BAIL JURISPRUDENCE UNDER ARTICLE 21: A COMPARATIVE ANALYSIS OF THE CRIMINAL PROCEDURAL CODE,1973 AND THE BHARTIYA NAGARIK SURAKSHA SANHITA,2023

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ABSTRACT

Bail is a fundamental aspect of criminal justice that is primarily aimed at securing the temporary release of an accused person from legal custody while awaiting trial often by conditioning money or by executing bonds. It shall be granted based on the nature and gravity of the offence committed. Bail has originated from the French word 'bailer' which means 'to give' or 'to deliver'. The concept of bail traces back to 399 B.C, when Plato tried to create a bond for Socrates's release.

This article aims to understand the modification brought in with the introduction of Bhartiya Nagarik Suraksha Sanhita, 2023 and the judicial approach to it. It highlights the changes brought in the criminal procedural code particularly the changes in bail provision of the undertrial, bail after conviction and the anticipatory bail and the changes in the definition of bail, bail bond and bond. Further this article explores the relationship between Article 21 and the bail provisions and how the constitutional provision is interlinked with the bail provision to preserve human dignity and liberty. The transition from criminal procedural code to Bhartiya Nagarik Suraksha Sanhita modernizes the legal system and helps in simplifying the legal procedures in India.

Keywords: Bail, Anticipatory Bail, Post-Conviction, Undertrial Prisoners, Article 21, Trial, Victim, Accused.

1. Introduction

Bail constitutes a fundamental component of the criminal justice system aimed at securing the release of an accused person pending trial while ensuring their appearance before the court. It represents a balance between the administration of justice and protection of personal liberty. In India, the concept of bail derives its constitutional legitimacy from Article 21 of the Constitution, which guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law.

Historically, bail emerged from informal legal practices to a structured legal framework to ensure fair trial and to prevent destruction of evidence in cases and ensuring the accused was present at court proceedings.

Austrian- American jurist Hans Kelson introduced the pure theory. In which legal positivism observed the law 'as it is' and not what it 'ought to be'. It emphasises law as a hierarchy of norms with basic norms and grundnorm at the top, which contains unbridled powers. This theory provides a useful lens to understand bail as a procedural law derived from a higher constitutional principle.

Bail is provided to the accused for the severity of the offence or during the stages of criminal proceedings, or if the evidentiary strength of the case against the accused is less, if the accused poses a risk of absconding or poses a threat to tamper with the evidence, he shall be released on bail. The introduction of the Bhartiya Nagarik Suraksha Sanhita gave a statutory definition of bail, bail bond and bond under section 2(1)(b)[1], 2(1)(d)[2] and 2(1)(e)[3]respectively, which was previously not expressed in the Criminal Procedural Code 1973.

In the Indian legal system, bail jurisprudence is continuously evolving, and statutory provisions of bail are being interpreted alongside the constitutional provision to uphold liberty and dignity, to prevent illegal detention and to give a chance to all individuals for bail.

The legal system is moving towards the jurisprudential aspect of "bail is a rule and jail is an exception, which was stated in Balchand[4]'s case by V.R Krishna Iyer. In the statutory

[1] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(b), No.46 Act of Parliament, 2023(India)
[2] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(d), No.46 Act of Parliament, 2023(India)
[3] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(e), No.46 Act of Parliament, 2023(India)
[4]State Of Rajasthan, Jaipur vs Balchand @ Baliay, 1977 AIR 2447

provisions of the Sanhita ,we can see a more cautious approach being taken for bail against grievous offences.

With the introduction of the Sanhitha, we can see stricter provisions being included in the statute, such as the exception of anticipatory bail for the rape of minors.

The undertrial prisoners who are first-time offenders are granted mandatory bail under section 479[5] of the Sanhita, which aimed at reducing overcrowding in the jails; however, this provision is restricted for offenders charged with multiple offences.

Post-conviction bail is primarily granted under section 430[6] of the Sanhita, which allows the appellate court to suspend the sentence of the convicted person and release them on bail with or without surety while their appeal is pending at court. While bail is granted for such a convict, the court must record reasonable reasons for releasing the convicted person on bail.

This paper mainly focuses on the modifications brought in with the introduction of Bhartiya Nagarik Suraksha Sanhita, 2023 and the judicial approach to it. It studies the changes brought in the bail provision of the undertrial prisoners, post-conviction bail, anticipatory bail and the definition of bail, bail bond and bond. Further, this article explores the relationship between Article 21 and the bail provisions and how the constitutional provision is interlinked with the bail provision to preserve human dignity and liberty. It explores the historical aspect of bail from the era of the Hindu kings till the current law of Bhartiya Nagarik Suraksha Sanhita, encompassing constitutional provisions and landmark decisions.

2.Overview Of the History of Bail in India

The history of bail can be traced back to the Greek and roman civilisation, but in India, the concept of bail was introduced by the ancient Hindu rulers, the Mughal dynasty and the British colonialists their policies and ideologies in statesmanship, which shaped the concept of bail as we know it in India.

During the ancient Hindu kings' rule, the concept of bail was not specified in any text ,scriptures or chronicles, but it existed informally in the 'Arthashastra' written by Kautalya, which was a culmination of military tactics, statesmanship and economic policy, etc. In this

[5] The Bharatiya Nagarik Suraksha Sanhitha,2023 §479, No.46 Act of Parliament, 2023(India)
[6] The Bharatiya Nagarik Suraksha Sanhitha,2023 §430, No.46 Act of Parliament, 2023(India)

book Kautalya conveyed that pre-trial detention is discouraged. The Hindu jurisprudence necessitates the immediate disposal of disputes by the functionaries of justice.[7]

The criminal justice system in the Mughal empire is centred on Islamic principles. According to the Islamic rules in the empire, the king is not above the holy law, and Mughal emperors regarded themselves as vicegerent of God and held the duty to enforce divine law. Obedience was demanded as his due by God's ordinance, and all resistance to it was treated as sinful.[8] Within this framework, the elements of 'bail' existed under Muslim jurisprudence to ensure a fair trial to a person accused of committing an offence by producing surety for their release.

Pre-trial detention was accomplished through police lock-ups in the cities which were called Chabutra-i-Kotwali. There are frequent references to these in the newsletters of Aurangzeb. Guilty officers, thieves, and robbers were confined in these facilities. The Mushrif was in charge of the Chabutra-i-Kotwali. Persons could be released on bail if they could produce security.

Thus, the Akhbarat of 11-5-1694 records the fact that the zamindar of Deogarh, Bakht Buland, had been dismissed and locked up at the Chabutra-i-Kotwali. The emperor ordered that if the accused was able to furnish a trustworthy surety, he could be removed from the Chabutra-i-Kotwali and handed over to Bahramand Khan and given an allowance of two rupees per day (Akhbarat-i-Darbar-i-Mualla11-5-1694).[9]

The Mughal empire discouraged the practice of bail, and the kotwal would arrest the accused for committing a cognizable offence and bring them forth to the Qazi for deciding whether they shall be prosecuted or released.

The control of the English East India Company in the Nizamat Adalat and Fouzdary courts paved the way for the criminal law and procedural code from English legislation to be included in the Indian legal system. During the British rule, India saw the gradual adaptations of the

[7] Shahnaz Begum, The Concept of Bail in India: Detailed analysis along with case laws, socialthikana (Apr 18,2026,3:15 PM), https://www.socialthikana.in/law/the-concept-of-bail-in-india-detailed-analysis-along-with-case-laws

[8] Admin, judicial system in Mughal India, historymarg (Apr 18, 2026, 3:44 PM), https://www.historymarg.com/2023/10/judicial-system-in-mughal

[9] Farrukh Behzad Hakeem, M.R. Haberfeld, Verma, Police and Administration of justice in medieval India,reseachgate,(Apr18,2026,4:27PM),https://www.researchgate.net/publication/297926142_Police_and_the_Administration_of_Justice_in_Medieval_India

principles and rules of the British Empire enforced in India[10]

During the British rule, the court used two types of bail, mainly the 'zamanat' and 'mulchalaka', to release a person from custody.[11] A release that was made in writing was known as mulchalaka. It is a formal pledge to the court, where a bond or obligation is made by the accused to appear before the court without the need for any monetary deposits. During the British era, the bail was granted by furnishing sureties, that is, the 'zamanati', by taking responsibility to ensure the accused person appears at court.

With the introduction of The Criminal Procedure Code of 1861, British rule had influenced the Indian legal system and its amendments in 1872 and 1882. The interesting point is that the 1872 amendment did not provide any room for the constitutional principle of liberty; rather, it was only meant for procedural clarity and administrative purposes. The Criminal Procedure Code of 1882 was enacted with a uniform criminal procedure for the whole Indian presidency, towns, and provinces.[12]

The improved version of The Criminal Procedural Code came in 1973, which marked a significant landmark movement in bail jurisprudence ,which was precedent by the adoption of The Constitution in 1950.It incorporated significant reforms under the 41st Law Commission Report. This legislation brought in major innovations like the anticipatory bail in section 438 to protect individuals from illegal arrest and politically motivated arrest. This provision recognised that the power of arrest can be misused in the wrong hands and can be used to harass individuals. The anticipatory bail in the criminal procedural code recognised that liberty of an individual must be protected even though it was contemplated in a statutory framework rather than a constitutional form.[13]

The current criminal law The Bhartiya Nagarik Suraksha Sanhitha, 2023, aims at refining the criminal law procedure in the Indian legal system by setting up speedy trials and

[10] Dr. Rohit, Evolution and Development of Bail System in India: A Study, 05 IJR.1, 3 (2018), https://journals.pen2print.org/index.php/ijr/article/viewFile/12490/11787#:~:text=Bail%20during%20British%20Rule:,International%20Journal%20of%20Research

[11] Id.

[12] Rayan Teeshan Pinto, BAIL: EVOLUTION FROM STATUTORY RIGHT TO CONSTITUTIONAL RIGHT,07 IJLLR.1,13(2026),file:///C:/Users/User/Downloads/BAIL%20EVOLUTION%20FROM%20STATUTORY%20RIGHT%20TO%20CONSTITUTIONAL%20RIGHT.pdf

[13] Id.

time-bound investigation. It ensures that the freedom of liberty and dignity given in Article 21, the principle of 'natural justice' , and the principle of 'audi alteram partem' is being upheld to ensure a fair trial at court. The BNSS provides stricter provisions to the offenders facing multiple charges so as not to misuse the bail system. It helps release undertrial prisoners as per the conditions specified under sections 290 and 479 of the Sanhita. Therefore, BNSS focuses on protecting the interests of individuals in the accountability of bail jurisprudence and preventing the judicial decisions from being ultra vires.

3. Jurisprudential aspect of bail

In the Indian perspective, the law is derived from different laws from the word, and the constitution is a culmination of many collections of aspects of laws borrowed from many other constitutions. The aspect of bail is deeply related to society and the aspect of protecting the dignity of the individuals of the state. The kelsonite concept of pure theory of law, the grundnorm possessed unlimited and unbridled powers of suppression and sub judication.[14]

According to Kelson, there is no such chimera as 'pure norm'; his theory's basic forms, which are known scientifically, are given as legal norm, which will have content, and the particular content is empirically contingent and a norm once determined can be morally evaluated. According to Kelson, the Grundnorm is a norm which shall be above all norms. It is based on human conduct, and the hierarchy of each norm rests on the higher norm, each level in the hierarchy representing a movement to a complete generality, increasing individualisation. The constitution is similar to the grundnorm, and BNSS are the general norms according to the theory proposed by Kelson. In his theory, he treated any breach of norm as a derelict, but not in the traditional term falling in the ambit of civil or criminal law; here, no conduct can amount to a derelict without a sanction stipulated by the legal norm.[15]

In the case of Directorate of Enforcement v. Subash Sharma 2025 live law (SC) 137[16] The Supreme Court ruled that," an arrest found to be illegal mandates the release of the accused on bail. The Court rejected the Enforcement Directorate's (ED) appeal, emphasising that failure to present the accused before a magistrate within 24 hours violates constitutional rights. The decision underscored the duty of courts to uphold fundamental rights in such cases." In this

[14] Dr.N.V. Paranjape, Studies in Jurisprudence and Legal Theory 112-114, (Central Law Agency 2016)
[15] M.D.A. freeman, LLYOD'S INTRODUCTION TO JURISPRUDENCE NINTH EDITION 249-254, (Sweet & Maxwell,2014)
[16] Directorate of enforcement v. Subash Sharma 2025 Live Law (SC) 137

case, articles 22 And 22 (2) were violated, which mandates that arrestees be produced before a magistrate within 24 hours, and the failure of the court to comply with this article infringes an individual's dignity and personal liberty under article 21. Here we see the aspect of 'grundnorm' being present in the case.

We can conclude that bail jurisprudence in India reflects the hierarchical structure of norms envisioned in Kelson's theory. The constitution functioning as a grundnorm is 'ought to be obeyed 'and a part of it, the fundamental right under Articles 21 and 22 shall not be violated by defective procedural action under BNSS. Thus, bail does not act just as a procedural remedy but also as a constitutional safeguard.

4. Definitions Of Bail Under Bharatiya Nagarik Suraksha Sanhitha,2023

Bail, bail bond and bond aren't clearly defined under The Criminal Procedural Code, 1973,but the Sanhita defines these terms under section 2 of the act.

Bail under BNSS is "the release of a person accused of or suspected of commission of an 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 bail bond" as per section 2(1)(b)[17].

Bail bond is defined as "an undertaking for release with surety" under section 2(1)(d)[18],and bond is defined as "a personal bond or an undertaking for release without surety" under section 2(1)(e)[19]. Although the words bond and security were used in The Criminal Procedural Code 1973, they aren't defined specifically in the act but are used in the sense of granting bail to an accused person. The Sanhita managed to differentiate between the personal bond and bond with sureties, which was previously not seen in the code.

4.1. Kinds of bail granted

Regular Bail: It is granted to a person who has already been arrested and kept in police custody. A person can file this bail application under section 480 [20]and 483[21]of the Bhartiya Nagarik

[17] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(b), No.46 Act of Parliament, 2023(India)
[18] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(d), No.46 Act of Parliament, 2023(India)
[19] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 2(1)(e), No.46 Act of Parliament, 2023(India)
[20] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 480, No.46 Act of Parliament, 2023(India)
[21] The Bharatiya Nagarik Suraksha Sanhitha,2023 § 483, No.46 Act of Parliament, 2023(India)

Suraksha Sanhitha, 2023.[22] Thus, regular bail is given to the accused to ensure his attendance at trial.

Interim Bail: Interim bail, is granted for a short period of time, is granted to the accused before the hearing for the grant of regular bail or anticipatory bail. [23]

Anticipatory Bail: An anticipatory bail petitioned is filed when a person has a reason to believe that he may get arrested on an accusation of having committed a non-bailable offence. Anticipatory bail is provided at the discretion of the court; the High Court and the Sessions Court have the power to direct the grant of anticipatory bail. [24]

Default Bail: When the authorities fail to complete the investigation within 90 days of the offence related to punishment with death, imprisonment for life or imprisonment for a term not less than 10 years and 60 days, where the investigation is related to other offence and the accused is released is known as a default bail. [25]

5. Judicial Aspect of Constitution and Statutory Interpretation of Bail

Article 21 and 22 correlate to the provision of bail in the Bharatiya Nagarik Suraksha Sanhita. It is the core that keeps the liberty and human dignity needed for such provision of law to be brought into force so that an individual may be bailed from the custody and their dignity shall be maintained until proven guilty. Article 22 ensures the protection of persons against arrest and detention. These articles laid down the foundation of 'bail is rule and jail is an exception', which also includes the principle of presumption of innocence until proven guilty. 'The Fiat of Article 21 is that any procedure which deprives a person of his life or liberty must be just, fair and reasonable. Just, fair and reasonable procedure implies a right to free legal services where he cannot avail them. It implies a right to a speedy trial. It implies human conditions of detention, preventive or punitive.'[26]

[22] Kush Kalra, LAW OF FIR ARREST BAIL INVESTIGATION& TRIAL 269(WHITESMANN PUBLICATION ,2024)
[23] Id.
[24]K. Swamyraj, Textbook on The Bhartiya Nagarik Suraksha Sanhitha,2023 416(CENTRAL LAW PUBLICATION ,2024)
[25] Id. at 409
[26] Kapil Chandna, Bail Is the Rule, Jail Is the Exception, kapilchandna.legal.L.8-10, (Apr 20,2026,3:58 PM), https://kapilchandna.legal/bail-rule-jail-exception/

State of Rajasthan, Jaipur v. Balchand @ Baliay[27], In this case the accused was convicted under section 452 and 323 of IPC and upon conviction he filed an appeal to the high court where he was aquitted, The state went on an appeal under article 136 of the constitution to The Hon'ble Supreme Court through a special leave petition that since the accused has already been found guilty he shall not be bail should not be granted so readily. The accused was directed to surrender by the court. He then filed for bail. Justice Krishna Iyer laid down an important principle in Indian jurisprudence regarding bail that "bail is the rule and jail is the exception". Here Iyer emphasised that the mere fact of trial by court does not mean automatic denial of bail when the appeal is pending at court and here the offence is not severe in nature. This principle still holds relevance and is seen in many judicial decisions but over time the legal principle is not followed and we can still see pre-trial detention. This shows the gap that exists between legal theory and judicial practice in the current era.

Moti Ram v. State of M.P[28], The Supreme court made the following important observation for improvement in laws relating to grant bail: "We leave it to Parliament to consider whether in our socialist republic, with social justice as its hallmark, monetary superstition, not other relevant considerations like family ties, roots in the community, membership of stable organizations, 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 in urgent desideratum; and the judiciary will do well to remember that the geo-legal frontiers of the Central Codes cannot be disfigured by cartographic dissection in the name of language of province."

Hussainara Khatoon v. State of Bihar[29] In this case, the undertrial was held due to poverty rather than guilt. Many women and children were illegally detained in the Patna, and Muzaffarpur jails on unreasonable grounds. They were presented before the magistrate and then the case was stated and was taken to custody, which is how their right to life was violated as per Article 21. This case is an example of 'justice delayed is justice denied'.

In the Division bench of Justice P.N Bhagavathi and Justice Desai ,The Supreme Court held that, "As the state of Bihar failed to present or make an appearance despite the notice by the

[27] State Of Rajasthan, Jaipur v. Balchand @ Baliay, 1977 AIR 2447
[28] Moti Ram & Ors vs State Of M.P, 1978 AIR 1594
[29] Hussainara Khatoon v. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

Supreme Court the court considered the allegations in the report and writ as correct. This was an interim order passed by the Supreme Court. Men, women, and children mentioned in the list by advocate Pushpa were granted immediate bail by the court. They were guaranteed bail along with personal sureties as it violated their right to life as guaranteed under Article 21 of the constitution of India. Further court ordered the state government and high courts to make a list of all pending cases and submit them by December 1978, and their reasons as such."

In Jalaludin khan v. Union of India [30] ,the Hon'ble Supreme Court observed that," Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in deserving cases, it will be a violation of the rights guaranteed under Article 21 of our Constitution."

Manish Sisodia v. Directorate of Enforcement (2024) [31], The Hon'ble Supreme Court observed that," The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

Mohammed Rasal C. & Anr. v. State of Kerala[32] ,The Supreme Court Of India examined "the

[30] Jalaludin khan v. Union of India [2024 KHC 6431]
[31] Manish Sisodia v. Directorate of Enforcement [2024 KHC 6426]
[32]Mohammed Rasal C. & Anr. V. State of Kerala (2025 Live Law SC 884)

direct filing of anticipatory bail applications in the High Court, questioning the practice of bypassing Sessions Courts. The case, often associated with SLP (Crl.) 6588/2025, emphasizes utilizing lower courts first, except in exceptional circumstances"

PARDEEP KUMAR @ BANU v. STATE OF PUNJAB [33] , The Supreme Court of India granted bail to an undertrial accused of attempt to murder who spent nearly two years in custody without the trial commencing. The Court ruled that "prolonged incarceration without trial constitutes punishment".

6. Anticipatory Bail Under The Bhartiya Nagarik Suraksha Sanhita,2023: An Analysis Of Legislative Evolution And Judicial Interpretation

The term anticipatory bail has not been defined under the criminal procedural code,1973 however in section 438[34] it is expressed as a convenient mode of conveying bail for a person during anticipation of arrest due to a commission of a non bailable offence. [35] Under

the Sanhita anticipatory bail provision is applied under section 482[36] anticipatory bail is not explicitly defined and it is only applied to non bailable offences. Furthermore, the authorities empowered under this section to grant bail are the Sessions Court and the High Court. [37] In Amir Chand v. Crown[38] C.J. Dass recognised that, "Anticipatory bail is not only in conformity with liberalised policy of law but is a measure which in no way obstructs the course of justice. The instance a person being first arrested and then released on bail for was found to be unappealing. The usefulness and utility of a power is to grant anticipatory bail".

If a person is accused of the commission of the offence of rape against a minor under the age of twelve or sixteen or an offence of gang rape against a woman under the age of eighteen, neither the sessions court nor the high court shall grant anticipatory bail under the Sanhita.

6.1 Legislative Evolution In Anticipatory Bail

The most consequential change seen from the old law and the new law is, in section 438(1)[39]

[33] PARDEEP KUMAR @ BANU v. STATE OF PUNJAB 2026 Live Law (SC) 302 (Criminal Appeal No. 1341/2026)
[34] The Criminal Procedural Code, 1973§438, No. 2 Act of Parliament,1974(India)
[35]Kush Kalra, supra note 22, at 312
[36] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 482, No.46 Act of Parliament, 2023(India)
[37]K. Swamyraj, supra note 24, at 416
[38] Amir Chand v. Crown, 1950CRILJ480
[39] The Criminal Procedural Code, 1973§438(1), No. 2 Act of Parliament,1974(India)

of The Criminal Procedural Code,1973,the statute granted the power to a police officer in charge of the police station to arrest the applicant while the application for anticipatory bail was pending. If the court had not granted interim protection, such an equivalent provision is excluded under the Sanhita. [40]

The omission of section 438 (6) [41] provision which many state governments used to impose bar on anticipatory bail, The Uttar Pradesh government through its 2019 amendment act imposed absolute bar on anticipatory bail but it was removed by the landmark case of Abdul Hameed v. State Of U. P.[42] the court held that, "The enactment of BNSS has created material changed circumstances, both in law and fact, that justify fresh consideration on merits. The removal of the statutory bar contained in Section 438(6) of CrPC represents a fundamental change in the legal framework that obliterates the foundation upon which the first application was rejected. The doctrine of beneficial legislation and the presumption in favour of retrospective application of procedural law strongly support the applicant's case. The applicant is entitled to the benefit of the more liberal provisions introduced by BNSS, regardless of when the alleged offence was committed."

The Bhartiya Nagarik Suraksha Sanhita, 2023, treats anticipatory bail with fewer statutory restrictions and wider judicial discretion than The Criminal Procedural Code, which interpreted anticipatory bail as a restrictive remedy.

6.2 Conditions To Grant Anticipatory Bail

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 think fit, including-(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;(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

[40] Unknown, Anticipatory Bail Under BNSS: Section 482 Explained, blogipleaders, (Apr .24,2026,12:20 PM), https://blog.ipleaders.in/anticipatory-bail-under-bnss-section-482/#section-482-bnss-vs-section-438-crpc-what-changed
[41] The Criminal Procedural Code, 1973§438(6), No. 2 Act of Parliament,1974(India)
[42] Abdul Hameed v. State Of U.P.,2025: AHC:102975

section 480, as if the bail were granted under that section.[43]

6.3 Release On Bail Under Section 482 Of The Sanhita

Individuals shall be released on anticipatory bail under section 482 (3)[44]of the Sanhita; (a)when he is arrested without warrant by an officer in charge of a police station on such accusation, and(b) the person is prepared either at the time of arrest or at any time while in the custody of such officer to give bail. If a magistrate taking cognizance of offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the court.[45]

6.4 Judicial Interpretation of Anticipatory Bail

Gurbaksh Singh Sibbia Etc v. State of Punjab[46]. In this landmark case, it was described that the anticipatory bail under section 438 of The Criminal Procedural Code,1973, should not be limited by rigid restrictive conditions as it acts as a safeguard for freedom of life and personal liberty under Article 21.

The Supreme Court held that, "It is understandable that if mala fides are shown anticipatory bail should be granted in the generality of cases. But it is not easy to appreciate why an application for anticipatory bail must be rejected unless the accusation is shown to be mala fide. This, truly, is the risk involved in framing rules by judicial construction. Discretion, therefore, ought to be permitted to remain in the domain of discretion, to be exercised objectively and open to correction by the higher courts. The safety of discretionary power lies in this twin protection which provides a safeguard against its abuse."

Syed Zafrul Hassan And Anr. v. State [47] ,the court held that," section 438 of the code does not permit the grant of anticipatory bail by any high court or any court of sessions within the country where the accused may choose to apprehend arrest. Such power vests only in the court of sessions or the high court having jurisdiction over the locale of the commission of the offence of which the person is accused.

[43] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 482(2), No.46 Act of Parliament, 2023(India)
[44] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 482(3), No.46 Act of Parliament, 2023(India)
[45]K. Swamyraj, supra note 24, at 417
[46] Gurbaksh Singh Sibbia Etc v. State of Punjab 1980 AIR 1632
[47] Syed Zafrul Hassan And Anr. v. State, AIR 1986 Pat 194

State (NCT of Delhi) v. Lavesh[48], where the court held that, when the proclaimed offender's conduct is taken into consideration he is "not amenable for investigation" and declares him as a "absconder", thus not granting him anticipatory bail.

Sushila Aggarwal v. State (NCT of Delhi)[49],the court held that, "The protection granted to a person under Section 438 CrPC should not invariably be limited to a fixed period and should be without any restriction on time. The life or duration of an anticipatory bail order does not end normally at that time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial."

Kanumuri Raghurama Krishnam Raju vs The State Of Andhra Pradesh[50]the court held as follows, "The jurisdiction of the Trial Court as well as the High Court under Section 439 of the Code of Criminal Procedure is concurrent and merely because the High Court was approached by the appellant without approaching the Trial Court would not mean that the High Court could not have considered the bail application of the appellant. As such, in our view, the High Court ought to have considered the bail application of the appellant on merits and decided the same."

Sumit v. State of U. P[51] in this case, Supreme Court ruled that, "once anticipatory bail is granted, it ordinarily continues without fixed expiry. The filing of a charge-sheet, taking of cognizance, or issuance of summons does not terminate protection unless special reasons are recorded." The court passed judgement in the favour of the appellant

Pawan Khera v. State of Assam[52] ,the Congress leader Pawan Khera approached The Supreme Court. Gauhati High Court's rejection of the anticipatory bail plea in connection with the FIR filed by Assam CM Himanta Biswa Sharma's wife, Miss Riniki Bhuyan Sharma, over his allegations that she holds multiple passports and undisclosed overseas assets. The FIR was registered under section 175,35,36,318 338,337,340,352 and 356 under Bharatiya Nyaya Sanhita ,2023, at Gauhati police station. The Assam police visited Khera's residence in Delhi on April 7 but, he was not there. The Telangana High Court on April 10 granted an anticipatory transit bail to Khera,permitting him to move before the concerned court. On April 15, The Supreme Court stayed the grant of transit bail by the Telangana high court. The bench said that

[48] State (NCT of Delhi) v. Lavesh, AIRONLINE 2012 SC 323
[49] Sushila Aggarwal v. State (NCT of Delhi), (2020 SCC OnLine SC 98)
[50]Kanumuri Raghurama Krishnam Raju vs The State Of Andhra Pradesh Criminal Appeal No. 515 of 2021
[51] Sumit v. state of U. P, 2026 Supreme(SC) 157
[52] Pawan Khera v. State of Assam, Diary No.25523/2026

if Khera applies for anticipatory bail in the Court having jurisdiction in Assam, then the interim order passed by the Supreme Court will not have any adverse effect on the consideration of such an application. Khera again urged The Supreme Court to vacate the stay it imposed on the transit anticipatory bail granted to him by the Telangana High Court. The appeal was turned down on April 17, and he was asked to approach The Gauhati High Court instead. the court observed that, "he dragged an 'innocent lady' into a controversy to get political mileage." The Gauhati high court denied Khera anticipatory bail vide the impugned order.

On April 30th the supreme court held that," Having regard to the aforesaid considerations, we are of the opinion that while adjudicating an application for anticipatory bail, a careful balance must be struck between the State's interest in ensuring a fair investigation and the individual's fundamental right to personal liberty under Article 21 of the Constitution of India, in light of the principles enunciated in Gurbaksh Singh Sibbia . In this context, the criminal process must be applied with objectivity and circumspection so as to ensure that individual liberty is not imperiled by proceedings that may be coloured by political rivalry. We are further of the opinion that the allegations and counter-allegations, as apparent in the present case, prima facie, appear to be politically motivated and seemingly influenced by such rivalry, rather than disclosing a situation warranting custodial interrogation, and the veracity of the allegations can be tested at trial. The right to personal liberty is a cherished fundamental right, and any deprivation thereof must be justified on a higher threshold, particularly where the surrounding circumstances may indicate the presence of political overtones." The court granted bail to the Congress spokesperson.

Thus, the anticipatory bail has evolved through time in the judicial arena, making the law stringent, flexible and efficient so that the rule of law may prevail and natural justice may be attained in the judicial system.

7. Detention of Undertrial Prisoners an Analysis of Section 479 of BNSS

Section 436 A[53] of the detention of undertrial prisoners was a result of the case Hussainara Khatoon v. State of Bihar[54] where the court criticised for the prolonged detention of the individuals, without trial, declaring that a right to a speedy trial is an essential component of the fundamental right guaranteed under the constitution, here in this case 'justice delayed is

[53] The Criminal Procedural Code, 1973§436A, No. 2 Act of Parliament,1974(India)
[54] Hussainara Khatoon v. State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532

justice denied'. Under Section 479[55] of the Sanhita, it underlines the issues of overcrowding in jail to prevent delay of justice and grants bail or bond by prescribing time limits under the Sanhita. It also makes a shift towards the protection of the rights of the prisoners under Article 21 but it does not grant bail under this provision to offenders charged with multiple offences.

7.1 The Changing Landscape In The Detention Of Undertrial Prisoners Under BNSS

The change incorporated into the Sanhita is that if someone is a first-time offender, the court may release him on bond after serving detention up to one-third of the maximum imprisonment period for that offence. However, if a person has multiple pending investigations, inquiries, or trials for different offences, the court cannot grant them bail. The jail superintendent, upon the completion of one-half or one-third of the specified detention period that is mentioned in subsection (1), must promptly submit a written application to the court for the person's release on bail. [56]

7.2 A Closer Look At Section 479 under BNSS,2023

Section 479(1)[57] mandates the release of an offender who has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law. Exception of an offence with the punishment of death sentence or life imprisonment cannot be granted bail under this provision. where such person is a first-time offender, he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law.

Second proviso states 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 under that law." This shows that the provision ensures speedy trial, enshrined under Article 21 of the Constitution.

In section 479 (2)[58] , it at first glance provides early release to offenders who have served a significant sentence for an undertrial offence. However, a closer look shows the limitation

[55] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 479, No.46 Act of Parliament, 2023(India)
[56]K. Swamyraj , supra note 24, at 411
[57] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 479(1), No.46 Act of Parliament, 2023(India)
[58] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 479(2), No.46 Act of Parliament, 2023(India)

bound in this provision. The subsection (2) states that, "Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court." This provision was not included in the previous code.

This exclusion is contrary to the bail jurisprudence since it restricts individuals from accessing their right to speedy trial under Article 21,This provision makes registration of more than one provision of offence under the FIR a reason to deny bail. This beats the principle that a person is innocent until the court proves them guilty of the offence. In the Sanhita, undertrial prisoners shall serve the whole period if they are charged with multiple offences, irrespective of the nature or gravity of the offence

In section 479(3)[59] it states that, "The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail." This was not previously provided in CrPC as in the old law the accused moved an application to court relating to undertrial and for those who are illiterate or not aware of the legal rights they possess where left in hopelessness and those who lacked money to hire an advocate would remain in jail serving a sentence longer than deserved.

7.3 Judicial Interpretation Of Undertrial Prisoners

Prem Shankar Shukla v. Delhi administration[60] , The court observed that," the appropriate principle for a classification should be defined by the need to prevent the prisoner escaping from custody or becoming violent." In the case it was highlighted that the regardless of social status, education or habit of life the dignity of a person must be protected and a person shall not be imposed to such restraints of handcuffing unless where there is "reasonable fear of the prisoner attempting to escape or attempting violence."

In Sheela Barse v. Union Of India,[61]The court directed the central government to pay to the petitioner who is a social worker, Rs 10,000 for the expenses and to extend all necessary

[59] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 479(3), No.46 Act of Parliament, 2023(India)
[60] Prem Shankar Shukla v. Delhi administration ,1980 AIR 1535
[61] Sheela Barse v. Union Of India, (1986) 3SCC 596

assistance who offered to personally visit different parts of the country to verify whether the information submitted by the authorities regarding children below the age of 18 years detained in jails in different states of the country was correct. The court directed that the children's Acts enacted by various states must be brought into force and their provision be implemented vigorously. It is desirable that parliament should pass a central legislation on the subject.

In Sunil Gupta v. State Of M.P[62], the petitioners, educated persons and social workers, had staged a 'dharna' for a public cause and voluntarily submitted themselves for arrest. They were remanded to judicial custody. They had no tendency to escape from the jail.in fact, they even refused to come out on bail but chose to continue in prison for the public cause. When they were taken to court from jail and back from court to the prison the escort party handcuffed them.it is held that, "the act of the escort party was violative of article 21 of the constitution. There was no reason recorded by the escort party in writing for this inhuman act.

State of A.P v. Challa Ramkrishna Reddy & Ors[63] held that a prisoner, whether a convict or undertrial does not seize being a human being and while lodged in jail, he enjoys all fundamental rights guaranteed by the constitution including right to life under article 21 in the constitution.

Salim Khan v. State Of Rajasthan[64] ,in this the, court held that, "We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution."

Arnesh Kumar v. State of Bihar[65], in the case, it was stressed that," arrest should be an exception and not a rule for offences involving punishment under seven years imprisonment. Section 41(1) of the crpc makes it clear that the police officer is required to issue notice directing the accused to appear before him at a specified place and time instead of resorting to immediate arrest. The police officer shall forward the check list duly filed and furnish the

[62] Sunil Gupta v. State of M.P,(1990)3 SCC 119
[63] State of A.P v. Challa Ramkrishna Reddy & Ors, AIR 2000 SUPREME COURT 2083
[64] Salim Khan v. State Of Rajasthan, Criminal Revision Petition No. 1450 / 2019
[65] Arnesh Kumar v. State of Bihar, AIR 2014 SUPREME COURT 2756

reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention. The magistrate shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise for the accused detention. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action and contempt of court."

re: Inhuman Conditions in 1382 Prison[66] held that, "Section 479 of the BNSS would apply retrospectively to all undertrials in cases registered before July 1, 2024. The retrospective application of the section further adds to the hope towards addressing the issue of overcrowding in prisons."

7.4 A Legal Analysis On The Right To Vote For Undertrial Prisoners

'Right To Vote' is a democratic right of the citizens of the nation. Participating in the electoral process of the nation shows the democratic influence that the nation has over its people. India is a representative democracy and follows a parliamentary form of democracy. Those who are of unsound mind, engaged in crime or illegal activities are disqualified to vote in elections. In Praveen Kumar Chaudhary v. Election Commission of India[67], the Delhi High Court reaffirmed that prisoners do not have Right to vote.

Undertrial prisoners are those who have been charged with an offence, but their trial is not complete, which means they are neither convicted nor acquitted of an offence. They are denied the right to vote even though the court has not proven them guilty of committing an offence. We know the rule that 'an accused is not a convict until they are proven guilty', but they are treated like convicts regardless of not being convicted of an offence. The principle of innocence should apply to them even when it comes to disqualification on the grounds mentioned under Article 326. The right to equality of the undertrials enshrined in Article 14 is thus violated. Under trial prisoners who can afford bail can get back their right to vote, while the poorer section who have been in jail and are unable to afford bail have to suffer injustice from their rights being infringed.

[66] Inhuman Conditions in 1382 Prisons, In re, 2024 SCC OnLine SC 3596
[67] Praveen Kumar Chaudhary v. Election Commission of India, W.P. (C) 2336/ 2019

Recently, the Madras High Court in Hari Nadar v. The Election Commission Of India [68]held that, "as per section 62(5) of the RP Act, only prisoners who are under preventive detention may cast their vote. Other prisoners either convicted or undertrial prisoners are prohibited from voting in elections. The bench also added that since the petitioner is in prison in connection with other criminal cases, he cannot be permitted to vote."

In the international scenario, the matter of voting rights is different from India. In the United States, there are 448,000 detainees still awaiting trial. The number of pretrial detainees increased between 1970 and 2015 by about 433%.

Legally innocent, pretrial detainees never lose the right to vote, but procedural and logistical barriers to casting a ballot from jail systematically disenfranchise them. Nevada's Assembly Bill 286,which is effective from January 1, 2024 onwards, attempts to actualise the right to vote from jail, requiring the city and county jail administrators to establish policies ensuring that every detained, eligible would-be voter can register to vote and vote from jail.[69]

The form of voting of undertrial detainees has been followed in Canada, South Africa and Switzerland. The detainees in these countries retain their right to vote while serving their sentence of imprisonment. Other countries like Japan and Sweden let their under-trial detainees vote subject to varying degrees of offence or other conditions. This shows that disfranchisement is not absolute, but it is conditional. [70]

8. Bail After Conviction: A Legal Evolution

When a trial is concluded, the accused is either convicted or acquitted of an offence. If the lower court convicts an accused, he will have to undergo the sentence the court has pronounced upon which the accused appeals to the appellate court. In the case where the appeal is pending, the accused can approach the court to suspend the sentence of punishment decreed against him.[71]

[68] Hari Nadar v. The Election Commission Of India,2026 livelaw (Mad)178 (WP 16236/2026)
[69] Jackie o' Niel, Towards Effectuating The Right To Vote From Jail, harvardlawreview, (Apr 28,2026, 9:36PM), https://harvardlawreview.org/blog/2024/08/toward-effectuating-the-right-to-vote-from-jail/
[70] Bhakti Parekh, Denial of Voting Rights To Undertrial Prisoners: An Unreasonable And Unjust Disqualification, Live Law, (Apr 28, 2026, 9:59 PM), https://www.livelaw.in/law-firms/law-firm-articles-/voting-rights-undertrial-prisoners-black-robes-legal-183859
[71] P. Rahul Ambedkar, B.A. LL.B (Hons) Civil Judge (Junior Division), Atmakur,POST CONVICTION BAIL AND POWER OF SESSIONS COURT TO GRANT ANTICIPATORY BAIL, cdnbbsr.s3waas.gov.in,(Apr 29,

We must bear in mind that an accused shall only approach an appellate court if an error of law has occurred in the decision of the court, and before the court orders suspension of sentence, the accused must have filed an appeal at the appellate court.[72] The Sanhita has the power to review or to rehear matters disposed of by the subordinate court. This is the process of post-conviction bail under section 430[73] of the Sanhita.

8.1 Detailed Procedural Framework Of Post-Conviction Bail Under Section 430 Of BNSS

Section 430(1)[74] states that 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 or bail bond. This provision of the Sanhita is incorporated from the code without any changes.

If the person was convicted for an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years the appellate court shall give the public prosecutor an opportunity for showing cause in writing against such release before releasing on his own bond or bail bond.

In cases where a convicted person is released on bail, the public prosecutor may file an application for the cancellation of bail. Under section 430(2)[75] the power conferred by this section can be exercised by the appellate court or high court in the case of an appeal by a convicted person from a subordinate court.

In Preet Pal Singh vs. State of U.P.[76] the Apex Court observed that, "There is a difference between the grant of bail under Section 439 of the CrPC, in case of pre-trial arrest and suspension of sentence under Section 389 of the CrPC and grant of bail, post-conviction. In the earlier case, there may be a presumption of innocence, which is a fundamental postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court

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https://cdnbbsr.s3waas.gov.in/s3ec030b6ace9e8971cf36f1782aa982a7/uploads/2025/09/2025090871.pdf
[72] Nayan Joshi, Session Trials With Model Forms,352(KAMAL PUBLISHERS, 2024)
[73] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 430, No.46 Act of Parliament, 2023(India)
[74] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 430(1), No.46 Act of Parliament, 2023(India)
[75] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 430(2), No.46 Act of Parliament, 2023(India)
[76] Preet Pal Singh vs. State of U.P, (AIR 2020 SUPREME COURT 3995)

in Dataram Singh vs. State of U.P. and Anr. However, in the case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt, and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is a conviction upon trial. Rather, the Court considering, an application for suspension of sentence and the grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) of the Cr.P.C."

The objective of this section in the Sanhitha is to ensure that the convicts who appeals against their conviction are not subjected to incarceration until the appellate court decides on an appeal. It also strikes the balance between justice and personal liberty enshrined In Article 21.

Under section 430 (3) [77]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. Accused shall be released on bail for such period as will afford sufficient time to present the appeal and get the order from the Appellate Court. In section 430(4)[78],when the appellant is sentenced to imprisonment for a term of imprisonment for life , the time during which he was released shall be excluded in computing the term for which he is so sentenced.

8.2 Judicial intervention in the case of post-conviction

In the State of Madhya Pradesh v. Chintaman[79],the high court of Madhya Pradesh has held that, once a bail is granted under section 389 of the code of criminal procedure it could not be cancelled under section 439(2) in as much as the persons who are granted bail were no more accused. In this case the persons were convicted and sentenced under section 326, 144,323,149 and 148 of the Indian procedural code. They preferred an appeal in the high court which suspended the sentence and released them on surety. After going through the facts and the circumstances of the case, the high court of Madhya Pradesh declined to accept the prayer of

[77] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 430(3), No.46 Act of Parliament, 2023(India)
[78] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 430(4), No.46 Act of Parliament, 2023(India)
[79] State Of Madhya Pradesh vs Chintaman And Ors., 1989CRILJ163

the state and observed," By passing an order under Section 389, Cr. P.C., the sentence is not set aside, but is merely suspended i.e. kept in abeyance and the appellant remains a convict for all practical purposes. The indulgence is shown because the appellate Court feels that the guilt is required to be rejudged and pending such adjudication if the appellant has served out the sentence or a substantial part of it, in the event of his ultimate acquittal, the suffering may become irreversible."

It was held in Bhagwam Rama Shinde Gosai And Ors vs State Of Gujarat[80]," when a convicted person is sentenced to a fixed period of the sentence and when he files appeal under any statutory rights suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances like if there are any statutory restrictions against suspension of sentence. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter suspending the sentence, so as to make the appeal right meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted."

In Dal Chand And Ors. vs State Of U.P.[81] held that, "An order passed on a bail application is only an interlocutory order and cannot be treated as a judgment or final order disposing of a case, and the bar contained under Section 362 CrPC is not attracted to entertaining a second bail application under Section 389 CrPC by the appellate court. There is no provision in the CrPC creating a bar against the maintainability of a second bail application, under section 389 CrPC, in an appeal. A second bail application would be maintainable only on some substantial grounds where some point which has a strong bearing on the fate of the appeal and which may have the effect of reversing the order of conviction of the accused is made out. Apart from the ground on the merits of the case, a second bail application would also be maintainable on the ground of delay in the hearing of the appeal within a reasonable time, and the convicted accused undergoes a major part of the sentence imposed upon him, the bail was granted to the accused on special leave, the purpose of filling the appeal may be frustrated . A strong humanitarian ground, which may not necessarily pertain to the accused himself but may pertain to someone very close to him, may also, in certain circumstances, be a ground to entertain a

[80] Bhagwam Rama Shinde Gosai And Ors vs State Of Gujarat, AIR 1999 SUPREME COURT 1859
[81] Dal Chand And Ors. vs State Of U.P., 2000CRILJ4579

second bail application. These are some of the grounds on which a second bail application may be entertained. It is not only very difficult but hazardous to lay down the criteria on which a second bail application may be maintainable, as it will depend upon the peculiar facts and circumstances of each case."

In Atul Tripathi v. State of U.P.[82] the court observed that, "The appellate court may even without hearing the public prosecutor, decline to grant bail. However ,in case the appellate court is inclined to consider the release on bail, the public prosecutor shall be granted an opportunity to show cause in writing as to why the appellant be not released on bail. Such a stringent provision is introduced only to ensure that the court is apprised of all the relevant factors so that the court may consider whether it is an appropriate case for release having regard to the manner in which the crime is committed, the gravity of the offence, age, criminal antecedents of the convicts, impact on public confidence in the justice delivery system etc. despite such an opportunity being granted to the public prosecutor, in case no cause is shown in writing, the appellate court shall record that the state has not filed any objection in writing. This procedure is intended to ensure transparency."

In Omprakash Sahni v. Jai Shankar Chaudhary[83] the court observed that, "From a perusal of section 389 of the CrPC, it is evident that save except the matter falling under the category of subsection (3) neither any specific principle of law is laid down, nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgement of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid background there happens to be a fine distinction between the prayer for bail at pre-conviction stage, viz sections 437,438,439and 389(1) of the CrPC. The endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal,

[82] Atul Tripathi v. State of U.P., 2014 AIR SCW 4326
[83] Omprakash Sahni v. Jai Shankar Chaudhary,2023 5 S.C.R.141

what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, based on which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

Jamnalal vs The State Of Rajasthan [84]The court held that ,"The reasoning of the High Court, set out above, falls far short of the parameters required under Section 389 of Cr.P.C. for enlargement of a convict, punished for heinous offence, on bail after suspending the sentence. The finding that no sexual assault was found, without considering the overall nature of the evidence of the case, is completely untenable. According to the evidence of the prosecutrix, Respondent No.2, at gunpoint, closed her mouth and forcibly took her to the house of Amro and committed rape on her. All that the medical evidence said was that no conclusive opinion about the crime could be given since FSL Report was awaited. That does not mean that the ocular evidence could be ignored. As far as non-availability of FSL Report is concerned, the prosecution has explained the situation and the Trial Court has also found that the non-availability of the DNA Report did not adversely affect the case of the prosecution. The reasoning that despite the availability of washrooms in the house it was difficult to believe that the prosecutrix could go out for the toilet, is conjectural in nature."

The court negated that the high court's reasoning in this case was flawed regarding the medical evidence, stating no conclusive opinion could be given, but it does not negate the prosecutrix testament as the prosecution had shown the court the unavailability of a forensic report. The Court observed that in serious offences under the POCSO Act, courts must consider the nature of the accusation, the gravity of the offence, and the desirability of releasing convicted persons on bail, which the High Court failed to do.[85]

9. Suggestions And Recommendations

- The 'multiple offence' stated under section 479[86] shall not be misused by charging an innocent with multiple offences to deny him bail.

[84]Jamnalal vs The State Of Rajasthan , 2025 INSC 935
[85] Drishti judiciary, https://www.drishtijudiciary.com/current-affairs/section-430-of-bnss,(last visited Apr 30, 2026)
[86] The Bharatiya Nagarik Suraksha Sanhitha,2023§ 479, No.46 Act of Parliament, 2023(India)

- The jail should bring an e- portal where offenders must be categorised by the gravity of the offence, and trials shall be done by electronic means for undertrial prisoners for a speedy and effective trial method. This portal shall be managed by the government. There shall be an e- list which contains convicts and undertrials, colour-coded and differentiated by age, sex, gravity of offence and years served in jail ,which would make it easier for the court to acquit or convict a prisoner.

- The statute must maintain morality and have a liberal interpretation to uphold the biases that exist in the judicial system.

- The remand must be provided to prisoners on strict conditions so that it shall not be misused by individuals.

- The failure to arrest the co- accused shall prevent the immediate bail of the first accused.

10. Conclusion

Bail transformation in the judicial arena is exceptional in The Bharatiya Nagarik Suraksha Sanhitha,2023. The statutory provisions are now more intertwined with maintaining constitutionality and morality. The provisions have shed light on more humanitarian considerations on the bail provisions of undertrial prisoners and added stringent conditions and uniform application of the anticipatory bail provision, which prevented anticipatory bail for rape and gang rape of minors. The post-conviction offence under the Sanhitha is given retrospective effect. The Bharatiya Nagarik Suraksha Sanhitha,2023, has modernised the bail provision to bring necessary changes to the legal system.

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