Liberty occupies a place of pride in our socio-political order. Who could knew the value of liberty more than the founding fathers of our Constitution whose liberty was curtailed time and again under Draconian laws by the colonial rulers. Article 21 of the Constitution provides that no person shall be deprived of his personal liberty except according to procedure established by law. It follows therefore, that the personal liberty of an individual can be curbed by procedure established by law.

The Code of Criminal Procedure, 1973, is such a procedural rules. The law allows a restriction on the freedom of the anti-social and anti-national elements. Article 22 raises certain obligations for the authorities in the case of the arrest of an individual accused of a crime against the society or the nation. In the case of the under-studies charged with the Commission of an offense or offenses as the Court is in general up to decide whether, for him free on bail to commit or him in prison. This decision has to be made mainly in non-bailable cases, taking into account the nature of the crime, and the circumstances under which it was committed, the background of the accused, the possibility of his jumping bail, the impact his release to the prosecution witnesses, its impact on society and the possibility of retaliation, etc.

The purpose of Article 21 is to prevent serious infringement of personal freedom by the executive save in accordance with law, and in accordance with the provisions of this Directive. Therefore, it is imperative that before a loses his or her life or personal freedom, the procedure must be strictly observed by the law and must not be departed from, and to the detriment of the affected. In any case, that a person who complains about the withdrawal of his life or personal freedom, the Court in the exercise of their constitutional powers of judicial review, to decide whether it is a law on the approval of the deprivation and whether in this case the procedure is quite reasonable by this, fair and just, and not arbitrary, whimsical and imaginative. Due to the liberal interpretation of the words "life" and "freedom" in Article 21, the article is now be called up almost as a waste product, even in a way that the father of the
Constitution have never dreamed of. So, personal freedom cannot be repealed only in accordance with the procedure established by law.

Personal freedom is a constitutional guarantee. However, Article 21 guarantees the top-right by non-custodial pre-trial supervision measures considered procedure established by law. In the framework of the provisions of criminal law in this country, a person with criminal offenses, the non-bailable is suitable, are detained during the pendency of the proceedings unless it is enlarged on bail in accordance with the law. This prison are not called into question as violative of Article 21 since the same is authorized by law. But also persons accused non-bailable offenses are entitled to guarantee when the Court concludes that the prosecution had failed to make a prima facie case against him, and/or if the court is satisfied for reasons to be recorded, that in spite of the existence of prima facie case, there is a need for these people released from prison where facts and situations require to do it. In this process a person whose request for extension to Bail is rejected once again is not to be excluded from the submission a subsequent application for the granting of the security Bail for a change in the situation.

In such cases, if the circumstances prevailing at that time require that such persons be released on bail, despite its previous applications are rejected, the courts can do this. The freedom of the individual is important, and it should be always an effort on the part of the courts for the protection of the civil liberties of the individual - but this protection can be made available to the public and it deserves, just because the term protection may not by itself be known, will be absolutely in every situation, but is qualified depending on the requirements of the situation. It is in this perspective that, in the case of there is recommended retail price a heinous crime it is the society that must be a protection from these elements because the latter are due to the possibility of spreading a terror to disrupt the life and stay of the people in society.

The protection is thus to be approved by the proper care in dependence on the fact of the matter. The examination of the scope of the reference to Article 21 of the Constitution, in one case, the Supreme Court found that, while it is true that Article 21 was not incorporated in the Constitution, the perpetrators, provided, however, that there is due to the right in the petitioner's question in the pre-trial detention.
Bail or prison? That is the question. Every citizen be assumed respect the law and innocent. But when the court speaks of the presumption of innocence of the accused, it only means that the burden of proof on the prosecution is to blame and that strict proof must be given for the assumption that the defendant is guilty. This is based on the principle that every citizen is entitled to a life of freedom until he commits an infringement, and no one, not even the State, should then his freedom, without establishing a Court that he had committed a crime and thereby disqualified themselves for enjoy the freedom of a free citizen.

It is true that personal freedom guaranteed under Article 21 of the Constitution contains all the freedoms in Article 19, paragraph 1, point (a) to (g). But that is also a reasonable restrictions and with the provisions of the law or procedure established by law. It is not a full freedom in the sense of immunity from arrest by the provisions of the law.

A provision, which curtails considerably personal freedom should be most strictly interpreted to the topic and to the protective measures in accordance with for the protection of the citizens of the freedom must be generously interpreted and applied. Certainly enough accused people, the right to personal freedom is important, but in the case of a conflict between accused the right of personal freedom and interest of public justice and social objectives of the society, the former shall be subject.

Freedom of a citizen is undoubtedly of importance, but is the same in a so serious balanced with the safety of the Community. It is thanks to the fact that a citizen should be given the freedom top priority in all situations and the same may be refused him for very good reasons, and only when absolutely necessary in the interest of justice and of the security provisions in the Czech Republic. P. C. are undoubtedly is designed so that the above mentioned objective. It is a consistent principle that before a person is the non-custodial pre-trial supervision measures, the procedure on the basis of the law strictly and strictly complied with and/or follow and should not be departed from to the detriment of the person concerned. The Court must therefore determine whether the requirements of the Act and of the proceedings in the present case have been met and whether the withdrawal of personal freedom is in accordance with the procedure established by law.
One of the accused to the statutory presumption innocent until his guilt has not been proven. As a presumably innocent person, he is entitled to the fundamental rights guaranteed under our constitution a citizen. As already mentioned under Article 21 of the Constitution no person be withdrawn his life or personal liberty except according to the procedure established by law. Personal freedom is a precious commodity and the courts have, to carefully protect it against all attacks from all sides. Subtle interventions in this valuable right under the guise of legal authority or procedural requirements to prevent always vigilant in monitoring and if it is found that such interventions are not necessarily in accordance with the law. Withdrawal of personal freedom by arrest before the proof of guilt is allowed in the Code of Criminal Procedure, not as a measure of the punishment for the offense but only in order to achieve a fair and proper investigation and trial. Withdrawal of the personal freedom means not only complete withdrawal; also partial deprivation is illegal confinement. The restriction of personal freedom, even if not the full withdrawal of personal freedom, but rather only a constraint, can only be made in accordance with the procedure established by law.

According to the principle of the presumption of innocence is not taken into account for the granting of the security. When the test is likely to be hindered or evidence likely to be distorted, or cast flee, Bail can be rejected. The salutary rule is used to compensate for the cause of the criminal defendant, and the cause of the judiciary. Over zealous homage to the criminal defendant of freedom can sometimes cause for the judiciary. In some circles, there seems to be a feeling that the object of the criminal law is to protect the rights of the accused and the criminal justice system is planned as the guardian of the rights of the accused. It is not so. The law is the Sentinel of the rights, the society and the individual. The rights of the accused criminal offenses is as carefully guarded as the cause of the judiciary. The pre-trial detention is not, in itself, a bad thing, but not opposed to the basic assumptions of innocence. The provision of security and order is a permissible non-punitive objective can be achieved by the pre-trial detention. Taking into account the overwhelming referred in nature require the type denial-of-bail, it has to be denied. So to be released on bail plays a very important role to save personal freedom.

As far as the interpretation and definition of security is concerned, is not defined by law. That is why it is still understood as a right to safeguard freedom
against the unacceptable restriction of the security of the impression of a people for his release. Security Bail is usually a matter of justice in its sole discretion. With regard to the question whether or not the granting, or not to bail, opposing party, without doubt is freedom of the accused and the larger interest of the society have to be taken note of. As far as the evolution and history of the Bail is it has gradually evolved in India. This is a very important instrument. The importance of the instrument of the Bail is hard to imagine that by the first stage of the accusation at the level of the police to Apex Court and right from direction for the forward-looking granted bail to special powers of the High Court and Court of Session on security and on habeas corpus and were challenged to restore the freedom of the individual.

The main purpose of the Bail is to ensure that an accused person will return to sample when it is released after the arrest. In the Indian state of Rajasthan v. Bal Chand, it was in the possession of the Supreme Court that general policy is to refuse to bail instead. The Supreme Court has decided that the gravity of the offense are involved, which will probably be on the initiative of the accused to avoid justice, must also with the examination of the question of the bail and as well as the heinousness of the crime should also be taken into account. It has been held by the Apex court in a number of cases that bail is not be refused as a punitive measure. The jurisdiction of the Court of Justice in the granting of a guarantee, it is not as if the penalty is imposed before trial. As mentioned above, it was a greater emphasis on the fundamental freedoms of our citizens in the Constitution. It is therefore necessary that strike balance between personal freedom and the public interest. All these aspects have been discussed in detail in Chapter I of this study.

For the granting of bail in Bailable for crimes committed were classified and non-bailable offenses pursuant to section 2 of the Code of Criminal Procedure. The primary difference in these offenses is that in bailable offenses against Bail may be requested as a matter of right, while in non-bailable offenses it is at the discretion of the courts whether to bail or not.

During the release on bail in the case of non-bailable offenses various factors to be taken into account by the courts the horizon of human rights today. While the crime rate is also increasing. In accordance with this, the Supreme Court has been decided that it is urgent that a balance between personal freedom and prophylactic
powers of the police. There is no gain saying that the freedom of the individual must be for the security of the country. However, no law can be absolute and reasonable restrictions to assess.

In *Moti Ram v. State of Madhya Pradesh*, the Supreme Court has the following observations for improvements in the legislation on the granting of Bail:

"We leave it to the European Parliament to investigate whether in our socialist republic with social justice as a sign, money superstition, not the other relevant aspects such as family ties, roots in the Community is the membership in the stable organizations, should take precedence over for bail bonds to ensure that the "Guardian" does not flee.

The best guarantee for presence in the courts is the range of the law, not the money. A dividing line. If the needy are not be betrayed by the law also to be released on bail law, re-writing of the many procedural right is an urgent desideratum; and the courts will remember that the geo-legal limits of the central codes do not disfigured by cartographic interventions in the name of the language or the Province?"

Section 437 of the Code of Criminal Procedure it is clear that, if a person other than the slayer a non-bailable offenses, is arrested and whether he is prepared to the security, he will be released on bail. This provision is mandatory, and the Court has no discretion in this context.

In accordance with section 437 of the application. P. C. on security in the event of bailable offenses the following conditions must be met:

1. The person who has been accused of a bailable offenses.
2. Such a person has been arrested or detained without a court order, by an officer of a police station or fixed amount is brought before a court.
3. Such a person is ready to be released on bail at any time and it is in the responsibility of this officer, or is he willing to do so at any stage of the procedure before the Court of First Instance.

Thus, the granting of security in the event of bailable offense is rule and refusal and exception. The granting of bail for a person accused non-bailable offense is at its own discretion during grid security Bail can also be imposed by the Court. However, such conditions do not bitter and incomprehensible. In the *Indian state of Rajasthan v. Bal Chand*, the Supreme Court has determined that this rule is released
on bail, not in prison. Unless there are circumstances on a flight from the justice or
defense of the judiciary or create new trouble in the form of repetitive acts or
intimidating witnesses and the like by the accused, the enlargement of the attempts to
bail from the Court.

On the basis of the various judicial decisions the following principles for the
granting or refusal of the Bail in accordance with section 437 (CR) P. C.:

(i) Security must not be refused unless the crime is charged by the highest
scale and the punishment of the IT has been assigned by the law is of
extreme severity.

(ii) Security Bail should be refused if the court can reasonably be assumed
that some evidence that no amount of the Bail has been sure the
presence of the perpetrator on the stage of the judgment;

(iii) Security Bail must be rejected, if the course of justice would be
blocked if the person who tries the benignant jurisdiction of the Court
to be freed for the time;

(iv) To be released on bail if there is likelihood that the applicant with the
witness for the prosecution or other pollutants; and the process of
justice

(v) Security Bail must be rejected, if the history of the man who is a bad
recording for Bail, especially a plate, the shows that he is likely to
commit serious crimes and to be released on bail.

While the question of the granting of denying the security courts in general,
the following considerations.

(A) the nature of the cargo.

(B) the nature of the charges brought against them.

(C) the nature of the supporting documents for the accusation.

(D) the severity of the punishment which the accused can be subjected.
(E) the risk of abuse accused the concession of the Bail in the form of risk of absconding or tempering with the evidence.

(F) health, age and sex of the accused.

(G) The social position or status of the accused and complainant was a party, and not the least.

(H) a statement as to whether the granting of the Bail would thwart the course of justice.

All these aspects have been discussed in detail in chapter II and III of the present study. So that the granting of the security in the event of non-bailable offenses is at the discretion of the Court of First Instance. However, in its sole discretion must be exercised in an arbitrary way but in a meaningful way. The courts apply different tests and criteria for the granting of the security in the event of non-bailable offenses.

It is necessary that the courts with request for release on bail, other circumstances too. The following factors are also taken into account by the courts.

(A) the nature of the accusation and the severity of the punishment in the event of a conviction and the nature of the supporting documents required.

(B) adequate concern of the temperature control with the witness or concern the threat to the complaint.

(C) prima facie satisfaction of the Court of Justice in support of the parents.

If a person accused or suspected the commission of bailable offense applies to Bail to another judge as a court or a court in one of the four circumstances, d. h.

(i) When he is arrested; or
(ii) When he is arrested without a warrant by an officer-in-charge of a police station; or

(iii) If it is displayed or.

(iv) When he is brought before a court;

The magistrate can him to be released on bail but he is not as "RELEASED", if there are reasonable grounds for believing that he has been found guilty of a criminal offense punishment with the death or life in prison for life. So, the question of whether to Bail or not, depends on the answer to a wide variety of circumstances, the cumulative effect of which must be in the judicial judgment. A single fact cannot be treated as necessarily the universal validity as a justification for the grant or refusal of discharge for a Bail. The Court has also power to cancel the Bail. But, it must have a sufficient and compelling reasons for the annulment of the released on bail. The Bail can be canceled by the Court only for good reasons, and the Court has the justification for the same. All of these aspects have been discussed in detail in Chapter IV and V study.

The Court has also to provide preventive judicial control. However, this power may be exercised only by the session or by the High Court. The Court has also to provide preventive judicial control. However, this power may be exercised only by the session or by the High Court.

Section 438, P. C. to ensure that the preventive judicial control. The object of the anticipatory bail is that the time a person is arrested, if an order has already been made of the sessions judge or the High Court, he would be released immediately without the strict observance of the prison also be mandatory for a few days, when submitting an application for release on bail after her arrest. Anticipatory bail is a preparation for the protection of freedom, it is neither the passport on the visit of crimes a shield against all types of acquisition likely or unlikely. Anticipatory bail will be not be reimbursed, as a question of rights. For the right of anticipatory bail concern the arrest must be there. Anticipatory bail can not be invoked to nullify the police clinical trials. Anticipatory bail provisions are generously designed by the courts and is far amplitude.
In Somabhai Chaturbhai v. The state of Gujarat, detailed guidelines have been of the Gujarat High Court in relation to the granting of anticipatory bail in accordance with the provisions of section 438 (CR) P. C. As shown below.

(A) the nature of the proceedings, the powers would be invoked during the pendency of the proceeding.

(B) the investigation to be incomplete it would be neither possible nor may finally be collected to be expected.

(C) The Court of Justice shall not be justified in their response to the hypothesis that no further or more serious material against the accused are excavated.

(D) The Court is not at the time of the enlargement to Bail on the stage of the pendency of investigation in cases where the Court of Auditors has been slow to do that investigations are completed or closed. In other words, the Court will not be bullied, the exercise of these powers in cases where the actions such acts, with the death or life imprisonment for life.

(E) The Court is in an effort to respect the relevant factors such as seriousness of the offense, the nature of the accusation, the probability of the risk of absconding, the probability of the manipulation of evidence, etc. (The list is only an example and not completely).

(F) in cases of economic crimes in which the probability of repetition of the offense while on bail cannot be excluded, such as, smuggling, heard, greed, superficial manipulation of foreign exchange, etc. The Court it is not for sure the exercise of powers.

(G) if, in rare cases the Court considers that it is inevitable that you a purchase order before you can listen to, the public prosecutor's office, the Court would make sure, not explicitly and in the duration of the contract the cabinets on 2 or 3 days, until the public prosecutor's office is heard.

(H) the power supply can not be allowed to be used in order to defeat, thwart, stable, or make impotent, the provisions on the long-term detention pre-trial detention for the purposes of the investigation. It can therefore be specified in the order in which the accused is on preventive against a Bail, be released and made available to it is not
obliged, in police custody and, if he so requests the police officer would be free, a
suitable jobs from the Court in this in the name of the arrest either before or within a
reasonable time of the arrest.

(I) The contract for the forward-looking to be released on bail would not be allowed
out of the way a fuller consideration of the question of when the investigation is
complete. The purchase order can therefore be available to ensure that it is on or will
continue only until the expiry of, say ten days from the date of the arrest and the
accused with the usual have to purchase a new framework.

(J) the likelihood that the accused were arrested in connection with some other
criminal offense can be expected and the order can enter the crime register number
and type and specification of the offense.

(K) in order to avoid complications, instead of passing a job of unlimited duration of
the order may provide that it works if no arrest is made within 90 days after receipt of
the order.

(L) all or part of the conditions in section 438 (2) of the amendment. P. C. of 1973 can
be integrated in the order.

All of these aspects have been discussed in detail in the relevant chapters of
the study. The meetings and the issues were also high courts powers in relation
to granting of the security. Section 439 German Civil Code (BGB) (CR) p. C offers
special powers of the supreme courts or meetings in this regard. The power to search
for security in accordance with section 439 German Civil Code (BGB) is wider and
then that, according to Section 437. Hearing both parties prior to the granting of the
Bail is a must. If the Bail has been granted by the sessions court, the High Court also
has the power, in which the Bail also. However, it must be for the cancellation of the
Bail are shown compelling reasons in this context. The considerations on which the
weight with the courts but the Bail either under section 438 or Section 439 of the Civil
Code (CR) p. c. are given below;

(i) The nature and gravity of the circumstances in which the offense was
committed;

(ii) The position and the status of the accused in relation to victims and
witnesses.
(iii) The probability that the accused fleeing from justice.
(iv) The likelihood that the accused the offense;
(v) The likelihood that the accused will face the risk of his own life with a grim prospect of a possible conviction in the case.
(vi) The probability that the accusation of manipulation of witnesses;
(vii) The history of the case, as well as its investigation; and
(viii) The other relevant grounds may apply for, the facts and the circumstances of the case.

For the granting of a guarantee in accordance with section 439 German Civil Code (BGB), Cr P. C. If the investigation or trail is not yet completed, following relevant considerations can be grouped and these considerations/guidelines are not exhaustive and there may be other considerations as well, from the facts and circumstances, and in any case:

(i) The size of the load or the nature of the charge:
(ii) The severity of the punishment it would lead to a conviction.
(iii) Nature of the evidence supporting the allegation.
(iv) The risk of the applicant the flight if he is released on bail.
(v) The danger of the witnesses for the prosecution has not been tampered with.
(vi) The long trail.
(vii) The length of pre-trial detention of the accused.
(viii) Nature, means and the reputation of the applicant;
(ix) Old behavior and the behavior of the defendants in the Court of First Instance;
(x) Health, age and sex of the accused.
(xi) Opportunity to the accused on the preparation of a defense and access to advice; and
(xii) Risk of recurrence of criminal offenses.

All of these aspects have been discussed in detail in the relevant chapters of the study. The critical examination of the various Bail provisions and the principles laid down by the courts indicates that the law on bail in India is not sufficient, unsafe,
and on the ground. The operation of the system is also unsatisfactory. The application of criminal law has recognized that a decision on bail is a recurring, is carried out by a number of different stations. It also recognizes that pre-trial versions are released on bail by the police in the jurisdiction of the security. For more Bail can be granted if the defendant occurs before the court or before the judgment is passed and even after he is found guilty and sentenced, so that he take in the appeal.

The practice of release on bail has taken over the form where one of the accused in a bond with a sum of money, which he/she is responsible to forfeit if he/she is not one of the obligations, the him/her by the Court. In general, the guarantees required in relation to money in a bond is not Bailed in cash in a Court of Justice, although the practice to do in the lightness of the police to be released on bail may be valid. In addition to the bond, the release on bail condition may require a guarantor (or guarantees), the payment itself also has a specific amount of money in the event of the failure of an accused person to appear before the police or the law on the appointed day. In the common law, a surety was of crucial importance for a person who is later. However, the Code of Criminal Procedure does not explicitly provide for the obligation of the guarantee as a condition for release on bail if you Bail only in the practice of the law courts on the accused's setting up a connection with a guarantee. The Law contains no definition of the nature and scope of the conditions that might be accused of courts in granting of the security. The courts have, unjustified restrictions on the freedom to provide services of one of the accused even after he had met the legal requirements for security of its for release on bail.

In Narendra Lal compared to Kaiser, the Court has held that the conditions may be imposed, so that the accused within the limits of his own house, and also to prevent it from communicating with a participation in crime. Just as in Joglekar compared to Kaiser, a condition has been imposed on one of the accused in accordance with Section 121-A IPC, he would not take part in a demonstration or agitation, nor would it provide a public speech or address the press during get out on bail. It noted that the job has been a valid one. In the framework of Article 19 of the Constitution of India, the exercise of judicial power conditions as described above, it should not be since such actions as valid collides with one or the other freedoms guaranteed under the Constitution an individual. It is questionable, however, whether these conditions can be levied as unconstitutional and invalidated in view of the
decision of the Supreme Court in *Naresh Mirajkar in comparison to in the state of Maharashtra*.

From this, it is clear that the Bail in order to with conditions, even if there might be a fundamental rights of the person is the undue restriction, would remain invulnerable and the then current terms and conditions.

In *Kota Appalakonda* it was pointed out that a person will be granted bail for an offense bailable without conditions with the exception of the enshrined in the law. According to the law of the state is the willingness to give a defendant released on bail. A person is entitled to for his release on bail on his willingness to offer volume, it can only miss if he is unwilling or unable, Bail or lack the ability to execute bail bonds. Fixing the amount of the security for the accused and guarantees are legitimate conditions that sugar cane are imposed in the exercise of the powers conferred on bail.

The Bail amounts should not be too high and the demand for review of the guarantee not unreasonable. The amount can be changed with the change of circumstances. Condition can be imposed on the accused person of his presence in the Court on a fixed date and place. A condition, however, is illegal. Thus, where the magistrate is bailable, the accused in a case that he should report to the police commissioner to twice a day, the job was disgusting, the provisions of the Code. Also, an order could not be handed over to the accused did not enter a controversial land until the disposal of the case. A condition that can't be kept on the refusal of his amounts against a Bail.

In *Afsar Khan Vs. State*, the Karnataka High Court has held a cash security of Rs.6750/- as harsh and oppressive amounting to denial of bail and deprivation of personal liberty. However, no statutory limits exist on the amount of bail bond or the number of sureties that may be required. The entire matter is left to the discretion of the court without giving any guidelines. The imposition of conditions can, therefore, be in the nature of prescribing certain requirements to be fulfilled for securing a release. A sum demanded by way of stipulation is to be vouchsafe the economic status and social position of the accused with a view to ascertaining his roots in the community. These tests indicate the soundness of the promises made by the accused for ensuring his presence for trial. These are, of course, goal oriented prescriptions
which may not be workable and fool proof in the context of today. Effective and useful substitutes for achieving the purpose may have to be searched and suggested.

A condition imposed must have bearing with the nature or purpose of the bail, which for all practical purposes is a process of the system of criminal justice besides being a mode to secure the accused’s freedom. Thus, an order that the accused would appear on the requisition by the police when needed is a competent order, or a direction to attend to investigation when needed is valid. Precedents continue to show that it is well within the court’s jurisdiction to impose some restrictions on the freedom secured by an accused who has been granted bail, irrespective of the fact whether these restrictions really relate to the purpose of the bail or not. Unreasonable restrictions on freedom, however, cannot be justifiably imposed in any case. A court cannot impose conditions which may restrict the freedom granted to the accused on bail under section 436 of the Code. The bail in bailable cases can be fettered only by requirements of the willingness and capacity of the accused to furnish bail bond and such other conditions as are provided under section 436 (1) and (2). The prescribed requirements may not be enough to give credibility to the working of a bail system and perhaps leave some lacunae but this may not be allowed to put the bail system to an abuse either though the judicial practice of imposing conditions not covered by the statues or those ought to be saved by virtue of Naresh Mirajkar’s case.

The court’s power to impose conditions on the grant of bail in bailable cases may frustrate the very purpose for which the bail is sought by an accused. Hence such power has neither been given nor needs to be given. However, in order to strengthen the bail system, the law requires that courts be vested with such discretion as may call for the use of such conditions as may promote the policy and purpose of bail in ensuring the accused’s attendance before the court while on release and also that his behaviour during the period of release conforms to such norms as may not cause prejudice in the minds of the court and the community that his freedom on bail may jeopardize the criminal process with a view to frustrating the interests of justice. The limited discretion thus vested may be helpful in tailoring a bail order to requirements of a particular case and to a particular accused.

It is, however, not to be used to put unnecessary restrictions on the enjoyment of such freedom of the person as are guaranteed to him under the Constitution. It has
been reiterated that the arrangement to free an accused is a mere facility that the system of criminal justice provides by way of bail, subject to such limitations as may be warranted by the exigencies of administration of justice. The law and practice provide only a hazy picture in this regard. This area of the administration of criminal justice, therefore, calls for an-in-depth study to bring meaningful reaffirms. The extent and limit of the courts’ power and discretion have to be mapped out keeping in view the need for grant of bail as well as the right of the accused to enjoy his freedom once he is out on bail. In the absence of clear statutory guidelines for grant of bail, courts have adopted some novel criteria also.

In *Smt. Lahari Bai Vs. State of Rajasthan*, a case of dowry death, the court granted bail to the husband but refused it to the mother-in-law of the deceased, though old. The court rested its decision on the logic that in our country, woman was the greatest enemy of woman. The application of law and discretion in the matter of grant or refusal of bail has introduced another issue as well. It is the doctrine of presumption of innocence that is sometimes taken as a plea for dissuading the courts to exercise their discretion against the accused. An accused is presumed innocent until it is proved to the contrary.

A refusal of bail, therefore, tends to become a punitive measure for which the law does not accord sanction.

It can result in injustice to the individual by way of his loss of employment, his inability to support his dependants, disruption of his social and family relationships and difficulties in arranging for his own defence. The present law in uncertain as to how far the bail process does affect the presumption of innocence. In practice the use of the doctrine has been seldom made as whenever the plea is forwarded, the courts bypass it on being satisfied that the proof of guilt in police possession outweighs the claim of the presumption.

The application of the presumption of innocence for purposes of considering the issue of pre-trial release may become redundant if release is considered only as a policy in the administration of justice for the limited purpose of ensuring the presence of the accused without getting the co-equal values of freedom and security disturbed. In the given set of affairs the state suffers in many ways.
A congestion is caused in prison houses, where the remanded prisoners are housed. The cost of confirming and maintaining them is borne by the state. By adopting a reckless attitude towards the welfare of the dependants of the accused, the welfare state may also not conform to the standards of social justice which it avowedly declares to profess. Competing considerations have to be accommodated in the law of bails. It is a fact that defaults by accused persons to present themselves do occur. The opportunity granted to an accused by way of bail is sometimes abused by him in several ways. It may be either to save himself from the impending culpability or engage himself in other activities of crime in order to improve his financial position or continue to embark upon the career of crime which he has chosen for himself. Public concern gets warped as a result of the abuse of such freedom. The incidence of bail-jumping and an increase in the number of proclaimed offenders do no good either to the public concern or to the system of criminal justice.

All these call for a review of consideration which have so far been existing in the law for purposes of grant or refusal of bail. The inadequacy of infrastructure to enable the courts to get information about the accused and the verification of sureties and other related information may have to be removed. The practice that invariably seems to operate in the enforcement of criminal law is to arrest a person accused of a crime. The person is then taken to the police station. Thus apprehended, he is either released on bail or is detained in the police lock-up pending his production before the court. Use of discretion by the police to grant or refuse bail arises at this stage. The question of granting of bail in bailable offences is considered and taken up as a matter of right for the arrested person. It is granted by the police officer at the police station in petty matters involving persons who are otherwise not known as anti-socials. The known bad characters are detained awaiting some more investigation.

The practice is, however, marked with certain inefficient and dishonest features, in as much as the discretion is effected to yield expeditious results at the instance and pressure of influential recommendations or through some settlement of pecuniary gains transacted between the agents of the parties concerned. In case of offences alleged to be of a non-bailable nature, the practice is to detain the arrested
person in the lock-up for an unduly long period for standing his trial. No formal case is registered.

The arrested person is also not produced before the court on the expiry of twenty-four hours after his arrest. A large number of these arrested persons are semi-literates or illiterates with limited means of income and influence and are thus unable to avail of the opportunity to communicate with a lawyer, friend or relative to arrange for legal aid or for standing sureties. In such cases, the arrest is not entered into the formal records although some paper work is shown to be done. The existence of professional sureties in the system of bail, within the knowledge of the magistracy, the lawyers and the police is a wonder – work in the system. Bonds are accepted from them as sureties for those who are unknown to them personally. These bailsmen have come to stay as an integral part of the system in subordinate courts and identifiable lawyers trade with them in the release of the arrested persons from custody. No system of verifying the character or status of the person standing as surety or his property exists in the records of the courts.

The verification of sureties may be the responsibility of the lawyers or of the officials but the records, in the course of field survey, were found without showing any such verification, suggesting thereby that either the verification of sureties may be the responsibility of the lawyers or of the officials but the records, in the course of field survey, were found without showing any such verification suggesting thereby that either the verification of sureties does not take place at all or the records are removed with the connivance of the officials. It has come to notice that the verification is done by requiring the surety to produce his ration card.

The details of his status, income and address are generally vouchsafed by the lawyer. No endorsement is made on the ration card. Bogus ration cards are even sometimes shown with the connivance of officials of the civil supplies department. The capacity, antecedents and character of the sureties are seldom questioned during the proceedings. There have also not been prosecutions for perjury or furnishing false bail bonds. Contrary to the above, the professional surety is generally considered an important person who helps in lessening the burden of the court by enabling it to take its order effective. He also unburdens the task of jail authorities, who otherwise have to take the arrested person in custody. Indeed, the professional surety is able to
provide succor to the person securing release from custody on mere payment of a “fee”. This instrumentality has become a convenience agency for the implementation of law of bails.

The professional sureties appear simultaneously in many cases on the basis of one and the same property which is sometimes even nonexistent. The forfeiture of bail bonds is a rare phenomenon. If the proceedings are initiated they are commonly set aside. The collusion of court officials, lawyers and professional sureties is evident and the willing indifference of the police, prosecution and the courts towards the existing mode of securing the bail is distinctly discernible. The services rendered by professional sureties in collusion with others, referred to above, and the diffidence shown by the administrators of criminal law and justice has proved to be gainfully useful to the organized groups and racketeers who deal in the business of crimes. While expenses incurred by these organized groups to pay for the services of professional sureties is considered a routine business expense, it comes as a ruthless exploitation of the individual who seeks their assistance and help.

This is the ground available against justice Krishna Iyer’s observation: “a developed jurisprudence of bail is integral to a socially sensitized judicial process.”41 There is a complete absence of any standard to determine the amount of bail. The amount required to be furnished in a case is mostly determined arbitrarily. No consideration is ever given to the personality of the accused or to his financial ability. No standards are followed to ascertain the integrity and capacity of the sureties as well. The quantum of bail amount can be deemed excessive from the general standards since most of the accused persons are from poor economic background. The usual mode of granting release is to ask for a personal bond from the accused stipulating a guaranteed sum of money for his presence along with surety with a similar stipulation.

Alternative bail process, particularly the recognizance without sureties virtually do not exist. The law on bail as legislatively enacted is poorly drafted, leaving broadly the system to be build by the enforcement agencies themselves, which they have been doing till date. The preceding pages have brought to the fore criss-cross of confusion that pervades the jurisprudence of bail. The classification of offences as bailable and non-bailable hardly indicates any rationale. The inter-
changeable forms and modes of release like surety, security, bond and bail prescribed under the Code serve an identical purpose. The various forms for the same mode of release make most of them repetitive and redundant except that their retention in the Code without declaring the specific purpose and scope helps confusion worse confounded. In sum, the confusion in the concept of bail and also in the working of the bail system is largely the result of a basic misunderstanding of the concept and the lack of its proper formulation under the Code.

A new law on the subject alone can rectify the errors. However, a proper functioning of the bail process in our legal system should guarantee the existence of changed social facts, which may be prerequisites for a successful functioning of the bail system.

SUGGESTIONS

1. FORMULATION of bail provisions in the Code may alone be not sufficient to make the system of bail functions with a purpose. A serious effort of securing public support and participation in the administration of criminal justice, coupled with necessary legislative, executive and judicial powers to act effectively are most warrant. Such an effort alone can help in fulfilling the pre-conditions required for smooth operation of the bail system. Urgent attention in this regard is needed towards the: (a) proper functioning of police power,
(b) developing the devices to control the police power, (c) speedy trial of the accused, and d) availability of legal aid and legal service from the preliminary stage for the terminal end of criminal process.

2. Performance of the existing bail law would require enactment of a comprehensive code to replace the existing law on the subject. The proposed code must reflect the basic philosophy, utility and guidance for grant and refusal of bail. In view of the emergence of certain issues under the Human Rights jurisprudence, specific mention of arrangements has become necessary about dealing the cases of minors, lunatics, and those detained for preventive purposes under special laws.

3. Procedural lucidity and comprehensiveness are wanting in the existing statutory bail scheme. The reformation of bail law must, therefore, replace this vagueness and uncertainty by clarity and coherence. Matters relating to jurisdiction, the successive stages necessary for availing of the freedom on bail, the extent and power of various courts in their hierarchical order to grant, refuse or cancel bail, the discretion to grant bail and prescribing the prohibition in cases where bail ought not to be granted, must be well comprehended under the scheme.

4. Other areas in this venture would include rationalizing the basis of classifying offences into bailable and non bailable ones. Bail with or without conditions, and the guidelines to be followed for purposes of imposing conditions together with the nature and purpose thereof are also to be spelled out. The modes and forms of release will have to be rationalized, explained and streamlined, so as to enable an accused to ask for a specific form of release commensurate with his capacity and circumstances of the case. The proposed code would thus remove all confusions in the provisions relating to procedure, enforcement and appeals.

5. Two important aspects of the bail process must be taken into consideration while formulating a new bail law. They are: (i) the police power to grant bail
and (ii) the police power to arrest and seek remand. In case of the former, the law may specifically provide for the grant of police bail in cases of arrest under a warrant, unless the release is imprudent on grounds that may be recorded. This principle can be made applicable to summary offences as well. The right to be bailed in the above cases may be accompanied by a police right to ask for a surety. In the latter case, where initial police arrest is either illegal or without a warrant, police request for the grant of remand should be given consideration only on the basis of the guidelines which must be legislatively provided in the code.

6. Bail may be appropriately viewed as a presumption which seeks to favour the release of an arrested person. Consequently, this would require the defendant to rebut the prosecution presumption that he may be failing to appear before the court on the appointed day or that he would commit an offence or obstruct the course of justice by interfering with witnesses or by tampering with the evidence. Any presumption in favour of bail would, however, terminate upon conviction of the accused. Since the basic, objective of bail is not a confine any one before conviction and also to ensure attendance of the accused in the court to stand his trial, the latter can reasonably be met by constituting the default of appearance as an offence punishable by imprisonment. The use of financial bonds from the defendants or the sureties can then be abolished. A mechanism based on voluntary participation of citizens or organizations in the trial process could be given legal recognition. Such citizens or organizations can take up the reasonability of presenting an accused who has been enlarged on bail.

7. Courts should be empowered to impose reasonable conditions but these may not be statutorily listed. However, it can be provided that the conditions must have a bearing to the object and purpose of bail. Viz. ensuring the presence of the accused on the appointed day and that he/she does not obstruct the course of justice. A number of court decisions have already crystallized the factors which are relevant to assess risks involved in releasing arrested person on bail. These factors together with other necessary ones may be catalogued to set up discernible criteria for use by the courts while exercising their discretion.
8. The procedure for bail hearing needs a specific treatment. The court may be empowered to conduct any bail hearing in private. It may be empowered to receive such information or material as may be relevant despite the question of its admissibility under the rules of evidence. Refusal to grant bail or where the court seeks to impose conditions on the grant of bail must be followed by reasoned orders. The reconsideration of bail on successive applications at various stages should be on merits, notwithstanding the refusal of bail at an earlier stage in any other court, judicial review of modifying or revoking a bail order of the court of first instance has to find a significant place. The right of appeal against the bail order, both by the accused and state, should also be incorporated.

9. The existing law on sureties is rather unsatisfactory. It is a policy issue to decide if the law on the subject is to be inter-woven around any community based organization like the Manhattan Bail Project. In any case, the law relating to sureties must take into account the capacity, integrity and the proximity of the surety (in relation to kinship, place of residence or work etc.) as well as his suitability in terms of moral worthiness. In case of individual sureties, a procedure for verification of the antecedents, capacity and their suitability shall have to be provided for. This can be a check on the growth of a clandestine channel of professional sureties. The financial capacity of the person to stand as surety need not be given a place of primacy. However, a surety should be under a duty to ensure attendance of the accused at the appointed time and place. On breach of a condition already agreed to by a surety, the accountability should be in terms of imposing a monetary fine on him.

10. The foregoing suggestions merely outline an approach so that the new law on bails, could be subjected to a methodical treatment. A separate legislation is urgently needed firstly, to remove the prevailing confusion and then to law down a sound mechanism for smooth working of the bail system. It is indeed a major task to overhaul the existing law and practice of bail. Rationalism of the law of bails requires debate and thinking on the basic premises in favour of the grant of bail with risks appurtenant to it, as well as the determining of factors
relevant to assessment of risks. The stage or stages where the presumption in
favour of grant of bail should cease to operate also calls for consideration. The
study on the nature of bail and the mode to procure it are to be prescribed.

Statutory list of conditions to be imposed rob the efficacy of bail process.
Instead the matter be left largely to judicial discretion to ensure the presence of the
accused, as well as the smooth functioning of the course of justice in completing the
trial. In any case the practice of requiring financial bonds from arrested persons need
be abolished. The substituting of surety by newer ventures, as disclosed by the
Manhattan Bail Project or by the hostel system for under-trials as obtains in some
Scandinavian countries, can also be taken note of for purposes of experimentation in
certain cases. The duration, variation and revocation of bail order also require
elaboration particularly with a view to enable a prosecutor to apply for variation of the
terms of conditions of bail granted, or where the breach of or likely breach of
conditions become imminent to cause difficulties for those entrusted to assist the
courts of justice, in the fulfillment of their obligations to speedy trial.

11. The frequent adjournment of cases in criminal courts is also a factor to be
reckoned with to assess the efficacy of the system of release on bail. The
delayed disposal of criminal cases together with the fact that the accused
person had been enlarged on bail affords opportunity to an accused to
approach and influence witness and also to exploit the gains of dismal memory
of the events narrated by a witness after a long lapse of time. This adversely
affects the administration of criminal law and justice. A prolonged release on
bail of an accused person caused by successive adjournments of trial has the
potential of reducing even the chances of the accused appearing in the court to
receive his conviction, if found guilty. The factor of delay may thus have a
direct bearing on the increased rate of absconding of offenders.

12. The Criminal Procedure Code, gives only an outline of the provisions of bail,
but most of the work is done by the courts themselves. The judicial principles
laid-down by the courts may be changed by the courts also. But if, all these
principles are incorporated in Cr.P.C. then the law will become more definite
and cannot be changed by the courts. Thus, all the judicial principles laid
down by higher judiciary should be incorporated in the provisions relating to bail.

13. Malimath committee reports has given many powers to police to grant bail. It is general impression that police is ignorant about law but has only the knowledge of power. This type of combination is not good. While exercising such absolute power the interest of the accused may not be protected. There is an urgent need to give thought to this aspect to avoid misuse of power by the police in granting Bail.

14. The judges have been given discretionary power to grant or not to grant bail. The exercise of this power is generally based upon the precedents. But, unfettered powers given to the judges is generally misused and subject to great criticism. It has been seen that bails granted by the lower courts are cancelled by the higher courts. There must be definite criteria in this regard.

15. If there are 5 accused in a case and suppose 4 have been arrested and one is yet to be arrested, the bail application of the four arrested persons cannot be entertained by the court an account of the fact that one accused is yet to be arrested. Thus in such cases the fate of the bail depends on the non-arrest of the co-accused, rather than on merits of the case. Such type of practice creates unnecessary delay and harassment. There is urgent need to find a solution to such unhealthy practices.

16. There is no statutory limit fixed on the amount of bail bond or number of sureties. The entire matter has been lost to the discretionary of the courts. Many persons have to remain in jail for want of furnishing bail bonds. The statutory provisions may be made for each category of cases.

17. If the police fails to submit the challan within the stipulated period as given in section 167(2) of Cr. P.C. the accessed in custody becomes entitled for bail. It has been observed that these statutory provision are not strictly adhered to. It is statutory duty of the courts to ensure the release of the accused on bail. The accused may be appraised of his/her right in this regard. A statutory duty in this regard should be imposed on the courts.
18. The law and practice relating to remand, police bail, successive bail applications on refusal of bail, detention release of juvenile, women, sick and old persons as well as host of related matters would necessarily call for discussion, debate and reformulation of the rules. The task is extensive. It is also vital for utilitarian and civilized functioning of the administration of criminal justice. In sum, the reformulation of bail law is not a mere revision of the law. It is preclude to any commitment to reform the administration of criminal justice. This study has shown that the law of bails contained in the Code of Criminal Procedure remains clouded in sundry legislative provisions as well as in a plethora of judicial precedents. Obscurity pervades both. The net result is that the law lacks cogency in its understanding and application. Without having a properly organized base of rules through the use of doctrines and principles the aberrations in the law of bails would continue. Accordingly, the reform calls for garnering total efforts. Concerned agencies of state and the government cannot ignore it for long; but prior to the undertaking of any reform it is essential that the job of systematization and analysis is completed. These are necessary prerequisites for any effort to draft a code. Therefore, an intense debate has to precede before the new law is codified with advantage even at the cost of impairing the “rule of law” as presently assured by the existing law.