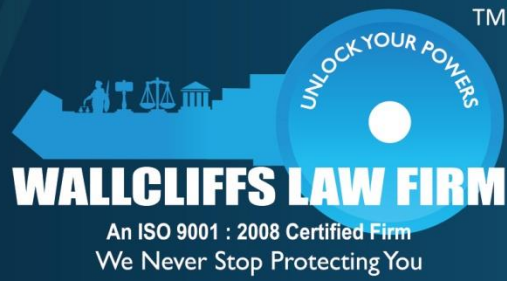


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CODE OF CRIMINAL PROCEDURE, 1973

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CHAPTER - XXXIII
PROVISIONS AS TO BAIL AND BONDS (SEC.436 - 450)

Q1. What are the cases in which the bail to be taken?

- If the person is accused other than a non-bailable offence who is arrested or detained without a warrant by an officer in charge of a police station, at any stage of the proceedings the person shall be released on bail.
- If the officer or Court thinks if such person is indigent and is unable to furnish surety, instead of taking bail from such person, discharge him on his bond without sureties for appearance.
- If the person is unable to give surety within a week of his arrest, it shall be sufficient ground for the officer or the Court to presume that he is an indigent person.
- Where a person has failed to comply with the conditions of the bail bond, the Court may refuse to release him on bail. **(Sec.436)**

Q2. What is the procedure to take bail in a non-bailable offence?

- If any person accused or suspected of the commission of any non-bailable offence is arrested without warrant by an officer in charge of a police station or appears or brought before a Court other than the High Court, he may be released on bail, but
 1. Such a person shall not be released if there appears reasonable ground to believe that he has been guilty of an offence punishable with death or imprisonment for life.
 2. Such a person shall not be released if such offence is a cognizable offence and has previously been convicted of an offence punishable with death, imprisonment for life or imprisonment extend to seven years.
- If it appears to the Court or officer at any stage of the investigation, inquiry, or trial, there is no reasonable ground for believing that the accused had committed a non-bailable offence but there is sufficient grounds for an inquiry into his guilt, the accused shall be released on executing the bond without sureties.



- If the person is accused or suspected of the commission of an offence punishable with imprisonment extend to seven years, the Court may impose the following conditions,
 1. Such a person shall attend the conditions in accordance with the bond.
 2. Such a person shall not commit an offence similar to the offence which he is accused or suspected of the commission of which he is suspected.
 3. Such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or to tamper the evidence.
- An officer or a Court releasing any person on bail shall record in writing him or its reasons or special reasons for doing so.
- Any court which has released a person on bail or necessary to do so, direct such person to be arrested.
- If the Magistrate has not concluded a trial of a person accused of any non-bailable offence within a period of sixty days, he shall be released on bail to the satisfaction of the Magistrate.
- After the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court of the opinion that there are reasonable grounds for believing that the accused is not guilty, he shall be released on bail on the execution of bond without sureties for his appearance to hear judgment delivered.

(Sec.437)

Q3. What is the procedure to grant bail to a person apprehending arrest?

- If the person is arrested on accusation of having committed a non-bailable offence, he may apply to the High court or the Court of Session for a direction that in the event of such arrest he shall be released on bail considering the following factors,
 1. The nature and gravity of the accusation.
 2. The antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction of any cognizable offence.
 3. Where the accusation has been made with the object of injuring or humiliation the applicant arrested.
- Where the High Court or the Court of Session has not passed any interim order or has rejected the application for grant of anticipatory bail, it shall be open to the



officer-in-charge of the police station to arrest such person on the basis of accusation apprehended in such application.

- Where the Court grants an interim order, it shall cause a notice to the Public Prosecutor being not less than seven days notice when the application shall be finally heard by the Court.
- The applicant seeking anticipatory bail shall be obligatory at the time of hearing of the application and pass final order by the Court if it considers such presence necessary in the interest of the justice.
- If the High court or the Court of Session makes a direction, it may include such conditions, including,
 1. A condition that the person shall make himself available for interrogation by the police officer and required.
 2. A condition that the person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.
 3. A condition that the person shall not leave India without the previous permission of the Court.
- If the person is arrested without a warrant by an officer-in-charge of a police station, he shall be released on bail at the time of the arrest.
- If the Magistrate taking cognizance of such offence he shall issue a bailable warrant in conformity with the direction of the Court. **(Sec.438)**

Q4. What is the procedure for execution of bond and sureties?

- The amount of every bond executed shall be fixed with due regard to the circumstance of the case and shall not be excessive.
- The High Court or Court of Session may direct the bail required by a police officer or Magistrate to reduce. **(Sec.440)**
- Before any person is released on bail, a bond for sum of money as the police officer or Court thinks sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond.
- Where any condition is imposed for the release of any person on bail the bond shall also contain the condition.



- The bond shall also bind the person released on bail to appear which is called upon at the High Court, Court of Session, or other Court to answer the charge.
- For determining the sureties are fit, the Court may accept affidavits in proof of the facts. **(Sec.441)**
- Every person standing surety to an accused person for his release on bail shall make a declaration before the Court. **(Sec.441A)**
- The accused shall be released on bail on executing the bond and when the Court admitting the accused to bail shall issue an order of release to the officer in charge of the bail. **(Sec.442)**
- If the sureties have been accepted through mistake, fraud or there are insufficient sureties, the Court may issue a warrant of arrest. **(Sec.443)**
- All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond.
- If the application is made, the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.
- On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged. **(Sec.444)**

Q5. What is the procedure to forfeit the bond?

- When a bond is for appearance, or for production of property or any other bond, before a Court and it is proved to the satisfaction of that Court to which the case has subsequently been transferred, that the bond has been forfeited, the Court shall record the grounds of such proof and may call any person to pay the penalty to show cause why it should not be paid.
- If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same.
- If the penalty is not paid and cannot be recovered, the person shall be imprisonment in civil jail for a term that may extend to six months.
- The Court may after recording its reasons remit any portion of the penalty mentioned and enforce payment in part only.
- Where a surety of a bond dies before the bond is forfeited his estate shall be discharged from all liability. **(Sec.446)**



CHAPTER - XXXIV
DISPOSAL OF PROPERTY (SEC.451 - 459)

Q6. What is the procedure to dispose of the property?

- When any property is produced before any Criminal Court during any inquiry or trial, if the property is subject to speedy and natural decay, the Court may record the evidence and order it to sell or disposed of.
- When a trial in any Criminal Court is concluded, the Court may order for disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession of any property document produced before in its custody.
- An order may be made for the delivery of any property to any person claiming to be entitled to the possession without any condition or on executing the bond to restore such property to the Court.
- A Court of Session instead to making an order directs the property to be delivered to the Chief Judicial Magistrate. **(Sec.452)**

CHAPTER - XXXV
IRREGULAR PROCEEDINGS (SEC.460 - 466)

Q7. What are the irregularities that do not vitiate proceedings?

If any Magistrate not empowered by law do not any of the following,

- To issue a search warrant.
- To order the police to investigate an offence.
- To hold an inquest.
- To issue process for the apprehension of a person within his local jurisdiction who has committed an offence outside the limits of such jurisdiction.
- To tender a pardon under Section 306.
- To recall a case and try it himself under Section 410.
- To sell property under Section 458 or Section 459. **(Sec.460)**



Q8. What are the irregularities which vitiate proceedings?

If any Magistrate, not being empowered by law shall be void if he does any of the following things namely,

- Attaches and sells the property under Section 83,
- Issues a search-warrant for a document, parcel, or other things in the custody of a postal or telegraph authority.
- Demands security to keep the peace.
- Demands security for good behavior.
- Discharges a person lawfully bound to be of good behavior.
- Cancels a bond to keep the peace.
- Makes an order for maintenance.
- Prohibits the repetition or continuance of a public nuisance.
- Makes an order under Part C and Part D of Chapter X.
- Takes cognizance of an offender under Section 190(C)(1).
- Tries an offender.
- Tries an offender summarily.
- Passes a sentence under Section 325 on proceedings recorded by another Magistrate.
- Decides an appeal
- Calls, under 397 for proceedings or
- Revises an order passed under Section 466. **(Sec. 461)**

CASE LAWS

Case 1

Ravuri Krishna Murthy V. State of Telangana, Crl A. 274 - 275 of 2021.

Held - A blanket order of protection from arrest cannot be passed by the High Court while dismissing a petition filed under Section 482 of Code of Criminal Procedure seeking quashing of FIR. A direction by the High Court has the effect of impeding the course of the investigation and has no basis or justification in law.



Case 2

Masood Khan V. Smt.Millie Hazarika, Crl.Petn. No. 1 of 2021.

Held - The petition under Section 482 of the Code of Criminal Procedure before it challenging Domestic violence Act proceeding is maintainable. The Proceedings under the DV Act, 2005 are purely in civil nature and the relief contemplated under Section 18 to 22 are civil reliefs with no criminal liabilities and as such, the enquiry is not a trial of criminal case, which will attract the provision of Section 482 Cr.P.c.

Case 3

Kamlesh Chaudhary V. State of Rajasthan, SLP (Crl.) No. 5715 of 2020.

Held - The accused who was released on default bail cannot be re-arrested in filing of charge-sheet by police. The Court says that the power of the Court to cancel bail if it considers necessary is preserved in cases where a person has been released on bail under Section 437(1) or (2) and these provisions are applicable to a person who has been released under Section 167(2). Delhi

Case 4

Saumaya Sanjay Khandare & Anr. V. State of Maharashtra, Criminal Application (APL) No. 709/2020.

Held - The inherent powers under Section 482 CrPc cannot set aside the order of conviction of accused in a non-compoundable case merely on the ground that the accused and complaint has arrived at a compromise at a post conviction state.

Case 5

Sanjay Tiwari V. State of Uttar Pradesh, Criminal Appeal No.869 of 2020.

Held - An application under Section 482 of the Code of Criminal Procedure filed by a person who is no way connected with the criminal proceedings or criminal trial cannot ordinarily be entertained by the High Court.



Case 6

Aluka Sandra Orewa @ Benny and State of Karnataka, Criminal Petition No, 6286 of 2020.

Held- The right to claim bail under Section 436 of Criminal Procedure Code (CrPc) becomes circumscribed when an accused repeatedly commits bailable offence. A person being on bail in relation to a bailable offence and applies for bail having again committed a bailable offence cannot as a matter of right claim bail. Any attempt to liberally interpret the right in this manner without having an idea of far-reaching consequences will have disastrous effect on the society or a system.

Case 7

Venkatesan Balasubramanian V. The Intelligence Officer, 2020 SCC Online SC 946.

Held - A default bail illegally or erroneously granted under Section 167(2) Cr.P.C can be cancelled under Section 439(2) Cr.P.c and also says that there is ample material in the complaint that the transportation of narcotic substance started from Omerga, Maharashtra and was being allegedly to be taken to Chennai and intercepted at Hyderabad. The complaint which has been brought on the record gives the detailed facts including the journey and the interception of appellants at Hyderabad. The combined complaint have filed within 180 days, the High court did not commit any error in canceling the default bail granted to the appellants.

Case 8

Subhash Bahadur @ Upender V. The State (N.C.T. of Delhi), Bail Appln. 3141/2020.

Held - The Delhi High Court grant of bail in a case where the accused was prepared to furnish bail and comply with the conditions under Section 167(2) of the Code of Criminal Procedure(CrPc) but had submitted his application under Section 439 CrPC. The Court held that the accused had submitted his application for bail under Section 139 CrPc, he had indicated as required under the Proviso(a) to section 167(2) of CrPc that he was prepared to furnish bail and therefore "in substance, the said conditions is met".



Case 9

Latha P.C V. State of Kerala, 2020 SCC Online SC 4238.

Held - A magistrate shall consider maintainability of the application filed under Section 12 of the Protection of women from Domestic Violence Act, if such a condition is raised by the opposite party. A party against whom a proceedings is initiated under Section 12 of the Act cannot approach the High court for quashing the proceedings invoking the power under Section 482 of the Code of Criminal Procedure.

Case 10

Ami Chand V. State of Himachal Pradesh, 2020 SCC Online SC 1465.

Held - An accused under Schedule caste & Schedule Tribes (Prevention of Atrocities) Act, resorting to Section 439 of Code of Criminal Procedure and surrendering before Sessions Court or High Court simultaneously obtaining ad-interim bail does not amount to bypassing the restrictions placed in Section 18 and 18-A of the Act.

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