

SC's Judgement on Anticipatory Bail

CURRENT AFFAIR

- The Supreme Court has recently held that the protection of anticipatory or pre-arrest bail cannot be limited to any time frame or “fixed period”.

Anticipatory bail

- Anticipatory bail is a direction to release a person on bail, issued even before the person is arrested. It is only issued by the Sessions court and High Court.

Questions referred to the Constitution Bench

- ◉ Whether the protection granted to a person under Section 438 of the Code of Criminal Procedure should be limited to a fixed period till the accused surrenders in court, and
- ◉ Whether the life of anticipatory bail should end when the accused is summoned by the court.

Anticipatory Bail

- Section 438 (anticipatory bail) of the Code of Criminal Procedure deals with direction for grant of bail to a person apprehending arrest.

Section 438

- It states that when any person has reason to believe that he may be arrested on an accusation of having committed a non- bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.
- The high frequency of arbitrary and heavy-handed arrests to harass and humiliate citizens, and often at the interest of powerful individuals led to the enactment of Section 438.

Highlights of the Judgement- Section 438 and its Importance

- Anticipatory bail helps thwart influential powers from implicating their rivals in false cases.
- It protects people from the humiliation of detention in jail for days.
- Anticipatory bail is all the more needed now because there is a drive of political rivalry and “this tendency is showing signs of steady increase”.

Duration of Bail

- The life of an anticipatory bail order does not normally end at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial.
- A denial of bail amounts to deprivation of personal liberty (a fundamental right under Article 21 of the Constitution), thus, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438.

Grant of Anticipatory Bail

- The court held that a plea for anticipatory bail can be filed even before the registration of FIR as long as there is reasonable basis for apprehension of arrest and clarity of facts.
- An application for anticipatory bail should be based on concrete facts and not vague or general allegations. The application should also contain bare essential facts relating to the offence and why the applicant reasonably apprehends arrest.

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- The grant of protection should not be “blanket” but confined to specific offence or incident for which relief from arrest is sought. It is open for the police to move court for arrest of the accused if there is any violation of bail conditions.

Conditions on Anticipatory Bail

- It is open for a court to impose appropriate conditions for grant of anticipatory bail if the specific facts or the features of the offence involved demands it.
- Restrictions/conditions can be imposed only on a case-to-case basis. Courts have to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation or tampering of evidence, including intimidating witnesses and fleeing justice.

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- It is essential for the court to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed. Special or other restrictive conditions may be imposed if the case or cases warrant, but should not be imposed in a routine manner in all cases.

Bail

- Bail denotes the provisional release of an accused in a criminal matter in which the court is yet to announce a judgment.
- The expression 'bail' means a security deposited to appear before the court for release.
- A bail is granted to an accused after presenting a bail bond to the court.

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- The primary objective of arrest is to ensure that the accused in a criminal case appears before the court for the conveyance of justice.
 - However, if the person's presence can be guaranteed for the court trial without putting the person in a jail, it would be unfair and unjust to violate a person's liberty.
 - Thus, bail can be granted as a conditional liberty to the accused

Types Of Bail In India

- Regular Bail: A regular bail can be granted to a person who has already been arrested and kept in police custody. A person can file a bail application for regular bail under Section 437 and 439 of the CrPC.

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- Interim Bail: Interim bail is a bail granted for a short period of time. Interim bail is granted to an accused before the hearing for the grant of regular bail or anticipatory bail.

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- Anticipatory Bail: A person who discerns that he may be arrested by the police for a non-bailable offence, can file an application for anticipatory bail. It is like an advance bail obtained under Section 438 of the CrPC. A bail under Section 438 is a bail before arrest and a person cannot be arrested by the police if the anticipatory bail has been granted by the court.



For questions and doubts



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