
Prelims and Mains focus: about the SC judgement on anticipatory bail and its significance; about types of bail

News: The protection of anticipatory or pre-arrest bail cannot be limited to any time frame or “fixed period” as denial of bail amounts to deprivation of the fundamental right to personal liberty in a free and democratic country, a Constitution Bench of the Supreme Court ruled on Wednesday.

Context: The questions referred to the Constitution Bench were two-fold:

1. whether the protection granted to a person under Section 438 should be limited to a fixed period till the accused surrenders in court, and
2. whether the life of anticipatory bail should end when the accused is summoned by the court.

What is Section 438?

Section 438 (anticipatory bail) of the Code of Criminal Procedure (CrPC) protects people from the ignominy of detention in jail for days on end and disgrace to their reputation.

What did the SC say in its judgement?

- The court acknowledged that anticipatory bail helps thwart influential powers from implicating their rivals in false cases.
- It said that the life or duration 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.
The history of our Republic — and indeed, the freedom movement — has shown how the likelihood of arbitrary arrest and indefinite detention and the lack of safeguards played an important role in rallying the people to demand independence.

The spectre of arbitrary and heavyhanded arrests: too often, to harass and humiliate citizens, and often times, at the interest of powerful individuals (and not to further any meaningful investigation into offences) led to the enactment of Section 438.

The court held that protection against arrest should inure in favour of the accused. Restricting the protection would prove unfavourable for the accused.

However, 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. 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. But restrictions/conditions can be imposed only on a case-to-case basis.

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. It should also have “his side of the story”.

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.

Nothing in Section 438 of the CrPC compels or obliges courts to impose conditions limiting the relief in terms of time or upon filing of FIR or recording of statement of witnesses by the police during investigation or inquiry, etc.
Courts, depending on the seriousness of the threat of arrest, need not wait to hear the prosecution’s version before granting anticipatory bail. Issuance of notice to the prosecutor can be done simultaneously while granting protection from arrest to the accused.

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.

What is bail?

- Bail means temporary release of an accused person awaiting trial, sometimes on condition that a sum of money is lodged to guarantee their appearance in court. In other words release or secure the release of a prisoner on payment of bail.
- It may be defined as Security such as cash, a bond, or property, pledged or given to a court by or on behalf of one accused of committing a crime, to obtain release from incarceration and to ensure the person’s future appearance in court when required during the criminal proceeding.

Types of Bail

1. Interim Bail- is for certain period of time granted before hearing to the prosecution.

2. Permanent Bail- permanent in nature and granted only after hearing to the petitioner a well as the prosecution.

3. Bail Before Arrest- it is granted when the court feels that the accused is falsely involved in the case and an arrest would affect his honor and dignity badly.

4. Bail On Arrest under Section 497 of Cr. Pc. Bail can be granted for both bail able as well as non bail able offences after the accused is arrested against a charge.
5. **Protective Bail**: A bail granted so that the accused can approach the provincial court for getting a pre-arrest bail without touching its merit.

6. **Directly Approaching Superior Court**: The Superior Courts can grant pre-arrest bail in some appropriate cases directly if the accused has been deprived or prevented of approaching lower courts.

7. **Bail For The Convict**: Once convicted, bail is granted to the accused even if the appeal for the same is accepted if court finds that there are considerable grounds for his/her release.

- **Anticipatory Bail**: The concept of Anticipatory Bail comes into place when the accused may rightfully fear arrest in cases of cognizable offences. Bail is a legal relief that a person may be entitled to in order to get temporary freedom until his case is disposed of. Depending on the gravity of the allegations, a person may be able to avoid arrest altogether. However, there are cases in which arrest is made and the accused is set free as per the provisions of the bail as given under the Criminal Procedure Code. In cases of Criminal cases, especially those pertaining to dowry, anticipatory bail comes as a relief to many accused person. It is literally applied for in anticipation of arrest.