
BEHIND BARS AND BEYOND: A BRIEF STUDY OF BAIL

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Article Received: 06 April 2026

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Article Revised: 26 April 2026

India.

Published on: 16 May 2026

DOI: <https://doi-doi.org/101555/ijarp.6706>

ABSTRACT

This research paper outlines and examines the concept of bail as an essential component in the administration of justice and criminal jurisprudence. The paper discusses in detail the philosophy of bail in order to understand its nature and significance by interpreting various definitions of bail laid down by the Apex Court and different high courts through their landmark judgements. It further examines the objectives of bail, particularly the need to ensure the attendance of the accused before the court during investigation and trial, while safeguarding presumption of innocence and his fundamental right to personal liberty. This paper also discusses various kinds of bail and their relevance in the practical application. Through this discussion, the paper outlines the significance of bail in maintaining a balance between individual liberty and interests of society. The study highlights that the concept of bail serves as a safeguard against arbitrary and unlawful detention of an individual and incorporates broader constitutional values of justice, equity and fairness.

KEYWORDS: Bail, Criminal Justice System, Personal Liberty, Presumption of Innocence, Arbitrary Detention, Kinds of Bail, Criminal Jurisprudence.

INTRODUCTION

The concept of bail is a basic yet crucial component of Indian criminal jurisprudence which ensures that a person is not deprived of his Right to Life and Personal Liberty enshrined in Article 21, Part III of the Indian Constitution. It can be regarded as a method or process that balances fundamental rights of an individual with the interests of justice.

The right to life and personal liberty enshrined under Article 21 of Constitution of India is a fundamental & constitutional right of every citizen in India and if a person accused of committing an offence is detained in legal custody without conviction, it infringes his right to

personal liberty, but this right is not absolute as it can be abridged in order to harmonize judicial fairness with social welfare. The principle behind the philosophy of bail is that a person accused of committing an offence is presumed innocent until proven guilty. Therefore, abiding by this principle, detention of an accused must not be punitive rather it should focus on ensuring the appearance of the accused during the investigation and trial. Examining the scope of Article 21 of the Constitution, in a case, the Supreme Court observed that while it is true that Article 21 has not been incorporated in the Constitution to safeguard the offenders, provided however that, there is due sanction of law in the matter of having the petitioners in the custody.¹

Sir William Blackstone in his *Commentaries of The Laws of England* defined bail 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.*”² This definition outlines that bail involves the release of a person from the formal custody subject to his appearance as and when required before the court of law, and the duty to ensure such appearance is taken by the sureties who act as guarantors on behalf of the accused person. In this context, bail depicts a balance between the liberty of an individual and interests of justice ensuring that the detention of an accused is not arbitrary and prolonged. The idea of bail also serves as a safeguard against the misuse and abuse of power by the authority and upholds the underlying principles of justice, fairness, equity and due process.

Understanding bail: Definitions and Meaning

The concept of bail has been interpreted and defined in various ways by different legal scholars, dictionaries, legal authorities and sources. The term ‘bail’ was not expressly defined in the Code of Criminal Procedure, 1963, it was understood through other terms such as ‘bailable offence’ and ‘non-bailable offence’ which were defined under Section 2 of the Code. However, the *Bhartiya Nagarik Suraksha Sanhita, 2023* exclusively defines ‘bail’ under Section 2(1)(b) of the Sanhita. According to this provision, “*bail means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond;*”³ This definition clearly explains the meaning of bail as a release of an accused person

¹ Narinder Singh Sahni v. Union of India, AIR 2001 SC 3810 at p. 3814 (2002)2 SCC 210

² Sir William Blackstone, *Commentaries on the Laws of England*, Vol. 1 (Clarendon Press, Oxford, 1765)

³ *Bhartiya Nagarik Suraksha Sanhita, 2023*

from the custody of law, upon the execution of a bond or a bail bond, subject to certain conditions that includes appearance before the court of law as and when required.

According to the Black's Law Dictionary bail means to *"To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court"*⁴ The above definition outlines that bail is a process wherein a person is released from the legal custody, in the manner prescribed by law, on the condition that he shall ensure his appearance for trial and investigation at the required time and place and comply with the directions of the court.

The concept of bail has also been examined and interpreted through various judicial interpretations. The Supreme Court of India in the case *Kalyan Chandra Sarkar v. Rajesh Ranjan*⁵ examined the concept of 'bail' in the light of Article 21 of the Constitution of India. The court observed that: *"Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law."*

In *Moti Ram v. State of Madhya Pradesh*⁶, the Supreme Court emphasized that *"bail conditions should not be excessive or beyond the capacity of the accused."* This comment by the court underlined that the grant of bail to the accused must be just and fair and should not function in a way that discriminates against the economically disadvantaged. Further, in *Sanjay Chandra v. C.B.I.*⁷, the Supreme Court of India examined the philosophy of bail and held that the core objective of granting bail is not to punish the accused, but to ensure his timely attendance during the investigation and trial. It strengthens the idea that pre-trial detention should be avoided unless necessary. *"Bail is the rule and jail is the exception"* is a guiding principle that governs the bail jurisprudence and it was laid down by the Supreme Court of India in *State of Rajasthan v. Balchand*. This pronouncement of the court highlights that granting of bail is a basic rule unless there are instances that suggest the accused might; flee from justice, tamper with the evidences, intimidate, threaten or abuse the witnesses, not co-operate with the authorities during the investigation and trial, and not ensure his appearance before the court at the required time.

⁴ Black's Law Dictionary (4th Edn.) 177.

⁵ (2005) 2 SCC 42

⁶ (1978) 4 SCC 47

⁷ (2012) 1 SCC 40

The significance of personal liberty and free legal aid to an accused person was strengthened by the Apex Court in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*,⁸ wherein the Supreme Court outlined the conditions of the under-trial prisoners who were detained without trial for prolonged periods. The court also emphasized on the right to speedy trial as an essential component of the right to life and personal liberty enshrined under Article 21 of the Constitution of India.

In view of the above definitions and judicial pronouncements, it becomes clear that bail is not just a procedural mechanism, but a fundamental safeguard within the criminal justice system. While statutory provisions and dictionary meanings describe bail as a method for securing the release of an accused person upon certain conditions, judicial interpretations have significantly expanded its scope and importance. Collectively, these definitions and judicial decisions establish that bail serves as a crucial element for balancing individual liberty with the interests of justice and ensuring that pre-trial detention does not become punitive in nature.

Objectives of Bail

After understanding the concept of bail, it is important to understand the objectives it seeks to achieve. Bail is a process wherein an accused individual is released from the lawful custody on certain conditions, and the concept of bail is often considered as a mechanism that acts as a bridge between the right to personal liberty of an individual and functioning of the criminal justice system. One of the primary objectives of bail is to secure attendance of an accused individual before the court of law during trial proceedings and investigation. The objectives of bail are not limited to securing conditional release of an accused individual from lawful custody and ensuring appearance before the court of law, but they extend to safeguarding personal liberty of an individual, upholding fairness in the administration of justice, prevention of punitive detention before conviction of an accused individual, reducing overcrowding in prisons, and ensuring that the accused does not interfere in the course of justice.

These objectives are discussed below:

1. To ensure the appearance of the accused during investigation and trial: Ensuring the presence of an accused individual before the court of law is one of the primary objectives of bail. The Supreme Court of India recognised this as the primary objective in *State of*

⁸ (1980) 1 SCC 91

*Rajasthan v. Balchand*⁹ where Justice V.R. Krishna Iyer laid down a guiding principle that “*bail is the rule and jail is an exception.*” This objective can be achieved only on the fulfilment of certain conditions such as furnishing one or more sureties or guarantors who take the responsibility of ensuring timely appearance of the accused before the court as and when required.

2. To protect personal liberty of the accused: Article 21 holds the highest position of constitutional hierarchy of fundamental rights enshrined in Part III of the Indian Constitution as it protects the personal liberty of an individual and guarantees that “*no person shall be deprived of his life or personal liberty except according to the procedure established by law.*” According to this article, right to personal liberty includes right to move freely, right to profess any lawful occupation or profession, and right to choose one’s place of residence

3. To prevent punitive detention before conviction: One of the fundamental principles that govern the concept of bail is presumption of innocence, which is closely linked to the rule that in absence of conviction, detention should not be punitive. This principle was upheld in *Dataram Singh v. State of Uttar Pradesh and Anr.*¹⁰, wherein the court upheld the principle of “*bail is the rule and jail is the exception.* In *Sanjay Chandra v. C.B.I.*¹¹, the Apex court held that the purpose of bail is neither punitive not preventive, but merely to ensure the appearance of the accused during trial.

4. To ensure that the accused does not interfere with judicial proceedings: Another important objective of bail is to ensure that the accused will not abuse or misuse the liberty granted to him in a way that obstructs the course of justice. There are certain conditions that are required to be followed and fulfilled by the accused at the time of granting of bail and some of these conditions include, that the accused shall not flee from justice, tamper with the evidences, intimidate, threaten or abuse the witnesses, and that he shall co-operate with the authorities during the investigation and trial, and ensure his appearance before the court at the required time. The bail may be cancelled if there is a likelihood of the accused violating any of the conditions that are required to be followed by him.

5. To maintain a balance between individual liberty and interests of society: The right to life and personal liberty is a fundamental right enshrined under Article 21 of the Indian Constitution, but it is not absolute. It can be curtailed to maintain a balance between the liberty of an individual and interests of society. To maintain this balance, courts often take

⁹ (1977) 4 SCC 308

¹⁰ (2018) 3 SCC 22

¹¹ (2012) 1 SCC 40

into consideration certain factors such as, the gravity and nature of offence, the character of the accused, likelihood of the accused absconding, possibility of the accused of committing further offences, while granting bail in serious and heinous offences, and adopt a more cautious approach in cases that affect public order and safety. This balance was recognised by the Supreme Cour of India in *Ram Govind Upadhyay v. Sudarshan Singh and Ors.*¹²

6. To reduce over-crowding in prisons: A significant population in the prison consists of individuals who have not been convicted and are merely awaiting trial, leading to prolonged and unnecessary detention. Such detention results in the curtailment of personal liberty of an individual guaranteed under Article 21 of the Constitution of India, and places an additional burden on the prison system. This concern was addressed by the Apex Court in *Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar*¹³, wherein the court highlighted the conditions of under-trial prisoners and recognised speedy trial as an essential component of Article 21, holding that prolonged and unlawful detention is unconstitutional.

In essence, the concept of bail is not just a procedural requirement, but is a safeguard within the criminal justice system. It ensures that an accused individual is not deprived of his personal liberty and freedom while also safeguarding interests of the society and upholding integrity of the judicial system. Bail strikes a balance between an individual's rights and societal interests by avoiding prolonged detention, securing attendance of an accused before the court at the required time, and preventing misuse of power. Thus, bail functions as a mechanism that preserves individual liberty while ensuring fair administration of justice.

Categories of Bail in Criminal Jurisprudence

The concept of bail has evolved through various legal developments, legislative changes and judicial interpretations, and is not limited to a uniform procedure as it recognizes different forms within the criminal jurisprudential system. The categories of bail, within the ambit of criminal law, address different stages of the criminal process and are not arbitrary, as they underline practical approach of law in dealing with certain situations without compromising with the personal liberty of an individual. Bail can be categorized into the following categories:

1. Regular Bail: A regular bail refers to the release of individual who was arrested and is in lawful custody at the time of securing bail. This is the most encountered form of bail in the Indian criminal jurisprudence. A regular bail is a conditional release of an individual wherein

¹² (2002) 3 SCC 598

¹³ (1980) 1 SCC 91

any person from the society undertakes the responsibility of the accused ensuring his appearance before the court of law upon furnishing bond or a bail bond. While granting a regular bail, courts take into consideration the nature and gravity of offence, background of the accused, and various conditions such as possibility of an accused fleeing from justice, absconding, not appearing before the court at the required time, not cooperating during the investigation or trial, tampering with the evidences, threatening or intimidating the witnesses.

2. Anticipatory Bail: An anticipatory bail refers to a bail that is granted to an individual who apprehends that he might get arrested and detained by the authorities. It is granted when a person has reasonable grounds to believe that he might be arrested and falsely implicated in a matter. It is an extraordinary remedy available to an individual to protect himself from arbitrary and unlawful arrest in case of non-bailable offences. In the case of *Gurbaksh Singh Sibbia and Ors. v. State of Punjab*¹⁴, the court outlined the scope of anticipatory bail and emphasized that an anticipatory bail is a matter of judicial discretion and may be granted only after considering the facts and circumstances of the case.

3. Interim Bail: Interim bail is a temporary release of an accused individual while a regular bail or an anticipatory bail is pending and the court requires time to decide the bail application. It is granted for a fixed period of time and is subject to certain conditions, and if those conditions are violated, the bail order may be revoked. The main purpose of an interim bail is to prevent unnecessary imprisonment of an accused during the pendency of the bail application, and provide immediate relief to the accused and safeguard his personal liberty. It can be granted in both, bailable offences and non-bailable offences, on humanitarian grounds and in situations involving medical emergency. The concept of interim bail is not expressly mentioned in the criminal laws but Supreme Court of India in the case *Sundeep Kumar Bafna v. State of Maharashtra*¹⁵ recognized and strengthened the position of interim bail and held that any court that has the power to listen and grant regular bail or anticipatory bail, also has the power to grant interim bail.

4. Default Bail: Default bails is a kind of bail that is granted when the investigating authority fails to file a chargesheet or complete the investigation within the time prescribed by law. Within the ambit of the criminal laws, an accused individual who is in lawful custody is entitled to be released if the police authorities fail to comply with the established

¹⁴ (1980) 2 SCC 565

¹⁵ (2014) 16 SCC 623

procedures, and this right cannot be defeated. In the case of *Rakesh Kumar Paul v. State of Assam*¹⁶, the Supreme Court established the constitutional status of default bail.

The kinds of bail as mentioned under the criminal laws strengthen the underlying principle of “*bail is the rule and jail is an exception*,” and ensure that no person is deprived of his fundamental right to life and personal liberty without any lawful justification.

CONCLUSION

Bail, grounded in the principles of liberty, justice, and fairness, serves as a crucial safeguard within India’s criminal justice system. It ensures that the fundamental right to life and personal freedom under Article 21 of the Indian Constitution is not infringed upon without just reasons, while simultaneously holding the State accountable for maintaining law, order, and public safety.

The concept of bail has a rich historical lineage, tracing back to ancient legal systems, early English law, the Magna Carta, the Habeas Corpus Act, and the Bill of Rights. Over time, it has evolved into its contemporary understanding within Indian law, consistently striving to balance individual liberty with societal needs. Landmark judicial decisions, such as *State of Rajasthan v. Balchand*, *Sanjay Chandra v. CBI*, *Moti Ram v. State of Madhya Pradesh*, and *Hussainara Khatoon v. State of Bihar*, have underscored the principle that “*bail is the rule and jail is the exception*,” emphasising that pre-trial detention should not serve as a punitive measure. Bail fulfils several critical functions: it ensures the accused’s appearance at trial, prevents unjustified and prolonged pre-trial detention, alleviates prison overcrowding, and upholds the Constitution’s commitments to fairness and equitable treatment. Concurrently, it restricts the accused from exploiting their freedom to undermine the justice process. In essence, bail transcends its procedural role, reflects the civilisation of our criminal justice system, respects individual freedoms, upholds the presumption of innocence until proven guilty, and guarantees equitable justice. It exemplifies the equilibrium between individual rights and societal imperatives, ensuring justice is administered without compromising dignity or freedom of an individual. The subsequent chapter will examine in detail the evolution of the concept of bail in India, legal framework governing bail in India, focusing on the relevant provisions and judicial interpretations.

¹⁶ (2017) 15 SCC 67