

PAPER FOR THE WORKSHOP OF 21/12/2014

SUBJECT - “Recent trends of arrest, remand, bail and forfeiture of bail bonds.”

Group-A**ARREST :-**

The word 'arrest' is derived from the French word 'Arrester' meaning 'to stop or stay' and signifies a restraint of the person.

Definition by Supreme Court :-

In the case of *Directorate of Enforcement..Vs..Deepak Mahajan*(AIR 1994 SC 1775; 1994 CR LJ 2269), the Hon'ble Supreme Court has elaborately dealt with “arrest” as under:

“46. The word 'arrest' is derived from the French word 'Arreter' meaning 'to stop or stay' and signifies a restraint of the person.”The word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases. When used in the legal sense in connection with criminal offences, an 'arrest' consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by a seizure or detention of the person in the manner known to law, which is so understood by the person arrested.”

“48. Thus the Code gives power of arrest not only to a police officer and a Magistrate but also under certain circumstances or given situations to private persons. Further, when an accused person appears before a Magistrate or surrenders voluntarily, the Magistrate is empowered to take that accused person into custody and deal with him according to law. Needless to emphasize that the arrest of a person is a condition precedent for taking him into judicial custody thereof. To put it differently, the taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender. It will be appropriate, at this stage, to note that in every arrest, there is custody but not vice-versa and that both of the words 'custody' and 'arrest' are not synonymous terms. Though 'custody' may amount to an arrest in certain circumstances but not under all circumstances. (Sandeep Bhatra..Vs..State of Rajasthan and another 2012 Cr LJ 1819 (Rajasthan High Court)).

Relevant provisions of Cr.P.C. about arrest :-

Chapter V of the Code of Criminal Procedure, 1973 deals with the arrest of persons. Section 41 to 60 of Chapter V deals with “Arrest of Persons. Broadly speaking, arrest may be classified into two categories namely, (I) Arrest under warrants issued by a court; and (ii) Arrests without warrants issued by a court.

Relevant provisions of Constitution about arrest :-

Article 22 of the Constitution deals with protection against arrest & detention in certain cases. Article 22 can be divided in two parts. One part deals with persons arrested under the ordinary law of crimes and the other part deals with persons detained under the law of preventive detention.

In view of increasing incidence of violence and torture in custody, the Supreme Court of India (in *D.K.Basu ..Vs.. State of*

West Bengal AIR 1997 SC 610) laid down 11 specific requirements and procedure that the police & other agencies have to follow for the arrest, detention & interrogation of any person. These are :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he

is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the ilaka Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

In the case of ***Siddharam Satlingappa***

Mhetre..Vs..State of Mah. And others 2011 SAR (Cri) 118 (SC), the Hon'ble Apex Court has dealt with the point as to when there should be arrest & procedure thereon & held as under :

“123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.”

“129. In case the arrest is imperative, according to the facts of the case, in that event, the arresting officer must clearly record the reasons for the arrest of the accused before the arrest in the case diary, but in exceptional cases where it becomes imperative to arrest the accused immediately, the reasons be recorded in the case diary immediately after the arrest is made without loss of any time so that the court has an opportunity to properly consider the case for grant or refusal of bail in the light of reasons recorded by the arresting officer.

In the recent case of ***Arnesh Kumar Vs. State of Bihar & anr. (Criminal Appeal No.1277/2014 dt.02/07/2014)***, the Hon'ble Supreme Court has issued following directions in respect of all offences which are punishable with imprisonment for a term which may be less than 7 years or which may extent to 7 years; whether with or without fine;

All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

All police officers be provided with a check list containing specified sub- clauses under Section 41(1)(b)(ii);

The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for

further detention;

The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;

The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

The directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

REMAND :-**Meaning, object & provisions of 'Remand' :**

The word ' remand ' is not defined in the Code of Criminal Procedure. The object of remand provisions as enumerated in Section 157 and 167 of the Code of Criminal Procedure, is to see that the person arrested by the Police being brought before a Magistrate with least possible delay, in order to enable the later to judge, if such person has to be further kept in custody and also to enable such person to make any representation, if he may wish to make in the matter. By these provisions, it is also intended to prevent the possible abuse by the police of their power in trying to make discoveries of crimes by means of duress, terror and wrongful confinement.

The scheme of the provisions contained in Sections 167, 209 and 309 is as under. Section 167 provides for the detention of an accused during pendency of investigation. Section 209 provides the detention of an accused during pendency of Commitment Proceedings and Section 309(2) provides for detention of an accused during pendency of trial or inquiry.

Guidelines regarding Remand :

- 1) The period of 24 hours begins to run the moment a person is arrested by any police officer.
- 2) Fifteen days of time for remand is to be counted from the first date of production of accused before court.
- 3) If the accused is juvenile, his age is to be ascertained and if he finds that he is juvenile, then he be directed to be produced before Juvenile Justice Board.
- 4) A person held in judicial custody can, if circumstances justify, be transferred to police custody or vice versa within a period of 15 days referred to in section 167(2) of the Cr. P.C..
(Kasanapu Ramreddy..Vs.. State of A.P. & others AIR 1994 SC 1447).

The arrest of a person is a condition precedent for taking him into judicial custody. ***(Directorate of Enforcement..Vs..Deepak Mahajan AIR 1994 SC 1775).***

Remand to police custody :

1) It is plain that those 15 days being to run immediately after the accused is produced before the Magistrate in accordance with sub-section (1). Police can not, therefore, be granted custody of the accused after the lapse of the first 15 days. (1982 Cri. L J 2366).

2) When a Magistrate remands a person to police custody, he has to conform to three conditions: (i) such custody should not be made of more than 15 days on the whole; (ii) reasons should be recorded for passing of such an order: (iii) A copy of the order and the

reasons should be sent to the Chief Judicial Magistrate.

3) Before passing an order remanding the accused to police custody, the Magistrate should first be satisfied that the accusations against him are well-founded. For this purpose he should not only go through the case-diary and the statements of witnesses recorded u/s 161, but he should scrutinize the record and decide whether the formalities prescribed have been followed. (**1973 Cri. L J. 869: 1973 Mad L J 157**).

Police Custody in Bailable offense:-

Bail in bailable offenses is right of accused, However, P.C.R can be claimed by I.O in bailable offense subject to condition that if the accused fails to furnish surety, then & then only P.C.R can be claimed. But as soon as accused furnishes surety, the Magistrate has to pass an order of release of accused forthwith.

a) AIR 2009 S.C.1341 Yaman ..Vs.. State of Rajasthan.

b) AIR 2009 SC 1362.

Magistrate has no power to discharge accused in session triable cases :

In the case of **Ajay kumar Verma ..Vs.. State of Rajasthan (AIR 2013 SC 633)** the Hon'ble Apex Court has held that the Magistrate has no power to discharge accused in session triable cases.

BAIL :-

Bail in bailable offence (S. 436) :

In bailable offences bail is a right and not a favour. In such offences there is no question of any discretion in granting bail. Bail can be claimed as of right and there is a statutory duty imposed upon the Police Officer as well as the Court to release a person on bail if he

is prepared to give bail. Such a person can also be released on his own bond in a fit case. It is only where the accused is unable to furnish bail then he should be kept in detention.

So far as discretion of Court in granting bail in bailable offence is concerned, the Honble Apex Court has held in the case of ***Rasiklal..Vs..Kishore Khanchand Wadwani (AIR 2009 SC 1341=2009 Cr LJ 1887)*** as under:

“6.The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him.”

Bail u/s 436-A :

There had been instances where under trial prisoners were

detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence. A new section 436-A is inserted in the Court to provide that where an under trial prisoner other than the offence for which death has been prescribed as one of the punishments, has been under detention for a period extending to one-half of the maximum period of imprisonment provided for the alleged offence, he should be released on his personal bond, with or without sureties.

It is also provided that in no case the under-trial be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.

Bail in non-bailable offence (S. 437) :-

Section 437 of the Code of Criminal Procedure gives the Court other than the High Court or Court of Session power to release accused on bail in a non-bailable cases, except where there appear reasonable grounds that the accused has been guilty of an offence punishable with death or with imprisonment for life. But a person under the age of sixteen years; a woman; or a sick or infirm person may be released on bail even if the offence charged is punishable with death or imprisonment for life.

In the case of *State of Rajasthan..Vs..Balchand AIR 1977 SC 2447= 1978 Cr LJ 195*), the Honble Supreme Court by observing that basic rule is bail and not jail held as under:

“The basic rule is bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like by the petitioner who seeks enlargement on bail from the court. When considering the question of bail, the gravity of the offence involved and the heinousness of the crime which are likely to induce the petitioner to avoid the course of justice must weigh with the court.”

In case of *Jayendra Sarswati Swamigal ..Vrs.. State of Tamilnadu (AIR 2005 SC 716)*, the Hon'ble Apex Court has laid down the following factors to be considered at the time of deciding bail application :

The considerations which normally weigh with the Court in granting bail in non-bailable offense are –

- 1) The nature of seriousness of offense;
- 2) the character of evidence; circumstances which are peculiar to the accused;
- 3) a reasonable possibility of the presence of the accused not being secured at the trial;
- 4) reasonable apprehension of witnesses being tampered with;
- 5) the larger interest of the public or the state and the other similar factors which may be relevant in the facts and circumstances of the case.”

Bail in non-bailable offence (S. 439) :-

Section 439 of the Code of Criminal Procedure gives an unfettered discretion to the High Court or Court of Session to admit

an accused person to bail, but that discretion must be exercised judicially. The power of the High Court and of the Court of Session to grant bail is not fettered by the restrictions contained in section 437.

Factors to be taken into consideration for the grant of bail under this section are substantially same as those u/s 438. There is no substantial difference between section 438 and section 439. The only difference is that u/s 438, the person approaches the Court before he is arrested; whereas u/s 439 he approaches the Court after he is arrested.

In the case of *Sanjay Chandra ..Vs.. C.B.I.. popularly known as 2G Scam (2012)1 SCC 40*, the Hon'ble Apex Court has observed about bail, its purpose & how discretion shall be used in cases involving economic offences as under.

“40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts & 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 primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.”

Anticipatory bail :

In the case of *Gurbaksh Singh Sibbia & others ..Vs.. State of Punjab (AIR 1980 SC 1632; 1980 Cr LJ 1125)* in para 122 the Hon'ble Apex Court has laid down the following factors & parameters which can be taken into consideration while dealing with application for anticipatory bail :

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused 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;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

So far as imposition of conditions are concerned, the Hon'ble Apex Court in the case of *Munish Bhasin & ors. ..Vs.. State (Govt. of N.C.T. Of Delhi) & anr. (AIR 2009 SC 2072)* has laid down as under:

Criminal P.C. (2 of 1974), S. 438 – Anticipatory bail – Grant of – Harsh, onerous, excessive, irrelevant or freakish conditions cannot be imposed on accused.

Now very recently the apex court in the case of *Siddharam Satalingappa Mhetre ..Vs.. State of Maharashtra (2011) 1 SCC 694* very elaborately and exhaustively traced the evolutionary development and exposition of the concept of anticipatory bail and enunciated certain salient features and this exercise of this apex court certainly very reflective and displays a rare jurisdictional reason in as much as that we now have a conceptually clear position on practically every limb of this provision.

2. A large number of people are languishing in jail for a long time because S.438 of Cr. P.C has not been allowed its full play. The observation of some courts that S.438 Cr. P.C should be invoked only in exceptional cases or rare cases is erroneous.

3. In the present vitiated, polluted and contaminated political atmosphere of present day, it has become fashion to revenge the adversary by implicating him into false and fabricated cases and involving big-wigs in many a time unfounded rackets and these practices are nearing flash point,. It was therefore very necessary that provisions of anticipatory bail become liberalized. It has now been done.

4. “In a barbaric society, you can hardly ask for bail; in a civilized society, you can hardly refuse it”. The bail is a rule and refusal is an exception. Liberty is precious to an individual but simultaneously it is also important that societal interest of

maintenance of law and order is adhered to.

5. New dimensions were added to the provision of bail; and new horizons were opened. It widened the powers of the superior Courts. The provision for anticipatory bail was meant for non-bailable offences. The provision of anticipatory bail was in that nature. It only originated in Indian Judicial mind. It was in consonance with our commitment to individual liberty, which implied scrutiny of every action of the investigating agency to provide effective check against arbitrariness and abuse of such power.

6. A direction u/s 438 is therefore intended to confer conditional immunity from the 'touch' or confinement contemplated by section 46 of the Code.

7. Since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of section 438 especially when not imposed by the legislature. An over-generous infusion of constraints and conditions, which are not to be found in section 438, can make its provisions constitutionally vulnerable since the right to personal freedom can not be made depend on compliance with unreasonable restrictions. The beneficent provision contained in section 438 must be saved, not jettisoned.

8. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.

Statutory bail :

Bail under section 167(2) of Cr. P.C. is popularly known as default bail. The accused is entitled to be released on bail on account of default on the part of the prosecution to file a charge-sheet under section 173 (2) within the prescribed period of 60 days or 90 days. The period of 60 days or 90 days commences from the date on which the accused is remanded and not from the date of arrest. (*Chaganti Satyanarayana and others Vs. State of Andhra*

Pradesh 1986 SCC (Cri.) 321, Central Bureau of Investigation, Special Investigation, Special Investigation Cell, New Delhi Vs. Anupam J. Kulkarni 1992 (3) Bom. CR 562 (SC).

Where a charge-sheet was filed within the stipulated period of investigation, but certain other informations and connected papers were submitted at a later date, even then it is held that the chargesheet is filed within the stipulated statutory time and the accused is not entitled to be released under proviso to sec. 167(2) Cr.P.C. Once the charge-sheet is filed, within that period section 167 ceases to apply and the accused cannot seek bail by virtue of proviso to Section 167(2).

If Bail application under section 167 (2) and charge sheet are filed on the same day, time for filing application is crucial and not when Magistrate considered it (***Jitendra Maroti Deotare & anr., vs. State of Maharashtra, 2009 (2) Bom.CR (Cri) 687.***)

Meaning of the term “ if not availed of ”

The indefeasible right accruing to the accused is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Cr. P.C. (***Sanjay Dutt Vs. State through C.B.I. Bombay, 1994 (5) SCC 410***)

The Hon'ble Supreme Court in ***Uday Mohanlal Acharya Vs. State of Maharashtra, AIR 2001 SC 1910***, by majority it is held that “The expression” if not already availed of

used by this Court in Sanjay Dutt's case (supra) must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in paragraph (a) of proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail, on being directed, then it has to be held that the accused has availed of his indefeasible right even though the Court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same.

The Hon'ble Supreme Court in *Sayed Mohd. Ahmed Kazmi Vs. State, 2013 (1) Bom.CR (Cri) 111* while discussing the ratio laid down in Sanjay Dutt's case and other cases observed that “statutory right has been once the charge sheet had been filed in the case and no application has been made prior thereto for grant of statutory bail extinguished. It is well established that if an accused does not exercise his right to grant of statutory bail before charge-sheet is filed he loses his right to such benefit once such charge sheet is filed and can thereafter only apply for regular bail.”

Meaning of word “ Extinguishing of Right”

Accused has not applied for statutory bail before charge sheet is filed. Meanwhile charge-sheet is filed, the right of accused of default bail stands extinguished as soon as charge sheet came to be filed.

Transit Bail :

Quite often it happens a person commits a crime in one State and is caught or apprehended by the police of another State. In such a case the police of the other State by which the offender has been arrested produces him before the Magistrate. The Magistrate thereupon orders the police to take (transfer) of the accused to the State in which he has committed the offence. For this transit of the accused the Magistrate has to pass an order either for his remand, bail, etc..

Interim Bail :-

In suitable circumstances, court can grant interim bail and can thereafter confirm such interim bail [*Pritam Singh ..Vs.. State of Punjab 1980 Cri.L.J. 1174 (Delhi)*]

The court can also grant interim anticipatory bail as per section 438(1-A) of the Code of Criminal Procedure.

CANCELLATION OF BAIL AND FORFEITURE OF BAIL**BONDS :-**

In case of a non-bailable offence, any court which has released a person on bail may, if it considers it necessary so to do, cancel the bail and direct that such person be arrested and committed to custody as per Section 437(5) of the Code. Cancellation necessarily involves a review of decision already made and can by and large be only permitted if by way of supervening circumstances it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial.

The bail once granted cannot be canceled suo-moto unless case for cancellation of bail is made out after hearing both the parties on proper application for cancellation. It has been held in the case of *R.J. Sharma..Vs..R.P. Patankar 1993 Cr L J 1993 (Bombay)* that the Magistrate ought to peruse the application for cancellation of bail and afford an opportunity to the accused to be heard.

The basic criteria for cancellation of bail are interference or even an attempt to interfere with the due course of justice and or any abuse of the indulgence/privilege granted to the accused. A reference of case of ***Ram Govind Upadhyaya..Vs..Sudarshan Sing 2002 CriL.J. 1849 (SC)*** is relevant.

There is distinction between rejection of bail in non-bailable case at the initial stage and the cancellation of bail already granted. Normally, very cogent and overwhelming grounds or circumstances are required for cancellation of bail already granted as held in the case of ***Savitri Agarwal Vs. State of Maharashtra AIR 2009 SC 3173.***

Factors to be considered for Cancellation of Bail :

As seen earlier, once the bail has been granted by the Court either on merit or in default, it can be canceled only for valid reasons. The normal grounds for canceling the bail are:

1. Jumping the bail,
2. Whenever the accused breached any condition of bail bond his bail may be canceled. e.g. threatening or influencing the witnesses, interfering with the investigation or prosecution,
3. When accused got bail by playing fraud upon Court or by giving wrong information the bail may be canceled,
4. The accused misuses his liberty by indulging in similar activities.
5. There is likelihood of the accused fleeing away to another country.

6. When accused has done or has tried to do something which hampers or is likely to hamper administration of justice in any manner,

The Court also can not cancel bail once granted to the accused suo motu unless an application for cancellation of bail is made out and after hearing both the sides. Mere absence of accused on one or two dates before the Court, may not be a ground to cancel the bail. Sufficient reasons must be there while canceling the bail. The inability of the accused also to be considered.

The accused is released on bail u/s. 167(2) also cannot be taken back in custody merely on filing of charge-sheet, which reveals the commission of a non-bailable offence unless there are strong grounds (*Aslam Babalal Desai Vs. State of Maharashtra, AIR 1993 SC 1*).

FORFEITURE OF BAIL BONDS :

Section 446 of Criminal Procedure Code lays down the procedure of forfeiture of bonds. It deals with two classes of bonds 1) Bond under the Code for appearance or for production of property before a Court and 2) Bonds taken by a Court under the Code. Action u/s 446 can be taken only when the bond is taken by the Court under the provisions of the Code such as section 88 for appearance.

Power to forfeit bond vests in the Criminal Court and a

Civil Court has no jurisdiction to entertain any suit about it. The Code before which an appearance is to be made or property is to be produced or the Court to which the case is subsequently transferred or, in respect of the second class of bonds, the Court by which the bond was taken, may satisfy itself as to forfeiture and call upon the person bound by it either to pay the penalty or to show cause.

Issuance of show cause notice to the surety is must. The Hon'ble Apex Court in ***Gulam Mehdi ..Vs.. State of Rajasthan AIR 1960 SC 1185*** that before a surety becomes liable to pay the amount of the bond forfeited it is necessary to give notice, and if the surety fails to show sufficient cause only then the court proceed to recover the money. Where no opportunity has been given to show cause why he should not be made to pay, the proceedings cannot be said to be in accordance with law and should be quashed.

The following case laws are relevant for discussion of today's workshop :

In *the case of Mohd. Kunju - v- State of karnataka reported in AIR 2000 SC 6*, it is held that a foreign national was facing charges u/ss. 466 and 471, IPC (forgery of Court record or public register and using as genuine a forged document) and a few other offences under the Foreigners Act, 1946 and the Passport Act,1967. He was released on board and secretly slipped away aboard. His two sureties had undertaken to pay Rs.25,000 each. The offences,though not trivial, were not very serious either, the Court

had not taken surrender of the passport and there was no connivance on the part of the sureties. The amount of penalty was reduced to Rs. 5000 per surety.

A contract of a surety and the contract of a person released on bail are independent of each other. The surety promises to pay a certain sum of money if the person accused does not appear at some time and place as required by law. If that person does not appear the money is forfeited. There can be no question of the surety making efforts to secure the attendance of the person accused, for his being badly treated by that person or of his having made all the necessary effort which he could make. This is a simple contract. All he undertakes is to pay a certain sum of money, if a certain event does not occur, and if that event does not occur, he must pay. This being so, a surety bond would be valid even though the person accused does not himself sign the bond. *(the Bombay High Court has dissented from this view in the case of M.A.Gajbiye, 1974 Cr LJ 1075)*

DETENTION :-

Police officers have been armed with extensive powers to prevent commission of cognizable offences and the relevant provisions are contained u/s.149 to 151. If the commission of the offence cannot be otherwise prevented police can forthwith arrest the person so designing (Section 151). The maximum period of detention u/s.151 can be for twenty four hours only, unless it is authorized or required under any other section or any other law.

Procedure :-

Once a person has been arrested by the police under section 151(1), provisions of Section 167, Cr.P.C., would be attracted. The provisions of Sections 56 to 59 must be strictly followed. If the Police Officer thinks that further detention is necessary, he must approach the Judicial Magistrate for necessary orders.

State of Maharashtra has made amendment in section 151 w.e.f. 27/05/1980 and inserted a new sub-section (3) to this section. As per this sub-section, a duty is cast upon the Magistrate to communicate the person produced before him the grounds upon which the order has been made and he has been detained and that he has right to make a representation against the said order to the Court of Sessions.

As per this amended sub-section, such person/detenuue shall not be detained for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person.

In the case of *Ahemad Noormohamed Bhartii ..Vs.. State of Gujrat AIR 2005 Supreme Court, 2115*, the Hon'ble Supreme Court has held that, "A mere perusal of section 151 of the Code of Criminal Procedure makes it clear that the conditions under which a Police Officer may arrest a person without an order from a Magistrate and without a warrant, have been laid down in S.151. He can do so only if he has come to know of the design of the person concerned to convict any cognizable offence. A further condition for

the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the Police Officer concerned that the commission of the offence cannot be otherwise prevented.”

In the case of ***Medha Patkar ..Vs.. State of M.P. 2008 CRI.L.J. 47 (MP)***, the Hon'ble MP High Court has held that preconditions of section 151, Cr.P.C. did not exist, the arrest by police of the petitioner and other agitators from the road where they were squatting and shouting was held to be in gross violation of their fundamental rights under Article 19(1)(a) & 19(1)(b) of the Constitution.

Surrender of Accused :-

As per Section 436 of Cr.P.C. various contingencies are contemplated i.e. any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an Officer Incharge of a Police Station or appears or is brought before a Court. In the similar manner the said contingency is contemplated u/s. 437 of the Cr.P.C.. The surrender of accused is thus covered by the word appears as mentioned in these sections.

In the case of ***Dinesh Babulal Thakkar ..Vs.. State of Gujrat (2011 Cr.L.J. 1364 Gujrat High Court)*** it has been held as under :

Criminal P.C. (2 of 1974), S. 436 – Bombay Prevention of Gambling Act (4 of 1887), Ss. 4, 5 – Information Technology Act (21 of 2000), S. 66 – Bail – Case registered against accused u/Ss. 4 and 5 of Bombay Prevention of Gambling Act and S. 66 of Information Technology Act – No proceedings are pending before Magistrate – Accused has to first appear before Police Officer Incharge of Police Station, furnish bail – And as soon as it appears that accused person is prepared to give bail, Police Officer is bound to release him on such terms as to bail as may appear to be reasonable – The accused straightway cannot appear and surrender before Magistrate & furnish bail & request Magistrate to release him on bail u/s 436 – Procedure which is required to be followed u/s 436 cannot be given go by merely because accused has apprehension that he will not be released on bail.

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