

All About Bail in India

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Why in News?

- In a judgement, recently, the Supreme Court held that **“undue delay” in a trial can be a ground for granting bail to an accused.**

Background on the Case

- In March 2023, a two-judge bench of the Supreme Court directed that an undertrial booked under the **Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985** nearly seven-and-a-half years ago for possession of cannabis be released on bail.
- NDPS is an exception to the ordinary rules for granting bail.
 - Under Section 37 of the Act, ***for a court to grant bail it has to be satisfied that “that there are reasonable grounds for believing that he is not guilty of such an offence”*** and that upon release, “isn’t likely to commit any offence.”
 - This high bar, requiring the accused to prove innocence at the time of seeking bail, ***ensures getting bail under the law is virtually impossible for certain offences.***
- However, the Court in its recent ruling said that the condition seeking the ***court’s satisfaction to the extent that an accused is not guilty of an offence “has to be interpreted reasonably.”***

What is the Meaning of ‘Undue Delay’ in Law?

- **Section 436A** of the **Code of Criminal Procedure** requires an accused to be granted bail if the trial is not concluded within specified periods.
 - Section 436A also requires that no person shall be detained during the period of investigation, inquiry, or trial for more than the maximum period of imprisonment provided for the offence.
- In the current case, the SC recorded that the accused Mohammad was in custody “for over 7 years and 4 months” and the progress of the trial had been at a snail’s pace, “with 34 witnesses remaining to be examined still”.
- The Court said that the stringent conditions under Section 37 of the NDPS Act cannot override the general law for granting bail for undue delay in the trial.

What is ‘Bail’?

- The term ‘bail’ is originated from an old French verb ‘bailer’ which means ‘to give’ or ‘to deliver’.
- ***Bail refers to the provisional release of the accused in a criminal case in which the court is yet to announce the judgment.***
- The term ‘bail’ means the security that is deposited in order to secure the release of the accused.

Types of Bail in India

- The **Code of Criminal Procedure** (CrPC) does not define the word bail.
 - The CrPC was first drafted in **1882** and continues to be in use with amendments from time to time.
- Depending upon the stage of the criminal matter, there are commonly three types of bail in India:
 - **Regular Bail** -
 - A regular bail is generally granted to a person who has been arrested or is in police custody.
 - A bail application can be filed for the regular bail under section 437 and 439 of CrPC.
 - **Interim Bail** -
 - This type of bail is granted for a short period of time and it is granted before the hearing for the grant of regular bail or anticipatory bail.
 - **Anticipatory Bail** -
 - Anticipatory bail is granted under section 438 of CrPC either by session court or High Court.
 - An application for the grant of anticipatory bail can be filed by the person who discerns that he may be arrested by the police for a non- bailable offence.

Conditions for Grant of Bail in Bailable/Non-Bailable Offences

- **Conditions for bail in bailable offence are -**
 - There are sufficient reasons to believe that the accused has not committed the offence.
 - There is sufficient reason to conduct further enquiry in the matter.
 - The person is not accused of any offence punishable with death, life imprisonment or imprisonment up to 10 years.
- **Conditions for grant of bail in non-bailable offences -**
 - If the accused is a woman or a child, bail can be granted in a non-bailable offence.
 - If there is lack of evidence then bail in non-Bailable offences can be granted.
 - If there is delay in lodging FIR by the complainant, bail may be granted.
 - If the accused is gravely sick.

Cancellation of Bail

- Court has the power to cancel the bail even at a later stage.
- The Court can cancel the bail granted by it and give directions to the police officer to arrest the person and keep in police custody.

In which cases Bail is an Exception and not a Rule?

- Legislations which prescribe an alternate criminal law framework, such as the **NDPS Act**, **Unlawful Activities Prevention Act** and the **Prevention of Money Laundering Act** make bail the exception, rather than the rule.
 - **Union of India v. K. A. Najeed Case (2021) -**
 - In the above judgement, the Supreme Court had granted bail to an accused facing incarceration for an extended period “with little possibility of early completion of trial” under the UAPA.
 - Section 43-D of UAPA, reverses the burden of proof on the accused and says that a court can reject bail if a prima facie case exists against the accused.
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Q1) How many undertrial cases are there in India?

The number of Convicts, **Undertrial inmates** and Detenues were reported as 1,22,852, **4,27,165** and 3,470 respectively accounting for 22.2%, **77.1%** and 0.6% respectively at the end of 2021. Other prisoners accounted for 0.1% (547 prisoners) of total prisoners. increased by 9.1% during the period.

Q2) What is Code of Criminal Procedure?

The Code of Criminal Procedure commonly called Criminal Procedure Code is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April 1974.

Source: [What the SC said on bail after ‘undue delay’ in trials, even for stringent laws such as NDPS](#) | [Hindustan Times](#)

Source: <https://vajiramandravi.com/current-affairs/all-about-bail-in-india/>

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