VOLUME 3 ISSUE II IJSARD ISSN 2455 4049

BAIL, NOT JAIL

Dr. Vijesh B. Munot
Officiating Principal, Amolakchand Law College, Maharashtra,
vijeshmunot@rediffmail.com

The denial of bail for an indefinite period impinges on fundamental rights. The prisoner must not be punished before conviction. Granting of bail always rings for the conflicting interest between liberty of an individual and interest of the society. The Principle underlying release on bail is that an accused person is presumed in law to be innocent until his guild is proved beyond reasonable doubt and as a presumably innocent person; he is entitled to freedom and every opportunity to look after his case, provided his attendance is secured by proper security.

The other object of the release of a person on bail is to secure the presence of the person charged with crime at his trial or at any other time when his presence may lawfully be required and to force him to submit to the jurisdiction and punishment imposed by the Court.

The normal rule is bail and not jail. Again at various occasions, Hon'ble Supreme Court and several High Courts reiterated that 'the grant of bail is a rule and refusal to bail is an exception.

The significance and sweep of Article 21 make the deprivation of liberty a matter of 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.

Grant of bail by the Court is a discretionary order. However, this discretion shall be exercised in judicial manner and not as a matter of course. The order denying the bail shall provide cogent reasons of rejection. The nature of the offence is one of the basic considerations for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

Introduction

The law of bails, which constitutes an important branch of the procedural law dovetails two conflicting interests namely, on one hand, the requirements of shielding the society from the hazards of those committing crimes and on the other, the fundamental principle of criminal jurisprudence namely, the presumption of innocence of an accused till he is found guilty.

Bail is a generic term used to mean judicial release from *custodia legis*. The right to bail-the right to be released from jail in a criminal case, after furnishing sufficient security and bond-has been recognized in every civilized society as fundamental aspect of human rights. This is based on the principle that the object of a criminal proceeding is to secure the presence of the accused charged of a crime at the time of the inquiry, trial and investigation before the Court, and to ensure the availability of the accused to serve the sentence, if convicted. It would be unjust and unfair to deprive a person of his freedom and liberty and keep him in confinement, if his presence in the Court, whenever required for trial, is assured.[1]

The cardinal principle of criminal law under the adversarial system of criminal justice is that the accused shall presume to be innocent until the accusation on him proved beyond reasonable doubt. The burden of proof of guilt generally lies on the prosecution. To respect for the liberty of a person is highest duty of every person under the rule of law. It should not be taken away without just cause. The abridgement of the freedom of the people without any due cause is gross violation of fundamental right enshrined under Constitution and also violation of human rights under different international instruments.

To respect for the liberty of a person is highest duty of every person under the rule of law. It should not be taken away without just cause. However, sometimes it become evident to deprive the personal liberty of a person but it should be reasoned according to law in the interest of society. The abridgement of freedom of the people without due cause is gross violation of fundamental right enshrined under Part III of the Constitution.

Since it is not the purpose of the criminal law to confine a person accused of crime before his conviction, release of a person on bail, in criminal cases, is intended to combine the administration of justice with the liberty and convenience of the person accused. Bail is allowed to prevent the punishment of innocent persons and to enable an accused person to prepare his defence to the charge against him. The Principle underlying release on bail is that an accused person is presumed in law to be innocent till his guild is proved beyond reasonable doubt and as a presumably innocent person; he is entitled to freedom and every opportunity to look after his case, provided his attendance is secured by proper security.

The other object of the release of a person on bail is to secure the presence of the person charged with crime at his trial or at any other time when his presence may lawfully be required and to force him to submit to the jurisdiction and punishment imposed by the Court. However, this does not mean that the released person is free of all blame. It can be explained in following words-

"One enlarged on bail is, however, also considered as being in the custody of the law and the bail does not divest the Court of its inherent power to deal with the person accused".[2]

The granting of bail permits release of an accused from incarceration and transfers him to the custody of his bail who is his jailers at his own choosing, although the Court retains its inherent power to deal with him. He is regarded as in the custody of his bail from the moment a bond of recognizance is executed until he is discharged or recommitted. The spirit of obligation of his bails is that they will as effectively secure his appearance and will put him as much under the power of the Court, as if he was in the custody of the law. In some jurisdiction, the obligation of bail is to surrender the principal or satisfy express undertaking.

In India, the general law relating to bail is contained in Sections 436 to 450 of Chapter XXXIII of the Code of Criminal Procedure, 1973. One can found other several provisions, which deal with the concept of bail elsewhere in the Code. Based on all these provisions, the law of 'bail' can broadly classified under following head:

1. Bail in case of bailable offence (Section 436)
2. Bail in case of non-bailable offence (Section 437)

- Bail-compulsory to undertrial prisoner in certain cases (Section 436-A)

1. Anticipatory Bail (Section 438)
2. Special Powers of High Court or Court of Session regarding bail Section 439
3. Default Bail (Section 167)

- Release of appellant (convicted person) on bail by suspending of sentence pending appeal (Section 389)

Under the Code, a person accused of a bailable offence is entitled to bail as a matter of right. Similarly, persons accused of non-bailable offence may be granted bail at the discretion of Court, on application.

Grant of Bail and Judicial Consideration:

A standard followed by some Courts is to the effect that bail must be allowed as a matter of right, unless the evidence clearly indicates the commission of the offence by accused and probability of capital punishment therefor. Another criterion is that bail should be allowed where, on a consideration of the whole evidence, a reasonable or well-founded doubt of accused's guilt exists or can be entertained or that doubt of accused's guilt of a capital offence is shown. [3]

In *State of Rajastan v. Bal Chand,* [4] the Supreme Court said that 'normal rule is bail and not jail'. In this case, Justice Krishna Iyer has rightly pointed out that the basic rule may perhaps be tersely put as *bail, not jail*, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the court. Thus, the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. Again at various occasions, Hon'ble Supreme Court and several High Courts reiterated that 'the grant of bail is a rule and refusal to bail is an exception'.

Many times, it is seen that right to bail is denied even in genuine cases. Even in cases where the prisoner was charged with bailable offence, they are found to rot in prisons due to exorbitantly high bail amount. In fact, the entire system of monetary bail is anti-poor, since it is not possible for a poor man to furnish bail because of poverty while a rich man in a similar situation can afford to buy freedom from arrest by furnishing bail. Hence, a poor defendant languishing in jail for weeks, months and perhaps evens for years as an undertrial prisoner.

In *Moti Ram v. State of U. P.,**[5]* Justice Krishna Iyer rightly quoted the words of the then President of USA, Mr. Lyndon B. Johnson who had made certain observations at the signing ceremony:

"Today, we join to recognize a major development in our system of criminal justice, the reform of the bail system.

This system has endured - archaic, unjust and virtually unexamined - since the Judiciary Act of 1789.

The principal purpose of bail is to insure that an accused person will return for trial if he is released after arrest.

How is that purpose met under the present system? The defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price. He languishes in jail weeks, months and perhaps even years before trial.

He does not stay in jail because he is guilty.

He does not stay in jail because any sentence has been passed.

He does not stay in jail because he is any more likely to flee before trial.

He stays in jail for one reason only - because he is poor. . . ." (Emphasis added).

In the same case the Supreme Court further observed that poor men- Indians are, in monetary terms, indigents - young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognizance's - put whatever reasonable conditions you may. The magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by *"we, the People of India"*, is meant for the butcher, the baker and the candlestick maker - shall we add, the bonded labour and pavement dweller.

The effect of the several decisions of the higher judiciary on this point, and having pragmatic view by the Legislature on this subject, the Section 436 of the Code was amended in 2005 to provide that in the opinion of the Police Officer or Court, the person in bailable offence is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearances. Further, the Code has made it clear that where a person is unable to give bail within a week of the date his arrest, it shall be a sufficient ground for the Officer or the Court to presume that he is an indigent person.

In case titled *Shahzad Hasan Khan v. Ishtiaq Hasan Khan and Anr.*,***[6]*** the Supreme Court has taken the view that liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution.

Grant of bail by the Court is a discretionary order. However, this discretion shall be exercised in judicial manner and not as a matter of course. The order denying the bail shall provide cogent reasons of rejection. There are several considerations, which may be noticed while deciding application of bail. However, these considerations are only illustrative and not exhaustive. The considerations being:

1. While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.
2. Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.
3. While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a *prima facie* satisfaction of the Court in support of the charge.
4. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.[7]

Denial of Bail should not be with a view to impose pre-trial punishment:

In leading judgment on the subject titled *Godikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh*,***[8]*** Justice Krsihna Iyer observed that:

"Bail or Jail?- at the pre-trial or post-conviction stage-belongs to the blurred area of the criminal justice system and largely hinges on the hunch of the bench, otherwise called judicial discretion. The Code is cryptic on this topic and the Court prefers to be tacit, be the order custodial or not. And yet, the issue is one of 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".

He further added that:

"Personal liberty, deprived when bail is refused, is too precious a value of our Constitutional system recognized under Article 21 that the crucial power to negate it is a great trust exercisable, not casually but judicially, with lively concern for the cost to the individual and the community. After all, personal liberty of an accused or convict is fundamental, suffering lawful eclipse only in terms of 'procedure established by law'. The last four words of Article 21 are the life of that human right".

In *Archbold* ***[9]*** it is stated that:

"The proper test of whether bail should be granted or refused is whether it is probable that the defendant will appear to take his trial……"

The test should be applied by reference to the following considerations:

1. The nature of the accusation……
2. The nature of the evidence in support of the accusation…..
3. The severity of the punishment which conviction will entail….

Whether the sureties are independent, or indemnified by the accused person….

Justice Krishna Iyer quoted the words of Lord Russel of Killowan C. J:

"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial".

Again, in the said case Justice Krishna Iyer cited the observations of Lord Russel of Killowan C. J.[1] in following words:

"…….it was the duty of Magistrates to admit accused persons to bail, whenever practicable unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not proper classes who did not appear, for their circumstances were such as to tie them to the place where they carried on their work. They had not the golden wings with which to fly from justice"[10].

Criterion for cancellation of bail:

Sub-Section (2) of Section 439 and Sub-Section (5) of Section 437 grants power to the courts to cancel the bail granted to the accused. According to Section 437 (5), any Court which any released a person on bail under Section 437 (1) or (2), may if it considers it necessary so to do, direct that such person be arrested and commit him to custody. The Court, who granted the bail, can alone cancel it. The Court of Magistrate cannot cancel the bail granted by a police officer. In such situations, the High Court or Court of Sessions may invoke the power under Section 439 for cancellation of bail.

The grounds for cancellation of bail granted under Section 437 (1) or (2) and under Section 439 (1) are dealt in *Aslam Babala Desai v. State of Maharashtra,**[11]***

"The order for release on bail may however be cancelled under Section 437 (5) or Section 439 (2). Generally the grounds for cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him……..".

The grounds can be summed up as-

1. Misuse of liberty by the accused by indulging in similar criminal activity;
2. Interferes with the course of investigation;
3. Attempt to tamper with evidence or witnesses;
4. Threatens witnesses or indulges in similar activities which would hamper smooth investigation,
5. There is likelihood of his fleeing to another country.
6. Attempts to himself scarce by going underground or becoming unavailable to the investigating agency,
7. Attempts to place himself beyond the reach of his surety etc.

These grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to.

Default Bail under Section 167 of the Code of Criminal Procedure, 1973:

Under Section 167 of the Code, it is provided if the investigation is not completed within a period stipulated under the Section; the accused shall be released on bail. The period is 90 days or as the case may be 60 days reckoned based on severity of case (punishment provided for the alleged offence).

On a plain reading of this Section it becomes clear that the Magistrate to whom the accused is forwarded may authorize his detention in such custody as he may think fit for a term not exceeding 15 days in the whole. If the Magistrate has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he is required to order the accused to be forwarded to a Magistrate having jurisdiction. Such Magistrate may authorize his detention beyond the period of 15 days if adequate grounds exist but no Magistrate can authorize the detention of the accused persons in custody for a total period exceeding 90 days or 60 days as the case may be depending on the nature of the crime alleged to have been committed.

In *Mantoo Majumdar and Basdev Singh v. State of Bihar,**[12]*** the two accused have been enduring incarceration for over seven years in various prisons in Bihar on the basis that they are implicated in several

cases of 1971 and 1972. However, in fact, there were no proper investigation of cases, nor has a single charge sheet been laid before the Court against either accused. What flabbergasts (stun, surprise) Court that even the magistracy have bidden farewell to their primary obligation, perhaps, fatigued by overwork and uninterested in the freedom of others. The chart has been produced by the Superintendent of the Jail showed that on large number of dates the prisoners have been produced before the Magistrates concerned from 1973 to 1980 without so much as the Court checking up whether the investigations have been completed, charge sheets have been laid and there is justification for keeping the petitioners in custody.

The petitioners filed a writ petition stating that their detention was contrary to the provisions of Section 167 (2). The Supreme Court allowed the petition, Justice Krishna Iyer observed that:

"there is a precious interdict protective of personal freedom which states that no Magistrate shall authorize the detention of the accused person exceeding 90 days in grave cases and 60 days in lesser cases. "On the expiry of the said period. . . the accused person shall be released on bail if he is prepared to and does furnish bail. . . .". Not 60 days but six years have passed in the present case; not 90 days but 1900 days or more have passed, and yet, the Magistrates concerned have been mechanically authorizing repeated detentions unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention".

Justice Krishna Iyer, in this case put the very important questions before all of us-

"We know not how many others are languishing in prison like the petitioners before us. 'If the salt hath lost its savour, wherewith shall it be salted?' If the law officers charged with the obligation to protect the liberty of persons are mindless of Constitutional mandates and the Code's dictates, how can freedom survive for the ordinary citizen?"

The question posed by the Hon'ble Justice Krishna Iyer is of paramount concern. This observation is relevant to famous Marathi proverb which means- *if protector becomes devil, then who to ask remedy*. The observation of law shall be carried our properly by the different agencies entrusted with dispensation of criminal justice.

Anticipatory Bail: Law and Remedy

Section 438 of Cr. P.C. empowers the Sessions Court and High Courts to grant anticipatory bail, namely a direction for grant of bail to person apprehending arrest. The Law Commission in its 41st Report recommended the incorporation of a provision on anticipatory bail. The commission had observed[13]:

"The necessity for granting anticipatory bail arises mainly because sometimes influential persons try to implicate their rivals in false cases for the purpose of disgracing them or for other purposes by getting them detained in jail for some days. In recent times, with the accentuation (emphasis, stress) of political rivalry, this tendency is showing signs of steady increase. Apart from false cases, where there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail, there seems no justification to require him first to submit to custody, remain in prison for some days and then apply for bail".

Section 438 of the Code of Criminal Procedure, 1973 contemplated it merely as an order directing the release of an accused on bail in the event of his arrest and therefore, it is only on arrest that the order granting anticipatory bail becomes operative.

Since the introduction of the provision of anticipatory bail under Section 438, its scope has been under judicial scrutiny. The leading case on the subject is *Gurbaksh Sing Sibbia v. State of Punjab.**[14]*** The Supreme Court, reversing the Full Bench decision of the Punjab and Haryana High Court in this case,[15] which had given a restricted interpretation of the scope of Section 438, held that in the context of Article 21 of the Constitution, any statutory provision (Section 438) concerned with personal liberty could not be whittled down by reading restrictions and limitations into it. The Court observed in *Gurbaksh Sing Sibbla v. State of Punjab.**[16]***

"Since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when no such restrictions have been imposed by the legislature in the terms of that Section".

The Court also held that the conditions subject to which the bail can be granted under Section 437(1) should not be read into Section 438. While allowing unfettered jurisdiction to the High Court and the Court of Session, the Supreme Court fondly hoped that a convention, any develop whereby the High Court and the Court of Session would exercise their discretionary powers in their wisdom. The Court laid down the following clarifications on certain points, which had given rise to misgiving in the case decided by Hon'ble High Court.

1. The person applying for anticipatory bail should have reason to believe that he will be arrested. Mere 'fear' of arrest cannot amount to 'reasonable'.
2. The High Court and the Court of Session must apply their mind with case and circumspection (Caustion) and determine whether the case for anticipatory bail is made out or not.
3. Filling of FIR is not a condition precedent to the exercise of power under Section 438.
4. Anticipatory bail can be granted even after the filling of FIR.
5. Section 438 cannot be applied after arrest.
6. No blanket order of anticipatory bail can be passed by any Court.

Again in *Savitri Agarwal and others v. State of Maharashtra an another*,[17] it is held that the filing of First Information Report (FIR) is not a condition precedent to the exercise of power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

In its significant judgment of *Siddharam Satlingappa Mhetre v. State of Maharashtra and others*,[18] Hon'ble Supreme Court widely decided and commented upon the term 'Liberty'. The Court observed that every kind of judicial discretion, whatever may be the nature of the matter in regard to which it is required to be exercised, has to be used with due care and caution. In fact, awareness of the context in which the discretion is required to be exercised and of the reasonably foreseeable consequences of its use is the hallmark of a prudent exercise of judicial discretion. One ought not to make a bugbear of the power to grant anticipatory bail.

A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions, which the court may deem, fit to impose, in consideration of the assurance that if arrested, he shall enlarge on bail.

Bail-compulsory to undertrial prisoner in certain cases (Section 436-A) : Pre-trial detention and Rights of accused:

The purpose of pre-trial detention is not punishment. A survey of decided cases reveals that the law favours release of accused on bail, which is the rule, and refusal is the exception.

The plight of undertrial prisoners in fact accused was vividly brought out in *Hussainara Khatoon I v. Home Secretary, State of Bihar.**[19]*** The case disclosed a dismal state of affairs in the State of Bihar in regards to administration of criminal justice. Hordes of men and women undertrial were languishing in Bihar jails for periods ranging from three to ten years without the commencement of trials. They were in jails for much longer periods than they would have been had they been found guilty and sentenced after trial. They were in jails not because they were found guilty but were too poor to afford bail and the trials did not commence.

To prevent the undertrial prisoners and accused from languishing in jails for periods longer than the period of maximum period of imprisonment for the alleged offence, the Code of Criminal Procedure (Amendment) Act, 2005 insets a new section 436-A (enforced w. e. f. 23-06-2006). The said Section provides for the maximum period for which an undertrial prisoner can be detained. In the statement of objects and reasons it was stated; there had been instances, where undertrial prisoners were detained in jail for periods beyond the maximum period of imprisonment provided for the alleged offence, as remedial measure Section 346-A has been inserted.

The Section provides that where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties.

However, the Court may after hearing the Public Prosecutor and for the reasons to be recorded by it in writing, order for the continued detention of such person for period longer than one-half of the said period or otherwise release him on bail.

The right of the undertrial prisoners is safeguarded by further providing that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

It also made clear under the Section that in computing the period of detention for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

In the case of *Archit Pravinbhai Patel v State Of Gujarat*[20], it is reveal that for the effective implementation of Section 436-A of the Code, an advisory had been issued by the Ministry of Home Affairs of the Government of India on 17th January, 2013

to all the States and Union Territories to implement the provisions of Section 436-A to reduce overcrowding in prisons. Among the measures suggested in this regard by the Ministry of Home Affairs was the constitution of a Review Committee in every district with the District Judge in the Chair with the District Magistrate and the Superintendent of Police as Members to meet every three months and review the cases of undertrial prisoners. The Jail Superintendents were also required to conduct a survey of all cases where undertrial prisoners have completed more than one fourth of the maximum sentence and send a report in this regard to the District Legal Services Committee constituted under The Legal Services Authorities Act, 1987 as well as to the Review Committee. It was also suggested that the prison authorities should educate undertrials of their right to bail and the District Legal Services Committee should provide legal aid through empanelled lawyers to the undertrial prisoners for their release on bail or for the reduction of the bail amount.

Even a single day delay in release of undertrial prisoners, who are entitled to the release as per Section 436-A, will amount to serious violation of their right to life under Article 21 of the Constitution. For this violation no amount of compensation would be sufficient. Hence, it is *sine qua non* that the concerned authorities must prevent the breach of Article 21 by effectively implementing Section 436-A.

The bail is a security for the prisoner's appearance to answer the charge at a specified time and place. It is natural and relevant for concerned 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 guilt of the accused there under. The foregoing discussion reveals that while granting bail, right to personal liberty of an individual along with the interest of the society including the right of victim/s must be balanced. The order of granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society.

References:

All Reported Cases (1936) : Corpus Juris Secundum: Complete Restatement of The Entire American Law.
Archbold : Pleading, Evidence and Practice in Criminal Cases, 36th Edition, London 1966.
Ashutosh Dr. : Rights of Accused, Edition 2009, Universal Law Publishing Company.
Bag, R. K. : Supreme Court on Criminal Justice, 2nd Edition, Asia Law House, Hyderabad.
Baker, Christopher : Human Rights Act, 1998: A Practitioner's Guide: Sweet and Maxwell Ltd., London.
Basu, Durga Das : Human Rights in Constitutional Law, Publisher Prentice- Hall of India, New Delhi 1994.
Gaur, K. D. : Criminal Law: Cases and Materials, 3rd Edition 1999.
Gour, Hari Singh : Penal Law of India, Vol. 1, 11th Edition
Hansaria, B. L. : Right to life and Liberty under the Constitution, Lexis Nexis (India)
Pandey, J. N. : Constitutional Law of India, 42nd Edition 2005-2010, Central Law Agency, Allahabad.
Pandya Asim : Rights of Arrested Persons, Investigation and Bail, Edition 2006, Snow White Publications Pvt. Ltd.
Pillai, P S A : Criminal Law, 9th Edition, Lexis Nexis, Butterworths, Wadhwa, Nagpur.
Ratanlal and Dhirajlal : The Code of Criminal Procedure, 19th Edition 2010, Lexis Nexis, Butterworhts, Wadhwa Nagpur.

[1] Gaur, K. D., *Criminal Law: Cases and Materials, 3rd Edition 1999 pg. 786*
[2] *CORPUS JURIS SECUNDUM Vol. 8 p. 60, an encyclopedia of U.S. Law. Corpus Juris Secundum: Complete Restatement of the Entire American Law As Developed By All Reported Cases (1936-). It contains an alphabetical arrangement of legal topics as developed by U.S. federal and state cases.*
[3] *CORPUS JURIS SECUNDUM Vol. 8 p. 60, an encyclopedia of U.S. Law*
[4] *AIR 1977 SC 2447*
[5] *AIR 1978 SC 1594: 1978-EQ(SC)-0-208, para.14*
[6] *1987 (2) SCC 684*
[7] *Ram Govind Upadhyay v. Sudharshan Singh, AIR 2002 SC 1475*
[8] *AIR 1978 SC 429*
[9] *Mod. Law Rev. Vol. 81, p. 53-Archbold, Pleading, Evidence and Practice in Criminal Cases, 36th Edn., London 1966 para. 203 vide Godikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, AIR 1978 SC 429*
[10] *R. v. Rose (1898) 18 Cox CC 717 : 67 LJQB 289 - quoted in 'the Granting of Bail'. Mod. Law Rev. Vol. 81, Jan. 1968 pp. 48, 49 vide Godikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh, AIR 1978 SC 429*
[11] *AIR 1993 SC 1*
[12] *AIR (SC) 1980-0-847: SCC-1980-2-406*
[13] *Vide Law Commission's 41st Report, Vol. I, PP.320,321 para 39.9.*
[14] *1980 (2) SCC 565*
[15] *Guribaksh Singh Sibbla v. State of Punjab, AIR 1978 P&H*
[16] *1980 (2) SCC 586*

[17] *2009 Cr. L. J. 4290 (SC): AIR 2009 Supreme Court 3173: 2009 AIR SCW 5092*
[18] *Criminal Appeal No. 2271 of 2010, arising out of SLP (Crl.) No. 7615 of 2009, Judgment Date 2nd December 2010*
[19] *1980 1 SCC 81*
[20] Decided on 21st March, 2016 by Hon'ble Supreme Court.