

ANTICIPATORY BAIL: AN INTERPRETATION

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ABSTRACT

This paper aims to make an interpretation regarding all the various aspects of the provision of anticipatory bail, given during the criminal procedure. It reviews all the legal definitions of bail, and types of bail, specifically anticipatory bail. Secondly, it reviews the purpose of bail. It takes up a hypothetical case study. The names of persons or places are wholly fictional and any resemblance to the names of any place or person, either alive or dead is a mere coincidence. The hypothetical case is of a person, who is accused of retrenchment of government funds. He applies for anticipatory bail, on certain grounds from the Hon'ble Patna High Court. The anticipatory bail was rejected by the court of Additional District Judge of the special court. Therefore, he appeals for anticipatory bail from Patna High Court. Although, the decision is pending. It concludes with the issue; of whether bail is a right of an accused or is it a discretion of the court of law.

INTRODUCTION

Bail is a legal provision, which provides for the temporary release of an under-trial accused, from the custody of the police or judicial custody, under certain terms and conditions. The condition may include monetary bonds, surety, not leaving the territory, without the permission prior permission of the court, etc. However, the accused remains bound to future attendance, whenever summoned¹ by the court.

The provision of bail and bonds is discussed from Section 436 to Section 450 in the Criminal Procedure Code, 1973 (Act no. 2 of 1974).

It is of three types: -

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¹ Under Section 205(1) of CrPC provides that if magistrate seeks personal attendance of any person, either for inquiry, basis of any suspicion, he/she may observe a summon order for the physical presence of the individual person.

Regular Bail: - This is a widely used concept of bail, where any accused may seek a release from police custody, after paying a prescribed amount of bail money. This is enforceable under Sections 437 and 439 of CrPC.

Interim Bail: - It is bail for a temporary or a short period of time. While the application for regular bail is pending in the court, the under trial may apply for interim bail. But, the Hon'ble Supreme Court of India noticed the abundance of misuse of the provision of Interim bail, in the case of *Rukmani Mahato vs the State of Jharkhand*.

Anticipatory Bail: - This is also a provision of bail, if any accused is speculating an arrest, speculation due to any pending case against him/her, or any FIR² registered against him/her, or case dairy mentions his/her name in any manner, the accused may apply to avoid future detention of himself/herself. Section 438 of CrPC provides for the provision of anticipatory bail.

WHAT IS ANTICIPATORY BAIL?

Any person apprehending arrest, on the accusation of having committed a non-bailable³ offence, may be released, on certain conditions, derived in Section 438 of CrPC. If the name of a person accused is mentioned in any pending case, any FIR, or any case dairy and confessional statement of the accused person, he/she may be released, on certain conditions, derived from Section 438 of CrPC.

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WHAT IS THE PURPOSE OF ANTICIPATORY BAIL?

The principle of bail extends from the principle that the accused is still innocent, until or unless proven guilty. This is the basic philosophy of the Indian justice-delivering mechanism/ Indian Judicial System. This presumption of innocence means that an accused in a criminal trial is assumed to be innocent until they have been proven guilty. As such, a prosecutor is required to prove '**beyond a reasonable doubt**' that the person committed the crime if that person is to be convicted. To do so, proof must be shown for every single element of a crime.

² It stands for '**First Information Report**'. It is a document prepared by the local law enforcement agency, i.e. Police, after receiving an information or complaint regarding any offence. It is generally reported by the victim or victim's family. But, legally everyone has the right to report the same, even if he/she is not himself directly involved as a victim, instance, a person who himself/herself has witness a crime. Overall, the public reports an FIR to the police.

³ The offence, in which, the accused has no right to apply for release from arrest. The classification of bailable and non-bailable offence is mentioned in the first schedule of this act.

That being said, a presumption of innocence does not guarantee that a person will remain free until their trial has concluded. In some circumstances, a person can be held in custody.

Secondly, the case may take a long time to investigate and the delivery of judgement may take time. Therefore, any person may avoid future arrest, in-order to allow the person to carry out his/her regular basis responsibilities, such as going to work, job, or taking care of his/her family, as the family may include children or dependent parents. Hence, the provision of bail was provided in procedural law.

IS BAIL A RIGHT OF AN ACCUSED OR IS IT A DISCRETION OF THE COURT?

The issue arrived has both prospective, if considered in a particular manner. If bail is right, right being something, that is a justified claim, every person will avail themselves without any discrimination on the basis of caste, class, creed, race, or gender. It is enforceable to the utmost mandatory extent. But, if considered a discretion, it is the power and function of the court of law, a body of jurists.

- **Right of accused**

As mentioned earlier, bail is a provision, provided under the procedural statute, where any accused may be released from custody. The provision of bail is the premise of Article 21 of the Constitution of India. Article 21, is a fundamental right that deals with the right to life and personal liberty. It implies that, even if an individual is accused of even criminal offense, he/she has the right to liberty. As mentioned earlier, the bail allows one to leave police custody and the said accused may carry out the regular-basis responsibilities of personal life. Since everyone has the right to defend themselves. But, being in custody, they are viciously monitored, and hence they may hesitate to seek legal advice. The accused can't then prepare their case for trial while being in custody. They may be innocent, but without proper investigation and ample information to the legal practitioner, can break down the case. Since the free person is in a far better position to handle the case adequately to defend themselves. Overall, the premise arises that until proven guilty, the accused is innocent.

- **Discretion of the court**

This particular concept has various prospective that may be observed, for the same. Firstly, if the question of Article 21 is covered, it says that there may be reasonable restrictions. The

said accused is not guilty, until proven so. But, here the restriction is reasonable, as the person is accused of a criminal deed.

Secondly, if the accused is set free, on the said basis, he/she may involve in further criminal acts. He/she can commit a further crime to vanish the previous crime. Further crime may involve tampering with the evidence or terrorizing the victims.

Thirdly, if the question of inadequate opportunities arises, procedural law also provides for permission of seeking legal advice. No one can prevent a person, in police custody, to meet or hire an advocate of one's choice, until any procedure is established by any other law. Also, it was observed in the judgement of *D.K. Basu v/s State of West Bengal*, that it is mandatory for the state to provide free legal advice, for the accused, if they are financially unable to do so. Here, the court of law needs to look in, if the bail for the said accused is justified or not. Discretion means, that no suggestion or recommendation is required by the court to deliver the justified judgement. It is completely the discretion of the court of law. It reviews all the prospective of the said case and justifies the bail.

CASE STUDY

AT- Hon'ble Patna High Court

Bench- Hon'ble Mr. Justice Durga Bhatia, Chief Justice of Patna High Court Judicature at Patna, and companion judges.

Petitioner- Vinay Kumar Mishra, Retd. Fr Sub Divisional Audit Officer, Cooperatives Society. 66 years, Dedarpur, Bihar.

Opposite Party- Central Bureau of Investigation, Delhi

Criminal Miscellaneous Jurisdiction

Cr. Misc. No.; XYZ of 2022.

Under Section 438 of the Criminal Procedure Code, 1973 (Act no. 2 of 1974).

A person, namely Nakul Singh, Sahkarita Prasar Officer, ₹6.5r, Dist.- Dedarpur registered an FIR in the Manor Police station, on 21/06/2017, following an order (letter no. 892, date: - 20/08/2017) issued under the signature of District Cooperative Officer, Dedarpur and by the

District Magistrate of Dedarpur (letter no 32, 08/06/2017). The FIR was registered under Section- 409, 420, 467, 120B of the Indian Penal Code, 1860 (Act no. 45 of 1860), against the ten office accused, including Shri Janak Singh, Charter Accounted, Shri Vinay Kumar Mishra (Petitioner) and ten officer bearers of VMVSSL, namely, (i) Smt. Neeranjana Yadav, (ii) Smt. Laxmi Kumari, (iii) Smt. Simran Singh, (iv) Smt. Fiza Abdul, (v) Smt. Rani Sharma, (vi) Smt. Kalpana Sharma, (vii) Smt. Reeta Kumari, (viii) Smt. Shruti Kumari, (ix) Smt. Sanju Singh, (x) Smt. Jyoti Kumari.

An NGO, namely Veerjan Mahila Vikas Sahyog Samiti Limited was operating in Manor, Dedarpur. It was government funded and there were some retrenchments made by the above-mentioned office bearers of the VMVSSL. Alleged that the whole was conducted with the help of M.N. Tiwari and associates and Shri Janak Singh, Chartered Accounted. They all intentionally created false documents and never provided proper information to the District authority.

Subsequently, the case was taken over by the Central Bureau of Investigation on 10/04/2018, after registering a case on the said accused and gaining consent from the state home department. The matter was taken under cognizance by the Executive Magistrate of CBI on 09/12/2021. The CBI presented the charge sheet on all the accused, including the petitioner, on 29/10/2022 (Case no. 14/2022). The allegations were made under Section 120B, 420, 465, 468, 471, and 477A of the Indian Penal Code.

In the charge sheet by the CBI, the allegations were made that, the petitioner created false records in the meeting register containing the signatures of office bearers, including the petitioner. The meeting was said to be of genuine discussions for the opening of bank accounts, purposely in bylaws and other needs to run the society. The meeting register contained information regarding the meeting, and signatures were confirmed by independent witnesses. But, CBI alleged that NO such actual meeting took place and in the name of the meeting, funds were withdrawn from the account of the District Magistrate to the account of VMVSSL, held as fraudulent.

Further, it was alleged that the petitioner has bought different flats, worth ₹25 lakhs/- in Ghaziabad, for his sons Naveen Vinay Mishra, and Ankit Vinay Mishra. It was alleged that it was paid a sum of ₹14.5lakhs/-, during 2012-2014 from the account of Smt. Jhanvi Kumari and VMVSSL. Similarly, his daughter Smt. Meenakshi Jha, a sum of ₹6.5 lakhs/- during

2012-14, from the count of Smt. Jhanvi Kumari and VMVSSL. He applied for bail in the learned Court of Exclusive Magistrate, CBI and the bail was rejected. Therefore, the petitioner appealed in the Hon'ble Patna High Court.

Appeal by the Petitioner

The petitioner humbly appeals for anticipatory bail. He claims that the charges made against him are mere outcomes of suspicion. During the investigation, nothing came out against him. He was not a beneficiary at all, from the transactions, in any manner. The charges made by the CBI are just on the basis of mere suspicion and conjecture. The alleged payment of the flat was merely on basis of the fact that the name of the petitioner has been implicated in the present case.

The alleged purchase of the flat was also on the basis of conjecture. Both the sons of the petitioner are major, employed, working, and financially self-independent. They have purchased flats on their own earning. The document proof is also sighted. The builder of the concerned flat was paid a sum of ₹10 lakhs/-, even so, he failed to handover him the flat allotment letter. Therefore, the petitioner's son, Naveen Vinay Mishra, send a legal notice to the builder, regarding the same date 18/02/2018. The same happened with the daughter of the petitioner, Smt. Sonakshi Mishra, paid some ₹18 lakhs/- for her purchased flat, in Ghaziabad. When the builder was unable to produce an allotment letter to her, she sent a legal notice to him, dated 20/01/2018.

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The grounds he applies for the anticipatory bail may be justiciable if found so by the Hon'ble bench of Patna High Court. The petitioner is a retired government employee and he is aged about 66 years old. He was also unaware of the cognizance order. He came to know about this after his younger son came to know through a neighbor. After that, the petitioner inquired about the same, from an advocate, in Patna Civil Court, who is an acquaintance of him. He applied for dispensing his personal appearance, in the Patna Civil Court and allow him to appear through his advocate, due to old age and distance, dated 18/09/2021, under Section 205(1) of CrPC. He is suffering from several diseases. He is suffering from back pain and is unable to even walk properly. He is residing with his two sons and he moves out with his sons, wherever they are posted. As a government employee, his tenure was completely unstained. He has persuaded his duty with utmost honesty and decency. It also seems that he is being pitched, only as a scapegoat, by the real culprits.

CONCLUSION

There is a specific provision of anticipatory bail, in the Indian Procedural Statute of Criminal Procedure Code, 1973 (Act no. 2 of 1974). The need for anticipatory bail is just to allow a person to carry out his daily basis responsibilities. However, he/she is expected to cooperate in the investigation and appear, whenever summoned⁴. Bail has both the aspects of being a right of the accused, as well as it is the sole discretion of the court of law. The right is something, a justified and legally sanctioned claim of a person, even if he/she is accused of a criminal offence. But, the discretion of the court as well. Freedom may be misused by the person. He may threaten the witnesses; he may involve in a further crime or he/she may tamper or forge the evidence. Although, Article 21 of the Constitution of India, provides for fundamental rights, of right to freedom and personal liberty and the concept of bail is the premise of the same. But, Article 21, also provides for reasonable restrictions. The restrictions are necessary to maintain public order and decency. It implies that a person is free to exercise his right, to a reasonable. An individual should abide by the law, so he/she should NOT violate the rights of fellow citizens. In the case study, the ground was sufficient to consider the bail application of the petitioner. He should be granted his appeal, or the rest is the discretion of the learned bench of Hon'ble Patna High Court.

⁴ If he/she is unable to appear on the given date, he is needed to produce valid reasons for the same, if he/she is unable to do so, he/she will be booked under contempt of courts.