
BAIL JURISPRUDENCE IN INDIA: RULE OR EXCEPTION

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ABSTRACT

Bail jurisprudence in India is founded upon the fundamental principle that “bail is the rule and jail is the exception,” which emanates from the constitutional guarantee of personal liberty under Article 21 of the Constitution of India. The concept of bail seeks to balance two competing interests: the protection of individual liberty and the need to ensure proper administration of criminal justice. Over the years, the Indian judiciary, particularly the Supreme Court, has consistently emphasized that deprivation of liberty before conviction should be an exception and not a matter of routine. However, despite progressive judicial pronouncements, the practical implementation of bail principles often reveals inconsistencies and inequalities.

This research paper critically examines the evolution and application of bail jurisprudence in India. It analyses statutory provisions under the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly the Code of Criminal Procedure, 1973), landmark judicial decisions, and constitutional perspectives governing the grant and denial of bail. The study further explores the impact of special legislations such as the Unlawful Activities (Prevention) Act, Prevention of Money Laundering Act, and Narcotic Drugs and Psychotropic Substances Act, which impose stringent conditions on bail and often reverse the presumption in favour of liberty.

The paper also highlights issues such as overcrowding of prisons, prolonged detention of undertrial prisoners, socio-economic disparities, and excessive judicial discretion that undermine the ideal of equal justice. Through doctrinal and analytical research methodology, the study evaluates whether bail truly operates as a rule in India or has gradually become an exception in practice. The paper concludes by suggesting reforms aimed at ensuring transparency, consistency, and protection of fundamental rights within the Indian bail system.

Keywords: Bail, Article 21, Criminal Justice System, Fundamental Rights, Bharatiya Nagarik Suraksha Sanhita 2023.

Introduction

Liberty is a highly valued principle in the constitution of a democratic society. The criminal justice system must carefully balance protecting individual liberties with making sure that crimes are successfully prosecuted. This equilibrium is maintained by the idea of bail, which acts as a safeguard against the needless incarceration of accused individuals before conviction.

Article 21 of the Indian Constitution, which states that “No one shall be deprived of life or personal liberty except in accordance with a procedure established by law”, serves as the fundamental basis for bail. This clause has been interpreted by judges to encompass proportionality, fairness, and reasonableness in the restriction of liberty.

The Supreme Court of India notably noted in *State of Rajasthan v. Balchand*¹ that “the basic rule may perhaps be tersely put as bail, not jail.” This statement has since become a fundamental part of the legal understanding of bail in India.

Despite this guiding principle, the current situation of India's criminal justice system shows a troubling reality. A large number of undertrial prisoners, many of whom come from economically weak backgrounds, are kept in jail for long periods because of delays in the system and strict bail conditions. Issues like the inability to provide sureties, lack of proper identity documents, limited access to legal help, and little family support make their condition even worse.

Article 21 of the Indian Constitution ensures the right to life and personal freedom, stating that no person can be deprived of these rights except according to a legal process². This clause has been widely interpreted to include the right to a fair and quick trial, as well as the right to bail. The Supreme Court has repeatedly said that keeping someone in pre-trial detention for a long time without proper reason violates this basic right.

This research paper seeks to examine the development and present state of bail-related legal decisions in India, with a special focus on the principle that “bail is the rule, jail is the exception.”

The paper critically looks at the gap between a long-standing legal principle and how it is

¹ *State of Rajasthan v. Balchand*, (1977) 4 SCC 308.

² INDIA CONST. art. 21.

applied differently in practice across the legal system. Though this principle has been consistently supported by constitutional courts to protect the right to personal freedom under Article 21 of the Constitution. The study examines how this foundational legal idea, which is central to criminal law, is often weakened in the interest of national security and public order, leading to an uneven approach in bail decisions. By comparing how the “bail, not jail” principle is used in regular criminal cases, the paper explores the social and systemic challenges that make it hard for certain groups, especially those who are under trial, to get bail. Through this analysis, the paper highlights the importance of changes in law and court practices to bring consistency back to bail decisions and ensure the criminal justice system aligns with its constitutional duty to protect personal freedoms and deliver fair justice.

Research Questions

This paper is guided by the following research questions:

- Whether the principle of “bail is the rule and jail is the exception” is effectively followed in the Indian criminal justice system?
- How does Article 21 influence bail jurisprudence?
- What principles govern the grant of bail in India?
- Why does inconsistency persist in bail decisions despite established jurisprudence?

Research Methodology

This research uses a doctrinal approach to study the subject. The main sources of information are the statutory provisions under the Code of Criminal Procedure, 1973, along with judicial decisions from the Supreme Court of India and various High Courts.

Secondary or Additional sources include scholarly writings, journal articles, reports from the Law Commission, and official statistics related to prisons. The study is both analytical and critical, focusing on the examination of legal principles as well as their practical application in real-world scenarios.

Theoretical Framework of Bail Jurisprudence in India

'Bail' refers to the process through which an accused person, who has been charged with certain offenses, is released from custody, provided they agree to appear in court for trial and remain within the court's jurisdiction³. This concept is clearly defined in the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as BNSS), which states that bail "as release of person accused or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution by such person of a bond or a bail bond"

In contrast, the older Criminal Procedure Code, 1973 (hereinafter referred to as the CrPC), did not provide an explicit definition of bail. Instead, it categorized offenses as either 'bailable' or 'non-bailable,' and the meaning and scope of bail were interpreted by the courts through various judicial precedents⁴. The purpose of arrest or detention is to ensure justice for individuals or society. If justice can be achieved without detention, then bail may be granted to the accused.

The concept of bail originates from older criminal law, as outlined in the Criminal Procedure Code, 1973, which provides details on the requirements and procedures for granting bail.

Over time, judicial interpretations have refined and developed the legal concept of bail, reflecting evolving societal values regarding the granting or denial of bail. Initially, the idea of bail was introduced in Sections 216 and 258, as well as Sections 156 and 212 of the Code Criminal Procedure of 1861.

Additional provisions were introduced in 1872. Sections 496 and 497 of the 1898 law dealt with bail in cases where bail was applicable and those where it was not, respectively. More additions and changes were made in 1973. The concept of bail is also a key part of the new criminal law, known as the Bhartiya Nyaya Sanhita, which provides a basis for the use of bail in the criminal justice system. These improvements have made the bail provisions more effective and have benefited the accused.

The idea of bail is also mentioned in Article 21 of the Indian Constitution, which talks about the right to personal liberty. Therefore, bail serves as a protection of the fundamental rights of

³ Yashasvi Singh, *Evolution of Bail Jurisprudence: In the Prospect of the Constitution and New Criminal Laws*, SSRN (Nov. 7, 2024), available at <https://ssrn.com/abstract=> (last visited June 6, 2025).

⁴ Bail Jurisprudence in India: Recent Trends and Challenges, The Amikus Qriae, available at <https://theamikusqriae.com/bail-jurisprudence-india-recent-trends-challenges/> (last visited June 6, 2025).

life and liberty for a person who is accused of a crime. Bail is considered a right, and any delay in granting it can be seen as a violation of an individual's fundamental rights. In the case of *P Chidambaram v. Directorate of Enforcement (2020)*⁵, the court denied bail because the charges were related to corruption. However, in the appeal, the Hon'ble Supreme Court granted bail and dismissed all other arguments. Thus, bail is a process through which the court allows an arrested person to be released on the condition of providing some form of security.

Delays in granting bail can sometimes infringe upon an individual's fundamental rights. The principle that bail is a rule and imprisonment is an exception is an important principle that should be followed. Common reasons for the delay in granting bail include the complexity of the case, pending investigations, opposition from the prosecution, and various legal formalities. In many cases, it is observed that the police are unable to establish the case properly, and in other instances, the police fail to ensure that prosecution witnesses appear on time⁶.

The Doctrine: "Bail is the Rule, Jail is the Exception"

In the year 1977, the principle of "Bail, not Jail" was followed. The idea that a person should be considered innocent until proven guilty was applied before charging them. This principle originated from the Universal Declaration of Human Rights⁷. It is more appropriate to refer to the accused as a defendant rather than a prisoner, convict, or someone who has been accused, as this reflects their presumed innocence⁸.

The constitutional principle that "bail is the rule and jail is the exception" was famously stated by Justice V.R. Krishna Iyer in the case of *State of Rajasthan v. Balchand (1977)*. In this case, the respondent, Balchand, was convicted by the trial court under Section 452 of the Indian Penal Code, which deals with house trespass after preparation for hurt, assault, or wrongful restraint, and under Section 323, which relates to voluntarily causing hurt. After his conviction, he filed an appeal before the High Court, which granted him bail. The State of Rajasthan then challenged this decision in the Supreme Court, arguing that since then accused had already been found guilty, and therefore, bail should not be granted easily, as individual freedom must be set aside in favor of the public interest in such cases.

⁵ *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791 (SC).

⁶ Supra note 3.

⁷ Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁸ *Black's Law Dictionary* (11th ed. 2019).

Justice V.R. Krishna Iyer, while delivering the judgment, established a key principle in Indian bail law: "bail is the rule and jail is the exception." He stressed that simply being convicted by the trial court does not automatically mean that bail should be denied during the appeal process, particularly when the sentence is not severe. This principle remains relevant today and is consistently upheld in current judicial decisions, reinforcing the constitutional obligation to safeguard personal liberty under Article 21 of the Indian Constitution. Over the years, the importance of this principle has somewhat diminished. Despite this foundational legal concept, the number of undertrial prisoners in India has continued to rise. This trend highlights a gap between legal theory and how courts actually apply the law. Nevertheless, the higher judiciary has consistently worked to uphold the value of personal liberty and to address the increasing misuse of pre-trial detention.

In *Dataram Singh v. State of Uttar Pradesh*⁹, the Supreme Court reaffirmed the principle of "bail, not jail," stating that providing bail is a fundamental aspect of criminal law. The Court expressed concern that this basic protection has been overshadowed by an excessive focus on imprisonment, often resulting in long and unjust detentions.

The decision in *Uday Mohanlal Acharya v. State of Maharashtra*¹⁰, further supported the right to default bail. The Court ruled that once the 90-day period under Section 167(2) of the Criminal Procedure Code has passed without the filing of a charge sheet, the accused has an unconditional and irrevocable right to be released on bail.

This view was reiterated in *Bikramjit Singh v. State of Punjab*¹¹, where the Court explained that the statutory right under Section 167(2) CrPC is closely connected to Article 21 of the Constitution, which protects against arbitrary and unlawful detention.

In *M. Ravindran v. The Intelligence Officer, Directorate of Revenue Intelligence*¹², the Supreme Court further explored the relationship between procedural safeguards and constitutional freedoms. It stressed that Article 21 must be interpreted in a way that promotes the cause of liberty and prevents misuse of state power, particularly in cases of custodial detention that goes beyond allowed limits.

⁹ (2018) 3 SCC 22

¹⁰ (2001) 5 SCC 453

¹¹ (2020) 10 SCC 616

¹² (2021) 2 SCC 485

The legal interpretation regarding anticipatory bail was significantly shaped by the landmark case of *Gurbaksh Singh Sibbia v. State of Punjab*¹³. The Court made it clear that the provisions of Section 438 of the Criminal Procedure Code should not be restricted by outside conditions or strict requirements, as such limitations would undermine the purpose of safeguarding people from wrongful arrests.

In the case of *Supreme Court Legal Aid Committee v. Union of India*¹⁴, the Court focused on the challenges faced by individuals who were in jail pending trial. Representing the rights of those awaiting trial, the Supreme Court stressed that no person should be held in custody indefinitely because of delays in the judicial process. The decision highlighted that if a trial cannot be completed within a reasonable period, the accused should not be forced to stay in prison.

The judgments in *Arnesh Kumar v. State of Bihar*¹⁵ and *Satender Kumar Antil v. Central Bureau of Investigation*¹⁶ mark important developments in the law related to bail. In *Arnesh Kumar*, the Court provided clear instructions for police and other law enforcement bodies to follow during and after an arrest, aiming to prevent unjustified detention. *Satender Kumar Antil* further built on these guidelines by classifying different types of offences to make the bail process more efficient and reduce the workload on courts. These rulings are intended to reduce the number of unnecessary bail applications and significantly improve the living conditions of undertrial prisoners.

Collectively, these decisions demonstrate the judiciary's steadfast commitment to realigning the administration of criminal justice with the principles of liberty and dignity outlined in the constitution. By issuing a series of progressive rulings, the Supreme Court consistently upholds the fundamental right to personal freedom, as guaranteed by Article 21, while striving to reduce the hardships faced by individuals who are detained pending trial.

Statutory Mechanism under the Bharatiya Nagarik Suraksha Sanhita, 2023

The bail law, which outlines the details of bail in an organized manner, is the statute that can incorporate constitutional language. Under the *Bharatiya Nagarik Suraksha Sanhita, 2023*,

¹³ (1980) 2 SCC 565

¹⁴ (1994) 6 SCC 731

¹⁵ (2014) 8 SCC 273

¹⁶ (2022) 10 SCC 51

various types of bail such as anticipatory bail, default bail, and release after long-term pretrial detention offer a structured approach that allows judges to use their discretion in a way that respects individual liberty¹⁷.

Ordinary Bail and Judicial Discretion

The Bharatiya Nagarik Suraksha Sanhita, 2023, reinterprets the concept of bail and retains the underlying principles associated with it. The new Criminal Procedure Code incorporates sections related to bail, with specific emphasis on the provisions governing bail, including Section 187(3)¹⁸. The logic of default bail, as outlined in the new provisions of the Bharatiya Nagarik Suraksha Sanhita, 2023, continues to reflect the ongoing policy of the legislative branch of the Government of India. This indicates the default stance of the law in such matters. The provisions clearly state that liberty, along with other legal considerations, remains the primary concern of the law, provided that the associated risks and procedural issues are legally justified.

The significance of the ordinary bail framework persists, as the majority of criminal cases do not fall under special legislative provisions.

In non-bailable criminal cases, the legal process focuses on the issue of whether the accused should be held in custody rather than whether they have the right to be released. This is why the case of *Dataram Singh v. State of Uttar Pradesh*¹⁹ remains relevant, even with the procedural changes introduced by the Bharatiya Nagarik Suraksha Sanhita. The essential requirement is that the presumption of innocence and the dignity of the accused must be upheld at the stage of bail. This should be recognized as the starting point of a continuous process involving challenges to bail.

Anticipatory and Default Bail

Anticipatory bail is meant to protect an individual's personal freedom when there is a threat of arrest that is anticipated in advance. There is now a well-established body of judicial decisions that guide the granting of anticipatory bail.

¹⁷ Law Commission of India, *268th Report on Amendments to Criminal Procedure Code, 1973: Provisions Relating to Bail*

¹⁸ *The Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, § 187(3) (India)

¹⁹ (2018) 3 SCC 22.

In the case of *Gurbaksh Singh Sibbia v. State of Punjab*²⁰, the court emphasized that anticipatory bail should not be interpreted too narrowly or in an exceptional manner. The decision stressed the importance of using discretion based on the specific circumstances of each case. Under Section 482 of the Bharatiya Nagarik Sangathan Act (BNSS), there will always be a need for discretion that takes context into account, especially when deciding whether to grant or deny bail in situations where arrest is threatened as part of a strategic effort to apply pressure, rather than due to a genuine need for investigation.

Additionally, the more recent judgment in *Dhanraj Aswani v. Amar S. Mulchandani*²¹ highlights that the anticipatory bail doctrine must remain flexible enough to accommodate procedural challenges, multiple prosecutions, and situations involving more than one, or even successive, periods of imprisonment.

Arrest, discipline, and default bail

Arrest, discipline, and default bail are all important aspects of the legal process. Default bail, in particular, plays a crucial role because it connects a person's freedom with the progress of the investigation by the prosecution. It seems as though delayed investigations owe a presumed guilty individual a certain level of procedural fairness, which is essential for both justice and the overall accountability of the criminal system. The Supreme Court's ongoing focus on procedural adherence includes a wide range of bail-related issues that go beyond the scope of Section 187(3) of the CPC. It is important to recognize that arrest, remand, and bail should not be viewed merely as routine administrative steps in a process that lacks proper justification. Without a valid reason, even the most lenient bail rules will ultimately be part of a system dominated by arrest, where the assumption of custody is the standard rather than the exception²².

Section 479 and Statutory Release

Section 479 of the Bharatiya Nagarik Suraksha Sanhita²³, is arguably one of the most significant modern changes. It establishes the standard for releasing an individual who has been detained but has not yet been convicted, provided they have spent no more than half the

²⁰ (1980) 2 SCC 565.

²¹ 2024 INSC 669.

²² Law Commission of India, *78th Report on Congestion of Undertrial Prisoners in Jails* (Feb. 1979).

²³ *The Bharatiya Nagarik Suraksha Sanhita*, No. 46 of 2023, § 479 (India).

maximum sentence prescribed for the offence. Even more notably, it allows for release after a period of no more than one-third of the maximum punishment for a first-time offender, but this is subject to certain conditions. Contemporary analysis of the Act correctly views this as an effort to address the problem of long periods of pre-trial detention by turning it into a formal requirement of prison law. However, the effectiveness of this provision depends on its proper identification, application through judicial orders, and timely action by officials²⁴.

Special Statutes and Constitutional Limits

Once special statutes come into play, the system experiences a significant change. The strictness of the Unlawful Activities (Prevention) Act, 1967²⁵ and the Prevention of Money Laundering Act, 2002, whether justified or not, affects the rules regarding bail. These laws place strong restrictions on the grounds for granting bail. The absence of a greater good should not be used to ignore these limitations, which are governed by Article 21. In this context, the case of *Union of India v. K.A. Najeeb*²⁶ holds great significance. It shows that there are limits to how strict such statutes can be.

Bail under Special Legislations

The principle of “bail not jail” has been repeatedly emphasized by Indian courts to safeguard individual freedom, particularly in cases involving people who have not yet been convicted. In the case of *Gudikanti Narasimhulu v. Public Prosecutor*²⁷, Justice Krishna Iyer highlighted the significance of bail as a way to respect the presumption of innocence. However, the UAPA framework conflicts with this principle, making it very difficult for the accused to get bail because of the following reasons:

- The requirement to prove that the case is not clearly true from the start.
- Delays in formally charging someone or beginning the trial.
- Judges being hesitant to look at evidence beyond what the prosecution presents during

²⁴ Ratanlal & Dhirajlal, *The Bharatiya Nagarik Suraksha Sanhita*, 2023 163 (24th ed., Eastern Book Company 2025).

²⁵ The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), s. 43D(5).

²⁶ (2021) 3 SCC 713

²⁷ *Gudikanti Narasimhulu & Ors. v. Public Prosecutor*, High Court of Andhra Pradesh, (1978) 1 SCC 240 (SC).

the bail hearing.

As a result, the law ends up creating a system where being held before trial has become the usual situation, which weakens the constitutional protections in place.

The passing and use of laws such as the Prevention of Money Laundering Act (PMLA) and the Unlawful Activities (Prevention) Act (UAPA) have greatly affected the usual way bail decisions are made. These laws have made it much harder to get bail and have made the process more strict. Under the UAPA, anticipatory bail is not allowed, so an accused person can only apply for regular bail after being arrested. Also, when a trial court considers bail, it mainly looks at the charges made by the prosecution and does not look deeply into the arguments presented by the defence at that point. This setup puts the responsibility of proving innocence on the accused, which goes against the usual criminal law idea that the prosecution must prove guilt and show that the accused is not innocent. As a result, the UAPA creates an exception to the usual rule that bail is the normal option and jail is the special case. This has caused major worries about the loss of personal freedom and the rights to a fair trial.

Contemporary Challenges in Bail Jurisprudence

The BNSS has several difficulties despite its advanced aspects:

- **Discretionary Anticipatory Bail:** Legal professionals have noted that the absence of clear guidelines under Section 482 may result in inconsistent decisions by different judges.
- **Prolonged Police Custody:** Individuals who are awaiting trial and have limited access to legal help may face longer periods of detention due to the flexible 15-day custody rule, which can delay the granting of bail, particularly in cases where police custody is extended in stages.
- **Handcuffing Provisions:** This provision may undermine human dignity and could lead to legal challenges, as it conflicts with previous court rulings.
- **Restrictions on Multiple Charges:** Preventing bail for those accused of multiple offenses may lead to increased jail overcrowding and unfair treatment of undertrials in complex cases.

- **Implementation Challenges:** In India's diverse legal and social setting, effective implementation of these provisions requires adequate judicial training, reliable digital systems, and greater public awareness.
- **Victim-Focused Measures:** While enhancing the involvement of victims is a positive step, it may unfairly disadvantage the accused, so judges need to be careful in their approach.

Conclusion

The principle that "bail is the rule, jail is the exception" is more than just a legal process—it is a constitutional right protected under Article 21, which guarantees the right to life and personal freedom. Although this principle has been consistently upheld by the higher courts, its real-world application shows a gap between legal theory and actual experience, particularly affecting those who are socially and economically disadvantaged. Judicial backlogs, limited access to legal assistance, and strict bail conditions have made the bail process unfair and, in some cases, unpredictable.

This issue is even more pronounced under specific laws like the Unlawful Activities (Prevention) Act (UAPA), where the standard for granting bail is much higher, and the presumption of innocence is weakened. This creates two different sets of legal rules—one for regular crimes and another for special offenses—thereby undermining the equal application of fundamental rights.

Evaluating the case law from the Supreme Court and understanding the constitutional statutes regarding bail law in the country shows that the proposition being studied is legally sound. The law on bail in India does not treat the legal person as an isolated or purely abstract entity. This area of law defines the liberty of the individual in the context of Article 21 of the Constitution, regulates preventive detention based on the principle of proportionality, considers the importance of the right to a speedy trial, and is increasingly recognizing the right to avoid prolonged detention under special laws as a constitutionally protected right. The various theories that support this principle can no longer be considered merely as arguments. The principle of bail is clearly a legal doctrine and has the potential to be one of the fundamental doctrines of law within the new interpretation and framework of the Indian Penal Code and the Criminal Justice System.

Recommendations

- To begin with, the rules that guide bail decisions should be applied consistently in all courts to reduce differences in how bail is decided.
- Second, the courts should give particular attention to cases where individuals are held in prison without having been tried.
- Third, law enforcement agencies should aim to finish their investigations promptly, so that the right to default bail is not frequently used.
- Fourth, creating specific training programs for judges and prosecutors can assist them in making more consistent and fair decisions regarding bail.

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