

## SPECIAL POWERS OF HIGH COURT REGARDING BAIL

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### ABSTRACT

Judges play a critical role in granting bail to the indicted since they have broad discretion over whether or not to grant bail. Although the power must be exercised judicially, the scope of discretion varies from judge to court. As a result, judges must be actively involved and open-minded in order to discover the truth not only in bail proceedings, but in all cases tried before them. The particular powers as higher courts have been granted to the High Court and the Court of Session. This clause grants the High Court or the Court of Session unrestricted power to admit an indictment to bail. The main aim of this research is to study the power of high court regarding the bail. The result of the study is shows that the Sessions Court and the High Court have specific bail-granting powers. Section 439 of the Criminal Procedure Code delegated sole competence to the High Court or Sessions Court in this situation. Section 439 extends the jurisdiction to provide bail beyond that of Section 437. Before bail can be granted, both parties must attend a court. If a Sessions Court grants bail, the High Court might revoke it.

**Keywords:** Law of bail, session court, high court, section 439, 437 etc.

### INTRODUCTION

The word “bail” can be traced to the old French word ‘*Baillier*’. In law, Bail means the acquisition of the release from prison of a person awaiting trial or appeal by means of a security deposit to ensure that he/she is submitted to the legal system at the time necessary. The monetary value of the safeguard is known as bail bond which is determined by the court with jurisdiction over the inmate. The security may be cash, title to property, or the bond of private persons or means or of a professional bondsman or bonding company. Failure of the person released on bail to surrender himself at the appointed time results in forfeiture of the security. Bail is a pre or post arrest remedy aimed at the release of the arrested suspect till the date of his trial. Bail vindicates the traditional right to freedom before the guilt is proved.

In Black’s Law Dictionary, bail has been defined as “a security such as cash or bond especially security required by a court for the release of a prisoner who must appear at a future date.” The Webster’s Law Dictionary defines it as “a temporary release of a person in exchange for security given for the prisoner’s appearance at a later hearing”.

The Supreme Court in the case of *Kamlapati v. State of West Bengal*<sup>1</sup>, defines bail as ‘a technique which is evolved for effecting the synthesis of two basic concepts of human value, viz., the right of an accused to enjoy his personal freedom and the public’s interest on which a person’s release is conditioned on the surety to produce the accused person in the Court to stand the trial.’

The jurisprudence of bail, like any other branch of the law, has its own rationale for proper understanding of which, one must go through the various stages of its development. In a primitive society, one could hardly conceive of it. However, in a civilized society bail has developed to such an extent that it has become the rule. It is indisputable that the law of bail occupies an important place in the administration of justice and constitutes a valuable and significant branch of law and procedure. It strikes a balance between two countervailing principles of jurisprudence i.e. on one hand it protects the un-convicted prisoners from the hazards of the alleged criminal trial by granting to them the benefit of jurisprudential principles of the presumption of innocence and on the other hand, it prevents the tampering of the judicial proceedings by the activities of those who would seek to subvert the process of

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<sup>1</sup> 1979AIR777

justice which harp son bringing the guilty to the book according to the settled principle of natural justice.

The concept of 'bail' has emerged from the conflict between the 'police power' to restrict the liberty of a man who is alleged to have committed a crime and the presumption of innocence in his favour. The right to bail being an important right created in favour of the accused is one of the foremost-recognized social defenses under criminal laws of any civilized society. It vindicates the traditional right to freedom before conviction, it permits unhampered preparation of a defence and prevents infliction of punishment prior to conviction. Thus, Bail is a great trust exercisable not casually but judicially with lively concern in the interest of the individual and community.

In India, this belief is no different and the Courts have time and again upheld the cardinal value of this law. This flow through the rich literature provided by the Judicial branch of our Country being from Justice V. Krishna Iyer eloquent judgement in *Motiram & Ors. vs. State of Madhya Prade*<sup>2</sup> (1978) to *Gulab Chand Upadhyaya Vs State Of U.P. And Ors.*<sup>3</sup> in 2002 to *Arnab Manoranjan Goswami vs. State of Maharashtra*<sup>4</sup> (2020). These judgments have acted as a reminder to the executive on the abuse of police powers to crack down on dissidents, activities. Etc.

However, in recent times, such view is tilting towards the other spectrum. Two recent developments in Judicial sphere, one being a judicial order and other being speech given by the Chief Justice of India, have drawn attention to this. In *Satender Kumar Antil vs CBF*<sup>5</sup>, the Supreme Court has sought to expand the scope for the grant of early bail to those arrested without sufficient cause. Further, the CJI, N.V. Ramana, has bemoaned the injury to personal liberty caused by hasty arrests, hurdles in the way of releasing suspects on bail and the prolonged incarceration of those under trial<sup>6</sup>.

Historically, bail was used to assure the appearance of the person accused of an offense at trial or to protect the integrity of the process by prohibiting such a person from interfering with evidence or witnesses. Under the Criminal Procedure Code of 1973, police, prosecutors, magistrates, and judges are required to use their best judgment and discretion within the confines of the law to ensure the appearance of the person accused of an offense without jeopardizing the interests of society as a whole.

## OBJECTIVES OF THE STUDY

1. To analysis the judicial precedents of High Court and Supreme Court of India with respect to bail in India, specifically with respect to delay and denial of bail in Lower Judiciary.

## BAIL BY HIGH COURT OR THE COURT OF SESSION

Judges play a critical role in granting bail to the indicted since they have broad discretion over whether or not to grant bail. Although the power must be exercised judicially, the scope of discretion varies from judge to court. As a result, judges must be actively involved and open-minded in order to discover the truth not only in bail proceedings, but in all cases tried before them.

Section 439 of the Criminal Procedure Code addresses the competence of the High

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<sup>2</sup> 1978AIR 1594

<sup>3</sup> 2002CrLJ2907

<sup>4</sup> 202014SCC12

<sup>5</sup> MANU/SC/0851/2022

<sup>6</sup> <https://www.thehindu.com/news/national/hasty-arrests-difficulty-to-get-bail-long-spells-of-jail-time-as-undertrials-show-justice-system-needs-an-overhaul-says-cji/article65647349.ece>

Court or Court of Session over bail. These particular powers as higher courts have been granted to the High Court and the Court of Session. This clause grants the High Court or the Court of Session unrestricted power to admit an indictment to bail. However, the discretion is not to be employed in a judicial context.

In exercising discretion, the High Court and Sessions Court should not limit their assessment solely to the question of whether or not the inmate is likely to flee, but also weigh other factors. According to Section 437, the Magistrate's authority is limited compared to that of the High Court and Court of Sessions. However, unless there are exceptional circumstances, the High Court or Sessions Court should not depart from the justifiable constraints indicated in section 437(1), which are founded on the principle of prudence. As a result, the authority granted to the High Court and the Sessions Court must be used with utmost discretion, balancing an individual's valuable right to liberty with the interests of society as a whole. The courts are expected to show, even if only briefly, the reasons for awarding or rejecting bail. The exercise of jurisdiction cannot be reckless or arrogant. Because the High Court and Sessions Court have concurrent jurisdiction, there is no reason not to apply for bail straight to the High Court. However, unless the lower court of concurrent jurisdiction is addressed first, the High Court would usually not accept a petition under Section 439 of the Criminal Procedure Code. Though the High Court's jurisdiction to grant bail under section 439 CrPC is totally unconstrained by any condition, it is only in extraordinary circumstances that a plea for bail should be filed directly to the High Court.

In such a scenario, the applicant must demonstrate extraordinary circumstances that warrant not moving the lower court in the first instance. So, as a general rule, an applicant requesting bail should first go to Sessions Court if an application is made to the High Court, and if the High Court issues an order refusing release, a new request cannot be made before Sessions Court. If the bail application is denied by the Sessions Court, the person can file a new bail request with the High Court. The Sessions Judge, as a subordinate to the High Court, cannot examine the legality of the order since it has concurrent jurisdiction and there is nothing in Section 439 that prevents the Sessions Court from doing so. So, unless and until unusual and conclusive conditions exist, the High Court cannot be tried directly.

When granting bail, the High Court or Sessions Court has the authority to impose conditions, set aside or alter terms, and reduce the amount of bail requested by a police officer or magistrate. The High Court and Sessions Court have the authority to reject any bail granted by another court. They have been given this authority to prevent against abuse of any court's proceedings or to bring justice to an end. They have considerable authority to deal efficiently with charged but acquitted on bail. They can exercise this power at any point throughout the trial or while an appeal is pending before them.

When granting bail under section 439 of the code, the court cannot go into detail regarding the clue to assess if it is sufficient to show the indicter's guilt beyond a reasonable doubt. It is not important at this time to evaluate whether or not the prosecution's case will result in a conviction. The question is whether the prosecutor can introduce evidence that supports the appearance of the allegations rather than proof that establishes the defendant's guilt beyond a reasonable doubt.

Before granting bail, the High Court and Sessions Court will serve pleas for bail on the prosecution in two cases:

- a. before giving bail to a person charged with an offence adjudicated only by a civil court;
- b. before giving bail to a person charged with a criminal offence punishable by life imprisonment;

## POWER OF HIGH COURT AND SUPREME COURT TO GRANT BAIL

Bail is typically a topic for which the High Court should have final power. Section 439(2) allows any court, including Sessions Courts, to detain a person released on bail in its discretion. The High Court has jurisdiction to grant bail in a Habeas Corpus petition filed in response to detention orders issued under Rule (3). The exercise of said authority is inevitably limited by considerations unique to such proceedings and relevant to the purpose intended to be served by orders of detention issued under the rule.

The Supreme Court can only intervene in a limited number of instances involving important legal issues that require a final decision for the entire country and in which natural justice norms are violated. Supreme Court justices should not close their eyes to injustice, but they should also avoid becoming involved in small problems; otherwise, the Supreme Court will be unable to play the noble and luxurious role that the Constitution's framers believe it should. When special leave requests are made for these reasons, the Supreme Court has established guidelines that allow it to exercise discretion in granting or refusing bail or advancing bail.

The High Court or Sessions Court may grant bail to a person accused of offenses punishable by death or life imprisonment. Nonetheless, the Court must consider the Supreme Court's multiple contemplations in this instance. Both the High Court and the Sessions Court have common power and jurisdiction, however the Sessions Court is typically moved first.<sup>7</sup>

The High Court cannot grant bail unilaterally. If the bail application has been filed in another court, it should be mentioned in the bail application. It is also the Court's responsibility to get an explanation for this fact before using its powers. The Court of Session is the Court presided over by a Sessions Judge.<sup>8</sup>

Different theories have been developed for various instances, and a few of them can be stated as follows: The law presumes defendants are innocent until proven guilty. He should be granted the option to attend his court until he demonstrates that he should not be freed on bond.<sup>9</sup>

The basic practice is to accept bail rather than deny it, and it should not be viewed as a penalty.<sup>10</sup>

- A criminal offense is not a sufficient cause to reject bail.
- Courts prioritize the defendant's likelihood of appearing in court, regardless of their guilt or innocence.
- If a defendant is released on bond, other defendants in comparable cases may also be eligible for bail.
- For heinous offenses like murder, bail may be rejected if there are reasonable grounds to suspect the accused is guilty. The absence of a charge-sheet against the accused should be considered.
- Previously convicted defendants can still be granted bail.

Section 438/439 of the Criminal Procedure Code gives the High Court the authority to evaluate bail and anticipatory bail applications. Under statutory procedural limitations, the High Court can ordinarily (unless in rare situations) exercise its authority under sections 438 and 439 of the Criminal Procedure Code. The same remedies can be obtained from a Sessions

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<sup>7</sup> Harbans Singh v. State of Punjab, (1986) 15 Cr. LT 264; (1987-1) 91 PLR 103; Hari Mohan Dixit v. State of M.P. 1986 Cr.LR211 (MP)

<sup>8</sup> Nagendra Nath v. King-Emperor. AIR 1924 Cal 476; Emperor v. Gulam Mohammad, AIR 1925 Lah. 510; Ram Chandra v. State, AIR 1952 MB 203; 1953 Cr.LJ 1

<sup>9</sup> Abraham Bali v. Emperor. AIR 1925 Oudh 489; 26 Cr.LJ 1286; Fazal Nawaz Jung

<sup>10</sup> Public Prosecutor v. M. Sanyasayya Naidu. AIR 1925 Mad. 1224; Rao Harnarain Singh Sheoji Singh v. State. AIR 1958 Punj. 123

Court with concurrent jurisdiction. Suspects of crimes that are not punished by death or life imprisonment cannot bypass Magistrates and Sessions Judges and go straight to the High Court for bail.<sup>11</sup>

It is reasonable to expect that a suspect will not be referred to a High Court or a Sessions Court until he loses his case before a Magistrate and an investigation is conducted to explain the evidence and circumstances around him.<sup>12</sup>

Only in extraordinary circumstances may an application for a security deposit be submitted directly to the High Court. The applicant has the option of choosing jurisdiction and submitting an application for bail directly to the High Court. A High Court will not grant bail only on the grounds that the indicted must first seek for bail in the Sessions Court.<sup>13</sup>

### **BAIL POWERS NOT BE USED IN A CASUAL OR CARELESS MANNER**

The provisions of the Code of Criminal Procedure give the Court the discretion to grant bail to defendants during trial or on appeal from conviction. The judiciary must use its discretionary powers with caution, balancing the important right to individual liberty with the interests of society as a whole. When granting or rejecting bail, the Court must describe the reasons for its decision. Authority should not be wielded casually or carelessly.<sup>14</sup>

While individual freedom is essential, it is also necessary to identify, investigate, and convict offenders who harm the public interest. High Courts and Sessions Courts have extensive authority to issue bail for a short time. However, granting or denying absolute or limited bail must adhere to the standards provided, and these powers must be exercised correctly in light of Supreme Court decisions.<sup>15</sup>

When making bail decisions, the generally accepted criteria are whether the offender is likely to flee if released on bail and if he is likely to abuse or misuse his privilege. If the defendant's response to these questions is negative, he will be released on bond. If the answers to any of these questions are affirmative, the bail must be rejected. When examining the matter, the Court analyzes the gravity of the offense, the sort of evidence available, the likelihood of conviction, and the potential punishment if convicted, as well as whether the defendant takes these concerns into account. Consider whether it is likely to result in a fugitive prosecution or obstruct the recording of prosecution evidence.<sup>16</sup>

### **BAIL CONSIDERATIONS FOR NON-BAILABLE CRIMES**

The nature and severity of the circumstances in which the crime was committed, as well as the standing and position of the indicted person in relation to the victim and witness, are all taken into account while granting bail under Sections 437(1) and 439(1) of the new Criminal Procedure Code. The offender may avoid trial, repeat the crime, imperil his own life, face the grim prospect of future conviction in this case, fabricate witnesses, history and study, and other relevant reasons.<sup>17</sup>

Courts processing bail applications should, among other things, examine the following factors before granting bail:<sup>18</sup> Details of the offense, potential sentence, and

<sup>11</sup> Shivasubramonham v. State of Kerala. AIR 2002 Kant HCR 1069:2002 Cr.LJ 1998 (2002) (Kant)

<sup>12</sup> Bahan v. State of Kerala, 2004 Cr.LJ 3427 (3431) (Ker-DB)

<sup>13</sup> Nathu v. State of U. P. 1987 All LJ 1211: 1987 All Cr. Cas. 344, 1987 AWC 988

<sup>14</sup> K. Narayanaswamy v. State of A.P., 1980 Cri LJ 588 at p. 591 (AP).

<sup>15</sup> Sangappa v. State of Karnataka, 1978 Cri LJ 1367 at pp. 1970-71 (Kant).

<sup>16</sup> M.P. Ramesh v. State of Karnataka, 1991 Cri LJ 1298 at p. 1311 (Kant).

<sup>17</sup> Ram Govind Upadhyay v. Sudarshan Singh, AIR 2002 SC 1475 at p. 1477: (2002)3 SCC 598: 2002 SCC (Cri) 688.

<sup>18</sup> (1977) 4 SCC 308 at pp. 308-9: AIR 1977 SC 2447: 1978 Cri LJ 195: 1977 SC (Cri) 594, See also E. Joseph v. Assistant Collector of Customs, Tuticorin, 1982 CrLJ 559 at p.560.



supporting documentation.

- A reasonable concern of manipulating or intimidating witnesses.
- The prosecution was upheld by the court with pleasure.

Some essential considerations for the grant of bail are, by way of illustration and not exhaustive:<sup>19</sup>

- When granting bail, the Court considers the nature of the allegation, the severity of the sentence if convicted, and the evidence supporting it.
- Courts should also consider well-founded fears/threat that witnesses will be manipulated or applicants will be intimidated in granting bail.
- Though it is not expected to obtain all the documents to prove the defendant's guilt beyond a legitimate cause, but there should always be prima facie justification of the Court for upholding the charges.
- Frivolity in judgment should always be taken into account and the issue of credibility needs to be considered in granting bail, if in the ordinary course of the case the seriousness of the prosecution is in doubt. The defendant has the right to bail.
- The Court must confirm that granting bail is necessary for justice in a specific instance. Denying bail is an exception. When deciding whether to grant bail, courts must examine whether it will frustrate or accelerate legal procedures. In truth, there are no hard and fast laws governing bail. Each case must be decided based on facts. However, courts do set standards that they normally examine when deciding whether to grant or refuse bail. Courts often consider the following while deciding whether to grant or refuse bail:
  - Nature of allegations.
  - Nature of charges.
  - The nature of the documents supporting the claim.
  - The severity of the sentence the defendant may face.
  - The risk that defendants will abuse bail concessions by absconding or mitigating evidence.
  - Defendant's health, age and gender;
  - Defendant's and Plaintiff's social status.
  - Whether granting bail will impact the course of natural justice.

## CONSIDERATIONS FOR GRANTING OF BAIL

Under Section 439 Section 498 of the Criminal Procedure Code (1898) (equal to section 439 of the Criminal Procedure Code 1973) broadens the High Court's power over bail. The type and degree of the offense, the nature of the document, the defendant's specific circumstances, and the reasonable chance of the defendant being punished by bail for such offenses before bail is granted can all differ, and these factors must be considered. The defendant's appearance at trial is not guaranteed, and there is a legitimate concern of tampering with witnesses or the greater interest of the State, among other considerations that arise when a Court is sought for bail in a non-bailable offence.<sup>20</sup>

When assessing a bail under Section 439 of the Criminal Procedure Code, two key factors should be addressed. The first consideration is whether the defendant will be tried without objection, and the second is whether the defendant will be present to hear the court's verdict. Courts must consider additional elements, such as the severity of the alleged crime

<sup>19</sup> Chandrawati v. State of U.P., 1992 Cri LJ 3634 at p. 3635(All).

<sup>20</sup> Surendra Kumar v. State of MP, 1995 Cri LJ 1517 at p. 1519.

and the gravity of the circumstances surrounding its commission. The defendant's position and standing in relation to the victim and witnesses. recidivism; endangering his own life, being released, being unlikely to be convicted in this case, and other acceptable factors. When assessing bail applications under Sections 438 or 439 of the Code, the Court considers two factors: individual liberty, the investigation process, and the protection of the public interest.<sup>21</sup>

Factors examined by a court while granting bail under sections 438 or 439 of the Criminal Procedure Code:<sup>22</sup> The essence and seriousness of the situation under which the crime was committed;

- Defendant's position and standing with respect to victims and witnesses.
- Possibility of defendant evading trial.
- The defendant's likelihood of repeating offenses.
- The chances of a conviction in this case are diminished by the defendant's risking his own life.
- Possible defendant tampering with witnesses.
- Incidents of history and investigation.

When there are other significant grounds related to the facts and circumstances of the case. To issue bail under Section 439 of the Criminal Procedure Code, awaiting investigation or legal processes, the following significant elements can be summarized: These regulations are not exhaustive and may also apply to additional reasons arising from the facts and circumstances of each case.<sup>23</sup> Severity of the blame or nature of claim;

- Severity of penalties leading to convictions.
- The nature of the evidence supporting the claim.
- The risk that the applicant will flee if released on bail.
- Risk of tampering with prosecution witnesses.
- The process takes a long time.
- Duration of detention of defendant.
- Applicant's character, assets and reputation.
- Defendant's past behavior in Court.
- Defendant's health, age and gender;
- Opportunities for defendants to prepare their defense and to consult with legal counsel.
- Repetition hazard of crime.

## **BAIL COURTS DO NOT ACT AS TRIAL COURT**

Courts may not hold mini-hearings when evaluating bail applications. At the bail granting stage, the Court can only consider the prima facie case. It cannot attack the reliability of the prosecution's witnesses. The credibility of prosecution witnesses can only be examined at trial.<sup>24</sup>

Courts are not expected to delve into bail problems beyond the evidentiary value of the documents on file. This is to be evaluated by the trial Court as the first step after

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<sup>21</sup> Romesh Chandra v. State of H.P., 2002 Cri LJ 1031 at pp. 1032-33 (HP).Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004)7 SCC 528

<sup>22</sup> Salim Khan v. Sanhjai Singh. (2002)9 SCC 670 at p. 671.

<sup>23</sup> Gharban Ali v. Intelligence Officer, AIR Intelligence Unit, NIPT, 1996 Cri UJ 2420 at p. 2422 (Bom).

<sup>24</sup> State of Maharashtra v. Buddhikota Subha Rao. AIR 1989 SC 2292: Arvind Kumar Jasram Gupta Vs. State of Gujarat (1990) I Guj LR 623

evidence.<sup>25</sup>

### **BAIL MATTER IS TO BE HEARD BY BOTH PARTIES**

Both sides must be heard during the initial stage of bail. The State is condemned for granting obvious bail, or temporary bail. Thus, the State has the right to be approached in all matters, including bail, unless the Court considers it acceptable to relieve itself from this responsibility. It was determined that in the urgent appeals, the Sessions Judge had not cited specific causes or additional reasons that compelled the Court to order the judgment for a brief term bail without hearing the Government's advocate; there was not even a hint as to what the urgent circumstances were that required the issuance of bail for a short period. In general, in serious criminal cases, the Sessions Judge does not evaluate the bail request on the same day because the prosecution need a legitimate opportunity to be granted in accordance with the provision in sub-section (1) of Section 439 of the Criminal Procedure Code. If the government advocate's argument in opposition is to be dismissed, the Court must record the reasons in writing for accepting this process.<sup>26</sup>

### **JURISDICTION OF SESSIONS COURT TO RELEASE ON BAIL PERSON CONVICTED BY IT SELF PENDING APPEAL**

If a Sessions Judge convicted a prisoner and freed him on bail pending an appeal to the High Court, it was determined that he lacked jurisdiction to make such a decision, despite the fact that the clause used the word "any person". The Conviction Court lacks the authority to do so, but the High Court does. They then change their own orders by releasing the inmates on bond, which contradicts the Queen Empress v. C.P. Fox decision.<sup>27</sup>

The term "optional" in sections shall be interpreted in accordance with the limitations set by this concept. This section refers to a Sessions Judge's hearing on the power to release a prisoner on bail who he considers has been unfairly convicted, as well as the power to dispose of the case himself or appeal to the High Court. This clause in no way empowers him to amend or alter his own sequence.<sup>28</sup>

However, Section 389 clearly regulates the question of prisoner release. See the following decision for an earlier Code decision in which the term "accused person" was used.<sup>29</sup> Section 389(3) empowers the court to grant bail even after the prisoner has been sentenced.

### **CANCELLATION OF BAIL**

Before this sub-section was incorporated into the Code of 1898 by Act 26 of 1955, there were concerns about whether a person granted bail might be arrested without invoking the High Court's inherent powers. To dispel these doubts, this sub-section has been added as follows:<sup>30</sup>

In accordance with the established principles of the Old Code, the High Court has the jurisdiction to refuse bail granted under the Old Code if they fail to facilitate the proper conduct of the case in Court. As a result, sub-section (2) of Section 498 of the Old Code authorized the arrest of a person who has been granted bail by a Sessions Court or High

<sup>25</sup> H.C. Gaur v. Rakesh Vij (1990) 40 Del. LT 346; 1990 Cr.LJ 1586 (Del)

<sup>26</sup> Mushtaque Ahmed v. State of U.P (1984) 1 Crimes 70 (All).

<sup>27</sup> See report of the joint Committee, para 43

<sup>28</sup> Sukar Narayan Bakhia v. Rajnikant R. Shah, 1982 Cri LJ 2148 at p. 2155 (Guj).

<sup>29</sup> Jagram v. Ghamandi (1980) 5 Raj. C.C.364; Vijaya Kumar v. State of Haryana. 1981 Cr.LJ 838 (PH): 1981 Cr.LT 110 (P&H).

<sup>30</sup> Yunus Hussain Rathod v. Asst. Collector of Customs (1990) 1Bom C.R.449



Court. This is very similar to Section 439(2) of the current code.<sup>31</sup>

- A private individual can file a bail cancellation application. Relatives of the dead may request to have the bail cancelled.<sup>32</sup> The deceased's wife declined to accept the Court-ordered interim compensation. The plea to cancel bail was refused. The private party's request did not give any grounds for revoking the defendants' bail. No third party, even the petitioner in a police hearing, has the right to interfere and oppose a defendant's bail application.
- Only when new circumstances occur after the offender has been freed on bail can the Sessions Court revoke bail and order the rear rest and imprisonment of the inductee. The High Court upheld the Sessions Judge's withdrawal of bail based on the Magistrate's inability to issue bail. The Sessions Judge is competent to make decisions in accordance with Chapter XXXIII of the Criminal Procedure Code. However, he lacks the jurisdiction to withdraw the bail granted under Rule 184 of the Indian Defense Rules.
- Both the High Court and the Sessions Court have the authority to revoke bail granted under Section 439(2), as well as anticipatory bail granted under Section 438. The Sessions Judge's anticipatory bail under Section 438 was cancelled by the High Court. A new request to cancel a bail was denied since there was no new evidence justifying the cancellation.
- The Sessions Court does not have the authority to issue an interim order canceling bail under Section 439. The Magistrate's order cannot be stayed because it temporarily suspends bail. If the bail is received owing to fraud, deception, etc., only the High Court has the ability to stay the order under section 482.<sup>33</sup>
- Revision does not invalidate the bail cancellation order. If the prosecutor can prove that the defendant tampered with a witness and the defendant is allowed to remain on the run, there is a legitimate risk that he may continue to threaten the witnesses by abusing the anticipatory bail granted to him by the High Court.<sup>34</sup>
- The primary objective of bail cancellation is to prevent indicted individuals who have been freed on bail orders from tampering with evidence of violent crimes, to ensure fair trials, and to bring justice to society. The aim of bail has effectively lost its objective and meaning, which is equally destructive to the wider interests of law enforcement. When a person is released on bail in a terrible criminal case where the penalty is extremely harsh and unconvincing, the individual not only engages in various activities such as threatening family members of deceased victims, but also creates legal and regulatory issues.<sup>35</sup>
- When cancelling bail, the Court must be cautious, thoughtful, and mindful, and it must use this authority very intelligently, so that the Court that used the authority to set free the indicted person on bail does not use it in the customary and common manner. While drafting these processes to cancel bail, the legislature was aware that the accused on bail could misuse his situation after being released on bond. Because of these conditions, procedures have been introduced into the Criminal Procedure Code to terminate bail, so that the accused is always under control and is aware that if he does something wrong, he will be arrested again. At the same time, the court has a substantial duty to satisfy its judicial conscience when deciding cases of bail

<sup>31</sup> Nilu v. State. 1983 Cr. LJ 1590 (Ori); (1983) 55 Cut LT 123.

<sup>32</sup> State through Delhi Administration v. Late Sanjay Gandhi. 1978 Cr.LJ 952 at 958; AIR 1978 SC 961

<sup>33</sup> Panchanan Mishra v. Digambar Mishra. (2005) 3 SCC 143 at pp 272

<sup>34</sup> Madurai Ganesan v. State of T.N. 2004 Cri LJ 2736 at p. 2739(Mad)

<sup>35</sup> Ram Govind Upadhyay v. Sudarshan Singh, AIR 2002 SC 1475 at p. 1478

cancellation, and bail should only be cancelled on serious reasons.

- In cases where witnesses are threatened, the court should act quickly to record their testimony in order to remove suspicion and resolve disagreements. Generally, the lower court's discretion to grant or deny bail is unaffected. However, if an order is based on extraneous reasons that are not supported by documentary proof, it should not be hesitated to throw it aside in order to meet court criteria.<sup>36</sup>
- An order to cancel bail requires compelling circumstances. The primary criterion is interference with the administration of justice or the abuse of privilege granted to the accused. The attempts to tamper with evidence, as well as witness intimidation, are two essential causes for bail cancellation.<sup>37</sup>
- Before an order for bail cancellation is made under Section 439(2) of the Code, the prosecutor must present evidence to prove that the accused tampered with prosecution witnesses. An act or action on the part of an indicated person must be demonstrated to demonstrate abuse or misuse of the freedoms granted to him in other ways. If feasible, bail may be cancelled. The seriousness of the charges against the indicted is undoubtedly a significant consideration in determining his release on bond, but if the indicted has previously been released on bail despite a crime of this nature, that alone would not support bail cancellation.<sup>38</sup>
- Except in highly compelling and overwhelming circumstances, grants of bail are normally irrevocable. The reasons for bail denial include obstruction or attempted obstruction of the proper administration of justice, evasion or effort to avoid enforcement of justice, or abuse of the liberty granted to the indicted. As a result, the factors for canceling bail differ from those for reviewing an application for release on bail.<sup>39</sup> While on bail, commit the same crime for which indicted tried or convicted.
  - Obstructing an investigation
  - When one tries to flee abroad, went underground, or went out of reach of his sureties, and lastly
  - If one commits a violent act for revenge.

## **APPEAL TO SUPREME COURT IN BAIL MATTER**

In *State of Gujarat v. Salimbhai Abdul Gaffar Shaikh*<sup>40</sup>, the appeal to the Hon'ble Supreme Court arose as a result of a certificate issued by the Gujarat High Court under Article 134-A. According to Articles 134(1)(c) and 134-A of the Constitution, a direction made in a case arising out of an application for grant of bail is not always a judgment because it does not terminate proceedings, as an order passed on an application for grant of bail is not a final order. As a result, the High Court of Gujarat issued the certificate incorrectly.

## **POWER OF HIGH COURT TO CANCEL BAIL GRANTED BY SESSIONS COURT**

There is no provision in the new Code of 1973 that limits the High Court's jurisdiction in dealing with a request under Section 439(2) of the Code to cancel bail once the Sessions Judge has been petitioned and issued an order granting bail. The High Court questioned his authority to examine a plea for bail under section 439(2) of the Criminal Procedure Code, despite the fact that the Sessions Judge had earlier granted bail to the accused.<sup>41</sup>

<sup>36</sup> *Ramesh Kumar v. State of H.P.* 1984 Cri LJ 1056 at p. 1056 at p. 1059(HP)

<sup>37</sup> *Ram Naresh Singh v. State of M.P.*, 1995 CriLJ.

<sup>38</sup> *Usha Devi v. .* 2006 Cri LJ 4435 at p. 4439 (Pat).

<sup>39</sup> *A.K. Murumu v. Prasenjit Choudury* 1999 Cr.LJ 3460 (3468) (Cal-DB).

<sup>40</sup> *Gurcharan Singh v. State (Delhi Admn.)* AIR 1987 SC 179

<sup>41</sup> *Gudikanti Narasimhulu v. Public Prosecutor.* High Court of A.P., AIR1978.

The High Court generally exercises this discretion under Section 439 of the Criminal Procedure Code to cancel bail granted by the Sessions Judge in favour of the indictment. In a case where an accused has been granted bail by the Sessions Court, the High Court has the discretion and authority under Section 439(2) of the Criminal Procedure Code to cancel the bail granted by the Sessions Court and re-arrest the defendant.<sup>42</sup>

In general, the High Court does not employ its discretionary jurisdiction to overturn bail orders issued by the Sessions Judge in favour of indictment.<sup>43</sup>

## CONCLUSION

The Sessions Court and the High Court also have specific bail-granting powers. Section 439 of the Criminal Procedure Code delegated sole competence to the High Court or Sessions Court in this situation. Section 439 extends the jurisdiction to provide bail beyond that of Section 437. Before bail can be granted, both parties must attend a court. If a Sessions Court grants bail, the High Court might revoke it. However, there must be a valid justification for canceling bail. Courts must consider the following before granting bail under Sections 438 or 439 of the Criminal Procedure Codes:

- The nature and seriousness of the circumstances under which the crime was committed;
- Defendant's standing and position with respect to victims and witnesses;
- Possibility of defendant evading trial.
- The defendant's likelihood of repeating offenses.
- The chances of a conviction in this case are diminished by the defendant's risking his own life.
- Possibility of defendant tampering with witnesses.
- The history of the incident and its investigation;
- Other relevant reasons that relate to the facts and conditions of the particular case.

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<sup>42</sup> Bhola v. State, 1974 Cri LJ 1318 at p. 1319 (All).

<sup>43</sup> Kishori Lal v. Rupa. 65CC 638 at p. 639; 2004 Cri LJ 3840