



Anticipatory Bail

Prelims: Types of Offences, Power to grant bail, CrPC, Supreme Court Judgements

Mains: Effects of indiscriminate arrests on society, Constitutional Protection

Why in News?

Recently, an MLA has been granted pre-arrest bail or [Anticipatory bail](#) by the High Court; a decision challenged in [Supreme Court](#) by the state [Lokayukta](#).

What is Bail and What are its Types?

- **Definition:** Bail is the conditional/provisional release of a person held under legal custody (in matters which are yet to be pronounced by the Court), by undertaking a promise to appear in the Court as and when required. It signifies a **security/collateral deposited** before the Court for release.
 - In ***Supt. and Remembrancer of Legal Affairs v. Amiya Kumar Roy Choudhry (1973) case***, the Calcutta High Court explained the **principle behind giving Bail**.
- **Types of Bail in India:**
 - **Regular Bail:** It is a direction given by the Court (any Court within the country) to release a person who is **already under arrest** and kept in police custody. For such Bail, a person can file an application under **Section 437 and 439** of the CrPC.
 - **Interim Bail:** Bail granted for a **temporary and short period** by the Court till the application seeking Anticipatory Bail or Regular Bail is **pending** before a Court.
 - **Anticipatory Bail or Pre-arrest Bail:** It is a legal provision that allows an accused person to apply for bail before being arrested. In India, pre-arrest bail is granted under section 438 of the Code of Criminal Procedure, 1973. It is **issued only** by the **Sessions Court and High Court**.
 - The provision of pre-arrest bail is discretionary, and the court may grant bail after considering the nature and gravity of the offence, the antecedents of the accused, and other relevant factors. The court may also impose certain conditions while granting bail, such as surrendering the passport, refraining from leaving the country, or reporting to the police station regularly.

What are the Judicial Interpretations of Pre-Arrest Bail?

- The [Supreme Court \(SC\)](#) of India has held that the power to grant **pre-arrest bail is an extraordinary power to be exercised only in exceptional cases**.
- ***Gurbaksh Singh Sibbia vs State of Punjab (1980) case:*** SC ruled that “Sec. 438(1) should be interpreted in the light of **Article 21** (protection of life and personal liberty) of the Constitution.”
 - Granting of anticipatory Bail as a matter of right of an individual should not be limited by time.
 - The Court **could impose appropriate restrictions** on a case-by-case basis.
- ***Salauddin Abdulsamad Shaikh vs State of Maharashtra (1995) case:*** SC overruled its

earlier judgment and held that “granting of anticipatory Bail **should be limited by time.**”

- **SS Mhetre vs State of Maharashtra & Ors (2010) case:** SC held that “**life/duration** of an order granting anticipatory Bail **could not be curtailed.**”
- **Sushila Aggarwal and others v. State (NCT of Delhi) (2020):** The Court held that Anticipatory bail as a ‘**general rule**’ will not be limited to a **fixed period of time.**

What are the Conditions for Granting an Anticipatory Bail in India?

- The person seeking anticipatory bail should have reason to believe that they **may be arrested for a non-bailable offense.**
- The court may also impose a **monetary bond**, which the person seeking anticipatory bail will have to pay if they **fail to appear before the court or violate the conditions imposed.**
- The person seeking anticipatory bail must make themselves **available for interrogation** by the **investigating officer as and when required.**
- The court may grant anticipatory bail for a limited period, and the person will have to **surrender to custody once the period expires.**
- It is important to note that the granting of **anticipatory bail is at the discretion of the court and is not an absolute right.** The court will consider various factors, such as the nature and gravity of the offense, the antecedents of the person seeking anticipatory bail, and the likelihood of the person absconding or tampering with evidence, before deciding whether to grant anticipatory bail.

On What Grounds Anticipatory Bail can be Cancelled?

- **Sec. 437(5) & Sec. 439 of CrPC** deal with the cancellation of anticipatory Bail. They imply that a Court which has the power to grant anticipatory Bail is also **empowered to cancel the Bail or recall the order** related to Bail upon appropriate consideration of facts.
- A **High Court or Court of Session** may direct that any person who has been released on Bail by it be arrested, and brought under custody after filing of an application by the complainant or the prosecution. However, a Court does **not have the power** to cancel the **Bail granted by the police officer.**
- Over the years, anticipatory Bail has acted as the protection (granted under **Sec. 438** of CrPC) to **safeguard a person against whom false accusation or charges have been made.** It ensures the release of such falsely accused person even before they are arrested.

Conclusion

- Pre-arrest bail is an important legal provision that safeguards the fundamental rights of individuals in India.
- The provision allows an accused person to apply for bail before being arrested for a non-bailable offence. The court **may grant bail after considering the nature and gravity of the offence, the antecedents of the accused**, and other relevant factors. The Supreme Court of India has laid down guidelines for granting pre-arrest bail, which require the court to consider various factors while granting bail.

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