

## **BNSS 2023 – LECTURE 18**

### **Notes - Bail and Bond -II**

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#### **Bail in non-bailable offences**

##### **Non-bailable offences**

This has been defined in Section 2(1)(c) of BNSS 2023, corresponding to Section 2(a) of the Cr.P.C. 1973. It is defined as ‘any offence which is not a bailable offence’ in the act.

But this name is a misnomer. Bail can still be given in a non-bailable case, only not as a right. Unlike bailable offences, bail is not a right and has to be applied for and given depending on different circumstances and conditions as we shall see later.

There are four different circumstances of grant of bail in a non-bailable offence and they have been defined under Section 480(1), 480(2), 480(6) and 480(7) of the BNSS, 2023 corresponding to Section 437 of the Cr.P.C. 1973.

##### **Bail**

The provision of Section 480 empowers two authorities for considering the question of bail, namely the court and the officer in charge of a police station.

##### **Circumstance I- Arrested without a warrant (Section 480(1))**

If a person is

1. accused or suspected of commission of any non-bailable offence and
2. is arrested without warrant either by a police officer in charge of a police station or appears before a court which is not a High Court or Court of Session,

he can be released on bail by the court on its discretion if it considers it justified to do so.

##### **Restrictions**

Section 480(1) also provides for restrictions when such a person cannot be released on the discretion of the court. They are :-

1. When there is reasonable suspicion that the person can be guilty of an offence punishable with death or imprisonment for life
2. When the person is suspected of committing a cognizable offence and he has been previously convicted of an offence punishable with death or life imprisonment or imprisonment of 7 years or more; and
3. When the person is suspected of committing a cognizable offence and also he has been previously convicted two or more times of an offence punishable with imprisonment of more than 3 years but less than 7 years.

### **Exception to restriction**

Notwithstanding the above conditions, the court may direct at its discretion the release of a person who is a child, a woman or is sick or infirm. Also, other suspected persons may be released on bail too if the court is convinced that it is just and proper to do so for special reasons.

### **Circumstance II (Before trial)**

According to Section 480(2), when it appears to the court or officer before which a person who has been arrested or detained that the person has not committed a non-bailable offence, but there are grounds that further inquiry is needed, he can be released on bail pending such inquiry.

This release is subject to the execution of a bond for his appearance when required.

### **Circumstance III (Trial not concluded within 60 days)**

According to Section 480(6), when a person has been in detention from the first date of taking evidence in the trial of a non-bailable offence, and the trial is not completed within 60 days of the above test, the person shall be released on bail on the discretion of the Magistrate. The person released shall also be subject to a personal undertaking in the form of bond to appear when required.

If the magistrate does not allow that person to be released on bail he must record the reasons in writing.

### **Circumstance IV (After trial concluded, before judgement is given)**

If after the conclusion of a trial for a non-bailable offence, the court has the opinion that the person is not guilty, it will release the person on bail and a bond to appear on the date of delivering judgement.

### **Discretion**

We have seen that the word 'discretion' has been used. This discretion cannot be arbitrary or on some standard set by each judge. There are certain factors to be considered while exercising discretion. If the

factors are not considered, such arrest or denial of bail would be without an application of mind and thus illegal. The Court has made the various factors clear in many cases and summarised them in the case of **Prasanta Kumar Sarkar v. Ashish Chatterjee (2010)**.

The factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) the nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

### **Whether successive applications for grant of bail be made or not?**

#### **Kalyan Chandra Sarkar v Rajesh Ranjan (2005)**

The SC said that though an accused has the right to make successive applications for bail, the Court entertaining such subsequent bail provisions has the duty to consider the reasons and grounds on which the earlier bail application was rejected.

The Court must also record in writing what changes happened in the circumstances that the subsequent bail application was granted.

#### **Bimla Tiwari v State of Bihar (2023)**

In this case, the SC said that the amount of bail is not the deciding factor to grant bail. It is the material on record which will decide whether bail is to be granted or not. Higher payment than the required amount is not a material factor at all as this will lead to arm-twisting of the procedure.

Money taken in bail is only in the form of an assurance to come to the court. The grant of bail is governed by other parameters.

### **Procedural aspects in granting bail for a non-bailable offence**

Section 480 also provides for some restrictions and conditions to be taken into consideration while granting bail in a case of non-bailable offence.

1. If the person is accused of committing an offence punishable with imprisonment of 7 years or above, or punishable with imprisonment for life or the death penalty, the public prosecutor must be given an opportunity to be heard before the Court.
2. Section 480(1) also says that a person entitled to bail cannot be denied bail simply because he is required for identification by witness if he had given an undertaking that he shall comply with the directions of the court.
3. Similarly, a person entitled for bail on other conditions cannot be detained simply for the reason that he is required for police custody beyond the first fifteen days of the investigation if he has given a personal undertaking to follow the directions of the Court.
4. According to Section 480(4), any officer or court releasing a person accused of a non-bailable offence on bail before trial must record their reasons to release him.
5. Section 480(5) says that if it is necessary, the court may order the arrest of a person and send him to custody even after he has been released on bail.

### **Specific conditions for certain offences**

Section 480(3) lays down some special conditions to be imposed in the grant of bail for certain offences. The offences are :-

- I. An offence whose punishment extends to 7 years of imprisonment or more.
- II. An offence that comes under :-
  - A. Chapter VI of BNS, 2023 (Offences affecting the human body)
  - B. Chapter VII of BNS, 2023 (Offences against the State)
  - C. Chapter XVII of BNS, 2023 (Offences against property)
- III. Abetment of or Attempt to commit or Conspiracy to commit any of the offences mentioned under (I) and (II)

The special conditions to be mandatorily imposed by courts who give bail to person accused of such offences are :-

- I. The person shall attend the court in accordance with the bond executed by him.
- II. On release, the person shall not commit any offence similar to the one that he is accused of.

- III. That person will not make any inducement, threat or promise to any witness or any police officer. He shall also not tamper in any kind with the evidence.

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