

DISTRICT COURT BHANDARA
WORK-SHOP
SUMMARY/GIST OF ALL THE PAPERS OF
FIRST WORKSHOP HELD ON 10TH JANUARY, 2015.

(B) Provisions as to Bail and Bonds (Chapter XXXIII of Code of Criminal Procedure).

Bail means release of a person from legal custody, it presupposes that he is in custody. Person who is under no such restraint cannot be granted bail.

2. Provisions as regards bail can be broadly classified into two categories : (1) bailable cases, and (2) non-bailable cases. In the former class, the grant of bail is a matter of course. It may be given either by the police-officer in charge of a police-station having the accused in his custody or by the Court. The release may be ordered on the accused executing a bond and even without sureties [s.436(1)]. In non-bailable cases, the accused may be released on bail; but no bail can be granted where the accused appears on reasonable grounds to be guilty of an offence punishable either with death or with imprisonment for life. But the rule does not apply to (1) a person under sixteen years of age, (2) a woman, or (3) a sick or infirm person. As soon as reasonable grounds for the guilt cease to appear, the accused is entitled to be released on bail or on his own recognizance; he can be also released, for similar reason, between the close of the case and delivery of the judgment. When a person is released on bail, the order with reasons therefor should be in writing.

3. The Hon'ble Supreme Court has held that though a person accused of a bailable offence is entitled to be released on bail

pending his trial, if his conduct subsequent to his release, is found to be prejudicial to a fair trial, he forfeits his right to be released on bail and such forfeiture can be made effective by invoking inherent power of the High Court under Section 482 of the Code. (*Talab Haji Hussain v. Madhukar Purushottam Mondkar, AIR 1958 SC 376 : 1958 Cr LJ 701*).

4. In cases of release of persons accused of bailable offences, such as defamation, the Court is not bound to issue a notice to the complainant and hear him. Sub-section (2) of 436 Cr.P.C. empowers the Court to refuse bail to an accused person even if the offence is bailable, where the person granted bail fails to comply with the conditions of the bail bond. Such refusal will not affect the powers of Court to forfeit the bond and recover penalty from the surety as laid down by Section 446. (*Mool Chand v. State, 1992 Cr LJ 2330 : AIR 1992 SC 1618*).

5. A new section 436-A is inserted in the Code to provide that where an under-trial prisoner other than the one accused of an 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 provide for the alleged offence, he should be released on his personal bond, with or without sureties. It also provide that in no case will an under-trial prisoner be detained beyond the maximum period of imprisonment for which he can be convicted for the alleged offence.

6. The Hon'ble Supreme Court in Criminal Writ Petition No. 310 of 2005 (*Bhim Singh vs. Union of India & Ors.*) vide orders dated on 05.9.2014 directed the Principal District and Sessions Judge to

instruct the Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge working under their control that they (including himself) shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purpose of effective implementation of 436(A) of the Code of Criminal Procedure. In its sittings in Jail they shall identify the Under-trial Prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436(A) pass an appropriate order in jail itself for release of such Under-trial Prisoners who fulfill the requirement of Section 436(A) for their release immediately.

Section 437 of Cr. P.C.:

7. This section gives the Court or a police-officer power to release an accused on bail in a non-bailable case, unless there appear reasonable grounds that the accused has been guilty of an offence punishable with death or with imprisonment for life. But (1) a person under the age of sixteen years, (2) a woman; or (3) a sick or infirm person may be released on bail even if the offence charged is punishable with death or imprisonment for life. Where a person is charged with a non-bailable offence, but it appears in the course of the trial that he is not guilty of such offence, he can be immediately released on bail pending further inquiry. The same may done after the conclusion of a trial and before judgment is pronounced, if the person is believed not to be guilty of a non-bailable offence. As a safeguard the section provides for review of the order by the Court which has released the person on bail. The Court should take into consideration various

matters such as nature and seriousness of the offence, the character of evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the interest of the public or the State and similar other considerations before granting the bail. Statement of reasons for refusing bail is mandatory.

8. A Magistrate can grant bail only when there is no reasonable ground to believe that the accused is guilty of the offence punishable with sentence of death or life imprisonment unless he is covered by the proviso to S. 437(1). Merely because the accused was initially granted anticipatory bail under section 438 for a lesser offence (under sections 306 and 498A IPC), would not entitle him to grant of a regular bail under section 437 when subsequently he was found to be involved in a graver offence like murder under section 302.

9. No appeal lies against an order of grant of bail. The use of the expression “appeal in respect of an order of bail” as used in some judgments is so used in the sense that one can move the higher Court. (*Dinesh MW (SP) v. State of Gujarat, AIR 2008 SC 2138 : 2008 Cr LJ 3008*).

Section 437A of Cr.P.C.: -

10. Section 437-A is inserted by the Criminal Procedure (Amendment Act), 2008 makes it obligatory for the trial Court or the Appellate Court, as the case may be, to execute bail bonds with sureties to appear before the Higher Court as and when such Court issues notice against the judgment of that Court. Sub-section (2) further provides that if the accused fails to appear on receiving such notice from the higher Court, his bond shall stand forfeited and procedure u/s. 446 Cr.P.C.

shall apply.

Section 438 of Cr.P.C. - Anticipatory Bail :-

11. The necessity for granting anticipatory bail arises mainly because sometimes influential person try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. 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.

12. Section 438 applies to all non-bailable offences and not merely to offences punishable with death or imprisonment for life. Its applicability is also not confined to offences exclusively triable by the Court of Sessions. The provision is not applicable to bailable offences.

13. At the stage of consideration of bail what the Court is normally required to consider are (1) the nature and seriousness of the accusation (2) severity of the offences (3) nature of the evidence collected and the character and behaviour of the accused (4) chances of the accused absconding and not being available during the trial (5) possibility of repetition of such crime (6) chances of the accused of tampering with the evidence and witnesses, and (7) last but not least larger interest of the people and the State.

14. A fresh application for anticipatory bail u/s 438 after rejection of the prayer for regular bail, is not maintainable. (*Maya Rani Guin v. State of W.B. 2003 Cr. L.J. 1 (Calcutta-Full Bench)*).

15. The Court may, if there are reasons for doing so, limit

the period of operation of anticipatory bail for a short period only after the filing of the FIR in respect of the matter. In such a case, the applicant may be directed to obtain order of bail under section 437 or section 439, Cr.P.Code within a reasonable short period of the filing of the charge-sheet. But this need not be followed as an invariable rule and the normal rule should not be to limit the operation of the order in relation to him. This is the view of the Hon'ble Supreme Court in Constitutional Bench Judgment in *Gurbaksh Singh v State of Punjab*. *AIR 1980 SC 1632 : 1980 Cr LJ 1125*.

16. It is observed that when the Court of Sessions or High Court is granting bail, it is granted at a stage when the investigation is incomplete and it is not informed about the nature of evidence against the offender and that it is, therefore, necessary that such anticipatory bail should be of limited duration. (*Salauddin Abdulsamad Shaikh v. State of Maharashtra, AIR 1996 SC 1042*). Similar view is taken in *K.L.Verma v State, 1999 SCC (Cri) 1031*.

Section 439 of Cr.P.C.:-

17. This section 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 a Court of Session to grant bail is not fettered by the restrictions contained in S.437. In every case, it is the cumulative effect of all the combined circumstances that must weigh with the Court and those considerations are far too numerous to be classified or catalogued exhaustively. There is no substantial difference between S.438 and S.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. (*Devidas Raghu Naik v. State of Maharashtra, 1989 Cr LJ 252 (Bom.)*)

18. While considering the application for grant of bail the Court is not required to evaluate the evidence. The Court is required to see whether a prima facie case exists or not and to take into consideration gravity of the offence, antecedents of the accused, nature of participation of accused in commission of the offence. Accused cannot be released on bail exclusively on the basis of plea of alibi.

19. The power of cancellation of bail has to be exercised with case and circumspection. The order of cancellation of bail should be passed when (a) the accused was found tampering with the evidence either during the investigation or during the trial; (b) when the person on bail committed similar or any heinous offence during the period of bail; (c) where the accused has absconded and the trial gets delayed; (d) a serious law and order problem noted due to release of the accused on bail.

B O N D S

Section 440 of Cr.P.C. :-

20. (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 police officer or Magistrate be reduced.

Section 441 of Cr.P.C. :-

21. This section contemplates furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties. It does not authorise a demand of cash security by a Magistrate.

Section 441-A of Cr.P.C.:-

22. This section provides that a person standing surety for an accused person shall disclose as to in how many cases he has already stood surety for accused persons.

Section 442 of Cr.P.C. :-

23. (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.

Section 443 of Cr.P.C. :-

24. 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.

Section 444 of Cr.P.C. :-

25. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time may 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 applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to jail.

26. When a surety applies for the cancellation of his bond there is no such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. Even if the surety fails to appear at a subsequent hearing, the Magistrate has to act under the section.

Section 445 of Cr.P.C. :-

27. This section permits payment of cash or Government promissory notes in substitution of passing a bond, except where the bond is one for good behaviour. This provision is salutary, and is meant to help an accused who is a stranger to the place.

Section 446 of Cr.P.C. :-

28. This section refers to two classes of bonds : (1) a bond under the Code for appearance or for production of property and (2) any other bond under the Code. Both stand on the same footing so far as forfeiture is concerned. The section lays down the procedure on forfeiture of such bonds. The Court 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 or any Court to which the case is subsequently transferred, or the Court of any Magistrate of the First Class may satisfy itself as to forfeiture and call upon the person bound by it either to pay penalty or to show cause. If sufficient cause is not shown and penalty not paid, the Court will recover the same as if it were a fine imposed by a Court under this Code as laid down in Section 421. The Court has a discretion to remit a portion of the penalty. If a surety dies before the bond is forfeited, his estate is discharged. Where the bond is forfeited and the penalty is not paid, the Court may proceed to recover the amount by issuing a warrant for attachment under Section 421.

29. Cancellation of bail bond of the accused falls u/s.446A and not under Sec.446, as Sec.449 Cr.P.C. does not provide for appeal against the said order, and writ petition lies against the said order.

Section 447 of Cr.P.C. :-

30. 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.

31. On forfeiture of the bond, the accused has no right to be released on bail on his furnishing fresh securities. But it would be within the discretion of the Court to release him or not to release him upon the execution of fresh personal or surety bond.

Section 448 of Cr.P.C. :-

32. 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.

Section 449 of Cr.P.C.:-

33. 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 Session, to the Court to which an appeal lies from an order of such Court.

34. An appeal ordinarily would lie to the Court of Session from an order passed by an Assistant Sessions Judge; but where the sentence imposed exceeds imprisonment for seven years, the appeal will lie before the High Court. Appeal against any sentence of fine would hence lie to the Court of Session only.

Section 450 of Cr.P.C. :-

35. 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.

LIST OF LATEST CASES DISCUSSED

- 1) Arnesh Kumar vs. State of Bihar and others,
(2014) 8 SCC 273 (Cri.Appeal No.1277/2014)

Hon'ble Supreme Court held- A person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. In many of the cases, detention is authorized in a routine, casual and cavalier manner. Before a Magistrate authorizes detention under Sec.167, Cr.P.C., he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested is satisfied. If the arrest effected by the police officer does not satisfy the requirements of Sec.41 of the Code, Magistrate is duty bound not to authorize his further detention and release the accused. The Magistrate before authorizing detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order.

- 2) Liyakat & anr. vs. State of Rajasthan,
Cri.Appeal No.2079/2009 (S.C. Decided on 26.12.2014.)

The defective examination of accused under section 313 of Cr.P.C. Does not by itself vitiate the trial. The accused must establish prejudice thereby caused to him. The onus is upon the accused to prove that by reason of his not been examined as required by section 313 he has been seriously prejudiced.

- 3) Balasaheb Sadanand Bhagat v. State of Maharashtra,

2014(3) ABR (Cri) 402.

While directing any person for furnishing a bond or surety, no onerous conditions are to be put. If amount of bond is fixed arbitrarily and if person arrested requires to be behind bar for his inability to forthwith furnish bond in said amount, period spent by him behind bars till furnishing of bond should be held to be his illegal detention.

4) Jai Nandan Singh vs. State of Bihar,
2014 ALL (Cri.) 3325(SC).

Sec.439 Cr.P.C.- Interim Bail- Confirmation so as to remain effective during pendency of trial – Objection on ground that petitioner has been intimidating witnesses – No material brought before Court to support such allegations against accused – Interim bail confirmed.

5) Pooja Bhatia vs. Vishnu Narayan Shivpuri and Anr.
2014 ALL MR (Cri) 4156(S.C.)

S.439 Cr.P.C. - Cancellation of Bail – Accused throwing sulphuric acid which got T-shirt of complainant burnt – Such Act of accused is a serious one though no injury was caused to complainant – Further conduct of accused after being enlarged on bail threatening people in the locality for repeating such act also taken in notice – Accused not entitled to continue benefit of bail.

6) Badrinarayan Shankar Bhandari vs. Omprakash Shankar Bhandari, 2014(5) Mh.L.J. 434 = 2014(5) ALL MR 846.
[Hon'ble Bombay High Court]

Section-6 of Hindu Succession Act, 1956 (As amended by Amendment Act of 2005)-

A) Sec.6 of Hindu Successions Act, 1956 as amended by Amended Act of 2005 is Retro Active in operation i.e.

(i) Sec.6 (1)(a) is prospective in operation;

(ii) Sec.6 (1)(b) and (c) and other parts of this sub-section and Sec 6(2) are retroactive in operation.

B) Amended sec.6 applied to daughters born prior to 17.06.1956 or thereafter (between 17.06.56 and 08.09.2005) provided they are alive on 09.09.2005 i.e. on the date when the Amended Act of 2005 came into force. Amended Sec.6 applies to daughters born on or after 09.09.2005.

C) Decision of the Division Bench of the Bombay High Court in **Vaishali S. Ghanorkar [2012(3)Mh.LJ 669]** is per in-curium the Supreme Court decision in **Ganduri Koteshwaramma** case.

Aforesaid Summary of all papers/Gist of work-shop is respectfully submitted for kind consideration.

(N.B.Yenurkar)
Adhoc District Judge- 1 and
Additional Sessions Judge, Bhandara,
I/c Chairman of Work-shop Committee,
Bhandara District Court, Bhandara.