
BAIL IN INDIA'S CRIMINAL JUSTICE SYSTEM: A CRITICAL ANALYSIS OF LEGISLATIVE AND JUDICIAL TRENDS

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ABSTRACT

Jurisprudence of bail plays a significant role in the criminal justice system of India which navigates the mechanism protecting the fundamental right to personal freedom of an accused person and addressing the concern of a Welfare State that crime must be prosecuted fairly in the interest of public justice. Bail-bond system in criminal jurisprudence acts as a legal instrument of procedural protection that helps to avoid unnecessary pre-trial unlawful detention and ensures to safeguard the constitutional rights of accused persons allowing them to fair, unbiased & timely investigation and speedy trial. Article 21 of the Indian Constitution recognises personal liberty, shapes the judiciary's attitude towards bail procedure.

This is the general belief that pre-conviction detention should be a rare exception, not the common rule. Over the years, Indian courts have built a strong jurisprudential tradition. They interpret bail provisions in light of constitutional values, statutory requirements, and principles of equal treatment. Recently, the Bharatiya Nagarik Suraksha Sanhita, 2023(BNSS, 2023) has introduced procedural changes to the criminal justice system, yet the core philosophy of bail remains almost unchanged. However, People's trust in the criminal justice system has increased as a result of several significant judgments by the higher judiciary that have made it easier to issue bail, obtain a speedy trial, and safeguard fundamental rights.

The present research paper critically analyses the development of bail jurisprudence in India by revealing the lack of consistency and fairness in bail system. It examines constitutional provisions, statutory frameworks, and judicial precedents to show how these elements shape bail decisions. The present research work explores the conceptual basis of bail and reviews its types, such as regular bail, anticipatory bail, default bail, and transit bail, to highlight inconsistencies in their application. It focuses on the principles governing bail grants and cancellations, emphasising that decisions often axis on judicial discretion rather than clear justified guidelines.

Keywords: Bail Jurisprudence, Personal Liberty, Pre-Trial Detention, Judicial Discretion, Constitutional Safeguards, Criminal Procedure in India

Introduction

Bail jurisprudence in the administration of criminal justice system in a democratic country like India is fundamentally anchored in the constitutionalism of balancing the implementation of laws related to bail procedure and personal liberty of an accused. The concept of bail jurisprudence is rooted in the general principle of criminal law that “bail is the rule and jail is the exception”. Personal liberty is not deprived unreasonably, requiring that bail processes be fair, just, and equitable, with the presumption of innocence until proven guilty after a fair trial.

The Constitution states that no human being shall be denied life or personal liberty except according to procedure established by law.¹ The Supreme Court in various landmark decisions has broadened this meaning which may include the rule of fairness, reasonableness, and procedural justice. Laws managing arrest, detention, and bail must therefore meet standards of constitutional fairness and proportionality. Bail helps to prevent unnecessary loss of freedom in the criminal justice system. Upon arrest, courts may release the accused on bond, requiring court appearances for investigation or trial. This allows the accused persons to defend themselves without needless imprisonment and promotes efficient justice.

Justice Krishna Iyer in *Narasimhulu v. Public Prosecutor*² had emphatically remarked about Indian bail jurisprudence, particularly concerning the principles governing bail & judicial discretion that—“The subject of bail belongs to the blurred are of the criminal justice system and largely hinges/relies on the hunch of the bench, otherwise called judicial discretion.” This antiquated concept of bail has some inherent handicaps and it will be myopic to argue that only monetary loss can act as a sole deterrent against accused fleeing from justice. Some other crucial and relevant factors such as socio-economic condition of accused, length of his residence in the community, employment status, reputation, individual, criminal antecedents, the identity of responsible members of his community related to him, nature of offence, probability of conviction, nature of accusations, frivolity of prosecution, behavior of accused, his means and standing in society, his deep family ties, roots in community, job security, membership of stable organisations and many other factors regrettably don’t often move the

¹ The Constitution of India, art. 21.

² Adjudicated by the Supreme Court of India on December 6, 1977

court conscience. This may be a peculiar consequence of our adversarial system, albeit, it dampens the spirit of distributive justice envisaged in the Constitution.

Similarly, the Hon^{ble} Supreme Court in the matter of *State of Maharashtra vs. Sitaram Popat Vetal*³ has also mentioned few factors to be considered for granting bail such as the nature of accusations and severity of punishment in case of conviction and nature of supporting evidence, reasonable apprehension of tampering of the witness or apprehension of threat to the complainant and prima facie satisfaction of the court in support of the charge.

Traditionally, the Code of Criminal Procedure, 1973,⁴ governed bail procedures in India. Recently, the Bharatiya Nagarik Suraksha Sanhita, 2023⁵ has introduced major procedural changes while retaining most principles on arrest and bail.⁶ Anticipatory, ordinary, and default bail still play key roles in safeguarding individual freedom. Judicial concern over prolonged pre-trial detention and delayed bail decisions has influenced recent bail jurisprudence.

The Supreme Court has emphasized in a case that application of bail and anticipatory bail should usually be decided within 2 months.⁷ The Court observed that long delays to granting of bail violate fundamental rights of equality and personal liberty enshrined in Articles 14 and 21 of the Constitution. The evolution of bail jurisprudence reflects the judiciary's challenge to balance the requirement of criminal justice with constitutional principles of liberty. The present paper argues that developments in statutory law, constitutional interpretation, and recent judicial decisions demonstrate the ongoing effort to align bail practices with the core value of protecting individual liberty.

Review of Literature:

Bail jurisprudence has received long-term academic interest. This is due to its position at the crossroads of constitutional, criminal procedure, and human rights law. Legal scholars, jurists, and policy institutions have studied bail principles from both doctrinal and socio-legal perspectives. Most academic discussion revolves around the conflict between the presumption

³ AIR 2004 SC Appeal (Crl.) 921

⁴ The Code of Criminal Procedure, 1973, Chapter – XXXIII, Ss. 436–450 (Provisions as to Bail and Bonds)

⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, Chapter – XXXV, Ss.478- 498 (Provisions as to Bail and Bonds)

⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, Ch. XXXV (Bail and Bonds).

⁷ *Re: Policy Strategy for Grant of Bail*, Supreme Court of India, 2025 (order directing timely disposal of bail applications).

of innocence and the need to ensure the effective administration of criminal justice. Initial research on bail law in India focused primarily on interpreting the Code of Criminal Procedure and on the discretionary role of courts in granting or denying bail. Scholars noted that despite the presumption of innocence in law, the criminal justice system often resorts to pre-trial detention, especially in major crimes.⁸

Many commentaries on criminal procedure take an analytical view of bail's philosophical basis. Legal critics say bail is a tool. Criminal procedure commentaries analyse bail's philosophical basis. Legal critics describe bail as a safeguard against undue loss of freedom, ensuring the accused participates in investigations and trials. Major texts say that a court's bail discretion depends on the crime's seriousness, flight risk, evidence risk, and justice. They emphasise that granting bail is a legal decision directly affecting basic rights. The Supreme Court has interpreted the right to life and personal liberty to include procedural fairness and protection against arbitrary imprisonment. Jurisprudence on bail should therefore align with constitutional guarantees, establishing the rule that pre-conviction detention should be an exception, not the norm, and supporting the principle that freedom should prevail unless there are strong reasons to restrict it.

Another base in the literature pertaining to bail jurisprudence is the social and institutional consequences of bail decisions. Some empirical analyses show that a significant percentage of prisoners in India are undertrial prisoners.⁹ They spend a long time in prison without conviction. Research data relating to the Indian prison system reveals structural problems that over 70 percent of the inmates are undertrial prisoners who have not yet been investigated or tried. These problems include slow court processes, limited access to legal counsel, and the economic inability of many accused individuals to post bail bonds. Such structural inequalities raise concerns about equality before the law and access to justice.¹⁰ In response to these issues, the Law Commission of India has greatly influenced the academic and policy debate on bail. Its reports reiterate the need to improve bail practices to reduce prison overcrowding and promote fair treatment for accused persons. Echoing earlier concerns, the Commission advocates non-custodial measures and easier bail for minor offences, with scholars emphasizing that such reforms are necessary for a criminal justice system that truly aligns with

⁸ K.N. Chandrasekharan Pillai, *R.V. Kelkar's Criminal Procedure* (7th edn., Eastern Book Company, 2016) 289.

⁹ National Crime Records Bureau, *Prison Statistics India 2022* (Ministry of Home Affairs, 2023).

¹⁰ Law Commission of India, *268th Report on Bail Reforms* (2017).

constitutional values.

Over the past years, literature on bail jurisprudence has grown to cover the effects of new criminal law reforms in India. With the Bharatiya Nagarik Suraksha Sanhita, 2023, a new scholarly debate has emerged. Researchers discuss the continuity and development of procedural protections related to arrest and bail. Despite the new law replacing the Code of Criminal Procedure, the core philosophy of bail law remains grounded in constitutional doctrine and legal precedents.

A recent literature also highlights how technology and data analysis have increasingly become important in bail decisions. Studies using large datasets reveal significant differences in bail outcomes across courts and jurisdictions. These reports call for greater uniformity and transparency in bail determinations.¹¹ Some researchers discuss using artificial intelligence to analyse and predict bail decisions, but such approaches raise ethical and legal issues regarding judicial discretion. Overall, the literature shows that bail jurisprudence is not just a technical part of criminal procedure but also a key component of constitutional obligations regarding individual freedom and justice. Hence, the present research relies more on a theoretical, analytical and doctrinal method. The study relies on legal sources rather than fieldwork. This also focuses on the issue of personal liberty and protection against arbitrary arrest. Besides the provisions in the constitution, the research examines the statutory provisions on bail in the Code of Criminal Procedure, 1973, (now replaced) and the Bharatiya Nagarik Suraksha Sanhita, 2023.

This approach will entail a doctrinal examination of the statutory provisions and case law to establish the principles governing bail grants and cancellations. It is in this way that the study will attempt to review the strengths and weaknesses of the current bail jurisprudence and propose reforms to enhance the fairness and efficiency of the criminal justice system.

Research Methodology

The research design that is employed in this study is the doctrinal, theoretical and analytical mode of research method. The study is not grounded on the field work, as the main basis of the research is the review of the legal sources. The research focuses on the provisions on the Constitution of India especially the Articles 21 and 22 that deal with personal freedom and

¹¹ Vidhi Centre for Legal Policy, *Bail and Pre-Trial Detention in India* (2023).

right against unreasonable arrest. The research also examines statutory provisions that govern bail in the Code of Criminal Procedure, 1973(now replaced) and the Bharatiya Nagarik Suraksha Sanhita, 2023 besides the constitutional mandates.

The study is also based on the sources of authoritative legal authority such as reports of the Law Commission of India, Standard Criminal Law and Criminal Procedure Textbooks, and other scholarly articles that can be found in legal journals. Critical analysis of judicial rulings by the Supreme Court of India and other High Courts that have been rendered between the year 2010 and 2025 has helped to appreciate the changing interpretation of the provision of bails. The approach entails doctrinal interpretation of the statutory law and case laws to determine the principles that guide the awarding of bail and cancelling of the same. By doing so, the proposed study will aim at assessing the merits and demerits of the currently existing bail jurisprudence as well as offer reforms that would enhance the effectiveness and fairness of the criminal justice system.

Concept, Nature and Scope of Bail

Bail is the conditional release of an individual suspected of a crime from custody, awaiting investigation or trial. It is, in essence, a legal system that enables the accused to be released on bail, subject to the condition that they appear in court when required. This notion of bail is closely related to the fact that the criminal justice system is not to punish the accused prior to the realisation of his/her guilt. Pre-trial detention is therefore not supposed to take the place of punishment. On the contrary, the sole justification of detention should be the necessity to promote the appropriate administration of justice.

The term “bail” is defined as follows in **Black’s Law Dictionary**: “*a security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date*”.¹²

In a landmark case of **Kamlapati v. State of West Bengal**, the term “bail” was defined by the Apex Court, “*A method that has developed to achieve a balance between two fundamental human values: the accused’s right to personal freedom and the public interest in ensuring that*

¹² Shivanshu Goswami, “*Analysis of the legal aspects of anticipatory bail: Law and reality*”, March 13, 2026 available at: <https://thedailyguardian.com/analysis-of-the-legal-aspects-of-anticipatory-bail-law-and-reality/>.

the accused appears in court to face trial."¹³

According to the **268th Report (2017) of Law Commission of India**, "*the term of 'Bail' essentially means the judicial interim release of a person suspected of a crime held in custody, on entering into a recognizance, with or without sureties, that the suspect would appear to answer the charges at a later date; and includes grant of bail to a person accused of an offence by any competent authority under law.*"¹⁴

Thus, it can be defined as that, bail is a conditional release of a person by Police, Magistrate, and Court during the stage of investigation, enquiry or Trial.

The nature and scope of bail reflects the philosophy of criminal law in general, which aims to balance individual rights with the interests of society. Although liberty protection is among the core goals, the criminal justice system must also ensure that the accused does not escape. The Supreme Court has repeatedly stated that bail determinations should be made in accordance with the constitutional provision that liberty should not be unnecessarily restricted. The courts should thus exercise caution and set terms and conditions of bail that are reasonable and proportional.¹⁵

Bail jurisprudence extends beyond the release of the accused on bail. It is also comprised of the conditions which are provided by the courts, the ways under which the bail may be cancelled and the rights of the accused in the course of the bail. All these considerations make or break the operations of the criminal justice system and impact or affect the safeguarding of basic rights.

Types of Bail in India

Regular Bail: Regular bail is the release of an individual who is already in arrest and under either judicial or police custody. A regular bail application is normally done before either the Magistrate or the Sessions Court, depending on the nature of the offence.¹⁶ The accused is statutorily entitled to bail whenever the offence committed is bailable. The accused must be released upon payment of the required bond by the court or a police officer. In the non-bailable

¹³ Kamlapati v. State of West Bengal AIR 1979 SC 777

¹⁴ 268th Report of the Law Commission of India, 2017.at p. 22.

¹⁵ Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 (applied in contemporary bail framework).

¹⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 478–483.

offences, however, the granting of bail is at the discretion of the courts. The courts normally take into consideration the intensity of the crime, the likelihood of the accused escaping justice, the likelihood of influencing witnesses, and the general interests of justice.

Anticipatory Bail: Bail granted before arrest.¹⁷ It offers security to people who fear they could be arrested on suspicion of committing a non-bailable crime. Anticipatory bail is meant to ensure that arrest powers are not abused and to prevent wrongful detention. The clause touching on the anticipatory bail remains a significant protection of individual freedom under the Bharatiya Nagarik Suraksha Sanhita. The courts have held that anticipatory bail ought to be granted in cases where the allegations are driven by motive or where the accused's arrest is not essential to the investigation.

Default/Statutory Bail: The default bail occurs when the investigating authority is unable to complete the investigation and present the charge sheet within the time stipulated by law.¹⁸ The accused has the right to bail in such a case. According to Section 187(2), if the police fail to file a charge sheet within 60 days (for offenses punishable by up to seven years) or 90 days (for more serious offenses), the accused is entitled to statutory bail, providing they pay a bail bond. Unlike the CrPC, which has a fixed 15-day maximum, the BNSS enables 15 days of police custody to be divided across the first 40 or 60 days of imprisonment. This modification may delay statutory bail, especially if police custody is purposefully staggered, raising worries about the impact on undertrials' rights.

Transit Bail: Transit bail is an interim release granted by a court to an accused individual so that he or she can approach the relevant court to obtain regular or anticipatory bail.¹⁹ Even though transit bail is not a statutory provision, it has developed as a judicially recognised tool to ensure that a person is not arrested in a foreign jurisdiction.

Emerging Issues & Challenges in Bail Jurisprudence

The BNSS has several difficulties despite its advanced aspects:

- **Discretionary Anticipatory Bail:** Legal experts have pointed out that the lack of

¹⁷ *Ibid.*, s. 482 (anticipatory bail provision under BNSS).

¹⁸ The Bharatiya Nagarik Suraksha Sanhita, 2023, provisions relating to default bail (60/90 days rule).

¹⁹ Recent High Court jurisprudence on transit bail; *see also Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

standards under Section 482 could lead to varied judicial results.

- **Extended Detention by the Police:** Undertrials with little access to legal representation may be disproportionately affected by the flexible 15-day custody period, which may postpone statutory bail, especially in situations involving staggered police custody.
- **Provisions for Handcuffing:** This clause runs the risk of compromising human dignity and could give rise to constitutional disputes because it contradicts judicial precedence.
- **Limitation on Multiple Charges:** Denying bail to people facing several counts could worsen jail overcrowding and discriminate against undertrials in complicated circumstances.
- **Implementation Gaps:** In India's complex socio-legal environment, judicial training, high-quality digital infrastructure, and public consciousness are necessary for effective implementation.
- **Victim-Centric Provisions:** Improving victim representation is commendable, but it may tip the scales against the guilty, therefore judges must exercise caution.

Legislative Analysis of Bail in India

The Indian criminal justice system of bail procedure is mostly a codification of the law which is aimed at finding the balance between the freedom of the person and the principles of fair justice. The framework that used to be governed by Code of Criminal Procedure, 1973, is now significantly changed due to the introduction of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS,2023), which started to apply and come in to force in July,2024, replacing the previous procedural law.²⁰ In the updated legislative view, the provisions of bail currently contained in the Chapter XXXV of BNSS are systematized and rights-oriented approach.²¹ The legislature acknowledges bail as continuation of innocence presumption where the accused could be given a chance to stay at liberty pending trial without being available in court which is guaranteed by conditions like bail-bonds.

²⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

²¹ *Ibid.*, Ch. XXXV (Bail and Bonds).

The recent changes in the legislation under BNSS show the movement to the modernization and efficiency. The law still has the fundamental characteristics, including regular bail, anticipatory bail and default bail, but the law has refinements. As an example, the provisions of anticipatory bail have been extended by eliminating the previous statutory limitations, hence protecting individual liberty. On the same note, default bail provisions still exist, where the suspect must be free until investigation is done within 60 or 90 days, a factor that further proves that legislators are concerned about the length of detention.²²

The 2018 NCRB report also states that 3920 UAPA cases remain pending investigation from prior years, with the addition of 1182 new cases, totaling 5107 cases under the UAPA pending until 2018. This demonstrates that once suspects under the UAPA are charged, while bail is rarely granted, trials take years to complete, with the bulk of cases still pending trial as of 2014. Given this information, it is crucial to consider how the constitutional rights of the accused can ever be secured.

Moreover, BNSS creates more rigid timelines of procedures and focuses on the fast investigation and trial that indirectly reinforces the bail regime by limiting unnecessary pre-trial incarceration. The legislature has also increased judicial discretion especially the higher courts of justice to give bails on serious offences with the condition. The political reason of bail provisions can therefore be said to have a threefold purpose of safeguarding individual freedom, avoiding arbitrary arrests and delivering efficient criminal justice. The existing framework is a deliberate effort of the legislature to balance the rights of an individual with the interests of society and the bail is no longer the procedural relief but the substantive protection in the Indian developing criminal justice system.

Judicial Development Bail Jurisprudence

The bail jurisprudence in India has undergone significant changes over the past 10 years, in the form of a series of milestone cases issued by the Supreme Court of India. These judicial trends indicate that the Court is still working hard to balance effective criminal investigation with the constitutional guarantee of individual freedom under Article 21 of the Constitution. The judiciary has reiterated on numerous occasions that pre-trial detention is not within the compass of punishment and that the presumption of innocence must inform judicial discretion when

²² The Bharatiya Nagarik Suraksha Sanhita, 2023, provisions relating to default bail (60/90 days rule).

deciding whether to grant bail requests. The Supreme Court has sought to establish common principles and to deny or grant bail in several cases between 2010 and 2026, and has also tackled systemic issues such as random arrests, long detention, and prison overcrowding.

The *Sanjay Chandra v Central Bureau of Investigation* (2012)²³ case is one of the first and most impactful cases introduced into contemporary bail jurisprudence, following the popular 2G spectrum allocation case. In this ruling, the Supreme Court strongly reiterated the age-old rule that bail is the rule and jail is the exception. The Court noted that the aim of bail is to keep the accused in the process of trial, not in punishment. The Court has pointed out that long periods of pre-trial detention are contrary to the basic right of personal liberty and cannot be justified merely by the severity of the charges. This ruling has generally been considered a significant restatement of liberalism in bail jurisprudence in Indian criminal law.

The second court case that transformed bail jurisprudence is *Arnesh Kumar v State of Bihar* (2014).²⁴ The Supreme Court addressed the issue of unnecessary arrest in cases that attract less than seven years' imprisonment, especially under Section 498A of the Indian Penal Code. The Court provided elaborate instructions that guided police officials to critically assess the need to arrest a person before detaining an accused individual, and mandated that they write reasons for doing so under Section 41 of the Code of Criminal Procedure. The Court also instructed magistrates to ensure that no one allows detention to be carried out mechanically. Such rules were also put in place to eliminate the possibility of arbitrary arrests and minimise unnecessary bail applications arising from detention.

The Supreme Court also, in *Siddharth v State of Uttar Pradesh* (2021),²⁵ reinforced the underpinning principle that arrest cannot be considered a normal part of the criminal investigation process. The Court said that an accused individual who has collaborated with the investigators and has never sought to corrupt the law should not be arrested simply because a prosecution is being prepared. In the judgment, it was pointed out that an unwarranted arrest results in unwarranted imprisonment and violates the constitutional pledge of individual freedom.

The other landmark case that has contributed immensely to the bail jurisprudence is *Satender*

²³ *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40.

²⁴ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

²⁵ *Siddharth v. State of Uttar Pradesh*, (2021) 1 SCC 676.

Kumar Antil v Central Bureau of Investigation (2022).²⁶ In this instance, the Supreme Court looked at the problem of the high population of undertrial prisoners in India and the misuse of powers to make arrests by investigating agencies. The Court provided detailed requirements for bail and classified offences into various classes according to their severity. It underlined that where the charge is punishable by up to seven years' imprisonment, the police should generally not arrest the accused but instead issue a notice of appearance. The Court also instructed that in cases where the accused is placed in response to such notice before the court, the ordinary rule should be bail. The decision again upheld the constitutional value of personal liberty not being unduly restrained.

Other areas in which the Supreme Court has also weighed in on bail are economic crimes and intricate financial inquiries. In *P Chidambaram v Directorate of Enforcement* (2019),²⁷ the Court analysed the principles that apply to bail in cases involving allegations of money laundering and irregularities. The Court noted that economic offences are not trivial and may affect the country's financial stability, but this cannot be denied even on the grounds of the seriousness of the allegations. Before a court can refuse to grant bail, it should consider that the accused is prone to abscond, distort evidence, or manipulate witnesses.

Correspondingly, in *Arnab Manoranjan Goswami v State of Maharashtra* (2020)²⁸ the Supreme Court highly stressed the need to safeguard personal freedom. The Court noted that the denial of bail lacked a significant justification and that the refusal to grant bail would therefore compromise the rule of law. Another judgment of the Court was the lower courts' inability to defend personal liberty, and it reiterated that constitutional courts have an obligation to intervene when liberty has been unreasonably limited.

The other development, which occurred in bail jurisprudence, was in the *Union of India v K A Najeeb* (2021)²⁹ case, in which the Supreme Court granted bail to an alleged offender under the Unlawful Activities Prevention Act. The Court noted that, despite the stringent conditions for bail under special laws such as the Unlawful Activities Prevention Act, long-term detention without trial can be a basis for granting bail on constitutional grounds. The Court held that the statutory limitations on bail do not interfere with the basic right to personal liberty in cases

²⁶ *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

²⁷ *P. Chidambaram v. Directorate of Enforcement*, (2020) 13 SCC 791.

²⁸ *Arnab Manoranjan Goswami v. State of Maharashtra*, (2021) 2 SCC 427.

²⁹ *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.

where the trial is not likely to end within a reasonable time.

The past few years, 2022-2026, have seen additional judicial enrichment of the principles of bail. In the *Elgar Parishad case*,³⁰ *Vernon Gonsalves v State of Maharashtra (2023)*,³¹ and *Arun Ferreira v State of Maharashtra (2023)*,³² the Supreme Court granted bail, noting that the accused had already been in custody for more than several years and that the trial had yet to be initiated. The Court noted that prolonged police detention without trial violates the constitutional rights to freedom and to due process of law in criminal proceedings.

The other remarkable example is a case of *Manish Sisodia v Directorate of Enforcement (2024)*.³³ The Supreme Court was of the view that the accused was entitled to bail, since they had already been in custody for a long time and, moreover, the trial had not begun despite the passage of much time. The Court noted that a speedy trial is a constitutional right under Article 21 and that extended detention without trial could not be accepted merely because of serious charges.

Conclusion

The jurisprudence of bail in India is a very important point where the constitutional law intersects with criminal procedure. It demonstrates the courts' current struggle to strike a balance between protecting individual freedom and maintaining law and order.

The courts have, over time, ruled that detention prior to conviction should remain an exception, not the rule. The Supreme Court has also noted that the right to personal liberty cannot be defeated by the procedure or by the common application of statutory provisions.

Recent rulings since 2022 show that the judiciary is increasingly eager to uphold the rights of under-trial inmates and ensure that bail decisions rely on constitutional principles. The focus on fast-track processing of bail applications and the recognition of long-term imprisonment as a violation of Article 21 are key advancements in this respect.

Nevertheless, there are still serious problems in the practical usage of the bail jurisprudence. Prison overcrowding, trial delays, and inconsistent judicial practices continue to hinder the

³⁰ FIR No. 4 of 2018, Vishrambaug Police Station, Pune (Bhima Koregaon/Elgar Parishad case).

³¹ *Vernon Gonsalves v. State of Maharashtra*, (2023) SCC OnLine SC.

³² *Arun Ferreira v. State of Maharashtra*, (2023) SCC OnLine SC.

³³ *Manish Sisodia v. Directorate of Enforcement*, (2024) SCC OnLine SC.

efficiency of bail provision.

Suggestions for Reforms

- To start with, the judicial principles governing bail must be more uniformly applied across the courts to minimise variations in bail determinations.
- Second, the courts ought to place special emphasis on cases involving undertrial prisoners who have been imprisoned without trial.
- Third, investigative agencies should endeavour to complete investigations in time so that the statutory right of default bail is not often availed.
- Fourth, specially designed training programs for judges and prosecutors can also help them adopt a more consistent and ethical approach to bail adjudication.
- Lastly, there is a need to sustain the observation of the undertrial detention through judicial and administrative procedures to ensure that the constitutional commitment to personal freedom is not lost.