Subject Name: Code of Criminal Procedure
Topic Name: Bail in Bailable Offences

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Purpose of Bail

The primary aim of arresting and detaining an accused person is to ensure their presence at trial and guarantee their availability for sentencing if found guilty. However, if there are reasonable means to secure the accused's appearance at trial without resorting to arrest and detention, it would be unjust to deprive them of their liberty during the legal proceedings.

Provisions concerning the issuance of summonses, arrest warrants, or bail are all designed to ensure the accused's presence at trial while minimising unjust interference with their freedom.

The release on bail is pivotal for the accused, considering the ramifications of pre-trial detention. Denying bail would subject the accused, presumed innocent until proven guilty, to the psychological and physical hardships of jail life. Moreover, it disrupts their ability to contribute to their defence and places a significant burden on their innocent family members.

In cases where the accused faces serious charges and is likely to receive severe punishment, there's a risk of absconding or jumping bail to evade trial and sentencing. Granting bail to such individuals would be unwise, as it could jeopardise the legal process or lead to further offences. However, denying bail without such risks would be unjust, as it violates the presumption of innocence until proven guilty.

To balance these conflicting demands, the law must consider societal safety and the fundamental principle of presumption of innocence. The legislature has provided specific guidelines for granting or denying bail, and courts have developed additional norms for exercising discretion in bail matters.

Although the Code does not provide a definition of bail, it distinguishes between "bailable" and "non-bailable" offences. Bail, as defined in legal terminology, involves providing security for the accused's appearance, allowing their release pending trial or investigation. It aims to secure the individual's release from custody under the condition that they appear at designated times and submit to the court's authority.

The Supreme Court has clarified that bail encompasses release on one's own bond, with or without sureties. Determining when sureties are necessary and the appropriate amount to demand requires careful consideration of the circumstances.

Bailable and Non-Bailable Offences

The Code categorises all offences into "bailable" and "non-bailable" offences. As per Section 2(a), a "bailable offence" refers to an offence listed as such in the First Schedule or made bailable by any other prevailing law. Conversely, a "non-bailable offence" encompasses all other offences. Notably, the Code doesn't prescribe a specific test or criterion for determining whether an offence falls into the bailable or non-bailable category; rather, it relies on the classification provided in the First Schedule.

The First Schedule categorises offences under the Indian Penal Code (IPC) into bailable and non-bailable categories, with the basis for this classification stemming from various considerations. Generally, serious offences, punishable by imprisonment for three years or more, are classified as "non-bailable offences," although there are exceptions.

For offences under laws other than the IPC, listing all offences and updating the schedule with every new penal law is impractical. Hence, a broad rule akin to the one in the IPC schedule has been adopted for these offences under other laws.

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However, this general rule can be adjusted as per specific requirements by enacting special provisions in the law to declare a particular offence as bailable or non-bailable.

If an individual accused of a bailable offence is arrested or detained without a warrant, they have the right to be released on bail. Conversely, for non-bailable offences, bail is not an automatic right but a discretionary privilege granted by the court. The classification of offences into bailable and non-bailable serves as a preliminary criterion for determining whether the accused should be granted bail. If this initial decision doesn't favour the accused, further examination is necessary before deciding on bail.

Bail in Bailable Offences

Section 436 stipulates that when an individual not charged with a non-bailable offence is arrested or detained, they have an inherent right to seek bail. This section covers scenarios where individuals are accused of bailable offences, cases where no offence is alleged but security proceedings under Chapter VIII of the Code have been initiated against them, and all other instances of arrest and detention unrelated to non-bailable offences.

Although this section entitles individuals other than those accused of non-bailable offences to seek bail, it's important to note that Section 50(2) mandates police officers arresting such individuals without a warrant to inform them of their right to bail. As soon as an accused individual expresses readiness to post bail, the police officer or court must release them on reasonable bail terms. The officer or court may even discharge the individual.

The term "appears" in Section 436(1) encompasses the voluntary appearance of an accused person, even in the absence of a summons or warrant. There's no exclusion of voluntary appearance in the section, nor is it suggested that the accused must appear in response to a court-issued process. The voluntary surrender and physical presence of the accused, submitting to the court's jurisdiction, constitute judicial custody, allowing for the granting of bail and subsequent release.



The second proviso to Section 436 preserves Sections 116(3) and 446-A. Section 116(3) permits the detention of individuals against whom security proceedings have been initiated if they fail to furnish an interim bond as required by the court. This provision overrides the general rule regarding release on bail under Section 436(1). Similarly, Section 446-A regarding forfeiture and cancellation of bonds due to breach of conditions remains unaffected by the general rule on bail release under Section 436(1).

The right to be released on bail under Section 436(1) cannot be indirectly nullified by setting unreasonably high bond amounts. In such cases, the accused can apply for reconsideration, and the court may grant bail after a fresh consideration. Section 440(1) specifies that bond amounts must be fixed with due regard to the circumstances of the case and not be excessive. Additionally, the High Court and the Court of Session can direct the reduction of bail required by a police officer or magistrate if deemed necessary.

Though there's no specific provision for appealing against orders refusing bail under Section 436(1), the High Court or the Court of Session can be approached under Section 439 for bail. Refusal to grant bail in violation of Section 436 renders detention illegal, and the police officer causing such detention may be liable for wrongful confinement under Section 342 IPC.

Sub-section (2) of Section 436 states that individuals who have absconded or breached bail conditions in a bailable case on a previous occasion are not automatically entitled to bail upon subsequent arrest, even if the offence is bailable. Additionally, under Section 446-A, bonds executed by such individuals, as well as those by their sureties, are cancelled. Furthermore, if an individual released on bail under Section 436(1) engages in acts undermining fair trial, the High Court or the Court of Session may revoke bail and remand them to custody.

An amendment to Section 436 mandates the release of individuals on their own surety if they are genuinely indigent. The added explanation assists the court in determining the accused's ability to provide surety, stating that if the accused cannot provide surety within a week of arrest, it may indicate indigence. Failure to appear in court after release on bail may result in imprisonment, a fine, or both, under Section 229-A IPC introduced in 2006.

In the case of State of Haryana v. Dinesh Kumar, the Supreme Court addressed the definition of "arrest" and "custody" in criminal proceedings, suggesting that it might not be unreasonable for a layperson to believe they were never arrested if they were immediately granted bail upon appearing before the court. However, the situation would differ if the individual had not been released on bail.