CHAPTER – I

INTRODUCTION

1.1 INTRODUCTION

Bail in law means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. The monetary value of the security known as the bail, or more accurately, the bail bond, is set by the court having jurisdiction over the prisoner. The security may be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security.\(^1\) Bail is a post arrest remedy aimed at the release of the arrested suspect till the date of his trial. Bail vindicates the traditional right to freedom before the guilt is proved.\(^1\) Bail is allowed to prevent confinement of innocent persons which would otherwise result into a pre-trial punishment and to enable an accused person to prepare his defence to the charges against him which is the common law principle, presumption of innocence.\(^2\)

Since the ancient times the system of bail has been practiced by different countries of the world in accordance to their local legal system, the traces of bail has been seen since the time of early civilization, it is difficult to mention exact date and time when for the first time bail was introduced or followed but if we go through different ages of our world culture we could find the references of bail being practiced in different parts of the world since their initial time, the signs of bail can be seen since far back from the time of Greek empire followed by roman evolution and how it has developed since that time

\(^1\) [http://www.legalserviceindia.com/articles/bail_poor.htm](http://www.legalserviceindia.com/articles/bail_poor.htm)
to present modern times, now a days almost all the countries have the system of bail in their criminal procedure system.³

The law of bail is an integral component of the criminal law procedure and the right to bail is subject to statutory stipulation. The bailable and non-bailable offences are precisely classified. Though bail can be granted in both categories of offences, the grant of bail in non-bailable offences is by exercise of discretion, while in bailable cases bail to be granted as a right to the accused. In Criminal Procedure Code, 1973 nowhere define bailable and non-bailable cases, rather they have been declared in reference to the offences simply by declaring that an offence will be bailable and non-bailable as declared in first schedule or declared in any other law. In the case of any other laws if the offence is not declared to be bailable or non-bailable as per specific statute then the 2nd classification in 1st schedule of Criminal Procedure Code, 1973 would apply and accordingly if the offence is punishable is less than 3 year or more is non-bailable.⁴ Basically in cases of bail it is a matter of balancing of interest between the individual liberty of accused and the societal interest. Societal interest lies in societal safety i.e. fair and effective trial, whereas individual interest lies in the personal liberty by granting bail.⁵

Bail is mainly the pre-conviction stage involving the personal liberty of a suspected person. The concept of bail is mainly involve the two opposite interest one is the interest of the arrestee person which involve the personal liberty to release him from the custody on some security may be Monterey or may be any other surety. And the other interest is the interest of the society to protect the society members from the anti-social activities.

1.2 CONCEPT OF BAIL

Literal meaning of bail means security, bond, payment and financial guarantee, bail, although being a legal term it is used by both people of the society law-

³ http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/8/08_chapter%202.pdf
⁵ Supra note 3.
men and lay-men, however, this has not been statutorily clear. Conceptually, that it is still interpreted as the assertion, assumption, and denunciation as restrictions put by the state on freedom of individuals. The main purpose is for the presence of the accused arrested and is available for punishment if held convicted. If the accused assures that he will be present at each and every trial for his case then it is quite possible that he would be released on bail and allowed him his right of liberty during the trial. Bail is one of the method by which an accused person can be set to enjoy his liberty in order to avoid a prison sentence. The term bail literally means appearance of the prisoner to release. With this idea, the word bail has been taken from an old French verb bailer, which means to give or to deliver. Although another view is that it is a Latin term “bajulare” which means “to bear a burden”. The bonds in the sureties, as referred to in the above. Bail is a conditional release on liberty to an accused who ensures that the accused who or on behalf of whom undertake, is present on the trial. 6

1.3 DEFINITION OF BAIL

In Black’s Law Dictionary, bail has been defined as “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.”7

The law lexicon defined, “bail as the security for the appearance of the accused person on giving which he is released pending trial or investigation”. 8

Webster’s Law Dictionary defined “Bail, a temporary release of a person in exchange for security given for the prisoner’s appearance at a later hearing”. 9

“To set at liberty a person arrested or imprisoned, or security being taken for his appearance on a day and at a place certain. Because the party arrested or

---

6 Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/7/07_chapter%201.pdf
8 Black’s Law Dictionary, 4th Edn., p. 177.
imprisoned is delivered into the hands of those who bind themselves or become bail for his due appearance when required in order that he may be safely protected from the prison”.

Justice William Blackstone defined it as “a delivery or bailment of a person to his sureties on their giving, together with himself, sufficient security for his appearance, he being supposed to continue in their friendly custody instead of going to jail”. Thus, when a person is released on bail, the person will be produced by him before the court when so required. The person who is released on bail is also usually asked to execute a bond for his appearance at a later stage of the proceeding.

The Supreme Court in the case of *Kamlapati v. State of West Bengal*, defines bail as ‘a technique which is evolved for effecting the synthesis of two basic concepts of human value, viz., the right of an accused to enjoy his personal freedom and the public’s interest on which a person’s release is conditioned on the surety to produce the accused person in the Court to stand the trial.’

### 1.4 IMPORTANCE OF CONCEPT OF BAIL

The importance of the instrument of bail can be well imagined from the facts that from the initial stage of accusation at Police level to Apex Court and right from direction for anticipatory bail to special powers of high court and court of session to grant bail and writ of habeas corpus and certiorari have been provided to restore the liberty of the individual. Instrument of bail is a counter to the interest of society and the individual interest can be sacrificed for the interest of society. That is why the instrument of bail is cautiously granted by the authorities. It is Herculean task to keep the balance between these two contrary rights and the rule of law is the only yardstick to perform this task judiciously. Rule of law means to follow “procedure established by law” which

---

12 AIR 1979 SC 777.
has its roots to phrase “due process” found in the fifth and fourteenth amendments to the U.S Constitution.\textsuperscript{13} Thus, the dominant idea of bail is that the liberty of a person cannot be lightly interfered with, except in due course of law. The whole object of arrest and detention of an accused is, obviously, to secure his appearance to abide the sentence of law. That being so, except where a statute specifically requires, the principles which should guide the courts in the exercise of their discretion to grant or not is the probability of the accused appearing to take the trial and not his supposed guilt or innocence. Considerably such as the nature of inducement, the nature of evidence and the severity of punishment awardable, have their relevance only because they affect the likelihood of the prisoner’s failing to appear for his trial. Every trial begins with the presumption of innocence of the accused. But a fair trial does not mean the employment of methods which end in the acquittal of the guilty.

A fair trial has two objects in view–

(i) It must be fair to the accused.

(ii) It must also be fair to the State. The test of fairness must be judged from this dual point of view. Just as a criminal trial must never be so conducted as would lead to the conviction of an innocent person. Similarly progress of a criminal trial must not be obstructed by the accused so as to lead to the acquittal of a really guilty person.\textsuperscript{14}

A bail cannot be withheld merely as punishment because the object of detention of an accused person is never punishment. To keep a person under detention with object of punishing him on the assumption that he is guilty, even if eventually he is acquitted, is highly improper. Generally it is the rule to allow bail rather than to refuse bail and it ought not to be held as punishment. Since

\textsuperscript{13} Statutory Provisions Relating to Bail : Judicial Trends, Submitted by : Ashu Sanjeev Tinjan, Under the Supervision of Dr. Preet Singh, Department of Law Maharshi Dayanand University Rohtak, retrieved at http://shodhganga.inflibnet.ac.in/bitstream/10603/7790/1/01_title.pdf

\textsuperscript{14} Talab Hazi Husain v. Modhukar Purshottam Mondhkar, 1958 Cr. L.T. 701.
the law presumes an accused to be innocent till his guilt is proved, he must be allowed an opportunity to look after his own case unless its circumstances are such that he should not be released on bail. The fact that offence is a serious one does not afford a sufficient ground to refuse bail. There is no hard and fast rule as to when the bail should be granted and through the discretion of the court is unfettered it must be exercised judicially.\textsuperscript{15} In India, we all very well know that daily thousands of arrests are made by police for different charges among them few are pity offences and some are severe kind of offences, in all the cases the accused are sent to police custody for detention in jail, for two obvious reason first to ensure his presence in court for trial and second to give justice to the victim, if the accused found guilty and to secure that the accused should not have chance to repeat the same thing doing again or not to involve in any kind of such things, in all the cases they are locked-up in jail till the trial comes to an conclusion. Here what is important to see is, how the personal liberty of the individual granted by the constitution get effected, personal liberty is a fundamental right given by the constitution to every person which applies even to accused, in that regard law of bail and arrest have been given much importance in modern times.\textsuperscript{16}

1.5 PURPOSE OF BAIL

The principal purpose of bail is to ensure that an accused person will return for trial if he is released after arrest. It is not the purpose of the criminal law to confine a person accused of crime before his conviction. Bail, in criminal cases is, therefore, intended to combine the administration of justice with the liberty and convenience of the person accused. Administration of justice on the spot or immediately after the commission of a crime in accordance with the fundamental principles of natural justice embedded in a fair and just legal system is not feasible. This appears to be one of the reasons for the evolution of

\textsuperscript{15} Mangon Iboton Singh v. Union Territory of Manipur, AIR 1969 Mani 6.
\textsuperscript{16} http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/11/11_chapter%205.pdf
\textsuperscript{16} http://shodhganga.inflibnet.ac.in/bitstream/10603/70509/12/12_chapter%206.pdf
the bail jurisdiction in any legal system. The release on bail is crucial to the accused as the consequences of pre-trial detention are given. If release on bail is denied to the accused, it would mean that though he is presumed to be innocent till the guilt is proved beyond reasonable doubt, he would be subjected to the psychological and physical deprivations of jail life. The jailed accused loses his job and is prevented from contributing effectively to the preparation of defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family. After the registration of crime, it takes time to complete the investigation and thereafter, it takes even longer to conclude the trial. It is a matter of common experience that the judicial machinery, more particularly in India, is ill-equipped to provide a speedy trial to the accused in conformity with well-established principles of criminal jurisprudence. The question, whether an accused should be kept in the prison or set free pending investigation and trial, therefore, falls for consideration before the Court in every criminal case where the accused is under arrest. An accused person cannot be detained in judicial custody for a long time by refusing him bail if the legal system is not in a position to provide a speedy trial. The inability of the judicial system to provide an expeditious trial to the accused should always be kept in mind while dealing with the issue of bail. Keeping a person behind bars without providing him a quick trial is quite incongruous to the concept of personal liberty, which is a basic human right. The under-trial prisoner, therefore, cannot be allowed to suffer in jail for an indefinitely long time.

At the pre-trial stage, every accused person is presumed to be innocent until the matter is finally disposed of by a competent court. Simply because a person has been charged with an alleged offence, he does not lose his right to protection of life and personal liberty. He has, till the final disposal of the case against him, the same right as enjoyed by any other citizen under the Constitution of India,

---

and other provisions of the law of the land. That is why various High Courts and Supreme Court of India have held in their judgments that “grant of bail is a rule and refusal is an exception”. The main purpose behind the grant of bail according to the learned Judges was that the consequences of long detention of the pre-trial accused person who are presumed to be innocent as any other citizen were very grave. In A. R. Antulay v. R. S. Nayak\textsuperscript{20}, the Supreme Court advocated for the speedy trial on the following lines:

(a) The period of remand and pre-conviction detention should be as short as possible.

(b) The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trial should be minimized.

(c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.\textsuperscript{21}

1.6 PAROLE

Parole is the release of the prisoner and will be a temporary release. It has certain conditions before the completion of the maximum sentence period. It refers to the period of time after a defendant is freed from prison. An offender on parole would face many of the same rules or precautions as probation. Parole is always granted to those people who have been imprisoned for a particular time period. It follows stringent rules to the letter, or they can be returned to custody with extra time for the violation of the parole.\textsuperscript{22}

Bail is used for the release of suspects from imprisonment pre-trial. It ensures their return for the trial. If the suspects do not return to the court, the bail will be forfeited, and the suspect will be brought up based on charges of the crime.

\textsuperscript{20} (1992) 1 SCC 225 (280).
\textsuperscript{21} http://shodhganga.inflibnet.ac.in/bitstream/10603/7790/1/01_title.pdf
\textsuperscript{22} https://kapilchandna.legal/2017/08/20/difference-between-parole-probation-and-bail/
When the suspect returns with making all their required appearances, bail will be returned after the trial is settled. There are cases in which the bail money is returned at the end of the trial.

Bail is provided before a trial as it allows the person who is charged with a crime to be released from the jail until the trial date. The cost of the bail is determined by the judge. It is necessary that one has to pay 10% of the bail amount, and also the bail bondsman will negotiate it. There will be a full payment is due for the circumstances called for it.23

1.7 PAROLE AND BAIL DISTINCTION

In a court of law both parole and bail have distinct connotations. The particular form, under which the application is filed, coupled with the prayer made and granted are the decisive factors to indicate its nature. Bail and parole have different connotations in law. Chapter XXXIII of the Code of Criminal Procedure deals with the provisions of bail and bond.24 The effect of granting bail is to release the accused from prison though the court would still retain constructive control over him during the period. In the Halshbury Laws of England25 Parole, however, has a different connotation from bail even though the substantial legal effect of both bail and parole may be the release of a person from detention or custody. Parole is a form of temporary release from custody, which does not suspend the sentence the forties Detention, but provides conditional release from custody and changes the mode of undergoing the sentence. In India, there are no statutory provisions dealing with the question of grant of parole. The Parole may be granted by way of a temporary release in accordance with the parole rules or administrative instructions, framed by the government. The court generally cannot exercise the power to grant temporary release, but this part would not affect the jurisdiction of the

23 Ibid.
The high court under Article 226, or of the Supreme Court under Articles 32, 136 or 142 of the Constitution to direct the temporary release of the detenue. The detenue while on parole is not a freeman. The period during which the detenue is on parole, therefore, requires to be counted towards the total period of detention. However, if the interruption of detention is not authorized by law then the period during which the detenue has been at liberty, cannot be counted but should be excluded from the period of detention while computing the total period of detention. The basis of preventive detention is suspension of individual freedom on the basis of imposed sentence of the verdict of the court by regular trial, if the persons can only be detained and the detention is justified so long it is found necessary.

1.8 KINDS OF BAIL

1.8.1 Temporary Bail

Every court which has jurisdiction to try bail matter has authority to allow a temporary bail or parole to an accused. Temporary bail means the accused is released from custody or jail for specific time and after completion of that time the accused has to return to jail or in custody as the case may be. Parole is another form of temporary bail. Recently number of times the convicted accused, Bollywood star actor Sanjay Dutt has been granted temporary bail or parole, temporary bail, parole is granted to the person who have been convicted in an offence.

1.8.2 Interim Bail

It is another provision, where the accused can take advantage and may apply for bail on some genuine reason, mostly it is granted to the offences which requires to travel, also to women, children and the persons who have crossed the age of 70 years and also to the students who are appearing for any examination in such cases interim relief or bail may be granted. It is to be noted

---

27 Supra note 2 at p. 170.
that interim bail does not mean that in future date regular bail may be granted, it can be granted only on merit basis. The only condition where interim bail may not be granted is in offences which has death punishment, but this condition has been relaxed to women, children and aged person. Where an order of interim bail has been passed in favour of accused the ordering authority cannot impose any condition while granting bail.28

1.8.3 Anticipatory Bail

The term “anticipatory bail” is not used in Section 438, but that is clearly the subject with which the section deals. In fact, “anticipatory bail” is a misnomer. It is not as if bail is presently granted by the court in anticipation of arrest. When the Court grant “anticipatory bail”, what it does is to make an order that in the event of arrest, a person shall be released on bail. Manifestly there is no question of release on bail unless a person is arrested.29

Anticipatory bail is granted in anticipation of arrest the anticipatory bail ensure freedom till the regular bail application decided by the Court.30 Anticipatory bail means where a person has a reasonable ground that he may be arrested for an non-bailable offence by the police on suspicion, to prevent such arrest the person moves an application in an appropriate court seeking bail in advance prior to his arrest this procedure is called anticipatory bail. Where the application of the person has been allowed then he shall show that order of Court regarding anticipatory bail when the police come to arrest him, on producing such order the person shall be released on bail. This option of anticipatory bail is available to every person who is been suspected of committing or involved in some non-bailable crime or offence. It is very rare that where the court allows anticipatory bail it is not a mandatory provision the court has discretion whether to allow or not to allow anticipatory bail to a suspected person. If the court at any point satisfied that anticipatory bail may

28 Ibid. at p. 75.
be granted then court may allow the application. Anticipatory means presumption or anticipation of something, a possibility that may happen or certain act may occur on a future day and to prevent that act from being happen necessary precautions need to be taken. Where the court allows anticipatory bail it means that in the event of arresting a person shall be released on bail, the anticipatory bail comes in function only on the occasion of arrest.31

1.8.4 Default Bail

The Code has not used the term “default bail” in any provision. “Default bail” is a term of convenience evolved by lawyers and judges engaged in the administration of bail jurisdiction. Default bail simply means statutorily mandated bail that an accused under arrest custody is entitled to get in the event of the failure of an investigating officer to complete the investigation within the time limit prescribed by law. Since this type of bail is granted for the reason of the default in filing a charge-sheet within the stipulated time limit, it is popularly known as “the default bail”. It is also known as “compulsory bail”.32 Sometimes the court may have to face a situation where investigation was not over within the time limit of 60 days or 90 days stipulated in Section 167 of the code of the Criminal Procedure Code, 1973. In such a situation the court has no other alternative but to release the accused on bail. This type of statutory release on bail is popularly known as the default. The logic behind this provision appears to be that a person cannot be kept in custody for indefinite period on the basis of incomplete material or investigation. The legislature has, in its wisdom, provided a time limit of 60 or 90 days as the case may be for completing the investigation. Within this time limit the police is bound to place a clear picture of the investigation before the court so that the court can decide whether the accused should be released on bail or not, if he is in custody, and weather the case is worth putting up for trial.33

31 Supra note 2 at p. 82.
32 For the full text of Section 167, see Part III of this book.

12
In *Rajnikant Jivanlal Patel v. Intelligence Officer, Narcotic Control Bureau, New Delhi*\(^\text{34}\), it has been held by the Supreme Court that an order for release on bail under proviso (a) to Section 167(2) may appropriately be termed as an order-on-default. Indeed, it is a release on bail on the default of the prosecution in filing charge-sheet within the prescribed period. The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court’s discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. In fact, the Magistrate has no power to remand accused beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds. Default bail is granted because of the statutory mandate and, hence, the rejection of bail application earlier on merits is not at all relevant for the release of an accused on default bail. In *Union of India v. Thamisharasi*\(^\text{35}\), it is reiterated that when an application for default bail is filed, the merits of the matter are not to be gone into.

1.9 **CLASSIFICATION OFFENCES**

Bail simply the process of releasing a person which may be on his personal bond or on some security, bail is the post arrest process and before trial. In the criminal procedure code bail is not defined anywhere, but classification of offences into bailable and non-bailable offences made expressly or may be made after examining the gravity of offences. Grave offences to be made non-bailable, where bail not to be granting as a right but to be granted on examining certain factors by exercising the judicial discretion by courts on some just and human grounds. Bailable and non-bailable defined as follow under criminal procedure:

\(^{34}\) AIR 1990 SC 71 (paras 12, 13) : (1989) 3 SCC 532 . Note: In *Aslam Babalal Desai* AIR 1993 SC 1 : (1992) 4 SCC 272 the decision in *Rajnikant’s* case has been clarified.

1. **Bailable Offence**

Bailable offences define under Section 2(a) of the Court which means an offence, which has been categorized as bailable, and in case of such offence, bail can be claimed, subject to fulfilment of certain conditions, as a matter of right under Section 436 of The Criminal Procedure Code, 1973. In case of bailable offences, the Police is authorised to give bail to the accused at the time of arrest or detention.\(^{36}\)

2. **Non-Bailable**

Non-bailable means an offence in which the bail cannot be granted as a matter of right, except on the orders of a competent court. In such cases, the accused can apply for grant of bail under Sections 437 and 439 of The Criminal Procedure Code, 1973.\(^{37}\) It is important to note that the grant of bail in a non-bailable offence is subject to judicial discretion of the Court, and it has been mandated by the Supreme Court of India that “Bail, not Jail” should be the governing and guiding principle.\(^{38}\)

1.9.1 **Bail is a Security for Appearance**

Bail in its fundamental concept is a security for the prisoner’s appearance to answer the charge at a specified time and place. It is natural and relevant for any court to consider such security in relation to and in the light of the nature of the crime charged and the likelihood or otherwise of the guilt of the accused there under. At any early stage when accused asks for bail, the court has necessarily to act on a reasonable and intelligent anticipation which ex-hypothesis must, to a certain extent, be problematical because the trial has not run its course. In matters of bail the test to be applied is the test of reasonable belief as opposed to decision and conclusion which marks the ends of the trial. The available materials for the court in considering the question of granting

---

\(^{36}\) Section 2(a) of the Code of Criminal Procedure, 1973.


bail are the charges made, the attendant facts including the police report, facts stated in the petition for bail and the grounds of opposition to the granting of that petition. The release on bail does not change the reality and from that fact alone, it cannot be said that he is not a person arrested for an offence. A person released on bail is still considered to be detained in the constructive custody of the Court through his surety. He has to appear before the court whenever required or directed. Therefore, to that extent, his liberty is subjected to restraint. He is notionally in the custody of the court and hence continues to be a person arrested. Even in spite of the fact that the accused had been released on bail, he continues to be a person arrested on a charge of commission of an offence.  

1.10 REVIEW OF LITERATURE

Janak Raj Jai in his book “Bail Law and Procedures” discussed elaborately that it is a well settled law, that grant of bail is a rule and refusal of the bail is an exception. Unfortunately, the letter and spirit of the law is not adhered to by most of the Courts in our country. Personal liberty of an individual citizen and right to life under Article 21 of the Constitution is the most precious fundamental right which cannot be jeopardized by any agency or institution whatsoever. A government founded on anything except liberty and justice cannot stand. All the wrecks on either side of the stream of time, all the wrecks of great cities and all the nations that have passed away—all are a warning that no nation founded upon injustice can stand. Personal liberty of a citizen, therefore, is certainly deprived when the bail is refused. It is too precious a value of a constitutional system recognized under Article 21 of the Constitution. After all, personal liberty of an accused is fundamental, suffering lawful eclipse only in terms of procedure established by law. Keeping in view the fundamental right of each and every individual citizen irrespective of caste,

colour or creed, a very humble effort has been made by the author in this book to deal with the provisions and procedure for the grant of bail as per the letter and spirit of the law of the land.\textsuperscript{40}

P.V. Ramakrishna, described the right to liberty is one of the fundamental rights guaranteed by the modern constitution of all the civilized countries. The right is as well recognised in India as in other foreign countries and the constitution of India contains detailed provisions relating to the fundamental rights. Further the constitution reflects the tendency of modern civilization to shift the emphasis from the individual to the community and at the same time it has struck a balance between individual liberty and social control. It is in the background of the constitution that the law relating to ‘bail’ is being shaped and as such a brief survey of the fundamental rights has been made in the first chapter of his book. This book deals with the law of bail, bonds, arrest and custody at length. Bail is a mechanism by which by which the adverse consequences of delay before trial can be minimised. Attention of the author unfold minutely the nature of the law of bail, the principles on which it is founded, and the practical rules connected with its administration to facilitate the readers understand the basic nuances of the law. Most recent judicial decisions of Supreme Court and High Courts have been added in good measure.\textsuperscript{41}

Asim Pandey, in his book Law of Bail Practice and Procedure, described the law of bail plays a very important role in the administration of justice. Law of bail Practice and Procedure has been conceptualized as a handy reference work to cater to the needs of lawyers and judges in day to day court practice. The law of bail is of supreme importance since it is directly and intimately connected with the liberty of a person which is safeguarded in article of the constitution. It

\textsuperscript{40} Janak Raj Jai, Bail Law and Procedures, Universal Law Publishing, 6\textsuperscript{th} edition, 2015.
is always difficult to decide bail applications without being influenced by external and internal forces which drive a judge to form a particular opinion.\textsuperscript{42}

\textbf{V.R. Krishna Ayer, Grant of Bail: Practice and Procedure}, Justice V.R. Krishna Ayer in his judgment in case \textit{Gudikanti Narsimulu v. Public Prosecutor}\textsuperscript{43} says “significance and sweep of Article 21 make the deprivation of liberty, ephemeral or enduring, a matter of grave concern and permissible only when the law authorizing it, is reasonable, even handed and geared to the goals of community good and State necessity spelt out in Article 19. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for the bifocal interests of justice to the individual involved and society affected.” Justice Krishna Iyer also mention that the code is cryptic on the topic of bail and the Court prefer to be the order custodial or not. And yet the issue is one of the liberty, justice, public safety and burden of the public treasury all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process. Rowena Jones, Bail law and practice: Recent Developments, in this paper, author describe that bail in New South Wales is allowed in every case except where the accused is involved in charges of murder rape or drug offences. In Australia we may see bail hostels. The accused persons who have been granted restrictive Bail or where the trial process is in progress in such cases the accused persons are kept in bail hostel.

The author tried to explain the concept of actual bail how bail should work and what is the exact meaning of bail, for which he mentioned the act of new south wales bail Act 1987, according to which bail means, it allows an individual framed with some criminal offence to be released from detention or custody on some terms and conditions that he will not fail to attend the court and will act according to the terms imposed upon him through bail order. He stressed on the issue that bail is approval to be at freedom or liberty instead of in custody. He

\textsuperscript{43}AIR 1978 SC 429 Para 12.
also mentioned in his book about the jurisdiction of police and the courts in regard to granting of bail. He very nicely narrated how to balance the rights of the supposed accused and the safety of the community while giving the values to the liberty of the suspected; he also gave the references of the latest amendments made in the Act.

The author mainly focused on the minor offences rather than serious ones, and tried to suggest how the accused’s can be rehabilitated and proposed about the bail hostels and bail information schemes. He explained the terms like Acceptable person: acceptable person is one who is familiar to the accused generally a near one like relative or a dear friend, Bail agreement\undertaking: the suspected person signs an agreement stating that he will follow all the rules which are imposed upon him so he to be released on bail, Bail conditions: normally the conditions imposed upon the accused are to be present in court on the given date and promise to behave like a good citizen in the society other conditions such as to leave with particular personality, to visit area police station on a given date, regularly attend the treatment or a training program if any imposed etc. Bail hostel: a residential establishment where suspected persons released on bail are sent for some particular reason such as to finish a drug or alcohol program. Surety: he the person who deposit the sum or amount in the court for the release of the accused and promises to bring him in court whenever his appearance is required in the Court, where he fails to do so the amount deposited as security will be forfeited.

Author categorised the offences in to different sections those are minor offences and serious offences and quoted in what offences bail may be given and where it cannot be granted. He also categorised in what offences the police may grant bail and where the court has power to do so. He has suggested that there should be special consideration to the disabled persons and the person who because of their economic conditions are not able to meet the terms of
their bail, he also suggested building the bail hostel and bailing information centres.

Kelly Anne Collins, ‘Queensland bail laws’ in this article provides an overview of the current Queensland, Bail laws. Recommendations for reform have been made by the Queensland Law Reform Commission 1993. Granting of bail for a defendant raises questions for each justice. The right of a person to the presumption of innocence and his/her right to liberty vis a vis society, has the right to ensure that members of the public be recorded loads with a crime and confirmation will be punished. A balance between these two requirements must be found. A balance between the risk to the public safety by release of the accused and of the personal freedom of the accused only at the level of the charge, may be wrong. The objective of this article is to offer a review on the fundamental right of the accused to get bail, it mostly revolve around the rights of the arrested person to be considered as innocent till his guilt is proved and at the same time to ensure the society that they are safe from being disturbed by the people those charged with criminal offences by detaining them. A focus on the objections from the crime victims has been shown in this article how they raised their voice against the changes made in the Queensland bail policy and what they have argued in their protest on the changes in bail policy they claimed that more weightage is given to the rights of accused and compromised with the safety of the community by giving low priority to it. Apart from this the crime victims wanted that the granting of bail should be made stronger that the accused should not get bail that easily where they are suspected of dangerous or violent offences. The author reviewed the recommendations made by the Queensland law reform commission which stated that while making changes in the bail law four most important things has to be taken in to consideration those are,

A) Presumption of innocence to be maintained.

B) Public to be protected from being hurt from harmful behaviour or conduct of the accused.

C) The priority should be given to the liberty of the people and to be protected from unlawful or unnecessary depravation of liberty.

D) There should be effective administration of the criminal justice system and it should be ensured that the accused of an offence should be at any cost be punished if the guilt is proved. A fair and just trial has to be conducted and till the guilt has been proved the accused should not be deprived of his liberty being free to leave in the society, thus a grant of bail allowing the accused to go free until the guilt is proved or convicted.45

Max Taylor, Response by NSW council for civil liberties to review of NSW Bail Act, 1978. Max Taylor says NSW Bail Act 1978 is not humanistic. Presumption in favour of bail has been removed from the Act which must be restored then alone the council for civil liberties will give its opinion on the Act. All over the world presumption of innocence of the arrestee is eroding and judges are also swayed by the public opinion and articles published by the courts. This article contains provisions regarding the presumption favouring the bail in all crimes even in those cases where there is no provision of right to bail in some offences. The author has contended in his report that no provision has been set up in the bail Act 1978, regarding restriction or limitation over the bail in a special condition, the author has also pointed out that in this act there is no minimum or maximum limit has been mentioned respect to application of bail that the accused may apply in the Court.46


1.11 SIGNIFICANCE OF STUDY

In this research I would like to work out to evaluate the existing provisions of bail. The basis on which bail is granted while exercising the judicial discretion. Whenever an application for bail is made to a court, the first question that it has to decide is whether the offence for which the accused is being prosecuted is bailable or otherwise. If the offence is bailable, bail will be granted under Section 496 of the Code of Criminal Procedure (of 1898) equivalent to Section 436 of Criminal Procedure Code, 1973 without more ado; but if the offence is not bailable, further considerations will arise and the Court will decide the question of grant of bail in the light of those further considerations such as, nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar other considerations which arise when a court is asked for bail in a non-bailable offence.

It is clear that an unnecessarily prolonged detention in prison of under trials is against the law and justice which is the main object of Indian constitution by declaring in the preamble of the constitution, equal justice to every person, the law of bails should have too much discretion in grant of bail and guidelines must be codified. The study is to contribute to literature on bail. Bail is a right and in the interest of liberty bail must be granted. There are stringent laws passed by parliament every alternate year which have been denuded of the safeguards for innocent persons who might be arrested on suspicion.

1.12 OBJECTIVE OF THE STUDY

The aim of my study is about to highlight the drawback of the bail system in India as the matter of bail is largely a matter of discretion. So such discretion
has to be exercise not arbitrarily but judiciously on the basis of norms which by now have become fairly established but not followed properly.

- The study will highlight the demerit of refusal of bail in minor and petty offences due to exorbitant money as security.
- The study will help to analysis the concept of anticipatory bail, as not to allowed the alleged criminal to disappear evidences.
- To suggest to classify certain offences in which bail must not be granted as in cases of acid-attack, gang-rape, offences against children etc.
- Our bail system suffers from property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice.

1.13 RESEARCH METHODOLOGY TO BE OPTED

The present research work requires theoretical study of the topic. The theoretical work will deal with judicial decisions relate to grant or refusal of bail. The study will include the comprehensive study through the libraries, journals, Case laws and books. The entire study is concerned to the analysis of bail provision in India. This study comprised doctrinal form of research. Doctrinal research is done with help of primary sources including Acts, legislation, bylaws, ordinances and secondary sources are the various judgements pronounced by the Hon’ble Supreme Court of India and the other High Courts in India.

1.14 HYPOTHESIS

- Whether the existing criteria granting and refusing bail is sufficient.
• Whether the societal interest override in certain heinous crimes such as gang-rapes, acid-attacks against individual liberty as denying bail.

• Whether monetary bond are sufficient or required some stringent security regarding bail.

• Whether the existing criteria for exercising the judicial discretion fulfilling the present needs.

1.15 SCHEME OF THE RESEARCH WORK

This research work is entitled “LAW RELATING TO BAIL IN INDIA: A CRITICAL STUDY”.

1.16 CHAPTERIZATION

The researcher has divided whole research work into seven chapters which are as follows:

Chapter-I

The first chapter of my research work is an Introduction. In this chapter researcher has mentioned meaning, definition, concept and importance of bail. This chapter focused on kinds of bail, importance and significance of research work, a brief over view of review of literature, hypothesis and the chapterization of research work.

Chapter-II

This chapter of my thesis deals with, “Concept of Bail: A Historical Prespective”. This chapter outline the evolution of bail in England and United States. I am going to discuss bail under India law stated with Moghul Rule and different law commission reports.
Chapter-III

This chapter of my research work titled as “Classification of Offences and Bail Mechanism”. Main focus is on classification of offences, bail in bailable offences and in non-bailable offences, functional aspect of bail and statutory aspect of bail mechanism.

Chapter-IV

This chapter titled as, “Constitution Provisions and Concept of Bail”. In this chapter constitution provision which basically relating to protection of personal liberty under Article 21 and issue of bail, right to speedy trial and right to bail has been discussed.

Chapter-V

This chapter of my research work deals with, “Judicial Approach regarding Bail in India”. In this chapter researcher has discussed various provisions which are relating to judicial approach and various considerations which to be taken while deciding application of bail. In this chapter concept of judicial discretion concept of anticipatory bail and duration of anticipatory bail discussed elaborately.

Chapter-VI

This chapter titled as, “Law Relating to Bail in India: A Critical Analysis”. In this chapter a detailed analysis of law relating to bail in India, power of granting bail, the various provisions of bail, anticipatory bail and cancellation of bail with critical analysis discussed.

Chapter-VII

In this chapter researcher has tried to draw the inferences based on the foregoing chapter of research work. In this chapter concluding remarks alongwith suggestions has been discussed for achieving the object of research study.