

# **Conditional Bail: Scope and Limits**

# Definition of Bail

**Law Lexicon** defines bail as the “security for the appearance of the accused person on giving which he is released pending trial or investigation.”

**Black’s Law Dictionary** defines bail as ‘the procurement of the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.’

# Grant of Bail

- Nature and gravity of the offence
- Likelihood of the accused committing the offence
- The position and status of the accused
- Likelihood of accused fleeing from justice
- Likelihood of accused influencing witnesses or tampering with evidence

## **Section 437 (1) Cr.P.C.**

- **Dipak Subhashchandra Mehta v. CBI, (2012) 4 SCC (Cri) 350 – Supreme Court**
- **State v. Captain Jagjit Singh, AIR 1962 SC 253**

# Condition of Bail

The phraseology of *Section 437(3)* casts an imperative duty on the court to impose certain conditions on the accused before granting him bail. These conditions are:

1. That, the accused shall attend court in accordance with the conditions of the bond executed by him;
2. That, the accused shall not commit any other offence of the similar nature;
3. That, the accused shall not make any inducement, threat or promise to any person acquainted with facts of the case;
4. That, the accused shall not tamper with the evidences of the case.

## Conditions are onerous and not justified

1.The condition of paying maintenance of Rs.12,500/- p.m. to the wife while granting anticipatory bail in a prosecution for a complaint under Section 498-A and 406 by wife, was considered to be onerous and hence set aside. **2009 0 AIR(SC) 2072 Munish Bhasin & Others Versus State (Govt. of N.C.T. of Delhi) & Another**

2. The Hon'ble Supreme Court in the matter of **Sumit Mehta v. State (NCT of Delhi) (2013) 15 SCC 570** also discussed the scope of the discretion of the Court to impose "any condition" on the grant of bail and observed thus at para 15:"15. The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail....."

3. In the matter of **Parvez Noordin Lokhandwalla v. State of Maharashtra and Another (2020) 10 SCC 77**, the Hon'ble Supreme Court held that the language of Section 437 (3) of the CrPC which uses the expression "any condition... otherwise in the interest of justice" has been construed in several decisions of the Supreme Court. It laid down that though the competent court is empowered to exercise its discretion to impose "any condition" for the grant of bail under Sections 437 (3) and 439 (1) (a) of the Cr.P.C. the discretion of the court has to be guided by the need to facilitate the administration of justice, secure the presence of the accused and ensure that the liberty of the accused is not misused to impede the investigation, overawe the witnesses or obstruct the course of justice



**4. Dataram Singh v. State of Uttar Pradesh, 2018 (3) SCC 22** Hon'ble Court observed "7.....The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

# Conditional Bail : Judicial Trends

1. Hon'ble Calcutta High Court way back in 1949 in the case of **Kamla Pandey v. The King AIR 1949 CALCUTTA 582** discouraged the practice of imposing arbitrary conditions while granting bail to the accused who was charged with stealing from a railway wagon. The Sessions Judge, Midnapore imposed a condition on the accused that he shall not leave the territorial limits of the town Midnapore although he was a resident of Kharagpur. Hon'ble Calcutta High Court through **Harries, C.J.** observed in the above case that, "...granting bail with a condition which no person can possibly comply with is tantamount to refusing bail and in such cases, Sessions Judge should refuse bail rather than impose this sort of condition."

2. In the case of, *Mahesh Chandra Banerjee (in re)*, (1870), magistrate imposed a condition that the ‘sureties must be *zamindars* of the district whose names as such are written in the town of the Collector and no one zamindar will be accepted as surety for more than one of the accused.’ Hon’ble Calcutta High Court observed that, “...the condition that only zamindar of the district will be accepted as surety is throwing unnecessary difficulties in the way of the defendants procuring bail, were illegal and as such as the Magistrate had no right to impose..’ Hon’ble High Court also reduced the amount of surety from Rs. 96,000 to Rs. 6,000.

3. In another leading case from Calcutta, *Giani Mehar Singh v. Emperor*, AIR (1939) Cal. 714, the accused was charged under Section 124A of IPC which is a non-bailable offence. Condition was imposed on the accused that he shall not deliver any speech until disposal of the case. *Edgeley J.* observed that, the condition imposed was beyond the competence of the court and only a condition for “attendance in court” could be imposed.

4. In the case of **Mukeshbhai Nanubhai Patel v. State of Gujarat, 1998 Cri LJ 194 (Guj.)**, condition imposed by Sessions Judge that the accused will pay an amount per month till the disposal of the case was held improper.

5. Seizure of passport and an order to return the items received in dowry as a condition of bail was rejected by Hon'ble Supreme Court of India. The apex court in the case of **Mohinder Kaur v. State of Punjab, (2008) 4 SCC 580**, disapproved the above conditions as excessive and unnecessary.

6. In the case of **Sandeep Jain v. NCT of Delhi, (2000) 2 SCC 66**, Sessions Court granted bail to the accused on condition that he will execute a bond for a sum of Rs. 50,000 with two sureties and one of the sureties giving a cheque of Rs. 2 lakh. The cheque got dishonoured and consequently the accused languished in jail for 10 months. Hon'ble Supreme Court set aside the order of Sessions Court and granted bail to the accused on a bond of Rs. 25,000 with two solvent sureties.

7. Hon'ble Lahore High Court through **Munir J.** in the case of **Kimat Rai v. Emperor, AIR 1945 Lah 215 (216)**, upheld the condition imposed by the magistrate that the accused shall attend the investigation when needed.



8. In the case of **Babu Singh v. State of Uttar Pradesh, AIR 1978 SC 527**, Hon'ble Supreme Court through **V. R. Krishna Iyer J.** granted bail to the accused who was charged under Section 302 of IPC on conditions that, firstly, the accused shall not enter the village where the offence occurred and secondly, he shall report weekly to the police station.

9 .Hon'ble Supreme Court in the case of **Hazari Lal Gupta v. Rameshwar Prasad, AIR 1972 SC 484**, upheld the order of the Hon'ble Allahabad High Court granting bail to the accused on condition that he will surrender his passport as there was an apprehension that he might jump bail and flee to United Kingdom. It was observed in this case that the power of the courts under Cr.P.C. while granting bail is not exhaustive.

Evolving Conditions of Bail in light of Current Conditions of the Process of Justice. Bails in trials are a major menace which threaten the credibility of the criminal justice system :-

1. In case the applicant or any accused does not cooperate in the trial or adopt dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.
2. Directions in expediting the trial [**See: Waseem Ahmad Vs State of U.P. rendered by AHC in Criminal Misc. Bail Application No 51613 of 2023**]

# Special Offences

## 1. Protection of Children from Sexual Offences (POCSO) Act, 2012:

**Dr. Shivmurthy Muruga Sharanaru v. State of Karnataka (CP No. 5031 of 2023)**, a mutt seer of Murugan Mutt was granted bail in a case registered against him under POCSO Act, 2012 on following conditions:

- The accused shall not enter the district of Chitradurga;
- The accused shall not influence the witnesses;
- The accused shall appear before the court through video conferencing;
- The accused shall surrender his passport;
- The accused shall execute bonds with sureties.

## 2. Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985:

Hon'ble Supreme Court in the case of **Sujit Tiwari v. State of Gujarat (2020) SC**, upheld the conditions imposed on the accused at the time of granting bail under NDPS Act, 1985. The conditions were:

- The accused shall surrender his passport;
- The accused shall either stay in Porbandar or Kolkata;
- The accused shall give his cell phone number to the police and shall not change it without the permission of the court;
- The accused shall report daily to the competent authorities at 9:00 AM;
- Accused shall join investigation when called upon and not hamper the investigation.

These condition although onerous in nature but given the nature of the offence seem reasonable.

# Financial Offences

Offences under Foreign Exchange Management Act, 1999, Prevention of Money Laundering Act, 2002, etc. are examples of this new emerging crimes. If an offence is allegedly committed under these enactments, imposing of onerous financial obligations to bail seems reasonable.

# Instances of Excessive Conditions

1. In the case of **Aparna Bhatt v. State of Madhya Pradesh (2021) SC**, supreme court set aside the impugned order of the Madhya Pradesh High Court in which the Hon'ble High Court granted anticipatory bail to the accused, who was charged under *Sections 452, 354A, 323 and 506* on condition that he will tie *rakhi* to the victim. The Hon'ble Supreme Court observed that, bail conditions in such cases should avoid any personal contact between the accused and the victim. Bail condition should also avoid stereotypical remarks.

2. Hon'ble Supreme Court again in the recent case of ***Guddan @ Roop Narayan v. State of Rajasthan, (2023) SC***, set aside the order of Rajasthan High Court imposing strict fine of Rs. 1,00,000 along with surety of Rs.1,00,000 and two bail bonds of Rs. 50,000 each. Supreme Court observed while setting aside these conditions that excessive condition acted as refusal to grant bail.



# Execution of bail order- Duty of the courts

**When under trial prisoners are unable to furnish surety or bail bonds due to poverty or some other reasons.**

Hon'ble Supreme court has given some guidelines in his judgement '**In Re Policy Strategy for grant of bail.**' Hon'ble Supreme court ruled that The court which grants bail to an under trial prisoner would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent and in case the accused not released within a period of 7days it would be duty of Jail Superintendent to inform the Secretary, DLSA who may depute a para legal volunteer to assist the accused. The Secretary, DLSA may take help of the District probation officer to find out the socio-economic conditions of accused and a report for this purpose will be placed before concerned court with a request to relax the bail conditions/surety. **(Sec. 440,441 of Cr.P.C).**

# **No Mechanical Fixation of Sureties**

**Arvind Singh V State of Uttar Pradesh** rendered in Application U/S 482  
no. 2613 of 2023 ; Lucknow Bench

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**Grateful Thanks**