Bail & Bonds

DRAFT READER

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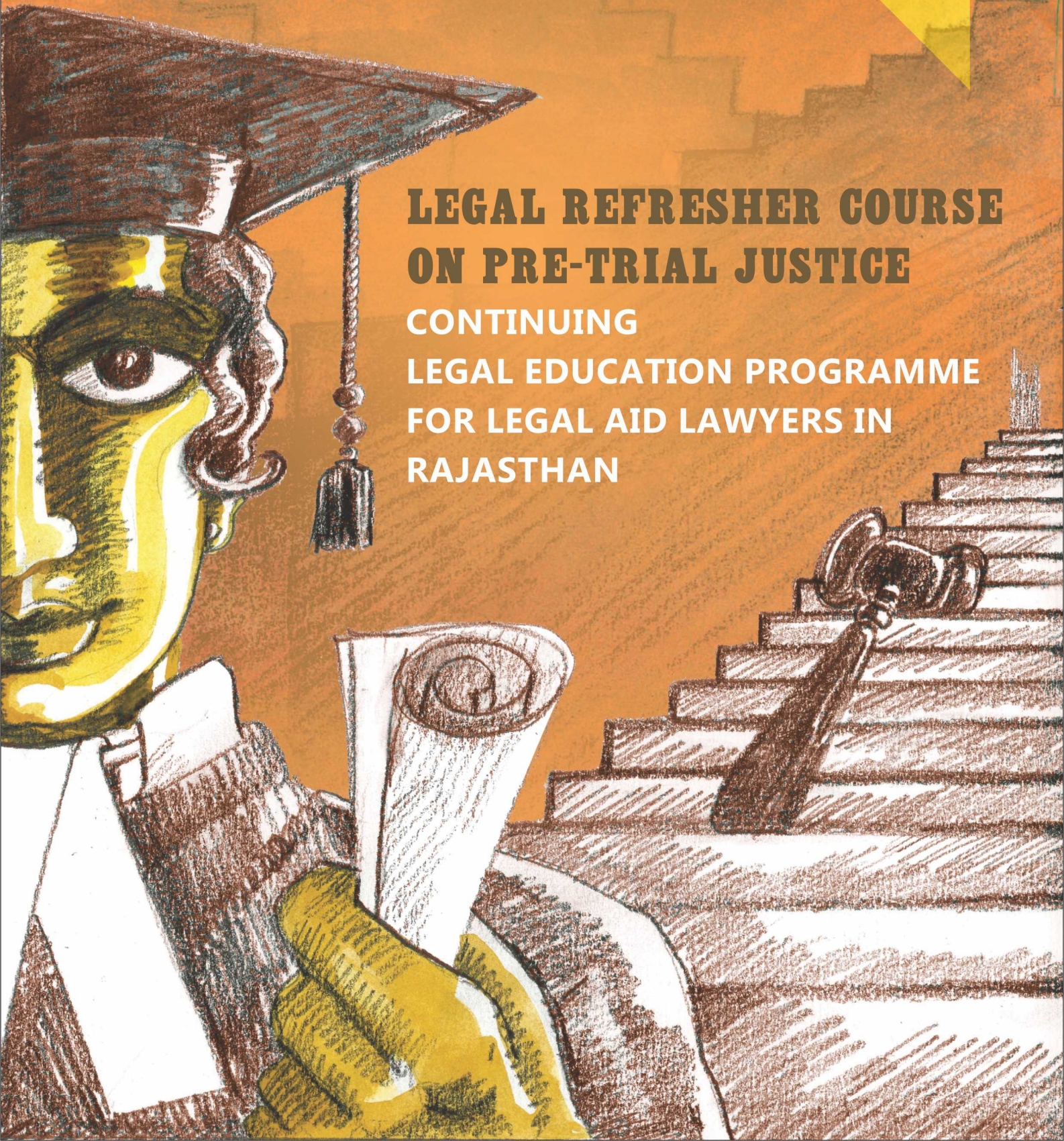

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

CONTINUING
LEGAL EDUCATION PROGRAMME
FOR LEGAL AID LAWYERS IN
RAJASTHAN

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MESSAGE & ENDORSEMENT

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MESSAGE FROM HON'BLE JUSTICE AJAY RASTOGI

CHAIRPERSON, STATE LEGAL SERVICE AUTHORITY, RAJASTHAN

Indeed, it is an ecstasy to acknowledge invitation to join you all as Chief Guest to the Inaugural Session of 'Legal Refresher Course on Pre-trial Justice' being initiated as Commonwealth Human Rights Initiative in collaboration with District Legal Service Authority (DLSA) Jodhpur & State Legal Service Authority, Rajasthan, to which I express my gratitude. Despite ardent wish to attend the Inaugural Session and to address the session: "Vision & Mission of SLSA Rajasthan for early & effective Access to Legal Aid in Police Station, Jails, Courts", I feel myself unable to be there due to my pre-occupations.

It is a matter of great pleasure that such a Training workshop is being organised for the legal aid advocates appointed under the model scheme for Remand & Bail Lawyers as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme.

I am confident, the Team of (DLSA) Jodhpur and SLSA Rajasthan would deliberate in the direction to contribute constructively in maintaining perception, with which the Training workshop through a continuing legal education programme is being organized, beyond expectations; and have been pleading for the cause of justice in various ways and pleasantly.

Organizing a Legal Refresher Course on the subject is an event, when each member of both the Teams with acumen will be able to think over to do justice to the participants by rendering services for better administration of justice. Kindly accept my heartiest felicitations for organisations of the Refresher Course and best wishes for its success and for betterment of the Nation.

(AJAY RASTOGI)

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न्यायाधीश श्री अजय रस्तोगी का संदेश

कॉमनवेल्थ ह्यूमन राइटस् इनिशिएटिव, जिला विधिक सेवा प्राधिकरण(डीएलएसए-जोधपुर) तथा राज्य विधिक सेवा प्राधिकरण(राजस्थान) के संयुक्त तत्वावधान में आयोजित 'लीगल रिफ्रेशर कोर्स ऑन प्री-ट्रायल जस्टिस' के उद्घाटन-सत्र में आप सबके बीच मुख्य अतिथि के तौर पर शामिल होने का निमंत्रण निश्चित ही अभिभूत करने वाला है और मैं इसके लिए कृतज्ञता ज्ञापित करता हूं। उद्धाटन-सत्र में शिरकत करने और "विजन एंड मिशन फॉर एसएलएसए राजस्थान फॉर अर्ली एंड इफेक्टिव एक्सेस टू लीगल ऐड इन पुलिस स्टेशन्स्, जेल्स, कोर्टस् " नामक सत्र को संबोधित करने की हार्दिक इच्छा के बावजूद पहले से चली आ रही व्यस्तताओं के निर्वाह के कारण मैं ऐसा करने में अपने को असमर्थ महसूस कर रहा हूं।

बड़ी खुशी की बात है कि रिमांड एंड बेल लॉयर्स नामक मॉडल योजना तथा एनएएलएसए की रिटेनर लॉयर्स योजना के तहत विधिक सहायता करने को नियुक्त अधिवक्ताओं के लिए प्रशिक्षण की ऐसी कार्यशाला का आयोजन किया जा रहा है।

मुझे विश्वास है कि जिस भावना से विधिक शिक्षा कार्यक्रम की निरंतरता में प्रशिक्षण की यह कार्यशाला आयोजित की जा रही है, उस भावना के अनुरुप जिला विधिक सेवा प्राधिकरण, जोधपुर तथा राज्य विधिक सेवा प्राधिकरण, राजस्थान की टीम अपना रचनात्मक योगदान देने की दिशा में अपेक्षा से कहीं ज्यादा आगे बढ़कर प्रयास करेगी।

विषय पर लीगल रिफ्रेशर कोर्स का आयोजन एक विशिष्ट घटना है जिसमें दोनों टीमों के प्रवीण सदस्यगण न्याय के सुयोग्य प्रस्तारण के लिए कार्यशाला के भागीदारों के हक में अनुचिन्तन को समर्थ होंगे। कृपया, रिफ्रेशर कोर्स के आयोजन के लिए मेरी हार्दिक बधाई तथा इसकी सफलता और राष्ट्र की बेहतरी के लिए मेरी शुभकामनाएं स्वीकार करें!

(अजय रस्तोगी)

MESSAGE FROM MAJA DARUWALA
DIRECTOR, COMMONWEALTH HUMAN RIGHTS INITIATIVE

Dear Advocates,

This long term training is a platform for learning and demonstrating on any legal issue that can ensure fair trial practices and reduce unnecessary pre-trial detention. As lawyers we are always keen to polish our cognitive/legal knowledge and argumentation skills and yet the scope for this is not always easily available. We are troubled by illegalities and malpractices we see in the court room but wonder how to address them and where to begin. As defense lawyers, we have a commitment to our clients to deliver the best services and provide the best solutions within the norms of fair trial. Yet we lack the biggest ammunition for this, which is the timely access to the most recent judgments, old and new debates within law and legal reform. We wish we had the technical expertise on specialised areas of defense such as remand, bail, evidence and cross-examination, to represent our clients more effectively, but the right mentorship is missing.

As advocates, we are different from a range of other professionals. Our task is not merely the delivery of a product or just any service, but to deliver relief and to provide protection to our clients against all forms of rights violation to serve the purposes of justice. But we forget sometimes that as advocates in the legal profession, we have a primary duty towards ensuring legal service and legal aid to the large number of pre-trial detainees who might suffer longer periods of detention than necessary merely because they are poor and cannot afford good lawyers or we were late in our interventions.

We forget to peer into the jails or make regular visits to see if there is someone there who needs our counsel. The high walls of the prison with the outside world's indifference towards inmates makes prison a breeding ground for delays and illegalities that even the prison itself would want to be rid of. It is possible that someone was unnecessarily remanded to custody or not produced physically in court merely because we were not appointed, not present, we did not argue, or did not argue well enough.

This course is designed to remind us of the duties that we should feel proud to perform as advocates because only we can perform it. Bringing the legal profession closer to jail reform through timely and effective use of remand and bail laws and the use of social protection laws for vulnerable prison populations will lie at the heart of this course on fair trial.

As officers of the court we are also expected to know and defend the 'rule of law', both procedurally and substantively. Yet the nature of law seems to escape our grasp in the practices that we come upon in the functioning of the criminal justice system as a whole. Our idealism, convictions and goodwill are constantly tested by the routine of court life, the poverty of debate, competitiveness and a mass of illegalities. In the course of being competitive with our peers we forget how we can encourage, nurture and be a resource to each other and to the many young lawyers who join the courtroom battle every day.

To address all this it is indispensable that we have opportunities and learning spaces to enrich our minds and be equipped towards the duties we have to perform, both individually and collectively. This training programme for legal aid lawyers is being initiated in just this spirit. It ensures your interaction with some of the best legal minds and criminal justice actors in Rajasthan and the country who will update and expand your legal knowledge. You will be guided and mentored by some of these inspiring individuals who have great commitment to 'rule of law' and deep knowledge of the legal strategies needed to protect one's client in the fullest sense.

On the whole, the course will draw attention to the powers and rejuvenated spirit that the legal profession, particularly legal aid lawyers, can channelize back into the criminal justice system through a revitalized knowledge of the law, vulnerabilities and prejudices and role of reasoning and argumentation; and improved skills of application of the law and effective representation for the indigent. The range of things this course can do, from legal education to changing malpractices in pre-trial detention and during trial, will be moulded by the energy and enthusiasm, interest and commitment all of you will bring to it.

MAJA DARUWALA

सीएचआरआई के निदेशक माया दारुवाला का संदेश

प्रिय अधिवक्तागण,

लंबी अवधि का यह प्रशिक्षण एक मंच की तरह है- ऐसा मंच जहां आप उन कानूनों मुद्दों को सीख-जान सकते हैं जिससे अदालती सुनवाई की निष्पक्षता सुनिश्तित होती है और अदालती सुनवाई-पूर्व की अनावश्यक बंदीकरण की घटनाओं में कमी आती है। एक वकील के तौर पर हमें हमेशा ही कानून के अपने ज्ञान और तर्क-कौशल को मांजने-चमकाने की जरुरत होती है लेकिन ऐसा कर पाने के अवसर अक्सर उपलब्ध नहीं होते। अदालत के भीतर जारी अनियमितताओं और कदाचार से हम परेशान रहते हैं और हताशा-भाव से सोचते हैं कि इन बातों का क्या समाधान निकाला जाय और इसकी शुरुआत कहां से की जाय। बचाव-पक्ष के वकील के रुप में हम निष्पक्ष न्याय के मानकों के भीतर रहते हुए अपने मुवक्कील को बेहतरीन सेवा और सर्वश्रेष्ठ समाधान प्रदान करने को प्रतिबद्ध हैं। लेकिन ऐसा कर दिखाने के लिए जो सबसे ज्यादा हथियार जरुरी हैं, जैसे- नवीनतम अदालती फैसलों के बारे में सामयिक जानकारी या फिर कानून और विधिक सुधार सबंधी नयी-पुरानी बहस की जानकारी, उनका हमारे पास अभाव होता है। हमारी यह भी इच्छा होती है कि रिमांड, बेल, एवीडेंस तथा क्रास-एग्जामिनेशन सरीखे बचाव से जुड़े विशिष्ट पहलुओं पर हमें तकनीकी महारत हासिल हो ताकि हम अपने मुवक्कील की पैरवी ज्यादा कारगर ढंग से कर पायें लेकिन ऐसे मामले में हमें सही मार्गदर्शन नहीं मिल पाता।

बतौर वकील हम अन्य पेशेवर लोगों से तनिक हटकर हैं। हमारा काम किसी वस्तु या किसी सेवा को प्रदान करना भर नहीं बल्कि हमारा काम अपने मुवक्कील को राहत दिलाना और इंसाफ के रास्ते पर चलते हुए अधिकार-उल्लंघन के तमाम रुपों से उसे सुरक्षा प्रदान करने का है। लेकिन हम कभी-कभी भूल जाते हैं कि एक अधिवक्ता के तौर पर कानून के पेशे में हमारा प्राथमिक कर्तव्य विचाराधीन कैदियों को विधिक सहायता और कानून की सेवा की अदायगी को सुनिश्चित करना है क्योंकि इस बात की प्रबल आशंका होती है कि गरीबी के कारण ज्यादातर विचाराधीन कैदी अच्छा वकील ना खड़ा पाने की स्थिति में जरुरत से ज्यादा समय तक कैद भुगतने को बाध्य हों। बहुधा यह भी होता है कि हमीं लोग समय रहते हस्तक्षेप नहीं कर पाते।

हम जेलों के भीतर झांक पाना भूल जाते है। क्या जेल के भीतर ऐसा कोई है जिसे हमारे विधिक परामर्श की जरुरत है- यह जानने के लिए जेलों में नियमित आवाजाही जरुरी है लेकिन हम ऐसा नहीं कर पाते। जेल की ऊंची दीवारें जेल के भीतर की दुनिया को अपने दायरे में समेटकर रखती हैं, बाहर की दुनिया जेल के भीतर की दुनिया से निरपेक्ष रहती है और ऐसे में जेल एक ऐसी उपजाऊ जमीन के रुप में तब्दील हो जाती है, जहां अनियमितताओं और विलंब की बेल खूब फलती-फूलती है। अनियमितताओं और विलंब की यह बेल कुछ इस कदर बढ़ती है कि खुद जेल ही इससे छुटकारा पाना चाहता है। इस बात की बहुत आशंका रहती है कि किसी आदमी को गैरजरुरी तौर पर रिमांड के तहत हिरासत में ले लिया जाय या फिर उसे सशरीर अदालत में ना पेश किया जा सके क्योंकि हम जैसा कोई वकील उनकी पैरवी के लिए नियुक्त ना हो, अनुपस्थित रहे, बहस से चूक जाये या फिर बहस करे भी तो तथ्यों को ठीक से पेश ना कर पाये।

इस पाठ्यक्रम का निर्माण हमें उन दायित्वों की याद दिलाने के लिए किया गया है जिनका सिर्फ हमीं निर्वाह कर सकते हैं और एक वकील के रुप में इन दायित्वों का निर्वाह करते हुए हमें गर्व का बोध होना चाहिए। निष्पक्ष सुनवाई से जुड़ा यह पाठ्यक्रम रिमांड और बेल से जुड़े कानूनों के कारगर और समयानुकूल इस्तेमाल और जेल के भीतर कैदी बनकर रहने वाली निरीह आबादी के लिए सामाजिक सुरक्षा के कानूनों के उपयोग के जरिए जेल-सुधार तथा कानून के पेशे को नजदीक लाने की भावना से प्रेरित है।

अदालती अधिकारी के रुप में हमसे अपेक्षा की जाती है कि हम कानून के शासन को प्रक्रिया और अंतर्वस्तु के धरातल पर समझेंगे और उसकी रक्षा करेंगे। लेकिन, जैसे ही हम दंडपरक न्याय-व्यवस्था के कामकाजी धरातल पर उतरते हैं, कानून की प्रकृति पर हमारी पकड़ ढीली जान पड़ने लगती है। रोजमर्रा की अदालती प्रक्रियाओं, बहसों के खोखलेपन, प्रतिस्पर्धा और भारी अनियमितताओं के बीच हमारे आदर्शवाद, प्रतिबद्धता और जन-कल्याण की भावना की जैसे परीक्षा होने लगती है। अपने साथी वकीलों के बीच होड़ में बने रहने की कोशिशों के बीच यह बात भूल जाती है कि हम एक दूसरे को बढ़ावा दे सकते हैं, परस्पर पूरक साबित हो सकते हैं और एक-दूसरे के लिए तथा अदालती परिसर में रोजमर्रा की कानूनी लड़ाई के लिए दाखिल होने वाले नये वकीलों के लिए संसाधन साबित हो सकते हैं।

इन सारी बातों के समाधान के लिए बहुत जरुरी है कि हमें सीखने-जानने का अवसर और मंच मिले, जहां हम अपने मन-मस्तिष्क को समृद्ध बनायें और व्यक्तिगत तथा सामूहिक रुप से हमें जो जिम्मेदारियां निभानी हैं, उनके लिए अपने को तैयार कर सकें। विधिक सहायता प्रदान करने वाले वकीलों का प्रशिक्षण-कार्यक्रम बस इसी भावना से शुरु किया गया है। इस प्रशिक्षण-कार्यक्रम में भागीदारी करते हुए आपकी भेंट राजस्थान तथा देश के अन्य हिस्सों से आये श्रेष्ठ विधिवेत्ताओं तथा दंडपरक न्याय-व्यवस्था की अहम हस्तियों से होगी जो कानून के आपके ज्ञान को अद्यतन करते हुए उसका विस्तार करेंगे। 'विधि के शासन' के प्रति अत्यंत निष्ठावान तथा मुवक्कील के बचाव के लिए जरुरी कानूनी नुक्तों के गहरे जानकार ऐसे कुछ प्रेरणास्पद व्यक्ति प्रशिक्षण के दौरान आपका मार्ग-दर्शन करेंगे।

साररुप में कहें तो यह पाठ्यक्रम कानून के पेशे, खासकर विधिक सहायता को नियुक्त वकीलों का ध्यान उस ताकत और नव-ऊर्जस्वी कार्य-भावना की तरफ खींचने की कोशिश है जिसको दंडपरक न्याय-व्यवस्था के भीतर कानून की जीवंत जानकारी, कमजोरियों और पूर्वाग्रहों की पहचान, तर्क-कौशल और तर्क-क्षमता के इस्तेमाल, कानून के कारगर उपयोग की युक्तियों तथा गरीब-जन की बेहतर नुमाइंदगी के जरिए जगाया जा सकता है। यह पाठ्यक्रम विधिक शिक्षा से लेकर सुनवाई-पूर्व की नजरबंदी तथा सुनवाई के क्रम में होने वाले कदाचार को रोकने के मामले में जो कुछ कर पाने में मददगार होगा उस पर आपकी उस ऊर्जा, उत्साह, रुचि और प्रतिबद्धता की छाप होगी जिसके साथ आप इस प्रशिक्षण-कार्यक्रम में शिरकत करेंगे।

माया दारुवाला

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Section I: OVERVIEW

HkkX I: सारांश

Operation of the Bail Law and the Indigent Accused
By Jaishree Suryanarayanan

"Bail is a very vital institution in criminal justice system. It carries a twin objective of enabling an accused to continue with his life activities and, at the same time, providing a mechanism to seek to ensure his presence on trial. The current problem of large number of undertrials is an outcome of a large number of indiscriminate arrests and the non-use of the option of bail in preference to jail."

Source: 177th Law Commission Report, Chapter 10, Para 4, p.117

Consequences of pre-trial detention

Misuse of arrest powers by the police

The police have been given the powers of apprehending the offender and of investigation under the Code of Criminal Procedure (hereinafter referred to as the Code). In the case of a cognizable offence, the police can arrest the accused without a warrant from a competent magistrate. Though arrest of an accused may become necessary at the stage of investigation for purposes of custodial interrogation, this power is subject to constitutional and statutory safeguards. The police should exercise caution and restraint before depriving an accused person of his/her personal liberty and use their powers to arrest an accused person only when there is a reasonable doubt that the person has committed an offence.

Despite all the limitations placed on the police, the power of arrest is often abused. False implications and wrongful arrests are very common resulting in unnecessary pre-trial detention. The National Police Commission has said that nearly 60% of arrests are either unnecessary or unjustified. A majority of arrests are connected with very minor prosecution and cannot therefore be regarded as necessary for crime prevention. This has grave ramifications for the human rights of persons, especially the poor, accused of petty offences or falsely implicated on unfounded charges. They have to undergo prolonged pre-trial detention, especially when they are unable to furnish bail.

Importance of bail

Bail is the procedure by which an accused person is released from custody, generally on the furnishing of a monetary consideration with or without sureties. It means providing security for the appearance of the accused person on giving which s/he is released pending investigation or trial.

Bail is a good alternative to detention during trial till the guilt of the accused is established. The law of bail has developed with a view to strike a balance between individual liberty and societal interest; between the requirements of shielding the society from the hazards of those committing crimes and the fundamental principle of criminal jurisprudence, namely, the presumption of innocence of an accused till s/he is found guilty.

The release on bail is crucial to the accused as pre-trial detention can have grave consequences for the accused and her/his family. If release on bail is denied to the accused, it would mean that

"Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls on heavily on the innocent members of his family."[1]

Impact on the indigent accused

The Law Commision of India, in a study conducted in 16 states revealed that the number of preventive arrests and arrests for bailable offences was unusually large ranging from 30 percent to 80 percent of all arrests. It was also observed that while undertrials constituted over 70 percent of the prison population, many of the undertrials who were granted bail were unable to avail of the same because of their inability to furnish sureties or comply with the conditions for release.[2]

A person may remain in jail as an undertrial in a variety of circumstances:

(a) On account of rejection of his prayer for bail in the case of a non-bailable offence;
(b) On account of the inability to furnish bail bonds and/or sureties in the event of arrest on a bailable offence or after being granted bail in a non-bailable offence;
(c) The application for bail has not been considered by the court for reasons including non-production in court on the appointed dates,overcrowding of the court's docket and non-availability of the judge;
(d) Not having a lawyer to represent the accused in court on the dates of hearing;
(e) The failure of the prosecution in filing a charge sheet on the completion of investigation within the statutorily stipulated time.

Source: *Justice S. Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice (New Delhi: LexisNexis Butterworths, 2004), chapter 5, pg 191.*

Need for Reform of the bail system

"The bail system, as it operates today, is a source of great hardship to the poor and if we really want to eliminate the evil effects of poverty and assure a fair and just treatment to the poor in the administration of justice, it is imperative that the bail system should be thoroughly reformed so that it should be possible for the poor, as easily as the rich, to obtain pretrial release without jeopardizing the interest of justice."

(The Juridicare Committee appointed in 1977 by the Government of India and consisted of Justices P.N.Bhagwati and V.R.Krishna Iyer and submitted the *Report on National Juridicare: Equal Justice – Social Justice*)

[1] Moti Ram v. State of M.P (1978) 4 SCC 47
[2] 177th Report of the Law Commission of India on the Law relating to Arrests

Several PILs highlighted the problem of undertrial prisoners suffering detention for long periods of time during pendency of their trials. The higher judiciary has periodically given relief to such undertrial prisoners by directing their release on personal bond without insistence on monetary surety.

Hussainara Khatoon judgement

> "One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is our highly unsatisfactory bail system. It suffers from property-oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where the accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bail operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the Courts is so unrealistically excessive that in a majority of cases the poor are unable to satisfy the police or the magistrate about their solvency for the amount of the bail and where the bail is with sureties as is usually the case, it becomes an almost impossible task for the poor to find persons reasonably solvent to stand as sureties. The result is that either they are fleeced by the police or revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial, leading to grave consequences."
>
> *P.N.Bhagawati, J. in Hussainara Khatoon v. State of Bihar 1980 1 SCC 108*

A petition for a writ of habeas corpus before the Supreme Court disclosed a shocking state of affairs in regard to administration of justice in the State of Bihar. An alarmingly large number of men, women and children were behind prison bars for periods ranging from three to ten years without even as much as their trial having commenced. The offences with which some of them were charged were trivial, which, even if proved, would not warrant punishment for more than a few months, perhaps for a year or two.

Highlighting the need for reform in bail law, P.N.Bhagawati,J. held

"It is high time that our Parliament realises that risk of monetary loss is not the only deterrent against fleeing from justice, but there are also other factors which act as equal deterrents against fleeing. Ours is a socialist republic with social justice as the signature tune of our Constitution and Parliament would do well to consider whether it would not be more consonant with the ethos of our Constitution that instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without

monetary obligation. Of course it may be necessary in such a case to provide by an amendment of the penal law that if the accused wilfully fails to appear in compliance with the promise contained in his personal bond, he shall be liable to penal action. But even under the law as it stands today the courts must abandon the antiquated concept 'under which pretrial release is ordered only against bail with sureties. That concept is outdated and experience has shown that it has done more harm than good. The new insight into the subject of pretrial release which has been developed in socially advanced countries and particularly the United States should now inform the decisions of our Courts in regard to pretrial release. If the Court is satisfied, after taking into account, on the basis of information placed before it, that the accused has his roots in the community and is not likely to abscond it can safely release the accused on his personal bond."

The Hussainara Court laid down the following factors concerning the accused that should be taken into account by the court to determine whether the accused has his roots in the community which would deter him from fleeing,:

- the length of his residence in the community
- his employment status, history and his financial condition
- his family ties and relationships
- his reputation, character and monetary condition
- his prior criminal record including any record or prior release on recognizance or on bail
- the identity of responsible members of the community who would vouch for his reliability
- the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk at non-appearance
- any other factors indicating the ties of the accused to the community or

On the need for courts to exercise the judicial discretion after application of mind and not mechanically, R.S. Pathak, J. added

"There is an amplitude of power in this regard within the existing provisions of the CrPC and it is for the Courts to fully acquaint themselves with the nature and extent of their discretion in exercising it. I think it is no longer possible to countenance a mechanical exercise of the power. What should be the amount of security required or the monetary obligation demanded in a bond is a matter calling for the careful consideration of several factors. The entire object being only to ensure that the under-trial does not flee or hide him-self from trial, all the relevant considerations which enter into the determination of that question must be taken into account."

Moti Ram judgement

The defining moment in bail jurisprudence came with the Krishna Iyer's, J. decision in Moti Ram.[3] The judgement, which sought to end the inherent discrimination against the poor in the operation of bail law, continues to be a guiding precedent even today, especially for legal aid lawyers.

Krishna Iyer, J. analysed the provisions of the Code to conclude that nothing in the Code precludes release on personal bond without insistence on sureties.

[3] Moti Ram v. State of M.P. 1978 CrLJ 1703

Quoting extensively from the Gujarat Committee[4], the court reiterated:

"The bail system, as we see it administered in the criminal courts to-day, is extremely unsatisfactory and needs drastic change. In the first place it is virtually impossible to translate risk of non-appearance by the accused into precise monetary terms and even its basic premise that risk of financial loss is necessary to prevent the accused from fleeing is of doubtful validity. There are several considerations which deter an accused from running away from justice and risk of financial loss is only one of them and that too not a major one. The experience of enlightened Bail Projects in the United States such as Manhattan Bail Project and D.C. Bail Project shows that even without monetary bail it has been possible to secure the presence of the accused at the trial in quite a large number of cases. Moreover, the bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situate would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount."

"*…We should suggest that the Magistrate must always bear in mind that* ***monetary bail is not a necessary element of the criminal process*** *and even if risk of monetary loss is a deterrent against fleeing from justice, it is not the only deterrent and there are other factors which are sufficient deterrents against flight.* ***The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail.*** *That concept is out-dated and* ***experience has shown that it has done more harm than good.*** *The new insight into the subject of pre-trial release which has now been developed in socially advanced countries and particularly the United States should now inform the decisions of the Magistrates in regard to pre-trial release. Every other feasible method of pre-trial release should be exhausted before resorting to monetary bail. The practice which is now being followed in the United States is that the accused should ordinarily be released on order to appear or on his own recognizance unless it is shown that there is substantial risk of nonappearance or there are circumstances justifying imposition of conditions on release.... **If a Magistrate is satisfied** after making an enquiry into the condition and background of the accused **that the accused has his roots in the community and is not likely to abscond, he can safely release the accused on order to appear or on his own recognizance..."***

On the insistence of the magistrate for local sureties, the court held

"What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties from the court district? This tendency takes many forms, sometimes geographic, sometimes linguistic, sometimes, legalistic. Article 14 protects all Indians qua Indians, within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities."

[4] The committee appointed by the government of Gujarat in 1971 under the chairmanship of Justice P.N. Bhagwati.

The court concluded by saying that

"We leave it to Parliament to consider whether in our socialistic republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organisations, should prevail for bail-bonds to ensure that the 'bailee' does not flee justice. The best guarantee of presence in court is the reach of the law, not the money tag. A parting thought. If the indigents are not to be betrayed by the law including bail law, re-writing of many processual laws is an urgent desideratum."

'Bail and not jail' should be the norm

The 78th Report of the Law Commission on Congestion of Undertrial Prisoners in Jails was concerned with the plight of large number of undertrial prisoners in Indian jails and recommended various measures to deal with the problem. One of the recommendations made by the Commission was to expand the category of bailable offences, releasing on bond without sureties, obligation to appear and surrender, violation of which was to be an offence.[5]

Further, the Law Commission has suggested that except in case of serious offences like murder, dacoity, robbery, rape and offences against the State, the bail provisions should be made liberal and that bail should be granted almost as a matter of course except where it is apprehended that the accused may disappear and evade arrest or where it is necessary to prevent him from committing further offences or to prevent him from tempering with witnesses or other evidence of crime. [6]

The Commission added:

"... in offences punishable up to seven years imprisonment, with or without fine, the normal rule should be bail and the denial thereof an exception i.e., in any of the situations mentioned hereinbefore. In other serious offences, the matter has to be left to the discretion of the court to be exercised having regard to the totality of the circumstances and keeping in mind the necessity to maintain a balance between the interests of the society as a whole in proper maintenance of law and order and the constitutional, legal and human rights of the accused." [7]

Select Statutory Provisions

Chapter XXXIII of the CrPC deals with bails and bonds. The Code does not define bail. It classifies offences into bailable and non-bailable offences. By and large, serious offences punishable with imprisonment for more than 3 years are non-bailable, while less serious offences are bailable.

[5] Chapter 10, Para 1, p.119, 177th Law Commission Report.
[6] Chapter 10, Para 1, p.116, 177th Law Commission Report.
[7] Chapter 10, Para 6, p.121, 177th Law Commission Report

Bailable Offences – Section 436

The right to claim bail granted by this section in a bailable offence is an absolute and indefeasible right and there is no question of discretion in granting bail.

Further, Section 50 (2) makes it obligatory for a police officer effecting an arrest without a warrant in a bailable offence to inform the accused of his/her right to be released on bail.

This section provides as follows:

- That when a person not accused of a non-bailable offence is arrested or detained, s/he can, as of right, claim to be released on bail, if s/he is prepared to give bail
- Such police officer or court may, instead of taking bail from the accused person, discharge him/her on executing a bond without sureties for her/ his appearance
- The section covers all cases of persons accused of bailable offences and, against whom security proceedings have been initiated under chapter VII of the Code

Special provisions for the indigent accused

Many years after the recommendations of the expert committees on legal aid and the judicial activism in Hussainara and Moti Ram, amendments were made to the Code in 2005 that sought to remove the discriminatory operation of the bail law against the poor. The amended section provides:

- If the accused person is indigent, bail cannot be insisted upon and s/he **shall** be released on executing a bond without sureties for her/ his appearance
- If the accused is incapable of giving bail within a week of her/ his arrest, s/he **shall be presumed to be an indigent**

Overriding effect given to Sections 116(3) and 446A

According to Section 116(3), a person, against whom security proceedings for keeping peace or maintaining good behaviour have been started, may be detained in custody if he fails to furnish an interim bond as required by the court in such proceedings. The second proviso to Section 436 saves this section and the general rule regarding release on bail will not affect it.

Similarly, Section 446A, which provides for forfeiture and cancellation of the bond on breach of any condition and consequent constraint imposed on fresh release on bail in the same case, will not be affected by Section 436.

Cancellation of bail granted under Section 436

Under Section 436(2), a person who fails to comply with the conditions of the bail bond as regards the time and place of appearance

- will be liable to pay the penalty for breach of bond under Section 446
- can be refused bail by the court on a subsequent occasion in the same case

Appeal against refusal of bail under Section 436(1)

There is no specific provision for appeal against orders refusing to grant bail under Section 436(1), however, the High Court or Court of Session can be approached under Section 439 for bail.

Non-bailable offences – Section 437

When any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, other than a High Court or court of session, he may be released on bail, subject to the two exceptions provided in Section 437 (1) (i) and (ii). These exceptions will not apply to a person under the age of 16, a woman or a sick and infirm person.

The word 'may' in this provision clearly indicates that the police officer or the court has got discretion in granting bail. However, there are certain principles which should guide police officers and the courts in the exercise of this discretion.

"The courts can for guidance look to the following circumstances-

(i) The enormity of the charge,
(ii) The nature of the accusation,
(iii) The severity of the punishment which the conviction will entail,
(iv) The nature of the evidence in support of the accusation,
(v) The danger of the accused person's absconding if he is released on bail,
(vi) The danger of witnesses being tampered with,
(vii) The protracted nature of the trial,
(viii) Opportunity to the applicant for preparation of his defence and access to his counsel,
(ix) The health, age and sex of the accused,
(x) The nature and gravity of the circumstances in which the offence is committed,
(xi) The position and status of the accused with reference to the victim and the witnesses,
(xii) The probability of accused committing more offences if released on bail, etc.,
(xiii) Interests of society"[8]

Circumstances when bail is imperative even in non-bailable offences

Section 436 A

As a reaction to what was witnessed in Hussainara and in subsequent PILS, the legislature, in an unfortunate acceptance of the reality in the country where the right to a speedy trial is not realized, has introduced Section 436 A in to the Code.

This section provides that where a person has during the period of investigation, inquiry or trial under the Code for an offence under any law undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence, s/he shall be released by the court on her/his personal bond with or without sureties.

The only exception to this provision is that the offence should not be one for which the punishment of death has been specified as one of the punishments.

However, the court can after hearing the public prosecutor, order the continued detention of such person for a period longer than one-half of the said period or release on bail instead of personal bond. The court will have to give reasons for the same.

The section further provides that no person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence.

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[8] K.N. Chandrasekharan Pillai, *R.V. Kelkar's Lectures on Criminal Procedure* (Lucknow: Eastern Book Company, 4th ed. 2007) pg 293; Also see Babu Singh v. State of U.P 1978 1 SCC 579

Section 437 (2)

Under Section 437(2), when any person accused of or suspected of the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court, and if it appears to such officer or court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry into his alleged guilt, then, the accused shall, subject to the provisions of Section 446-A, and pending such inquiry, be released on bail, or, at the discretion of such officer or court, on the execution by him of a bond without sureties for his appearance. An officer or a court releasing such person on bail under this provision is required to record his or its reasons for doing so.

Section 437 (6)

If, in any case triable by a magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of 60 days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the magistrate, unless for reasons to be recorded in writing the magistrate otherwise directs.

Section 437(7)

If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the court is of the opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

Compulsory bail under Section 167, CrPC

The time limit of 60/90 days when the accused can be remanded was fixed to put pressure on the police to complete the investigation at the earliest. The failure of the police to do so and file the charge sheet within the prescribed time of 60/90 days will entitle the accused to 'compulsory bail'. Further, when investigation in to an offence which triable by a magistrate as a summons case is not concluded within 6 months from the date of the arrest of the accused, the magistrate has to make an order stopping further investigation into the offence, subject to certain conditions. These provisions ensure that the accused is not subjected to prolonged pre-trial detention. The Code contains the following provisions regarding the same:

- On the expiry of the period of 60/90 days, the accused shall be released on bail (only if he is prepared to and furnishes bail) and such a release on bail shall be deemed to be a release on bail under chapter XXXIII of the Code. The accused shall be detained in custody so long as s/he does not furnish bail. [Section 167 (2) Proviso read with Explanation I]
- If the investigation in to an offence which will be tried by a magistrate as a summons case is not concluded within 6 months from the date of the arrest of the accused the magistrate shall make an order stopping further investigation into the offence. The magistrate can allow continuation of the investigation beyond the period of 6 months if the investigating officer is able to satisfy the magistrate that

for special reasons and in the interests of justice, the investigation needs to be continued. [Section 167(5)]

- Where an order stopping further investigation has been made, the Sessions Judge may vacate such an order and direct further investigation, if he is satisfied, on an application made to him or otherwise, that further investigation is required. [Section 167(6)]

There is no time limit for completion of investigation by the police. However, the legislative intent behind this provision is to put pressure on the police to complete the investigation at least within a period of 90/60 days as failure to do so will result in the accused being released on bail. The right to compulsory bail is an indefeasible right of the accused person and is also referred to as 'default bail'. It is the duty of the magistrate to inform the accused about the right to default bail. The magistrate has to pass orders forthwith so as not to enable the prosecution to frustrate the object of the legislature.[9]

Calculation of 60/90 days

The period of 60/90 days is to be calculated from the date when the accused person is first produced before the magistrate and an order is passed remanding her/him to such custody as the magistrate considers necessary, and not from the date of arrest.[10] While calculating the period of 60/90 days under section 167(2) (a), period of detention authorized by the magistrate under section 167(2) must be included.[11] In offences where the sentence up to 10 years' imprisonment is provided, the challan has to be filed within 60 days and in cases where the sentence period is not less than 10 years, challan has to be filed within 90 days.[12]

In view of conflicting judgments by different High Courts on the prescribed period for filing the challan in a case involving an offence punishable under Section 304 (B), the Supreme Court settled the controversy in Bhupinder Singh.[13] Holding that the significant word in the proviso is "punishable", the court held that the adequate punishment in a given case has to be decided by the Court on the basis of the facts and circumstances involved in the particular case. The range varies between 7 years and imprisonment for life in case of Section 304 (B). "Punishable is ordinarily defined as deserving of or capable or liable to punishment, capable of being punished by law or right, may be punished or liable to be punished, and not must be punished. Where minimum and maximum sentences are prescribed both are imposable depending on the facts of the cases. It is for the Court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is provided that does not mean that the sentence imposable is only the minimum sentence."

When does the right to compulsory bail accrue?

The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code. The right of the accused to be released on bail after filing of the charge-sheet, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the charge-sheet only by the provisions relating to the grant of bail

[9] Najamuddin
[10] Chaganti Satyanarayana v State of AP, AIR 1986 SC 2130
[11] Batna ram v State of Himachal Pradesh, 1980 CrLJ 748
[12] Babu v State of Karnataka 1998CriLJ16
[13] Bhupinder Singh v Jarnail Singh 2006CriLJ3621

applicable at that stage.[14] Therefore, if an accused person fails to exercise her/his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, it cannot be contended that s/he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge sheet is filed.

In Uday Mohanlal Acharya the question before the Supreme Court was whether an accused is entitled to bail if s/he exercises the right immediately after expiration of the prescribed period, but bail is refused by the magistrate and the charge-sheet is filed during pendency of the matter before the High Court. The court by a majority answered in the affirmative. By interpreting the expression 'availed of', the court held that an accused must be held to have availed of her/his right flowing from the legislative mandate, if s/he files an application after the expiry of the stipulated period mentioning that no charge-sheet has been filed and s/he is prepared to offer bail that would be ordered. If it is found that, as a matter of fact that no such charge-sheet was filed within the prescribed period, such accused must be held to have exercised the said right, even if the application is posted for consideration or for orders before the court after some time and the court has not indicated the terms and conditions of bail, and the accused has not furnished the same. In the instant case, the magistrate refused the application erroneously and the accused moved the higher forum for being released on bail in enforcement of her/his indefeasible right, during which period the charge-sheet was filed.[15]

Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the magistrate on a charge-sheet being filed in accordance with Section 209 and the magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail.

It is a settled position that the benefit of Section 167 (2) proviso will ensue to an accused involved in offences under NDPS Act as well. There is no express provision in the NDPS Act from which a conclusion can be drawn by necessary implication that the benefit of compulsory bail will not be available to a person accused of an offence under the Act. [16]

Cancellation of compulsory bail

If an accused person exercises the right to compulsory bail within the time allowed by law and is released on bail under such circumstances, s/he cannot be rearrested on the mere filing of the charge-sheet, as pointed out in Aslam Babalal Desai.[17], overruling Rajnikant Jivanlal Patel.[18] Bail can be cancelled only under Sections 439 (2) or 437(5) of the Code.

In the latter case, the court had said that an order for release on bail under 167 (2) (a) proviso may appropriately be termed as an order on default. It's a release on bail on the default of the prosecution in filing charge sheet within the prescribed period. The right to bail is absolute. It's a legislative command and not court's discretion. If charge-sheet is not filed within 60/90 days, the accused person should be released on bail and the merits of the case are not to be examined. The accused cannot therefore claim any special right to remain on bail. If the investigation reveals commission of a serious offence and charge-sheet is filed, bail under 167 (2) proviso (a) could be cancelled. This decision has been overruled as mentioned earlier.

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[14] Sanjay Dutt v State, 1995 CrLJ 477
[15] Uday Mohanlal Acharya v State of Maharashtra 2001CriLJ1832
[16] Union of India v Thamisharasi, (1995) 4 JT (SC) 253
[17] Aslam Babalal Desai v. State of Maharashtra 1992CriLJ 3712
[18] Rajnikant Jivanlal Patel v IO, NCB, New Delhi, AIR 1990 SC 71

Amount of bond not to be excessive

The right to be released on bail cannot be nullified indirectly by fixing too high an amount of bond or bail bond to be furnished by the accused. Therefore, under Section 440, the amount of every bond shall be fixed with due regard to the circumstances of the case and ***shall not be excessive***.[19]

Further, the High court or Court of Session may direct that the bail required by a police officer or magistrate be reduced.

[19] See Moti Ram v. State of M.P. 1978 CrLJ 1703; A. Kokan Rao v. the State 1998 CrLJ 1898; Keshab Narayan Banerjee v. State of Bihar 1985 CrLJ 1857

BEST PRACTICES AROUND THE WORLD

BACKGROUND

All around the world there are people who spend long periods of time in jail awaiting trial on minor charges because they are incapable to pay bail. This is an absolutely unnecessary infringement of a person's basic liberty and is unconstitutional to say the least. Moreover, this does not only bring injustice to those people who languish in jails but it also leads to overcrowding of prison which eventually becomes expensive for the taxpayers. There have been experts who have urged on increasing pre trial bail, but judges fear that a majority of those released would never return to court to face their charges. To challenge this mindset, there was a wave of bail projects that were carried out in various countries to reform the existing Criminal Justice System with regards to granting of bail.

Efforts were taken by non-profit organizations along with the support of Ministry of Justice in various countries to devise a way through which judges could quickly assess the strength of each defendant's community ties and set out to prove that when these ties were verified judges could safely release people without bail. Some of the countries where such projects were carried out are listed below with a brief description of the projects.

- ✓ MANHATTAN

Vera Institute of Justice, a non-profit organization along with the support from the Mayor of New York started a project in the year 1960 to reform the Criminal Justice System that was not living up to the promise of the U.S. Constitution.

They conducted inquiries into the backgrounds of thousand of defendants to assess whether the accused could be trusted to return for his or her trial without being required to purchase a bail bond. Factors such as employment history, local family ties, and prior criminal record were considered in determining the flight risk posed by each defendant. Whenever Vera staff determined (based on a points system of risk factors) that a defendant was not likely to skip or flee his or her court date, a recommendation was made to the presiding judge to release that defendant on his own cognizance. Vera staffers also made an effort to follow up on their recommendations, calling defendants to remind them of an impending court date, and, in some cases, even bringing them by taxi to the courthouse.

Over the project's three years, 3505 accused persons were released without any requirement of bail as a result of Vera recommendations. Only 1.6% of them failed to show up for their trials for reasons within their control. The results of the randomized experiment were especially striking: 60 % of the experimental group was released without bail. Data also showed that those released before trial were 250% more likely to be acquitted in court.

By the end of 1963, the program's outstanding results had convinced the presiding justices of the first and second appellate departments that bail reform along the lines of the Vera project should be undertaken by the city and spread throughout the five boroughs of New York. Concerned about the overcrowding in the city's jails, the Mayor agreed, and the Bail Project became a function of the probation department.

Many successful projects in other countries have been conducted on the same line up as Manhattan Bail Project.

✓ LONDON

In the early 1970's, England was experiencing a rapid increase in its remand population in its institutions. In 1974, a study into pre-trial procedures by the Home Office noted that the sort of verified information provided to bail Courts by the US Manhattan Bail Project was needed in England and Wales to speed up and improve the bail process. As a result, the Inner London Probation and After-care Service (ILPAS) and Vera began to collect data and verify information to be presented to the bail Court. Within a few months, however, their role was expanded to include securing accommodation and other resources for people appearing for bail hearings, following up clients on bail etc. As well, in October 1976 a Bail Centre was opened to provide short-term social work intervention with pre-trial clients requesting the service. In addition to providing the aforementioned services, supervision as an alternative form of release was also introduced. England also pioneered the use of Bail Hostels as one solution to the high rate if pre-trial detention. In 1971, the first Bail Hostel was opened in East London.

✓ CANADA

After enacting two consecutive amendments to reform the bail system that existed in Canada in early 1970s to reduce economical discrimination, the British Columbia began a supervision pilot project in Vancouver in 1974.

The philosophy of the program was to provide an alternative form of release to individuals who might otherwise remain in custody until trial. Similarly, in 1977 the Alberta Solicitor General's Department began a pre-trial release program in Calgary, which involves interviewing, verification, selection and supervision. By 1979, the Ontario Government was dealing with similar issues and was under some pressure by various groups to establish similar programs. In 1979, the Bail Project was set up as a 6 month pilot project in two Courts as a response to the constantly growing remand populations.

The reasons for bringing in the same were dualistic, one being economical and other being philosophical. Economical in the sense that at that time over 60% of the inmate population was made up of remand inmates, many who remained in custody because they were unable to meet a surety or cash Bail. The Ministry was faced with the choice of building an additional detention facility. By implementing Bail Supervision as an option they were able to avoid this cost. The second reason was Philosophical relating to the principle of the presumption of innocence until proven guilty and the fair and equal treatment of all persons regardless of their socio-economic status. Thus Bail Programs mandate was to assist those persons who do not have the financial and community or familial ties to meet a surety or cash release that were deemed releasable by the Court to the Supervision of the Bail Program.

The functions of this programme were divided into Bail verification and Supervision Verification involved receiving referrals from Duty or Private Counsel, checking the criminal record of the accused and interviewing the accused in custody to determine whether or not the accused meets the Programs criteria. Efforts to contact potential sureties and to verify as much information as possible are made and the Court is advised of the accused suitability for community supervision.

Following the Show Cause or Bail Hearing and the release of the accused person, Supervision begins. Upon a person first reporting to the Bail Program, an Intake process takes place. The

intake begins with the formalizing of a Plan of Supervision and with a Supervision Contract which outlines the day(s) of the week a person will be required to report and the rules and expectations of the Program. Supervision necessarily includes some personal counselling and assistance around the legal process but most often requires referrals to specialized services. The goal is to provide accused persons with constructive, professional help at the earliest point in the justice process.

In the year ending March 31st, 2011, 12,772 accused were interviewed in custody across the province of Ontario. Of these cases 4,577 or approximately 35% were released to the Supervision of a Bail Program. In addition, 3,066 of these individuals were released as a result of a surety being found or on their own Recognizance.

Over the course of a year, 4442 cases were closed. In 3928 cases, the accused attended all Court appearances, developing an appearance rate of 88%.

✓ SOUTH AFRICA

In younger democracies, ineffective prosecution is a special problem, not only because criminals go unpunished but because public trust in a fragile system is hurt. Ineffective prosecution can lead to increased incidents of vigilantism or calls for a return to authoritarian government. In 1997, in response to the problem of overcrowding in South African prisons, the Vera Institute of Justice established a demonstration pre-trial services project aimed to reduce the number of admissions into remand detention. The project, based at various court centres in the country, sought to provide magistrates with independently verified information about defendants at arraignment, which, it was hoped, would make the bail process more efficient, equitable and informed.

The provision of such a report firstly aimed to ensure that serious or repeat offenders were not released on bail, and secondly that petty offenders were released on affordable bail or on non-financial supervisory conditions. The report was also meant to provide a fuller picture of a defendant's overall financial means so as to mitigate the chance of bail amounts being set too high, and to prevent the economic injustice of remanding defendants who pose no threat to public safety into custody simply for not being able to afford bail thresholds.

✓ MALAWI

The Malawi Bail project is one of its kinds and has recently commenced the outstanding initiative of reforming the existing Bail System of the country. It boasts of the following objectives:

- To educate those going through the court process in Malawi about court procedure and their basic legal rights.
- To increase the amount of bail applications made at the first court appearance prior to detention.
- To reduce the amount of people being held in pre-trial detention who are charged with minor offences.
- To encourage co-operation between the courts, the police and the prison service; supporting capacity building within the criminal justice system in Malawi.
- To understand and remove the obstacles which inhibit the court and the prison service from development in accordance with international human rights standards.

The project holders have produced a legal education booklet which informs those going through the court process about court procedure and their basic legal rights. The booklet uses bullet point text to explain the role of the Magistrate and Prosecutor, using illustrations to show the layout of the court, and gives a 'step by step' guide on how and when to make a bail application. The guide then goes on to explain common phrases a defendant is likely to hear, including the definition of guilty and not guilty and the role of a surety. The booklets have now been distributed to 7 courts and 11 police stations in Blantyre and the surrounding areas.

Due to the low literacy levels in Malawi they intend to install a speaker system in the holding cells at Blantyre Magistrate's Court, which will play a tape recording of the paralegals explaining how and when to apply for bail. This will ensure that all people going through that court will have access to information about their legal rights prior to their first court appearance before the Magistrate.

They have started a toll-free helpline to provide those arrested with access to the 24/7 advice line managed by the paralegals.

श्रेष्ठ वैश्विक आचार

पृष्ठभूमि

ऐसे लोग आप को पूरी दुनिया में मिल जायेंगे जिन्हें छोटे-मोटे अपराध के आरोप में अदालती फैसले का इंतजार करते हुए एक लंबा समय जेल में बिताना पड़ा क्योंकि उनके पास जमानत दे सकने लायक रकम नहीं थी। यह किसी व्यक्ति की मौलिक स्वतंत्रता का अत्यंत गैरजरुरी हनन है और असंवैधानिक तो खैर, है ही। इससे एक तो, जो लोग जेल में दिन काट रहे हैं उनके साथ अन्याय होता है दूसरे, जेल में भीड़ बढ़ती है और इसका बोझ करदाताओं को उठाना पड़ता है। कुछ विशेषज्ञों का कहना है कि अदालती कार्यवाही-पूर्व जमानत पर रिहाई का चलन बढ़ना चाहिए लेकिन न्यायाधीशों को आशंका है कि इस ढंग से रिहाई पाने वाले ज्यादातर लोग अपने ऊपर लगे आरोपों का सामना करने के लिए दोबारा अदालत का रुख नहीं करेंगे। इस मानसिकता को चुनौती देने के लिए विभिन्न देशों में जमानत परियोजनाओं की एक लहर चली ताकि दंडमूलक न्याय-व्यवस्था(क्रिमिनल जस्टिस सिस्टम) में जमानत प्रदान करने के मामले में सुधार किया जा सके।

सेवार्थ(नॉन-प्रॉफिट) संगठनों ने कई देशों में विधि और न्याय मंत्रालय के सहयोग से इस दिशा में प्रयास करते हुए एक तरीका खोज निकाला जिसके सहारे न्यायाधीश प्रत्येक प्रतिवादी के सामुदायिक-संबंधों की ताकत का तेजी से मूल्यांकन कर सके और यह साबित कर पायें कि जब इन संबंधों की ताकत का सत्यापन हो जाने पर न्यायाधीश पूरे भरोसे के साथ प्रतिवादी को बिना जमानत के रिहा कर सकते हैं। जिन देशों में ऐसी परियोजनाएं चली हैं उनमें से कुछ देशों के नाम और परियोजना का संक्षिप्त विवरण नीचे लिखा गया है।

✓ मैनहैटन, न्यूयार्क

सेवार्थ संचालित(नॉन प्रॉफिट) एक संस्था वेरा इंस्टीट्यूट ऑव जस्टिस ने न्यूयार्क के मेयर की सहायता से सन् 1960 में दंडमूलक न्याय-व्यवस्था में सुधार के लिए एक

परियोजना चलायी थी क्योंकि यह व्यवस्था संयुक्त राज्य अमेरिका के संविधान में किए गए वायदों को पूरा नहीं कर पा रही थी।

क्या किसी अभियुक्त पर इस बात के लिए भरोसा किया जा सकता है कि अगर उसे बगैर जमानती मुचलके के छोड़ा जाता है तो वह अपने ऊपर लगे आरोपों का सामना करने के लिए फिर से अदालत में हाजिर होगा - इस बात की परख के लिए संस्था ने हजारों प्रतिवादियों की पृष्ठभूमि की जांच की। प्रत्येक प्रतिवादी के बारे में कुछ कारकों को ध्यान में रखते हुए विचार किया गया, मसलन प्रतिवादी का रोजगार संबंधी इतिहास, उसके स्थानीय पारिवारिक संबंध और उसका पूर्ववर्ती आपराधिक रिकार्ड। इन कारकों के आधार पर उसके बारे में फरार हो जाने के जोखिम का निर्धारण किया गया। जब भी वेरा नामक इस संस्था के कर्मचारी (जोखिम को निर्धारित करने वाले अपने बिन्दुवार पैमाने के आधार पर) इस निष्कर्ष पर पहुंचते कि अमुक प्रतिवादी की फरारी की आशंका ना के बराबर है और वह मुकदमे की सुनवाई के दौरान अदालत द्वारा निर्धारित की गई तारीख को गैरहाजिर नहीं रहेगा तो वे पीठासीन न्यायाधीश से सिफारिश करते कि प्रतिवादी को उसके अपने संज्ञान में रिहा कर दिया जाय। वेरा के कर्मचारी इस सिलसिले में सिफारिश के बाद भी अपनी गतिविधियों को जारी रखते थे। वे प्रतिवादी को याद दिलाते कि उस पर चल रहे मुकदमे में सुनवाई की अगली तारीख कब है, और कुछ मामलों में वे स्वयं प्रतिवादी को किसी टैक्सी में बैठाकर अदालत के कमरे तक हाजिर करते।

परियोजना के तीन सालों में, वेरा की सिफारिशों के परिणामस्वरुप 3505 अभियुक्तों की रिहाई हुई। इसमें मात्र 1.6 फीसदी ही अभियुक्त ऐसे थे जो मुकदमे की सुनवाई के दौरान हाजिरी ना दे सके क्योंकि परिस्थितियां उनके वश में नहीं थीं। यादृच्छिक (रैंडमाइज्ड) रीति से किए गए इस प्रयोग के नतीजे अत्यंत उल्लेखनीय रहे: प्रयोग में शामिल 60 प्रतिशत समूह बिना जमानत के रिहा हुए। आंकड़ों से यह भी पता चला कि जिन अभियुक्तों को सुनवाई से पहले छोड़ा गया अदालत में उनके निर्दोष साबित होने की संभावना 250 फीसदी रही।

सन् 1963 के अंत तक इस कार्यक्रम की उल्लेखनीय उपलब्धियों के परिणामस्वरुप प्रथम और द्वितीय अपीलीय प्राधिकरण के पीठासीन जज आश्वस्त हो चुके थे कि वेरा नामक संस्था की राह पर चलते हुए शहर में जमानत संबंधी सुधारों पर अमल किया जाना चाहिए और न्यूयार्क के पाँच उपनगरीय इलाकों में इसका विस्तार किया जाना

चाहिए। शहर के जेलखानों में बढ़ती भीड़ के मद्देनजर मेयर इस बात पर सहमत हुए और 'बेल-प्रोजेक्ट' परिवीक्षा विभाग (प्रॉबेशन डिपार्टमेंट) के कार्य के रुप में स्वीकृत हुआ।

मैनहैटन के बेल प्रोजेक्ट के आधार पर अन्य देशों में कई परियोजनाएं सफलतापूर्वक चलायी गईं।

✓ लंदन

1970 के दशक के शुरुआती सालों में इंग्लैंड के जेलखानों में हिरासत में लिए गए लोगों की संख्या तेजी से बढी जा रही थी। सन् 1974 में गृह मंत्रालय की ओर से सुनवाई-पूर्व की कार्यवाहियों पर केंद्रित एक अध्ययन में कहा गया कि संयुक्त राज्य अमेरिका में मैनहैटन बेल प्रोजेक्ट के तहत जिस तरह की सत्यापित सूचनाएं जमानत प्रदान करने वाली अदालतों को हासिल हुई थीं कुछ उसी किस्म की सूचनाएं इंग्लैंड और वेल्स के लिए भी जरुरी हैं ताकि जमानती प्रक्रिया को सुधारा जा सके। नतीजतन, इनर लंदन प्रोबेशन एंड आफ्टर केयर (आई.एल.पी.ए.एस) तथा वेरा नामक संस्था ने आंकड़ों को एकत्र करना तथा जमानत प्रदान करने वाली अदालतों में पेश की जाने वाली सूचनाओं के सत्यापन का काम शुरु किया। बहरहाल, काम शुरु करने के कुछ ही महीने के अंदर उनकी भूमिका बढ़ गई और उन्हें जमानत की सुनवाई के लिए हाजिर होने वाले लोगों के रहने-ठहरने तथा उन्हें अन्य संसाधन प्रदान करने और जमानत पर छूटे लोगों की जानकारी रखने जैसे कामों को भी करना पडा। 1976 के अक्तूबर महीने में एक 'बेल सेंटर' खोला गया ताकि विचाराधीन बंदी मदद का आग्रह करें तो उन्हें इस केंद्र के जरिए सामाजिक-सहायता कार्य करते हुए एक सीमित अवधि तक सेवा प्रदान की जा सके। उपर्युक्त सेवाओं के अतिरिक्त रिहाई की एक वैकल्पिक व्यवस्था के रुप में 'निरीक्षण' को भी अपनाया गया। सुनवाई की प्रतीक्षा में बंदियों के लंबित मामलों की उच्च-दर को देखते हुए इसके समाधान के तौर पर बेल हॉस्टल की शुरुआत भी इंग्लैंड में ही हुई। पहला बेल हॉस्टल सन् 1971 में पूरवी लंदन में खुला।

✓ कैनेडा

1970 के दशक की शुरुआत में कैनेडा में तत्कालीन जमानती प्रक्रिया में सुधार के लिए क्रमागत रुप से दो संशोधनों पर अमल हुआ ताकि इस मामले में आर्थिक भेदभाव को कम किया जा सके। इसके बाद ब्रिटिश कोलंबिया ने 1974 में वैंकुवर में निरीक्षणपरक पायलट परियोजना शुरु की।

कार्यक्रम का मूल विचार(दर्शन) व्यक्तियों को रिहाई का एक वैकल्पिक रुप प्रदान करने का था अन्यथा ये व्यक्ति सुनवाई पूरी होने तक हिरासत में ही बने रहते। ठीक इसी तरह सन् 1977 में अल्बर्टा सॉलिसिटर जेनरल डिपार्टमेंट ने कैलगेरी में एक सुनवाई-पूर्व रिहाई कार्यक्रम की शुरुआत की जिसमें साक्षात्कार, चयन, सत्यापन तथा निरीक्षण करना शामिल था। सन् 1979 में ओंटारियो की सरकार ऐसे ही मसलों से निपट रही थी। सरकार पर कई समूहों ने समान कार्यक्रम बनाने के लिए दबाव बनाया। रिमांड पर हिरासत में लिए गए लोगों की बढ़ती संख्या को देखते हुए सन् 1979 में दो अदालतों में छह महीने के लिए 'बेल प्रोजेक्ट' पायलट परियोजना के तौर पर शुरु किया गया।

परियोजना की शुरुआत के दो कारण थे, एक आर्थिक तो दूसरा दार्शनिक। आर्थिक इस अर्थ में कि उस समय जेल में बंद कुल लोगों में 60 फीसदी तादाद रिमांड पर लिए गए बंदियों की थी और इनमें से ज्यादातर इस वजह से हिरासत में रहने को मजबूर थे क्योंकि उनके पास जमानत के तौर पर देने के लिए नगदी नहीं थी या फिर कोई जमानती नहीं था। मंत्रालय के सामने रास्ता यही था कि वह बंदियों को रखने के लिए अतिरिक्त जगहों का निर्माण करे। विकल्प के तौर पर बेल-सुपरविजन (जमानत-निरीक्षण) लागू करके मंत्रालय यह अतिरिक्त खर्च उठाने से बच गया। दूसरा कारण दार्शनिक था। इसका सबंध इस मान्यता से था कि जब तक किसी व्यक्ति का दोष साबित ना हो जाय तब तक वह निर्दोष है और हरेक व्यक्ति को बराबर मानकर उसके साथ पूरी निष्पक्षता का बर्ताव करते हुए सुनवाई होनी चाहिए, भले ही उसकी आर्थिक-सामाजिक हैसियत कुछ भी हो। इस तरह 'बेल-प्रोग्राम' के तहत माना गया कि वे लोग जिनकी आर्थिक स्थिति अथवा सामाजिक या पारिवारिक संबंध इतने मजबूत नहीं हैं कि वे अदालत द्वारा निर्दिष्ट राशि को चुकाकर अथवा जमानती लाकर रिहा हो सकें, उनकी मदद की जाय और बेल-प्रोग्राम के तहत इनको निरीक्षण में रखा जाय।

इस कार्यक्रम के तहत काम को बेल वेरिफिकेशन (जमानत सत्यापन) और सुपरविजन वेरिफिकेशन (निरीक्षण सत्यापन) में बांटा गया जिसके अंतर्गत ड्यूटी या प्राइवेट

काऊंसेल से रेफरल हासिल करना, अभियुक्त के आपराधिक रिकार्ड की जांच करना और हिरासत में लिए गए अभियुक्त का साक्षात्कार लेना शामिल था। साक्षात्कार के जरिए यह तय करना था कि अभियुक्त बेल-प्रोग्राम की कसौटियों पर खड़ा उतरता है या नहीं। इसके अंतर्गत संभावी उत्तरदायी से संपर्क करने तथा यथासंभव सूचनाओं के सत्यापन के प्रयास किए जाते हैं और अदालत को सलाह दी जाती है कि अभियुक्त सामुदायिक निरीक्षण में रखने के काबिल है या नहीं।

कारण बताओ (शो कॉज) या बेल हीरिंग और अभियुक्त की रिहाई के बाद उसका निरीक्षण शुरु होता है। बेल-प्रोग्राम में व्यक्ति के प्रवेश के साथ उसे नामांकित करने की प्रक्रिया शुरु हो जाती है। शुरुआती तौर पर निरीक्षण की एक योजना तैयार की जाती है और निरीक्षण संबंधी एक अनुबंध तैयार किया जाता है। इस अनुबंध में उल्लेख रहता है कि किसी व्यक्ति को हफ्ते में कितने दिन अपनी हाजिरी देनी होगी और कार्यक्रम के नियम तथा अपेक्षाएं क्या-क्या हैं। निरीक्षण में अनिवार्य तौर पर विधायी प्रक्रिया को लेकर कुछ निजी सलाह और मदद दी जाती है लेकिन बहुधा इसमें विशिष्ट किस्म की सेवाओं के लिए सिफारिश की जाती है। इसका लक्ष्य अभियुक्त को न्यायिक प्रक्रिया के शुरुआती मुकाम पर रचनात्मक और पेशेवर मदद प्रदान करना है।

वर्षान्त यानि 2011 के 31 मार्च तक पूरे ओंटारियो प्रांत में, हिरासत में रखे गए 12,772 अभियुक्तों के साक्षात्कार लिए गए। इनमें से 4577 यानि तकरीबन 35 फीसदी अभियुक्तों को बेल-प्रोग्राम के निरीक्षण में रिहा किया गया। इसके अतिरिक्त, 3066 व्यक्तियों को जमानती मिल जाने के कारण या फिर उनके अपने संज्ञान पर छोड़ा गया।

एक वर्ष के भीतर 4442 केस (अदालती मामले) बंद हुए। 3928 मामलों में अभियुक्त हर अदालती सुनवाई में उपस्थित हुए और इस मामले में उनकी हाजिरी की दर 88 फीसदी रही।

✓ दक्षिण अफ्रीका

जिन देशों में लोकतांत्रिक व्यवस्था को कायम हुए ज्यादा दिन नहीं हुए वहां अभियोजन का काम कारगर तरीके से नहीं होता और यह ऐसे देशों की एक खास समस्या है। इस वजह से एक तो अपराधी को सज़ा नहीं मिल पाती दूसरे नाज़ुक न्याय-व्यवस्था के प्रति लोगों में अविश्वास पैदा होता है। अभियोजन कारगर तरीके से ना हो तो फिर

सतर्कता को बढ़ाने की जरुरत पड़ती है या फिर अधिनायकवादी शासन की वापसी की आशंका रहती है। सन् 1997 में दक्षिण अफ्रीका के जेलों में बढ़ती भीड़ की समस्या को देखते हुए वेरा इंस्टीट्यूट ऑफ जस्टिस ने रिमांड पर लिए गए लोगों की संख्या को कम करने के उद्देश्य से निदर्शनात्मक सुनवाई-पूर्व सेवाओं (डेमोस्ट्रेशन प्री ट्रायल सर्विसेज) की परियोजना चलायी। परियोजना देश की कई अदालतों में चली। इसके तहत प्रतिवादी पर दोषारोपण के समय उसके बारे में मैजिस्ट्रेट को स्वतंत्र रुप से सत्यापित सूचनाएं प्रदान करने का काम किया गया और उम्मीद की गई कि इन सूचनाओं के कारण जमानत की प्रक्रिया ज्यादा कारगर, सूचनाप्रद और समतापरक होगी।

इस तरह की रिपोर्ट का प्रावधान करने के पीछे लक्ष्य यह सुनिश्चित करना था कि कानून तोड़ने के अभ्यस्त अथवा गंभीर किस्म के अभियुक्त जमानत पर ना छूटें और दूसरा लक्ष्य यह था कि जिन लोगों के ऊपर छोटे-मोटे अपराध के आरोप हैं वे हल्की-फुल्की जमानत ऱाशि देकर अथवा अवित्तीय निगरानी की शर्तों के अधीन रिहा हो सकें। रिपोर्ट पेश करने के पीछे एक मंतव्य प्रतिवादी के आर्थिक साधनों की एक पूर्ण तस्वीर प्रस्तुत करना था ताकि जमानत की राशि ज्यादा ऊंची ना रखी जाये। इसके पीछे सोच प्रतिवादी को आर्थिक भेदभाव के कारण होने वाले अन्याय से बचाने की थी। जमानत की राशि अगर प्रतिवादी की आर्थिक क्षमता से ऊंची हो और वह उसे ना चुका सकने की वजह से रिमांड पर लेकर हिरासत में रखा जाय तो ऐसा होना प्रतिवादी के प्रति आर्थिक भेदभाव बरतने का सूचक है।

✓ मलावी

द मलावी बेल प्रोजेक्ट अपने किस्म की अनूठी परियोजना है और इसने देश की मौजूदा जमानत-प्रणाली में सुधार के लिए हाल ही में उल्लेखनीय पहल की है। परियोजना के अंतर्गत निम्नलिखित उद्देश्यों को साधने की बात कही गई है:

- मलावी में जो लोग अदालती प्रक्रिया से गुजर रहे हैं उन्हें अदालती कार्य-प्रक्रिया के बारे में तथा अपने बुनियादी विधिक अधिकारों के बारे में शिक्षित करना
- अदालत में पहली पेशी (हिरासत में लेने से पहले) के वक्त जमानत की अर्जियों की संख्या बढ़ाना
- जिन लोगों पर छिट-पुट अपराध के आरोप हैं और जिन्हें इस आरोप में विचाराधीन कैदी के रुप में जेल में रखा गया है उनकी संख्या को कम करना।

- अदालत, पुलिस और जेल-सेवाओं के बीच सहयोग को बढ़ावा देना; मलावी में दंडमूलक न्याय-व्यवस्था के भीतर क्षमता-संवर्धन करना।
- जिन बाधाओं की वजह से मलावी में अदालत और जेल-सेवाएं अंतर्राष्ट्रीय मानवाधिकार-मानदंडों के अनुकूल विकसित नहीं हो पा रहीं है उन्हें समझना और दूर करना।

परियोजना के संचालकों ने विधिक शिक्षा की एक पुस्तिका प्रकाशित की है। अदालती प्रक्रिया से गुजर रहे व्यक्तियों को इस पुस्तिका में अदालती कार्य-प्रक्रिया तथा बुनियादी विधिक अधिकारों के बारे में बताया गया है। पुस्तिका में बिन्दुवार इस बात को समझाया गया है कि मैजिस्ट्रेट और अभियोक्ता की क्या भूमिका होती है। पुस्तिका में इस बात को समझाते हुए अदालत की बनावट बताने के लिए चित्रों का सहारा लिया गया है और जमानत की अर्जी कब और कैसे लगानी है, इसके बारे में चरणबद्ध तरीके से बताया गया है। इसके बाद पुस्तिका में उन शब्दों का जिक्र किया गया है जो किसी प्रतिवादी को अदालती कार्यवाही के दौरान बारंबार सुनने को मिलते हैं। इसके अंतर्गत 'दोषी' और 'निर्दोष' जैसे शब्दों की परिभाषा बताना तथा जामिन की भूमिका का उल्लेख करना शामिल है। पुस्तिका अबतक बैंलेटायर और उसके आस-पास के इलाकों की 7 अदालतों और 11 पुलिस थानों में वितरित की जा चुकी है।

मलावी में साक्षरता का स्तर नीचे है। इस वजह से परियोजना की एक योजना बैलेंटायर के मैजिस्ट्रेट की अदालत एक हिस्से में 'स्पीकर सिस्टम' लगाने की है। इसके जरिए विधि-सहायकों द्वारा कही गई बातों के टेप-रिकार्ड को बजाया-सुनाया जाएगा ताकि अदालती प्रक्रिया से गुजर रहे लोगों को जमानत की अर्जी के बारे में यह जानकारी मिले कि उसे कब और कैसे डालना है। इससे सुनिश्चित हो पाएगा कि जो लोग अदालती प्रक्रिया से गुजर रहे हैं उन सबको मैजिस्ट्रेट के समक्ष प्रथम पेशी से पहले अपने बुनियादी विधिक अधिकारों की जानकारी हो सके।

परियोजना के तहत एक टॉल-फ्री हैल्पलाइन भी शुरु की गई है। इसके जरिए हिरासत में लिए गए व्यक्ति हफ्ते के सातो दिन चौबीसों घंटे सलाह हासिल कर सकते हैं। सलाह देने के लिए पैरालीगलस् (विधि-सहायकों) की व्यवस्था की गई है।

RIGHT TO BAIL AND UNDERTRIAL REVIEW MECHANISM IN RAJATHAN

Periodic Review Committee (*Avadhik Samiksha Samiti)*

In order to ensure that the situation of *each* prisoner awaiting trial would be frequently reviewed and appropriate correctives applied as long ago as 1979 Rajasthan, created a special committee – the *Avadhik Samiksha Samiti* or Periodic Review Committee (the Review Committee). Made up of various duty holders its purpose was to ensure that no Undertrial would be held for unjustifiably long periods in detention or simply get lost in the system for any reason at all. The **government order No.F/8/22/Grah-12/kara/79** which established the Review Committee states that there should be a Review Committee for every district to periodically review the cases of the under trial prisoners in Rajasthan prisons, including sub-jails.

Members of the Review Committee

The government order states that every district is to have the Periodic Review Committee comprising of the following members:

1. Chief Judicial Magistrate — Member
2. Representative of District Magistrate — Member
3. Representative of Superintendent of Police — Member
4. District Probation Officer — Member
5. Officer In charge, District Prison — Member-Secretary

Though the executive order creating the Review Committee cites the Chief Judicial Magistrate as 'member' in practice he convenes the meeting and acts as de facto chair while the officer in-charge of the district prison, who could be the Superintendent, Jailor or Deputy Jailor, acts as the Member Secretary to the Review Committee.

It further states that **the Review Committee should conduct its meetings every month.**

According to the mandate, the Review Committee will give advice/recommendations to the respective courts, in order to release the under trial prisoners who,

- have completed half or more than the maximum prescribed punishment for the offence charged with; or
- are accused of serious offences and have been under trial for a long period of time; or
- have committed such petty offences that there is no need to keep them in judicial custody.

Thus, there is a clear mandate to highlight cases of illegal detention and to suggest the concerned authorities to take steps to expedite cases of overstays and also to ensure effective implementation of the legal provisions, like S.436A, to avoid delays in the legal system. Both the mandate as well as the provisions seek to institutionalize the effective implementation of legal provisions by taking pro-active steps on the part of the Review Committee to avoid illegal and prolonged detentions. The mandate makes it very clear that the purpose for which these Committees are formed is directly linked to ensuring to the under trial his legal rights.

Conduct of Meetings

The process of holding a meeting is governed by rules of practice which appear to require the prison authorities – the Superintendent being the member-secretary to the committee - to send a letter to the Chief Judicial Magistrate asking for a date. He then fixes a date and notices fixing a date time and venue are sent out to other members. The prison authorities prepare and put forward four Government of Rajasthan proformas each with the name of Jail/sub jail, date of review and total number of under trials written on top.

- Proforma A: has a list of prisoners standing trial in cases punishable with *death, imprisonment for life or imprisonment for a term of not less than 10 years*, who have *completed 90 days under custody* but in whose case investigations have not concluded. **[S.167(2)(a)(i)Cr.P.C.]**

- Proforma B: List of prisoners standing trial in cases punishable with a *term of imprisonment less than 10 years*, who have *completed 60 days* under custody but investigation has not concluded **[S.167(2)(ii)Cr.P.C.]**

- Proforma C: List of prisoners who are under detention for period *more than the maximum term of sentence* awardable to them in case in which they are standing trial. **[S.428 Cr.P.C.](now S.436A)**

- Proforma D: List of *non-criminal lunatics* confined in prison for observation for more than 30 days. **[S. 16 & 23 of Indian Lunacy Act, 1912](now repealed)**

Meetings are generally held within the premises of the prison. At the conclusion of the meeting, if the Chairman, that is, the Chief Judicial Magistrate is unable to decide on a next meeting date for the coming month, a letter is sent from the prison to remind him about the same. The minutes of the meetings are recorded.

आवधिक समीक्षा समिति

प्रत्येक विचाराधीन बंदी की स्थिति के बारंबार पुनरीक्षण एवं उपयुक्त शोधक लागू करना निश्चित करने के लिए 1979 में राजस्थान ने एक विशेष समिति – आवधिक समीक्षा समिति का गठन किया। विभिन्न अधिकारियों से गठित इस समिति का उद्देश्य था यह सुनिश्चित करना कि किसी भी विचाराधीन बंदी को अनुचित रुप से लम्बे समय तक बंदी बना कर न रखा जाए या वो किसी भी कारण कागज़ी कार्यवाही के कारण न उलझा रहे। सरकारी **आदेश नं. F/8/22/गृह-12/कारा/79** जिसमें समीक्षा समिति स्थापित हुई के अनुसार यह बताया गया कि प्रत्येक ज़िले में एक समीक्षा समिति होगी जो उप–कारावासों सहित राजस्थान के कारावासों में विचाराधीन बंदियों के मामलों पर समय–समय पर पुनरीक्षण करेगी।

समीक्षा समिति के सदस्य

सरकार के आदेश में कहा गया है कि प्रत्येक ज़िले में निम्नलिखित सदस्यों से गठित एक आवधिक समीक्षा समिति होनी चाहिए :

1) मुख्य न्यायिक मजिस्ट्रेट – सदस्य
2) ज़िला मजिस्ट्रेट का प्रतिनिधि – सदस्य
3) पुलिस अधीक्षक का प्रतिनिधि – सदस्य
4) ज़िला परिवीक्षा अधिकारी – सदस्य
5) भारसाधक अधिकारी, ज़िला कारावस – सदस्य–सचिव

यद्यपि प्रशासनिक आदेश द्वारा गठित समीक्षा समिति में उल्लिखित है कि मुख्य न्यायिक मजिस्ट्रेट एक 'सदस्य' है परन्तु व्यवहारिक रुप से वह बैठकों का आयोजन करता है और वास्तव में अध्यक्ष के तौर पर काम करता है जबकि ज़िला कारावास का भारसाधक अधिकारी जो अधीक्षक जेलर या उप जेलर कोई भी हो सकता है समीक्षा समिति के सदस्य सचिव के तौर पर काम करता है।

इसमें आगे कहा गया है कि **समीक्षा समिति को हर महीने बैठकों का आयोजन करना चाहिए।**

आदेश के अनुसार, समीक्षा समिति उन निम्नलिखित विचाराधीन बंदियों को रिहा करने के लिए अपनी–अपनी अदालतों को सलाह/मशविरा देगी जो:

- अपने ऊपर लगे अपराध के लिए निर्धारित आधी या अधिकतम से ज़्यादा सज़ा काट चुका हो /या
- संगीन अभियुक्त हों और लम्बे समय से विचाराधीन हो /या
- छोटे–मोटे अपराधी हों, जिसके लिए उन्हें न्यायिक अभिरक्षा में रखने की ज़रुरत न हो।

इस तरह या अवैद्य कैद के मामलों को उजागर करने का तथा संबंधित अधिकारियों को ज़रुरत से ज़्यादा समय तक कैद में रखने के मामलों को शीघ्र निपटाने के कदम उठाने की सलाह देने और न्याय

प्रणाली में विलम्ब होने से बचने के लिए S.436A जैसे न्यायिक प्रावधानों को भी प्रभावकारी रूप से लागू करना निश्चित करने का स्पष्ट आदेश है। आदेश और प्रावधान दोनों ही समीक्षा समिति की ओर से अवैद्य और लम्बी क़ैद से बचने के लिए सक्रिय कदम उठा कर न्यायिक प्रावधानों की प्रभावकारी परिपालन संस्थापित करवाना चाहते हैं। आदेश में यह स्पष्ट कर दिया गया है कि जिन उद्देश्यों के लिए इस समिति का गठन किया गया है वह विचाराधीन बंदियों को उनके न्यायिक अधिकार दिलवाने से सीधे रूप से जुड़े हैं।

बैठकों का संचालन

बैठक के आयोजन की प्रक्रिया अभ्यास के नियमों से शासित है जहाँ कारावास प्राधिकारी – अधीक्षक का, समिति के सदस्य सचिव होने के नाते तारीख के लिए मुख्य न्यायिक मजिस्ट्रेट को एक पत्र भेजने की आवश्यकता होगी। फिर वो तारीख तय करेगा और अन्य सदस्यों को तारीख समय और स्थान तय करने की सूचनाएँ भेजेगा। कारावास प्राधिकारी राजस्थान सरकार के चार प्रोफ़ॉर्मा तैयार करेंगी और भेजेंगी। हर एक प्रोफ़ॉर्मा में सबसे ऊपर कारावास/उप–कारावास का नाम, समीक्षा की तारीख और विचाराधीन बंदियों की कुल संख्या लिखी होगी।

- प्रोफ़ॉर्मा A: में उन बंदियों की सूची होगी जिन के मृत्यु आजीवन कारावास या आवधिक कारावास जो 10 साल से कम न हो जो कैद में 90 दिन पूरे कर चुके हैं पर जाँच पूरी नहीं हुई जैसे दण्डनीय मामले विचाराधीन हैं। **[S.167(2)(a)(i)Cr.P.C.]**

- प्रोफ़ॉर्मा B: उन बंदियों की सूची जिन के 10 साल से कम अवधि के कारावास जो क़ैद में 60 दिन पूरे कर चुके हैं पर जाँच पूरी नहीं हुई जैसे दण्डनीय मामले विचाराधीन हैं। **[S.167(2)(ii)Cr.P.C.]**

- प्रोफ़ॉर्मा C: उन बंदियों की सूची जो उन पर चल रहे केस में उन्हें मिली अधिकतम अवधि से ज़्यादा समय के लिए कैद हैं। **[S.428 Cr.P.C.]** (;g vc S.436A g)

- प्रोफ़ॉर्मा D: गैर आपराधिक पागलों की सूची जिन्हें जेल में 30 दिन से ज़्यादा समय से प्रेक्षण के लिए जेल में रखा गया है। **[S.16&23, भारतीय पागलपन** (lunacy) **अधिनियम, 1912]** (;g vc fujflr g)

बैठकें आमतौर पर कारावास के परिसर में ही आयोजित की जाती हैं। बैठक के अंत में यदि अध्यक्ष यानी मुख्य न्यायिक मजिस्ट्रेट आने वाले महीने की अगली बैठक की तारीख तय न कर पाए तो, कारावास की ओर से उन्हें इसकी याद दिलवाने के लिए एक पत्र भेजा जाता है। बैठकों के विवरण रिकॉर्ड किए जाते हैं।

Section II: STATUTORY PROVISIONS

Hkkx II: Ok/kkfUkd Áko/kkUk

STATUTORY PROVISIONS

Code of Criminal Procedure Code, 1973

389. Suspension of sentence pending the appeal; release of appellant on bail.

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

1[Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.]

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a court subordinate thereto.

(3) Where the convicted person satisfies the court by which he is convicted that he intends to present an appeal, the court shall, -

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of 'imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

436. In what cases bail to be taken.

(1) When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at, any, time-, while-in, the custody of such officer or at any stage of the proceeding before such court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, 20[may, and shall, if such person is indigent and in unable to furnish surety, instead of taking bail] from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:

21[Explanation. – Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso.]

Provided further that nothing in this section shall be deemed to affect the provisions of sub-section (3) of section 116 or section 446A.

(2) Notwithstanding anything contained in sub-section (1), where a person has failed to comply with the conditions of the bail-bond as regards the time and place of attendance, the court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the court or is brought in custody and any such refusal shall be without prejudice to the powers of the court to call upon any person bound by such bond to pay the penalty thereof under section 446.

22436 A. Maximum period for which an undertrial prisoner can be detained.

23[Maximum period for which an undertrial prisoner can be detained. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]

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[20] Subs. by Act 25 of 2005, sec. 35, for "may instead of taking bail".

[21] Ins. by Act 25 of 2005, sec. 35.

[22] Ins. by Act 25 of 200, sec. 36 (w.e.f. 23-6-2006)

[23] Ins. by Act 25 of 2005, sec. 36.

437. When bail may be taken in case of non-bailable offence.

24[(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail, but-

(i) Such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) Such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of 25[a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:

Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that the shall comply with such directions as may be given by the court:]

26[Provided also that no person shall, if the offence allege to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]

(2) If it appears to such officer or court at any stage of the investigation, inquiry or trial as the case may be, that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, 27[the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail], or, at the discretion of such officer or court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chatter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or

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24 Subs. by Act 63 of 1980. Sec. 5, for sub-section (1) (w.e.f. 23-9-1980).

25 Subs. by Act 25 of 2005, sec. 37, for "a non-bailable and cognizable offence".

26 Ins. by Act 25 of 2005, sec. 37.

27 Subs. by Act 63 of 1980. Sec. 5. for certain words (w.e.f 23-9-1980).

conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1) 28[the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary.]

(4) An officer or a court releasing any person on bail under sub-section (1), or sub- section (2), shall record in writing his or its 29[reasons or special reasons] for so doing.

(5) Any court which has released a person on bail under sub-section (1), or sub- section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to Custody.

(6) If, any case triable by a Magistrate, the trial of a person accused of any non bailable offence is not Concluded within a period of sixty days from the first date fixed for – taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

(7) If, at any time after the conclusion of the trial of a person accused of a non bailable offence and before Judgment is delivered the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused, if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.

30[437A. Bail to require accused to appear before next appellate Court. — (1) Before conclusion of the trial and before disposal of the appeal, the Court trying the offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgment of the respective Court and such bail bonds shall be in force for six months.

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[28] Subs. by Act 25 of 2005, sec. 37, for "the Court may impose any condition which the Court considers necessary-
(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
(c) otherwise in the interests of justice."

[29] Subs. by Act 63 of 1980. Sec. 5, for "reasons" (w.e.f. 23-9-1980).

[30] Ins. by Act 5 of 2009, sec. 31 (w.e.f. 31-12-2009)

(2) If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply.".

438. Direction for grant of bail to person apprehending arrest.

31[(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) the possibility of the applicant to flee from justice; and

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.]

(2) When the High Court or the Court of Session makes a direction under sub- section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including -

(i) a condition that the person shall make himself available for interrogation by a police officer and when required;

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31 Subs. by Act 25 of 2005, sec. 38, for "(1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for direction under this section; and the Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail".

(ii) a condition that the person shall not, directly or indirectly,- make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer,

(iii) a condition that the person shall not leave India without the previous permission of the court;

(iv) Such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted -under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the court under sub-section (1).

439. Special powers of High Court or Court of Session regarding 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 he recorded in writing, of opinion that it is not practicable to give such notice.

(2) A 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.

440. Amount of bond and reduction thereof.

(1) The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case and shall not be excessive.

(2) The High Court or Court of Session may direct that the bail required by a police officer or Magistrate be reduced.

441. Bond of accused and sureties.

(1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police officer or court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned

that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police officer or court, as the case may be.

(2) Where any condition is imposed for the release of any person on bail, the bond shall also contain that condition.

(3) If the case so requires, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other court to answer the charge.

(4) For the purpose of determining whether the sureties are fit or sufficient, the court may accept affidavits in proof of the facts contained therein relating to the sufficiency or fitness of the sureties, or, if it considers necessary, may either hold an inquiry itself or cause an inquiry to be made by a Magistrate subordinate to the court, as to such sufficiency or fitness.

32441A. Declaration by sureties.

Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.]

442. Discharge from custody.

(1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the orders shall release him.

(2) Nothing in this section, section 436 or section 437 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

443 Power to order sufficient bail when that first taken is insufficient.

If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do, may commit him to jail.

444. Discharge of sureties.

(1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond, either wholly or so far as relates to the applicants.

(2) On such application being made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the

[32] Ins. by Act 25 of 2005, sec. 39 (w.e.f. 23-6-2006)

applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do `so, may commit him to jail.

445. Deposit instead of recognizance.

When any person is required by any court or officer to execute a bond with or without sureties, such court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the court of officer may if in lieu of executing such bond.

446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a court and it is proved to the satisfaction of that court or of any court to which the case has subsequently been transferred, that the bond has been forfeited,

or where in respect of any other bond under this Code, it is proved to the satisfaction of the court by which the bond was taken, or of any court to which the case has subsequently been transferred, or of the court of any Magistrate of the first class, that the bond has been forfeited, the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Explanation. - A condition in a bond for appearance, or for production of property, before a court shall be construed as including a condition for appearance, or as the case may be, for production of property before any court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the court may proceed to recover the same, as if such penalty were a fine imposed by it under this Code:

33[Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The court may, 34[after recording its reasons for doing so], remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the court by which he was convicted of such offence maybe used as evidence in proceedings under against his surety or sureties, and, if such certified copy is so used, the court shall presume that such offence was committed by him unless the contrary is proved.

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33 Ins. by Act 63 of 1980, Sec. 6 (w.e.f. 23-9-1980).
34 Subs. by Act 25 of 2005, sec. 40, for "at its discretion".

35[446A. Cancellation of bond and bail bond.

Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition-

(a) The bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled; and

(b) Thereafter no such person shall be released only on his own bond in that case, if the Police Officer or the court, as the case may be, for appearance before whom the bond was executed, is satisfied that there was no sufficient cause for the failure of the person bound by the bond to comply with its condition:

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of such sureties as the Police Officer or the court, as the case may be thinks sufficient.]

447. Procedure in case of insolvency or death of surety or when a bond is forfeited.

When any surety to a bond under this Code becomes insolvent or dies, or when any bond is forfeited under the provisions of section 446, the court by whose order such bond was taken, or a Magistrate of the first class may order the person from whom such security was demanded to furnish fresh security in accordance with the directions of the original order, and if such security is not furnished, such court or Magistrate may proceed as if there had been a default in complying with such original order.

448. Bond required from minor.

When the person required by any court, or officer to execute a bond is a minor, such court or officer may accept, in lieu thereof, a bond executed by a surety or sureties only.

449. Appeal from orders under section 446.

All orders passed under section 446 shall be appealable, -

(i) In the case of an order made by a Magistrate, to the Sessions Judge;

(ii) In the case of an order made by a Court of Sessions, to the court to which an appeal lies from an order made by such court.

450. Power to direct levy of amount due on certain recognizances.

The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond for appearance or attendance at such High Court or Court of Session.

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[35] Ins. by Act 63 of 1980, Sec. 7 (w.e.f. 23-9-1980).

167. tc pkcbl ?kVs d vanj vUo"k.k ijk u fd;k tk ldsa rc ifd;k &

1. जब कभी कोई व्यक्ति गिरफतार किया गया है और अभिरक्षा में निरूद्व है और यह प्रतीत हो कि अन्वेषण धारा 57 द्वारा नियत चौबीस घंटे की अवधि के अंदर पूरा नही किया जा सकता और यह विश्वास करने के लिये आधार है कि अभियोग या इतिला दृढ आधार पर है तब पुलिस थाने का भार साधक अधिकारी या यदि अन्वेषण करने वाला पुलिस अधिकारी उपनिरीक्षक से निम्नतर पंक्ति का नही है तो वह, निकटतम न्यायिक मजिस्ट्रेट को इसमे इसके पश्चात विहित डायरी की मामले से संबधित प्रविष्टियों की एक प्रतिलिपि भेजेगा और साथ ही अभियुक्त व्यक्ति को भी उस मजिस्ट्रेट के पास भेजेगा ।

2. वह मजिस्ट्रेट, जिसके पास अभियुक्त व्यक्ति इस धारा के अधीन भेजा जाता है, चाहे उस मामले के विचारण की उसे अधिकारिता हो या न हो, अभियुक्त का ऐसी अभिरक्षा में जैसी वह मजिस्ट्रेट ठीक समझे इतनी अवधि के लिये, जो कुल मिलाकर पन्द्रह दिन से अधिक न होगी, निरूद्व किया जाना समय समय पर प्राधिकृत कर सकता है तथा यदि उसे मामले के विचारण की या विचारण के लिये सुपुर्द करने की अधिकारिता नही है और अधिक निरूद्व रखना उसके विचार में अनावश्यक है तो वह अभियुक्त को ऐसे मजिस्ट्रेट के पास, जिसे ऐसी अधिकारिता है, भिजवाने के लिये आदेश दे सकता है।

परन्तु– (क) मजिस्ट्रेट अभियुक्त व्यक्ति का पुलिस अभिरक्षा से अन्यथा निरोध पन्द्रह दिन की अवधि से आगे के लिये उस दशा मे प्राधिकृत कर सकता है, जिसमे उसका समाधान हो जाता है कि ऐसा करने के लिये पर्याप्त आधार है, किन्तु कोई भी मजिस्ट्रेट अभियुक्त व्यक्ति का इस पैरा के अधीन अभिरक्षा में निरोध, –

कुल मिलाकर नब्बे दिन से अधिक की अवधि के लिये प्राधिकृत नही करेगा जहॉ अन्वेषण ऐसे अपराध के संबध मे है जो मृत्यु, आजीवन कारावास या दस वर्ष से अन्यून की अवधि के लिये कारावास से दण्डनीय है।

कुल मिलाकर साठ दिन से अधिक की अवधि के लिये प्राधिकृत नही करेगा जहॉ अन्वेषण किसी अन्य अपराध के संबध में है, और यथास्थिति नब्बे दिन व साठ दिन की उक्त अवधि की समाप्ति पर यदि अभियुक्त व्यक्ति जमानत देने के लिये तैयार है और दे देता है तो उसे जमानत पर छोड दिया जाएगा और यह समझा जाएगा कि इस उपधारा के अधीन जमानत पर छोडा गया प्रत्येक व्यक्ति अध्याय 33 के प्रयोजनो के लिये उस अध्याय के उपबंधो के अधीन छोड गया है,

(ख) इस धारा के अधीन मजिस्ट्रेट, पुलिस अभिरक्षा में अभियुक्त का निरूद्व तब तक प्राधिकृत नही करेगा जब तक अभियुक्त को पहली बार व्यक्तिगत प्रस्तुत नही करे और पश्चात में हर बार जब तक अभियुक्त पुलिस अभिरक्षा में रहता है लेकिन मजिस्ट्रेट अभियुक्त को व्यक्तिगत या इलेक्ट्रोनिक विडियो कवरेज के माध्यम से अभियुक्त प्रस्तुत करने पर न्यायिक अभिरक्षा निरूद्व विस्तारित कर सकेगा ।

(ग) कोई द्वितीय वर्ग, मजिस्ट्रेट, जो उच्च न्यायालय द्वारा इस निमित विशेषतया सशक्त नही किया गया है, पुलिस की अभिरक्षा मे निरोध प्राधिकृत न करेगा ।

स्पष्टीकरण 1. – शकांए दूर करने के लिये इसके द्वारा यह घोषित किया जाता है कि पेरा क. में विनिर्दिष्ट अवधि समाप्त हो जाने पर भी अभियुक्त व्यक्ति तब तक अभिरक्षा में निरूद्व रखा जाएगा जब तक की वह जमानत नही दे देता है ।

स्पष्टीकरण 2– यदि कोई प्रश्न उत्पन्न होता है कि क्या अभियुक्त व्यक्ति को खण्ड ख. के अधीन अपेक्षित अनुसार मजिस्ट्रेट के समक्ष प्रस्तुत किया था, तो अभियुक्त व्यक्ति की प्रस्तुति निरूद्व प्राधिकृत के ओदश पर उसके हस्ताक्षर द्वारा या इलेक्ट्रोनिक विडियो लिंकेज के माध्यम से अभियुक्त व्यक्ति को प्रस्तुत करेन के मजिस्ट्रेट के प्रमाणित आदेश द्वारा जैसी भी स्थिति हो साबित किया जा सकेगा ।

परन्तु यह और कि अठारह वर्ष से कम आयु की महिला की दशा में प्रति प्रेषण गृह या मान्यता प्राप्त सामाजिक संस्था के अभिरक्षा में निरूद्व को प्राधिकृत किया जायेगा ।

(2क) उपधारा (1) या उपधारा (2) में किसी बात के होते हुए भी, पुलिस थाने का भार साधक अधिकारी या अन्वेषण करने वाला पुलिस अधिकारी, यदि उपनिरीक्षक से निम्नतर पंक्ति का नही है तो, जहॉ न्यायिक मजिस्ट्रेट न मिल सकता हो, वहॉ कार्यपालक मजिस्ट्रेट को जिकसेा न्यायिक मजिस्ट्रेट या महानगर मजिस्ट्रेट की शक्तिया प्रदान की गई है, इसमे इसके पश्चात विहित डायरी की मामले सें संबधित प्रविष्टियों की एक प्रतिलिपि भेजेगा और साथ ही अभियुक्त व्यक्ति को भी उस कार्यपालक मजिस्ट्रेट के पास भेजेगा और तब ऐसा कार्यपालक मजिस्ट्रेट लेखबद्व किये जाने वाले कारणो से किसी अभियुक्त व्यक्ति का ऐसी अभिरक्षा में निरोध, जैसा वह ठीक समझे, ऐसी अवधि के लिये प्राधिकृत कर सकता है जो कुल मिलाकर सात दिन से अधिक नही हो और ऐसे प्राधिकृत निरोध की अवधि की समाप्ति पर उसे जमानत पर छोड दिया जाएगा, किन्तु उस दशा में नही जिसमे अभियुक्त व्यक्ति के आगे और निरोध के लिये आदेश ऐसे मजिस्ट्रेट द्वारा किया गया है जो ऐसा आदेश करने के लिये सक्षम है और जहॉ ऐसे आगे और निरोध के लिये आदेश किया जाता है वहा वह अवधि जिसके दौरान अभियुक्त व्यक्ति इस उपधारा के अधीन किसी कार्यपालक मजिस्ट्रेट के आदेशो के अधीन अभिरक्षा में निरूद्व किया गया उपधारा (2) के परन्तुक के पेरा (क) मे विनिर्दिष्ट अवधि की संगणना करने मे हिसाब मे ली जाएगी ।

परन्तु – उक्त अवधि की समाप्ति के पूर्व कार्यपालक मजिस्ट्रेट मामले के अभिलेख, मामले से संबधित डायरी की प्रविष्टियो के सहित जो, यथास्थिति, पुलिस थाने के भारसाधक अधिकारी या अन्वेषण करने वाले अधिकारी द्वारा उसे भेजी गई थी, निकटतम न्यायिक मजि. को भेजेगा ।

3. इस धारा के अधीन पुलिस अभिरक्षा में निरोध प्राधिकृत करने वाला मजिस्ट्रेट ऐसा करने के अपने कारण अभिलिखित करेगा ।

4. मुख्य न्यायिक मजिस्ट्रेट से भिन्न कोई मजिस्ट्रेंट जो ऐसा आदेश दे अपने आदेश की एक प्रतिलिपि आदेश देने के अपने कारणो के सहित मुख्य न्यायिक मजि. को भेजेगा ।

5. यदि समन मामले के रूप में मजिस्ट्रेट द्वारा विचारणीय किसी मामले में अन्वेषण अभियुक्त के गिरफतार किये जाने की तारीख से छह मास की अवधि के भीतर समाप्त नही होता है तो मजिस्ट्रेट अपराध मे आगे और अन्वेषण को रोकने के लिये आदेश करेगा जब तक अन्वेषण करने वाले अधिकारी मजिस्ट्रेट का समाधान नही कर देता है कि विशेष कारणो से और न्याय के हित में छह मास की अवधि के आगे अन्वेषण जारी रखना आवश्यक है।

6. जहॉ उपधारा (5) के अधीन किसी अपराध का आगे और अन्वेषण रेाकने के लिये आदेश दिया गया है वहा यदि सेशन न्यायाधीश का उसे आवेदन दिये जाने पर अन्यथा समाधान हो जाता है कि उस अपराध का आगे और अन्वेषण किया जाना चाहिये तो वह उपधारा (5) के अधीन किये गये आदेश को रदद कर सकता है और यह निदेश दे सकता है कि जमानत और अन्य मामलो के बारे मे ऐसे निदेशो के अधीन रहते हुए जो वह विनिर्दिष्ट करे अपराध का आगे और अन्वेषण किया जाए ।

389. अपील लम्बित रहने तक दण्डादेश का निलम्बन अपीलार्थी का जमानत पर छोडा जाना

1- vihy न्यायालय, ऐसे कारणो से, जो उसके द्वारा अभिलिखित किये जाएगे आदेश दे सकता है कि उस दण्डादेश या आदेश का निष्पादन, जिसके विरूद्व अपील की गई है, दोषसिद्व व्यक्ति द्वारा की गई अपील के लम्बित रहने तक निलम्बित किया जाए और यदि वह व्यक्ति परिरोध में है तो यह भी आदेश दे सकता है कि उसे जमानत पर या उसके अपने बंध पत्र पर छोड दिया जाए ।

परन्तु अपील न्यायालय दोषसिद्व व्यक्ति को जो मृत्युदण्ड या आजीवन कारावास या दस वर्ष से अन्यून अवधि के कारावास से दण्डनीय अपराध का दोषसिद्व हुआ है जमानत पर या उसके अपेन बंध पत्र पर छोडने से पूर्व लोक अभियोजक को ऐसे छोडे जाने के विरूद्व लिखित में कारण दर्शाने का अवसर देगा ।

परन्तु यह और कि जहॉ दोषसिद्व व्यक्ति जमानत पर छोडे जाने का मामला है वहॉ लोक अभियोजक का जमानत निरस्त किये जोन के लिये आवेदन प्रस्तुत करना खुला रहेगा । ,

2. **अपील** न्यायालय को इस धारा द्वारा प्रदत्त शक्ति का प्रयोग उच्च न्यायालय भी किसी ऐसी अपील के मामले मे कर सकता है जो किसी दोषसिद्व व्यक्ति द्वारा उसके अधीनस्थ न्यायालय में की गई है ।

3. **जहॉ** दोषसिद्व किया गया है यह समाधान कर देता है कि वह अपील प्रस्तुत करना चाहता है वहा वह न्यायालय।

4. उस दशा मे जब ऐसा व्यक्ति, जमानत पर होते हुए तीन वर्ष से अनधिक की अवधि के लिये कारावास से दण्डादिष्ट किया गया है, या उस दशा मे जब वह अपराध जिसके लिये ऐसा व्यक्ति दोषसिद्व किया गया है जमानतीय है और वह जमानत पर है यह आदेश देगा कि दोषसिद्व व्यक्ति को इतनी अवधि के लिये जितनी से अपील प्रस्तुत करने और उपधारा(1) के अधीन अपील न्यायालय के आदेश प्राप्त करने के लिये पर्याप्त समय मिल जाएगा जमानत पर छोड दिया जाए जब तक की जमानत से इंकार करने के विशेष कारण न हो और जब तक वह ऐसे जमानत पर छूटा रहता है तब तक कारावास का दण्डादेश निलम्बित समझा जाएगा जब अंततोगत्वा अपीलार्थी को किसी अवधि के कारावास से आजीवन कारावास का दण्डादेश फिर जाता है, तब वह समय, जिसके दौरान वह ऐसे छूटा रहता है उस अवधि की संगणना करने मे जिसके लिये उसे ऐसा दण्डादेश दिया गया है, हिसाब में नही लिया जाएगा ।

436. किन मामलो में जमानत ली जाएगी **(1)** जब अजमानतीय अपराध के अभियुक्त व्यक्ति से भिन्न कोई व्यक्ति पुलिस थाने के भार साधक अधिकारी द्वारा वारण्ट के बिना गिरफतार या निरूद्व किया जाता है या न्यायालय के समक्ष हाजिर होता है या लाया जाता है और जब वह ऐसे अधिकारी की अभिरक्षा में है उस बीच किसी समय, या ऐसे न्यायालय के समक्ष कार्यवाहियों के किसी प्रक्रम में, जमानत देने के लिये तैयार है तब ऐसा व्यक्ति जमानत पर छोड दिया जाएग ा।

परन्तु –
यदि ऐसा अधिकारी या न्यायालय ठीक समझते है और यदि ऐसा व्यक्ति निर्धन है और प्रतिभू देने में असमर्थ है तो वह ऐसे व्यक्ति से प्रतिभू लेने के बजाय उसके इसमे इसके पश्चात उपबंधित प्रकार से अपने हाजिर होने के लिये प्रतिभूओ रहित बंध पत्र निष्पादित करने पर उसे उन्मोचित कर सकेगा ।

स्पष्टीकरण –
जहॉ व्यक्ति अपनी गिरफतारी के दिनांक से एक सप्ताह के अंदर जमानत देने में असमर्थ रहा है, वहॉ अधिकारी या न्यायालय के लिये यह उपधारणा करने के लिये पर्याप्त आधार हेागा कि, वह इस परन्तुक के प्रयोजन में निर्धन व्यक्ति है ।

परन्तु यह और कि इस धारा की कोई बात धारा116 की उपधारा (3) या धारा 44क के उपबंधो पर प्रभाव डालने वाली न समझी जाएगी ।

(2) उपधारा (1) में किसी बात के हेाते हुए भी जहॉ कोई व्यक्ति, हाजिरी के समय और स्थान के बारे में जमानत पत्र की शर्तो का अनुपालन करने मे असफल रहता है वहा न्यायालय उसे, जब वह उसी मामले मे किसी पश्चातवर्ी अवसर पर न्यायालय के समक्ष हाजिर होता है या अभिरक्षा में लाया जाताहै ज्मानत पर छोडने से इंकार कर सकता है और ऐसी किसी इंकारी का, ऐसे जमानत पत्र से आबद्व किसी व्यक्ति से धारा 446 के अधीन उसकी शास्ति देने की अपेक्षा करने की न्यायालय की शक्तियों पर कोई प्रतिकूल प्रभाव नही पडेगा ।

436. अधिकतम अवधि जिसके लिये विचाराधीन कैदी निरूद्व रखा जा सकता है । जहॉ व्यक्ति किसी विधि के अधीन किसी अपराध के जो नही है जिसकेउस विधि के अधीन मृत्युदण्ड एक दण्ड के रूप में किया गया है इस संहिता के अधीन अन्वेषण जांच या विचारण की अवधि के दौरान कारावास को उस अधिकतम अवधि के जो उस विधि के अधीन उस अपराध के लिये निर्विदिष्ट की गई है, आधे से अधिक की अवधि के लिये निरोध भोग चुका है, वहॉ वह प्रतिभूओ सहिता या रहित व्यक्तिगत बंधपत्र पर न्यायालय द्वारा छोड दिया जायेगा ।

परन्तु न्यायालय, लोक अभियोजक को सुनने के पश्चात और उन कारणो से जो उसके द्वारा लेखबद्व किये गये है, ऐसे व्यक्ति का उक्त आधी अवधि से दीर्घतर अवधि के लिये निरोध जारी रखने का आदेश कर सकेगा या व्यक्ति बंध पत्र के बजाज प्रतिभूओ सहित या रहित जमानत पर छोड सकेगा ।

परन्तु यह और कि कोई भी ऐसा व्यक्ति अन्वेषण, जांच विचारण की अवधि के दौरान उस विधि के अधीन उक्त अपराध के लिये उपबंधित कारावास की अधितम अवधि से अधिक, किसी भी दशा में निरूद्व नही रखेगा ।

स्पष्टीकरण–
जमानत देने के लिये इस धारा के अधीन विरोध की अवधि की गणना करने मे अभियुक्त द्वारा कार्यवाही मे किये गये विलम्ब के कारण भोगी गई निरोध की अवधि को अपवर्जित किया जायेगा।

437. अजमानतीय अपराध की दशा मे कब जमानत ली जा सकेगी–
जब कोई व्यक्ति, जिस पर अजमानतीय अपराध का अभियोग है या जिस पर यह संदेह है कि उसने अजमानतीय अपराध किया है, पुलिस थाने के भारसाधक अधिकारी द्वारा वारण्ट के बिना गिरफतार या निरूद्व किया जाता है या उच्च न्यायालय अथवा सेशन न्यायालय से भिन्न न्यायालय के समक्ष हाजिर हेाता है या लाया जाता है तब वह जमानत पर छोडा जा सकता है, किन्तु'

I. यदि यह विश्वास करने के लिये उचित आधार प्रतीत होते है कि ऐसा व्यक्ति मृत्यु या आजीवन कारावास से दण्डनीय अपराध का दोषी है तो वह इस प्रकार नही छोडा जाएगा।

II. यदि ऐसा अपराध कोई संज्ञेय अपराध है और ऐसा व्यक्ति मृत्यु, आजीवन कारावास या सात वर्ष या उससे अधिक के कारावास से दण्डनीय किसी अपराध के लिये पहले दोषसिद्व किया गया है, या वह किसी तीन वर्ष या अधिक परन्तु सात वर्ष से अनधिक कारावास से दण्डनीय संज्ञेय अपराध के लिये दो या अधिक अवसरो पर पहले दोषसिद्व किया गया है तो वह इस प्रकार नही छोडा जाएगा।

III. परन्तु न्यायालय यह निदेश दे सकेगा कि खण्ड (।) या खण्ड (।।) में निर्दिष्ट व्यक्ति जमानत पर छोड दिया जाए यदि ऐसा व्यक्ति सोलह वर्ष से कम आयु का है या कोई स्त्री या कोई रोगी या शिथिलांग व्यक्ति हैः

IV. परन्तु यह और कि न्यायालय यह भी निदेश दे सकेगा कि खड ।। में निर्दिष्ट व्यक्ति जमानत पर छोड दिया जाए यदि उसका यह समाधान हो जाता है कि किसी अन्य विशेष कारण से ऐसा करना न्यायोचित तथा ठीक है।

V. परन्तु यह और भी कि केवल यह बात कि अभियुक्त की आवश्यकता, अन्वेषण में साक्षियों द्वारा पहचाने जाने के लिये हो सकती है, जमानत मंजूर करने से इंकार करने के लिये पर्याप्त आधार नही होगी, यदि वह अन्यथा जमानत पर छोड दिये जाने के लिये हकदार है और वह वचन देता है कि वह ऐसे निदेशो का, जो न्यायालय द्वारा दिये जाए अनुपालन करेगा।

VI. परन्तु यह और भी कि उस व्यक्ति को, यदि उसके ,द्वारा ऐसा अपराध करना आरोपित है जिसमे मृत्युदण्ड, आजीवन कारावास या सात वर्ष से अधिक की सजा से दण्डनीय है तो न्यायालय द्वारा लोक अभियोजक को सुनवाई का अवसर दिये बिना इस उपधारा के अधीन जमानत पर नही छोडा जायेगा।

2. यदि ऐसे अधिकारी या न्यायालय को यथास्थिति, अन्वेषण जांच या विचारण के किसी प्रक्रम में यह प्रतीत होता है कि यह विश्वास करने के लिये उचित आधार नही है कि अभियुक्त ने अजमानतीय अपराध किया है किन्तु उसके दोषी होने के बारे में और जांच करने के लिये पर्याप्त आधार है तो अभियुक्त धारा 446 क के उपंबधो के अधीन रहते हुए ऐसी जांच लम्बित रहने तक जमानत पर, या ऐसे अधिकारी या न्यायालयके स्वविवेकानुसार, इसमे इसके पश्चात उपबंधित प्रकार से अपेन हाजिर होने के लिये प्रतिभूओ रहित बंधपत्र निष्पादित करने पर, छोड दिया जाएगा ।

3. जब कोई व्यक्ति, जिस पर ऐसे कारावास से, जिसकी अवधि सात वर्ष तक की या उससे अधिक की है, दण्डनीय कोई अपराध या भारतीय दण्ड संहिता 1860 का 45 के अध्याय 6, अध्याय 16 या अध्याय 17 के अधीन कोई अपराध करने या ऐसे किसी अपराध का दुष्प्रेरण या षडयंत्र या प्रयत्न करने का अभियोग का संदेह है, उपधारा (1) के अधीन जमानत पर छोडा जाता है तो न्यायालय शर्ते अधिरोपित करेगा–

क. कि ऐसा व्यक्ति इस अध्याय के अधीन निष्पादित बंध पत्र की शर्तो के अनुसार उपस्थित होगा,

ख. कि ऐसा व्यक्ति उस अपराध जैसा, जिसको करने का उस पर अभियोग या संदेह है, वैसा अपराध नही करेगा और

ग. कि व्यक्ति, उस मामले में तथ्यो से अवगत किसी व्यक्ति को न्यायालय या किसी पुलिस अधिकारी को, मामले के तथ्य प्रकट न करने के लिये मनाने वास्ते प्रत्यक्ष या अप्रत्यक्ष, उत्प्रेरित धमकी या वचन नही देगा या साक्ष्य को नही छेडछाड सकेगा। और न्यायहित में ऐसी अन्य शर्ते भी, जैसी वह ठीक समझे, अधिरोपित कर सकेगा।

(4) उपधारा (1) या उपधारा (2) के अधीन जमानत पर किसी व्यक्ति को छोडने वाला अधिकारी या न्यायालय ऐसा करने के अपने कारणो या विशेष कारणो को लेखबद्व करेगा।

(5) यदि कोई न्यायालय जिसने किसी व्यक्ति को उपधारा (1) या उपधारा (2) के अधीन जमानत पर छोडा है, ऐसा करना आवश्यक समझता है तो ऐसे व्यक्ति को गिरफतार करने का निदेश दे सकता है और उसे अभिरक्षा के लिये सुपुर्द कर सकता है ।

(6) यदि मजिस्ट्रेट द्वारा विचारणीय किसी मामले में ऐसे व्यक्ति का विचारण, जो किसी अजमानतीय अपराध का अभियुक्त है, उस मामले में साक्ष्य देने के लिये नियत प्रथम तारीख से साठ दिन की अवधि के अंदर पूरा नही हो जाता है तो, यदि ऐसा व्यक्ति उक्त सम्पूर्ण अवधि के दौरान अभिरक्षा में रहा है तो, जब तब ऐसे कारणो से जो लेखबद्व किये जाएगे मजिस्ट्रेट अन्यथा निदेश न दे वह मजिस्ट्रेट को समाधानप्रद जमानत पर छोड दिया जाएगा।

1. यदि अजमानतीय अपराध के अभियुक्त व्यक्ति के विचारण के समाप्त हो जाने के पश्चात और निर्णय दिए जाने के पूर्व किसी समय न्यायालय की यह राय है कि यह विश्वास करने के उचित आधार है कि अभियुक्त किसी ऐसे अपराध का दोषी नही है और अभियुक्त किसी ऐसे अपराध का दोषी नही है और अभियुक्त अभिरक्षा में है, तो वह अभियुक्त को निर्णय सुनने के लिये अपने हाजिर होने के लिये प्रतिभूओ रहित बंधपत्र उसके द्वारा निष्पादित किये जाने पर छोड देगा ।

437d. अभियुक्त से आगामी अपील न्यायालय के समक्ष उपसंजात होने की अपेक्षा जमानत–
विचारण के निष्कर्ष के पूर्व और अपील के निस्तारण पूर्व, अपराध विचारण न्यायालय अपील न्यायालय जैसी स्थिति हो, अभियुक्त से उच्चतर न्यायालय के समक्ष उपसंजात होने के लिये प्रतिभूओ सहित बंधपत्र निष्पादित करने की अपेक्षा करेगा, जब और जैसे ऐसा न्यायालय संबधित न्यायालय के निर्णय के विरूद्व प्रस्तुत किसी अपील या याचिका के संबध में नोटिस जारी करता है और ऐसा जमानत बंध पत्र छः मास के लिये प्रवृत होगा।
2. यदि ऐसा अभियुक्त उपसंजात होने मे असफल रहता है, तो बंध पत्र समपहत किया जायेगा और धारा 446 के अधीन की प्रकिया लागू होगी।

438. गिरफतारी की आशंका करने वाले व्यक्ति की जमानत मंजूर करने के लिये निदेश 1. जब किसी व्यक्ति को यह विश्वास करने का कारण है कि उसे अजमानतीय अपराध के आरोप पर गिरफतार किया जा सकता है , तो वह इस धारा के अधीन उच्च न्यायालय या सत्र न्यायालय को आवेदन कर सकता है कि ऐसी गिरफतारी की स्थिति में उसे जमानत पर छोड दिया जाए और न्यायालय अन्य सभी बातो के विचारो के साथ साथ निम्न बातो को ध्यान में रखकर, –

I. आरोप की प्रकृति एंव गंभीरता
II. आवेदक का पूर्ववृत जिसमे यह तथ्य भी सम्मिलित है कि कभी उसने पूर्व में किसी संज्ञेय अपराध के बाबत में न्यायालय द्वारा दोषसिद्व होने पर कारावास का दण्ड भोगा है या नही,
III. आवेदक के न्याय से भागने की सम्भावना, और
IV. आवेदक को गिरफतार करके उसे चोट पहुचाने या अपमानित करने के उदेश्य से आरोप लगाया गया है,
V. या तो आवेदन को तत्काल अस्वीकार किया जावेगा या अग्रिम जमानत प्रदान करने का अंतरिम आदेश दिया जायेगा ।
VI. परन्तु यह कि जहा जैसी स्थिति हो उच्च न्यायालय या सत्र न्यायालय ने इस उपधारा के अधीन कोई अंतरिम आदेश नही दिया है या अग्रिम जमानत प्रदान करने के आवेदन को अस्वीकार कर दिया है, तो पुलिस स्टैशन के प्रभारी अधिकारी का यह विकल्प खुला रहेगा कि ऐसे आवेदन के आशांकित आरोप के आधार पर आवेदक को बिना वारण्ट गिरफतार करलेक ।

(1क) जहॉ न्यायालय उपधारा (1) के अधीन अंतरिम आदेश देता है तो वह तत्काल सूचना कार्यान्वित करेगा, जो सात दिनो से कम की सूचना की नही होगी जो ऐसे आदेश की एक प्रति के साथ जो लोक अभियोजक और पुलिस अधीक्षक को भी देय होगी, जो न्यायालय द्वारा आवेदन की अंतिम सुनवाई मे लोक अभियोजक को सुनने का युक्तियुक्त अवसर दिये जाने की दृष्टि की होगी ।
(1ख) न्यायालय द्वारा अग्रिम जमानत चाहने वाले आवेदन की अंतिम सुनवाई और अंतिम आदेश देने के समय आवेदक की उपस्थिति, यदि लोक अभियोजक द्वारा आवेदन करने, न्यायालय न्याय हित में विचार करे कि ऐसी उपस्थिति आवश्यक है तो बाध्य कर होगी ।
2. जब उच्च न्यायालय या सेशन न्यायालय उपधारा (1) के अधीन निदेश देता है तब वह उस विशिष्ट मामले के तथ्यो को ध्यान में रखते हुए उन निदेशो मे ऐसी शर्ते जो वह ठीक समझे, सम्मिलित कर सकता है जिनके अंतर्गत निम्नलिखित भी है, –

1. यह शर्त कि वह व्यक्ति पुलिस अधिकारी द्वारा पूछे जाने वाले परिप्रश्नो का उत्तर देने के लिये जैसे और जब अपेक्षित हो, उपलब्ध होगा ।
2. यह शर्त कि वह व्यक्ति उस मामले के तथ्यो से अवगत किसी व्यक्ति को न्यायालय या किसी पुलिस अधिकारी के समक्ष ऐसे तथ्यो को प्रकट न करने के लिये मनाने के वास्ते प्रत्यक्षतः या अप्रत्यक्षत उसे उत्प्रेरणा धमकी या वचन नही देगा ।
3. यह शर्त कि वह व्यक्ति न्यायालय की पूर्व अनुज्ञा के बिना भारत नही छोडेगा ।
4. ऐसी अन्य शर्ते जो धारा 437 की उपधारा (3) के अधीन ऐसे अधिरोपित की जा सकती है मानो उस धारा के अधीन जमानत मंजूर की गई है ।
5. यदि तत्पश्चात अधिकारी द्वारा वारण्ट के बिना गिरफतार किया जाता है और वह या तो गिरफतारी के समय या जब वह ऐसे अधिकारी की अभिरक्षा में है तब किसी समय जमानत देने के लिये तैयार है, तो उसे जमानत पर छोड दिया जाएगा तथा यदि ऐसे अपराध का सज्ञान करने वाला मजिस्ट्रेट यह विनिश्चय करता है कि उस व्यक्ति के विरूद्व प्रथम बार ही वारंट जारी किया जाना चाहिये तो वह उपधारा (1) के अधीन न्यायालय के निदेश के अनुरूप जमानतीय वारण्टऐसे व्यक्ति को ऐसे अभियोग पर पुलिस थाने के भारसाधक जारी करेगा ।

439. जमानत के बारे में उच्च न्यायालय या सेशन न्यायालय की विशेष शक्तियॉ –

1. उच्च न्यायालय या सेशन न्यायालय यह निदेश दे सकता है कि–

क. किसी ऐसे व्यक्ति को, जिस पर किसी अपराध का अभियोग है और जो अभिरक्षा में है, जमानत पर छोड दिया जाए और यदि अपराध धारा 437 की उपधारा (3) में विनिर्दिष्ट प्रकार है, तो वह ऐसी कोई शर्त, जिसे वह उस उपधारा में वर्णित प्रयोजनो के लिये आवश्यक समझे, अधिरोपित कर सकता है।
किसी व्यक्ति को जमानत पर छोडने के समय मजिस्ट्रेट द्वारा अधिरोपित कोई शर्त अपास्त या उपांतरित कर दी जाए।

परन्तु उच्च न्यायालय या सेशन न्यायालय किसी ऐसे व्यक्ति की, जो ऐसे अपराध का अभियुक्त है जो अनन्यतः सेशन न्यायालय द्वारा विचारणीय है, या जो यद्यपि इस प्रकार विचारणीय नही है, आजीवन कारावास से दण्डनीय है, जमानत लेने के पूर्व जमानत के लिये आवेदन की सूचना लोक अभियोजन को उस दशा के सिवाय देगा जब उसकी, ऐसी कारणो से, जो लेखबद्व किये जायेगे यह राय है कि ऐसी सूचना देना साध्य नही है ।

उच्च न्यायालय या सेशन न्यायालय, किसी ऐसे व्यक्ति को, जिसे इस अध्याय के अधीन जमानत पर छोडा जा चुका है गिरफतार करने का निदेश दे सकता है और उसे अभिरक्षा के लिये सुपुर्द कर सकता है।

440. बंध पत्र की रकम और उस घटाना –

1. इस अध्याय के अधीन निष्पादित प्रत्येक बंध पत्र की रकम मामले की परिस्थितियों का सम्यक ध्यान रख कर नियत की जाएगी और अत्यधिक नही होगी ।
2. उच्च न्यायालय या सेशन न्यायाल यह निदेश दे सकता है पुलिस अधिकारी या मजिस्ट्रेट द्वारा अपेक्षित जमानत घटाई जाए ।

441. अभियुक्त और प्रतिभूओ का बंध पत्र

1. किसी व्यक्ति के जमानत पर छोडे जाने या अपने बंध पत्र पर छोडे जाने के पूर्व उस व्यक्ति द्वारा, और जब वह जमानत पर छोडा जाता है तब एक या अधिक पर्याप्त प्रतिभूओ द्वारा इतनी धनराशि के लिये जितनी, यथास्थिति, पुलिस अधिकारी या न्यायालय पर्याप्त समझे, इस शर्त का बंधपत्र निष्पादित किया जाएगा कि ऐसा व्यक्ति बंध पत्र में वर्णित समय और स्थान पर हाजिर होगा और जब तक, यथास्थिति पुलिस अधिकारी या न्यायालय द्वारा अन्यथा निदेश नही दिया जाता है इस प्रकार बराबर हाजिर हेाता रहेगा।
2. जहॉ किसी व्यक्ति को जमानत पर छोडने के लिये कोई शर्त अधिरोपित की गई है, वहा बंधपत्र में वह शर्त भी अंतर्विष्ट होगी।
3. यदि मामले में ऐसा अपेक्षित है तो बंध पत्र द्वारा जमानत पर छोडे गए व्यक्ति को अपेक्षा किये जाने पर आरोप का उत्तर देने के लिये उच्च न्यायालय, सेशन न्यायालय या अन्य न्यायालय में हाजिर होने के लिये भी आबद्व किया जाएगा।

4. यह अवधारित करने के प्रयोजन के लिये कि क्या प्रतिभू उपयुक्त या पर्याप्त है अथवा न ही न्यायालय शपथपत्रो को, प्रतिभूओ के पर्याप्त या उपयुक्त होने के बारे में उनमे अंतर्विष्ट बातो के सबूत के रूप में स्वीकार कर सकता है अथवा यदि न्यायालय आवश्यक समझे तो वह ऐसे पर्याप्त या उपयुक्त होने के बारे में या तो स्वंय जांच कर सकता है या अपने अधीनस्थ किसी मजिस्ट्रेट से जांच करवा सकता है।

441क. प्रतिभूओ द्वारा घोषणा –

प्रत्येक व्यक्ति जो अभियुक्त को जमानत पर छोडे जाने के लिये प्रतिभू बने है, वह न्यायालय के समक्ष अभियुक्त सहित घोषणा करेगे जिसमे संबधित सभी विवरण प्रस्तुत करते हुए कि उसने कितने व्यक्तियो की प्रतिभू दिया है।

442. अभिरक्षा से उन्मोचन –

1. ज्यो ही बंध पत्र निष्पादित कर दिया जाता है त्यो ही वह व्यक्ति, जिसकी हाजिरी के लिये वह निष्पादित किया गया है, छोड दिया जाएगा और जब वह जेल में हो तब उसकी मंजूर करने वाला न्यायालय जेल के भारसाधक अधिकारी को उसके छोडे जाने के लिये आदेश जारी करेगा और वह अधिकारी आदेश की प्राप्ति पर उसे छोड देगा ।

.2. इस धारा की या धारा 436 या धारा 437की कोई भी बात किसी ऐसे व्यक्ति के छोडे जाने की अपेक्षा करने वाली न समझी जाएगी जो ऐसी बात के लिये निरूद्व किये जाने का भागी है जो उस बात से भिन्न है इसके बारे में बंधपत्र निष्पादित किया गया है।

443. जब पहले ली गई जमानत अपर्याप्त है तब पर्याप्त जमानत के लिये आदेश देने की शक्ति– यदि भूल या कपट के कारण या अन्यथा अपर्याप्त प्रतिभू स्वीकार कर लिये गये है अथवा यदि वे बाद में अपर्याप्त हो जाते है तो न्यायालय यह निदेश देते हुए गिरफतारी का वारण्ट जारी कर सकता है कि जमानत पर छोडे गए व्यक्ति को उसके समक्ष लाया जाए और उसे पर्याप्त प्रतिभू देने का आदेश दे सकता है और उसके ऐसा करने मे असफल रहने पर उसे जेल सुपुर्द कर सकता है ।

444. प्रतिभूओ का उन्मोचन

1. जमानत पर छोडे गए व्यक्ति की हाजिरी और उपस्थितिके लिये प्रतिभूओ मे से सब या कोई बंध पत्र के या तो पूर्णतया या वहा तक जहॉ तक वह आवेदको से संबधित है प्रभावोन्मुक्त किये जाने के लिये किसी समय मजि. से आवेदन कर सकते है ।
2. ऐसा आवेदन किये जाने पर मजिस्ट्रेट यह निदेश देते हुए गिरफतारी का वारंट जारी करेगा कि ऐसे छोडे गए व्यक्ति को उसके समक्ष लाया जाए ।
3. वारंण्ट के अनुसरण में ऐसे व्यक्ति के हाजिर होने पर या उसके स्वेच्छया अभ्यर्पण करने पर मजिस्ट्रेट बंध पत्र के या तो पूर्णतया या वहा तक जहॉ तक कि वह आवेदको से संबधित है प्रभावोन्मुक्त किये जोन का निदेश देगा और ऐसे व्यक्ति से अपेक्षा करेगा कि वह अन्य पर्याप्त प्रतिभू दे ओर यदि वह ऐसा करने मे असफलरहता है तो उसे जेल सुपुर्द कर सकता है ।

445. मुचलके के बजाए निक्षेप–

जब किसी व्यक्ति से किसी न्यायालय या अधिकारी द्वारा प्रतिभूओ सहित या रहित बंध पत्र निष्पादित करने की अपेक्षा की जाती है तब वह न्यायालय या अधिकारी, उस दशा मे जब वह बंध पत्र सदाचार के लिये नही है उसे ऐसे बंधपत्र के निष्पादन के बदले मे इतनी धनराशि या इतनी रकम के सरकारी वजन पत्र, जितनी वह न्यायालय या अधिकारी नियत करे, निक्षिप्त करने की अनुज्ञा दे सकता है ।

446. प्रकिया जब बंधपत्र समपहत कर लिया जाता है

1. जहॉ इस संहिता के अधीन कोई बंध पत्र किसी न्यायालय के समक्ष हाजिर होने या सम्पति पेश करने के लिये है और उस न्यायालय या किसी ऐसे न्यायालय को, जिसे तत्पश्चात मामला अंतरित किया गया है, समाधानप्रद रूप में यह साबित कर दिया जाता है कि बधंपत्र समपहत हो चुका है,

   अथवा जहॉ इस संहिता के अधीन किसी अन्य बंध पत्र की बाबत उस न्यायालय को, जिसके द्वारा बंध पत्र लिया गया था, या ऐसे किसी न्यायालय को, जिसे तत्पश्चात मामला अंतरित किया गया है या प्रथम वर्ग मजिस्ट्रेट के किसी न्यायालय को, समाधानप्रद रूप में यह साबित कर दिया जाता है कि बंध पत्र समपहत हो चुका है ।

वहा न्यायालय ऐसे सबूत के आधारो को अभिलिखित करेगा और ऐसे बंध पत्र से आबद्व किसी व्यक्ति से अपेक्षा कर सकेगा कि वह उसकी शास्ति दे या कारण दर्शित करे कि वह क्यो नही दी जानी चाहिए।

Li"Vhdj.k&न्यायालय के समक्ष हाजिर होने या सम्पति पेश करने के लिये बंधपत्र की किसी शर्त का यह अर्थ लगाया जाएगा कि उसके अंतर्गत ऐसे न्यायालय के समक्ष, जिसको तत्पश्चात मामला अंतरित किया जाता है, यथास्थिति, हाजिर होने या सम्पति पेश करने की शर्त भी है ।

2. यदि पर्याप्त कारण दर्शित नही किया जाता है और शास्ति नही दी जाती है तो न्यायालय उसकी वसूली के लिये अग्रसर हेा सकेगा मानो वह शास्ति इस संहिता के अधीन उसके द्वारा अधिरोपित जुर्माना हो ।

परन्तु जहॉ ऐसी शास्ति नही दी जाती है और वह पूर्वोक्त रूप में वसूल नही की जा सकती है वहॉ, प्रतिभू के रूप में इस प्रकार आबद्व व्यक्ति उस न्यायालय के आदेश से, जो शास्ति की वसूली का आदेश करता है, सिविल कारागार में कारावास से, जिसकी अवधि छह मास तक की हो सकेगी, दण्डनीय होगा ।

3. न्यायालय ऐसा करने के लिये इसके कारणो को लेखबद्व करने के पश्चात, उल्लेखित शास्ति के किसी प्रभाग का परिहार और केवल भाग के संदाय का प्रवर्तन कर सकता है ।
4. जहॉ बंधपत्र के लिये कोई प्रतिभू बंध पत्र का समपहरण होने के पूर्व मर जाता है वहा उसकी संपदा, बंधपत्र के बारे में सारे दायित्व से उन्मोचित हो जाएगी ।
5. जहॉ कोई व्यक्ति, जिसने धारा 106 या धारा 117 या धारा 360 के अधीन प्रतिभूति दी है, किसी ऐसे अपराध के लिये दोषसिद्व किया जाता है, जिसे करना उसके बंध पत्र की या उसके बंध पत्र के बदले में धारा 448 के अधीन निष्पादित बंधपत्र की शर्तो का भंग होता है वहा उस न्यायालय के निर्णय की, जिसके द्वारा वह ऐसे अपराध के लिये दोषसिद्व किया गया था, प्रमाणित प्रतिलिपि उसके प्रतिभू या प्रतिभूओ के विरूद्व इस धारा के अधीन सब कार्यवाहियों में साक्ष्य के रूप में उपयोग में लाई जा सकती है और यदि ऐसी प्रमाणित प्रतिलिपि इस प्रकार उपयोग मे लाई जाती है तो जब तक प्रतिकूल साबित नही कर दिया जाता है, न्यायालय यह उपधारणा करेगा कि ऐसा अपराध उसके द्वारा किया गया था ।

446d. बंधपत्र और जमानत पत्र का रददकरण –
धारा 446 के उपबंधो पर प्रतिकूल प्रभाव डाले बिना, जहॉ इस संहिता के अधीन कोई बंधपत्र किसी माले में हाजिर होने के लिये है और उसकी किसी शर्त के भंग हेाने के कारण उसका समपहरण हो जाता है वहा–
क. ऐसे व्यक्ति द्वारा निष्पादित बंधपत्र तथा उस मामले में उसके प्रतिभूओ द्वारा निष्पादित एक या अधिक बंधपत्र भी यदि कोई हो, रद्द हो जाएगे और
ख. तत्पश्चात ऐसा कोई व्यक्ति,उस मामले में केवल अपने ही बंधपत्र पर छोडा नही जाएगा यदि, यथास्थिति, पुलिस अधिकारी या न्यायालय का, जिसके समक्ष हाजिर होने के लिये बंधपत्र निष्पादित किया गया था, यह समाधान हो जाता है कि बंधपत्र की शर्त का अनुपालन करने में असफल रहने के लिये बधंपत्र से आबद्व व्यक्ति के पास कोई पर्याप्त कारण नही था ।
परन्तु इस संहिता के किसी अन्य उपबंध के अधीन रहते हुए उसे उस मामले में उस दशा में छोडा जा सकता है जब वह ऐसी धनराशि के लिये कोई नया व्यक्तिगत बंधपत्र निष्पादित कर दे और ऐसे एक या अधिक प्रतिभूओ से बंधपत्र निष्पादित करा दे जो यथास्थिति, पुलिस अधिकारी या न्यायालय पर्याप्त समझे ।

447. प्रतिभू के दिवालिया हो जाने पर उसकी मृत्यु हो जाने या बंध पत्र का समपहरण हो जाने की दशा में प्रक्रिया –
जब इस संहिता के अधीन बधंपत्र का कोई प्रतिभू दिवालिया हो जाता है या मर जाता है अथवा जब किसी बंध पत्र का धारा 446 के उपबंधो के अधीन समपहरण हो जाता है तब वह न्यायालय, जिसके आदेश से ऐसा बंधपत्र लिया गया था या प्रथम वर्ग मजिस्ट्रेट उस व्यक्ति को, जिससे ऐसी प्रतिभूति मांगी गई थी, यह आदेश दे सकता है कि वह मूल आदेश के निदेशो के अनुसार नई प्रतिभूति दे और यदि ऐसी प्रतिभूति न दी जाए तो वह न्यायालय या मजिस्ट्रेट ऐसे कार्यवाही कर सकता है मानो उस मूल आदेश के अनुपालन में व्यतिक्रम किया गया है ।

448- आवश्यक से अपेक्षित बंधपत्र –
यदि बंधपत्र निष्पादित करने के लिये किसी न्यायालय या अधिकारी द्वारा अपेक्षित व्यक्ति अवयस्क है तो वह न्यायालय या अधिकारी उसके बदले में केवल प्रतिभू या प्रतिभूओ द्वारा निष्पादित बंधपत्र स्वीकार कर सकता है।

449. धारा 466 के अधीन आदेश से अपील,
धारा 446 के अधीन किये गये सभी आदेशो की निम्नलिखित को अपील होगी, अर्थात–

1. किसी मजिस्ट्रेट द्वारा किये गये आदेश की दशा मे सेशन न्यायाधीश :
2. सेशन न्यायालय द्वारा किये गये आदेश की दशा मे वह न्यायालय जिसे ऐसे न्यायालय द्वारा किये गये आदेश की अपील होती है।

450. कुछ मुचलको पर देय रकम का उदग्रहण करने का निदेश देने की शक्ति–
उच्च न्यायालय सेशन न्यायालय किसी मजिस्ट्रेट को निदेश दे सकता है कि वह उस कम को उदगृहित करे जो ऐसे उच्च न्यायालय या सेशन न्यायालय में हाजिरऔर उपस्थित होने के लिये किसी बंधपत्र पर देय है ।

Section III: TABLE OF JUDGMENTS

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TABLE OF JUDGEMENTS

S. No.	NAME OF THE CASE, CITATION & NAME OF THE COURT	ISSUES	DECISION
	AMOUNT OF SURETY		
1	***A. KOKAN RAO VS. THE STATE*** ▪ **1998(2)ALT(Cri)9** ▪ **1998 CriLJ 1898** **Orissa High Court**	Is quoting an exorbitant amount for bail as good as refusal of bail and should the amount be decided after considering the nature and gravity of the offence and the financial status of the accused?	Reliance was placed on *Keshab Narayan Banerjee v. The State of Bihar* (AIR 1985 SC 1666, 1985 CriLJ 1857) and it was observed that the petitioner, being an unemployed youth, the bail amount and number of sureties fixed by the Sessions Judge was undoubtedly excessive and it was as good as refusal of bail. Thus, it is a fit case where the inherent power under Section 482 of the Code can be invoked for the ends of justice and accordingly the bail amount was reduced to Rs. 5,000/-.
	DELAY IN CONCLUDING TRIAL		
2	***STATE OF KERALA VS. RANEEF*** **2011(1)ACR333 (SC)** **Supreme Court of India**	Is delay in concluding trial an important factor for deciding bail applications?	The book entitled 'Jihad' said to have been found, in the house of the respondent (a doctor), written by a well known and respected religious scholar and had been in circulation for 83 years, and was available in many book shops**.** The Court held that the provision to Section 43(d) of Unlawful Activities Prevention Act was not violated, as no prima facie case was established against the Petitioner. Moreover, the Petitioner had already spent 66 days in custody. The Court while taking it into consideration, held that long period of incarceration due to denial of bail is a violation of Article 21 of the Constitution. Therefore, delay in

			concluding trial shall be considered as a very significant factor while deciding bail applications.
3	**VINOD BHANDARI vs. STATE OF M.P.** **Criminal Appeal No. 220 of 2015** **Supreme Court of India**	Whether an accused can be granted bail, in the pre-conviction stage, if there is no possibility of conclusion of trial in a reasonable period?	The Supreme Court noted that the real reason for not granting bail to an accused is to ensure his availability during the trial. In this case, as the amount of investigation that had to be covered was huge, the Supreme Court noted that even though the concerns of the High Court could be true, the accused cannot be put in jail for an indefinite time as the case date was not fixed. *"Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time."*
CRITERIA FOR GRANT OR REFUSAL OF BAIL			
4	***BABU SINGH AND ORS. VS. STATE OF UP*** ▪ **1978 AIR 527** ▪ **1978 SCR (2) 777** ▪ **1977()ACR243(SC)** **Supreme Court of India**	➢ Does an order rejecting the bail application of the Petitioner prevent him from applying for another bail application? ➢ What is the relevant criterion for grant or refusal of bail in the case of a person who	✓If the Petitioner acquaints the Court with more material, further developments and different considerations, the Court can entertain the second bail application. ✓The Court criticized the present concept of 'judicial discretion' on which the fate of bail application generally rests, stating that it must be governed by rule and it should not be arbitrary, vague, fanciful but legal and regular. It placed constant reliance on Article 21 of the Constitution and held that the following factors should be considered for determining the fate of a bail application: • the charge, the nature of the evidence by which it is supported, and the punishment to which the party would be liable if convicted • the antecedents of the accused which suggested that he was likely to commit serious offences while on bail but it should not lead to a complacent refusal of bail by Courts

		has either been convicted and has appealed or one whose conviction has been set aside but leave has been granted by this Court to appeal against the acquittal?	• the period in prison already spent • prospect of the appeal being delayed for hearing, having regard to the unreasonable time it takes to dispose an appeal (*Kashmira Singh v. The State of Punjab; 1977CriLJ1746*).
5	***SANJAY CHANDRA VS. CBI*** **Criminal Appeal 2178 of 2011** **Supreme Court of India**	Whether the seriousness of charge a more relevant factor than the severity of the punishment while considering the bail application?	The Court held that seriousness of charge is not the only test or factor. Severity of the punishment should also be taken into consideration. It was held that unless exceptional circumstances were brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. The grant or denial is regulated to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The Court expressed its consciousness of the fact that the accused are charged with economic offences of huge magnitude and of the fact that the offences alleged, if proved, may jeopardize the economy of the country. However, it held that one cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed. Therefore, the Court was of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions.

BAIL UNDER SECTION 167 AND 436A OF CRPC			
6	***JIGAR MAYURBHAI SHAH VS. STATE OF GUJARAT*** **2008CriLJ2750** **Gujarat High Court**	Whether the completion of 60 days makes it mandatory for the Court to release the accused for a non-bailable offence on bail under Section 437(6)?	It is not mandatory or obligatory on the part of the Magistrate to enlarge the accused on bail, once the period of sixty days from the first date for taking evidence is over. There is an inbuilt exception. Reliance was placed on a Orissa High Court judgment, *Chhabi v. State of Orissa; 1995(2) Cri 2773*. Hence, it was held that depending upon the facts and circumstances of the case, gravity of the offence, quantum of punishment and the manner in which the petitioner was involved in the offence, the petitioner shall not be enlarged on bail for reasons to be recorded despite the completion of the period of sixty days.
7	***BHIM SINGH VS. UNION OF INDIA*** **W.P. (Criminal Appeal) No. 310/2005** **Supreme Court of India**	Public Interest Litigation filed with regards to fast-tracking the criminal justice system so as to release the prisoners who have completed their sentence and for delivering timely and expeditious criminal justice.	Considering that more than 50% of the prisoners in jails are under trials, the Court passed an interim order directing the Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge to hold one sitting in a week in each jail/prison for two months. They were further directed to pass an appropriate order in jail itself for release of such under trial prisoners who continue to be detained in prison beyond the maximum period provided under Section 436A.
BAIL UNDER SECTION 107 OF CRPC			

8	***DHANI RAM VS. STATE*** **9(1973)DLT255** **Delhi High Court**	Whether the Magistrate can order the accused to show cause why he should not be ordered to execute a personal bond for appearance in Court?	The Court reiterated Section 107, 112 and 117 of the Code of Criminal Procedure. The Court held that pending the completion of the enquiry, the Magistrate may order the accused to execute a bond with or without sureties for keeping the peace or for maintaining good behavior. He shall record reasons for the same. However, there was no sanction in Section 117 of the Code to direct that a person proceeded against in terms of the orders made under Section 107/112 of the Code may be directed to execute a personal bond with or without sureties for his appearance in Court on dates of adjourned hearings. Therefore, the impugned order was outside the contemplation of the Code and was hence, set aside.
STATION BAIL			
9	***STATE OF GUJARAT VS. LAL SINGH KISHAN SINGH*** **1981AIR368** **Supreme Court of India**	Can the Police Officer bar the accused from getting released on bail by following a circular order when the offences under Section 4 and 5 of the Bombay Prevention of Gambling Act are cognizable and bailable?	The Court directed that the Commissioner of Police or the Police officer who is authorized by him to search, arrest and investigate such offences, is under a legal obligation to release the accused on bail under the provisions of section 496 of the Code. The authority to grant bail to the person arrested in execution of such a warrant is derived by the officer arresting from the statute and consequently no executive instructions or administrative rules can abridge or run counter to the statutory provisions of the Code.
10	***K. UPENDER REDDY VS.***	Whether a police officer has the power	The Court held that: ✓ Under S.437(1) the Police officer doesn't have the power to release

	DIRECTOR GENERAL, ACB **W.P. No. 28728 of 1998** **Andhra High Court**	to release an accused under Section 7, 10, 11 and 13(e) of the Prevention of Corruption Act which are non-bailable offences when such powers are exclusively held by the Courts other than the High Court and Courts of Session?	the accused charged for a non-bailable offence on bail. ✓ Under S.437(2), the power is available to both the Court and Officer to release the accused on bail but before exercising this power, the Court or the Officer shall record that there are no reasonable grounds for believing that the accused has committed a non-bailable offence and there are sufficient grounds for further inquiry into his guilt.
11	***RASIKLAL VS. KISHORE WADHWANI*** **2009(2)ACR1443 (SC)** **Supreme Court of India**	Whether the contention of the respondent that he was not heard sufficient to cancel the bail granted to the accused under Section 436 of the Code?	The Court held that the right to claim bail granted by S.436 of the Code in a bailable offence is an absolute and indefeasible right. However, the settled judicial trend is that the High Court can cancel the bail bond while exercising inherent powers under Section 482 of the Code if his conduct subsequent to his release is found to be prejudicial to a fair trial (*Talab Haji Hussain v. Madhukar Purushottam Mondkar and Anr; 1958CriLJ701*). Section 446 of the Code enumerates the situations where the bail can be cancelled, however, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case.
BAIL ON INDIGENCY			
12	***MOTIRAM & ORS.***	➢ Whether a person	✓An accused person should not be required to produce a surety from

	VS. STATE OF MP & ORS. **AIR 1978 SC 1594** **Supreme Court of India**	can be released on bail on a personal bond, without surety? ➢ The criteria for fixing the bail amount, and ➢ Whether a surety can be rejected because he resides in a different district or state or his property is situated in a different district or state?	the same district especially when he is a native of some other place. ✓Bail covers release on one's own bond, with or without sureties. ✓Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied. ✓The bail amount should be fixed keeping in mind the financial condition of the accused. ✓When dealing with cases of persons belonging to the weak categories in monetary terms - indigent young persons, infirm individuals or women - courts should be liberal in releasing them on their own recognizance.
13	***HUSSAINARA KHATOON & ORS. V. HOME SECRETARY, BIHAR, PATNA*** **AIR 1979 SC 1360** **Supreme Court of India**	A writ of habeas corpus was filed in the Supreme Court seeking directions to release a large number of under-trial prisoners languishing in the prisons of Bihar. The Court dealt with the issue of State's constitutional obligations to assure speedy trial.	*Bail System:* The Court questioned the property-oriented approach of the existent bail system, stating that such a system of bail operates very harshly against the poor. The Court asked Parliament to consider whether, instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation. *Speedy Trial:* Remarking on the undue delay in commencement of trials, the Court stated that speedy trial was the essence of criminal justice and thus delay in trial by itself constitutes denial of justice. Directions: ✓ The under-trial prisoners be released forthwith on personal bonds. Owing to the peculiar facts and circumstances of the case, the personal bonds were not to be based on any monetary obligations. ✓ The state government should realize its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. The state government should appoint competent

			judges for the newly established courts. ✓ In cases where the police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months. Upon failure to do so, the state government should withdraw such cases. ✓ All women and children who are in jails in Bihar under 'protective custody, or who are in jail because their presence is required for giving evidence, or who are victims of offence should be released. All women and children so released should be taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after.
ANTICIPATORY BAIL			
14	***SHRI GURBAKSH SINGH SIBBIA AND ORS. VS. STATE OF PUNJAB*** ▪ **AIR1980SC1632** ▪ **1980CriLJ1125** ▪ **(1980)2SCC565** ▪ **[1980]3SCR383** **Supreme Court of India**	Whether courts had the inherent power to pass an order of bail, in anticipation of arrest?	In order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. The notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith. High Court and Court of Sessions should exercise their jurisdiction under Section 438 by wise and careful use of their discretion. It must apply its own mind to the question on anticipatory bail and it cannot leave the question for the decision of the Magistrate. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. The filing of a First Information Report is not a condition precedent to the exercise of the power under Section 438. Anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been

			arrested. A 'blanket order' of anticipatory bail should not generally be passed. **NOTE:** The ratio of the above case has been reiterated in a recent Supreme Court case - *Siddharam Satlingappa Mhetre vs. State Of Maharashtra And Ors, Citation: AIR 2011 SC 312, 2011 (1) SCC 694*
BAIL UNDER SPECIAL LAWS			
15	***THANA SINGH VS. CENTRAL BUREAU OF NARCOTICS*** **(2013)2SCC590** **Supreme Court of India**	Can an undertrial incarcerated for 12 years in jail charged under NDPS, be denied bail?	The Court discussed the judgment of *Supreme Court Legal Aid Committee Representing Undertrial Prisoners v. Union of India and Ors*. This judgment however had constrained applicability to NDPS cases in light of Section 37 of Act 1985. The court thus observed that NDPS cases should be tried as early as possible because in such cases normally accused are not released on bail. Given Section 37 of the Act and the procedural delays, the court set out a list of directives for the different agencies to follow. The ratio of the case was as follows: "Under trial Accused shall be released on bail if he has been in jail for not less than five years and furnishes bail in sum of rupees one lakh with two sureties."
16	***HUIDROM KONUNGJAO SINGH VS. STATE OF MANIPUR AND ORS.***	Whether a person who is already in jail, could be detained under detention law?	There is no prohibition in law to pass the detention order in respect of a person who is already in custody in respect of criminal case. However, if the detention order is challenged the detaining authority has to satisfy the Court the following facts: (1) The authority was fully aware of the fact that the detenu was actually in custody.

	▪ **AIR 2012 SC 2002, 2012 CriLJ 2935** ▪ **(2012) 7 SCC 181** **Supreme Court of India**		(2) There was cogent and reliable material before the said authority on the basis of which he could have reasons to believe that there was real possibility of his release on bail and further on being released he would probably indulge in activities which are prejudicial to public order. (3) In view of the above, the authority felt it necessary to prevent him from indulging in such activities and therefore, detention order was necessary. In case either of these facts does not exist the detention order would stand vitiated. Merely, because somebody else in similar cases had been granted bail, there could be no presumption that in instant case had detenu applied for bail could have been released on bail.
17	***CHIKKAPPA AND ORS. VS. STATE BY SUB-INSPECTOR OF POLICE, HANGAL POLICE STATION*** ▪ **2002(1)KarLJ61** ▪ **2001(4)KCCRSN442** **High Court of Karnataka**	Whether High Court can grant anticipatory bail in spite of bar under Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989?	The exercise of finding out prima facie material, allegation should be very limited and to be exercised by the High Court alone. The Court will have to take a look at the F.I.R/Complaint and the allegations made therein to find out whether the essence of the offence under the Act is made out. If the Court finds such material, then it has to reject the application made under Section 438 of Cr.P.C., as prohibited by Section 18 of the Act. On the other hand, if no prima facie case is made out to show commission of the offence under the Act, certainly the High Court can consider the application under Section 438 Cr.P.C., 1973.
PROLONGED DETENTION OF UNDERTRIALS			
18	**Re- InHuman Conditions in 1382 Prisons**	Regarding undertrials forming a major portion of the inmates in prison	**Directions:** 1. MHA was instructed to study the Prisoners Management System used in Tihar Jail and return to the Court with suggestions or

	WP (Civil) 406/2013; Order Dated 24/04/2014. **Supreme Court of India**	across India, and the necessary steps to be taken thereof.	modifications for its implementation in all jails around India. 2. For the purposes of implementation of 436A of CrPC, the court ordered for the establishment of an Undertrial Review Committee (UtRC) in every district in India comprising of the District Judge, as Chairperson, the District Magistrate and District Superintendent of Police as members. It was directed that their first meeting be held on 30th June 2015. 3. The court directed the UtRC in their first meeting to consider all cases falling under 436A. It also laid out that in case of multiple offences review should take place after half the sentence of the lesser offence is completed. It also noted that it is not necessary that an undertrial prisoner remain in custody for half the maximum sentence ***only*** because the trial has not been completed in time. 4. With regard to prisoners remaining in jail only for the inability to furnish bail, the court directed the State Legal Services Authorities to instruct the panel lawyers to meet the prisoners and submit appropriate applications before appropriate courts for the release of such persons.
19	**Bhim Singh vs. Union of India** ▪ **W.P (C) 341/2014** ▪ **W.P (Crl.) 175/2005 Order Dated 05/09/2014** **Supreme Court of India**	Regarding fast-tracking the criminal justice system and effective implementation of 436A CrPC.	Taking note of the amendment to the CrPC which inserted the Section 436A, the court directed the jurisdictional magistrates/Chief Judicial Magistrates/Sessions Judges to hold one meeting in each jail/prison every week for a period of two months starting 1st Oct, 2014 for identifying prisoners who have served half or full period of maximum sentences for the said offence. These judges were also directed to pass an order in the jail itself for the immediate release of any such person who is eligible under 436A.

RAJASTHAN HIGH COURT JUDGEMENTS			
20	***JAI SINGH AND ANR. VS.UNION OF INDIA (UOI) AND ORS*** **AIR1993Raj177** **Rajasthan High Court (Full Bench)**	Does the exclusion of application of Section 438 CrPc (Anticipatory Bail) by Section 18 of the SC & ST (Prevention of Atrocities) Act, 1989' violate Article 21 of the Constitution?	The court clarified that the right to anticipatory bail did not flow from Article 21 of the Constitution either expressly or impliedly. This right has been conferred by the statute enacted by the parliament and the parliament by enacting another law or by amending the Code of Criminal Procedure could take it away also. The settled principles of interpretation are that the special enactment will prevail over the general. The court also discussed Sub-section (7) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 which also excludes the application of Section 438 of the CrPC. Thus special legislations by the parliament excluding the right to anticipatory bail were found non-violative of Article 21.
21	***STATE OF RAJASTHAN VS LALSINGH*** ▪ **1987 CriLJ 269,** ▪ **1986 (1) WLN 424** **Rajasthan High Court**	Whether the Executive Magistrate was right in continuing the accused in judicial custody, charged under the Rajasthan Control of Goondas Act 1975, when the fitness of surety is being sent to Tehsildar for verification?	If an affidavit is filed with regard to the fitness of the surety, generally it should be accepted unless for reasons to be recorded the Magistrate is of the opinion that he thinks it necessary that an inquiry with regard to the sufficiency of fitness of the surety could be made. He can make Inquiry himself which can be made immediately or within reasonable time. If he considers that the inquiry should be made by a Magistrate subordinate to him the proper course will be to release the accused accepting surety as sufficient as an interim measure, then make an inquiry and in case he considers that the surety is not sufficient or fit call upon the accused to furnish a fresh surety.
22	***MAGHA RAM VS STATE OF RAJ. &***	Whether the Court while granting bail	While granting bail, the Sessions Court, Bikaner had imposed a condition that the present petitioner should get the forged sale-deed

	ORS. **S.B. Criminal Misc. Petition No.678/2013** **Rajasthan High Court**	can impose a condition which will determine the litigation without affording proper opportunity to the parties in accordance with the provisions of law?	registered at his instance annuled and should further execute a sale deed in favour of the legal heirs of the respondent. The condition was considered onerous and the order granting bail was modified and such condition was waived.
23	***DINESH KUMAR AND PURUSHOTTAM MITTAL VS. STATE OF RAJASTHAN*** **S.B. Cr. Misc. 2nd Bail Application No. 790/2013** **Rajasthan High Court (Jaipur Bench)**	Whether or not to grant bail to the accused particularly when completion of trial is nowhere in sight in near future?	Relying on the judgment of the Supreme Court in *Sanjay Chandra v. Central Bureau of Investigation, (2012) 1 SCC 40*, the bail application was allowed considering the facts (i) that major charges against the petitioners have been dropped by the trial court itself, (ii) that the Supreme Court has granted bail to co-accused, (iii) that the petitioners are in jail for last more than 21 months, (iv) and that in view of enormity of witnesses, trial is not likely to get concluded within next few years; (v) and the fact that the petitioners have not objected to disbursement of amount of the sale proceeds received by the State agencies by auctioning the goods, to the farmers.
24	***SAMAST VICHARADHIN BANDI VS. STATE OF RAJASTHAN*** **D.B. Civil Writ Petition (PIL) No. 9261/2014**	A letter petition was sent by 217 prisoners lodged in Central Jail, Ajmer. Owing to a resolution passed by the Bar Association, the lawyers were abstaining from	The Court relied on the Supreme Court judgment of *Bhim Singh vs. Union of India; WP (Crl.) 310/2005* and directed the District & Sessions Judge of each judgeship to nominate one District & Sessions Judge and one Additional Chief Judicial Magistrate to hold the courts in all central jails, district jails and sub jails of the State at least for two days in a week to reduce the clogging of jails by under trial prisoners. They were authorized to hear all the bail applications and all the applications for remand and bail in their jail visits. The State Government was directed to facilitate the appearance and

	Rajasthan High Court (Jaipur Bench)	work leading to an unnecessary delay in trials of these prisoners which included the hearing of bail applications.	presence of all Prosecutor and Investigating Officers in all such hearings. DLSA was directed to provide adequate assistance/legal aid to the prisoners through the paralegal volunteers nominated in jails.

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Ø.	dsl dk uke, साइटेशन एवं dkV.dkuke	eqnnk	Qslyk
		ज़मानत की राशी	
1	,- dkdu jko cuke jkT; 1998 ¼2½ ,-,y-Vh-¼lh-vkj-vkbZ-½ 9 ओड़ीशा उच्च न्यायालय	tekur dh fy, Hkkjh jkf'k dk gokyk nus ls rk vPNk gS fd tekur mldh xHkhjrk rFkk nk"kh 0;fDr dh vkfFkd fLFkfr ij fopkj djus ds ckn gh ;g jkf'k ugh r; dh tkuh pkfg,?	*d'ko ukjk;.k cuth cuke fcgkj jkT;* ¼AIR 1985 SC 1666, 1985 CriLJ 1857½ dh ekey esa ;g ekuk x;k gS fd pfd ;kfpdkdrk cjkcj txkj gS vr% l= U;k;k/kh'k }kjk tk tekur dh jkf'k vkj tekufr;ksa dh lwph fu/kkfjr dh xbZ gS og fuf'pUnsg dkQh T;knk gS vkj bl lwph vPNk rjg tekur nus ls gh bUdkj dj fn;k tk;sxk vr% ;g ,d lVhd ekeyk gS ftlesa U;k; dh fy, /kkjk 482 dh lfgrk dh rgr dh vUrfufgr vf/kdkj dk mi;ksx fd;k tk ldrk gS vkj mlh vuqlkj tekur dh jkf'k ?kVkdj 5]000 :i, dj nh xbZA
		eqdnesa dh Qslyk esa njh	
2	dqy jkT; cuke juhQ 2011 ¼1½ ,-lh-vkj-333 ¼,l-lh½ mPpre U;k;ky;	D;k eqdnesa dh ckj esa Qslyk djus esa njh tekur dh vkonu ij fu.k; yus dk ,d egÙoiw.kZ dkj.k gS?	tks ^tgkn^ uked fdrkc ÁR;FkhZ dh ?kj ls tCr dh xbZ Fkh og ,d lEekfur /kkfeZd fo}ku }kjk fy[kh vkj fiNys 30 o"kksZ ls bldk forj.k fd;k tk jgk Fkk vkj ;g iLrd dbZ ndkuksa esa Hkh miyC/k FkhA vnkyr us ;g ekuk fd /kkjk 43 ¼Mh½ dh izko/kkuksa dk dkbZ mYya?ku ugh gqvk gS D;kfd bl ;kfpdkdrk dh fo:) dkbZ iR;{k ekeyk ugh LFkkfir gksrk gSA bldh vykok ;kfpdkdrk us gokykr esa igys ls gh 66 fnu xqtkj gSA vnkyr us bl ij xkSj djrs gq, ekuk fd tekur nus ls bUdkj dh dkj.k mls yEcs le; rd dkjkokl esa xqtkjuk iMk tks fd bl lfo/kku dh vuPNsn 21 dh vogyuk gSA vr% tekur dh vkonu ij Qslyk djrs le; eqdnesa ij fu.k; yus esa njh dk ,d egÙoiw.kZ dkj.k ekuk tk,xkA

3	foukn Hk.Mkjh cuke मध्य प्रदेश राज्य Criminal Appeal No. 220 of 2015 mPpre U;k;ky;	D;k vkjksih dk vijk/k LFkkiu l igy tekur nh tk ldrh g tc bl ckr dh lHkkouk u gk fd fu/kkfjr le; e ekey dh lquokbZ ijh gk ldxhA	lokPp vnkyr u यह स्पश्ट किया कि जमानत खारिज करने का असल कारण यह है कि केस के दौरान आरोपी की उपस्थिति को सुनिष्चित किया tk ldA bl ekey e pfd tkp dk nk;jk 0;kid Fkk vkj mPp vnkyr dh fpr okftc gku d ckotn lokPp vnkyr u ;g ekuk fd vkjkih dk अनिष्चित काल d fy, ty e ugh j[kk tk ldrk D;kfd dl dh frfFk fu/kkfjr ugh gbZ gA "केस के षुरू होने और पूरे होने में विलंब को ध्यान में रखा जाना चाहिए और आरोपी को अनिष्चित काल के लिए उस परिस्थिति में जेल में नहीं रखा tk ldrk tcfd lquokbZ i;kIr le; e ijh gkuh dh lHkkouk u gkA**
tekur Ánku ;k bdkj dju d ekun.M			
4	ckc fl rFkk vU; cuke mÙkj izn'k jkT; 1977 ,lhvkj 243 ¼,ll½ mPpre U;k;ky;	➢ D;k ;kfpdkdrk d tekur d vkonu dk vLohdkj dj nu okyk vkn'k vkond dk nkckjk tekur d fy, vkonu dju l jkdrk g? ➢ vxj fdlh 0;fDr dk vijk/k Lohdkj dj fy;k x;k g vkj mlu vihy dh g ;k ,lk 0;fDr ftl cjh dj	✓ vxj ;kfpdkdrk vnkyr dk vkj ;k phtk] vkx dh izxfr vkj fofHkUu rdk l voxr djkrk g rk vnkyr nlj vkonu ij fopkj dj ldrk gA ✓ vnkyr u ;g dgr g, ^^U;kf;d food^^ dh ekt&nk lkp dh vkykpuk dh] ftl ij vkerkj ij tekur d vkonu dk Lohdkj gkuk ;k u gkuk fuHkj djrk g fd bl ij dkuu dk jkt pyuk pkfg, vkj ;g euekuk fujdz'k] vLi"V] vokLrfod ugh gkuk pkfg,] cfYd dkuu lEer vkj fu;fer gkuk pkfg,A ble lfo/kku d vuPNn 21 ij cjkcj Hkjkslk fd;k x;k vkj ekuk fd tekur d vkonu ij fu.k; yr le; fuEufyf[kr ckr® ij fopkj fd;k tkuk pkfg,: • vkjkih] lcr dh izkfr ftld tfj, bldk leFkZu fd;k tkrk g vkj lt tk mDr i{k dk nh tk,xh vxj og vkjkih lkfcr gvk • fiNyh ftnxh dh Hkh tkp dh tk,xh ftll ;g fgnk;r feyrh gk fd og 0;fDr tekur d nkjku dkbZ xHkhj vijk/k dj ldrk g] fQj Hkh bl vnkyr }kjk tekur nu l bUdkj dju dk lrk"ktud vk/kkj ugh

		fn;k x;k g\ yfdu vnkyr u\ mldh foefDr d\ fo:) vihy dju\ d\ vkonu dk Lohdkj dj fy;k g\ rk\ ,\l\ e\ tekur nu\ ;k ml\ vLohdkj dju\ dk D;k egÙoi.k ekin.M gkrk gA	ekuk tkuk pkfg, • dkjkokl e\ igy\ l\ gh fcrkb\ xb\ vof/k vkj • luokb\ d\ volj iku\ e\ foyEc gku\ dk y\dj g] ;g n[kr\ g\, fd fdlh vihy dh ifØ;k dk ijk gku\ e\ fdruk vuko';d le; yxrk g] ¼*d'ehjk flg cuke i\tkc jkT;*] 1977 lh-vkj-vkb\-,y-t\½
5	l\t; p\n\ cuke d\Unh; tkp C;\jk lh-vkj- vihy 2011 dk 2178 mPpre U;k;ky;	tekur d\ vkonu ij fopkj dju\ e\ D;k ltk dh xHkhjrk ¼dBkjrk½ l\ T;knk vkjki dh xHkhjrk dk egÙoi.k ekuk tkrk g\\	vnkyr dk ekuuk Fkk fd vkjki dh xHkhjrk gh flQ\ tkp dk vk/kkj ;k rF; ugh gA og ltk ftl\ e\dne\ vkj nk"k flf) d\ ckn l\ukb\ tk ldrh g\ ml\ Hkh /¸kku e\ j[kuk pkfg,A ble\ ;g dgk x;k fd tc rd fd vnkyr d\ le{k ,\lh viokfnd ifjfLFkfr;k\ dk u yk;k tk, ftul\ mfpr tkp vkj U;k;kfpr e\dne\ dh gkj gk ldrh g] ,\l\ e\ vnkyr ,\l\ fdlh 0;fDr dk tekur nu\ d\ b\Udkj ugh djxk tk ekr ;k vkthou dkjokl ftruh cMh ltk dk vkjkih ugh gA tekur d\ vkonu dk Lohdkj vFkok vLohdkj djuk dkQh gn rd iR;\d d\l ¼ekeyk½ fo'k"k d\ rF;k\ vkj mldh ifjfLFkfr;k\ l\ r; gkrk gA ijUr\ tekur d\ vf/kdkj dk bl vk/kkj ij ugh vLohdkj fd;k tk ldrk g\ fd le\nk; vkjkih d\ fo:) gA vnkyr u\ viuh rF; dh tkudkjh e\ dgk fd vkjkih ij cM\ Lrj ij vkfFkd vijk/k dju\ dk vkjki g\ vkj ;g Hkh fd nk"kh ij tk vkjki yxk g] vxj og lkfcr gk tkrk g\ rk\ n'k dh vFk0;oLFkk Hkh [krj\ e\ iM\ ldrh gA fQj Hkh bldk ekuuk Fkk fd ge\ ;g ugh\ Hkyuk pkfg, fd tkp ,\lh u\ igy\ l\ gh viuh tkp i\jh dj yh g\ vkj bl ij vkjki i= Hkh nkf[ky dj fn;k x;kA blhfy, vnkyr dk ;g fopkj Fkk fd vkond yfcr e\dne\ d\ el\ utj tekur iku\ dk gdnkj gA

nM ÁfØ;k lfgRkk dh /kkjk 167 vkj 436			
6	ftxj e;j Hkkbi cuke xjtjkr jkT; 2008 Cr.L.J. 2750 xjtjkr mPp U;k;ky;	D;k 60 fnu dh fu/kkfjr le;&lhek ikj gk tkus l vnkyr d fy, ;g vfuok;; gk tkrk g fd og /kkjk 437 ¼6½ d rgr fdlh xj&tekurh vijk/k d fy, nk"kh dk tekur ij fjgk dj n?	U;k;k/kh'k d fy, ;g vfuok;; ugh g vFkok og bld fy, ck/; ugh g fd og vkjkih dh tekur e tj dj (mMhlk mPPkUke U;k;ky; dk Qlyk Nch cuke mMhlk jkT;] 1992 ¼2½ lh-vkj-vkbl- 2773) ;g viu vki e ,d viokn gA vr% ;g fu.k; fy;k x;k fd dl ¼ekey½ d rF;k rFkk ifjfLFkfr;k] vijk/k dh xHkhjrk vkj ftl rjg l vkond vijk/k e fylr g mld vk/kkj ij vkond dk bl dkj.k l tekur ij fjgk ugh fd;k tkuk pkfg,] Hkyk gh bldh 60 fnu dh vof/k lekIr gk xbZ gkA
7	Hkhe flg cuke Hkkjr jkT; *W.P (C) 341/2014* *W.P (Crl.) 175/2005* fu.k; dh rkjh[k 05@09@2014	vijk/k U;k; 0;oLFkk dk rt dju vkj 436, dk iHkkodkjh rjhd l ykx dju d lnHk eA	सीआरपीसी के उस संषोधन को नोट करते हुए जिसमें धारा **436**ए लाया गया Fkk] vnkyr us U;kf;d eftLVªV@e[; न्यायिक मजिस्ट्रेट/सत्र न्यायाधीषों को यह निर्देष दिया कि वे प्रत्येक जेल में **1** अक्टूबर **2014** से महीने में एक ehfVx dj ftle ,l dfn;k dh igpku dh tk ld ftUgkus viuh vf/kdre ltk dk vk/kk ;k ijk fgLlk tyy e dkV fy;k gA dkVt us bu जजों यह भी आदेष दिया कि जो कैदी धारा **436**ए के rgr vkr g mUgs तत्काल रिहा करने का आदेष दिया जाए।
nM ÁfØ;k lfgRkk dh /kkjk 107 d vËkhUk tekur			
8	/kuh jke cuke jkT; 9 ¼1973½ Mh,yVh 255	D;k U;k;k/kh'k vkjkih dk ;g dkj.k crkus dk vkn'k n ldrh g fd D;k ml vnkyr e mifLFkr gku d fy, ,d 0;fDrxr	vnkyr us vijkf/kd dk;ii.kkyh lfgrk dh /kkjk 107] 112 vkj 117 dks nkgjk;kA vnkyr dk ;g dguk Fkk fd tkp yfcr gkus ij U;k;k/kh'k vkjkih dk 'kkr cus jgus ;k vPNk vkpj.k cuk, j[kus d fy, tekufr;k d lkFk ;k mld cxj ,d ckM Hkjxk A yfdu bl lfgrk dh /kkjk 117 e n.M fo/kku ugh g ftlls ;g funs'k fn;k tk ld fd tks 0;fDr vnkyr d vkn'kk d fo:) tkrk g] tls bl lfgrk dh /kkjk 107@112 e dgk

	fnYyh mPp U;k;ky;	ckM nu dk vkn'k fn;k tkuk pkfg,?	x;k g rk ml LFkfxr lqukbZ dh rkjh[k dk vnkyr e viuh mifLFkfr d fy, tekurh d lkFk ;k mld fcuk ,d 0;fDrxr ckM Hkjuk gkxkA pfd ;g lkngkLin vkn'k bl lfgrk dh vi{kk l vyx g vkj blfy, bl vyx dj fn;k x;kA
		FkkUkk tekur	
9	xtjkr jkT; cuke ykyflg fd'ku flg 1981 ,-vkbZ-vkj- 368 mPpre U;k;ky;	D;k ifyl vf/kdkjh bl ifji= vkn'k d eÈ utj vkjkih dk tekur ij fjgk gku l jkd ldrk g] ml fLFkfr e tc ckEc प्रिवेन्शन ऑफ xEcfyx vf/kfu;e dh /kkjk 4 vkj 5 d rgr d vijk/k lK; vkj tekur nu ;kX; gk?	vnkyr u fun'k fn;k fd ifyl vk;Dr vFkok ifyl vf/kdkjh ftUg ,l vkjkfi;k dh ryk'k dju] mUg fxj¶rkj dju vkj mudh tkp dju dk vf/kdkj fn;k x;k g] o bl lfgrk dh /kkjk 496 d iko/kuk d rgr vkjkfi;k dk tekur ij fjgk dju d fy, dkuuh :i l ck/; gA ,l okjaV d rgr fxj¶rkj 0;fDr dk ikf/kdkjh }kjk tekur nuk gkxk D;kfd vf/kdkjh }kjk tk okjaV fn;k x;k g og ml dkuu l ikIr gvk g] vr% fdlh Hkh dk;dkjh fun'k ;k i'kklfud dkuu l bl lfgrk d dkuuh iko/kuk dk de vFkok jkdk ugh tk ldrk gA
10	d- mi Un jMMh cuke egkfun'kd] ,-lh-ch MCY;ih l[;k 1998 dk 28728 vk/kk mPp U;k;ky;	D;k fdlh ifyl vf/kdkjh dk ;g vf/kdkj g fd og ih- vk-lh vf/kfu;e dh /kkjk 7]10]11 vkj 13 ¼b½ d rgr fdlh vkjkih dk fjgk dj n tk fd xj&tekurh vijk/k g] ftu ij flQ mPp U;k;ky; vkj l=	vnkyr u vijkf/kd izfØ;k dh lfgrk 1973 dh /kkjk 437 dk nkgjk;k vkj bl fu"d"k ij igqph fd: ✓ /kkjk 437 ¼1½ d rgr ifyl d ikl ,l vkjkih dk tekur ij fjgk dju dh 'kfDr ugh g ftl ij xj&tekurh vijk/k dju dk vkjki yxk gA ✓ /kkjk 437 ¼2½ d rgr vnkyr vkj vf/kdkjh nkuk d ikl vkjkih dk tekur ij fjgk dju dh 'kfDr g ijUr viuh bu 'kfDr;k dk mi;kx dju l igyu vnkyr ;k vf/kdjh ;g fjdkMZ dj x fd dgh ble ;g fo'okl dju dk dkbZ vk/kkj ugh g fd vkjkih ugh g fd vkjkih u xj&tekurh vijk/k fd;k g vkj ble mld vijk/k dh vkx tkp&iMrky dju d i;kIr vk/kkj ekt n gA

		U;k;ky; }kjk gh fu.k; fy;k tk ldrk g\	
11	jfldyky cuke fd'kkj ok/kokuh 2009 ¼2½ ,-lh-vkj-1443 ¼,l-lh-½ mPpre U;k;ky;	vkond dk ;g nkok Fkk fd ml lh-vkj-ih-lh- dh /kkjk 436 d rgr nk"kh dk nh tkus okyh tekur dks jÌ djus lEcU/k i;kIr rd ugh fn, x,?	vnkyr dk ekuuk Fkk fd tekur nus ;kX; vijk/k dh lfgrk dh /kkjk 436 d rgr nh xbZ tekur dh nko djus dk vf/kdkj ,d ije vkj vykl; ¼vfodyuh;½ vf/kdkj gSA fQj Hkh LFkkbZ U;kf;d pyu g fd mPpre U;k;ky; vxj ;g ikrk g mldh fjgkbZ d pyr mldk crko U;k;fpr tkp d fo:) g rk og bl lfgrk dh /kkjk 482 d rgr viuh vUrfuZfgr 'kfDr;k dk mi;kx djr g, tekur d ckM dk jÌ dj ldrk gSA ¼*ryc gkth gfjku cuke e/kdj i:"kkUke ekndj* ,l-vkj- 1958 Cr.L.J 701½ lh-vkj-ih-lh- dh /kkjk 446 e mu ifjfLFkfr;k dk 0;Dr fd;k x;k g ftld rgr tekur dk jÌ fd;k tk ldrk gSA yfdu fQj Hkh tekur ;kX; vijk/k e tekur ikIr vkjksih 0;fDr dh tekur bl vk/kkj ij jÌ ugh dh tk ldrh g fd bldh f'kdk;r djus oky dh lquokbZ ugh gksbZ gSA loky mBrk g fd fdl gn rd ikÑfrd U;k; dk fdld vuqi:i gkuh vkj dl d rF; ij fuHkZj jgus dh t:jr gSA
tekur v©j fUkËkUkRkk			
12	ekrhjke o vU; cuke **मध्य प्रदेश राज्य** ¼,-vkbZ-vkj- 1978 ,l-lh- 1594½ mPpre U;k;ky;	1- D;k fdlh 0;fDr dk nM izfØ;k lfgrk 1973 d rgr fdlh vU; 0;fDr dk tekur d :i e Lohdkj fd, fcuk futh epyd ij fjgk fd;k tk ldrk g\ 2- ज़मानत राशि तय djus d ekinM D;k	✓ vfHk;Dr l mlh fty dk tekurh izLrqr djus dh vi{kk ugh dh tkuh pkfg, vkj [kkl rkj l ml 0;fDr l tk fdlh vU; LFkku dk eyr fuokl h gkA ✓ ज़मानत में किसी व्यक्ति को निजी मुचलके पर रिहा किया जाना शामिल ह] pkgs ,slk izfrHkwfr d lkFk vFkok fcuk gkA ✓ यदि समुचित शर्तों की संतुष्टि की जाती है तो गरीब व्यक्तियों को उदारता l doy mudh futh epyd ij fjgkbZ nh tkuh pkfg,A ✓ अभियुक्त की आर्थिक स्थिति को ध्यान में रखकर ज़मानत की राशि तय dh tkuh pkfg,A ✓ fu/kZu] toku 0;fDr] vkfFkd :i l detkj o ykpkj 0;fDr;k vFkok

		g\ 3- D;k fdlh 0;fDr }kjk iLrqr tekurh dsoy blfy, udkjh tk ldrh g fd og fdlh vU; fty ;k jkT; dk fuoklh g vkj mldh lifUk vU; fty ;k jkT; esa fLFkr g\	efgykvksa ds ekeyksa ij fopkj djrs le; U;k;ky; dks mudh fjgkbZ esa mnkjrk cjruh pkfg, o mudks futh epyds ij NkMks tkuk pkfg,A
13	gqlukjk [kkrqu cuke xg lfpo] fcgkj *AIR 1979 SC 1360*	vuqPNsn 21 ds vrxZr rho lquokbZ vkj vfuR; dkj.kksa ds vk/kkj esa tekur ds lanHk esaA	tekur 0;oLFkk dh i{kirh izdfr dks n[krs gq, vnkyr us lqlaxr lk{; ikFkuk dh fd vkfFkd uDlku ds vykok Hkh vU; dkj.kksa tSls fd पारिवारिक संबंध, समुदाय के साथ जुड़ाव, काम की निष्चित्ता, स्थिर संगठन dh lnL;rk vkfn dks tekur dk vk/kkj cuk;k tk ldrk g ;k tgk mfpr gks ogk vkjksih dk fuft epyds ij fcuk vkfFkd ck/;rk ds tekur nh tk ldrh gA कोर्ट ने मामले की विषेशता और खास तथ्यों के आधार पर यह निर्देष दिया fd fopkjk/khu dfn;s dks ,sls fuft epyds tks vkfFkd ck/;rk ij vk/kkfjr u gks ij fjgk fd;k tk,A इसके अलावा कोर्ट ने यह भी निर्देष दिया कि जहां भी पुलिस जांच में दो वर्श से vf/kd dh nsjh gks pqdh g ogk vfre fjikVZ ;k vkjksi i= vxys rhu eghus esa tek fd, tk,A ;fn ,sls djus esa nsjh gksrh g rks ljdkj bu dsls dk okil y ysA
vfxe tekur			
14	Jh x#cDl flag flfcs;k vkj vU; cuke ikVkc jkT; ▪ ,vkbZvkj 1980	D;k vnkyr ds ikl गिरफ्तारी का अंदेशा gksus ij tekur nus का आदेश पारित करने dk vrfufgr vf/kdkj g?	यह सुनिश्चित करने के लिए कि इस प्रावधान का बेईमान याचिकादाताओं के मामले में दुरुपयोग न हो इसलिए इसका अंतिम आदेश तभी दिया जाना चाहिए जब सार्वजनिक अभियोजक को नोटिस दे दिया जाय। इसका शुरुआती आदेश सिर्फ अंतरिम होना चाहिए। यह भी दिया जाना सही होगा कि अंतरिम आदेश और अंतिम आदेश का नोटिस तुरन्त पुलिस अधीक्षक कks lkSai tk,A mPpre U;k;ky; vkj l= U;k;ky; dks viuk food dk cf)ekuh vkj

	,l lh 1632 ▪ 1980 lhvkjvkbZ ▪ ,yt 1125 ▪ ¼1980½ 2 ,l lhlh 65 ▪ ¼1980½ 3 ,l lhvkj 383 mPpre U;k;ky;		lko/kkuh l mi;qDr djuk pkfg,A ml bl loky dk viu fnekx e mi;qDr djuk pkfg, vkj fu.kZ; yuk pkfg, fd D;k ,l lh dkbZ jkgr ikus d fy, ;g dl fd;k x;k gSA og vk/kkj ftl ij vkosnd का विश्वास टिका है कि वह गैर–जमानती vijk/k e Ql ldrk gS vr% og vnkyr }kjk fu"i{k :i l tkp djk, tkus ;kX; gks ldrk gS D;kfd rHkh vnkyr ;g r; dj ldrk gS fd vkosnd dk ,l dkbZ dkj.k gS ftl og eku ldrk gS fd bl rjg og fxj¶rkj gks ldrk gSA izFke सूचना रिपोर्ट (एफआईआर) शक्ति का उपयोग करने की पूर्व शर्त नहीं gks ldrh gSA ,QvkbZvkj nt fd, tkus d ckn Hkh izokHkkl h tekur nh tk ldrh gS] rc rd tc rd fd vkosnd dk fxj¶rkj u fd;k x;k gksA ukV % gky d lokPp U;k;ky; d ,d dl e mijksDr dl d vuqikr dk nkosckjk dgk x;k gS d dl % fl)jk; lrfyxlik e= cuke egkjk"V jkT; vkj vU;] mYy[k ,vkbZvkj 2011 ,l lh 312] 2011 ¼1½ ,l lhlh 694
विशेष अधिनियमों के अधीन ज़मानत			
15	Fkkuk fl g cuke d dUnh; ukjdkfVDl C;qjks ▪ ¼2013½ 2 ,l-lh-lh-590 mPpre U;k;ky;	D;k fdl fopkjk/khu cnh dk ,u-Mh-ih-,l- d vijk/k d vfHk;qDr में 12 वर्षों तक जेल e cn jgus d ckn] vkjksih dh tekur ukeatj dh tk ldrh gS\	vnkyr e *fopkjk/khu dSnh dh ifrfuf/k mPPkre U;k;ky; fof/kd lgk;rk lefr cuke Hkkjr x.kjkT; o vU;* dl d fu.kZ; ij ppZ dh xbZA gkykfd] 1985 d vf/kfu;e dh /kkjk 37 d vrxZr ,u-Mh-ih-,l- dks e bl fu.kZ; dh mi;qDrk dk ifrcf/kr dj fn;k gSA vnkyr us blfy, ;g voyksdu fd;k fd ,u-Mh-ih-,l- d dl dh lquokbZ tYn l tYn dh tkuh pkfg, D;kfd ,l dl e lk/kkj.k rkj ij vkjksih dk tekur ij fjgk ugh fd;k tkrk gSA vf/kfu;e dh /kkjk 37 vkj ifØ;kRed foyc dk /;ku e j[krs gq,] vnkyr us fofHkUu ,tfl;ksa }kjk ekuus d fy, विभिन्न निर्देशों की एक सूची जारी की। bl dl dk Hkko@lkj bl izdkj Fkk% ßfopkjk/khu vkjksih dk tekur ij fjgk dj nsuk pkfg, ;fn og tsy e कम से कम 5 वर्षों का समय व्यतीत कर चुका है और दो ज़मानतियों के lkFk ,d yk[k : dh tekur nsAÞ

16	gbinjke dkuUXk tvk flg cuke ef.kipj jkT; o vU; ▪ ,-vkbi-vkj- 2012 ,l-lh- 2002 ▪ 2012 fØ-y-t-2935 ▪ ¼2012½7 ,l-lh-lh-181 mPpre U;k;ky;	D;k dkbi 0;fDr tk igyk lh gh tyy eg] ml ij ifrjk/kh dkuu ykxk djd mlk ifrcf/kr fd;k tk ldrk g\	dkuu e ,slk dkbi ifrc/k ugh g fd tk 0;fDr igyk lh gh fdlh vkijkf/kd ekey e hirasat में है उसके विरूद्ध प्रतिरोधी आदेश न दिया जाए। हांलाकि, यदि प्रतिरोध के आदेश को चुनौती दी जाती है तब प्रतिरोधी अधिकारी को अदालत को निम्नलिखित तथ्यों से संतुष्ट करना होता है: ¼1½ ikf/kdkjh dk bl ckr dh ijh tkudkjh Fkh fd 0;fDr ¼fMVU;½igyk lh gh fgjklr e g] (2) उक्त अधिकारी के समक्ष ऐसे विश्वसनीय तथ्य मौजूद हैं जिस पर विश्वास dju dk mldk ikl dkj.k g fd mldk tekur ij NVu dh okLrfod lEHkkouk g vkj mldk NVu ij gk ldrk g fd og ,slh xfrfof/k;k e fyIr gk tk, tk ykd 0;oLFkk dk fy, gkfudkjd gA ¼3½ mijkDr dk /;ku e j[krk g,] vf/kdkjh dk bl ikdkj dh xfrfof/k;k में में लिप्त होने से रोकने के लिए, ऐसा करने की आवश्यकता महसूस हुई, इसलिए प्रतिरोध आदेश ज़रूरी है। अगर इनमें से कोई भी कारण न उपस्थित हो, प्रतिरोध आदेश lekIr gk tk,xkA dsoy blfy, fd ,slh fdlh dsl e fdlh vU; 0;fDr dh tekur e tj dj yh xbi Fkh] bl ckr dh dkbi ifjdYiuk ugh dh tk ldrh g fd mDr dsl e Hkh tgk fMVU;k u tekur d fy, vkonu fd;k g ml telur ij fjgkbi fey gh tk,A
17	fpdlik vkj vU; cuke jkT; }kjk lc&bLikDVj ¼ifyl½] gxy ifyl Fkkuk ▪ 2002 lhvkjvkbi ,yt 518 ▪ vkbi,yvkj 2001 ▪ dukVd 5483 ▪ 2002 ¼1½ dkj,yt 61 ▪ 2001 ¼4½ dslhlhvkj	vuqlfpr tkfr vkj vuqlfpr tutkfr ¼vR;kpkjk dh jkdFkke½ vf/kfu;e 1989 dh /kkjk 18 d rgr D;k mPpre U;k;ky; n.M d ckotn iokHkkllh tekur n ldrk g\	ikbek Qslh dh phti] nk"kkjki.k dk irk yxku dk dke lhfer gkuk pkfg, vkj flQ mPpre U;k;ky; }kjk gh djk;k tkuk pkfg,A vnkyr को एफआईआर / शिकायत और इसमें किए गए दोषारोपण पर xkj djuk gkxk ftll ;g irk py ld fd bl vf/kfu;e d rgr d vijk/k dk lkj r;kj fd;k x;k gA vxj vnkyr ,slh dkbi lkexh ikrk g rk bl lhvkjihlh dh /kkjk 438 d rgr fn, x, vkonu dk udkjuk gkxk] tlk fd bl vf/kfu;e dh /kkjk 18 }kjk bl ij jkd yxkbi xbi gA nljh vkj अगर इस अधिनियत के तहत के अपराध को दर्शाने के लिए कोई प्राइमा फेसी नहीं लगा है तो निश्चित रूप से उच्चतम न्यायालय धारा **438** lhvkjihlh] 1973 d rgr bl vkonu ij fopkj dj ldrk gA

	442 dukVd mPp U;k;ky;		
fgjklr e fopkjk/khu dinh			
18	iu% 1382 tyk e vekuoh; fLFkfr *WP (Civil) 406/2013;* fu.k; dh rkjh[k 24@04@2014	Hkkjrh; tyk e din cgl[;d dinh fopkjk/khu g vkj bl **पर आवष्यक कदम** mBku d ckj eA	**निर्देश** 1. vnkyr u xg e=ky; dk frgkM ty e dinh ic/ku 0;oLFkk dk v/;;u dju dk dgk vkj ml vf[ky Hkkjr Lrj ij ykx dju d lc/k e mle l/kkj ;k l>ko d lkFk mifLFkr gku dk dgkA 2. **सीआरपीसी की धारा 436ए को लागू करवाने के उद्देष्य से अदालत ने प्रत्येक जिले में जिला न्यायाधीष की अध्यक्षता में जिला मजिस्ट्रेट** vkj ftyk ifyl v/kh{kd dh lnL;rk e fopkjk/khu dinh leh{kk **समिति का गठन करने का आदेष दिया। और यह निर्देष दिया कि** lfefr dh igyh cBd 30 tu 2015 dk dh tk,A 3. **कोर्ट ने आदेष दिया कि 436ए से संबंधित सभी मामलों पर समिति** viuh igyh cBd e fopkj djA mlu ;g r; fd;k fd ,d l vf/kd vkjkik oky ekeyk e de ltk oky mu vijk/kk dh leh{kk dh tk, ftu ij vf/kdre ltk l vk/k dh ltk ijh dh tk pdh gA vnkyr u ;g Hkh ukV fd;k fd flQ blfy, fd d l dh luokbi ijh ugh gbi g fopkjk/khu dfn;k d vf/kdre सजा से आधे तक जेल में रहने की आवष्;drk ugh gA 4. egt tekur u n iku dh otg l tyk e jg jg dfn;k d ckj **में कोर्ट ने राज्य कानूनी सेवा प्रधिकरण को निर्देष दिया कि वे अपने** iuy d odhyk l bu dfn;k l eykdkr dju dk dg vkj lcf/kr vnkyrk e tYn fjgkbi d fy, vkonu tek djA

jkTkLFkkUk mPp u;kk;ky;k d Qlys			
19	t; flag o vU; cuke Hkkjr x.jkT; ¼Hk-x-½ o vU; ,-vkbZ-vkj- 1993 jkt 177 jkt LFkku mPp U;k;ky; ¼lanHkZ [kMihB½	D;k ,l-lh- ,.M ,l-Vh-(fuokj.k vkWQ vVjkflfVt½ ,DV] 1989 dh /kkjk 18 }kjk n-i-l- dh /kkjk 438 dk viotu] lafo/kku d vuPNn 21dk mYya?ku g\	अदालत ने बरसों पूराने अस्पर्श्यता के मुद्दे और इस प्रकार एस-lh-,.M ,l-Vh- एक्ट के उद्देश्य और कारणों की व्याख्या की। अदालत ने स्पष्ट किया कि पूर्वाभासी ज़मानत का अधिकार स्पष्ट या अस्पष्ट रूप से अनुच्छेद 21 से नहीं fudyrk gA ;g vf/kdkj lalln }kjk cuk, x, ,d vU; dkuu ls fudyrk g vkj lalln nljk dkuu cukdj ;k n.M izfØ;k lafgrk esa संशोधन करके इसे वापस भी ले सकती है। निर्वचन का नियत सिद्धांत यह है कि विशेष कानून सामान्य कानून के ऊपर होगा। अदालत ने टेररिस्ट एण्ड fMLrpfVo ऐक्टिविटिज़(प्रिवेन्शन) ऐक्ट 1987 की धारा 20 पर भी चर्चा की ftld varxZr Hkh n-i-l- dh /kkjk 438 d mi;ksx dk ckf/kr fd;k x;k है। इस प्रकार संसद द्वारा पारित विशष कानून जिसमें पूर्वाभासी ज़मानत की vkKk ugha nh xbZ g] dk vuPNn 21 dk mYya?ku djus okyk ugha ik;k x;kA
20	jkt LFkku jkT; cuke yky flag ▪ 1987 fØ-y-t-269 ▪ 1986¼1½MCY;-,y-,u-424 jkt LFkku mPp U;k;ky;	D;k dk;kZdkfj.kh eftLVªsV }kjk xaMk ij fu;a=.k vf/kfu;e] 1975 d varxZr vkjksih dk U;kf;d fgjklr esa j[k jguk Bhd Fkk tc tekurnkj dh ;kX;rk dk lR;kiu djus d fy, rglhynkj d ikl Hkstk tk jgk Fkk\	vxj tEkkurnkj dh ;kX;rk d ckj esa dkbZ gyQukek nk;j fd;k tkrk g rc vke rkj ij ml Lohdkj dj fy;k tkrk gA ,sls dsl rc ugha dj ldrs tc eftLVªsV }kjk dkj.k nsrs fd, gaA rFkk mld fopkj esa bld बारे में इंक्वायरी की आवश्यकता समझी जाए। वह स्वयं भी तुरंत या एक निश्चित समय के भीतर इंक्वायरी कर सकता है। अगर वह यह मानते हैं कि bDok;jh mudk vf/kuLFk eftLVªsV }kjk gkuh pkfg, rc mfpr izfØ;k ;g gkxh fd varfje mik; d rkj ij tekurnkj dk lgh eku fy;k tk, vkj vkjksih dh fjgk dj fn;k tk,] fQj bDok;jh dh tkuh pkfg,A vxj bDok;jh d ckn ;g ekyse iMrk g fd tekurh mi;qDr ;k ;kX; ugha g rc vkjksih dk cyk dj u;k tekurh iLrkfor djus dk dgk tk,A
21	e?kk jke cuke jkt LFkku jkT; o vU; ,l-ch-vkbZjkf/kd	D;k vnkyr tekur esa tqj djus d fy, कोई ऐसी शर्त लगा ldrh g tks] ikfVZ;ksa dk dkuu d izko/kkuksa	ज़मानत मंजूर करते समय, सत्र न्यायालय बीकानेर यह शर्त yxk nh Fkh fd orEeku ikFkh viuh uke ij ithdr udyh fcØh foys[k dk jn dj nsa vkj इसके बदले में शिकायतकर्ताओं के कानूनी वारिसों के नाम पर बिक्री विलेख निष्पादित करें। इस शर्त को ग़लत माना गया और ज़मानत मंजूर करने वाले आदेश को बदल दिया गया और ऐस शर्त को हटा दिया गया।

	fofo/k ;kfpdk u- 678@2013 jkt LFkku mPp U;k;ky;	d vuqlkj volj inku fd;s cxj dksl dk lekIr dj nsa\	
22	दिनेश कुमार एंव पुरूषोत्तम मित्तल cuke jkt LFkku jkT; ,l-ch-vkijkf/kd fofo/k nlljk tekur vkonu u- 790@2013 jkt LFkku mPp U;k;ky; ¼t;iqj [kaMihB½	D;k vkjksih dh tekur dk eqtj djuk pkfg, ;k ugha] विशेषकर उस स्थिति esa tgaर निकट भविष्य esa eqdnek lekIr gksus की आशा न हो\	संजय चंद्रा बनाम सेंट्रल ब्यूरो ऑफ इंवेस्टिगेशन, (2012) 1 एस-lh-lh- 40] d dksl esa mPPkre U;k;ky; d fu.k; d vk/kkj ij tekur d vkonu dk fuEu rF;ksa dk ekuus gq, Lohdkj dj fy;k x;k & ¼i½ fd vkjksih d fo:) iesa[k vkjksiksa dk Lo; V'k;y dkVs }kjk gVk fn;k x;k Fkk] ¼ii½ fd mPpre U;k;ky; us lg&vkjksih egUnz dqekj xk;y dh tekur dk eqtj dj fy;k Fkk] ¼iii½ fd ikFkhZ fiNys 21 eghuksa ls tsy esa gS] ¼iv½ vkj D;kfd xokgksa dh Hk;kogrk d dkj.k, अगले कुछ वर्षों में मुकदमा lekIr ugha gksus okyk gS] ¼v½ vkj ;g rF; fd ikfFkZ;ksa us ljdkjh एजेंसियों द्वारा सामान की नीलामी की बिक्री के बाद प्राप्त राशि को किसानों esa ckaVus ij dksbZ vkifRRk ugha dh gSA
23	lqLr fopkjk/khu cnh cuke jkt LFkku jkT; Mh-ch- flfoy fjV ;kfpdk ¼ih-vkbZ-,y-½ jkt LFkku mPp U;k;ky; ¼t;iqj [kaMihB-½	dUæh; dkjkxkj] vtesj esa cn 217 cfn;ksa }kjk ,d i= ;kfpdk Hkstk xbZA अधिवक्ता परिषद द्वारा ikl fd;s x;s ,d ladYi d dkj.k odhy dke ugha dj jgs Fks ftl dkj.k bu cfn;ksa d dlksa dh सुनवाई में अनावश्यक :Ik ls foyac gks jgk Fkk] blesa budh tekur ;kfpdk Hkh शामिल थी।	vnkyr us Hkhe fl ag cuke Hkkjr x.kjkT;(MCY;-ih-¼fØ-½310@2005 esa उच्चतम न्यायालय के निर्णय पर निर्भर करते हुए प्रत्येक न्यायाधीशता (जजशिप) के सभी ज़िला एंव सत्र न्यायाधीशों को निर्देश दिया कि वे एक ज़िला न्यायाधीश, एक सत्र न्यायाधीश एंव एक अतिरिक्त मुख्य न्यायिक eftLVsV dk eukuhr djs fd o jkT; d lHkh dUæh; dkjkxkjksa] ftyk dkjkxkjksa vkj mi&dkjkxkjksa esa llrkg esa de ls de nks fnu vnkyr yxk,a rkfd fopkjk/khu cfn;ksa d ,df=r gksus ls tyksa esa HkhM dk de djsA mUgksaus viuh dkjkxkj oh{k.k d nkjku lHkh tekur vkj fjekM ;kfpdkvksa dk lquus dk vf/kdkj FkkA राज्य सरकार को निर्देश दिया गया कि वह सभी सरकारी वकीलों और जांच vf/kdkfj;ksa dk bu lquokbZ;ksa d nkjku mifLFkfr vkj iLrqfr esa lgk;rk djsA Mh-,y-,l-,- को निर्देश दिया कि वह जेलों में मनोनीत पारालीगल Lo;alodksa }kjk] cfn;ksa dk i;kIr lgk;rk@fof/kd lgk;rk miyC/k djk,a xaA

Section V:
WHAT DOES THE LAW COMMISSION SAY

Hkkx V:
D;k dgrk gS fOkf/k vk;ksx

- **Objection against the new provision**

"The principal objection against the new provision is that a person seeking advances bail has to be present in Court when the petition is taken up. The main apprehension is that the suspect could be arrested as soon as Sessions Court rejects his anticipatory bail application is a power concurrently vested in both the Sessions Court and the High Court. The Lawyers fear that the suspects may be arrested even before they could exhaust their option of moving the High Court.

In view of the strong protest against this provision by the Lawyers fraternity, giving effect to this provision was kept in abeyance and it was decided to seek expert opinion of the Law Commission of India on the amended version of Section 438 CrPC."[36]

- **Suggested changes**

"The new provision in Section 438 (has been inserted in the Code on the recommendation of the Law Commission in its 41st Report. In this Report, the Law Commission made the following observations on 'anticipatory bail' viz.

"39.9. **Anticipatory Bail:-** The suggestion for directing the release of a person on bail prior to his arrest (commonly known as "anticipatory bail") was carefully considered by us. Though there is a conflict of judicial opinion about the power of a Court to grant anticipatory bail, the majority view is that there is no such power under the existing provisions of the Code. The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false causes for the purpose of disgracing them or for other purposes by getting them detained in jail for some 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."[37]

- **Anticipatory Bail should not be the routine**

"From the Statement of Objects and Reasons for introduction of Section 438 of the Code, it is apparent that the framers of the Code on the basis of recommendation of the Law Commission purported to evolve a device by which a citizen is not forced to face disgrace at the instance of influential persons who try to implicate their rivals in false cases; but the Law Commission, at the same time, had also issued a note of caution that such power should not be exercised in a routine manner."[38]

- **Jurisdiction**

"Earlier, the IGP's Conference, 1981, inter alia, suggested that Section 438 be amended so as to take away the powers to grant anticipatory bail from the Court of Session and vest the same only in the High Courts. In May 1983, the Home Ministry constituted a Group of Officers, which considered the question of deletion of the provision of anticipatory bail and felt that since, after deletion of the provision, the High Court will

[36] Page 9/10, Para 1.3, Chapter I – Introduction
[37] Page 12/13, Para 2.2, Chapter 2, Pre-Amended Law
[38] Page 14, Para 2.4, Chapter-2, Pre-Amended Law

be competent to grant bail under the inherent powers, the provision need not be deleted. As sometimes, the Courts take a very liberal view in granting anticipatory bail to criminals, it was considered that such powers should be taken away from the Court of Session and vest only in the High Court even though it will make difficult for the poor persons to avail of the provisions of anticipatory bail. At times, an accused person secures anticipatory bail even without making an appearance before the Court."[39]

- **Use and Misuse of Anticipatory Bail**

"In the various workshops diverse views were expressed regarding the retention or deletion of the provision of anticipatory bail. One view is that it is being misused by affluent and influential sections of accused in society and hence be deleted from the Code. The other view is that it is a salutary provision to safeguard the personal liberty and therefore be retained. Misuse of the same in some instances by itself cannot be a ground for its deletion. However, some restraints may be imposed in order to minimize such misuse. We are, however, of the opinion that the provision contained under Section 438 regarding anticipatory bail should remain in the Code..."[40]

- **Parameters**

"The Court would grant or refuse anticipatory bail after taking into consideration inter alia the following factors, namely:

(i) the nature and gravity of the accusation;
(ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
(iii) the possibility of the applicant to flee from justice; and
(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested."[41]

- **Recommendation**

"We recommend that:
(i) The proviso to sub-section (1) of Section 438 shall be omitted.
(ii) Sub-section (1B) shall be omitted.
(iii) A new sub-section on the lines of Section 397(3) should be inserted.
(iv)An Explanation should be inserted clarifying that a final order on an application seeking direction under the section shall not be construed as an interlocutory order for the purposes of the Code."[42]

[39] Para 3.3, Page 19/20, Chapter 3, Legislative Changes
[40] Para 3.5, Page 25, Chapter 3, Legislative Changes
[41] Para 6.1.2, Page 34, Chapter–6, Analysis of the amended law and conclusions
[42] Para 7.1, Page 94, Chapter 7, Recommendations

154th
Law Commission Report

- **Introduction to Law of Bails**

  "The law of bails, which constitutes an important branch of the procedural law dovetails two conflicting interests namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and on the other, the fundamental principle of criminal jurisprudence, namely, the presumption of innocence of an accused till he is found guilty.

  With a view to fulfilling the above objectives, the legislature has provided directions for granting or refusing bail. Where law allows discretion in the grant of bail, it is to be exercised according to the guidelines provided therein; further the courts have evolved certain norms for the proper exercise of such discretion.

  Though the Code of Criminal Procedure has not defined bail, the terms "bailable offence" and "non-bailable offence" have been defined. Bail in essence means security for the appearance of the accused person on giving which he is released pending investigation or trial. The Supreme Court in *Moti Ram v. State of M.P.*[43] has held that bail covers both release on one's own bond, with or without securities."[44]

- **Classification of Offences**

  "An examination of the provisions of the Schedule would reveal that the basis of the classification is based on divergent considerations. However, the gravity of the offences, namely, offences punishable with imprisonment for three years or more have been treated as non-bailable offences. But this is not a hard and fast rule. There are exceptions to the same."[45]

- **Bail without Surety**

  On the question that whether the bail system discriminate against the poor, the Central Committee on Legal Aid reported:

  …[w]e think that a liberal police of conditional release without monetary sureties or financial security and release on one's own recognizance with punishment provided for violation will go a long way to reform the bail system and help the weaker and poorer sections of the community to get equal justice under law. Conditional release may take the form of entrusting the accused to the care of his relatives or releasing him on supervision. The Court or the authority granting bail may have to use the discretion judiciously. When the accused is too poor to find sureties, there will be no point in insisting on his furnishing bail with sureties, as it will only compel him o be custody with the consequent handicaps in making his defence."[46]

- "In order to eliminate discrimination against the poor and indigent accused in the grant of bail for bailable offences, Clause 40 of the Criminal Procedure Amendment Bill, 1994 seeks to amend section 436 of the Code to make a mandatory provision that

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[43]

[44] Page 21, Chapter VI, Bail, Anticipatory Bail and Sureties

[45] Page 21, Para 5, Chapter VI, Bail, Anticipatory Bail and Sureties

[46] Para 8.3, Page 22, Chapter VI, Bail, Anticipatory Bail and Sureties

if the arrested persons accused of a bailable offence is an indigent and cannot furnish security, the court shall release him on his execution of a bond without sureties. The amendment is as follows:

In section 436, in sub-section (1)-

(a) In the first proviso, for the words "may, instead of taking bail," the words "may, and shall if such person is indigent and is unable to furnish security", shall be substituted:

(b) After the first proviso the following Explanation shall be inserted:
Explanation: where a person is unable to give bail within a week of the date of his arrest, it shall be sufficient ground for the officer or the court to presume that he is an indigent person for the purposed of the proviso."[47]

- "In a public interest litigation case on the undertrials in Tihar Jail, Delhi, National Capital Territory, the Supreme Court in R.D. Upadhyay vs. State of Andhra Pradesh issued, specific directions for expediting the trial of under-trials accused of serious offences as murder, attempt to murder etc. under I.P.C., Arms Act, Customs Act, Narcotic Drugs and Psychotropic Substances Act, Official Secrets Act, Extradition Act, Terrorist and Disruptive Activities Act and Dowry Prohibition Act. The Court also issued directions for release on bail without the necessity of application for bail in cases where undertrials are charged with attempt to murder under IPC and cases have been pending for more than two years. In cases where undertrials are charged with the offences of kidnapping, theft, cheating, counterfeiting, rioting, hurt, grievous hurt or under the Arms Act, Customs Act if they have been in detention for more than one year, they should be released on bail without an application of bail."[48]

- **Prevention of Misuse of Anticipatory Bail**
"The Law Commission, in its 48th Report, gave vent to the impression that had gained ground in the interregnum about the misuse of the provision on grant of anticipatory bail in the following observations:

> [I]n order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded and if the court is satisfied that such a direction is necessary in the interest of justice.
>
> It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith."[49]

- **Misuse of Freedom granted by Section 438**
The working of Section 438 has been criticized in that it hampers effective investigation of serious crimes, the accused misuse their freedom to criminally intimidate and even assault the witnesses and tamper with valuable evidence and that whereas the rich, influential and powerful accused resort to it and the poor do not, owing to their indigent circumstances thus giving rise to the feeling that some are "more equal than others" in the legal process."[50]

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[47] Para 8.4, Page 23, Bail, Anticipatory Bail and Sureties
[48] Para 9.4, Page 24, Bail, Anticipatory Bail and Sureties
[49] Para 13.4, Page 27, Bail, Anticipatory Bail and Sureties
[50] Para 15, Page 28, Bail, Anticipatory Bail and Sureties

❖ **Recommendations of the 48th Law Commission Report**

The Code of Criminal Procedure Amendment Bill in clause 43 seeks to amend section 438, echoing the recommendations of the Law Commission in its 48th Report and also on some other grounds referred to above, in the following manner:

> "In section 438 of the principal Act for sub-section (1), the following sub-sections shall be substituted, namely:
>
> (1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:
>
> (i) The nature and gravity of the accusation:
>
> (ii) The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence:
>
> (iii) The possibility of the applicant to flee from justice; and
>
> (iv) Where the accusation has been made with the objection of injuring or humiliating the applicant by having him so arrested.
>
> Either reject the application forthwith or issue an interim order for the grant of anticipatory bail:
>
> Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer-in-charge of a police station to arrest, without warrant the applicant, if there are reasonable frounds for such arrest.
>
> (1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.
>
> (1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in interest of justice."[51]

❖ **Unfair Means Used To Obtain Surety**

"There are touts operating in the Court premises, who help out, on a price tag, those accused who scheme to obtain bail with the idea of absconding. These touts give surety on the basis of fake identity. They operate with numerous fake ration cards which substantiate their domicile in Delhi each in a different name and address."[52]

❖ **Law to Prevent Use of Fake Sureties**

Clause 44 of the Code of Criminal Procedure (Amendment) Bill seeks to incorporate a new section, S. 441A to deal with the abuse of professional and fake sureties which reads as under:

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[51] Para 17, Page 38, Bail, Anticipatory Bail and Sureties

[52] Para 19.3, Page 29, Bail, Anticipatory Bail and Sureties

Every person standing surety to an accused person for his release on bail shall make a declaration before the court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars.

We are of the view that section 441A be incorporated in the Code to eliminate the pernicious evil of professional and fake sureties in the bail process. It will eliminate collusion between professional sureties, administrators of criminal justice system and criminals."[53]

- **Provisions of Section 437A**

"A new section 437A be inserted empowering all the criminal courts (including the 1st appellate court) to take bail and bail bond before the conclusion of the trial or disposal of the appeal requiring the accused to bind themselves to appear before the next appellate court; in case an appeal against acquittal or an appeal for enhancement is filed in the higher court. Such a bond shall be in force for a period of 12 months from the date of judgment disposing of the case either by trial court or by the 1st appellate court as the case may be. We feel, the twelve months limit would be enough to cover the period of limitation for processing and filing of such appeals."[54]

[53] Para 19.4/Para 19.5, Page 29, Bail, Anticipatory Bail and Sureties
[54] Para 2, Chapter VII, Page 31, Bail-Attendance of Accused-Appellate State

- **Liberal Bail**
  "It has been suggested by the commission that except in case of serious offences like murder, dacoity, robbery, rape and offences against the State, the bail provisions should be made liberal and that bail should be granted almost as a matter of course except where it is apprehended that the accused may disappear and evade arrest or where it is necessary to prevent him from committing further offences or to prevent him from tempering with witnesses or other evidence of crime." [55]

- **Denial of Bail**
  "When the accused is in police custody, bail should be a matter of course except where his continuing presence in police custody is necessary for the purpose of investigation. Even if the offence is a serious one, the accused must be sent to judicial custody and not be kept in police custody unless required for the purpose of investigation. Similarly the apprehension that the accused, if enlarged on bail, may disappear and evade arrest or that it is necessary to keep him confined to prevent him from committing further offences or from tempering with witnesses and evidence or to ensure his own safety, can be grounds for keeping him in judicial custody but certainly not in police custody."[56]

- **Objectives of Bail**
  "Bail is a very vital institution in criminal justice system. It carries a twin objective of enabling an accused to continue with his life activities and, at the same time, providing a mechanism to seek to ensure his presence on trial. The current problem of large number of undertrials is an outcome of a large number of indiscriminate arrests and the non-use of the option of bail in preference to jail."[57]

- **Expansion of bailable offences**
  "The 78th Report of the Law Commission on Congestion of Undertrial Prisoners in Jails was concerned with the plight of large number of undertrial prisoners in Indian jails and recommended various measures to deal with the problem. The Commission recommended, inter alias, to expand the category of bailable offences, releasing on bond without sureties, obligation to appear and surrender, violation of which was to be an offence. It referred to position in England where a presumption is drawn in favor of the right to bail for all offences." [58]
- **Insertion of new section 436A**

  "The Report supports the insertion of section 436A and amendment of section 437, as proposed by the CrPC (Amendment) Bill, 1994 as also the insertion of section 441A and amendment of sub-section (3) of section 446 as proposed by the said Amendment Bill.

  "436A. Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment

[55] Chapter 10, Para 1, p.116, 177th Law Commission Report.
[56] Chapter 10, Para 2, p.117, 177th Law Commission Report.
[57] Chapter 10, Para 4, p.117, 177th Law Commission Report. (Taken from I.L.I. publication "Right to Bail").
[58] Chapter 10, Para 1, p.119, 177th Law Commission Report.

of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties: Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law:
Explanation – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded." [59]

- ***Amendment of section 437***

"In section 437 of the principal Act,-
(a) in sub-section (1),-
(i) in clause (ii), for the words "a non-bailable and cognizable offence", the words "a cognizable offence punishable with imprisonment for three years or more but not less than seven years" shall be substituted;
(ii) after the third proviso, the following proviso shall be inserted, namely:
"Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death or imprisonment for a term which may extend upto seven years or more, be released on bail by the court under this sub-section without giving an opportunity of hearing to the Public Prosecutor."
(b) after sub-section (1), the following subsection shall be inserted, namely:-
"(1A) Notwithstanding any thing contained in sub-section (1), a person accused of a non-cognizable offence punishable with imprisonment which may extend up to seven years (whether with or without fine) shall be released on bail unless there are reasons to believe, which shall be recorded in writing ,that release of such person on bail is not in the public interest."
(c) in sub-section (3), for the portion beginning with the words "the Court may impose", and ending with the words "the interests of justice", the following shall be substituted, namely:
"the Court shall impose the conditions,-
(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,
(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence
and may also impose, in the interests of justice, such other conditions as it considers necessary." [60]

[59] Chapter 10, Para 2, p.119, 177th Law Commission Report
[60] Chapter 10, Para 4, p.144, 177th Law Commission Report

- ***Addition of Section 440A***

  "***440A***. *Every person standing surety to an accused person for his release-on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."* [61]

  It may be stated as a general proposition that in offences punishable up to seven years imprisonment, with or without fine, the normal rule should be bail and the denial thereof an exception i.e., in any of the situations mentioned hereinbefore. In other serious offences, the matter has to be left to the discretion of the court to be exercised having regard to the totality of the circumstances and keeping in mind the necessity to maintain a balance between the interests of the society as a whole in proper maintenance of law and order and the constitutional, legal and human rights of the accused." [62]

[61] Chapter 10, Para 1, p.145, 177th Law Commission Report
[62] Chapter 10, Para 6, p.121, 177th Law Commission Report

78th
Law Commission Report

❖ **Position under the present law**

"Under the present law, any answer to the question whether a person arrested for an offense would be able to secure release on bail mainly depends on the offense with which he is charged (bailable or non-bailable), the discretion exercised by the officer or court (in respect of non-bailable offences) and (assuming that, in law, he can be released on bail), his capacity to furnish the security or personal recognizance required by the officer or the court."[63]

❖ **The position as to bail under the code of 1898 was, in broad terms, as follows:**

(1) "For bailable offences, bail was a matter of right.
(2) For non-bailable offences, it was a matter of discretion.
(3) Bail shall not ordinarily be granted by Magistrate if the offense is punishable with death or imprisonment for life.
(4) The Court of Session and High Court had a wider discretion in regard to bail."[64]

❖ **General Position:**

(1) "For bailable offenses bail is a matter of right, subject to certain qualifications to be stated in the due course. The person arrested must be informed of his Right of Bail. The relevant provisions speak of a person other than one accused of a non bailable offense, but for brevity we use the words "bailable offenses".
(2) As regards non bailable offenses a person accused of, or suspected of the non bailable offence, shall not be released on bail, if there appear reasonable rounds for believing that he has been guilty of any offense punishable with death or imprisonment for life. There is however an important exception to this. The court may direct that even in such a case a person under the age of 16 years or a woman or any sick or infirm person accused of such an offense be released on bail.
(3) In other cases of accusation of suspected commission of a non bailable offence the court has the discretion to grant bail and the person may be released on bail, but the discretion is regulated by certain provisions many of which effect, lead in favor of the grant of bail, while some might operate in the contrary direction. These provisions are summarized below:

✓ *Provisions Leaning in favor of Bail*

(4) The mere fact that an accused person may be required to being identified by witnesses during investigation shall not be sufficient ground for refusal to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall with such directions as given by the court.
(5) If it appears to the officer or the court concerned at any stage of the investigation, inquiry or trial (as the case may be) that there are no reasonable grounds for believing that the accused has committed a non-bailable but that there is sufficient grounds for further inquiry into his guilt, the accused shall, pending such enquiry, shall be released on bail (on sureties) or, at the discretion of such officer or court, on personal bond.

[63] Para 1.25, Page.5, Chapter I, Introductory
[64] Para 2.4, Page 7, Chapter II, Present Law, Comparative Law and Questions for Consideration

(6) If any case triable by the magistrate, the trial of a person accused of any non-bailable offense is not concluded within a period of 60 days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during whole of the said period, be released on bail, to the satisfaction of the magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.
(7) There is a special provision for the grant of bail at the stage between conclusion of trial and judgment, in certain cases.

✓ *Provisions restrictive of Discretion*

(8) Certain conditions can be imposed while granting bail in respect of non-bailable offences.
(9) An officer or court releasing any person on bail for a non bailable offense shall record in writing his or its reason for doing so.
(10) Any Court which has released a person on bail for a non-bailable offense may, if it considers necessary so do to, direct, that such a person be arrested and commit him to custody.
(11) The amount of bail must not be excessive.

✓ *High Court and the Court of Sessions*

(12) The High Court and the Court of Sessions have a wider discretion in respect of bail. These courts can grant bail even in cases of much serious offenses. In some cases, notice is also required to be given to the public prosecutor. These Courts can cancel bail granted to any person."[65]

❖ **Bail in Case of Non-Bailable Offenses.**
"As already noted in case of non bailable offenses, bail is not a matter of right, under the Code of Criminal Procedure. It is a matter of judicial discretion regulated in part, by the provisions of the code and, in part, by certain principles that have been evolved in the case law."[66]

❖ "Whenever an application for bail is made to a court, it has first to decide whether the offence is bailable or non-bailable. If the offense is bailable, there is no problem. If the offense is non-bailable considerations such as the nature and seriousness of offense, the character of the evidence, circumstances peculiar to accused, a reasonable possibility of the accused not being secured, reasonable apprehension of the witness being tampered with the larger interests of the public or the state and similar other considerations should be taken into account before granting bail."[67]

❖ **Purpose and Amount of Bail**
The purpose of Bail Pending trial in criminal cases are to avoid un-necessary hardship to the accused persons some of whom may be ultimately found not guilty, and to permit the unhampered preparation of the defense and, at the same time, to ensure his presence on the various dates of hearing.[68]

[65] Para 2.5, Page 7-8, Chapter II, Present Law, Comparative Law and Questions for Consideration
[66] Para 2.9, Page 9, Chapter II, Present Law, Comparative Law and Questions for Consideration
[67] Para 2.11, Page.9. Chapter II, Present Law, Comparative Law and Questions for Consideration
[68] Para 2.14, Page.9. Chapter II, Present Law, Comparative Law and Questions for Consideration

- Theoretically, the amount of bail should be set in the light of all the factors, which bear upon the risk of the non-appearance of the accused for trial; the seriousness of the offense, the prima facie nature of case against him, the accused's character, history, reputation, antecedents and his capacity to secure bail. In practice, however, the paramount consideration which generally prevails is the nature of the offence.[69]

- **The Criminal Law Amendment Act, 1932**
  "Section 10(2) of the act that the State Government may, in certain contingencies, that an offense punishable under Section 188 or 506 of the Penal Code shall be non-bailable.
  Reasons for Liberal Bail Approach
  ….in the first place, person accused of crime is entitled to remain free until adjudicated guilty, so long his freedom doesn't threaten to subvert the orderly process of criminal justice…
  Secondly pending formal adjudication of guilt, his status ought not to be humiliated to that of a convicted person.
  Thirdly, if kept in custody, he is impeded in preparing his defense, since in custody; unrestricted consultation with counsel is restricted.
  Fourthly, If he is kept in custody, his earning capacity is impaired thereby hardship and economic deprivation.
  Fifthly, there is a large class of persons for whom any bail is "excessive bail", they are persons loosely referred to as indigents. For such persons, provisions of bail prove more or less illusory."[70]

- **Expansion of Categories of Bailable Offenses**
  "In deciding the question whether any particular offence should or should not be included in the list of bailable offences under this head, we have had due regard to the gravity or otherwise of the offence, the range and ambit of the offense being so wide as to include within itself situations of aggravation, the probability of repetition of the offence if the alleged offender remains at large, the effect, if any, of his remaining at large on public order and on even flow of the life of the community, and other relevant considerations.[71]
  As regards offences under the Indian Penal Code which are punishable with more than three years' imprisonment we do not consider it necessary to make bailable any of these offences which are at present non-bailable.[72]
- **Amount of Bail**

  "…where the order of the court releasing them on bail is passed, sometimes they cannot furnish the bail bond because of their inability to find appropriate surety for the requisite amount. This could happen if the amount of the bond for which they have to find surety is so excessive that it is difficult for them to get competent surety for the requisite amount."[73]
- "It was suggested to us that one such possible device of ensuring that the legal provision prohibiting demand of excessive bail is properly enforced is to impose a limit- not as an unalterable maximum but as a guideline for minor cases."[74]

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[69] Para 2.15 Page10, Chapter II, Present Law, Comparative Law and Questions for Consideration
[70] Para 2.22, Page 14, Chapter II, Present Law, Comparative Law and Questions for Consideration
[71], Para 4.4, Page 17, Chapter IV, Expansion of the Category of Bailable Offences
[72] Para 4.8, Page 17, Chapter IV, Expansion of the Category of Bailable Offences
[73] Para 5.1, Page 20, Chapter V, Amount of Bond
[74] Para 5.4, Page 20, Chapter V, Amount of Bond

- "We are, however, of the view that any such change might, in practice, favor rich persons rather than poor person. The object would thereby be defeated. It is therefore, not to impose any limit on the discretion of the Magistrate."[75]

- **Release on Bond without Sureties**
  Amendments:
  "In Section 436(1) explanation is to be added- If such person is unable to furnish bail within one month of the date of arrest, that circumstance shall, in the absence of reasons to be recorded by such officer or court, be a good fit ground for the release of such person on his executing a bond without sureties.
  In Section 437(1) Third Proviso to be added- Provided also that such an officer or court, if he thinks fit, may instead of taking bail from such a person, release him on his executing a bond without sureties for his appearance as hereinafter provided."[76]

- "New **Section 441A** added- A person released on bail or on a bond without sureties in criminal proceedings shall be bound to comply with the terms of the bond executed for the purpose in the matter of appearance in court or before the police officer and surrender to custody."[77]

- Consequential to recommendation made in this report to liberalize the law relating to bail, it would be necessary to create an offence of failure, on the part of the person released on bail or on bond without sureties, to appear in compliance with the terms of the bond and surrender too custody.[78] **(229A)**

- The punishment which we have proposed is imprisonment up to two years. Although the general approach adopted by us in this Report would suggest that the offence should be bailable, that principle cannot, for obvious reasons, be applied to this offense.[79]

[75] Para 5.6, Page 20, Chapter V, Amount of Bond
[76] Para 6.5, Page. 22, Chapter VI, Release on Bond without Sureties
[77] Para 7.1, Page 23, Chapter VII, Obligation to appear and surrender – Violation to be an offence
[78] Para 7.1, Page 23, Chapter VII, Obligation to appear and surrender – Violation to be an offence
[79] Para 7.3 Page 24, Chapter VII, Obligation to appear and surrender – Violation to be an offence

Section VI:
ADVISORIES ISSUED BY THE MINISTRY OF HOME AFFAIRS

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No. V-13013/70/2012-IS(VI)
Government of India
Ministry of Home Affairs
(CS Division)
*****-

5th Floor, NDCC-II Building
Jai Singh Road, New Delhi
the 17th January 2013

To
The Home Secretaries
of all States/UTs

Sub: Use of Section 436A of the Cr.P.C to reduce overcrowding of prisons.

Sir/Ma'am,

The State Governments and Union Territories have been requested to adopt various measures related to reduction in overcrowding an advisory dated 9th May 20111 of the Ministry of Home Affairs. One of the initiatives taken by the Government of India has been the amendment of section 436 in the Cr.P.C. through the Criminal Procedure Code Amendment Act 2005 and the insertion of a new section 436A. The section 436A is reproduced below:

"***436A. Maximum period for which an undertrial prisoner can be detained*** *– Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:*
Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:
Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.
Explanation. – In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded".

_____
1 http://mha.nic.in/pdfs/PrisonAdvisories-1011.pdf

Thus u/s 436A an under trial prisoner (UTP) has the right to seek bail on serving more than one half of the maximum possible sentence on their personal bond. No person can be detained in prison as an undertrial for a period exceeding the maximum possible sentence. This provision is, however, not applicable for those who are charged with offences punishable with the death sentence.
Although the percentage overcrowding in jails is steadily going down but even now in our prisons 67% of the inmates are undertrials as per 2011 data collected by NCRB.
Invariably it has been found that only the poor and indigent who have not been able to put up the surety are those who have continued to languish as under-trials for very long periods and that too for minor offences. The lack of adequate legal aid and a general lack of

awareness about rights of arrestees are principal reasons for the continued detention of individuals accused of bailable offences, where bail is a matter of right and where an order of detention is supposed to be an aberration. Thus a disproportionate amount of our prison-space and resources for prison maintenance are being invested on UTPs which is not sustainable.

States/UTs may hence consider taking the following actions:

1. Constitute a Review Committee in every district with the District Judge as Chairman, and the District Magistrate and District SP as members to meet every three months and review the cases.

2. Jail Superintendent should conduct a survey of all cases where the UTPs have completed more than one-fourth of the maximum sentence. He should prepare a survey list and send the same to the District Legal Service Authority (DLSA) as well as the UT Review Committee.

3. Prison authorities may educate undertrial prisoners on their rights to bail.

4. Provide legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount.

5. The list should be made available to the non-official visitors as well as District Magistrates/Judges who conduct periodic inspections of the jails.

6. Home Department may also develop management information system to ascertain the progress made jail-wise in this regard.

Action taken to implement the suggestions in all the jails may kindly be intimated within one month. The receipt of this letter may please be acknowledged.

Yours sincerely

Sd/-

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Section VII:
SELF ASSESSMENT QUESTIONS

HkkX VII:
Lok-मूल्यांकन के लिए प्रश्न

PRE AND POST WORKSHOP ASSESSMENT FORM ON PRE-TRIAL DETENTION

Bail and Bond

1. The constitutional principles underlying the legal provision for bail are:

   - Article 14
   - Article 21
   - Article 19
   - Article 22

2. Which of the following officials have the power of release on bail:

   - Executive Magistrate:
   - High Court Judge:
   - Sessions Judge:
   - Trial Court Judge:
   - Police Officer:

3. Please mark True or False:

   a) Police has the power to release a person on bail in cases of bailable offences.
   b) Legal provisions related to bailable offences are provided under S.436A of the CrPC.
   c) Police has the power to release a person on bail in cases of non-bailable offences.
   d) Legal provisions related to non-bailable offences are provided under S.437 of the CrPC.

4. Can bail be granted to compensate delay in trial?

   - Yes
   - No

5. Can the court release a person on bail if trial is not completed within stipulated time as provided in the Cr.P.C.?

   - Yes
   - No

6. State True or False. The following persons are eligible for release on personal bond without surety.

   - A migrant labourer
   - An IT professional
   - A homeless person
   - A business person

7. At what stage is an accused eligible for release on personal bond?

   (a) At the time of police custody
   (b) First production
   (c) Subsequent Remand
   (d) All the Above

8. Can an accused be released on personal bond in non-bailable offences? Please mention Yes or NO.

   - Yes

   - No

9. Please cite relevant jurisprudence for this?

   - Supreme Court:

   - Rajasthan High Court:

10. What are the criteria for judicial discretion while considering a bail application?

    - Evidence
    - Argument
    - Precedent
    - Merit
    - Sickness or Infirmity of the Accused
    - Gender
    - Speedy Trial
    - All of this
    - None of this

11. What are the legal provisions specified in the CR.P.C. for determining bail amount ?

    - Sec. 436
    - Sec. 436A
    - Sec. 440
    - Sec. 439

12. What are the legal provisions for bail when accused is detained under S 107, 109,110?

13. The Sections that provide for anticipatory bail are:

    - Sec. 436
    - Sec. 437
    - Sec. 438
    - Sec. 440

14. Anticipatory Bail is a matter of Right. Please Tick the correct answer

    - True
    - False

15. Can anticipatory bail be refused?

    - If Yes, mention grounds----------
    - If No, mention why not----------

16. S 107, S 108, S 109, S 110 of the Cr.P.C. relate to securities for maintaining peace. What are the options for bail in the event of failure of the person failing to furnish security under these sections?

    _____

    _____

17. What are the options for bail in the event of arrest under S 151?

    _____

    _____

18. Can bail be granted in the following cases:

    (a) 498A: Yes / No

    (b) NDPS Act: Yes/No

    (c) Rajasthan Excise Act:Yes/No

    (d) Rajasthan Bovine Act:Yes/No

19. The options before the magistrate when accused has jumped bail include:

    a) Issue of a bailable warrant to arrest the accused
    b) Issue of non-bailable warrant to arrest the accused
    c) Issue an order proclaiming the accused as an absconder
    d) Refuse all future bail applications

20. When does the right to compulsory/default bail accrue?
    a. On the expiry of 60/90 days from the date of arrest.
    b. On the expiry of 60/90 days from the date of first production.

21. How will you calculate the period of 60/90 days in regard to compulsory bail? Tick the right option.

    a) From the date of arrest.
    b) From the date of first production.
    c) From the date when police custody is over and judicial custody begins.

22. Will bail under S 167 stand cancelled automatically on the charge-sheet being filed?

    a) Yes
    b) No

23. On what legal grounds can bail be cancelled?

a) Tampering with evidence
b) Threatening of witnesses
c) Others: Please mention _____

24. Can bail be cancelled in the case of bailable offence?

a) Yes
b) No

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1. **संवैधानिक प्रावधान के तहत जमानत प्रक्रिया के कौन से सिद्धांत लागू होते हैं**
   - अनुच्छेद 14
   - अनुच्छेद 21
   - अनुच्छेद 19
   - अनुच्छेद 22

2. **किन न्याय अधिकारियों के पास जमानत पर रिहा करने का अधिकार है**
   - कार्यकारी मजिस्ट्रेट
   - उच्च न्यायालय के न्यायाधीश
   - सत्र न्यायाधीश
   - ट्रयल कोर्ट के न्यायाधीश
   - पुलिस अधिकारी

3. **सही या गलत चिन्हित करें**
   - जमानती अपराध के मामलों में पुलिस के पास जमानत पर रिहा करने का अधिकार है
   - जमानती अपराधों के कानूनी प्रावधान, दण्ड प्रक्रिया संहिता की धारा 436 ए के अंतर्गत आते हैं
   - गैर जमानती अपराध के मामले में पुलिस के पास जमानत में रिहा करने का अधिकरा है
   - गैर जमानती अपराधों के कानूनी प्रावधान, दण्ड प्रक्रिया संहिता की धारा 437 ए के अंतर्गत आते हैं

4. **क्या सुनवाई में देरी की वजह से जमानत दी जा सकती है**
   - हां
   - नहीं

5. **यदि सुनवाई दण्ड प्रक्रिया संहिता द्वारा प्रदत समय सीमा में हो पाती तो अदालत जमानत दे सकती है**
   - हां
   - नहीं

6. **सही या गलत बताएः निम्न लिखित व्यक्ति बिना मुचलके के निजी बांड पर रिहा हो सकते है**
   - प्रवासी मजदूर
   - आईटी पेशेवर
   - बेघर व्यक्ति
   - व्यापारी

7. **गैर जमानती मामलों में, अभियुक्त को किस अवस्था रिहा निजी बांड पर रिहा किया जा सकता है**
   - पुलिस हिरासत के समय
   - प्रथम प्रस्तुति के वक्त
   - रिमांड के बाद
   - उपरोक्त सभी में

8. सही या गलतः आरोपी गैर जमानती अपराधों में निजी बांड पर रिहा किया जा सकता है
   - हां
   - नहीं

9. इनकी न्यायषास्त्र संबंधी व्याख्या क्या हैं
   - सर्वोच्च न्यायालय
   - राजस्थान उच्च न्यायालय

10. जमानत याचिका पर विचार करत समय न्यायिक विवेक के क्या मानदंड है
   - साक्ष्य
   - तर्क
   - मिसाल
   - मेरिट
   - अभियुक्त की बीमारी या दुर्बलता
   - लिंग
   - स्पीडी ट्रायल
   - सभी
   - इनमें से कोई नहीं

11. दंड प्रक्रिया संहिता के अनुसार जमानत राषी निर्धारित करने के प्रावधान क्या है
   - धारा 436
   - धारा 436ए
   - धारा 440
   - धारा 439

12. जिस अभियुक्त को धारा 107, 109, 110 के तहत हिरासत में लिया गया है उस व्यक्ति के जमानत के प्रवाधान क्या है

13. किन धाराओं के तहत अग्रिम जमानत प्रदान की जाती है
   - धारा 436
   - धारा 437
   - धारा 438
   - धारा 440

14. अग्रिम जमानत अधिकार है
   - सही
   - गलत

15. क्या अग्रिम जमानत खारिज की जा सकती है
   - यदि हा, तो कारण बताएं
   - यदि नही, तो कारण बताएं

16. दंड प्रक्रिया संहिता की धारा 107, 108, 109, 110 कानून व्यवस्था बनाए रखने से संबंधित धाराएं हैं। यदि कोई व्यक्ति मुचलका जमा नहीं कर सकता तो उसके पास जमानत के क्या प्रावधान हैं

_____
_____

17. **धारा 151 के तहत गिरफ्तारी में जमानत के क्या विकल्प हैं**

_____
_____

18. **क्या इन मामलों में जमानत दी जा सकती है**

- 498ए : हां या नहीं
- एनडीपीएस कानूनः हां या नहीं
- राजस्थान आबकारी कानूनः हां या नहीं
- राजस्थान पशु कानून : हां या नहीं

19. **ऐसे मामलों में जबकि आरोपी ने जमानत की शर्तो का उल्लंघन किया हो, मजिस्ट्रेट के पास क्या विकल्प हैं**

- जमानती वारेंट जारी करना
- गैर जमानती वारेंट जारी करना
- आरोपी को भगौड़ा घोषित करना
- भविष्य की सभी जमानत याचिकाओं को रद्द करना

20. **कौन सी अवस्था में जमानत अनिवार्य हो जाती है**
- गिरफ्तारी के बाद 60 अथवा 90 दिन की अवधी समाप्त होने पर
- मजिस्ट्रेट के समक्ष पहली बार प्रस्तुत करने के बाद 60 अथवा 90 दिनों की समय सीमा पूरी होने पर

21. **अनिवार्य जमानत के प्रावधान के प्रयोग के लिए आप 60/90 दिन की अवधी को कैसे निर्धारित करेंगे।**
- गिरफ्तारी की तारीख से
- पहली बार प्रस्तुती की तारीख से
- पुलिस हिरासत की अवधी समाप्त होने के बाद न्यायिक हिरासत की अवधी शुरू होने के दिन से

22. **आरोप पत्र दायर करने की स्थिती में, क्या धारा 167 के तहत प्राप्त जमानत से स्वतः रद्द हो जाती है।**
- हां
- नहीं

23. **किन कानूनी हालातों में जमानत रद्द हो सकती है**
- साक्ष्यों के साथ छेड़छाड़
- गवाहों के साथ छेड़छाड़
- अन्य, कृपया उल्लेख करें ——————————

24. **क्या जमानती मामलों में जमानत रद्द हो सकती है**
- हां
- नहीं

Commonwealth Human Rights Initiative's (CHRI) Work on Pre-trial Detention in Rajasthan

As part of its mandate to ensure that the working of the criminal justice system promotes fair trial and prevents unnecessary detention, Commonwealth Human Rights Initiative (CHRI) has been conducting a series of micro studies in Rajasthan, using the Right to Information Act, interviews with undertrial prisoners in judicial custody and court observation exercises to understand and record court practices related to pre-trial detention such as court production, remand and bail.

Pursuant to a study on access to counsel in the district jail of Alwar that was completed in November 2010, CHRI conducted four workshops between February 2011 and September 2011 with a focus on effective representation and rights of the accused in the three towns of Jaipur, Jodhpur and Alwar. One of the major findings of the study was that a large percentage of undertrials had no access to legal representation or legal aid, or representation was obtained after the first production, sometimes at the time of filing of the chargesheet. The study also indicated poor lawyer-client relationship, as even those undertrials who had legal representation could only meet their respective lawyer in the courts.

With an aim to improving early access to counsel and effective representation, CHRI has also been conducting workshops in collaboration with the District Legal Services Authority in Jodhpur district of the state of Rajasthan on remand and bail for legal aid lawyers appointed under the State's Model Scheme of 'remand and bail lawyers'. Alongside, CHRI has engaged with the Jodhpur Bar Association with a plan to jointly hold regular discussions and debates on topical legal issues for lawyers.

In 2013, CHRI conducted three impact assessment workshops to evaluate the impacts of the workshops in Jaipur, Jodhpur and Alwar. The broad impact assessment areas were interventions, preparedness and results vis-à-vis arrest and first production, bail, remand, chargesheet, pro-bono lawyering, lawyer- client relationship, and defense preparedness. The assessment also highlighted future learning needs of the lawyers.

With the objective to strengthen the legal aid structure inside prison and to demonstrate a legal aid environment where no suspect/accused goes unrepresented, CHRI, in 2012, began *Swadhikaar,* a legal aid services initiative in Jodhpur Central Prison. The legal aid clinic's area of work ranges from identifying illegal and unnecessary detentions, providing legal representation through referrals to DLSA and to the CJM, the Convenor of the Periodic Review Committee for Undertrials, drafting petitions and applications on behalf of the inmates, providing legal counselling and guidance whenever sought by the inmates, conducting legal aid awareness activities inside the prison and training convicts as jail paralegals to support the work of the DLSA and *Swadhikaar* legal aid clinic.

Many of these activities have been undertaken in close co-operation with the Rajasthan Prisons Department, the District Legal Services Authority, Jodhpur, the International Bridges to Justice and the National Law University (NLU), Jodhpur.

सुनवाई-पूर्व कैद से संबंधित सीएचआरआई का राजस्थान में कार्य-कलाप

कॉमनवेल्थ ह्यूमन राइटस् इनिशिएटिव (सीएचआरआई) का एक संकल्प दंडपरक न्याय-व्यवस्था के भीतर निष्पक्ष सुनवाई को सुनिश्चित करना और अनावश्यक कैद को रोकना है। अपने इस संकल्प के एक हिस्से के रुप में सीएचआरआई राजस्थान में व्यष्टिगत अध्ययनों की एक ऋंखला चला रहा है जिसमें सूचना का अधिकार अधिनिय़म का इस्तेमाल करना, न्यायिक हिरासत में लिए गए विचाराधीन कैदियों का साक्षात्कार लेना तथा अदालती कार्रवाइयों के नजदीकी अवलोकन के जरिए विचाराधीन कैदी से संबंधित कोर्ट प्रोडक्शन, रिमांड और बेल सरीखे अदालती कार्य-व्यवहारों को दर्ज करना शामिल है।

साल 2010 के नवंबर महीने में सीएचआरआई ने अलवर जिला-जेल में प्राप्त न्यायिक परामर्श की स्थिति के अवलोकन पर केंद्रित एक अध्ययन पूरा किया था। इस अध्ययन के बाद इसी क्रम में साल 2011 के फरवरी से सितंबर महीने के बीच तीन शहरों जयपुर, जोधपुर और अलवर में चार कार्यशालाओं का आयोजन किया गया। इन कार्यशालाओं का जोर अभियुक्त के कारगर प्रतिनिधित्व और उसके अधिकारों पर था। अध्ययन का एक मुख्य निष्कर्ष यह था कि ज्यादातर विचारधीन कैदी न्यायिक प्रतिनिधित्व या विधिक सहायता हासिल नहीं कर पा रहे या फिर उन्हें न्यायिक प्रतिनिधित्व अपने प्रथम कोर्ट-प्रॉडक्शनव के बाद हासिल हुआ, कभी-कभी तो आरोप-पत्र दाखिल किए जाने के बाद उन्हें वकील की सहायता मिल पायी। इस अध्ययन से यह भी स्पष्ट हुआ कि वकील और मुवक्कील के बीच संबंधों की स्थिति अच्छी नहीं है क्योंकि जिन विचाराधीन कैदियों को अपनी पैरवी के लिए वकील की सहायता हासिल हो पायी थी, उनकी अपने-अपने वकील से मुलाकात अदालत पहुंचकर ही हो पायी।

विचाराधीन कैदियों को शुरुआती चरण में ही न्यायिक परामर्श मिले जाये और अदालती कार्रवाई में ऐसे कैदियों की पैरवी कारगर तरीके से हो सके, इस लक्ष्य को ध्यान में रखते हुए सीएचआरआई राजस्थान के जोधपुर जिले में जिला विधिक सेवा प्राधिकरण के साथ मिलकर रिमांड और बेल के मामले में सहायता प्रदान करने के मुद्दे पर वकीलों को लेकर कार्यशाला का आयोजन करता रहा है। इन वकीलों की नियुक्ति राज्य सरकार की एक मॉडल योजना रिमांड एंड बेल लॉयर्स के तहत की गई है। इसके साथ-

साथ सीएचआरआई की एक योजना जोधपुर बार एसोसिएशन के साथ मिलकर प्रासंगिक कानूनी मसलों पर नियमित चर्चा और बहस-मुबाहिसा चलाने की है।

जयपुर, जोधपुर और अलवर में आयोजित कार्यशालाओं के प्रभाव के आकलन के लिए साल 2013 में सीएचआरआई ने तीन इम्पैक्ट असेसमेंट कार्यशालाएं आयोजित कीं। प्रभाव के आकलन के अंतर्गत मुख्य तौर पर यह जानने की कोशिश की गई कि गिरफ्तारी और प्रथम कोर्ट-प्रॉडक्शन, बेल, रिमांड, चार्जशीट, जन-कल्याण के निमित्त की गई वकालत, वकील और मुवक्कील के आपसी संबंध तथा बचाव-पक्ष की तरफ से की जाने वाली तैयारी के मामले में हस्तक्षेप, बंदोबस्त और परिणाम क्या रहे। प्रभाव के आकलन से यह बात भी उभरकर सामने आई कि आगे आने वाले दिनों में वकीलों के लिए किन बातों को जानना-सीखना जरुरी होगा।

कारागृह के भीतर और उसके बाहर हासिल होने वाली विधिक सहायता का ढांचा मजबूत हो और विधिक वातावरण कुछ इस तरह का बने कि संदिग्ध या अभियुक्त करार दिया गया कोई भी व्यक्ति कानूनी पैरवी से वंचित ना रहे- इस उद्देश्य को ध्यान में रखते हुए सीएचआरआई ने साल 2012 में पहल करते हुए जोधपुर केंद्रीय कारा में एक विधिक सहायता सेवा 'स्वाधिकार' नाम से शुरु की। विधिक सेवा केंद्र के कामकाज के दायरे में अनेक चीजें शामिल हैं, जैसे- गैरकानूनी और अनावश्यक नजरबंदी की पहचान करना, डीएलएसए और सीजेएम के पास रेफरल के माध्यम से कानूनी प्रतिनिधित्व प्रदान करना, विचाराधीन कैदियों के लिए आवधिक पुनर्वीक्षा समिति का संयोजन, बंदियों के लिए अर्जी और आवेदन लिखना, बंदी के कहने पर उसे कानूनी परामर्श और मार्गदर्शन प्रदान करना, कारागृह के भीतर विधिक सहायता विषयक जागृति की गतिविधियां संचालित करना तथा डीएलएसए और 'स्वाधिकार' विधिक सेवा केंद्र की मदद के लिए अभियुक्तों को जेल-पैरालीगल्स् के रुप में प्रशिक्षित करना।

इनमें से कई गतिविधियां राजस्थान कारा विभाग, जिला विधिक सहायता प्राधिकरण (जोधपुर) तथा इंटरनेशनल ब्रिजेज टू जस्टिस एंड द नेशनल लॉ यूनिवर्सिटी (जोधपुर) के निकट सहयोग से संचालित की जा रही हैं।

About the Course

This Legal Refresher Course on Pre-trial Justice will be conducted primarily for legal aid advocates by the Prison Reforms Programme of the Commonwealth Human Rights Initiative (CHRI), in collaboration with State Legal Services Authority (SLSA), Rajasthan, the District Legal Services Authority (DLSA), Jodhpur, in co-operation with Jodhpur Bar Association, Rajasthan High Court Lawyers Association, and the International Bridges to Justice.

The course will help legal aid advocates to find solutions to unnecessary and long detentions in police and judicial custody. Through a revisiting of constitutional values and legal safeguards of writs and bail; re-familiarising with skills of opposing unnecessary custody, argumentation, cross-examination, evidence-building; reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

By focusing on the short term and long term impacts of incarceration on the prisoner, the Course will approach their constructive diagnosis with a focus on due process treatment, strengthening legal aid services, and effective legal interventions by advocates that are grounded in the organic link between police reform, jail reform, legal aid reform and judicial reforms.

The Course will include Refresher Workshops on Cr.P.C, Workshops on Case Analysis, Legal Strategies, Legal Aid & Pro-Bono Lawyering, New Developments in Evidence, a Module on Law, Justice & Everything in Between; Rule of Law and Reform of the Criminal Justice System and will use lectures and talks, exercises and case studies, exposures to places of custody, synthesis workshops and mentoring sessions to advance the knowledge and skills of the participants towards furthering the goals of early access to counsel, effective representation and access to justice for all.

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