BLOGS

Anticipatory Bail as a Right under CrPC

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Introduction

Article 21 of the Indian Constitution safeguards the right to life and personal liberty, granting individuals the fundamental right to live with dignity and personal freedom. This provision ensures the right to seek bail when arrested by law enforcement agencies.

Anticipatory bail, a provision under **Section 438 of the Code of Criminal Procedure (CrPC)**, was introduced in 1973, aimed at protecting individuals from unjust arrests and promoting the presumption of innocence. This principle finds its roots in international law, notably enshrined in **Article 11 of the Universal Declaration of Human Rights**.

Definition of Bail

'Bail' entails securing the release of an accused individual charged with specific offenses, ensuring their appearance in court for trial while remaining under the court's jurisdiction. Black's Law Dictionary defines bail as the security required by a court for the release of a prisoner who is to appear at a future date.

The primary purpose of arrest is to facilitate justice by presenting the accused before the court. However, bail can serve this purpose without depriving the individual of their liberty, thereby offering conditional release.

Types of Bail

Regular Bail: This type of bail involves the court ordering an accused person's release from police custody upon paying a specified bail amount. The accused can apply for regular bail under **Sections 437** and **439 of the CrPC**.

Interim Bail: The court can grant temporary bail until a regular or anticipatory bail application is pending. However, misuse of interim bail has been noted.

Anticipatory Bail: This type of bail is granted by the Sessions or High Court to an accused person before their arrest. It aims to prevent unjust arrest, but its application can sometimes inadvertently reveal an individual's potential involvement in a crime.

Anticipatory Bail as a Fundamental Right

Anticipatory bail finds its roots in Article 21 of the Indian Constitution, which guarantees every individual the fundamental right to life and personal liberty. This right ensures that no person is deprived of their freedom except through established legal procedures. Anticipatory bail serves as a vehicle to provide accused individuals with a fair chance to prepare their case for trial while preserving their dignity and daily affairs.

The principle of "innocent until proven guilty" underscores the essence of anticipatory bail. Imprisonment, even before conviction, tarnishes an individual's reputation and curtails their daily activities. Thus, the availability of anticipatory bail prevents undue hardships and upholds the tenets of justice.

Factors Considered for Anticipatory Bail

When considering anticipatory bail under **Section 438(1) of the CrPC**, the Supreme Court has laid out essential factors. These considerations are crucial in ensuring a just and balanced approach to the application of anticipatory bail, safeguarding both the rights of the accused and the interests of justice. The enumerated factors include:

Gravity of the Crime and Role of the Accused: Prior to authorizing an arrest, a thorough assessment of the seriousness of the alleged crime and the accused individual's role in it is imperative. This evaluation aids in determining the necessity and proportionality of granting anticipatory bail.

Previous Criminal Record: A scrutiny of the accused's past criminal record, especially any history of convictions for non-bailable offenses, is essential. This information helps in gauging the potential risk posed by the accused's release on anticipatory bail.

Possibility of Fleeing from Justice: The court examines whether there exists a reasonable likelihood that the applicant might abscond to evade legal proceedings. This consideration is vital in ensuring the accused's presence for trial.

Potential for Recurrence of Offences: The court assesses the likelihood of the accused engaging in similar or other offenses if granted anticipatory bail. Preventing the repetition of criminal behavior is a paramount concern.

Intent behind the Accusation: The motivation behind the accusation is evaluated to ascertain whether the intention is to merely injure or humiliate the applicant by initiating legal proceedings. This ensures that the granting of anticipatory bail is not exploited for ulterior purposes.

Role of the Accused: The specific role played by the accused in the alleged offense is examined to determine the extent of their involvement. This analysis aids in distinguishing between active participants and those who may have had a peripheral role.

Apprehension of Tampering with Evidence, Witnesses, and Threatening the Complainant: The court evaluates whether there is a reasonable concern that the accused might tamper with evidence, influence witnesses, or intimidate the complainant if released on anticipatory bail.

Additionally, factors such as tampering with evidence, witnesses, or the complainant are crucial considerations.

In addition to these detailed considerations, standard conditions are often imposed when granting anticipatory bail to ensure a balance between the rights of the accused and the interests of justice.

These conditions typically include:

- Cooperation with Investigation: The accused is required to present themselves for interrogation by the investigating officer whenever requested.
- Non-Interference: The accused must refrain from attempting to influence, threaten, or induce any individuals associated with the case who possess knowledge of the facts, with the aim of

preventing them from disclosing information to the court or the investigating officer.

- Travel Restrictions: The accused may not leave the country without obtaining prior permission from the court.
- Other Court-Deemed Conditions: The honorable court may impose any additional conditions it deems appropriate in light of the specific circumstances of the case.

Cancellation of Bail

The CrPC provides provisions for the cancellation of granted bail under certain circumstances. **Section 437(5)** enables the court that granted bail to cancel it if deemed necessary, ensuring that justice is upheld throughout the legal process.

Similarly, **Section 439(2)** empowers the Sessions Court, High Court, or Supreme Court to suo moto cancel bail and transfer the accused into custody if warranted. Moreover, under **Section 389(2)**, an appellate court possesses the authority to revoke bail and order the immediate arrest and custody of the accused.

Recent Legal Developments

1. Re: Digendra Sarkar: A pivotal judgment established that an application for anticipatory bail can be made even before the registration of a First Information Report (FIR). This precedent dispelled the notion that an FIR must be a prerequisite for seeking anticipatory bail, thereby ensuring that an individual's rights are protected from the very outset of legal proceedings.
2. Suresh Vasudeva vs. State: This case clarified that Section 438(1) of the CrPC, which pertains to anticipatory bail, exclusively applies to non-bailable offenses. This distinction underscores the importance of providing protection against potential arrests for serious crimes, enhancing the concept's relevance in the criminal justice system.
3. Sushila Agarwal vs. State: The Supreme Court's ruling emphasized that anticipatory bail should not be subject to a fixed period. Instead, courts have the discretion to set the duration of anticipatory bail based on unique circumstances. This judgment underscores the adaptable nature of anticipatory bail, ensuring that justice remains paramount.
4. Gurbaksha Singh Sibbia vs. the State of Punjab: This landmark ruling addressed the absence of specific time-bound provisions for granting pre-arrest anticipatory bail under the CrPC. It

confirmed that the court possesses discretionary powers to impose conditions and time limits while granting anticipatory bail, considering the gravity of the offense and other relevant factors.

Amendment and Controversy regarding Anticipatory Bail

The **Criminal Amendment Bill of 2018** introduced a significant change to anticipatory bail provisions. **Clause 4 of Section 438** imposed restrictions on granting anticipatory bail to those accused of certain heinous crimes, including rape of minors.

While the intention behind this amendment is to deter serious offenses, concerns arise regarding the potential injustice of denying anticipatory bail to accused individuals.

It is essential to differentiate between an accused and a convict. Denying anticipatory bail entirely contradicts the principle of presumption of innocence and may lead to unjust consequences. Instances of false accusations, driven by ulterior motives, emphasize the necessity of maintaining a fair and balanced approach when restricting anticipatory bail.

Conclusion

The concept of bail under the Code of Criminal Procedure in India revolves around the preservation of an individual's liberty while promoting the presumption of innocence until proven guilty.

Anticipatory bail, though not an absolute right, serves as a crucial safeguard against arbitrary arrests. While the law aims to protect both the accused's rights and the interests of justice, recent legal developments have spurred discussions on the delicate balance between ensuring justice and upholding individual freedoms.

As the legal landscape continues to evolve, the principles of justice and liberty remain at the heart of the Indian criminal justice system.

Also Read: Bailable and Non-bailable Offences