

NOTES

Bail under the Bharatiya Nagarik Suraksha Sanhita, 2023

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Introduction

Imagine that A is accused of stealing a phone. The case may take months to reach trial. If A is kept in custody throughout that time before the trial begins, the punishment may begin even before the court decides whether A is guilty. Bail prevents this unfair result while still ensuring that A appears before the court, does not threaten witnesses and does not obstruct the investigation.

The **Bharatiya Nagarik Suraksha Sanhita, 2023** (BNSS) replaced the **Code of Criminal Procedure, 1973** (CrPC) from **1 July 2024**. Its principal bail provisions are in **Sections 478 to 496**, with **default bail** linked to **Section 187**. This article explains the BNSS changes relating to undertrial prisoners, anticipatory bail and police custody.

Meaning and Legal Position of Bail

Bail means the conditional release of a person accused of or suspected of an offence from legal custody. The accused gives a bond or bail bond and promises to obey the conditions imposed by the police officer or court. BNSS **Section 2(1)(b)** defines **bail**. **Section 2(1)(d)** defines **bail bond** as an undertaking with surety, while **section 2(1)(e)** defines a bond as a personal undertaking without surety.

Object

Bail does not mean acquittal. The case continues, but the accused remains out of custody. The object is to secure attendance and protect investigation, not punish a person who has not been convicted. In **State of Rajasthan v. Balchand (1977)**, the Supreme Court expressed the guiding principle as “**bail is a rule, jail is an exception.**” In **Hussainara Khatoon v. Home Secretary, State of Bihar (1979)**, it held that unduly long detention of undertrial prisoners violates the

right to a speedy trial under [Article 21](#).

Article 21 requires a fair, just and reasonable procedure. Article 22 also protects an arrested person's right to be informed of the grounds of arrest, to consult a lawyer and to be produced before a Magistrate within 24 hours, subject to lawful exceptions. Bail law must therefore balance individual liberty with the interests of justice.

Bailable and Non-Bailable offences

A bailable offence is one declared bailable by the First Schedule or another law. Under [Section 478 BNSS](#), a person accused of a bailable offence who is arrested or brought before a court and is ready to furnish bail shall be released. Bail is a right in such cases. The police officer may release the accused at the police station itself. An indigent person who cannot furnish surety within the prescribed period should not be kept in custody merely because of poverty.

A non-bailable offence does not mean that bail is impossible. It means that bail is discretionary. Under [Section 480 BNSS](#), the court considers the gravity of the charge, the prima facie material against the accused, the possibility of absconding, the possibility of tampering with evidence or influencing witnesses, and the necessity of further investigation.

Ordinarily, **bail is not granted** by a Magistrate where there are reasonable grounds to believe that the accused committed an offence punishable with **death or imprisonment for life**. Similar restrictions apply to certain repeated offenders. However, the law permits a more compassionate approach for a child below sixteen, a woman, a sick or infirm person, or other cases covered by the statutory proviso's. While granting bail, reasons must be recorded when granted particularly in serious cases.

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01 MEANING

Bail = conditional release from custody on a bond or bail bond.

Purpose: secure attendance, protect investigation and prevent pre-trial custody from becoming punishment.



Bail is the rule; jail is the exception.

02 BAILABLE vs NON-BAILABLE

Section 478: in bailable offences, bail is a right.

Section 480: in non-bailable offences, bail is discretionary.

Court considers seriousness, prima facie material, flight risk, witness influence, evidence tampering and investigation needs.



03 TYPES OF BAIL

Regular: after arrest.

Interim: short-term release while bail is decided.

Default | Section 187: right after 90 days for serious offences or 60 days for other offences, if the accused applies and is ready to furnish bail.



04 UNDERTRIAL BAIL | SECTION 479

Usually after one-half of the maximum sentence.

First-time offender: may qualify after one-third.

Restriction: multiple pending cases; excludes offences punishable with death or life imprisonment.



05 ANTICIPATORY BAIL | SECTION 482

Pre-arrest protection when there is a reasonable apprehension of arrest in a non-bailable offence.

Conditions may include joining investigation, not influencing witnesses and not leaving India without permission.



06 CANCELLATION + POLICE CUSTODY

Bail may be cancelled for violating conditions, threatening witnesses, destroying evidence, absconding or obstructing trial.

Section 187: up to 15 days of police custody may be used in parts or as a whole within the permitted period.

Extra custody is not proof of guilt or an automatic reason to deny bail.



POLICE CUSTODY

Main kinds of Bail

1. Regular Bail

It is sought after arrest. A Magistrate may grant it under [Section 480](#). The High Court or Court of Session has special powers under [Section 483](#) to grant bail, change conditions or direct that a person released on bail be arrested and committed to custody. Before granting bail in serious offences, the court ordinarily gives notice to the Public Prosecutor.

The court applies the familiar “**triple test**” i.e. whether the accused may flee, tamper with evidence or influence witnesses. The court also considers the accused’s criminal record, the status of the investigation, the time already served in custody and the prospects of the trial being completed soon. In [Satender Kumar Antil v. CBI \(2022\)](#), the Supreme Court advised the courts against unnecessary arrest and to adopt a liberal and liberty-oriented approach especially when there is no need for custody.

2. Temporary Bail (Interim Bail)

Interim bail is a provisional release for a short duration while the regular or anticipatory bail application is being decided. It has been developed through judicial practice and [Article 21](#), and is not separately defined in the BNSS. It may be granted where there is a need for immediate protection, for example, where urgent medical treatment is required or to avoid serious and irreversible hardship. The court may impose strict conditions and then confirm, alter or cancel the interim protection.

3. Default or Statutory Bail: [Section 187](#)

Default bail is a right created by the investigating agency’s failure to complete investigation within the statutory period. Under [Section 187\(3\)](#), the usual limit is 90 days where the offence is punishable with death, imprisonment for life or imprisonment of ten years or more, and 60 days in other cases. If the charge-sheet is not filed within the applicable period and the accused is prepared to furnish bail, release must follow.

This is not a question of ordinary judicial discretion. The Supreme Court in [Uday Mohanlal Acharya v. State of Maharashtra \(2001\)](#) and [M. Ravindran v. Directorate of Revenue](#)

Intelligence (2021) recognized default bail as an indefeasible right once it accrues and is claimed correctly. The accused must promptly apply on the expiry of the period. A subsequent charge-sheet may affect the right if not invoked in time.

4. Undertrial Bail: Section 479

Section 479 replaces the main undertrial-release rule formerly found in Section 436A CrPC. An undertrial prisoner should ordinarily be released on bail after detention for **one-half of the maximum imprisonment prescribed for the offence**, excluding offences punishable with death or life imprisonment. The court must hear the Public Prosecutor.

The BNSS introduces a beneficial rule for a **first-time offender** i.e. a person who has never previously been convicted may be released on bond after undergoing detention for **one-third of the maximum imprisonment**. The Jail Superintendent must make a written application to the court when the one-half or one-third threshold is reached.

At the same time, Section 479(2) creates a restriction where investigation, inquiry or trial in more than one offence or multiple cases is pending. This may prevent release under Section 479, although the accused can still apply for bail under other provisions. The section also does not authorise detention beyond the maximum period of imprisonment prescribed for the offence.

Anticipatory Bail: Section 482

Anticipatory bail is pre-arrest protection. Section 482 BNSS states that a person who has a reasonable suspicion of being arrested for non-bailable offenses may make an application to the High Court or Court of Session. If granted, the order would require that the person be released on bail when arrested.

In **Gurbaksh Singh Sibbia v. State of Punjab (1980)** the Supreme Court held that the provision should not be given a narrow construction. The applicant need not wait for actual arrest, and a formal FIR is not always necessary if there is a genuine and reasonable apprehension. The court examines the nature and gravity of the accusation, the applicant's role, previous convictions, the possibility of fleeing, repetition of the offence, witness intimidation, evidence tampering and whether the accusation appears motivated by humiliation or harassment.

Section 482 permits conditions such as joining investigation, remaining available for interrogation, not influencing witnesses, not leaving India without permission and not committing

a similar offence. The protection does not apply to an accusation under [Section 65](#) or [Section 70\(2\)](#) of the Bharatiya Nyaya Sanhita, 2023, which concerns specified sexual offences, including gang rape of a woman below eighteen years.

In [Sushila Aggarwal v. State \(NCT of Delhi\) \(2020\)](#), the Constitution Bench held that ordinarily anticipatory bail need not be limited to a fixed period. It may continue until the end of the trial, unless the court imposes a reasonable limit. However, it can be revoked if the accused breaks conditions, obstructs justice or abuses freedom.

Anticipatory bail is not an absolute fundamental right. But it saves the value of personal liberty under [Article 21](#) and prohibits arrest as a means of harassment. The remedy must be weighed against the legitimate interest of investigation and the interest of victims and society.

Cancellation of Bail

Bail can be cancelled by the court that granted it or by the High Court or Sessions Court under [Section 483](#). Cancellation is not the same as refusal. It generally requires supervening circumstances, such as violation of conditions, threats to witnesses, destruction of evidence, commission of a similar offence, absconding or obstruction of the trial. The prosecution must show why continued liberty has become unsafe or unjustified.

Extended Police Custody and Bail

Under old law [section 167 CrPC](#), the police had to claim their 15 days of police custody strictly within the first 15 days after arrest. If they didn't use them, or only used 5 days, the other remaining days got suspended and now the accused could only be sent to judicial custody.

Now [Section 187](#) BNSS permits a Magistrate to authorise police custody for **fifteen days** in whole or in parts, rather than requiring all fifteen days to be used at the beginning. In serious offences i.e offences punishable by death, life imprisonment, or rigorous imprisonment of 10 years or more, the total investigation period is 90 days. Those fifteen days of police custody may be used during the initial 60 days in whole or in parts. Whereas in other offences covered the total investigation period is 60 days, the 15 days of police custody may be used during the initial 40 days in parts or in whole.

This does not mean that bail must be refused merely because police seek custody after the first fifteen days. The Magistrate must examine the legality and necessity of remand. Bail is decided under Sections [478](#), [480](#), [482](#) or [483](#), as applicable. Additional custody is not proof of guilt or an automatic ground to deny bail. Hence, [Article 21](#) continues to control this power.

Therefore the rule of extended police custody under [section 187](#) BNSS only applies as long as the accused is already in detention. The moment an accused is granted liberty through bail, the police cannot use [section 182](#) to cancel that bail or force the person back into the cell.

Conclusion

The BNSS retains the basic principle that pre-trial detention should not become punishment. **Section 478** makes bail a right in bailable offence, **Section 480** regulates discretionary bail in non-bailable offences, **Section 479** addresses prolonged undertrial detention, **Section 482** provides anticipatory bail, **Section 483** gives special powers to the High Court and Sessions Court, and **Section 187** governs remand and default bail.

For CLAT PG, remember that the BNSS brings both reform and concern. The one-third rule is a relief for first-time offenders. The restriction of multiple cases under **Section 479(2)** and the prolonged police-custody window under **Section 187** need to be examined carefully on constitutional lines. The ultimate test is whether custody is really necessary and whether liberty can be protected by reasonable conditions.