

CONSTITUTIONAL ASPECTS AND ISSUES RELATING TO THE BAIL IN INDIA

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ABSTRACT

The human instinct of freedom and liberty is not only recognized but generally protected and preserved by almost all civilized nations. By virtue of being human, a man has inalienable human rights that take effect at birth. Because these rights are birthrights, they belong to all individuals. The extent to which human rights are respected and protected is an important measure of the civilization of a society. The right to personal freedom is enshrined in the constitution of all countries. Human rights jurisprudence has reached a stage where it can easily be said that the Indian constitution recognizes the fundamental right to human dignity. The fundamental value comes directly from Article 21 of the Constitution of India. Articles 21 and 22 of the Constitution guarantee the right to personal freedom regardless of one's political creed, creed, class or creed. It is against this background that an attempt has been made here to deal with the constitutional issues relating to the bail legislation. Maneka Gandhi Vs. Union of India Justice Bhagwati expressed his opinion in the following words: "These rights represent the basic values cherished by the people of this county since the Vedic times and they are calculated to protect the dignity of the individual and create condition in which every human be in can develop his personality to the fullest extent. They weave a pattern of the guarantee on the basic structure of human rights and impose negative obligations on the State not encroach on individuals liberty in its various dimensions."

KEYWORDS: Bail, Legal Constitutional Etc.

INTRODUCTION

Bail refers to the release of a person awaiting trial or appeal from prison by posting a bond to ensure that he or she surrenders to a law enforcement agency within a specified time. The monetary value of the security, which is called bail or more specifically bond, is determined by the court having jurisdiction over the detainee. Collateral can be cash, securities or a bond from a private individual or a professional lender or loan company. If the person released on bail does not surrender within the specified time, the bond will be forfeited. Bail is a post-arrest legal remedy designed to release an arrested suspect pending his trial. Bail establishes the traditional right to freedom before being proven guilty. Bail can prevent the imprisonment of innocent persons, which would otherwise lead to preliminary investigation, and give the accused an opportunity to prepare to defend himself against the charges against him, which is a general legal

principle, the presumption of innocence. Since ancient times, bail has been practiced in different countries according to their local legal system, bail has been seen since early civilization, the exact date and time is difficult to say. The bails were first introduced or followed, but if we go through the different eras of our world culture, we can find references to bails practiced in various parts of the world since their original times, bails have been observed for a long time. back The period of the Greek Empire, followed by the development of Rome, which has developed since the present day,. Today, almost all countries have bail in their criminal justice system.

CONCEPT OF BAIL

The literal meaning of guarantee means guarantee, payment note, payment and financial guarantee, guarantee, although as a legal term it is used by both lawyers and laymen in society, but it is not clear by law. Conceptually, it continues to be interpreted as a declaration, assumption and disclaimer of the state's restrictions on the freedom of individuals. Its main purpose is to keep the accused in custody and it is punishable on conviction. If the accused confirms that he will attend every hearing in his case, it is quite possible that he will be released on bail and given freedom during the trial. Bail is one way that a defendant can enjoy his freedom to avoid jail time. Termbail literally means the appearance of a prisoner to be released. With this idea, the word bail is taken from the old French verb *bailer*, which means to give or hand over. Although another point of view is that the Latin term "*bajulare*" means "to carry a burden". Guaranteed bonds as described above. Bail is the conditional release of an accused, which ensures that the accused, to whom or on whose behalf the bond is granted, will be present at the hearing.⁴.

IMPORTANCE OF CONCEPT OF BAIL

The importance of the instrument of bail can be well imagined from the fact that from the initial stage of prosecution at the police level to the Supreme Court and directly from directing anticipatory bail to the special powers of the Supreme Court and the Court of Session. bail and orders. habeas corpus and certiorari are intended to restore personal liberty. Bail is against the interest of the society and the interest of the individual can be sacrificed for the interest of the society. That is why the authorities are cautious about granting bail. It is a herculean task to maintain the balance between these two opposing rights, and the rule of law is the only yardstick when weighing this task. The rule of law refers to the observance of "due process of law," rooted in "due process" as expressed in the Fifth and Fourteenth Amendments to the United States Constitution. Thus, the idea governing bail is that the freedom of a person cannot be lightly influenced, except in cases prescribed by law. The purpose of arresting and detaining the accused is, of course, to ensure that he appears for the punishment prescribed by law. Therefore, in exercising their discretion, courts should be guided by the principles of whether or not to be judged, the likelihood of an accused appearing at trial, rather than his presumed guilt, unless specifically required by law. Remarkably such an introduction. The nature of the evidence and the severity of the sentence are significant only because they affect the likelihood that the inmate will not appear for trial. Every trial begins with the presumption of innocence of the accused. But a fair trial does not mean using methods that lead to the acquittal of the guilty

³Urvashisaikumar, "Indiansystem of Bailantipoor" Accessed from <http://www.legalsaviceindia.comon> (5.07.2019) at 3.30pm

PERSONAL LIBERTY AND BAIL

The right to life and personal freedom are undoubtedly the most important rights. All other rights depend on the existence of life itself and increase the quality of life. Since human rights can only belong to living beings, it can be assumed that the right to life itself is somehow the most important, because without it, other rights would have no value or benefit. If Article 21 were read in its original meaning, there would be no substantial fundamental rights. The right to life and liberty is enshrined in Article 21 of the Constitution of India. According to Article 21, no one shall be deprived of life or liberty except in accordance with law. The right to life stipulated in Article 21 of the Constitution does not mean only physical breathing. Nor does it mean an exemplary existence. It is much broader, including the right to a decent life. Originally, the term "personal liberty" meant freedom from physical restraint on a person by imprisonment or otherwise.

But later, personal liberty included all rights except those contained in several clauses of Article 19. Even the phrase "due process", originally interpreted by the Supreme Court as a law enacted or enacted by the state, rather than as a law embodying the principles of natural law, underwent significant changes in subsequent Supreme Court decisions. In *Makhan Singh v. State of Punjab*, it was held that for a law to be valid, it must be enacted by a competent parliament and must not violate other fundamental rights declared in the constitution. The case further held that an arbitrary, oppressive or contrived procedure is no procedure at all and that an unreasonable procedure violates Article 14.⁵

It would be pertinent to refer to the decision in *Kartar Singh and Ors. vs. Punjab State*, wherein Justice K. Ramaswamy, speaking for the Court discussed the importance of life and liberty in the following words; "The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty and fraternity in secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the Constitution protects right to life which is the most precious right in civilized society. The trinity i.e., liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gift of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Art.20(3),21 and 22 of the Constitution and Art.19 ensures freedom of movement Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality."⁶

⁴<http://en.wikipedia.org/wiki/Bail>(accessed on 12.6.2019 at 12:30pm)

PERSONAL LIBERTY VERSUS SOCIAL SECURITY

The right to life and personal liberty are not absolute and must be equal to social security to be fair, just and reasonable for all. Granting or denying bail is vital to society because a crime is a crime against the state. The conflicting interests, namely the sanctity of individual liberty and the interests of society, must be balanced between bailors and bailees. The law on bail combines two opposing interests, namely, on the one hand, the requirements to protect society against the dangers associated with committing crimes and the possibility of repeating the same offense against bail, and on the other hand, the absolute observance of the bail. basic principle. criminal court practice on the presumption of innocence until proven guilty. guilty and the sanctity of personal freedom. Although personal freedom is precious and the court must always protect such personal freedoms, this protection cannot be considered absolute in every situation, it is qualified according to the needs of the situation. So protection must be given to those who deserve it. It is society that needs protection from criminals because they can spread terror and disturb the peace and tranquility of society. The modern definition of "freedom" has two sides, negative and positive. In the first, actions performed according to a certain will and will are considered, the effect of which does not interfere with the interests of others, and therefore the interference of others is prohibited. The latter requires the responsibility of an individual or group to perform such actions for the benefit or benefit of another individual or group. Thus, in various cases, freedom requires both action and limitation on the part of an individual or group. In other words, freedom is an act, the consequence of which is limited to the perpetrator, in which the intervention of others in such an act is prohibited, and if the actions of the perpetrator harm others, it is a limitation that requires intervention. of an individual. or commitment-related group. Therefore, protecting the interests of society, the intervention of the state and the limitation of the criminal is the freedom of society. Thus, state-imposed restrictions on the exercise of certain personal freedoms are necessary elements for the freedom or social interest of an ordered society. The Supreme Court in *Kartar Singhv. State of Punjab* has also said that unrestricted and unconditional freedom cannot be said to protect the interest of society. The Supreme Court observed; "Freedom cannot be alone, but must be combined with virtue, that is, with virtue and morality, with freedom and justice, with freedom and justice, with freedom and the common good, with freedom and responsibility, which are related to order and social stability. achieve opposite desires.⁷ This intertwined network is difficult to delineate within defined spheres of conduct within which freedom of action may be confined. Therefore, freedom would not always be absolute permission, but must be placed within the limits of the law. In other words, there can be no freedom without social constraints. Freedom then, as a social conception is a right to be assured to all members of a society. Unless restraint is enforced on and accepted by all members of the society, the liberty of some must involve the oppression of others. If liberty be regarded a social order, the

⁵M.R.Mallick, *Bail Law and practice*, 5(Eastern law House, Kolkata 5 thed.2014)

⁶Bahul Kumar Shastri, "Bailand Judiciat Discretion"Vol.1Pragyaan: Journal of Law 50(2012)

problem of establishing liberty must be a problem of organising restraint which society on rollover the individual. Therefore, liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number, in other words common happiness as an end of the society, lest law lessens and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to undermine social welfare and order. Thus the essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution.”⁸

RIGHT TO SPEEDY TRIAL

One of the main goals of the criminal justice system is to solve crimes quickly, because long delays can defeat justice. That is why it is said that speedy administration of justice is one of the basic elements of an organized society. It is often said that the matter should be resolved as soon as possible, but it is also said that the basic standards that guarantee justice cannot be ignored, because the common saying is "justice hastened, justice buried". There should also be a fair compromise between basic requirements and speedy trial because the main purpose of the legal system is to provide complete justice to all. If the trial is adjourned and the accused is imprisoned during such adjourned trial, the accused shall be tried before the trial and the trial after the trial. On the other hand, it would be fair and just to exercise the discretion of the court to grant bail to the accused in such cases. It can be argued that the right to a speedy trial is an extension of the right to liberty, security and protection against arbitrary detention. This is a prerequisite for the right to be presumed innocent unless proven guilty.

This right is necessary and does not depend on the convict's request or exercise of this right. Such accused have the right to be brought before the court without delay so that the court can decide whether they have jurisdiction to arrest him and whether the accused should be released on bail. It was said that the accused was entitled to a speedy trial. The law therefore requires a speedy legal system that determines the guilt or innocence of the accused. In India, speedy justice is a fundamental right under Article 21 of the Constitution.

Delay in the judgment of criminal cases and subsequent appeals due to the guilt of the accused entitles him to apply for bail. The jurisprudence of speedy trials is based on the basic idea that the legal system should not persecute the innocent (suspects) unreasonably, and that victims should receive justice as soon as the legal system allows it.

⁷Indianed.2005p41

⁸Asim Pandya, Law of Bail Practice and Procedure (lexisnex is, Haryana 2013)

THE RIGHT TO FREE LEGAL AID

It is equally important to ensure that the accused has the necessary resources to defend a lawyer, if the right to a lawyer is necessary for a fair trial. A thorough understanding of the legal process is not necessary to understand how an indigent defendant faces the prospect of not being afforded a fair trial. in a criminal case because he does not have an equal right to use the legal remedies available to the other party. Currently, according to § 39 of the Constitution, it is accepted that the state has the duty to provide free legal aid to those in need. Considering the inclusion of Article 39-A of the Directive on Principles of the Constitution, which specifically calls on the State to act to provide free legal aid," "due process of law" under Article 21 would further mean that legal aid is available to poor defendants and if no such provision is made to provide legal aid to a defendant who is too poor to hire a lawyer, the procedure cannot be applied. the procedure prescribed by law. However, this article only contains a directive The state is a political principle, i.e. it obliges the state to provide free legal aid, but it does not represent an obligation to perform in court and does not give the accused the right. to give legal aid. the fundamental right to free legal aid.⁹

The right to free legal aid is not expressly recognized as a fundamental right in the Constitution of India. In recent years, however, it has become known as a simplified version of § 21 of the Constitution, which is based on court decisions in several cases. This constitutional obligation to provide free legal aid also arises when the accused is brought before a judge for the first time. The personal liberty of the accused is at risk as soon as he is arrested and brought before a judge. This is the stage where he has the first opportunity to apply for an order and release from detention. The accused needs legal aid and representation at this stage Because the proceedings can be considered reasonable, fair and just if he is denied legal aid and representation, therefore it is the constitutional duty of the state to provide free legal services to the poor accused not only . in the trial stage but also when the accused are taken from time to time for the first time order to arrest.

These duties are the same as in D.K. Basu Vs. State of West Bengal. Section 41C of the Code obliges the state to establish a police control station at each district and state level. Thus, all changes correspond exactly to D.K. to defined changes. Basu Vs. State of West Bengal. Special provisions have been introduced to prevent abuse of arbitrary power by the police, especially with regard to women. For example, Section 46(4) of CrPC 1973 provides that no woman shall be arrested before sunrise and after sunset. If the circumstances are such that the woman must be arrested immediately, the arrest must be made by a female officer. Such arrest must take place with the prior permission of the judge. Furthermore, if a woman is arrested, unless the circumstances indicate otherwise, , his arrest is based on the filing of his statement. That assumption is made by the provision to section 46 (1) of the Criminal Procedure (Amendment) Act 2008. The police will not touch the body of a woman unless she is a woman. If the arrested woman resists, only the police can use the necessary force to detain her. These provisions concerning women are made according to Article 15 (3) of the Constitution, which allows special provisions to be made to ensure the equality of women. These policies ensure that police officers do not abuse their power to perpetuate violence against women.¹⁰

⁹M.R.Mallick, Bail Law and Practice 2 (Eastern law house, Kolkata 5 thed.2014)

¹⁰Janak Raj Jai, Bail Law and Procedures,10(universal law publishing, Haryana7thed.2016)

¹¹Supranote30,p.91

CONCLUSION

Human freedom is very important and it is a fundamental right under the Constitution of India. As a result of the decision of the Supreme Court in several judgments, the issue of bail became closely related to the constitutional rights of some defendants in relation to due process, legal aid and speedy trial. Therefore, the difficulties related to the implementation of these rights in practice should be overcome by appropriate legal, administrative and other means. One approach to the problem is to rationalize the bail law to conform it to the basic principles of human rights practices contained in international human rights instruments and current Supreme Court decisions on human rights issues. The rights of the accused. From this perspective, bail law must balance two conflicting demands, namely personal freedom and the social need to prosecute offenders. Guarantee legislation should address two conflicting situations in society as a whole. Protection of those involved in a crime from victims and the presumption that the accused is innocent until proven guilty. The basic principle "bail is the rule and imprisonment is the exception" is intended to be applied to the following courts, but there is also an exception to this exception that bail conditions should be viewed not only in the interest of the accused, but also in the interests of the prosecutor and the whole society, which the crime can also directly or indirectly affect. Although the provisions of the Bail Criminal Procedure Code.¹¹

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