

CHAPTER 10

Bail and recognizance

1. Principles governing grant of bail:- It must be understood that for every bailable offence bail is a right not a favour. In demanding bail from an accused person, Magistrates should bear in mind the social status of the accused and fix the amount of bail accordingly, care being taken that the amount so fixed is not excessive. The amount of bail and the offence charged, with the section under which it is punishable, should always be stated on the face of an order directing the accused to be detained in the lock-up in default of his furnishing bail. Bail may be tendered and must be accepted at any time before conviction.

Bail may also be tendered and accepted even after conviction in accordance with the provisions of sub-section (2-A) of Section 426 of the Code of Criminal Procedure, when a person other than a person convicted of a non-bailable offence satisfies the court that he intends to file an appeal.

2. Recognizance:- When any person other than a person accused of a non-bailable offence is brought before a Criminal Court, the Court may, if it thinks fit, instead of taking bail, discharge him on his executing a bond without sureties for his appearance (section 496 Criminal Procedure Code).
3. Bail in non-bailable cases:- Even in the case of non-bailable offence there are circumstances under which the accused may be admitted to bail. These are described in Section 497 of the Code. Sub-section (3-A) has been inserted by the Amendment Act No. 26 of 1955 and provides that if the trial has not been concluded within sixty days of the first date fixed for evidence in the case and the accused person has been in custody during the whole of the said period, he shall be released on bail, unless for reasons to be recorded in writing the magistrate directs otherwise.
4. Cash or Government promissory may be accepted in lieu of bail:- Under section 513 of the Code of Criminal Procedure, a deposit of cash or Government promissory notes may be made in lieu of bail, except in the case of a bond for good behaviour.
5. Bail is to be granted promptly:- It is a hardship to detain parties under trial in prison an hour longer than the law requires. They are prejudiced in their means of defence, if respectable and innocent, they are exposed to the indignity of imprisonment, for which no subsequent order of discharge or acquittal can atone.
6. Release on bail by superior Court:- Under section 498 of the Code, the Sessions Judges may, whether there be an appeal on conviction or not, direct that any accused person be admitted to bail, or that the bail required by a Police Officer or Magistrate be reduced. The Sessions Judge may, similarly,

cause any person who has been admitted to bail by him to be arrested and may commit him to custody as provided in sub-section (2). Section 438 enables a Court of Sessions or District Magistrate in referring a case to the High Court, if it is recommended that the sentence be reversed, to direct that the person under sentence be admitted to bail. It should also be remembered that, under section 426 of the Code of Criminal Procedure; an Appellate Court may; for reasons to be recorded in writing, order that the convicted persons be released on bail or on his own bond.

7. Bail applications on holidays:- Sessions Judges should allow urgent applications for bail to be presented to them at their residence on holidays at a fixed hour, such applications cannot be presented in court on a working day owing to unavoidable circumstances.
8. Disposal of bail applications in the absence of Sessions Judge :- When Sessions Judges are unavoidably absent from the station, they should take action under section 17(4), Criminal Procedure Code for the hearing of urgent bail application.
9. Inquiry about sufficiency of bonds:- Considerable diversity of practice exists in carrying out the provisions of the law in regard to the taking of bonds from accused persons and their sureties, and the result of the diversity is not only to cause Police officers to be employed in needless inquiries, but also to keep the accused person in custody pending the result of the inquiry into the sufficiency or otherwise of the bail offered. Sub-section (3) of Section 499 now enables the court to accept affidavits for the purpose of determining whether the sureties are sufficient or not. At the same time, however, it is the duty of Magistrates to satisfy themselves that the sureties are, in point of substance, persons of whom it may reasonably be presumed that they can, if necessary, satisfy the terms of the bail-bond.

^[1]9A. To avoid abscondence of accused due to furnishing of bogus surety or surety bond by a stock surety, the surety, in all cases under the NDPS Act, the cases in which offence is serious and sentence provided is of more than 10 years imprisonment or the cases under the special enactment like POTA etc. shall furnish two copies of his latest passport size photograph, which is not older than six months before the date of submission, of which one copy shall be retained in the Court record and one copy to be retained by the concerned police station, alongwith one of the following documents:-

1. Passport.
2. Identity Card issued by the Election Commission of India.
3. Permanent Account Number Card, i.e. PAN Card issued by the Income-Tax Department.
4. ATM/ Debit Card or Credit Card issued by any Nationalised or Private Bank of Standing at the National Level, having photograph of the holder thereon.
5. Identity Card issued by the Government Authorities or the Public Statutory

Corporations.

6. Any such document, which is ordinarily issued by an Authority after due verification of the Identity of the person and his address, which the Judge or the Magistrate may think just and proper, in the interest of justice, by recording specific reasons.
7. If surety is not in possession or unable to produce any document referred to in Clause 1 to 5 above or documents demanded by Judge/ Magistrate under Clause 6, his identity and address be got verified from Police Station within whose jurisdiction such surety resides or works.

[¹] Rule 9A added by correction slip no. 32 Rules/11.D4, dated 6th September, 2007.

10. Forfeiture of bail bonds:- Section 514 of the Code lays down the procedure to be adopted to compel payment of the penalty mentioned in the bond from the person executing the personal recognizance and from his sureties.
11. Form of bond for appearance before High Court:- When a person is enlarged on bail by order of the High Court, or when bail is to be taken for his appearance before the High Court, the bonds to be executed by such person and his sureties shall be in the following forms which have been prescribed by the High Court with the sanction of the State Government, under powers conferred by section 554 (2) of Code of Criminal Procedure.

FORM OF BOND AND BAIL BOND

I,.....,son of.....caste.....,appealed resident of having____to the Punjab petitioned High Court at Chandigarh and being required to give security for my attendance before the High Court and for my surrender before the Court of the District Magistrate of..... if required, do bind myself to attend said High Court every -day of the hearing of my appeal /petition by the High Court and on such other day or days as I may be ordered to attend, and, should the High Court order my internment or commitment to person, to appear and surrender myself before the District Magistrate of.....and in the case of my making default therein. I bind myself to forfeit to the Government the sum of rupees

Dated this ५.....day of..... 19

SURETY BOND

WHEREAS.....son of....., caste , resident of. having appealed ___to the Punjab High Court at Chandigarh petitioned is being required to give security for his attendance before the High Court and for his surrender before the Court of the District Magistrate of..... if required, I , son of , resident of..... , do bind myself to produce at the said High Court on every day of the hearing of his appeal _by the High Court and on such other day or petition days as I may be ordered to produce him, and, should the High Court order his internment or commitment to prison, to produce and surrender him before the District Magistrate of..... and in the case of my making default therein, I bind myself to forfeit to the Government the sum of rupees.....

Dated the.....day of..... 19 .

12. Date of hearing to be communicated to the accused and sureties:- The District Magistrate on accepting the sureties shall inform them that the person released on bail must be present at the hearing in the High Court.

He shall also inform the person released on bail to the same effect.

13. Discretion of High Court: - On the date of hearing in the High Court, the Judge or Judges hearing the appeal may order that: —

- (a) the bail-bond should be cancelled at-once, and the man re-arrested, or
- (b) he should appear on a certain day to hear judgment pronounced, or
- (c) he should attend daily (excluding holidays) until judgment is pronounced, or
- (d) he should be discharged from his bail-bond.

14. Re-arrest on cancellation of bond:- If the person who has been released on bail is not arrested on the day of hearing; in accordance with paragraph (13)(a) above he will ordinarily be rearrested in the High Court immediately judgment has been pronounced against him.

Notes.—(1) 'The foregoing instructions will apply mutatis mutandis to the case of persons enlarged on bail by a Court of Sessions.

(2) Except in very special cases, the Judges of the High Court decline to entertain applications for bail unless the Sessions Judge or the Court trying the case has already been applied to and has rejected application. Sessions Judges should conform to this practice.

15. ^[1] Bail applications to be treated as urgent: -

- i) All applications for bail in criminal cases including appeals should be treated as urgent.
- ii) The copy of reply to bail application or status report (by the police or prosecution) if any, shall be furnished to the accused if present, or his counsel as the case may be. The presiding officer may, in an appropriate case in its discretion insist on a statement to be filed by the prosecutor in charge of the case.
- iii) The application for bail in non-bailable cases must ordinarily be disposed off within a period of 3 to 7 days from the date of first hearing. If the application is not disposed off within such period, the Presiding Officer should furnish reasons thereof in the order itself. Copy of the order of the bail application should be furnished to the accused on the date of pronouncement of the order itself.

^[1]Rule 15 amended vide C.S. no. 40 Rules/II.D4 dated 10.12.2021

16. It is irregular for criminal courts to forward original bail applications presented to the Court and other documents connected therewith to the Prosecuting Agency for report. If and when it is considered desirable to issue notice to the Prosecuting Agency, a definite date should be fixed for the hearing of the bail application, so that all concerned may have due notice.