Ram Pratap Yadav* Vs. *Mitra Sen Yadav* (2003) 1 SCC 15: 2003 SCC (Cri) 1: 2003 (1) Crimes 132 (134, 135) (SC).

122 *Amar Singh* Vs. *State*, 1985 Cr.LJ 550 (Del).

witnesses and thereby obstructing the course of justice would be a very cogent ground for refusing bail.[123]

There are many considerations which are to be taken into account in granting bail. The two paramount considerations are likelihood of the accused fleeing from justice and his tampering with the prosecution evidence which relate to ensuring a fair trial of the case in a Court of justice.[124]

6.4 CONCURRENT JURISDICTION

Although under this section concurrent jurisdiction is given to the High Court and Sessions Court, the fact that the Sessions Court has refused to bailunder this section does not operate as a bar for the High Court entertaining a similar application on the same facts and for the same offence. However, if the choice was made by the party to move first the High Court and the High Court hasdismissed the application, then the decorum and the hierarchy of the Courts require that if the Sessions Court is moved with a similar application on the same facts, the said application be dismissed.[125] Where bail petition of the accused is pending in the High Court, the accused cannot pursue his bail application simultaneously before the Court of Sessions.

6.5 POWER OF THE HIGH COURT

Even after a bail application is rejected by the Court of Session, a person in custody can move the High Court for bail under Section 439 (1), because in such cases the High Court is not exercising any revisional power, but exercises a special power. After the High Court rejected a bail application, the Court of Session can entertain a bail application of the same accused, if any substantial grounds for bailarose after such rejection. On the other hand if the fresh application was meant to

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123 *Krishna Chandra Jagti, (1927) Pat 802, 803; Jayendra Saraswathi Swamigal Vs. State of Tamil Nadu, (2005) 2 SCC 13; 2005 Cr.LJ 883 (888) (SC); State through CBI Vs. Amarmani Tripathi 2005 Cr. LJ 4149 (4155) (SC)*

124 *Gurcharan Singh Vs. State (Delhi Admn) 1978 Cr.LJ 129: AIR 1978 SC 179; (1978) 2 SCR 358;*

125 *Devi Dass Roghu Nath Naik Vs. State, 1987 (3) Crimes 363; 365: 1989 Cr.LJ 252 (Bom)*

overcome the earlier order of rejection of bail by the High Court, judicial decorumrequires that the Court of Session should direct that accused to approach the High Court.[126] Another application on the same facts and for the same offence can be made to the HighCourt.[127]

In view of the special facts of the case, the accused was permitted to appear before the Chief Judicial Magistrate, Allahabad, instead of appearingbefore the Munsif-Magistrate Haridwar, and take orders on his bail application before the former.

6.6 WHEN BAIL MAY BE GRANTED BY HIGH COURT OR COURT OF SESSION

There is no ban against the High Court of the Court of Session granting bail to persons accused of an offence punishable with death or imprisonment for life. Still that Court will have to take the several considerations enumerated by the Supreme Court in this case.[128]Though both the High Court and the Court of Sessions have concurrent power, normal practice is to move the latter first. The High Court would directly entertain an application only in exceptional cases or under special circumstances.[129]

Bail should not be granted by the High Court *suo motu*[130] Whether a bail petition has been moved in a co-ordinate Court should be mentioned in theapplication for bail. It is also the duty of the Court to obtain a statement about that fact before exercising its power. 'Court of Session' means the court presided over by the Sessions Judge.

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126 *Virendra Singh Vs. Avdesh Kumar, 1983 (U.P.) Cr.LR 415; 1983 A. Cr.R.434: 1983AWC 809.*

127 *Baghirath Ghusai Patel Matha Vs. State of M. P. 1980 MPLJ 373 at 375.*

128 *Gudikanti Narasimhlu Vs. Public Prosecutor, AP, AIR 1978:SC 429: 1978 Cr.LJ 502; Gurcharan Singh vs. Delhi Administration, AIR 1978, SC 179: 1978 Cr.LJ 129*

129 *Mutum Chooba Singh Vs. State of Manipur (1985) 1 GLR 286*

130 *Dara Gaddi Vs. State of Bihar (1986) 4 SCC 564*

There is no hard and fast rule when bail may be granted by the High Court, and though the discretion of the High Court is unfettered, that discretion has to be exercised judicially.[131] The High Court can exercise its powers under this section uncontrolled by the restrictions mentioned in Section 437.[132] But even so, the power has to be exercised judicially and not arbitrarily.[133]

There cannot be an inexorable formula in the matter of granting bail. The facts and circumstances of each case will govern the exercise of discretion in granting or canceling bail.

The two paramount considerations are: Likelihood of the accused fleeing from justice and his tampering with prosecution evidence.[134]

If an objection is raised on behalf of the State that the accused persons are likely to abscond or tamper with the prosecution evidence, such a contention should be considered on merits. If no such objection is raised, an assumption should not be made against the accused that the accused persons may abscond or may tamper with the prosecution evidence.[135]

Even after rejection of a bail application by High Court, the Court of Session may entertain and consider an application for bail of the same accused provided new substantial grounds for bail have arisen since the last order of rejection of bail and a reasonably long interval has also elapsed. While dealing with such a bail application, the Sessions Court should be circumspect and bear in mind the question of propriety and judicial decorum. If it feels that passing an order of bail in the face of an earlier order of rejection of bail by the High Court, would appear to over-step the limits of propriety and judicial decorum, it should

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131 *Paras Ram Vs. State, AIR 1951 H.P. 13*

132 *Ram Chand Vs. Emperor, AIR 1929 Lah. 284, 30 Cr.LJ 1129; Kirpa Shanker Vs. Emperor., AIR 1948 All. 26: 48 Cr. LJ 941: Champa Lal Vs. State, AIR 1952 M.B. 189 (FB); State Vs. Shantilal, AIR 1955 Raj.141*

133 *Ram Chand Vs. Emperor, AIR 1929 Lah. 284*

134 *Raj Kumar Sharma Vs. Delhi Administration, 1978 Cr.LR (SC) 1: 1978 SC Cr.R.143; Dilip Shankar Koli Vs. State of Maharashtra, 1981 Cr.LJ 500 (Bom): 1981 Cr.LR. (Mah) 241*

135 *Ramchandra Kanthari vs. State of Orissa (1984) 57 Cut. LT 303 at 304*

direct the accused to approach the High Court for bail. This kind of exercise of discretion will also be conducive to clean administration of justice.

Various principles have been enunciated in different cases, and some of them may be summarized as below:

(i) The law presumes the accused person to be innocent till his guilt is proved. He should be allowed an opportunity to look after his own case, unless the circumstances are such that he should not be released on bail.[136]

(ii) Generally it is the rule to allow bail, rather than to refuse bail, and bail ought not to be held as punishament.[137]

(iii) The fact that the offence is a serious one does not afford a sufficient ground to refuse bail.[138]

(iv) The principle to guide the Court is the probability of the accused appearing to take his trial,[139] and not his supposed guilt or innocence.

(v) If bail has been granted to one accused, other accused in the same case similarly placed are entitled to be released on bail.[140]

(vi) In a serious offence such as murder, bail will be refused if there are reasonable grounds for believing that the accused is guilty.[141]

(vii) The fact that the charge-sheet has not been submitted against the accused is a factor to be taken into consideration.[142]

(viii) That the accused has been previously convicted is no bar to grant bail.

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136 *Sant Ram* Vs. *State*, AIR 1952 J&K 28. 1952 Cr.LJ 1223: *State* Vs. *Surinder Singh Kairon* (1966)

137 *Nagendra Nath* Vs. *King-Emperor*, AIR 1924 Cal 476: *Emperor* Vs. *Gulam Mohammad*, AIR 1925

138 *Abraham Bali* vs. *Emperor*, AIR 1925 Oudh 489; 26 Cr.LJ 1286: *Fazal Nawaz Jung* Vs. *State of Hyderabad*, AIR 1952 Hyd 30: 1952 Cr.LJ 873: *Warrier* Vs. *State of Kerala*, 1964 Ker. LT 595.

139 *Public Prosecutor* Vs. *M. Sanyasayya Naidu*, AIR 1925 Mad. 1224; *Rao Harnarain Singh Sheoji Singh* Vs. *State*, AIR 1958 Punj. 123

140 *Ngangom Iboton Singh* Vs. *Union Territory of Manipur*, AIR 1969 Manipur 6.

141 *Ngangom Iboton Singh* Vs. *Union Territory of Manipur*, AIR 1969 Manipur 6.

142 *Prafulla Kumar Pradhan* Vs. *Pabaneswar Subudhi*, 1989 Cr.LJ 2016 (Ori.)

6.7 DIRECT BAIL APPLICATION TO BAIL

There is absolutely no want of jurisdictional competence for the High Court to consider and exercise powers in an application for bail anticipatory bail under section 438/439 Cr.P.C. at the first instance. Following the statutory procedural self imposed rule of restriction, a High Court shall not ordinarily (and except under exceptional circumstances) exercise its powers under sections 438 and 439 Cr.P.C. without and before the Sessions Court having concurrent jurisdiction is moved for identical relief.[144] A person suspected of any non-bailable offence cannot be allowed to frog leap the Magistrate and Sessions Judge and make an application for bail directly to the High Court.[145] It is legitimate to suppose that the High Court or Court of Sessions will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused.[146]

Only in exceptional circumstances bail application can be filed directly in the High Court.[147] The applicant has the right to choose forum and he can approach the High Court direct for bail. The High Court would not refuse bail on the merge ground that the accused should should first file bail petition before the session judge concerned. [148]

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144 *Usman Vs. Sub Inspector of Police (2003) 2 Ker LT 594; 2003 Cr.LJ 3928 (3935) (Ker)*

145 *Mathew Zacharish Vs. State of Kerala, 1974 Cr.LJ 1198 (Ker-DB)*

146 *Gurcharan Singh Vs. State (Delhi Administration) AIR 1978 SC 179: 1978 Cr.LJ 129 (1978) 2 SCR 358; Usman Vs. Sub Inspector of Police (2003) 2 Ker LT 594; 2003 Cr.LJ 3928 (3935) (Ker)*

147 *Shivasubramonham Vs. State of Kerala, AIR 2002 Kant HCR 1069:2002 Cr.LJ 1998 (2002) (Kant)*

148 *Bahan Vs. State of Kerala, 2004 Cr.LJ 3427 (3431) (Ker-DB)*

6.8 Power under S. 439 is Wider than that Under s. 437

The powers of the High Court or the Court of Session under S.439 of Cr.P.C. are considerably wider than the powers of the Magistrate in S. 437 for the reason that the limitation in S. 437 and the distinction drawn between non-bailable offences punishable with death or life imprisonment and other non- bailable offences with lesser penalty are non-existent in S. 439, nor is there the condition that bail shall be refused if there appear reasonable grounds for believing that the accused has committed an offence falling under the first category. The discretion, therefore, in the 439 is wholly unfettered and is wide enough to allow bail in any case even when charged with non-bailable offence of a most serious character. The powers given in S. 439 are unfettered by any limitation other then that which controls all discretionary powers vested in a Court. Though the discretion is absolute the unfettered by restrictions of any kind, like all discretionary powers, it has to be exercised judicially and on well- established principles. Therefore, though the discretionary power under S. 439 is much wider than in S. 437(1) and is uncontrolled by the latter, the reasonable limitations in S. 437 (1) which are founded upon a rule of prudence ought not, ordinarily, to be departed from by the High Court or the Court of Session except in special cases. The provisions of S. 437 (1) of the new Code (of 1973), likethose of S. 497(1) of the old Code (of 1898), do constitute one of the relevant one of the relevant considerations amongst several others in the judicial exercise ofthe powers of granting bail by the High Court or the Court of Session.[149]

It is true that under S. 439 of the Code, the powers of High Court in the matter of granting bail are very wide, even so where the offences alleged are non- bailable, relevant considerations have to be taken into account before deciding as to whether bail should be granted or refused in a non-bailable offence.[150] TheHigh Court and the Court of Session have a wider discretion in granting bail even in respect of offences punishable with death or imprisonment for life.

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149 *K. Narayanaswamy v. State of A.P., 1980 Cri LJ 588 at p. 591 (AP).*

150 *Sangappa v. State of Karnataka, 1978 Cri LJ 1367 at pp. 1370-71 (Kant).*

CHAPTER- VII

CONCLUSION AND SUGGESTIONS

7.1. INFERENCE

Section 438 is a legal rule that deals with the personal liberty of an individual who is entitled to the privilege of the presumption of innocence because he has not been convicted of the crime for which he is seeking anticipatory bail at the time of his application. Although the power to grant anticipatory bail can be described as a special power, this does not justify the conclusion that it should only be used in exceptional circumstances. It is not necessary for the accused to make out a special case in order to exercise the power to grant anticipatory bail.

In cases of anticipatory bail, no one-size-fits-all formula can be applied universally since each case must be judged on its own merits and facts and circumstances. Personal liberty, as a priceless constitutional right, should only be restricted when it becomes necessary due to the facts and circumstances of the case. If the State takes the following recommendations into account, it may not be sufficient to restrict the accused's personal liberty on a regular basis

Direct the accused to join investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested. Seize either the passport or such other related documents, such as, the title deeds of properties or the Fixed Deposit Receipts/Share Certificates of the accused. Direct the accused to execute bonds; The accused may be directed to furnish sureties of number of persons which according to the prosecution are necessary in view of the facts of the particular case. The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided. Bank accounts be frozen for small duration during investigation. It is an established principle that discretion vested in the court, in all matter.

It is a well-established principle that the court's authority should be exercised with care and caution in all matters, depending on the facts and circumstances justifying its use. Similarly,

the court's jurisdiction under section 438 Cr.P.C. should be exercised wisely and carefully, as they are ideally suited to do so due to their extensive training and experience.
There is no reason to read the limitations mentioned in section 437 Cr.P.C. into section 438 Cr.P.C. The section's maximum potential must be fully realised.

The provisions of Section 438 should not be suspected as containing something volatile or incendiary, which needs to be handled with the greatest care and caution imaginable. A wise exercise of judicial power inevitably takes care of the evil consequences which are likely to flow out of its intemperate use. Neither inflexible guidelines can be provided for grant or refusal of anticipatory bail nor should any attempt be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In any event, this is the legislative mandate which the Courts are bound to respect and honor. Anticipatory bail is a device to shield against any and all kinds of accusation, likely or unlikely.

In our socio-political order, liberty is a source of pride. Who better to understand the importance of liberty than our country's founding fathers? That is why they stipulated in Article 21 of the Constitution that no one's personal liberty can be taken away except in accordance with legal procedures. As a result, an individual's personal liberty may be limited by legal procedure. One such procedural law is the Code of Criminal Procedure of 1973.In cases of under-trials charged with the commission of an offence or offences the court is generally called upon to decide whether to release him on bail or to commit him to jail. This decision has to be made mainly in non-bailable cases, having regard to the nature of the crime, the circumstances in which it was committed, the background of the accused, the possibility of his jumping bail, the impact that his release may made on the prosecution witnesses, its impact on society and the possibility of retribution, etc.
According to India's Law Commission's 268th survey, 67 percent of the country's prison population is awaiting trial. Inconsistency in the bail system could be one of the causes of

overcrowding in prisons around the world, posing new problems for the Prison Administration. Part III of the Constitution guarantees freedoms that are inextricably linked to the ideas and goals enshrined in the Preamble of the Indian Constitution, namely economic, social, and political justice. It remains a solemn obligation of the government, and its complete realisation is one of the most cherished goals. [151]

The right of a fair trial requires moderation not only to the person accused of an offence, but also consideration of the public and society at large as represented by the State. It must also instil public confidence in the criminal justice system, including those close to the accused person, and those affected by the crime.[152]

Presumption of innocence and the duty of the prosecution to prove the guilt of the person accused of an offence is the golden thread in criminal law jurisprudence.[153] Every individual charged with a crime has a right to be presumed innocent until proven guilty.[154] It may be surmised that pre-trial detention beyond the strictly necessary limits, poses a serious threat to the principle of presumption of innocence of the accused. The revocation of bail is dependent on the presumption being dislodged by strong material pointing towards substantial probability and clear and convincing evidence of the guilt in relation to an offence. The Supreme Court of India has opined that the presumption of innocence would be effective by favouring bail.[154]

Due to the monetary bond as compensation for the accused's presence at the time of trial, bail has grown into a major business. India's courts are judge-centric and state-run. Due to the monetary bond as compensation for the accused's presence at the time of trial, bail has grown into a major business. India's courts are judge-centric and state-centric. The maxim states that bail is denied as a law and given as an exception. The notion that bail is a law and jail is an exception is a myth; in fact, the opposite is true.

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[151] *268 Report p. 4.*
[152] *South African Supreme Court in Zanner v. Director of Public Prosecutions [2006] 2 AllSA 588.*
[153] *Vinod Kumar v. State of Haryana (2015) 3 SCC 138*
[154] *Smirnova v. Russia, Applications Nos. 46133/99 and 48183/99 (2003)*

The just and human factors should be taken into account when exercising judicial discretion. In addition to the democratic concept of liberty, it should be ruled out that in certain barbaric, horrific, and cruel offences, bail should not be given. The jurisdiction to grant bail in a bail application is to be exercised on the basis of established principles, taking into account the circumstances of each case. The nature of the charge, the nature of the evidences in support of it, the standing character and behaviour of the accused, rational fear of being tempered with the large interest of the public and state are all factors to be considered by the Court when granting bail.

The worst case scenario is when a person is arrested on suspicion of something and is forced to remain in jail due to a denial of bail. However, since certain prisoners are denied bail due to their failure to post a bond, as in the case of *Hussainera Khatoon v. State of Bihar*[155], these types of cases should be granted on natural grounds as a proper exercise of judicial discretion. The accused was found guilty by the trial court in State of Rajasthan v. Balchand[156]**.**

When he appealed to the High Court, he was acquitted. Under Article 136 of the Constitution, the State filed an appeal with the Supreme Court. By filing a special leave petition, you will challenge the Constitution. The accused was ordered by the Court to surrender. After that, he applied for bail. For the first time, Justice Krishna Iyer spoke out against the inequitable bail scheme in place at the time. Although the scheme of pecuniary bail has a long history, he believes the time has come to reconsider it. It may well be that in most cases an undertaking would serve the purpose. The interests of justice criterion had always been the test that a bail applicant had to satisfy in order for the applicant to be released from custody.
While it is true that Article 21 of the Constitution is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck.

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[155] *AIR 1979 SC 139*
[156] *AIR 1977 SC 2447*

between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. If an accused has been in prison for a long time, the Court must weigh other facts and conditions, such as the public interest, when determining whether or not to grant bail.[157] Punitive prosecutions are constitutionally sanctioned in order to ensure the protection of the state and the general welfare of the people. Nonetheless, an accused's personal liberty is paramount, and it can only be limited by a legal procedure.

The Rule of Law is regarded as an essential tool in the Indian Constitution for avoiding discrimination and the excessive use of force.[158] The current bail scheme is highly influenced by financial status, and it discriminates against the poor and illiterate. Our judicial system appears to have evolved two approaches to bail: bail as a right for the financially able and bail as a privilege for the rest. Bail is based on judicial discretion, which is exercised through the use of the bail process.[159] The loss of liberty is inevitable in the pre-appears to have become the deciding criterion for granting pre-trial release since the standard for setting bail amounts always fails to take into account the convicted person's willingness to pay.[160]

The grant or refusal of bail on economic conditions i.e. monetary surety violates Articles 14 and 15 of the Constitution of India and runs contrary to the constitutional ethos. Further, it has no correlation with the objective sought i.e. Assurance of appearing at every stage of the trial along with the presumption of innocence until proven guilty. However, it must be remembered that in every case where the indigent is unable to afford bail the indigent is not being discriminated against, but the state only demands some security that such accused person will appear at the trial.[161]

As a result, people of various financial backgrounds would be motivated to appear in court for varying amounts of bail. The new bail scheme, which is focused on financial.

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[157] *Rajesh Ranjan Yadav v. CBI, (2007) 1 SCC 70 at p. 79*
[158] *Ram Sahodar v. State of M.P., 1986 Cri LJ 279 at p. 280 (MP) : 1985 Jab LJ 750*
[159] *986 Cri LJ 279 at p. 280 (MP) : 1985 Jab LJ 750*
[160] *Bail and Its Discrimination Against the Poor: A Civil Rights Action as a Vehicle of Reform, 9 Va*
[161] *Bandy v. United States, 81 S. Ct. 197 (1960)*

oversight and objective evaluation, will result in criminal classification and prejudice. Furthermore, it would violate the universal right to a fair trial.

The right to a speedy trial is a prerequisite to the right to be presumed innocent unless proved guilty and is an extension of the right to liberty, security, and immunity against arbitrary detention. This right is universal and is not contingent on the convicted person's request or invocation of it. Such an accused has the right to be brought before the court as soon as possible so that the court can decide if the original detention was warranted and whether the accused could be released on bail.

The system of bail poses a conflict in any criminal justice system because it attempts to reconcile the conflicting interests of the accused person who desires to remain free and the State that has an obligation to ensure that such accused appears promptly at the trial. The current scenario on bail is a paradox in the criminal justice system, as it was created to facilitate the release of accused person but is now operating to deny them the release. However, the provisions of the bail contained in the various sections of The Code of Criminal Procedure, 1973, indicate that context in which it is used is to set a person free by taking security for his appearance. It is desirable as well as necessary to meet the requirement of existing legal provisions under the criminal law justice as well as the Constitution of India that whenever the police officer arrests a person accused of non-bailable offense he must inform such accused that he is entitled to access free legal aid and may also apply for being released on bail. The officer shall also inform him about the procedure, as far as possible in the language that the accused person so understands.

A liberal programme with conditions for release without monetary sureties or violations, it is said, would go a long way toward reforming the bail system and ensuring that the weaker and poorer sections of the population receive equal protection under the law. Conditional release can include entrusting the individual accused of an offence to the care of relatives or placing them under strict supervision.

The Court or the authority issuing bail may have to exercise caution when deciding whether or not to grant bail. If the convicted person cannot find sureties, it is pointless to insist on bail with sureties, since this would only force them to be in jail, putting them at a disadvantage in providing their defense.[162]

In Hussain and Anr v. Union of India[163], the Supreme Court ordered the High Courts to issue orders to the lower courts directing, among other things, that bail applications be decided within one week. The Court also held that, in accordance with the spirit of Section 436A of the Code of Criminal Procedure, 1973, if an under trial has served a term of imprisonment in excess of the sentence likely to be imposed if a verdict were to be entered, the under trial must be released on personal bond.

The practices should address two key goals: (1) protecting against the risk that the accused fails to appear on the scheduled date; and (2) protecting against risks to the safety of specific persons or the community. Unnecessary pre-trial confinement should be minimized. Confinement is detrimental to the person accused of an offence that is kept in custody, imposes unproductive burden on the State, and can have an adverse impact on future criminal eans the judicial interim release of a person suspected of a crime or any person accused of an offence held in custody, upon a guarantee that the suspect or the accused, as the case may be, will appear to answer the charges at some later date; and includes grant of bail to a person suspected of a crime or any accused person by a Court or police officer authorised by law for the time being in force; and the guarantee may include release without any condition, release on condition of furnishing security in the nature of a bond, with or without sureties, or release on condition of furnishing other forms of security, or release based on any other condition, as deemed sufficient by the court or police office authorised by law for the time being in force.

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[162] *Chief of Justice of the Gujarat High Court); Government of India, Ministry of Law Justice and Company Affairs.*

[163] *Criminal Appeal No . 509 of 2017.*

The main purpose of the bail is to assure that an accused person will return for trial if he is released after arrest it is held by the Supreme Court that general policy is to grant bail rather than to refuse. Thus, there is a need to strike balance between individual freedom and public interest.

In a bail application, such requirements are always stated explicitly or implicitly. Those criteria, on the other hand, should be subjective. The conditions should be such that the accused, particularly in bailable offences, is willing to comply with them, especially when bringing surety and the sum of the bond. The bond sum should not be unreasonable, but more fair so that it can be deposited. This means that the sum should be determined based on the accused's financial ability. Many people are languishing in prison due to a lack of bail, even for minor offences. Detaining the accused person in the jail for an excessively long period of time without a proper trial is a common practice and case is registered.

Whereas bail now become a big industry, due to monetary bond as security for require attendance of the accused at the time of trial.
The Courts in India are judge-centric and state-centric. Bail is rejected as a rule and granted as exception, the maxim Bail is a rule and jail is exception is a myth, in practice the reverse is followed.

The exercise of judicial discretion should on considering the just and human factors. As it should be ruled out that in some brutal, heinous and inhuman crimes bail must not be granted moreover the democratic principle of liberty. In bail application the jurisdiction to grant bail is to be exercised on the basis of settled principles, having regard to the circumstances of each case. While granting bail the Court has to consider the nature of accusation, nature of evidences in support thereof, the standing character and behaviour of the accused, reasonable apprehension of being tempered with the large interest of public and state.

It is true that there is Constitutional sanction behind punitive proceedings in order to achieve security of the State and the larger interest of the public. Even so, the personal liberty of an accused is fundamental and can be circumscribed only by some process sanctioned by law.[184]

7.2 SUGGESTIONS

i. Formulation of bail provisions in the Code may alone be not sufficient to make the system of bail functions with a purpose. A serious effort of securing public support and participation in the administration of criminal justice, coupled with necessary steps. Judicial powers to act effectively are most warrant. Such an effort alone can contribute to the fulfilment of the pre-requisites for the smooth operation of the bail system. Urgent attention in this regard is needed towards the:

   a) Proper functioning of police power,

   b) Developing the devices to control the police power

   c) Speedy trial of the accused.

ii. Performance of the existing bail law would require enactment of a comprehensive code to replace the existing law on the subject. The proposed code must embody the underlying concept, utility, and direction for bail grant and rejection. Due to the emergence of some issues under Human Rights jurisprudence, it is now important to make specific notice of preparations for dealing with juveniles, lunatics, and those imprisoned for preventative purposes under special laws.

iii. The current statutory bail system necessitates procedural clarity and accuracy. Bail reform is required; as a result, this ambiguity and uncertainty must be replaced with clarity and consistency.

iv. Also there should be an active effort to eradicate poverty and spread education because poverty is the root of most of the crimes. If this problem is solved there will be fewer disputes hence less no of under-trial languishing in jail.

v. Also the number of Courts should be increased and the vacant seats of the judges be filled up immediately. The numbers of Courts are not adequate enough to dispose all the cases. Its inadequacy results in pending of cases. And vacant post of the judges adds to the problem.

vi. Rationalism in bail law necessitates consideration of the fundamental premises in favour of the issuance of bail with the dangers that come with it, as well as the determination of variables important to risk assessment.

vii. The technical procedure should be favourable to the accused regarding timely preparation of bail order by the copy agency, so that the bail order should be implement from the very time of announcement of the same.

viii. Malimath committee reports have given many powers to police to grant bail. It is general impression that police is ignorant about law but has only the knowledge of power. This type of combination is not good. While exercising such absolute power the interest of the accused may not be protected. There is an urgent need to give thought to this aspect to avoid misuse of power by the police in granting Bail.

ix. The judges have been given discretionary power to grant or not to grant bail. The exercise of this power is generally based upon the precedents. But, unfettered powers given to the judges are generally misused and subject to great criticism.

x. The amount of a bail bond or the number of sureties is not limited by law. The entire case is now in the hands of the courts' discretion. Due to a paucity of bail bonds, many people are compelled to remain in jail. Each type of situations may have its own set of statutory provisions.

xi. If the police fail to submit the challan with in the stipulated period as given in Section 167(2) of The Code of Criminal Procedure, 1973, the accused in custody becomes entitled for bail. It has been observed that these statutory provisions are not strictly adhered to. It is statutory duty of the courts to ensure the release of the accused on bail. The accused's legal rights may be assessed in this regard. The courts should be held to a legislative duty in this regard.

The technical architecture of the Crime and Criminal Tracking Network and Systems (CCTNS) scheme may be adapted and utilized To ensure that the person does Mark his appearance by taking a picture and/or his fingerprints, name, father's name, mother's name, spouse's name, address, date of birth, mobile number, contact number, accused of an offence, driving license, voter ID, Aadhaar number and criminal history, if any. The Delhi High Court has previously directed the CBI to establish a cell to investigate abductors and kidnappers' criminal records. Such extrajudicial developments could serve as a spur for the creation of national criminal databases and the linking of various investigative agencies and the judiciary.

These linkages may necessitate the Ministry of Home Affairs' active participation, aided by various state and national authorities. Courts, public prosecutors, investigation agencies, and other entities that play vital roles in preserving the law and delivering justice would be aided in their decision-making in this way. The preceding solutions are only proposals for improving bail law. A separate piece of legislation is urgently needed, first to clear up the current ambiguity, and then to codify a sound structure for the seamless operation of the bail system. Reforming the current bail system is a significant undertaking.

BIBLIOGRAPHY

1. ACTS / STATUTES

- Criminal Procedure Code, 1973.
- Indian Penal Code, 1860.
- Prevention of Corruption Act, 1988.
- The Schedule Caste And Schedule Tribes (Prevention of Atrocities) Act, 1989.
- The Probation of offenders Act, 1958.
- In Juvenile Justice Act, 1988.
- Narcotic Drugs & Psychotropic substances Act, 1985.
- Armed Forces (Special Powers Act) And the Assam disturbed Act, 1955.
- The Indian Evidence Act, 1872.
- The Immoral Traffic (Prevention Act), 1956.

2. BOOKS:

- Andhra Legal Decisions (ALD"s) Criminal Consolidated Digest, 1996- 2002, 2003 Edition, ALD Publications, Hyderabad.
- ALD"s Criminal Consolidated Digest, 2006-2008, 2009 Edition, ALD Publications, Hyderabad.
- ALT (yearly) Digest - 2000 (Vol. 14), ALT Publications, Hyderabad.
- ALT (yearly) Digest - 2008 (Vol. 22), ALT Publications, Hyderabad.
- Ashari, S.M.: "Ways to get Bail avoid Police Harassment and Jail", Ashri Law Publication, 1994.
- Barnes and Teeters – New Horizons in Criminology
- .Baxi Upendra- The Crisis Legal Indian, The of System.
- Baxi, Upendra - Law and Poverty, Critical Essays, 1988.
- Blom-Cooper (Ed.) Progress in Penal Reforms, Oxford, Reform, 1974, Clarendon Press.
- Campbell, Tom, "Human Rights Rhetoric Tom. From to Reality", Chaturvedi, A.N. Right of under Accused Indian Constitution, 1984.
- Chaudhary and Chaturvedi, „Law of Fundamental Rights", 1985.
- Courts, J.A., Ed. „The Accused: A Comparative Study", British Institute of International Comparative Law.
- Datir, R.N., „Prison as a Social System with Special Reference to Maharashtra State", 1989, Bombay. Desai, Violation Democratic in A.K. of Rights in India.
- Dewan, V. K. "Laws Relating to Bail & Remand" with Introduction by R.S. Bedi Orient Law House.
- Donnelly, Jack, „The Concept of Human Rights", 1985, Australia.
- Encyclopaedia Britannica. • Goldfarb, Ronald. Ransom A Critique the of American Bail System, 1965.
- Goldstein, Abraham S. and Goldstein, Joseph, „The State and the Accused: Crime, Law and Society", 1971.
- Gupta R.L., The Law and Method Criminal of Investigation, 1960.

- Halsbury, Lord, "Law of England", Butterworth & Co. Lord; Laws, 1952-59.
- Halsbury"s Laws of England, 1955 Ed. Vol. X. Hansariya, B.L. – „Right to Life and Liberty under the Constitution", Hansariya, B.L. – „Rights to Life and Liberty under, the Constitution", 1993, Bombay. Hemphill, Charles F. – „Criminal Procedure: The Administration of Justice", Goodyear Publishing Co. Hingorani, R.C. Human Rights in India, 1985.
- R. Sharma, Human Rights and Bail, 2002, APH Publishing Company, New Delhi.
- Indian Law Institute, „Legal Research and Methodology", Tripathi, Bombay, 1983.
- Indian Law Institute, "The Supreme Court under Strain: The Challenge of Arrears", 1979.
- Iyer V.R.K., "Human Rights and the Law", 1984.
- Iyer, V.R.K., "Equal Justice and Forensic Process - Truth and Myth", 1986.
- Iyer, V.R.K., "Indian Social Justice in Crisis", 1983.

- Jai, Janak Raj, „Bail-Law and Procedures", 1995. Johnson, Robert and Toch, „The Pains Hans of Imprisonment", 1982.
- Jai, Janak Raj, Bail Law and Procedures with Tips to Avoid Police Harassment, 7th edn. 2016.
- J.D. Chandan, Law Relating to Dowry Deaths Dying Declarations Suicides & Cruelties to Women, 2005.
- Kataria, R.P., "Law of Bails, Bands and Arrest", First Edition, 2003, Orient Publishing Company, New Delhi.
- Keele, „The Sociology of Law", 1976. Kelkar, R.V., „Code of Criminal Procedure", 1980, Ed.
- Khare, Subhas Chandra, „Human Rights and United Nations".
- Krishnamurthy, K., „Police Diaries, Statements, Reports, Investigation and Arrest", 1986.
- Langer; William L. (Ed.) „A of Survey European Civilization", Vol. II, 1952. Mallick, M.R., „Bail Law in India", 1993, Edn.
- Laxmanrao, Naryana, "Anticipatory Bail Law & Practice", Asia Law House, Hyderabad, 2003.

3. LIST OF REFERRED ARTICLES

- Ashworth A.J., "Concepts of Criminal Justice", 1979, Cr. L.R. 412.
- Adarsh Ramanujan & Raghav Sharma, "Bail or Acquittal"? A Judicial medley? Criminal Law Journal, (2007), Vol. l.
- Agarwal A.K, "Some PROS and CONS of Law to Relating to Anticipatory Bail", Criminal Law Journal, (2007), Vol. 3.
- Amit Anand Deshpande, "Life of Anticipatory Bail", Criminal Law Journal, (2007), Vol. 3.
- Arup Kumar Bhattacharya, "Section 438, Cr.P.C. should be saved, not Jettisoned", Criminal Law Journal, (2005), Vol. 4.
- Baxi, Upendra, "The Supreme Court under Trial", Undertrials and the Supreme Court, 1980, SCC, Vol. 1, Joun., p. 35.
- Chabra, K.D., "Rights of an Accused under the Law", 22 J.I.L.I. 371 (1980).
- Guptestwar, K., "The Rule Against Double Jeopardy under the Indian Constitution", 1956, SCJ, XIX 53.
- Dwivedi, S.P., "Procedural Priveieges of the Accused", 10, Indian Advocate, 1970, p. 75.
- Frederic Suffet, "Bail Setting - A Study of Court Room Interaction", Crime and Delinquency, 12, (1966), p. 318.
- Kautilya Arthshastra, IV ch. 9.
- Joseph, A., Searches Seizures and Immunities, Vol. II, 1961, pp. 900-01.
- Law Commission of India, 14th Report on the Reform of Judicial Administration, 1958, Vol. II, p. 736, Journals Ashworth A.J. "Concepts of Criminal Justice", 1979, Cr. L.R., 412.
- Mallick, M.R., „Bail Law in India", 1993 Edn. Misra, Shailendra Police Brutality, An Analysis of Police Behaviour, 1986, Edn.
- Mitter, "Police Investigation and the Courts", 1975.
- Mughal, A.K., "Cases and Statues on Criminal Procedure", Butterworths, 1973.
- Nandlal, "Code of Criminal Procedure", Law Publishers, (1975).
- Narula, R.K., (Justice of Undertial) "Jail or Bail" Law and Procedure of Bail in India and U.K
- Narula R.K. „Jailor Bail", 1979.
- Pandey, D.C., "Annual Survey of Indian Law", IL1 (1973), 66 and XVI (1980), p. 452.
- Pandey, D.C., "Release on Bail", Law and Practice, Under the Auspices of the Indian Law

Institute, New Delhi.

- Pandecy, D.C., "Right to Bail", L.L.I. Pandey, D.C. Criminal Law and Procedure – Annual & Bagga V. Survey of Indian Law 1973, Vol. IX, LLI, Report of the Joint Code of Criminal Procedure Bill Committee, 1970, 4th Dec., 1972.
- Dr. S. Subramaniam, "Human Rights and the Police", CBI Bulletin, 1993, Vol. 1, p. 9.
- Shangloo, R.K., "Restore „Anticipatory Bail" Appeal to Government Legislators and Bar Associations", Criminal Law Journal, (2001), Vol. l.
- Shantimal Jain, "Bail Before Jail", Criminal Law Journal, (2007), Vol. 3.
- Swamika Prasad, "Cancellation of Bail - Emerging Trends", Criminal Law Journal, (2007), Vol. 2.
- Saha, A.N. K. C. Mehrotra"s, "Law of Bails", Forfeiture of Bonds and Habeas Corpus, 2nd Ed., Eastern (1985). • Scollin, John. A., "Pre-Trial Release", An analysis of Provisions of the Criminal Code released to Bail and Arrest.
- Tanmaya Mehta, "Principles for Grant or Rejection of Bail", Criminal Law Journal, (2007), Vol. 2.
- Thakur, P.R., "Maintainability of Successive Bail Applications in Appeals - Bail is Judicial Discretion, Not a Judge"s Hunch", Criminal Law Journal, (2003), Vol. l.
- Thakur, P.R., "Order to Deposit Money as a Pre-condition for Bail has no sanction of Law", Criminal Law Journal, (2003), Vol. 2.
- Thakur, P.R., "Release on Bail after Conviction by Trial Court, under Section 389(3) of the Code of Criminal Procedure, 1973", Criminal Law Journal, (2001), Vol. 2.
- Zander, Michael, "Bail L.: A Reappraisal, 1967, Cr. Rev. 100.

4. LIST OF REFERRED COMMISSION REPORTS

- Thirty Sixth Indian Law Commission Report - submitted by Mr. J. L. Kanpur to Law Ministry of India on 9th January, 1968.
- Forty one Indian Law Commission Report - submitted by Mr. K. V.K. Sundaram to Law Ministry of India on 24th September, 1969.
- Forty Eight Indian Law Commission Report - submitted by Mr. P.B. Gajendra Gadkar

to Law Ministry of India on 25th July, 1972.

- One hundred and fifty fourth Indian Law Commission Report - submitted by Mr. T. Seetharam to Law Ministry of India in 1996.
- Two hundred and third Law Commission Report - submitted by Dr. Justice A.R. Lakshman to Law Ministry of India in December, 2007.
- The 154th Law Commission Report
- Report of the Expert Committee on Legal Aid, 1973.
- Report of the Joint Select Committee on the Code of Criminal Procedure Bill, 1970 (1972).
- National Police Commission Reports, 1980.
- Report of Working Group on Prisons, 1973.
- Delay in the Disposal of Criminal Cases in the Sessions and Lower Courts in Delhi. I.C.F.S. Government of India (1982), p. 7.
- Report of the All India Committee on Jail Reforms, 1980-83.
- Law Commission of India, 79th Report on Delay and Arrears in High Courts and other Appellate Courts, 1979.
- 77th Report of the Law Commission of India on Delay and Arrears in Trial Courts, 27.11.1978.
- Government of India, Law Commission of India Report No. 268 Amendments to Criminal Procedure Code, 1973 – Provisions Relating to Bail, May 2017.

5. ONLINE SOURSES

- http://14.139.60.114:8080/jspui/bitstream/123456789/671/11/Bail%20M echanism.pdf
- http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/13/13_chapter %207.pdf
- http://indialawyers.wordpress.com/2011/11/26/law-on-bail/
- http://www.legalindia.in/personal-liberty-and-grant-of-anticipatory-bail/

- http://www.lawctopus.com/academike/anticipatory-bail-india-criticalanalysis/http://14.139.60.114:8080/jspui/bitstream/123456789/671/11/Bail%20Mechanism.pdf
- http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/13/13_chapter %207.pdf
- http://indialawyers.wordpress.com/2011/11/26/law-on-bail/
- http://www.legalindia.in/personal-liberty-and-grant-of-anticipatory-bail/
- http://www.legalindia.in/personal-liberty-and-grant-of-anticipatory-bail/ 296
- https://www.google.co.in/webhp?sourceid=chromeinstant&ion=1&espv=2&ie=UTF-8#q=law%20relating%20bail
- https://www.google.co.in/webhp?sourceid=chromeinstant&ion=1&espv=2&ie=UTF-8#q=law%20relating%20bail
- https://www.allprobailbond.com/blog/bail-bond-process/history-of-bail-2/
- https://www.pretrial.org/download/pji.../PJI-History%20of%20Bail%20 Revised.pdf
- https://money.howstuffworks.com/bail3.htm
- https://en.wikipedia.org/wiki/Bail
- http://www.bail.com/bail-history/
- http://mpsja.mphc.gov.in/Joti/pdf/LU/criminal%20trial%20guidelines.pdf

6. NEWSPAPERS

- The Hindu
- The Hindustan Times
- The Times of India
- The Telegraph
- The Indian Express
- The Economic Times
- The First Spot
- The Tribune