

BNSS 2023 – LECTURE 17

Notes - Bail and Bond - I (Default bail, Bail in bailable offence)

Introduction

The provisions regarding the issue of summons, relating to arrest with or without warrant and attachment are the kind of steps taken by the law to ensure a person's presence at a trial. Bail and Bond come under the same category of steps taken to ensure the presence of an accused at trial without unreasonably and unjustifiably interfering with his personal liberty. The denial of bail would go against the presumption of everyone being innocent until proven guilty.

Meaning

Bail generally means the process of procuring the release of an accused by ensuring his future appearance or attendance in the court for trial. It is the process of procuring a temporary release on furnishing security or surety.

It has not been defined under the Cr.P.C., but has been included within the definition section under Section 2(b) of BNSS 2023. It means the release of a person suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or court on execution of a bond or bail bond by the arrested person.

Bail through the process of taking security for appearance, balances the rights of the accused to be free until he is proven guilty and the court's constructive custody for the appearance of the person when needed.

Kinds of bail

- I. Default bail
- II. Bail in case of bailable offences
- III. Bail in case of non-bailable offences
- IV. Bail before arrest

There are other specific kinds of bail such as interim and medical bail which we will cover later on.

Default Bail

This was present in Section 167 of the Cr.P.C., now Section 187 of the BNSS. Under Section 187 (Procedure when an investigation cannot be completed within twenty four hours), 187(2) authorises the detention of and 187(3) contains a mandate on the maximum time one can be kept in custody and how a person is to be released on bail on expiry of such time, whatever offence he might have committed.

In case of an offence punishable with death, life imprisonment and a term of ten years or more, the total time for detention of a person can be 90 days. Out of those 90 days, a person can be sent to police custody for 15 days in total (which can be done in parts) in the initial 60 days of such detention.

In case of any other offence, the total time for which a person can be detained is 60 days out of which police custody can be given for 15 days at once or in parts in the first 40 days of such detention.

When the total period of detention is over, whatever the reason may be for police not completing their investigation or nature of offence, the person is entitled to default bail.

If the detained person is prepared to furnish bail after such a period, he will be considered to be released on furnishing such bail and no magistrate can order his further detention.

Bail in Bailable offence

Bailable offence

Section 2(c) in the BNSS, corresponding to Section 2(a) in Cr.P.C. defines bailable offence. It says that an offence which is shown as bailable in the First Schedule or an offence declared bailable by any other law is a bailable offence.

Non-bailable offence has been defined in the same subsection as ‘any other offence than a bailable offence is a non-bailable offence’.

Bail

Section 478 of BNSS, corresponding to Section 436 talks about in what cases bail can be taken.

Conditions/ Essentials

1. The offence should be a bailable offence.
2. The person must have been arrested/ detained without warrant.
3. Such a person is ready at any time of proceeding to furnish bail.

Who will grant the bail

If the person is brought before court, the court will release him on bail.

If he is under custody of a police officer he is entitled to be released by the officer on furnishing bail. It will be a mandatory duty of the police officer to inform the person of bail and release him. (Section 47(2) BNSS)

Indigent persons

The provided and explanation attached to Section 478(1) talk about bail in cases of bailable offence by an indigent person.

An indigent person, in layman terms means a person who is poor or destitute and does not have a comfortable or decent existence. Such a person will not be able to pay his bail, and would lose his right to be free simply due to inability to afford bail. Thus BNSS has made special arrangements for him.

According to the explanation, when a person cannot give his bail bond within a week of his arrest, it will form sufficient grounds for presumption that the person is indigent for this provision.

If such person is indigent, the court or the police officer shall discharge him after he executes a bond for his appearance. Thus a poor person can be released on bail on a personal undertaking too.

Non-compliance (imp. for prelims)

Section 478(2) covers what would happen if a person in a case does not comply with the date and place of appearance conditions in the bail bond or bond, the court can deny his subsequent bail applications in that case if and when he comes before the court or is brought into custody again.

Bail for undertrial prisoners

It was covered under Section 479 of BNSS, corresponding to Section 436A of the Cr.P.C. and has the heading 'Maximum period for which an undertrial prisoner can be detained'. It has undergone changes in the new act which we will see.

Background

Section 436A was introduced through the amendment in 1980 to the Cr.P.C. This amendment was made after the directions of the Supreme Court in the case of Hussainara Khatun v State of Bihar (1979). Its purpose is to protect the rights of undertrial prisoners who are held in jail for extended periods of time awaiting inquiry, investigation or trial.

In this case, the SC said that prolonged incarceration without following due process or procedure is violative of Article 21. It also directed the Central and State governments to ensure legal aid through the formation of legal services programmes due to the mandates of equal justice in Article 14, right to life and liberty from Article 21 and the directive of legal aid in Article 39A.

Requirements and procedure

In the earlier Cr.P.C., the accused was released on bail on his own surety if he had served half the maximum term prescribed for that offence for which death penalty is not prescribed. In BNSS, a few additions and conditions have been changed.

According to Section 479(1), a person who has committed an offence and is under detention awaiting trial or during the period of investigation or inquiry for it, he shall be released -

- I. If the offence is not punishable by imprisonment for life or death penalty, and he is a first time offender he shall be released on bail or bail bond after completing half of the maximum period of imprisonment specified for that offence. This is a new addition in BNSS, 2023.
- II. In other cases, if the offence is not punishable by imprisonment for life or death penalty, he shall be released on bail after completing half of the maximum period of imprisonment specified for that offence.

The Superintendent of the jail shall make an application in writing to the court to start the process of release on the completion of either half or one-third of the maximum period of imprisonment for the offence of an undertrial prisoner. This subsection, Section 479(3) was added in BNSS, 2023.

In both the cases, the court shall give the public prosecutor an opportunity to be heard and can authorise further detention of that person. The release or further detention shall be made by the Court with reasons to be recorded in writing.

And in no case shall the person be detained for more than the maximum time of imprisonment for the offence for which he was detained. But according to Section 479(2), if the person arrested is subject to the process of investigation, inquiry or trial for more than one offence, i.e. he is an accused under multiple cases, he will not be released on bail by the court.

For calculation of the period of detention, the period of detention which was caused due to delay in proceedings by the accused shall be excluded from the total time of detention.