

# Jurisprudence of Bail



## CONTEXT

- The jurisprudence of bail in post-independent India, is anchored on the bedrock of Article 21 of the Constitution which safeguards not only life but also liberty by commanding that liberty can be deprived only through the procedure established by law, which must be “just, fair and reasonable”.
- The same procedural law which provides for arrest and incarceration, ensures that bail can be sought by an accused through a broad spectrum of provisions ranging from pre-arrest bail to statutory bail.
- While the former envisaged under Section 438 of the Code of Criminal Procedure (CrPC) enables the accused to approach a Sessions Court or High Court seeking a direction to release him on bail in case he is arrested on a non-bailable offence, the latter, as conceived under Section 167 of the CrPC, vests with the accused the right to be released if the investigation is not completed within ninety days or sixty days, as the case may be, depending on the severity of the alleged offence.



## Grant of bail

- A conjoint reading of Section 436 (bailable offences) and 437 (non-bailable offences) of the CrPC makes it clear that the wisdom of the legislature is to secure bail as the rule and jail as the exception.
- The CrPC defines “bailable offence” as an offence which is shown as bailable in the First Schedule of the CrPC, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence.
- While bail is a matter of right in bailable offences, in non-bailable offences, the grant of bail is at the discretion exercised by the judge taking note of the factual aspects of the case.



- The presumption of innocence is a foundational postulate in India’s criminal jurisprudence. This is the main reason why an accused is usually released on bail pending investigation and trial except for a few offences under the Penal Code as well as offences framed under special statutes like the Unlawful Activities Prevention Act, the Narcotic and Psychotropic Substances Act and the Prevention of Money Laundering Act, all of which impose extremely rigid conditions for the grant of bail.
- While bail refers to the conditional release of a person from confinement or custody during investigation and trial, it can also be sought during the appellate stage to prevent endless internment during the pendency of appeal though the benefit of the presumption of innocence is not available at the latter stage.

- The grant of regular bail is usually guided by what is referred to as the triple test — the ascertainment of whether the accused is at flight risk; or the possibility of tampering with the evidence and influencing witnesses.

■ In addition to the above three, it was held by a three-judge-bench of the Supreme Court (P. Chidambaram Case (2019)) that the gravity of the offence may also be an additional consideration which may be ascertained by the sentence prescribed for the offence alleged to have been committed.



## The Presumption of Innocence



## The triple test

